

1 EXECUTIVE COMMITTEE MEETING TO CONSIDER THE CHAIRMAN'S
2 MARK ON RESTRUCTURING THE IRS
3 TUESDAY, MARCH 31, 1998
4 U.S. Senate,
5 Committee on Finance,
6 Washington, DC.

7 The meeting was convened, pursuant to notice, at
8 5:27 p.m., in room SD-215, Dirksen Senate Office
9 Building, Hon. William V. Roth, Jr. (Chairman of the
10 Committee) presiding.

Gilmour
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11 Also present: Senators Chafee, Grassley, Hatch,
12 D'Amato, Murkowski, Nickles, Gramm, Lott, Jeffords, Mack,
13 Moynihan, Baucus, Rockefeller, Breaux, Conrad, Graham,
14 Moseley-Braun, Bryan, and Kerrey.

15 Also present: Franklin G. Polk, Staff Director and
16 Chief Counsel; Mark A. Patterson, Minority Staff Director
17 and Chief Counsel.

18 Also present: Donald Lubick, Assistant Secretary for
19 Tax Policy, Department of the Treasury; Ms. Nancy
20 Killefer, Deputy Director, Office of Government Ethics;
21 Jane Lay, OGE.

22 Also present: Lindy Paull, Chief of Staff, Joint
23 Committee on Taxation; Mark Prater, Chief Tax Counsel;
24 and Tom Roesser, Tax Counsel.

25

1 The Chairman. The committee will please be in
2 order. I think we have accomplished a great deal in the
3 informal meeting of the Finance Committee, and I want to
4 thank my colleagues for their cooperation. I can say
5 that I believe there is overwhelming agreement that
6 something must be done to help the taxpayers.

7 Senator Moynihan. Absolutely.

8 The Chairman. Many constructive amendments were
9 offered to my mark, and we have adopted several of them.
10 I hereby notify the committee that I incorporated those
11 changes we agreed to in the back room as part of the
12 Chairman's mark.

13 Senator Moynihan. So done.

14 The Chairman. Other issues will be taken up in this
15 meeting, and then on the floor and in conference, but the
16 progress thus far bodes well for the American taxpayers.

17 I want to emphasize that is what this is all about,
18 to help the taxpayers. They deserve it. It is their
19 money and it should be used on their behalf. How can you
20 put a price on protecting the taxpayer? The Finance
21 Committee knows what must be done.

22 With that, I would say let us proceed. Pat, do you
23 want to make any comments?

24 Senator Moynihan. I do, Mr. Chairman. Thank you
25 for the openness with which you and the staff, and Lindy

1 Paull, in particular, have responded to matters.

2 I would like to note that we have in the measures
3 just accepted a provision that the Joint Committee on
4 Taxation will provide a complexity analysis of tax
5 proposals in the 14-day period after reported from the
6 committee. This is something new for the Finance
7 Committee and may be looked back upon as an important
8 event.

9 We have a number of amendments we would like to
10 offer, sir. I do not think we have to debate them at
11 great length, if any length at all, because we have been
12 doing so all day. The problem is, the first amendment is
13 to be offered by the Senator from Nebraska, who is
14 unaccountably absent.

15 The Chairman. We are going to have a walk-through,
16 first.

17 Senator Moynihan. I have a statement I would like
18 to place in the record, sir.

19 The Chairman. Without objection.

20 [The prepared statement of Senator Moynihan appears
21 in the appendix.]

22 The Chairman. Tom, are you going to give the walk-
23 through?

24 Mr. Roesser. Yes, Senator. In addition to the
25 original Chairman's mark and the modifications to the

1 Chairman's mark, the members discussed providing the IRS
2 board 6103 access, but the taxpayer name, address, and
3 Social Security number would be redacted.

4 They also discussed requirements of Joint Tax to
5 prepare a complexity analysis, and this complexity
6 analysis would include the cost of compliance.

7 The third item would be for a Joint Tax and Treasury
8 study of penalties and interest. The next item, which
9 staff are going to look into, relate to the tax matters
10 partner and notice to others when the tax matter partner
11 changes.

12 The next item deals with the provision in the mark
13 providing that there will be liberal offer and compromise
14 acceptance procedures, and we would include report
15 language defining that.

16 Two additional items were actual knowledge for
17 innocent spouses. Staff will look into that provision to
18 try to work something there. Actual notice of transfers
19 for innocent spouses. Staff will look into that. Also,
20 the 9811 possible moratorium.

21 Mr. Prater. To the extent that revenue permits it,
22 under the first five years.

23 The Chairman. Anything further?

24 Mr. Roesser. That is it.

25 Senator Moynihan. Is the bill open to amendment,

1 sir?

2 The Chairman. Yes.

3 Senator Breaux. What does that mean? I might have
4 missed what they said. On all of these things you just
5 outlined, is that something they intend to incorporate,
6 or what?

7 Mr. Prater. Senator Breaux, I think the staff's
8 intention is, to the extent that we have the revenue in
9 the first five years, we would provide a moratorium on
10 the 9811 notice, that enforcement.

11 Senator Breaux. Well, the concern that I think a
12 number of members have about that is the whole specter of
13 the IRS issuing a notice immediately following
14 regulations without the benefit of public comment, having
15 the effect of changing tax policy and putting a lot of
16 companies, and perhaps individuals, in a very uncertain
17 position.

18 It is the responsibility of the Congress, and this
19 committee in particular, to pass those changes in policy,
20 not juts with a quick notice followed by regulations
21 without public comment.

22 I think it really flies in the face of how Treasury
23 should operate in these particular areas and I think it
24 is really important for this committee to take a stand on
25 something as, I think, egregious as that.

1 The Chairman. I think there is general agreement
2 with that. We will work with the Senator as the matter
3 comes before the floor.

4 Senator Mack. Mr. Chairman?

5 The Chairman. Yes, Senator Mack.

6 Senator Mack. Mr. Chairman, on the same point,
7 again, I do think that we should act. Part of this deals
8 with actions that this committee took last year which, in
9 my opinion, Treasury is taking a different position than
10 the Congress stated.

11 But I do understand that there are some discussions
12 going on right now about how the committee might approach
13 this. So why do we not see what kinds of things we can
14 work out and, depending on our discussion of that, we may
15 or may not want to go forward with an amendment.

16 Senator D'Amato. Mr. Chairman?

17 The Chairman. Yes, Senator D'Amato.

18 Senator D'Amato. Mr. Chairman, let me, first, say
19 that I think you, the staff, the Majority, Minority, and
20 the Ranking Member have done an outstanding job,

21 I think, particularly as it relates to the innocent
22 spouse and the protections that this will afford.

23 There was one other thing that, Mark, you did not
24 mention, but I think is implicit, and that is the notice
25 that will go out, where they are divorced, to both so

1 that they will both be covered because oftentimes, one
2 spouse is unaware.

3 So let me just commend you on it. I think it is just
4 a great step forward. I know some of my colleagues are
5 concerned, and staff is working, that those who have
6 benefitted where there has been actual knowledge or
7 fraud, that a party was aware of, they certainly were not
8 looking to enrich them, and staff is working on that.

9 But let me, if I might say, I am going to offer an
10 amendment and the Chair will raise the question of
11 germaneness, and I understand that. That is with respect
12 to the Women's Health and Cancer Rights Act. Now, the
13 fact is, I have had that and have introduced that now for
14 a year and a half. The fact is, there is no doubt that
15 there are some people who just do not want this to come
16 to a vote.

17 Now, it has to come through this committee. It has
18 to be on a revenue measure, a tax measure, or it will
19 never see the light of day when it comes to the floor.

20 So, while there may be some who say, well, Senator,
21 this is not the vehicle, I have been around here long
22 enough to know that the intent of the institution, or at
23 least in some, is that there will never be a vehicle
24 because they do not want to deal with this.

25 The question is, simply, are we going to say that

1 reconstructive breast surgery is not cosmetic and a woman
2 should have a right to that? There are policies today
3 that do not provide that, and States cannot get at it,
4 and we cannot get at it, because ERISA preempts that.
5 That is what it comes down to. I am not going to talk
6 longer to it. There is almost no financial implication.
7 The Joint Tax Committee has costed it out. It is \$102
8 million over 5 years.

9 Now, we are going to have thousands of women here,
10 breast cancer advocates, tomorrow and lots of people are
11 going to go over there and they are going to tell them
12 how they are working for them, how they are fighting for
13 them, but yet we will use every parliamentary device to
14 keep them from getting two basic things: 1) length of
15 stay should be determined by the doctor and patient, not
16 by some insurance carrier; and 2) reconstructive surgery.
17 I am not going to say more than that, but I am submitting
18 my amendment here today and I will ask for a vote.

19 Senator Murkowski. Mr. Chairman?

20 The Chairman. Yes.

21 Senator Murkowski. Yes. I join with the Senator
22 from New York on this. I think that we look at
23 reconstruction relative to prostate types, skin cancer.
24 These are significant, but the justification for
25 reconstruction for breast cancer speaks for itself. You

1 said it is, what, \$102 million over 5 years? I think
2 this is the time to do it and face up to the realization
3 that this is a legitimate medical cost that should be
4 included.

5 The Chairman. I would ask the distinguished Senator
6 from New York to withdraw this amendment. I know it is a
7 matter in which he is very deeply interested, but it is
8 not germane to the legislation before us and it could
9 very well be a killer amendment. I think we all
10 recognize that reform of the IRS structure is of critical
11 importance.

12 We have a bill that I think are very nearly in
13 agreement that we ought to report it out. There will be
14 other opportunities for the distinguished Senator to
15 raise this and I would respectfully ask that it be
16 withdrawn.

17 Senator D'Amato. Well, with all due deference to my
18 friend, the Chairman--and he is my friend--I would point
19 out that we had an education bill that came here. I
20 think that would have been appropriate, maybe even more
21 appropriate than with respect to this particular vehicle.

22 It was opposed, again, for the same reason by this
23 committee here. It was not included in the unanimous
24 consent on the floor of the Senate. We are going to have
25 the same fate here. We are going to have other

1 legislation and we are going to continue to get that
2 request to withhold.

3 So I will, respectfully, have to decline and say that
4 we are going to continue to vote on this here and on the
5 floor, and we are going to vote. If people want to say
6 no, it is not germane, fine, that is the way their vote
7 will be recorded.

8 The Chairman. I would ask the distinguished Senator
9 to set it aside temporarily, this amendment. We will
10 come back to it.

11 Senator D'Amato. Well, I would ask that it be
12 considered, Mr. Chairman, because I think people should
13 have a right to vote and let us find out what is
14 happening.

15 The Chairman. I am not trying to prevent it from
16 being voted upon, I am asking that we just delay that
17 vote.

18 Senator D'Amato. Well, how long would that be, Mr.
19 Chairman?

20 The Chairman. Ten minutes, 15.

21 Senator D'Amato. Fine. I will delay it.

22 The Chairman. I will now turn to Senator Grassley.

23 Senator Grassley. Mr. Chairman, I would offer my
24 amendment that would institute what is in the Kerrey-
25 Grassley legislation and the product of the Restructuring

1 Commission, an amendment that Senator Kerrey agrees with
2 me on. That is, to put a representative who is a
3 Treasury employee on the oversight board. I could go
4 into a lot of reasons for doing it, but I believe we have
5 the vote so I would just as soon vote on it.

6 [Laughter].

7 Senator Grassley. Why waste a lot of time?

8 Senator Kerrey. Mr. Chairman, I concur with the
9 logic and the conclusion of the Senator from Iowa.

10 [Laughter].

11 The Chairman. Just let me make two or three
12 comments, because I think it is important.

13 Senator Grassley. Then can I make some comments for
14 my amendment?

15 The Chairman. Yes.

16 Senator Gramm. I thought you gave it up.

17 Senator Grassley. I was hoping we would not have
18 any debate at all.

19 Senator Mack. Well, we could not have a vote and
20 just leave it as it is.

21 Senator Gramm. Let us have the debate. You have
22 got the votes, we get the debate.

23 Senator Grassley. This is what I would like to
24 share with you. As you know, Senator Kerrey and I were
25 the two U.S. Senators that served on this commission and

1 there was a member of the Treasury employees'
2 organization on the board as well.

3 I think they contributed tremendously to the work
4 product and we have a successful product that obviously
5 passe the House by an overwhelming margin and I think we
6 will have a bill that will pass the Senate by an
7 overwhelming margin. I think that they have established
8 in this commission's work a credibility that I think we
9 should take advantage of as we go through restructuring.

10 This procedure in the commission taught me that the
11 employees' representative and the members of the union
12 want real change at the IRS, they care about where they
13 work, they want the IRS to run smoothly and customers to
14 be happy with the service that they received. I think
15 that that experience tells me that this will be a very
16 worthwhile contribution to the efforts of the oversight
17 board.

18 The Chairman. Well, let me start out by saying that
19 I think it is important that the union leadership of the
20 IRS employees be brought into discussions, and we
21 specifically provide in the Chairman's mark that there
22 will be consultation with the union leadership on matters
23 involving the membership. So there is no disagreement as
24 to bringing them in as part of the discussion.

25 But the problem is that the purpose of the board is

1 essentially represent the best interests of the American
2 taxpayer. We are not including representatives from
3 agriculture, small business, or other groups, but rather
4 we are trying to maintain this as a board that, as I say,
5 represents the interests of the American workers.

6 So I have to say that we are concerned about the
7 conflict of interest because the union representative,
8 who will represent a limited group of individuals--in
9 this case the union employees--cannot represent the
10 interests of the union and at the same time make
11 decisions in the best interests of all the taxpayers.

12 I would point out that the criminal conflict of
13 interest laws embody the concept that a government
14 employee, even one who serves for a limited period of
15 time, cannot have two masters. This is not just my
16 belief.

17 I would point out that the Office of Government
18 Ethics, which is an agency of the executive branch, said
19 in a letter dated March 23, 1998 that, "It would appear
20 to us that as long as the board retains the authority
21 that the House bill would grant to it, an officer of a
22 union which represents Treasury employees will be barred
23 from acting on a substantial number of matters coming
24 before the board."

25 Last week, the Office of Government Ethics sent us a

1 second letter in which it sets forth its suggestions on
2 the ethics issue. Let me read what the second letter
3 says.

4 "We recommend that the bill not include an individual
5 who is a representative of an organization which
6 represents a substantial number of IRS employees. We
7 believe that the basic criminal financial conflict of
8 interest statute will be applicable to this individual
9 and will substantially limit the individual's ability to
10 carry out any meaningful service on the board.

11 More importantly, to the individual, such service
12 will expose him or her to constant scrutiny for even the
13 smallest official act. In addition, we believe that such
14 a member will also be substantially inhibited from
15 carrying out his or her duties on behalf of the union by
16 other conflict of interest rules."

17 So I would just make the point, and I will not take
18 more time, that it is not in the interests of the board
19 or the individual that would be appointed to be a member
20 of this board under these circumstances.

21 Senator Gramm. Mr. Chairman, I would like to be
22 heard on this.

23 The Chairman. I would ask you to be as brief as
24 possible.

25 Senator Gramm. I will be.

1 The Chairman. Senator Gramm.

2 Senator Gramm. Mr. Chairman, the purpose of this
3 board, even though the board has extensive powers, is to
4 represent the interests of the taxpayer. I think if you
5 explain that to working Americans and then you explain to
6 them that we were going to have the representatives of
7 the Treasury employee labor union on the board and that
8 we could potentially in another amendment have the
9 Secretary of the Treasury on the board, they would find
10 it laughable that the union and that the Secretary of the
11 Treasury are representing the taxpayer on this board.

12 Also, there is a little bit of a problem here. The
13 union claims to represent the 170,000 employees, but they
14 only have 60,000 members. So they do not even represent
15 half of the people who work at the Treasury Department.

16 So I think this is a bad idea. I think it perverts
17 the whole purpose of the board. I think, basically, we
18 are turning the board into a sham with these amendments.

19 Senator Kerrey. Mr. Chairman, I must, just for the
20 record, take 30 seconds to say that the board's purpose
21 is to provide management oversight and support for the
22 Commissioner. One of the most important things that this
23 Commissioner has indicated that he is going to do is use
24 the new authority that is law to restructure this agency
25 with significant personnel changes.

1 We took on board, our Restructuring Commission,
2 advice from both public and private sector agencies that
3 had gone through massive restructuring that said, put a
4 union representative on the board if you are going to do
5 this sort of thing in order to be able to get support, in
6 order to be able to get it done.

7 So the bull's eye here is to support the management
8 restructure that Mr. Rossotti will have, the authority
9 that he will have, and the restructuring effort that he
10 intends to do, that he has told this committee that he is
11 going to do.

12 The Chairman. I would like to expedite because I
13 know there are a number of matters.

14 Senator Conrad. Mr. Chairman?

15 The Chairman. Yes, Senator Conrad.

16 Senator Conrad. Just on this point. As a former
17 revenue commissioner, I would just say, if our interest
18 is in being effective at changing the Internal Revenue
19 Service, the employees have to be part of that. I mean,
20 frankly, the employees can undermine what we seek to do
21 if they are not participants in this effort. So I think
22 it would be a mistake to leave a representative of the
23 employees out.

24 Second, on the question of the Commissioner or the
25 Secretary of Treasury, I cannot fathom how we would leave

1 out the Secretary of Treasury. I mean, there is no
2 corporation in America that has a board of directors that
3 represents the interests of the shareholders that does
4 not have the CEO of the company s part of the board,
5 because they want to have a way of being effective.

6 So I would hope that we would not limit ourselves in
7 terms of the membership of this board. We ought to
8 include the employees and we ought to include the head of
9 the department that oversees the agency.

10 Senator Baucus. Mr. Chairman?

11 The Chairman. Senator Mack was next, but I would
12 like to try to limit.

13 Senator Mack. Well, apparently this discussion is
14 going beyond just the issue of union representation.
15 Senator Conrad just raised the issue of the Secretary of
16 the Treasury. Maybe we have a fundamental disagreement
17 as to what this board or commission is all about.

18 I thought that we were putting something together
19 that represented the taxpayers' concerns and interests,
20 but what it sounds like is developing here is that, no,
21 no, this is a management oversight commission.

22 I am not sure that that is what I am supporting. I
23 want a board, frankly, that is representing the
24 taxpayers' interests. I do not see how putting both
25 management and labor on that board is in the best

1 interests of the taxpayer.

2 Clearly, the Secretary of the Treasury still has
3 direct-line authority over the IRS. He does not need to
4 be on this board in order to have that direct line of
5 authority. Clearly, the board or the commission is going
6 to invite input from both labor and management.

7 Again, I would make the case that, if we put both of
8 those entities on this board, we have just established
9 the status quo again. The impression that the people in
10 the country are going to get is, there they go again. It
11 was a great idea, but by the time it worked its way
12 through the process we have now put the Secretary of the
13 Treasury on the commission, and labor.

14 Remember now, these six individuals--I think that is
15 the number--are part-time. Who do you think is going to
16 dominate what this board does? I would at this point
17 say, you put those other two individuals on it, the
18 Secretary of the Treasury and labor, they will dominate
19 what this board does and I think that is a tragedy.

20 Senator Baucus. Mr. Chairman? Mr. Chairman?

21 The Chairman. Thirty seconds.

22 Senator Baucus. I will try.

23 Senator Baucus. Mr. Chairman, this is an important
24 matter. I very much appreciate how much you want to
25 expedite discussion here, but in fairness and in all

1 honesty, to the American public this is a very important
2 matter and I think it is something we should discuss and
3 debate a little bit.

4 I say that because, first of all, the powers that
5 this board will have are enormous. I do not think the
6 American people, and I do not think members of the
7 Congress, fully understand the powers that this board is
8 going to have, including supervision--not direct
9 supervision, but management--of personnel, and many other
10 powers.

11 I will not read them all because I want to, in
12 respect to the Chairman, not take too much time here.
13 But I would ask the Senators to look at each of the
14 individual powers that this board is going to have.

15 I do believe, second, that it is better and the board
16 is more likely to help taxpayers and represent taxpayers
17 the more it understands various issues including points
18 of view that employees have, some of their real concerns,
19 some of the problems employees have. Most IRS employees,
20 I think, are doing a good job and want to do a good job.

21 The reason we have this bill, in part, is because
22 there are a few rogue agents, there are a few bad actors
23 in the IRS that cause a lot of problems, and there have
24 been some management problems as well. But most want to
25 do a good job.

1 If you have a board with tremendous powers, that
2 board is going to do a better job representing taxpayers
3 doing a better job, the more it understands employees'
4 concerns and problems.

5 Third, the employee is, first, going to be appointed
6 by the President and subject to the confirmation of the
7 Senate, which will give Senators ample opportunity to
8 sensitize this person and also give Senators a good
9 opportunity to decide whether this is a good appointment
10 or a bad appointment.

11 Also, the statute does not say it has to be a union
12 representative. it does not say that. The statute does
13 not say that it has to be a union representative. It
14 says the person has to represent employees or an
15 organization of the employees. There is a way to skin
16 this cat to get a good employee who represents employees
17 and be a good person on the board.

18 Do not forget also, these board members, some of
19 them, are not going to know a lot about how the IRS
20 operates. They are just not going to know because they
21 are business people doing different things. They are
22 just not going to know.

23 The same thing applies to the Treasury
24 representative. I think it is important for the board to
25 note Treasury's legitimate concerns. Our goal here is

1 not to be adversarial. It is not a board to be
2 adversarial with the IRS through the Treasury or the
3 board to be adversarial with employees.

4 The goal here is to get some accommodations and
5 cooperation, and I believe that you have to assume that
6 the Secretary on the board is going to be cooperative
7 rather than assuming he is going to be uncooperative.
8 You also have to assume that the employee representative
9 wants to be cooperative rather than uncooperative.

10 Now, I understand there are potential conflicts
11 problems. There are amendments floating around here that
12 deal with the conflicts issue. I believe the proper
13 result is to operate on good faith here, have both the
14 Treasury Secretary and employee on the board. We also
15 passed the conflicts amendment here to resolve potential
16 conflicts of interest.

17 The Chairman. The committee has called for the
18 vote. The clerk will call the roll on Amendment Number
19 1.

20 Senator Chafee. Now, what will that do, that would
21 put a union member on the board?

22 The Chairman. Yes. Put the union member on the
23 board of oversight.

24 Senator Lott. Mr. Chairman, just a parliamentary
25 inquiry.

1 [AFTER 6:00 P.M.]

2

3 The Chairman. Yes.

4 Senator Lott. Did you address the conflict of
5 interest issue?

6 The Chairman. Yes, we have addressed that.

7 Senator Lott. That has been resolved or it has just
8 been pointed out?

9 The Chairman. It has just been pointed out.

10 The Clerk will call the roll.

11 The Clerk. Mr. Chafee?

12 Senator Chafee. No.

13 The Clerk. Mr. Grassley?

14 Senator Grassley. Aye.

15 The Clerk. Mr. Hatch?

16 The Chairman. No, by proxy.

17 The Clerk. Mr. D'Amato?

18 Senator D'Amato. Aye.

19 The Clerk. Mr. Murkowski?

20 Senator Murkowski. No.

21 The Clerk. Mr. Nickles?

22 Senator Nickles. No.

23 The Clerk. Mr. Gramm, of Texas?

24 Senator Gramm. No.

25 The Clerk. Mr. Lott?

1 Senator Lott. No.
2 The Clerk. Mr. Jeffords?
3 Senator Jeffords. Aye.
4 The Clerk. Mr. Mack?
5 Senator Mack. No.
6 The Clerk. Mr. Moynihan?
7 Senator Moynihan. Aye.
8 The Clerk. Mr. Baucus?
9 Senator Baucus. Aye.
10 The Clerk. Mr. Rockefeller?
11 Senator Moynihan. Aye, by proxy.
12 The Clerk. Mr. Breaux?
13 Senator Breaux. Aye.
14 The Clerk. Mr. Conrad?
15 Senator Conrad. Aye.
16 The Clerk. Mr. Graham, of Florida?
17 Senator Graham. Aye.
18 The Clerk. Ms. Moseley-Braun?
19 Senator Moseley-Braun. Aye.
20 The Clerk. Mr. Bryan?
21 Senator Bryan. Aye.
22 The Clerk. Mr. Kerrey?
23 Senator Kerrey. Aye.
24 The Clerk. Mr. Chairman?
25 The Chairman. No.

1 The Clerk. The votes are 12 yeas, 8 nays.

2 The Chairman. The amendment is agreed to.

3 Senator Moynihan. Mr. Chairman, I would like to
4 offer a companion amendment.

5 The Chairman. Before we go there I would like to go
6 back to the pending business.

7 Senator D'Amato. Mr. Chairman, I would yield to
8 Senator Moynihan. I think he is going to bring up the
9 question of the Treasury Secretary.

10 Senator Moynihan. That is right.

11 Senator D'Amato. Why do we not dispose of that and
12 then we will get to ours. I thank the Chairman.

13 Senator Moynihan. I thank my friend from New York.

14 The proposal is that the Secretary of Treasury would
15 be included on the Internal Revenue Service oversight
16 board for the very same reason we have just voted to have
17 an employee representative.

18 These six individuals need to know what the Treasury
19 can do, what it cannot do, and the Treasury Secretary
20 needs to participate in the decisions in order to carry
21 them out. That is the CEO's job and I think you ought to
22 have it, and I ask for a vote, sir.

23 Senator Nickles. Mr. Chairman?

24 The Chairman. Senator Nickles.

25 Senator Nickles. Mr. Chairman, Senator Baucus said

1 we can assume that he would be working to implement these
2 changes and so on. I just remember the current incumbent
3 Secretary of Treasury was totally opposed to this bill,
4 totally opposed to the House bill. He may be in
5 agreement with this because he saw the train moving down
6 the station, but frankly I do not think he wants this
7 board to be telling him what to do, or even be giving
8 them the input.

9 So I may see where the votes are coming, but I do not
10 think it is a good deal. I think it is a vote for the
11 status quo and, frankly, the opportunity for him to
12 dominate the agenda instead of really having a taxpayers'
13 advocate input to make sure that we have real reform, I
14 am afraid we will be hindered by his participation.

15 He would certainly, as Secretary, have a chance to
16 have review, have a chance to have budget impact, and has
17 a lot of input, so we are not curtailing his power by not
18 including him on this board. So I would urge my
19 colleagues to vote no on the amendment.

20 Senator Baucus. Mr. Chairman, very briefly. It
21 will be 30 seconds.

22 The Chairman. All right. Thirty seconds.

23 Senator Baucus. Anybody who knows our Secretary
24 knows there is no finer public servant than Secretary
25 Rubin. We all know he will work and stay up and burn the

1 midnight oil to cooperate and find a good way to make
2 sure that American taxpayers are treated fairly. To say
3 that the current Secretary is going to cause a problem
4 just is not the case.

5 Senator Nickles. Was he in favor of this
6 legislation originally?

7 Senator Moynihan. May I point out that the vote in
8 the House was 426 to 4 and the Secretary is on the board?
9 Let us vote.

10 The Chairman. The question has been called for.
11 The vote aye is to include the Secretary of the Treasury
12 on the oversight board; those opposed will vote nay.

13 The Clerk will call the roll.

14 The Clerk. Mr. Chafee?

15 Senator Chafee. Aye.

16 The Clerk. Mr. Grassley?

17 Senator Grassley. No.

18 The Clerk. Mr. Hatch?

19 The Chairman. No, by proxy.

20 The Clerk. Mr. D'Amato?

21 Senator D'Amato. Aye.

22 The Clerk. Mr. Murkowski?

23 Senator Murkowski. No.

24 Senator Nickles. No.

25 The Clerk. Mr. Gramm, of Texas?

1 Senator Gramm. No.
2 The Clerk. Mr. Lott?
3 Senator Lott. No.
4 The Clerk. Mr. Jeffords?
5 Senator Jeffords. Aye.
6 The Clerk. Mr. Mack?
7 Senator Mack. No.
8 The Clerk. Mr. Moynihan?
9 Senator Moynihan. Aye.
10 The Clerk. Mr. Baucus?
11 Senator Baucus. Aye.
12 The Clerk. Mr. Rockefeller?
13 Senator Moynihan. Aye, by proxy.
14 The Clerk. Mr. Breaux?
15 Senator Breaux. Aye.
16 The Clerk. Mr. Conrad?
17 Senator Conrad. Aye.
18 The Clerk. Mr. Graham, of Florida?
19 Senator Graham. Aye.
20 The Clerk. Ms. Moseley-Braun?
21 Senator Moseley-Braun. Aye.
22 The Clerk. Mr. Bryan?
23 Senator Bryan. Aye.
24 The Clerk. Mr. Kerrey?
25 Senator Kerrey. Aye.

1 The Clerk. Mr. Chairman?

2 The Chairman. No.

3 The Clerk. The votes are 12 yeas, 8 nays.

4 The Chairman. The amendment is carried.

5 We will now return to the pending business, which was
6 Senator D'Amato's amendment. The Chair must rule that
7 his amendment is nongermane, under Committee Rule 2-A.
8 The very title of the amendment, Women's Health and
9 Cancer Rights Act of 1997, reveals that the Senator has
10 offered a health care amendment and not a tax amendment.

11 The fundamental purpose of the amendment is related
12 to health care and not to the Chairman's mark. And,
13 while it is true that part of the amendment amends the
14 Tax Code, it is clear that the major portion of this
15 amendment does not.

16 Under Senate precedent, if any part of an amendment
17 is nongermane the entire amendment must be held
18 nongermane. Consequently, the Chair holds the amendment
19 nongermane and out of order under Committee Rule 2-A.

20 Senator D'Amato. Mr. Chairman, I would respectfully
21 move to overturn the ruling of the Chair and ask for the
22 yeas and nays.

23 The Chairman. Yeas and nays have been asked for. A
24 yea vote would be to overturn the ruling of the Chair
25 that it is nongermane.

1 Senator D'Amato. And I will spare the members any
2 speechifying if we can get to the vote.

3 The Chairman. The Clerk will call the roll.

4 The Clerk. Mr. Chafee?

5 Senator Chafee. No.

6 The Clerk. Mr. Grassley?

7 Senator Grassley. No.

8 The Clerk. Mr. Hatch?

9 The Chairman. No, by proxy.

10 Senator D'Amato. I do not think that would be a no
11 by proxy, Mr. Chairman. I understand proxies cannot
12 vote. Mr. Hatch, if he was here, would vote aye. So if
13 proxies count, let us vote him.

14 The Clerk. Mr. D'Amato?

15 Senator D'Amato. Are we going to get a proxy?

16 The Chairman. No, no.

17 Senator D'Amato. Okay.

18 The Clerk. Mr. Murkowski?

19 Senator D'Amato. Wait, wait. I want to vote aye.

20 The Clerk. Mr. Murkowski?

21 Senator Murkowski. Aye.

22 The Clerk. Mr. Nickles?

23 Senator Nickles. No.

24 The Clerk. Mr. Gramm, of Texas?

25 Senator Gramm. No.

1 The Clerk. Mr. Lott?
2 Senator Lott. No.
3 The Clerk. Mr. Jeffords?
4 Senator Jeffords. No.
5 The Clerk. Mr. Mack?
6 Senator Mack. No.
7 The Clerk. Mr. Moynihan?
8 Senator Moynihan. Aye.
9 The Clerk. Mr. Baucus?
10 Senator Baucus. No.
11 The Clerk. Mr. Rockefeller?
12 Senator Moynihan. No, by proxy.
13 The Clerk. Mr. Breaux?
14 Senator Breaux. Aye.
15 The Clerk. Mr. Conrad?
16 Senator Conrad. No.
17 The Clerk. Mr. Graham, of Florida?
18 Senator Graham. No.
19 The Clerk. Ms. Moseley-Braun?
20 Senator Moseley-Braun. Aye.
21 The Clerk. Mr. Bryan?
22 Senator Bryan. Aye.
23 The Clerk. Mr. Kerrey?
24 Senator Kerrey. Aye.
25 The Clerk. Mr. Chairman?

1 The Chairman. No.

2 The Clerk. The votes are 8 yeas, 10 nays.

3 The Chairman. The motion to overturn the ruling of
4 nongermaneness does not carry.

5 Senator Baucus. Mr. Chairman?

6 The Chairman. The legislation is open to further
7 amendment.

8 Senator Baucus. Mr. Chairman, I do not have an
9 amendment at this point, but I would urge the Chairman to
10 find some vehicle so that we can pass the D'Amato
11 amendment. It is a very important amendment. I voted no
12 because I felt it was not appropriate at this time, but I
13 do believe we should find an appropriate time so we can
14 address this amendment.

15 Senator D'Amato. I thank the gentleman.

16 Senator Moynihan. Mr. Chairman, I believe the
17 Senator from Nebraska has an amendment.

18 The Chairman. Senator Kerrey?

19 Senator Kerrey. Mr. Chairman, first of all, prior
20 to offering this amendment let me both praise you and
21 Senator Moynihan for this mark-up, for the legislation,
22 for the attention you have brought to this, and
23 especially the staff work for developing the bill. It is
24 a good bill. We are going to debate at the margin on the
25 board and things like that, but the underlying bill is a

1 solid bill.

2 The problem with it, as I see it, is that it costs
3 too much money and we do not have offsets in the second
4 five years. I would just point out to colleagues that if
5 you look at the revenue table you will see that we are
6 about \$9.5 billion short in the second 5 years. There
7 are a lot of good things in here that we would all like
8 to do, all would like to be able to support and all like
9 to see in the bill.

10 But, in the interest of taxpayers who would have a
11 deadline on the 15th of April to have their taxes in, 120
12 million taxpayers who would get substantial new powers
13 under the House bill, as modified, I would say, by all of
14 the amendments that the Chairman, Ranking Member, and
15 this committee has agreed to that have no additional cost
16 expenditures, and there are a lot of them with no revenue
17 effect or negligible revenue effect, would be a
18 substantial improvement for the American taxpayer. They
19 would get new powers. The taxpayer advocate is
20 independent. The basis of the audits all have to be
21 reported.

22 If IRS sends out a collection notice--and they send
23 out 145,000 every single day--where negligence can be
24 proven, they are liable up to \$100,000 in civil
25 penalties, as well as the taxpayer, under this law, are

1 given the power to recover legal and other expenses if it
2 can be proven that the IRS is wrong. So there is a lot
3 of new power in this bill.

4 I regret, Mr. Chairman, having to offer an amendment
5 that is basically the House amendment. I point this out
6 to colleagues. I hope you will look at what we are
7 doing, what this bill requires us to do. We basically
8 are having to raise a few additional tax revenues to come
9 up with another \$7 billion in the first 5 years, then we
10 have no answer to the question, where do we get another
11 \$9.5 billion for the second 5 years?

12 So what I would substitute would be the House
13 language, which is H.R. 2676, and would observe that all
14 the fine amendments that the Chairman, the Ranking
15 Member, and this committee have come up with that we
16 could add that have no revenue impact could be offered
17 later as an amendment to improve the bill even further,
18 to offer the language of H.R. 2676 as passed by the House
19 on the 5th of November of last year for the Finance
20 Committee mark.

21 Now, however, unlike the House bill, I would propose
22 that we fully pay for the substitute over 10, not just 5
23 years, by merely repealing the Schmidt-Baking provision
24 with respect to vacation pay effective for tax years
25 ending after the date of enactment, and allowing

1 taxpayers to use foreign tax credits to reduce income for
2 one year back and carry it forward seven years, effective
3 for years beginning after December 31, 2000.

4 Mr. Chairman and members of this committee, if you
5 take those two offsets you fully pay for the bill and it
6 still allows us, if this amendment passes, to come back
7 in and offer all the amendments with negligible no
8 revenue impacts, including, in my judgment, the innocent
9 spouse provision that Senator D'Amato and others have
10 championed. I believe we can fund that as well.

11 But the importance of considering this amendment can
12 be seen as you look at the offsets that we are going to
13 have to come up with just to pay for the new things in
14 the first five years with a need to go to the floor.

15 We have talked about this before where, in some
16 unspecified way, we are going to try to find either a
17 budget offset by cutting expenditures by \$9 billion or a
18 tax offset, or perhaps even the door is still open to
19 waiving the Budget Act, which I suspect is going to be
20 difficult to do.

21 So these two offsets all by themselves would fully
22 pay for the bill and actually leave, Mr. Chairman and
23 members of the committee, a \$738 million surplus over the
24 years 1998 to 2002, and a surplus of \$33 million over the
25 years 2003. Thus, this \$770 million could be used to pay

1 for additional taxpayer provisions that the Chairman and
2 many members have talked about here.

3 In the interest of getting this bill done, we have
4 got to have a bill that we can conference quickly with
5 the House. This amendment will be fully paid for, we can
6 conference quickly, and get it on for the President's
7 signature on behalf of 120 million taxpayers who have a
8 deadline coming up of April 15, and give them the new
9 powers that this bill would provide them.

10 Senator Moynihan. Bravo.

11 Senator Nickles. Mr. Chairman?

12 The Chairman. Senator Nickles.

13 Senator Nickles. I just want to see if I understand
14 Senator Kerrey's amendment. So basically, you strike out
15 everything that we did in the Senate.

16 Senator Kerrey. No.

17 Senator Nickles. You strike out the innocent spouse
18 provision?

19 Senator Kerrey. No, sir, I do not. Here is what I
20 am suggesting, that we start with H.R. 2676 as our mark,
21 we use only Schmidt-Baking and this provision allowing
22 taxpayers to use the foreign credit, and use those two
23 provisions only as our pay-for, knocking out all the
24 other pay-fors that we have got in this bill thus far
25 that, again, to be clear, put us \$9 billion short in the

1 second 5 years.

2 This fully funds the bill and leaves a surplus of
3 \$770 million over the entire----

4 Senator Nickles. The House did not have the
5 innocent spouse. If you just substitute the House bill
6 you do not have innocent spouses, you also do not have
7 the----

8 Senator Kerrey. The House bill does not have
9 innocent spouse in there. What I am suggesting, Senator,
10 is if you use the two offsets that I have suggested you
11 will end up with \$770 million. I believe that can fund
12 innocent spouse, properly drawn. I mean, we could get
13 the innocent spouse provision in this bill, as well as
14 most of the amendments that we have discussed previously,
15 or at least significant numbers of amendments, have no
16 revenue impact, or negligible revenue impact.

17 Senator Nickles. I understand that.

18 Senator Kerrey. All those could be incorporated
19 into this bill.

20 Senator Nickles. But we already used, for offsets,
21 Schmidt-Banking and we already used the foreign tax
22 credit. Those are already used in the bill.

23 Senator Kerrey. Senator, what you have to do is
24 start with the House bill which is, by the way, a strong
25 bill, substantially improved by the Chairman and this

1 committee. But start with that as a mark and say that,
2 as a condition of the mark, we are going to fully pay for
3 the bill in order to be able to get this thing
4 conferenced quickly with the House, and on this week to
5 signature for the President, in time for the April 15
6 deadline that American taxpayers have. Those two
7 provisions by themselves on the House bill enable you to
8 fund an additional \$770 million with additional taxpayer
9 protection if you choose to do so.

10 Senator Nickles. We have both of those provisions
11 in this bill.

12 Senator Kerrey. Senator, we have a bill that is
13 \$9.5 billion short in the second 5 years.

14 Senator Nickles. But we have both pay-fors that you
15 mentioned already in this bill.

16 Senator Kerrey. But we do not have them paid for
17 over a 10-year period of time. We have got them paid for
18 in the first five years, not the second five years.

19 Senator Nickles. I just want to make sure I
20 understand because both the pay-fors that you suggested
21 are in the Chairman's mark.

22 The Chairman. That is correct.

23 Senator Nickles. So, basically, you are saying, gut
24 everything that we have done in the Chairman's mark and
25 replace it with the House bill. So you would not have

1 innocent spouses, you would not have----

2 Senator Kerrey. I am not saying that, no. Step one
3 is, this amendment passes and becomes the mark. The
4 condition is, fully paid for for 10 years. We can add
5 back in all of the amendments that have no revenue or
6 negligible.

7 Senator Moynihan. In a manager's amendment?

8 Senator Kerrey. Yes, sir. And you have got \$770
9 million, which I believe can fund innocent spouses
10 because we have raised----

11 Senator Nickles. No. Innocent spouses cost \$3.8
12 billion.

13 Senator Kerrey. We have had many discussions about
14 the innocent spouse provision prior to coming out
15 publicly in the mark, and we understand and we have
16 significant concerns about that language.

17 The Chairman indicated that we are going to look to
18 try to make certain that that language does not open up a
19 significant loophole. We could even add that. We could
20 find an offset for that as well. We could probably reach
21 agreement on an additional \$3 billion.

22 The most important thing, Senator, is this mark would
23 allow us, using the House as a base, or if you do not
24 want to use the House as a base then we ought to say with
25 this mark, we are not going to report a bill out of here

1 that is not fully paid for where we have not decided how
2 we are going to pay for the thing, because under that
3 condition we are not likely to be able to get anything
4 passed or conferenced without.

5 The Chairman. Senator Gramm has been seeking
6 recognition.

7 Senator Gramm. Mr. Chairman, first of all, I
8 believe we ought to pay for the bill. I am willing to
9 vote to pay for the bill. I am about as cold on this
10 innocent spouse proposal as I can be. But what Senator
11 Kerrey is asking us to do is to throw out a month's work
12 and start over here this afternoon at 6:11, and I
13 personally do not think that is wise. So I think if we
14 do this, that all the work we have done----

15 Senator Kerrey. You would, Senator, if you were
16 offering the amendment.

17 [Laughter].

18 Senator Gramm. All the work we have done for the
19 last month would just be thrown out and we would start
20 over tonight. I just think that is a mistake. I am for
21 paying for the amendment. If somebody wants to offer to
22 cut in an entitlement or something to pay for it, I will
23 guarantee in advance to vote for it. But I do not think
24 we ought to throw out our bill here at 6:11 tonight and
25 start all over.

1 Senator Nickles. Mr. Chairman?

2 The Chairman. I would like to proceed, if we could.
3 I will give you 30 seconds, if that will help.

4 Senator Nickles. Mr. Chairman, just a couple of
5 comments. If we adopted the House bill, one, we have
6 wasted a month; we would have no interest and penalty
7 relief, which is very significant in this bill; we have
8 no innocent spouse protectionS that we had hearings on in
9 this committee that I think were evidence that we need
10 some relief there; we have no due process for taxpayers.
11 And, I might mention, the House bill was not paid for
12 either, my understanding was, over a 10-year period of
13 time.

14 So I would just urge my colleagues, the Senate should
15 be a player in this. I do not think we should just
16 recede to the House. If there are some problems with
17 innocent spouse or if somebody has some concerns with it,
18 let us work on it. But I think we should stay with the
19 mark that the Chairman and other members of this
20 committee worked so hard to put together.

21 The Chairman. Well, I would just like to point out
22 that the Senate bill goes much further in reform in favor
23 of the taxpayer than the House bill. The House bill was
24 a good beginning, but, frankly, that is all it is. In
25 the Senate bill, we have far more oversight on the part

1 of the IRS, we have more accountability for employees,
2 and we have a new arsenal of taxpayer protections.

3 The House bill overlooks the fact that there are
4 statutory impediments to Commissioner Rossotti's efforts
5 to turn the agency into a streamlined taxpayer-friendly
6 organization. We have included any number of provisions
7 at the request of the new Commissioner, and they are
8 important ones if we are going to change the culture of
9 this organization.

10 Let me point out that the House bill does not allow--
11 and I emphasize does not allow--the oversight board to
12 oversee. Board members are not allowed to read anything
13 that contains taxpayer information, which we feel is
14 essential if it is going to have the kind of oversight
15 that we think is essential.

16 Other major reforms included in the Chairman's mark
17 but not in the Kerrey, is that there is, as has been
18 pointed out, meaningful relief for innocent spouses,
19 provisions that abate penalties and interest after one
20 year so that the IRS does not profit from its own delay,
21 one of the most important, I think, reforms in it.

22 We also provide for due process of law to taxpayers
23 by granting them a right to a hearing before the IRS can
24 pursue a lien, levy or seizure. It seems to me that is
25 only fair.

1 Time is running out. I could make additional
2 arguments, but I think it is important that we go ahead
3 and support the Chairman's mark, which goes much further
4 in protecting the interests of taxpayers than the House
5 bill.

6 Senator Moseley-Braun is next.

7 Senator Moseley-Braun. Thank you. Mr. Chairman, I
8 have a question. Schmidt-Baking, I understand, is kind
9 of like the gift that keeps on giving----

10 [Laughter].

11 Senator Moseley-Braun. [Continuing]. In that it is
12 already being used to fund this bill, the Chairman's mark
13 or Senate bill, on the House side, the House Africa Trade
14 bill is funded with it, apparently the Coverdale
15 Education Tax Credit initiative is being funded with it.

16 My question, and this is really to staff more than
17 anybody else, in the first five years of this bill the
18 repeal will produce \$3.193 billion for the first 5 years.
19 Then in the last 5 years, that is to say the second 5
20 years out, it is only \$860 million, a fourth of what it
21 produces in the first 5 years.

22 Could somebody explain to me why that precipitous
23 drop-off in the revenue estimates associated with the
24 repeal of this?

25 The Chairman. Lindy, would you like to answer?

1 Ms. Paull. Sure. Basically, there is a timing
2 difference involved here. It really has to do with,
3 basically the vacation pay and the severance pay will be
4 deductible, it is just a question in which year it is
5 going to be deductible. So that is why, whenever you see
6 a timing difference in deductions moving from one year to
7 another, you see this kind of unusual pattern where the
8 revenue is raised up front and it trickles off in the
9 last years.

10 Senator Conrad. Is it not that you get a change in
11 behavior? I mean, the fundamental reason you get a big
12 drop-off is you get a change in behavior if you make the
13 change that is advocated.

14 Senator Moseley-Braun. Such an extraordinary drop.
15 It is almost as though it just kind of falls off a cliff.

16 Senator Conrad. That has got to be the reason.

17 Ms. Paull. It is not completely changed. It is a
18 difference in timing as to when you take the deduction.

19 Senator Moseley-Braun. Thank you very much.

20 Thank you, Mr. Chairman.

21 The Chairman. Senator Graham is next.

22 Senator Graham. Thank you, Mr. Chairman. I believe
23 that Senator Kerrey's proposal raises two issues. First,
24 the desirability of having an IRS reform bill passed
25 concurrent with the April 15 tax filing date.

1 I think that is a very desirable objective, but I
2 believe it is an objective which is now beyond our grasp.
3 If we had taken this action 60 days ago we might have
4 been able to have accomplished it, but to do it on the
5 31st of March with Congress scheduled to recess on the
6 3rd of April for two weeks, it is not an attainable
7 objective, as desirable as it would have been had we
8 started earlier.

9 The second issue is one I strongly agree with, and
10 that is that we should not set a precedent of passing a
11 major IRS reform bill that is not fully funded for the 10
12 years that the Senate rules require us to provide
13 funding. I believe it is to that issue that we should
14 direct our attention.

15 Therefore, I personally hope that Senator Moynihan
16 will offer the amendment that he has filed, Amendment
17 Number 9, which would do precisely what this committee
18 voted less than 12 months ago to do, which was to
19 increase the current tobacco tax by an additional 5
20 percent and accelerate the 15-cent tax increase which was
21 enacted in 1997.

22 I understand that that action will increase the
23 amount of funding by \$12.8 billion over the 10-year
24 period and, thus, would fully fund this legislation
25 within the 10-year period. I believe that we should

1 adopt Amendment Number 9 and accomplish the objective of
2 providing full funding, then proceed forward with the
3 Chairman's mark.

4 Senator Conrad. Mr. Chairman?

5 Senator Baucus. Mr. Chairman?

6 The Chairman. Yes, Senator Conrad.

7 Senator Conrad. Mr. Chairman, I want to say that I
8 think that the provisions in your mark, where we are now,
9 is really far superior to what is in the House bill, and
10 I commend the members of this committee, and I especially
11 commend you and the Ranking Member for the work that you
12 and your staffs have done to bring us to this point. I
13 do not think there is any question that the provisions
14 that you have got here are really far superior to what is
15 in the House vehicle.

16 But there is a part of this I do find very nagging,
17 and that is, the first thing out of the block, for this
18 committee of all committees to put a bill out there that
19 is not paid for, I think, sends all the wrong signals.

20 For the members of this committee, who have been
21 among the most fiscally responsible members on both
22 sides, to put a bill out there that is not paid for is
23 just wrong.

24 I will be constrained to vote for the Kerrey
25 amendment on that basis even though, as I say, I believe

1 your provisions are far superior to what is in the House
2 bill. But I do think we have got to address this
3 question of having legislation that is not paid for.

4 Senator Baucus. Mr. Chairman?

5 The Chairman. Senator Baucus.

6 Senator Baucus. Mr. Chairman, my thoughts are very
7 similar to those of the previous Senator who spoke. I
8 have a hard time voting for a committee bill which is not
9 paid for. It just goes against my grain.

10 So my question to you is, Mr. Chairman, is this bill
11 paid for? I understand so far that it is not. It would
12 help me, and I think it would help other members of the
13 committee, to know if this is paid for and how it is paid
14 for so we have a better idea how to vote.

15 The Chairman. Well, as has been indicated, the bill
16 is paid for in respect to the first five years, as
17 required under the Budget Act. It is fully paid for.

18 At this stage, we have not come up with full payment
19 for the second five years, which is a Senate requirement.
20 We are working very closely with the leadership, Senator
21 Domenici, in trying to develop a means of paying for the
22 second five years. We are trying to do it in a manner
23 that it is not controversial, the payment. So we expect
24 that, by the time it comes to the Senate floor, we will
25 have it fully paid for.

1 I would point out that on a number of instances
2 members of the Finance Committee on the Democratic side
3 have called for enactment of a House bill when it was in
4 the same situation, it does not pay for the second five
5 years either, so what we are doing was consistent with
6 that. But, as I said, we are working with the leadership
7 to work out payment for the second five years.

8 Senator Baucus. Mr. Chairman, I appreciate that.
9 But, as I understand it, the substitute amendment being
10 offered by the Senator from Nebraska is paid for, both
11 the first five years and the second five years. May I
12 ask, is that correct?

13 Senator Kerrey. That is correct. It does not, by
14 the way, preclude adding all the non-revenue costing
15 provisions, many of which the Chairman has just cited as
16 improvements, all of which I support.

17 We can still produce a bill that is vastly superior
18 to the House, but one that is fully paid for over 10
19 years that we can conference in relatively short order.
20 I think we can get our work done. I refuse to believe
21 that we cannot get this work done if we produce a bill
22 that is conferenceable with the House by Friday of this
23 week.

24 The Chairman. Lindy, did you want to make a
25 comment?

1 Ms. Paull. I would have to say that we did not have
2 the opportunity to estimate this. The House bill was
3 \$2.9 billion short over the second 5 years. We have been
4 trying to pull the estimate on the foreign tax credit.
5 As it is currently sitting on the Senate floor, it is
6 kind of fluctuating.

7 Senator Kerrey. I used the numbers right out of
8 Coverdale, so unless they have changed since the
9 Coverdale education proposal, I am just using the numbers
10 you provided us for that.

11 Ms. Paull. Yes. All I am suggesting is that you
12 may want to just modify your amendment to include the
13 foreign tax credit provision that is in the Chairman's
14 mark.

15 Senator Baucus. Could you speak up, Lindy? I am
16 sorry. I could not hear that.

17 Ms. Paull. I was just suggesting that he may wish
18 to modify his amendment to include the foreign tax credit
19 provision that is in the Chairman's mark as opposed to
20 Coverdale because at least we know the estimate on that.

21 Senator Kerrey. Mr. Chairman, I would so modify the
22 amendment just to make certain that it is fully paid for
23 over 10 years.

24 Senator Baucus. And just for a point of
25 information, if I might ask, too, by how much is the mark

1 deficient in the second five years?

2 Ms. Paull. \$9.8 billion.

3 Senator Baucus. Thank you.

4 The Chairman. It will be a roll call vote. The
5 Clerk will call the roll. A vote aye would be in favor
6 of the Kerrey amendment.

7 The Clerk. Mr. Chafee?

8 The Chairman. No, by proxy.

9 The Clerk. Mr. Grassley?

10 Senator Grassley. No.

11 The Clerk. Mr. Hatch?

12 Senator Hatch. No.

13 The Clerk. Mr. D'Amato?

14 The Chairman. No, by proxy.

15 The Clerk. Mr. Murkowski?

16 Senator Murkowski. No.

17 The Clerk. Mr. Nickles?

18 Senator Nickles. No.

19 The Clerk. Mr. Gramm, of Texas?

20 Senator Gramm. No.

21 The Clerk. Mr. Lott?

22 Senator Lott. No.

23 The Clerk. Mr. Jeffords?

24 The Chairman. No, by proxy.

25 The Clerk. Mr. Mack?

1 Senator Mack. No.

2 The Clerk. Mr. Moynihan?

3 Senator Moynihan. Aye.

4 The Clerk. Mr. Baucus?

5 Senator Baucus. Aye.

6 The Clerk. Mr. Rockefeller?

7 Senator Moynihan. Aye, by proxy.

8 The Clerk. Mr. Breaux?

9 Senator Breaux. Aye.

10 The Clerk. Mr. Conrad?

11 Senator Conrad. Aye.

12 The Clerk. Mr. Graham, of Florida?

13 Senator Graham. No.

14 The Clerk. Ms. Moseley-Braun?

15 Senator Moseley-Braun. Aye.

16 The Clerk. Mr. Bryan?

17 Senator Bryan. Aye.

18 The Clerk. Mr. Kerrey?

19 Senator Kerrey. Aye.

20 The Clerk. Mr. Chairman?

21 The Chairman. No.

22 The Clerk. The votes are 8 yeas, 12 nays.

23 The Chairman. The amendment does not carry.

24 Senator Grassley. Mr. Chairman?

25 The Chairman. Yes, Senator Grassley.

1 Senator Grassley. I would like to offer my
2 Amendment Number 3. I again offer this with Senator
3 Kerrey. This amendment would assist States in collecting
4 past due taxes. Under this program, the Federal
5 Government is authorized to withhold income tax refunds
6 to satisfy legally enforceable past due State tax debt.
7 This proposal was recommended by our Restructuring
8 Commission and we did not take this recommendation
9 lightly. We believe that the committee should include
10 this.

11 By the way, this is \$12 million positive revenue.
12 Now, currently, 33 States offset State income tax refunds
13 to satisfy Federal income tax debt. In 1996, this
14 program generated \$91 million for the Federal Treasury.
15 So what we are doing here is helping the States do the
16 same thing.

17 The Federal Government currently offsets for
18 delinquent Federal debts such as past due child support,
19 student loans, VA housing. Adding State debts to this
20 list would not cause hardship to the Federal Government
21 and would benefit the States.

22 I would like to clarify some concerns that were
23 raised in our ad hoc meeting before we came to the open
24 session. First, eligible debts must be both overdue and
25 legally enforceable. This means that the State has

1 reduced the tax assessment to a legally owed judgment,
2 the debt has been agreed to and reduced to a judgment, or
3 the opportunity for further appeal under State law has
4 expired, there may be no recourse left to challenge the
5 tax, a variety of notifications are required before this
6 point is reached, and after this the State agency must
7 make reasonable efforts to collect the debt.

8 I know that I, Bob Kerrey, Senator Hatch, Senator
9 Baucus, and Senator Conrad had written to you asking you
10 to put this in the bill. We also have letters from
11 Governor Pataki. We have letters from the governors of
12 Delaware, Mississippi, my State of Iowa, and from
13 California, Illinois, Oklahoma, Louisiana, New York. So
14 we ought to have enough votes to get it passed.

15 Senator Hatch. Mr. Chairman?

16 The Chairman. Senator Kerrey. He is co-sponsor.

17 Senator Hatch. Yes. I just support him, that is
18 all.

19 Senator Kerrey. Likewise. Mr. Chairman, there are
20 32 States that use State tax refunds to settle Federal
21 taxes and they end up getting a two-way street.

22 The Chairman. Could I ask a question of the authors
23 of this amendment? It is my understanding that this
24 offset is limited to where there is a judgment.

25 Senator Grassley. Absolutely.

1 Senator Kerrey. That is correct.

2 The Chairman. I think that that is probably
3 acceptable by the committee.

4 Senator Nickles. Mr. Chairman?

5 The Chairman. Senator Nickles.

6 Senator Nickles. Before you accept this amendment,
7 let me just ask a question. So the State of Oklahoma
8 said I owed them money, maybe it is State income tax. I
9 guess it would be any tax liability from the State.

10 Maybe it could be estate taxes, maybe it could be any
11 type of State liability. Therefore, if I am getting a
12 refund from the Federal Government, they would take all
13 of that refund, or a portion of that refund, to pay off
14 the State tax. What if I am contesting? Maybe I do not
15 agree with the valuation of the estate tax.

16 Senator Grassley. Then you would not be affected by
17 my amendment. All of the opportunities under State law
18 would have to expire before this judgment could be
19 entered into, and the Federal Government would pay the
20 State the tax that you owe.

21 Senator Baucus. If I might clarify, this only
22 applies where that liability has been agreed to by the
23 taxpayer. He agreed to it, but there just is no
24 collection yet.

25 The Chairman. I think that is an important point.

1 I mean, after all, this legislation, the purpose of it is
2 to protect the taxpayer. In a sense, we are going the
3 other direction if we did not have it limited to those
4 cases where the payment is underscored by a judgment.

5 Senator Nickles. But Mr. Chairman, just a second.
6 There is a difference between a judgment and an
7 agreement. You may have a Tax Court judge or a tax
8 dispute within the State and you may wrestle with the
9 State of Oklahoma or the State of New York on what do you
10 owe the State, and some judge may make a judgment and
11 say, well, you owe \$10,000. You may not agree with it.
12 You may be running your appeals.

13 You may run the whole gamut and end up with losing on
14 it, and all of a sudden you lose your refund as well.
15 Most everything we have done in this is going to make
16 taxpayers happy. You are going to be taking some tax
17 refunds that they may still be contesting, or maybe not.
18 I was going to say, they may still be contesting with the
19 State whether that is a legitimate tax or not.

20 The Chairman. Could we ask the author, again, a
21 question?

22 Senator Grassley. Yes.

23 The Chairman. Would all appeals have to be
24 exhausted?

25 Senator Grassley. Yes, all appeals would have to be

1 exhausted. This is where it is final that you owe the
2 money.

3 Senator Nickles. Let me just ask, on estate tax, if
4 you have a farm in Iowa and the State government said
5 your estate tax is \$50,000 and you are still disagreeing
6 with it, you may have run your appeals and you lose, so
7 you get a refund and 100 percent of that refund goes to
8 pay the State court, even though you were still in the
9 process of fighting them? Maybe you want to use it
10 leveraged or were hoping for a settlement.

11 Senator Grassley. Well, there comes a point of
12 finality in every dispute that you have with government
13 any time. When that point of finality comes, that is
14 when it is due, whether you like it or not, or whether I
15 like it or not as a taxpayer. It is that point where
16 this judgment would be entered into.

17 Senator Nickles. One of the reasons why I mentioned
18 this, Mr. Chairman, after my father died we fought the
19 government for seven years on what the valuation was on a
20 machine shop, and there were significant differences of
21 opinion. We ended up settling and closing eventually,
22 but it was not a pleasant experience and not one that I
23 would hope that people would have to go through.

24 Senator Grassley. In that instance, you would not
25 be affected by this until either the court said you owed

1 it or until you, yourself, agreed to it.

2 Senator Murkowski. Mr. Chairman?

3 The Chairman. Frank.

4 Senator Murkowski. My concern here is, we are
5 trying to design this to improve the taxpayers' rights
6 and not to impose the IRS in the middle of a tax matter
7 between citizens and a State. That is kind of what we
8 are doing here.

9 Last year in the hearings we were certainly aware
10 that the IRS was not doing a good job of protecting
11 rights. I do not see why we should give it the
12 additional task now of collecting taxes for the State.
13 That is basically, in spite of the safeguards the Senator
14 from Iowa has, what we are doing.

15 I think we ought to fix the problems we learned about
16 the IRS first before we take steps to make them tax
17 collectors for the States. Of course the States are
18 going to be supportive of this; they have got somebody
19 helping them out. But I am just a little leery that we
20 are getting the cart before the horse here. I am going
21 to oppose the amendment.

22 Senator Grassley. Mr. Chairman?

23 The Chairman. I think Carol is next, and then we
24 will go back to you.

25 Senator Moseley-Braun. Mr. Chairman, it may be a

1 little late for this, but I have a memo from Treasury, in
2 response to Senator Nickles' concern. It says that
3 legally due and owing means that it has been agreed to by
4 the taxpayer and that you do not even get into this until
5 there is agreement by the taxpayer.

6 Now, we have representatives from Treasury here and I
7 think it would be appropriate to ask them that question.

8 Mr. Lubick. I would like to make about three
9 comments here. Point number one, is that the IRS,
10 whatever conditions you impose for the IRS to collect, we
11 will follow the certification by the State. It is not
12 possible for the IRS to make an independent
13 investigation.

14 Second, and I think Senator Conrad can help on this
15 because of his past experience, normally a State tax
16 liability would not be reduced to a judgment. There
17 would be an assessment from which the time to appeal or
18 contest has run, but normally I do not think you would
19 expect the States to run after each assessment that is
20 outstanding and go to a court and start a lawsuit and
21 sue, I think, unless you say there is a final liability
22 that you have not done much for the States.

23 As far as additional burden on the IRS is concerned,
24 once these other two points are satisfied, we collect
25 many other debts by offset and this is not a particular

1 problem that would impair the resources of the Internal
2 Revenue Service.

3 Senator Grassley. Mr. Chairman?

4 The Chairman. Let me point out, it is my
5 understanding that there will be a roll call vote at 7:00
6 p.m. If at all possible, I would like to finish by that
7 time, so I would ask each of you to be brief.

8 Senator Grassley. All right. The only thing that
9 has gone unanswered here is, we are trying to give the
10 Federal taxpayers some rights and protect the Federal
11 taxpayers. I accept that.

12 But if we were each sitting in our respective State
13 capitals as a member of the State legislature and we were
14 working for State taxpayers to protect the taxpayers
15 within our State, then we would argue that our State
16 should not be helping the Federal Government collect
17 taxes that are due. Now, several States do that in
18 conjunction with the Federal Government. This is a
19 reciprocal arrangement that we are giving for the States
20 to benefit from it.

21 Mr. Lubick. We agree with that, Senator Grassley.
22 We think it is a matter of reciprocity and we strongly
23 favor it.

24 The Chairman. I think the time has come for a vote.

25 Senator Mack. May I ask a simple question?

1 The Chairman. Yes.

2 Senator Mack. Does present law give States priority
3 with respect to tax collection, does it have priority
4 over another creditor? Present law already provides
5 that.

6 Mr. Lubick. I believe in bankruptcy court, Senator
7 Mack, but not as far as the Internal Revenue Code is
8 concerned. It is a creditor like other creditors.

9 Senator Mack. So only in bankruptcy does the State
10 have a priority.

11 Mr. Lubick. State tax liability has a priority.

12 Senator Mack. So the point is, what we are really
13 doing here is we are reestablishing a priority with, in
14 essence, who has a prior claim on a Federal refund. Is
15 that right?

16 Mr. Lubick. I guess the effect of it would be that,
17 if the State certified the liability and we honored the
18 State's request.

19 Senator Nickles. Mr. Chairman, a very quick
20 question for Mr. Lubick. Now, you have 50 different
21 States. If the State of Oklahoma and State of Alaska has
22 an assessment against the taxpayer, are you going to know
23 whether that taxpayer has run every appeal that is
24 complete?

25 Mr. Lubick. No, Senator. I think the point I made

1 was that the Internal Revenue Service can administer it
2 only if it is allowed to rely upon the State's
3 certification.

4 Senator Nickles. My concern is, and I have the
5 greatest respect for Senator Grassley, but you might have
6 States making assessments, notifying IRS, please help us
7 out on this, and they might do it and the taxpayer may be
8 in the process of trying to appeal it, they may be in the
9 process of trying to work it out, they may be in the
10 process of trying to say, let us pay it out over some
11 period of time, and instead basically they would lose
12 their refund in the process. I am not so sure we should
13 pass the amendment.

14 Senator Baucus. Mr. Chairman?

15 The Chairman. May I ask Secretary Lubick a
16 question. Who would have precedence, Federal or State,
17 say, in the case of child support or other claims of the
18 Federal Government?

19 Mr. Lubick. Child support comes first, Mr.
20 Chairman.

21 Senator Baucus. Mr. Chairman.

22 The Chairman. Senator Baucus.

23 Senator Baucus. Just very briefly. First of all,
24 this would not apply until the State certifies that all
25 these conditions have been met, that is, time for appeals

1 run, judgment, or so forth. That is stated right in the
2 amendment. Second, the same applies on a reciprocal
3 basis. That is, States do not know whether the Federal
4 appeals have been exhausted until, I presume, the IRS has
5 so certified. We are talking about reciprocity here. I
6 would expect, frankly, some State legislature is going to
7 think, well, hey, if they are not going to help us we are
8 not going to help them. I can just see that happening.

9 If we turn this down I can see some saying, well,
10 what is the big deal then? Why should we collect money
11 for Uncle Sam, or at least with respect to the refund
12 offset, if they are not going to help us?

13 In both cases taxpayers are protected, as near as I
14 can tell, with the certification that either there has
15 been agreement, or judgment or appeal time has run. I
16 have not heard of any complaints, frankly, where States
17 have made an offset and the taxpayer has not provided.
18 It is just reciprocity here.

19 Senator Mack. It seems to me there is a question of
20 germaneness here. I am not sure this is germane to this
21 bill. We are talking about establishing priorities among
22 creditors.

23 The Chairman. I would agree, it is a close call.

24 Senator Kerrey. Mr. Chairman, I hope this is ruled
25 to be germane. This really is a debate about States that

1 have income taxes and States that do not. For those of
2 us who have the income tax, and I appreciate Senator
3 Nickles is raising a detailed point here and a concern,
4 but for those of us who have income taxes, these offsets
5 are very important to us.

6 Is it millions of dollars? No. It could be hundreds
7 of thousands of dollars at a State level, but it is a big
8 issue. It is a fairness issue. It creates a two-way
9 street. I appreciate it and I hope the Chairman will
10 rule that this amendment is germane.

11 The Chairman. It is close, but I would suggest that
12 we go ahead and have a roll call vote on the amendment.

13 Senator Moynihan. Yes.

14 The Chairman. Those in favor of the amendment,
15 signify by saying aye.

16 [A chorus of ayes].

17 The Chairman. Opposed, nay.

18 [A chorus of nays].

19 Senator Grassley. The ayes have it.

20 [Laughter].

21 The Chairman. Do I hear a request for a roll call
22 vote?

23 Senator Grassley. Well, we will wait until you
24 rule.

25 The Chairman. The Chair is in doubt. A roll call

1 vote will be held. The Clerk will call the roll.
2 The Clerk. Mr. Chafee?
3 The Chairman. Aye, by proxy.
4 The Clerk. Mr. Grassley?
5 Senator Grassley. Aye.
6 The Clerk. Mr. Hatch?
7 The Chairman. Aye.
8 The Clerk. Mr. D'Amato?
9 The Chairman. Aye, by proxy.
10 The Clerk. Mr. Murkowski?
11 Senator Murkowski. No.
12 The Clerk. Mr. Nickles?
13 Senator Nickles. No.
14 The Clerk. Mr. Gramm, of Texas?
15 Senator Gramm. No.
16 The Clerk. Mr. Lott?
17 The Chairman. No, by proxy.
18 The Clerk. Mr. Jeffords?
19 The Chairman. Aye, by proxy.
20 The Clerk. Mr. Mack?
21 Senator Mack. No.
22 The Clerk. Mr. Moynihan?
23 Senator Moynihan. Aye.
24 The Clerk. Mr. Baucus?
25 Senator Baucus. Aye.

1 The Clerk. Mr. Rockefeller?
2 Senator Moynihan. Aye, by proxy.
3 The Clerk. Mr. Breaux?
4 Senator Breaux. Aye.
5 The Clerk. Mr. Conrad?
6 Senator Conrad. Aye.
7 The Clerk. Mr. Graham, of Florida?
8 Senator Graham. Aye.
9 The Clerk. Ms. Moseley-Braun?
10 Senator Moseley-Braun. Aye.
11 The Clerk. Mr. Bryan?
12 Senator Bryan. Aye.
13 The Clerk. Mr. Kerrey?
14 Senator Kerrey. Aye.
15 The Clerk. Mr. Chairman?
16 The Chairman. No.
17 The Clerk. The votes are 14 yeas, 6 nays.
18 The Chairman. The amendment is agreed to.
19 Senator Moynihan. I think Mr. Conrad is next on our
20 side.
21 The Chairman. Senator Conrad.
22 Senator Conrad. Mr. Chairman, I have an amendment
23 that strikes the burden of proof provisions in the
24 Chairman's mark.
25 Mr. Chairman, I offer this amendment because I am

1 personally persuaded that we are headed in a direction,
2 though well intended, that will give us the opposite
3 result from the one we hope to achieve, and that is
4 making things better.

5 I am personally persuaded that we are going to have a
6 result here that is directly opposite to the one we
7 intend. We intend to change the burden of proof to make
8 things easier for taxpayers. I am persuaded we are going
9 to do precisely the opposite.

10 We earlier received a letter from 100 professors, law
11 school professors who teach tax. They wrote us urging us
12 to, as they say, "urge strongly the Senate Finance
13 Committee not approve legislation fundamentally altering
14 the current allocation of the burden of proof in civil
15 tax litigation."

16 They point out in their letter that they believe,
17 "the measure would produce the opposite of its intended
18 result. It would make tax controversies more expensive,
19 more intrusive, more inconvenient for taxpayers."

20 Mr. Chairman, I think they have got it exactly right.
21 We have said and we have heard that we have a tax system
22 that gives more rights to criminals than it does to
23 taxpayers. That sounds good and it sounds believable
24 until you examine the facts.

25 What the facts reveal, is something quite different

1 than that simple slogan. What the facts reveal is that,
2 in a criminal tax case, the burden of proof is on the
3 government, precisely as one would expect, and that is
4 appropriate. The burden of proof should be on the
5 government, just as it is in any other criminal case.

6 With respect to civil litigation, the principle in
7 tax cases, as the principle is in other civil litigation,
8 the question is, who has the most information about the
9 transaction.

10 In civil cases, there is no question with respect to
11 tax questions that the people who have the most
12 information are the people who are involved in the
13 transaction. The IRS was not involved in the
14 transaction, the taxpayers were involved in the
15 transaction.

16 So the principle that applies in civil litigation,
17 not only in tax cases but other cases, the test is, who
18 has the closest nexus to the transaction? Clearly, in
19 civil cases, that is the taxpayer. That is why the
20 burden of proof properly rests with the taxpayer.

21 Now, what happens if we change the burden of proof?
22 These are law school professors from all over the
23 country, virtually every State represented. They are
24 saying to us, listen to us, please, before you leap off
25 the cliff thinking you are doing something that will help

1 taxpayers when you are going to do something that is
2 going to hurt taxpayers. They say, here are the things
3 that could flow from a decision to make the changes that
4 are in the Chairman's mark.

5 Number one, what will the IRS do? The IRS would have
6 alternatives, but all of them are costly, burdensome, and
7 intrusive--intrusive--to taxpayers.

8 Here are what the alternatives would be to the IRS.
9 Number one, they could issue a summons to the taxpayer
10 requiring production of information. Anybody that is
11 involved in a summons knows that is time consuming,
12 expensive, and adversarial. Is that really what we want
13 to have happen here with relations between taxpayers and
14 the IRS? I do not think so.

15 The second option open to the IRS, would be to seek
16 more information from third parties, but banks, credit
17 card companies, the taxpayer's customers and suppliers
18 may well have reason to complain if legislation that
19 increased their expense and inconvenience in responding
20 to such inquiries is imposed on them by the Congress.

21 The third possible result, is that the IRS could wait
22 until litigation was commenced and then seek to obtain
23 the needed information through judicial discovery. Boy,
24 if that is not intrusive, if that is not expensive.

25 Mr. Chairman, I think this is well intended. I think

1 all of us want to see taxpayers be given a fair shake.
2 But the reality is, the burden of proof changes required
3 here are going to further burden taxpayers. I think we
4 are headed for a mistake, one that we will regret, one
5 that taxpayers will regret.

6 We have been put on notice by law school professors
7 from around the country who practice tax law, who teach
8 tax law, and who tell us, we know you think you are
9 helping taxpayers, but you are about to make a mistake
10 that is going to make taxpayers' lives more difficult.

11 So I would hope that my colleagues would give this
12 close consideration. I am under no illusion here on what
13 the vote might be, but I hope that we think carefully
14 about what we are doing.

15 Senator Moynihan. Mr. Chairman, may I just
16 supplement and refresh the committee's mind. This matter
17 was brought before us in our hearings. At one point, we
18 had four previous Internal Revenue Commissioners. We had
19 received a letter from Judge Cohen, who is the head of
20 the Tax Court, saying, please do not do this. It would
21 add such a burden to the taxpayer. The Tax Court sees
22 what goes on out there.

23 The Federal Government will have to be so much more
24 intrusive, so much more demanding. Most people pay their
25 taxes and get along fine. Suddenly, they would not be.

1 I asked about Chief Judge Cohen's letter and I said,
2 "The actual event will be to increase the burdens on the
3 individual. Is that your judgment?" we asked this panel
4 of former IRS Commissioners. Fred Goldberg: "Without
5 question, Mr. Moynihan." Margaret Richardson: "There is
6 no doubt in my mind." Donald Alexander: "I completely
7 agree with my colleagues and with Judge Cohen's letter."
8 It just went on.

9 We had the strongest testimony, do not spoil this
10 wonderful bill with this seemingly simple change, but,
11 oh, my God, it could be fateful. We could be remembered
12 as the people who drowned the American taxpayer in
13 paperwork.

14 Senator Gramm. Mr. Chairman?

15 The Chairman. Yes, Senator Gramm.

16 Senator Gramm. Mr. Chairman, I do not think our
17 dear colleague went far enough in the letter by all these
18 law professors. I think their letter is typical of an
19 argument that is wonderful and should have been delivered
20 on another day when another subject was debated. What we
21 have done, is we have responded to the concerns that were
22 made by witnesses before the committee and by this letter
23 by saying that only when you provide all of the
24 information do you have a shift of the burden of proof.

25 Now, there are four concerns that are raised on page

1 3 of the letter. The first, is that shifting the burden
2 of proof will encourage taxpayers to deal in cash and
3 discourage them from making and keeping records of their
4 transactions. Well, if they do not keep records of their
5 transactions, they cannot get the burden of proof
6 shifted, so that is not a concern under the language of
7 the bill.

8 The second, is they will have incentives to conceal
9 and delay. Again, the only way they can get the burden
10 of proof shifted on the bill is to turn over their
11 records to the IRS.

12 Then we have the final two. One, is there will be
13 procedural wrangling. Lawyers are concerned about
14 procedural wrangling? Give me a break.

15 And then the final one, and I love this one, is it
16 will increase public cynicism because people will forget
17 to read the fine print. What kind of argument is that?

18 So, Mr. Chairman, I am already unhappy about, we have
19 turned the henhouse over to the foxes on the oversight
20 board. We take this provision out, there is nothing left
21 to this bill. This is a very important provision.

22 I never thought this board was going to do anything
23 anyway. I always thought it was sort of a political cop-
24 out. But shifting the burden of proof is going to change
25 the way the IRS does business, and that is what I want to

1 do.

2 So I think this amendment is critical. I think we
3 have got to defeat it or we just basically do not have a
4 bill.

5 The Chairman. Senator Moseley-Braun.

6 Senator Moseley-Braun. Thank you, Mr. Chairman.

7 I agree with the Senator from Texas, and not just
8 because he released my judges. The fact of the matter
9 is, in any civil litigation the suing party is required
10 to prove their case. I do not see how, with regard to
11 civil litigation brought by the Treasury against the
12 taxpayer, why it should be any different.

13 I have read the letter from the professors and it
14 does not make all that much sense in terms of the normal
15 flow of litigation. We already face some of the problems
16 that are represented here. I am sorry to disagree, ever,
17 with the distinguished senior Senator from New York, whom
18 I just absolutely adore, but I have to, in this case,
19 give fair warning that I will not vote for this
20 amendment.

21 Senator Breaux. Mr. Chairman?

22 The Chairman. Senator Breaux.

23 Senator Breaux. Just very briefly. I think we
24 ought to keep the compromise, which I will call it, in
25 the bill as it is. I mean, currently there is a

1 presumption that the government is always right and the
2 taxpayer has to come in and present evidence that reduces
3 that presumption, but the taxpayer still has the burden
4 in court to prove his case. He has to prove himself
5 innocent not once, but twice.

6 I think what we have here is sort of a fair
7 compromise that, when the taxpayer takes all of his
8 material and presents it as credible evidence, then that
9 shifts the burden of proof.

10 That does not absolve the taxpayer of having to have
11 records and present those records to the IRS. The
12 taxpayer would still have to present credible evidence
13 that he is right and the government is wrong, but then
14 that shifts the burden to the government, as it should
15 be, to prove the case. I think that is a fair balance in
16 what we have accomplished and I hope we can support it.

17 Senator Conrad. Mr. Chairman?

18 The Chairman. I think we had Senator Bryan, first.

19 Senator Bryan. Mr. Chairman, if I might make an
20 inquiry. In one of the iterations of this shifting of
21 the proof, it was my understanding that the
22 administration signed off.

23 One of the versions, and I do not know if it is the
24 current one that we are operating with, is that the
25 burden of proof would shift only when the taxpayer was at

1 the Tax Court level.

2 Perhaps the Chairman can enlighten me in terms of how
3 the current draft is structured, and, second, whether or
4 not the administration has either previously or has
5 currently signed off on the provisions.

6 The Chairman. I would say to the distinguished
7 Senator, it is limited to Tax Court or Federal court,
8 yes.

9 Senator Conrad. Mr. Chairman?

10 The Chairman. Let me see who is next. Yes, you are
11 next.

12 Senator Conrad. Mr. Chairman, I would say to my
13 distinguished colleague, Senator Moseley-Braun, she has
14 really argued my side of the case because the taxpayer
15 takes the IRS to the Tax Court, not the other way around.

16 I would just say, with respect to the question of the
17 Department of Treasury, we have been asked the question,
18 what is the administration's position with respect to
19 this amendment?

20 As I understand it, the administration has indicated
21 they would prefer the burden of proof provisions in the
22 Senate bill over the House bill, but they would, further,
23 prefer that there were no change in the burden of proof
24 for the precise reasons that I have given.

25 In fact, although this is well intended, it is going

1 to have the opposite result from what people think it is
2 going to have, the simple fact being, in a criminal case
3 the burden of proof is on the government, just as it
4 should be, but in a civil matter the burden of proof lies
5 with those who have the greatest access to information.
6 That is a principle that we apply in all civil
7 litigation.

8 I would ask Mr. Lubick, what is the administration's
9 position with respect to the amendment I have offered?

10 Mr. Lubick. Senator Conrad, you have stated it
11 correctly. We have worked very closely with the staffs
12 here and they have, in our judgment, greatly improved the
13 provision as it was in the House bill and they have dealt
14 with many of the concerns that Senator Gramm had raised.

15 I think, weighing it overall, I visited last week
16 with Senator Kerrey and he went to the blackboard and he
17 drew onto the blackboard a very large circle and a very
18 small circle.

19 Senator Nickles. Trying to get you into Amway?

20 [Laughter].

21 Mr. Lubick. The very large circle represented
22 taxpayers in this country who are striving to be
23 compliant and the small circle was taxpayers who are
24 trying to be noncompliant. He said he judged a provision
25 in this bill, and I have followed that since in all of

1 these doubtful matters, that anything that makes life
2 easier for those in the large circle is something you
3 want in the bill and anything that makes life tougher for
4 those in the small circle you want in the bill.

5 Judging the burden of proof, I think, does not really
6 make things, for the reasons you have given, easier for
7 those in the large circle, but it certainly helps those
8 in the small circle.

9 Senator Moynihan. Don, what is your vote?

10 Mr. Lubick. I do not have a vote, Senator.

11 [Laughter].

12 Mr. Lubick. As you know, I have been before this
13 committee since 1961 and I have never had a vote. If I
14 had had a vote, I would have lost almost all of them.

15 Senator Moynihan. His vote is aye.

16 [Laughter].

17 Senator Nickles. Has the administration taken a
18 position on the total bill?

19 Mr. Lubick. Well, we endorsed the House bill.

20 Senator Nickles. What about the Senate bill?

21 Mr. Lubick. Pardon me?

22 Senator Nickles. What about the Senate bill?

23 Mr. Lubick. Well, we have not seen the Senate bill
24 yet, Senator Nickles. We hope it will be a bill that we
25 can endorse. As far as the burden of proof provision, I

1 think Senator Conrad stated it correctly. It is not a
2 black and white question.

3 Our preference is, and Senator Conrad is correct,
4 that the system will operate much better. We have
5 reviewed the matter with the American Bar Association,
6 the American Institute of Certified Public Accountants,
7 the Tax Executives Institute, the New York State Bar
8 Association, the Association of Enrolled Agents, all the
9 private practitioners who you would think would have a
10 vested interest in something that might be most helpful
11 to their clients.

12 Senator Nickles. If you would yield just a half a
13 second. I heard you say you endorsed the House bill, but
14 the House bill has a burden of proof provision that you
15 like less than the Senate provision.

16 Mr. Lubick. Yes. I think the Senate has improved
17 the House bill.

18 Senator Nickles. So could I assume from that that
19 you would endorse the Senate bill?

20 Mr. Lubick. We did not support the inclusion of
21 that provision in the bill, but overall we thought the
22 bill merited our support. I am sure there will be no
23 bill passed in either House where everything is 100
24 percent to either our satisfaction or yours.

25 Senator Gramm. Mr. Chairman, I do not want the

1 Treasury's support. If they are for it, we did not do
2 our job.

3 [Laughter].

4 The Chairman. Time is moving on.

5 Senator Baucus. Mr. Chairman?

6 The Chairman. Yes.

7 Senator Baucus. Very briefly.

8 The Chairman. Senator Baucus.

9 Senator Baucus. Mr. Chairman, I have a letter from
10 the Tax Court. It is signed, MaryAnn Cohen, Chief Judge
11 of the U.S. Tax Court, who basically says in this letter
12 dated December 19, the practical effect of this is not
13 going to be great.

14 So that is one problem I have with this amendment.
15 It leaves the impression that suddenly all taxpayers are
16 going to think, oh, my gosh, this is great, I do not have
17 to carry the burden of proof, and so forth. They are
18 going to be able to do a lot less than the current bill
19 provides for.

20 Second, this is much different than ordinary civil
21 cases. It is much different. In ordinary civil cases,
22 both parties have facts, there is the discovery process
23 both ways. This is not that at all. This is a tax case
24 where the party that has the information----

25 Senator Moseley-Braun. You have an individual

1 against the power of the government in this case.

2 Senator Baucus. Well, I am talking about other
3 cases where the government is a party, too. In civil
4 cases where the government is a party.

5 In all other civil cases where the government is a
6 party, the government has the burden of proof if it is a
7 plaintiff, and the individual has the burden of proof
8 when he or she is a plaintiff. That is reasonable
9 because both sides have discovery and both sides have
10 information here. But in this case, it is the taxpayer
11 who has almost all of the information, it is not the
12 government.

13 The Chairman. We have had extensive debate on this
14 matter. I just want to point out that the taxpayer is
15 still required to maintain records and cooperate. That
16 is an important requirement.

17 As far as the difference between the House and the
18 Senate, we have taken two steps to relieve the taxpayer
19 of the burden. We have substituted credible evidence and
20 we have eliminated the requirement of fully cooperative.
21 I think both of these are significant changes.

22 With that, we will call for a roll call vote. The
23 Clerk will call the roll.

24 The Clerk. Mr. Chafee?

25 The Chairman. No, by proxy.

1 The Clerk. Mr. Grassley?
2 Senator Grassley. No.
3 The Clerk. Mr. Hatch?
4 The Chairman. No.
5 The Clerk. Mr. D'Amato?
6 The Chairman. No, by proxy.
7 The Clerk. Mr. Murkowski?
8 The Chairman. No, by proxy.
9 The Clerk. Mr. Nickles?
10 Senator Nickles. No.
11 The Clerk. Mr. Gramm, of Texas?
12 Senator Gramm. No.
13 The Clerk. Mr. Lott?
14 The Chairman. No, by proxy.
15 The Clerk. Mr. Jeffords?
16 The Chairman. No, by proxy.
17 The Clerk. Mr. Mack?
18 Senator Mack. No.
19 The Clerk. Mr. Moynihan?
20 Senator Moynihan. Aye.
21 The Clerk. Mr. Baucus?
22 Senator Baucus. Aye.
23 The Clerk. Mr. Rockefeller?
24 Senator Moynihan. Aye, by proxy.
25 The Clerk. Mr. Breaux?

1 Senator Breaux. No.

2 The Clerk. Mr. Conrad?

3 Senator Conrad. Aye.

4 The Clerk. Mr. Graham, of Florida?

5 Senator Graham. Aye.

6 The Clerk. Ms. Moseley-Braun?

7 Senator Moseley-Braun. No.

8 The Clerk. Mr. Bryan?

9 Senator Bryan. No.

10 The Clerk. Mr. Kerrey?

11 Senator Kerrey. No.

12 The Clerk. Mr. Chairman?

13 The Chairman. No.

14 The Clerk. The votes are 5 yeas, 15 nays.

15 The Chairman. The amendment is not agreed to.

16 Senator Grassley?

17 Senator Grassley. I would offer my Amendment Number

18 5. If you will remember back when we had some of our

19 romp sessions I brought up the proposition that we should

20 not seize home or small business without a court order.

21 I have decided not to pursue that amendment, but I have

22 decided to pursue an amendment that would have the home

23 or the business low in the priority that the IRS could

24 take.

25 In other words, my amendment requires that in the

1 case of the seizure of a principal place of residence or
2 a business, then the IRS would have to exhaust all other
3 payment options before doing that. Making sure that the
4 IRS takes a principal residence or a business last will
5 help preserve family and, in the case of a business,
6 preserve a person's ability to work to maybe pay the tax
7 debt that they owe.

8 Tax liability is not just hard on the taxpayer, it is
9 hard on the taxpayer's entire family. Preserving the
10 home until all other payment options are exhausted will
11 give the family a little stability in time of trouble.
12 In making sure that a business is not seized until the
13 IRS has tried all other options, the taxpayer may
14 preserve his or her livelihood and a chance to rebuild a
15 life after that debt is paid.

16 This amendment does not change--I want to emphasize,
17 does not change--what assets the IRS can take, it merely
18 puts two assets, the home and the business, at the bottom
19 of the list. This is roughly based on the Homestead
20 exemption in many State bankruptcy laws.

21 There is simply no reason the IRS needs to be taking
22 anyone's house or business until--I am not saying they
23 should not take the house or business, but should not
24 take it until--they have tried every other way of
25 collecting. Taking a business basically ends the chances

1 the owner ever has of paying the tax debt.

2 Taking the principal place of residence sometimes
3 would uproot a family that is already in dire straits and
4 turmoil. Passage of my amendment will help preserve
5 family stability, foster small businesses, and help
6 people to stay on their feet and pay their debts.

7 The Chairman. I would ask the distinguished
8 Senator, do you have any cost for this amendment?

9 Ms. Paull. There is no revenue impact.

10 Senator Grassley. All right. Thank you.

11 Senator Nickles. Mr. Chairman, I would urge that we
12 adopt the amendment.

13 The Chairman. If there is no objection, the
14 amendment will be accepted.

15 Senator Moynihan. There is no objection on our
16 side.

17 Senator Nickles. Mr. Chairman, could we work with
18 the staff to try and clarify that so it does not mean if
19 there is a nickel of other assets, which would be
20 insufficient?

21 The Chairman. Yes. We would ask the staff to work
22 with you.

23 Senator Grassley. I would say yes. I just expect
24 the staff to be very reasonable and not gut the intent of
25 my legislation.

1 Mr. Lubick. All right.

2 Senator Bryan. Mr. Chairman?

3 The Chairman. Senator Bryan.

4 Senator Bryan. Mr. Chairman, it is not my intent to
5 offer an amendment at this time, but I would like to
6 invite attention to the treatment in the Chairman's mark
7 of paired shared REITs.

8 This has been a vehicle which has been most helpful
9 in terms of the hospitality industry, in terms of dealing
10 with the conflict of interest that is inherent between
11 the C corporation and the REIT itself. What I would like
12 to do, is to work with you, Mr. Chairman.

13 We are, I think, able to come up with an alternative
14 that addresses your concerns in terms of equity, that
15 addresses your concerns with respect to transfer pricing,
16 which I know is a concern and a legitimate concern, and
17 we would like just to work with you and your staff, as
18 well as with the Joint Tax, because I think we could
19 generate a proposal that will provide revenue equal to,
20 if not greater, than the revenue that you achieve. It is
21 \$139 million over the 10-year period of time. I would
22 just like to be able to work with you, Mr. Chairman, and
23 your staff to see if we cannot work out something that,
24 in my judgment, is more fair.

25 The Chairman. I would point out to the

1 distinguished Senator that the Ranking Member and myself
2 have introduced a bill on this matter that we will
3 certainly be prepared to talk and discuss with you.

4 Senator Bryan. Well, I appreciate that. Both the
5 Chairman and the Ranking Member are eminently fair and
6 always subject to persuasion by powerful reasoning, and I
7 believe that we can, indeed, persuade you that this is a
8 reasonable way of dealing with the issue in terms of the
9 transfer pricing, which I know is a legitimate concern,
10 as well as the equity in terms of fairness of treatment.

11 Give us the opportunity to do that, to work with you
12 and the Joint Tax Committee.

13 The Chairman. We certainly will give you the
14 opportunity to work with us.

15 Senator Hatch. Mr. Chairman?

16 The Chairman. Yes.

17 Senator Hatch. I am appreciative of what the
18 Senator said. As you know, I think that the paired
19 shared REIT situation is certainly given some unfair
20 advantage. Basically, by sanctioning what we have for
21 the purposes of real estate investment, they are now
22 using it to shut out traditional business investments.

23 I appreciate the way you have been willing to work
24 with us in trying to resolve what I consider to be some
25 pretty bad injustices, and I will certainly be happy to

1 try and work with my colleague.

2 Senator Bryan. Well, I appreciate that. I know the
3 Chairman was the architect of the toll charge provisions
4 and the publicly traded partnership provisions. That is
5 one mechanism I know the Chairman and the Ranking Member
6 are familiar with, and that may be a vehicle that allows
7 us to provide the equity that you understandably are
8 interested in, Mr. Chairman. Again, I look forward to
9 working with you and my friend from Utah.

10 Senator Hatch. Mr. Chairman, if I could just
11 mention one other thing.

12 The Chairman. Senator Hatch.

13 Senator Hatch. The Chairman's mark would end the
14 ability of these entities to make further acquisitions
15 and take unfair advantage of their special tax treatment
16 and stock arrangement. To me, that is fair. We are not
17 broadening this distortion of the rate rules and we are
18 not hitting these people retroactively. So I think it is
19 a fair resolution and I hope that we can hold onto that.

20 Senator Kerrey. Mr. Chairman?

21 The Chairman. Senator Kerrey.

22 Senator Kerrey. Mr. Chairman, I would offer my
23 Amendment Number 7. It is a companion amendment to the
24 Treasury employee representative. In order to make that
25 amendment work, we need to make certain that we have

1 language that requires the representative to file
2 detailed financial information with Ways and Means and
3 Senate Finance, including membership dues, compensation
4 of all employees, and some additional things in order to
5 prevent, at least as I read it, potential conflicts of
6 interest.

7 The Chairman. I would ask Jane Lay, who is the
8 Deputy Director of OGE, to come forward, please. I
9 appreciate your being here, Ms. Lay. Do you have a copy
10 of the amendment?

11 Ms. Lay. I do, yes.

12 The Chairman. Would you please comment on it?

13 Ms. Lay. Well, I have read the amendment and I am
14 unsure, actually, what the operative sentence means.
15 There is a sentence that says, "The employee
16 representative would be subject to all of the conflict of
17 interest statutes applicable to special government
18 employees, except to the extent they apply to the
19 employee organization."

20 Actually, some of the conflict of interest laws do
21 apply to the payment by the employee organization to the
22 employee, but I doubt that is what was intended. I think
23 they are trying to get to the restrictions. My guess is
24 that someone is trying to get to the restrictions that
25 actually apply to the union representative and not those

1 that would apply to the union organization.

2 Senator Kerrey. That is correct.

3 Senator Moynihan. Could the staff not work this
4 out, because we do have some conflict of interest
5 problems that have to be resolved. We welcome you to our
6 councils.

7 Senator Kerrey. We are just trying to take the
8 observations that are made on this specific issue by your
9 office and change the law so as to make certain that
10 these conflicts are addressed.

11 Ms. Lay. May I ask a question?

12 The Chairman. Yes.

13 Ms. Lay. You are trying to narrow it down so that
14 any personal financial interest of the representative, or
15 any other interests of the representative outside of the
16 employment of the union or representation of the union
17 still remains a conflict?

18 Senator Kerrey. No, does not remain a conflict.
19 Indeed, we are trying to address the conflicts that have
20 to do with the things that are addressed in this
21 particular amendment. First of all, which part are you
22 not clear with?

23 Ms. Lay. The third sentence of the first paragraph.

24 Senator Kerrey. What is the lack of clarity?

25 Ms. Lay. Well, you are talking about conflict of

1 interest statutes as they, the statutes apply to the
2 union employee organization. Some of them actually apply
3 to the organization. I think you want to deal with the
4 ones that apply to the member personally.

5 Senator Kerrey. That is correct. That is correct.
6 I mean, I would be pleased to work to try to get the
7 language so that it is directed at the member and not at
8 the association.

9 Ms. Lay. Right. But you still want to have
10 conflicts for his personal interests outside of those
11 that rise out of the fact that he may be an officer,
12 employee, or a member of the union.

13 Senator Kerrey. As everybody else on the board.
14 One of the things that we may need to do prior to final
15 passage of this bill is solicit your advice as to
16 potential conflicts for other people on this board
17 besides just the Treasury employee representative,
18 because it seems to me that we want to make certain that,
19 especially since we are giving this board a substantial
20 amount of power, that you have evaluated that thoroughly
21 and enabled us to write the law so that we are addressing
22 our concerns and your concerns about these conflicts.

23 The Chairman. I would point out that the office has
24 addressed those questions in the correspondence submitted
25 to us. But I would also point out, as I understand your

1 amendment, we are being asked to waive the criminal
2 conflict of interest laws for the sake of having a union
3 representative on the board, is that correct?

4 Senator Kerrey. Well, we are not going to waive the
5 criminal laws for any of the other members that are on
6 this board. I understand that the ethics individuals
7 have addressed their concern.

8 The Chairman. My understanding of your amendment,
9 yes, you are correct, we are not waiving it for other
10 members of the board.

11 Senator Kerrey. In fact, we have not even solicited
12 the opinion of the ethics people about any other member
13 of the board except for this one individual.

14 The Chairman. Well, as I indicated, the letters
15 that we received from the office did cover other
16 individuals, is that not correct?

17 Ms. Lay. Yes, the March 23rd letter did try to give
18 examples of all the types of individuals that might be on
19 the board.

20 The Chairman. But the point I was making, is that
21 this amendment does, with respect to the union
22 representative, waive the criminal conflict of interest
23 laws. At least, that is our understanding. That is not
24 the case for other members. I think this is a very
25 serious change that deserves to be studied further.

1 Senator Kerrey. It is not without precedent, I must
2 say. We have done this for other boards and commissions,
3 have we not? I mean, this is not without precedent to
4 take an action like this to make certain that we can get
5 people to serve in these kinds of positions.

6 The Chairman. May I ask the Deputy Director of the
7 Office of Government Ethics a question. Are you aware of
8 any case where all of the criminal conflict of interest
9 laws have been statutorily waived for one person?

10 Ms. Lay. I am not, no.

11 The Chairman. I suggest to----

12 Senator Kerrey. Mr. Chairman, there is a specific
13 statutory exemption of Section 205 for labor management
14 representation already on the books. This is not without
15 precedent. For those who did not want a union
16 representative on the board, vote no. But we are not
17 doing something here without precedent. I would insist
18 on a vote on this. I mean, it is going to be necessary
19 in order to make the previous position that was adopted
20 acceptable and workable.

21 The Chairman. Would you care to comment?

22 Ms. Lay. There is a section in 205 that does waive
23 uncompensated representational services by an employee on
24 behalf of a group of employees, but there is another
25 criminal conflict of interest statute, 203, that

1 prohibits compensated representations. A person who is
2 employed by and paid by a union would be compensated for
3 those representations.

4 Senator Kerrey. Look, Mr. Chairman. All I am
5 saying is, we have had a vote already on this
6 representative being on the board. That vote is in
7 place. Now we need to make certain that the law enables
8 that individual to do their job.

9 Senator Moynihan. Do it.

10 Senator Kerrey. That is what we are trying to do.
11 So if you have got language that enables us to get that
12 done, give us the language and I will be pleased to
13 modify this. The bull's eye here, now that we have
14 already had a vote that this individual is going to be on
15 the board, let us get the language right. We write the
16 laws around here. Let us get the law written so this
17 individual can do his or her job, whoever it is that is
18 appointed to the board.

19 Senator Baucus. Mr. Chairman, if I might, on this
20 same point.

21 The Chairman. Yes, Senator Baucus.

22 Senator Baucus. I understand there has been a
23 letter written. Let me ask the lady, do you have any
24 questions about potential conflicts of interest of other
25 members of the board, as provided for in the mark? I

1 want to make sure we are even all the way around here,
2 that we correct any potential conflict of interest
3 matters with respect to all board members. I mean, is
4 there any concern about other board members in addition
5 to or other than the employee representative?

6 Ms. Lay. Well, the regular criminal conflict of
7 interest statutes will apply to the rest of the board
8 members, it just depends on who is selected. It is the
9 union member we could tell clearly what kind of
10 background that person would be coming from that would
11 create this built-in conflict.

12 Senator Baucus. What are some of the other
13 potential conflicts that might arise?

14 Ms. Lay. Well, you could have somebody, as we use
15 as an example, who came from a high-tech corporation that
16 wanted to sell software to the IRS. That person would
17 have to be careful about what actions he or she would
18 take with regard to matters that would have a direct and
19 predictable effect on the employer's ability to go after
20 that business.

21 Senator Baucus. I guess my question is, we have a
22 situation where there are significant potential conflicts
23 which might inhibit someone from serving in the first
24 place, or second, once when they got there, found him or
25 herself entangled in a very difficult situation which

1 rendered that person a little bit less able to do his or
2 her job. I mean, in your judgment, might either of those
3 conditions occur, based upon the language that is in the
4 underlying bill?

5 The Chairman. Let me just step in.

6 Senator Baucus. I would like the question answered,
7 though, if I could, Mr. Chairman.

8 The Chairman. I know. I did not mean that she
9 should not answer. But we do appreciate your being here
10 and want you to feel free to answer and work with these
11 people, so please proceed.

12 Ms. Lay. I think it will simply depend on who is
13 selected to it and what his or her particular
14 affiliations and financial interests are. There is
15 nothing that would inherently stop anyone else that I can
16 think of from serving on the board, but then you have to
17 look into their individual case.

18 Senator Baucus. Thank you.

19 Thank you, Mr. Chairman.

20 Senator Nickles. Mr. Chairman?

21 The Chairman. Yes, Senator Nickles.

22 Senator Nickles. Mr. Chairman, I am looking at this
23 amendment and I read that same sentence which was pointed
24 out, and we say, "The employee representative will be
25 subject to all the conflict of interest statutes

1 applicable to special government employees, except to the
2 extent they apply it to an employee organization," which
3 would mean an exemption from conflict of interest even if
4 it dealt with criminal? I think that would be a serious
5 mistake.

6 I would urge my colleague from Nebraska to withhold
7 the amendment and maybe work with staff and others to see
8 if he cannot work something out. But this language is
9 too broad of an exemption for somebody that happens to be
10 affiliated with an association.

11 Senator Kerrey. I would say to the Senator, we have
12 done that. The distinguished Chairman has improved the
13 language governing the board itself by putting in there
14 restrictions that prevent them from doing the very thing
15 that was just described here. You cannot represent some
16 software company and be on this board. You cannot do it.
17 The language of the law----

18 Senator Nickles. But you are waiving any conflict
19 of interest for the member of the association under your
20 amendment, and I think that is broader than even you
21 intend to do.

22 Senator Kerrey. Look, I am not waiving in this all
23 criminal statutes. I am merely saying that, as a
24 consequence of being a member of the union, that they are
25 not disqualified from performing their duties on the

1 board. That is what we are attempting to say with the
2 language.

3 Senator Nickles. If the Senator would yield. I
4 just think you need to work on your language because I
5 think you are waiving any conflict of interest as it
6 applies to an employee organization.

7 Senator Kerrey. I appreciate that you think I
8 should work on the language. I want to vote on the
9 amendment. I mean, we have voted amendments here in this
10 committee that we are now going to work on and we are
11 going to consult with staff and have staff improve on it.
12 I insist that we vote on the amendment. We have not gone
13 to general counsel to work on other amendments.

14 We can vote the amendment and we can work with the
15 Office of Ethics and we can come up with any additional
16 changes you want to make to this thing to make it clear
17 that all this amendment does is make certain that, as a
18 consequence of being in the union, this individual is not
19 prevented from performing his or her duties on the board.

20 Senator Moynihan. Good. Let us vote.

21 The Chairman. I think the difficulty is, some of us
22 are not clear as to what the amendment proposes, as to
23 what it means. But you are entitled to a vote.

24 Senator Kerrey. I thank the Chair.

25 The Chairman. Do you want a roll call vote?

1 Senator Kerrey. I will go voice if that gets the
2 job done.

3 The Chairman. Those in favor, signify by saying
4 aye.

5 [A chorus of ayes].

6 The Chairman. Opposed, nay.

7 Senator Nickles. No.

8 The Chairman. No. The ayes have it. The amendment
9 is agreed to.

10 I would ask the distinguished Senator to see if the
11 language cannot be clarified. I think that would be
12 helpful.

13 Senator Kerrey. Yes, sir.

14 Senator Graham. Mr. Chairman?

15 The Chairman. Senator Graham.

16 Senator Graham. Thank you, Mr. Chairman. Mr.
17 Chairman, I would, first, like to make a comment and then
18 I am going to offer an amendment. The comment is that in
19 the current tax law there are a number of clear
20 inequities between the position of the taxpayer and the
21 government.

22 Two of those are, first, that if there is a refund
23 due from the government to the taxpayer, the rate of
24 interest on that refund is eight percent, but if the
25 taxpayer owes the government an additional payment the

1 interest rate is nine percent.

2 We have rectified that in the Chairman's mark, in
3 part, as it relates to individuals, and we have said they
4 will both be at the nine percent level. For
5 corporations, we have left that differential of eight and
6 nine.

7 But maybe even a more egregious situation is the
8 statute of limitations. The government has 10 years to
9 go after the taxpayer if it believes that the taxpayer
10 owes additional funds, but the taxpayer only has 3 years
11 to seek a refund.

12 We had instances in our hearings, and I think the
13 Senator from Oklahoma had the same experience in his
14 hearings, in which it was in the course of the government
15 pursuing its 10-year statute of limitations that it found
16 out that actually the taxpayer had overpaid his taxes.

17 In a case in Florida, a taxpayer had been overpaying
18 his FICA tax by a substantial amount. The problem was,
19 it was beyond the three-year window and so he was
20 ineligible to get a refund on the areas in which he had
21 been overpaying, while the government was able to
22 continue to pursue a deficiency in those areas in which
23 he had been found to be underpaying.

24 According to the materials supplied by the committee
25 by Joint Tax, if we were to establish the same level of

1 window, six years for both the taxpayer and the
2 government, it would have a revenue cost to the
3 government in terms of the refunds of \$454 million over
4 the next 5 years, which says to me that in a 5-year
5 period there are \$445 million of lawfully owed, but for
6 statute of limitations, refunds to taxpayers. Four
7 hundred and forty-five million dollars of refunds which
8 are not being made solely because of this arbitrary
9 three-year cut off on application.

10 Now, I have amendments to deal with those, but I am
11 not going to offer them at this time because they would
12 have the effect of making this bill even more imbalanced
13 than it already is in terms of its revenue cost.

14 So I point that out for purposes of the information
15 of the members of the committee in hopes that before we
16 conclude our action on this bill we will deal with those
17 inequities. In order to put us in a financial position
18 to do so, I now would like to move----

19 Senator Nickles. Wait. Would the Senator yield
20 just for a second?

21 Senator Graham. Yes.

22 Senator Nickles. I would like to support your
23 efforts and make a comment because I think it is awfully
24 important. We want to be taxpayer friendly. I think the
25 statute of limitations is important so you do not have

1 these cases drawn out forever.

2 Also, I want to thank the Chairman, if you do not
3 mind, Bob, for just a half a second. One of the things
4 that we did that was very good for taxpayers, is a lot of
5 taxpayers have underpayments and overpayments and we said
6 in the future they should be offset with the right
7 interest rate. Taxpayers should not be penalized. We
8 did that prospectively. We did not do that retroactively
9 for open years. You have many cases that are pending for
10 years, and we ought to fix that, too.

11 If somebody has both underpayment of assessments and
12 overpayments, the taxpayer should not be coming out on
13 the short end of the stick or to the benefit of the
14 government on interest. So we fixed it prospectively.
15 I, frankly, think we should also fix it retroactively for
16 open years in tax case.

17 Senator Graham. Well, the good news is, I am about
18 to offer an amendment which will not only balance the
19 current shortfall in this legislation, but will provide a
20 sufficient amount of revenue to allow us to do exactly
21 what the Senator from Oklahoma and I feel would be fair.

22 That is, to turn our attention to what this committee
23 did less than 12 months ago when it passed, as part of
24 the Tax Reduction Bill of 1997, an increase in the
25 tobacco tax which was 20 cents per pack, effective

1 October 1, 1997.

2 When our bill went to conference with the House,
3 which had no similar provision, the result was to raise
4 the tax in two steps. First, the tax rate was increased
5 by 10 cents a pack effective January 1, 2000, and then,
6 second, it increased it an additional 5 cents per pack,
7 to a total of 15 cents, effective January 1, 2002.

8 I am proposing, as was stated in Amendment Number 9
9 filed by Senator Moynihan, that we return to the level of
10 taxation that the Senate had voted, and this committee
11 voted by a vote of 18 to 2, to the 20 cent level and that
12 we accelerate the effective date sufficient to raise an
13 estimated \$12.8 billion.

14 I understand the Joint Tax Committee is calculating
15 what that effective date would have to be in order to
16 reach that level of income, which would allow us to fully
17 fund the bill that we have before us and provide a
18 sufficient amount of additional funds to be able to deal
19 with this gross inequity of the 10-year statute of
20 limitations for the government, but a 3-year period for
21 the taxpayer to file for refunds.

22 My proposal would be that we set both of them at six
23 years and we deal with the issue that Senator Nickles has
24 raised relative to allowing taxpayers who are in both a
25 refund and a deficiency situation to be able to net out

1 those and to make that applicable to currently open tax
2 years.

3 But those amendments would not be offered unless we
4 are willing to fully fund the existing bill and leave
5 enough additional revenue in order to achieve those
6 laudatory objectives.

7 Senator Moynihan. Mr. Chairman, may I say, this was
8 the amendment I proposed to offer. I am delighted that
9 the Senator from Florida has done so. I think we should
10 adopt it.

11 Senator Kerrey. Mr. Chairman, if I could say as
12 well, I concur. I think this satisfies the concerns that
13 I had earlier. If we can fully pay for this bill we can
14 report something out and, I think, advance it rather
15 quickly.

16 The Chairman. Let me point out that we have the
17 budget resolution before the Senate. In that resolution
18 a determination has been made as to what should be done
19 with respect to taxes.

20 I have to say that the difference between now and
21 last year is that this tobacco tax has become very
22 controversial. I think it could very well set back the
23 movement to bring about reform of the IRS, which I think
24 is the top priority of the American people. So, I would
25 urge that this amendment be rejected. We are working,

1 ample time for this committee to speak, and Congress to
2 speak, on the issue of tax increases this year.

3 The Chairman. I might add to what Senator Nickles
4 said, that Senator Moynihan and I have written a very
5 strong letter about the importance of retaining and
6 reserving all tax matters for this committee. I think
7 that is something that is going to take the strong
8 support of all of us, and we want to work with all of you
9 on this.

10 Let me say, if I might, to the distinguished Senator
11 from Florida, we understand and appreciate his effort to
12 come up with a solution to the problem, but I think at
13 this time it would be in the best interests if this
14 amendment was defeated. It is something that we will be
15 dealing with at a later time.

16 Senator Graham. Mr. Chairman, to close on my
17 amendment.

18 The Chairman. Senator Graham.

19 Senator Graham. Mr. Chairman, I believe that a
20 committee earns the respect of its body by the way in
21 which it acts, and I believe this committee would be
22 disparaging its position if, as one of the first major
23 actions after having achieved a balanced budget in which
24 this committee played a very significant role, we were to
25 report out an IRS reform bill which was over \$9 billion

1 out of balance.

2 If it is felt that this particular approach is not
3 appropriate, then I would be willing to defer a period of
4 time this evening, but not before the conclusion of
5 action on this bill, to let someone offer a substitute
6 amendment which would provide the funding for this
7 legislation.

8 But it is not, in my opinion, acceptable, nor does
9 this committee justify the kind of confidence that we
10 want the Senate and the American public to place in us,
11 if we just defeat this amendment and then ask to vote on
12 a bill that is grossly out of balance and does not
13 provide the resources to do some very important further
14 steps in terms of making this bill more equitable towards
15 taxpayers.

16 Senator Nickles. Mr. Chairman?

17 The Chairman. Yes, Senator Nickles.

18 Senator Nickles. Mr. Chairman, I appreciate the
19 comments that my colleague from Florida raised, but I
20 also remember the comments that you made earlier, that
21 you are going to continue to search for offsets. I also
22 appreciate the interest and everybody saying, boy, we
23 want to balance the budget, we do not want to spend the
24 surplus.

25 But I might tell my colleagues, we are in the process

1 of passing a supplemental appropriation bill that spends
2 \$5.3-5.4 billion, and not a dime of it is offset. That
3 is real and it is now. What you are talking about is
4 being in balance for the first five years under the
5 proposal and coming up short for the next five years, and
6 we need to work on that.

7 I would be happy to work with you. It may be that
8 the solution that you have proposed is the one maybe
9 within a few weeks that we might be considering, but I
10 think at this point it is probably not the right time to
11 pass it.

12 The Chairman. Any further comment?

13 [No response]

14 The Chairman. If not, we will vote.

15 Senator Nickles. Mr. Chairman, can we have a roll
16 call vote?

17 The Chairman. A roll call vote has been called for.

18 The Clerk will call the roll.

19 The Clerk. Mr. Chafee?

20 The Chairman. No, by proxy.

21 The Clerk. Mr. Grassley?

22 Senator Grassley. No.

23 The Clerk. Mr. Hatch?

24 The Chairman. No, by proxy.

25 The Clerk. Mr. D'Amato?

1 The Chairman. No, by proxy.
2 The Clerk. Mr. Murkowski?
3 The Chairman. No, by proxy.
4 The Clerk. Mr. Nickles?
5 Senator Nickles. No.
6 The Clerk. Mr. Gramm, of Texas?
7 The Chairman. No, by proxy.
8 The Clerk. Mr. Lott?
9 The Chairman. No, by proxy.
10 The Clerk. Mr. Jeffords?
11 The Chairman. No, by proxy.
12 The Clerk. Mr. Mack?
13 Senator Mack. No.
14 The Clerk. Mr. Moynihan?
15 Senator Moynihan. Aye.
16 The Clerk. Mr. Baucus?
17 Senator Baucus. Aye.
18 The Clerk. Mr. Rockefeller?
19 Senator Rockefeller. Aye.
20 The Clerk. Mr. Breaux?
21 Senator Breaux. No.
22 The Clerk. Mr. Conrad?
23 Senator Moynihan. Aye, by proxy.
24 The Clerk. Mr. Graham, of Florida?
25 Senator Graham. Aye.

1 The Clerk. Ms. Moseley-Braun?

2 Senator Moseley-Braun. Aye.

3 The Clerk. Mr. Bryan?

4 Senator Bryan. Aye.

5 The Clerk. Mr. Kerrey?

6 Senator Kerrey. Aye.

7 The Clerk. Mr. Chairman?

8 The Chairman. No.

9 The Clerk. The votes are 8 yeas, 12 nays.

10 The Chairman. The amendment is not agreed to.

11 Senator Kerrey. Mr. Chairman?

12 The Chairman. Senator Kerrey.

13 Senator Kerrey. Mr. Chairman, staff does not need
14 to distribute Amendment Number 2. Given the hour and
15 given the likelihood of it being defeated, I am not going
16 to offer Amendment Number 2. But if I could, I want to
17 describe it in a single minute.

18 This provision would have provided for a joint
19 hearing of two members of the Majority and one member of
20 the Minority from each of the committees of Finance,
21 Appropriations, Government Affairs, Senate and House,
22 biennially with this new board.

23 The purpose of this was to create an environment
24 where shared consensus could be achieved between the
25 oversight board and the Congress on a variety of things,

1 not the least of which is what kind of technology
2 investments are going to be made.

3 I hope either that we will adopt this eventually or
4 that we will come up with some mechanism to get this
5 done, because I think it is terribly important to get to
6 that kind of place where that can be accomplished. I
7 say, Mr. Chairman, I think we are working our way to
8 developing a very good piece of legislation. I hope we
9 can find adequate offsets and a way to pay for it.

10 But I hope all of us understand that there are 450
11 working days between day and December 31, 1999. This
12 legislation, nobody should make any mistake about it, is
13 asking the IRS to do lots of new things.

14 Today, just for the record, the IRS collects
15 approximately \$1.6 trillion, with an operating budget of
16 about \$8 billion, less than half of one percent. It is
17 the most efficient tax collection agency in the entire
18 industrial world.

19 One of the most remarkable things about the
20 Restructuring Commission, of all the witnesses that we
21 heard--and we heard thousands of witnesses--from
22 employees, as well as private sector people in both
23 public and private hearings, we did not find a single
24 incident where an individual came forward and said that
25 there was a bribe taken by an IRS agent, by a revenue

1 agent. That makes this agency rather unique. It is
2 clean, in short. It may be a bit too rigid. There are
3 lots of things we want to do differently.

4 But no one should suffer under the illusion that the
5 450 working days that the IRS has between today and
6 December 31 of 1999 will have those men and women sitting
7 around on their hands looking for something to do.

8 This legislation, as good as it is, I think we have
9 to be very conscious as we move towards final passage of
10 this thing that we are going to be asking the IRS to do
11 lots of additional things, including making certain that
12 their computers are ready to adjust to the new century.

13 Senator Moynihan: Mr. Chairman, could I just
14 continue on the theme that the Senator from Nebraska has
15 raised, and I think the answer is yes.

16 Sir, today we have received two letters. One was a
17 long letter from the Commissioner Rossotti himself
18 raising the question of whether, if the provisions in
19 this legislation have to go into effect before December
20 31, 1999, before the year 2000 comes along, they might
21 very well make it impossible to do both. That would be
22 the ultimate ruin. I see Ms. Killefer is nodding.

23 The Commissioner gives us a very detailed set of
24 suggestions about what provisions he thinks should be
25 effective July 31, 1999, July 31, 2000. July 31, 2000.

1 That is the one he is mostly talking about.

2 Later in the day I received a letter from the
3 Secretary, which I am going to take the liberty of
4 reading. It is quick.

5 "As Commissioner Rossotti noted in his letter
6 earlier, the IRS is engaged in one of the largest
7 information systems challenges in the country today. At
8 a projected cost of nearly \$850 million through FY 99,
9 the IRS efforts to make its 75,000 programs and thousands
10 of computers year 2000 compliant is a truly massive
11 undertaking and requires every available resource to
12 ensure that the service will be ready to meet the year
13 2000 deadline. Because of the demands this effort will
14 impose on the IRS, I am writing to underscore the
15 Commissioner's concerns.

16 Specifically, I urge the committee to set the
17 effective date of many provisions in the IRS
18 Restructuring Bill which will require systems changes no
19 earlier than January 31, 2000. Provisions with earlier
20 effective dates could imperil the IRS's effort to prepare
21 for the century date change."

22 I hope my colleagues heard me on this. We face an
23 unprecedented event. The airlines could stop working on
24 December 31, 1999. In the defense world, systems of
25 every kind are in peril.

1 I had the opportunity today to introduce Arthur
2 Levitt, Jr. for a second term, and he is already telling
3 banks in this country, just because you think you are
4 compliant, if you are dealing with somebody abroad who is
5 not, you had better get out of the relationship with them
6 now. There is no experience with such a change.

7 What the Secretary asks us, is to pay close heed to
8 the suggestions by the Commissioner, that in order to do
9 what we want done he needs this amount of time. He
10 cannot do both program changes simultaneously.

11 I would like to ask that these be put in the record.

12 The Chairman. Without objection.

13 (The letters appear in the appendix.)

14 Senator Moynihan. How do you think we ought to go
15 about this? I see Ms. Killefer might want to speak.

16 Ms. Killefer. Yes. Let me just echo the concerns
17 of the Commissioner and the Secretary. We have met with
18 staff to go over these concerns.

19 We applaud the efforts of this committee and would
20 like to support them. Our issue is the feasibility of
21 these. I think we would all agree that the IRS needs to
22 continue to operate as we go through the century date
23 change, and that it would be unwise management to place
24 burdens on it such that we put that program in further
25 risk.

1 As most of you know, the magnitude of this program is
2 enormous. It depends on changes in a legacy system, some
3 of which date back to 1960 and are in Assembly language.
4 They depend on roughly 900 programmers who understand
5 these systems. We simply cannot get all of it done, as
6 well as the magnitude of systems changes that are
7 imbedded in this bill.

8 I know that you did not pass these or look at these
9 with the intent of bringing down the IRS, but the systems
10 changes that are imbedded in many of these provisions
11 would, in fact, do that. I think we have to be
12 responsible.

13 Senator Moynihan. Ms. Killefer, please do not tell
14 anybody around Capitol Hill right now that you might
15 bring down IRS. That is a no-no.

16 [Laughter].

17 Senator Moynihan. The greater efficiency and
18 service to the taxpayer.

19 Ms. Killefer. Absolutely.

20 Senator Moynihan. No. But this could be a problem.

21 Ms. Killefer. But it is a very serious situation.
22 I think just wise management suggests that we are very
23 supportive of your efforts, but we have to recognize the
24 century date change and the very unusual situation it
25 places us in.

1 The Chairman. Let me say that, as I listen to you,
2 there is both good news and bad news. There is good news
3 in that you do recognize that reforms we are talking
4 about are important and in the interests of the taxpayer.
5 Am I correct on that?

6 Ms. Killefer. That is correct.

7 The Chairman. The bad news is, you want to postpone
8 it. Let me make the general observation that, as far as
9 I am concerned, justice delayed is justice denied. These
10 are too important to just postpone them indefinitely.
11 But we do, of course, always want to work with the
12 Commissioner and the agency in a fruitful, positive way
13 of trying to develop a program that meets all these goals
14 and objectives.

15 So one of the things I am going to propose is that
16 the Commissioner sit down with the Chief of Staff of the
17 Joint Tax Committee to review the various requirements
18 and try to come up with solutions that are in everybody's
19 mutual interests.

20 But I have to emphasize that I do not feel I can
21 personally go out to the public and say, well, we
22 recognize these are serious problems, but I am sorry, we
23 cannot do anything about it for a couple of years. There
24 has to be significant progress in making this
25 organization taxpayer friendly, and that we will insist

1 upon, and we do want to work with you.

2 I would like to ask Lindy Paull, our Chief of Staff
3 for the Joint Tax Committee, if she has any observation
4 to make.

5 Ms. Paull. Well, I would say that both the House
6 bill and the bill that you are about ready to approve
7 have numerous changes to improve taxpayer rights. I
8 think that it would be worthwhile to go through and
9 analyze what are the most important that need to be
10 prioritized, and we can get back to you with a list as
11 quickly as possible, after working with the Treasury
12 Department and the IRS Commissioner.

13 Senator Baucus. Mr. Chairman?

14 The Chairman. Senator Baucus.

15 Senator Baucus. I think that is very important, if
16 this bill passes and is reported out as I expect it will,
17 to give us an opportunity before we go to the floor
18 because I think none of us want--and this is a little
19 cataclysmic--to enact legislation that is going to put
20 such an additional burden on the Service that it is going
21 to make it almost impossible to meet its century change
22 requirements. But on the other hand, we do want the IRS
23 to be more taxpayer friendly, and so forth. It is a
24 matter of good faith and balance here.

25 So I urge you to work very closely together and get a

1 list of those provisions which are, in fact, systems
2 changes which will cause all these problems. On the
3 other hand, there are a lot of provisions in this bill
4 which are not systems changes.

5 Ms. Killefer. Exactly.

6 Senator Baucus. Which we all generally approve of
7 and want enacted. But we do need to know which systems
8 changes are going to cause problems.

9 Ms. Killefer. And the system changes vary in their
10 degree of burden on the programmers.

11 Senator Baucus. Right.

12 Ms. Killefer. So we would be happy to share that
13 and go through the list and try and get as much done as
14 possible.

15 Senator Moseley-Braun. Mr. Chairman, the only
16 prioritization that the Service will be looking at will
17 be those priorities relating to systems specifically and
18 not the other taxpayer rights and privacy kinds of issued
19 that are addressed in this bill.

20 Ms. Killefer. That is right.

21 Senator Moseley-Braun. Thank you.

22 Senator Baucus. Mr. Chairman?

23 The Chairman. Senator Baucus.

24 Senator Baucus. Mr. Chairman, I would just like the
25 Chairman's view with respect to extenders and at some

1 point passing legislation so we can extend the extenders
2 without a gap. I mean, this is a subject that you and I
3 have talked about earlier. I just think it would be
4 appropriate if you could give us your views on that
5 subject.

6 The Chairman. Well, as the distinguished Senator
7 from Montana knows, I think all of us on both sides of
8 the aisle look upon these extenders as extremely
9 important. We want them extended without gaps. We will
10 have further tax legislation this year and we will
11 include the extenders as part of that.

12 Senator Baucus. Thank you very much, Mr. Chairman.

13 Senator Rockefeller. Mr. Chairman?

14 The Chairman. Senator Rockefeller.

15 Senator Kerrey. Would Senator Rockefeller yield
16 just for 10 seconds? I just want to make sure the
17 Chairman had an opportunity to clarify something.

18 Senator Rockefeller. Yes, I will.

19 Senator Kerrey. Earlier you also said that you
20 intend to do these extenders without any gaps.

21 The Chairman. I said that.

22 Senator Kerrey. Thank you.

23 Senator Rockefeller. Mr. Chairman, I have an
24 amendment which I think is of concern to the Justice
25 Department and to Treasury, so I might ask Mr. Lubick

1 what he thinks.

2 It is about the modifying of privilege and
3 confidentiality in this. If this is for small taxpayers,
4 medium-sized business, small business, et cetera, I can
5 understand that and could go along with that.

6 If you get into large publicly-traded companies that
7 have fleets of lawyers, accountants, and all the rest of
8 it, I am not sure that it is necessary. I would like
9 very much to have your view on it. I would like to offer
10 an amendment.

11 Mr. Lubick. Senator Rockefeller, we, of course,
12 have reservations about the whole privilege question.

13 Senator Rockefeller. I understand.

14 Mr. Lubick. But, given that, certainly the
15 objective that was stated to be the objective of the
16 privilege was to enable those small businesses and
17 individuals who were not able to afford high-priced
18 talent like I used to be, I guess, to give them advice in
19 planning their affairs.

20 I think this is another question, and I referred
21 earlier to Senator Kerrey's large circle and small circle
22 for judging these provisions. I think your amendment
23 would focus the benefits of this provision upon those
24 compliant taxpayers trying to get along in the large
25 circle and not at the same time help those taxpayers who

1 are trying to use it as a cover-up for tax shelters, et
2 cetera.

3 So we think the amendment is appropriate under the
4 standards that the committee is operating. We know that,
5 incidentally, even very learned accounting experts, as
6 has been cited by the American Bar Association, William
7 Raby has written and book, who was formerly a Big Six
8 major accounting person, that disclosure and integrity of
9 the accounting process and independence run counter to
10 each other.

11 So I think if you focus it on the areas where
12 taxpayers have a real need to it, you will have greatly
13 improved the situation. I note that the commission upon
14 which Senators Grassley and Kerrey served studied this
15 question but did not endorse the idea. So I think your
16 amendment would be certainly an improvement in this
17 situation.

18 Senator Rockefeller. Mr. Chairman, it would cost
19 less than \$50 million over the course of 10 years, and I
20 would advance it.

21 Senator Baucus. Mr. Chairman?

22 The Chairman. Senator Baucus.

23 Senator Baucus. Mr. Chairman, I think this is a
24 very important amendment. First of all, privileges in
25 the law are court created, they are not statute created.

1 Whether it is the attorney/client privilege, or
2 husband/wife privilege, and so forth, these are
3 privileges that are created in the common law through the
4 courts and not created by statute.

5 If we go down the road here of, by statute, creating
6 privileges, I think it is a precedent that we are going
7 to regret. The goal here, of course, is just to find the
8 truth, to get to the truth. The more we start creating
9 privileges, I think, the more difficult it is going to be
10 for courts to find what the truth actually is in a given
11 case.

12 Second, it is the point that the Secretary made with
13 respect to particularly large publicly traded
14 corporations. There is an accountant which certifies
15 that these financial statements are presented according
16 to generally accepted accounting principles.

17 I mean, independent auditors today auditing financial
18 statements, again, particularly of publicly-held
19 corporations, are performing an independent assessment
20 role. I mean, they are not employees of the company,
21 rather, they are auditors certifying to the public, to
22 the SEC, or to whomever, that these financial statements
23 are valid and true.

24 Frankly, if we were to create this privilege where
25 this accounting firm now found itself compromised because

1 of the privilege, I think that that is going to question
2 the integrity of the certification by accountants.

3 I might just say that this issue arose before the
4 Supreme Court. Chief Justice Berger, on behalf of the
5 unanimous Supreme Court in United States vs. Arthur
6 Young, basically made this point.

7 I will not read the entire quote, but the essence is,
8 "the independent auditor assumes a public
9 responsibility." If we were to go down this road in
10 creating this privilege, it would seriously jeopardize
11 that independence.

12 On the other hand, I think small companies do
13 probably, in some cases, need this protection or need
14 some advice to come talk to their accountants, and so
15 forth. So the amendment offered by the Senator from West
16 Virginia makes good sense.

17 But to, in a broad brush, create this privilege for
18 all companies, particularly for large companies who, as
19 the Senator says, has their fleet of lawyers anyway, I
20 think would be unwise.

21 Senator Rockefeller. Mr. Chairman?

22 Senator Mack. Mr. Chairman?

23 The Chairman. Senator Mack.

24 Senator Rockefeller. Mr. Chairman, I am advised
25 that this may even raise money and there is no, yet,

1 final cost attached to it. But it may even save money.

2 The Chairman. Senator Mack.

3 Senator Mack. Thank you, Mr. Chairman. I oppose
4 the amendment. First of all, I would say that at least I
5 never proposed the confidentiality privileges for the
6 purpose of small businesses only, it was done for the
7 purpose of treating all taxpayers equally who get their
8 advice from Federally authorized tax practitioners.

9 To discriminate against publicly traded companies
10 undercuts this goal of equal treatment. There is no
11 justification for the proposal based on the accountant's
12 role as an auditor, for only tax advice is covered by the
13 privilege.

14 I might just add, there are statutorily-created
15 privileges under Federal law. There is no interference
16 with the SEC or other government entities, as the
17 privilege is for tax cases involving the IRS. There is
18 no interference with criminal proceedings, as the
19 privilege applies only to noncriminal matters.

20 So I oppose this amendment.

21 Senator Nickles. Mr. Chairman?

22 The Chairman. Senator Nickles.

23 Senator Nickles. Mr. Chairman, I, likewise, oppose
24 this amendment. This is kind of like saying, well, all
25 right, you have confidentiality if you are using a small

1 town CPA, but if you happen to use H.R. Block, if you
2 happen to use a publicly traded firm, one of the big
3 boys, you do not have any confidentiality.

4 That does not make sense. That is not good policy.
5 I think when people are dealing with taxes and they are
6 seeing advice from their accountant, whether they work
7 for Ernst & Young, H.R. Block, or the local CPA that is
8 in their small town, they want to be able to receive some
9 advice and consult with them.

10 Senator Rockefeller. Would the Senator yield?

11 Senator Nickles. In just a moment. I think to say,
12 well, we think you have confidentiality in all small
13 firms but you do not with the big firm, maybe you will
14 just have a big exodus in going to the small town CPAs.
15 But I just do not think it makes good sense. I think
16 Senator Mack is right.

17 If I am misunderstanding the amendment, I stand
18 corrected. But I think, as I understand it, it would say
19 that you have the confidentiality in dealing with your
20 CPA, unless he happens to be in a publicly traded firm,
21 and then you do not have it.

22 Senator Rockefeller. If the Senator would yield.
23 This is not about confidentiality with the CPA, but
24 confidentiality with the publicly traded company for
25 which the CPA is employed.

1 The Chairman. Senator Breaux.

2 Senator Breaux. I think the whole nature of what we
3 are talking about, if it is the policy of our government
4 to say that a taxpayer should have the right of
5 confidentiality with people who help him prepare his tax
6 returns, it should not matter whether the person is
7 helping him prepare that tax return with his law degree
8 showing or with his CPA degree showing.

9 What we are looking at with this policy is the
10 taxpayer, not at for whom the taxpayer works. If we make
11 the principle that we should protect the taxpayer's
12 confidentiality, again, it should not matter whether the
13 guy has a law degree out there or a CPA degree out there.

14 What Senator Rockefeller's amendment says, is he
15 wants to preserve the confidentiality, but only to
16 individuals and non-publicly traded businesses. You are
17 either going to have it or you are not going to have it.
18 If we make the decision to have it, it should apply
19 equally to all taxpayers whether they are a business, a
20 publicly traded corporation, or an individual.

21 The question is, are we going to have this as a
22 policy? I think the answer is yes. If we do, we should
23 have it for everybody or we should have it for nobody.

24 Senator Nickles. Absolutely. Absolutely.

25 Senator Kerrey. Mr. Chairman?

1 The Chairman. Are we ready for the question?

2 Senator Kerrey. Mr. Chairman, if I could.

3 The Chairman. Very briefly, please.

4 Senator Kerrey. I will be as brief as I can.

5 I agree with what Senator Breaux said. I mean, I
6 have listened to Treasury's arguments on this, big
7 circle/small circle is my language. I do think that
8 extending this privilege makes sense. The problem with
9 compliance today is much greater with small business,
10 interestingly, than it is with large business.

11 In addition to that, I would point out that one of
12 the problems we have got with the amendment is that if
13 you say it is a publicly traded company, you have a lot
14 of very large corporations that are privately held. It
15 is a distinction that, it seems to me, is rather
16 difficult. So on that basis and many others, briefly
17 stated, I will oppose the amendment.

18 The Chairman. We will have a roll call vote.

19 Senator Baucus. Mr. Chairman, just one minor point
20 here.

21 The Chairman. Very briefly.

22 Senator Baucus. In the burden of proof language we
23 make a cut-off at \$7 million. So this argument that
24 everybody is the same just does not apply. In the burden
25 of proof provision that this committee is going to

1 approve, if you are above \$7 million you do not get the
2 so-called shift of burden of proof. You do not get it.
3 We made a \$7 million cut-off.

4 Second, I do agree with the point of the Senator from
5 Nebraska that it should not just be publicly traded
6 corporations, just large. These large companies, I have
7 nothing against them, but they have tax advice that is
8 privileged.

9 I do worry very much, the way this bill is written,
10 how it affects accountants who allegedly provide
11 independent audits. It is going to question their
12 integrity and cause, at least on the surface, a conflict
13 of interest. I just do not think we want to go down that
14 road.

15 The Chairman. I think there has been adequate
16 discussion of this amendment. A roll call vote will be
17 held. The Clerk will call the roll.

18 The Clerk. Mr. Chafee?

19 The Chairman. No, by proxy.

20 The Clerk. Mr. Grassley?

21 Senator Grassley. No.

22 The Clerk. Mr. Hatch?

23 The Chairman. No, by proxy.

24 The Clerk. Mr. D'Amato?

25 The Chairman. No, by proxy.

1 The Clerk. Mr. Murkowski?
2 The Chairman. No, by proxy.
3 The Clerk. Mr. Nickles?
4 Senator Nickles. No.
5 The Clerk. Mr. Gramm, of Texas?
6 The Chairman. No, by proxy.
7 The Clerk. Mr. Lott?
8 The Chairman. No, by proxy.
9 The Clerk. Mr. Jeffords?
10 The Chairman. No, by proxy.
11 The Clerk. Mr. Mack?
12 Senator Mack. No.
13 The Clerk. Mr. Moynihan?
14 Senator Moynihan. Aye.
15 The Clerk. Mr. Baucus?
16 Senator Baucus. Aye.
17 The Clerk. Mr. Rockefeller?
18 Senator Rockefeller. Aye.
19 The Clerk. Mr. Breaux?
20 Senator Breaux. No.
21 The Clerk. Mr. Conrad?
22 Senator Moynihan. No, by proxy.
23 The Clerk. Mr. Graham, of Florida?
24 Senator Graham. No.
25 The Clerk. Ms. Moseley-Braun?

1 Senator Moseley-Braun. No.

2 The Clerk. Mr. Bryan?

3 Senator Bryan. No.

4 The Clerk. Mr. Kerrey?

5 Senator Kerrey. No.

6 The Clerk. Mr. Chairman?

7 The Chairman. No.

8 The Clerk. The votes are 3 yeas, 17 nays.

9 The Chairman. The amendment does not carry.

10 Senator Grassley. Mr. Chairman?

11 The Chairman. Senator Grassley. I would hope that
12 we would be close to the vote on enactment of the
13 legislation, but I will call on you first, Senator
14 Grassley.

15 Senator Grassley. Yes. Your staff asked me to make
16 a clarifying point on an amendment that you have
17 accepted, or will accept, I guess, after I make this
18 statement. That is in regard to my further clarification
19 of your provision that the taxpayer's advocate must have
20 a background in customer service as well as tax law.

21 I asked for a clarification that that would be a
22 taxpayer advocate having experience representing
23 individual taxpayers or taxpayers' rights, and I would
24 agree to striking out the words "or taxpayers' rights."

25 The Chairman. Without objection, so agreed.

1 Are we ready for the vote on reporting out the
2 legislation?

3 Senator Moynihan. Just a second. Senator Moseley-
4 Braun has one. It is not an amendment.

5 Senator Moseley-Braun. Is this the final vote?

6 The Chairman. Yes.

7 Senator Moseley-Braun. Oh, wonderful. I want to
8 congratulate you, Mr. Chairman. I think you have done a
9 great job with this and I am really pleased with the
10 privacy issues for taxpayers. I think that is so
11 important. I think privacy concerns are going to be
12 major concerns as we go forward.

13 I am not going to take a really long time, but I just
14 wanted to raise one technical point for the staff,
15 primarily, and that is this. I know you have worked hard
16 and you have done a great job with this, but Senator
17 Graham and I were just sitting here talking about the
18 statement that was made that the shifting of the burden
19 of proof was limited at \$7 million.

20 We just looked at the mark that we have been given,
21 and it is not referenced there. Then I asked my staff
22 and she said, well, it is in the statutory language. It
23 is really important that you give us the statutory
24 language so we do not run into omissions like that as we
25 consider these things, because we have to be concerned

1 with the details, too, and it is not in the mark.

2 Ms. Paull. Well, just to clarify. For individuals
3 there is no net worth limitation on the burden of proof
4 proposal. For businesses, there is the \$7 million net
5 worth limitation that applies to attorney's fees, and it
6 is cross-referenced in the mark.

7 Senator Moseley-Braun. But it was not cross-
8 referenced in the mark I got.

9 Ms. Paull. It is cross-referenced in the mark, but
10 to a code section, so the \$7 million net worth term is
11 not in the mark. We will try to fix that for the future.

12 Senator Moseley-Braun. A little English would be
13 good.

14 Ms. Paull. All right.

15 Senator Moseley-Braun. Other than that little tiny
16 point, just to say, Mr. Chairman, in closing, I think you
17 have a done a great job, and I vote aye even beforehand.

18 Senator Moynihan. Mr. Chairman, I do suggest we
19 have a roll call vote while we are still here and wrap
20 up.

21 The Chairman. I will ask the Clerk to call the roll
22 on final passage of the legislation. Those in favor,
23 signify by saying aye.

24 [A chorus of ayes].

25 The Chairman. Opposed, nay. I will ask the Clerk

1 to call the roll.

2 The Clerk. Mr. Chafee?

3 The Chairman. Aye, by proxy.

4 The Clerk. Mr. Grassley?

5 Senator Grassley. Aye.

6 The Clerk. Mr. Hatch?

7 The Chairman. Aye, by proxy.

8 The Clerk. Mr. D'Amato?

9 The Chairman. Aye, by proxy.

10 The Clerk. Mr. Murkowski?

11 The Chairman. Aye, by proxy.

12 The Clerk. Mr. Nickles?

13 Senator Nickles. Aye.

14 The Clerk. Mr. Gramm, of Texas?

15 The Chairman. Aye, by proxy.

16 The Clerk. Mr. Lott?

17 The Chairman. Aye, by proxy.

18 The Clerk. Mr. Jeffords?

19 The Chairman. Aye, by proxy.

20 The Clerk. Mr. Mack?

21 Senator Mack. Aye.

22 The Clerk. Mr. Moynihan?

23 Senator Moynihan. Aye.

24 The Clerk. Mr. Baucus?

25 Senator Baucus. Aye.

1 The Clerk. Mr. Rockefeller?

2 Senator Rockefeller. Aye.

3 The Clerk. Mr. Breaux?

4 Senator Breaux. Aye.

5 The Clerk. Mr. Conrad?

6 Senator Moynihan. Aye, by proxy.

7 The Clerk. Mr. Graham, of Florida?

8 Senator Graham. Aye.

9 The Clerk. Ms. Moseley-Braun?

10 Senator Moseley-Braun. Aye.

11 The Clerk. Mr. Bryan?

12 Senator Bryan. Aye.

13 The Clerk. Mr. Kerrey?

14 Senator Kerrey. Aye.

15 The Clerk. Mr. Chairman?

16 The Chairman. Aye.

17 The Clerk. The votes are 20 yeas.

18 Senator Moynihan. Congratulations, Mr. Chairman.

19 The Chairman. Let me thank the committee for their
20 cooperation. I am very proud of what we have done. I
21 think it is a major step forward in the interests of the
22 American taxpayer and we look forward to this continued
23 cooperation.

24 I also want to thank the staff members of the
25 committee, the Joint Tax Committee, as well as that of

1 the Minority, for their cooperation and hard work. As I
2 say, Senator Moynihan, I think this is a major step in
3 the interests of the taxpayer of this country.

4 Senator Moynihan. And we will not forget the year
5 2000.

6 The Chairman. I could not agree more.

7 Ms. Paull. Mr. Chairman?

8 The Chairman. I would call on Lindy for any
9 comments.

10 Ms. Paull. The staff would request the usual
11 technical drafting authority.

12 The Chairman. Without objection.

13 Ms. Paull. Thank you.

14 The Chairman. Anything further?

15 [No response].

16 The Chairman. If not, the committee is in recess.

17 [Whereupon, at 8:00 p.m., the meeting was concluded.]

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**STATEMENT BY SENATOR ORRIN G. HATCH
SENATE FINANCE COMMITTEE
MARKUP
IRS REFORM LEGISLATION
March 31, 1998**

I want to commend the Chairman for this Mark. It is a good document. We can all say to the American taxpayer that the wait has been worth it. What we have before us is a stronger bill than the House passed.

This Chairman's mark will do more for the taxpayer than the bill the House passed. I am particularly pleased to see that taxpayer rights are strengthened, that there is a new appeals process for the issuers of tax-exempt bonds, that innocent spouses will receive real relief, and that penalties and fines will be reformed.

The American taxpayer can take heart at the bill we have before us today. I don't think we can ever get to the point where the IRS is seen as taxpayer friendly -- people are just not going to be happy turning over their money to the government. However, we can, and should, ensure that the taxes are collected in a courteous, efficient, and most important, honest way. This bill will move us toward that goal.

One provision that I particularly want to thank the Chairman and his staff, as well as the Treasury Department, for working with me on is providing that an issuer of tax-exempt financing can appeal the decision of the IRS through the tax court system. This will help protect the individual taxpayers from having to go to court on an individual basis to fight the IRS determination that a bond issue is not tax-exempt. This is extremely important to those municipalities that issue these bonds. These bonds are issued for tax-exempt purposes, such as construct schools or build hospitals and universities. This is a good provision.

I am also glad to see the extensive taxpayer rights section of the Chairman's Mark. That is our ultimate goal today -- to ensure that taxpayer rights are protected. I think that the Chairman goes a long way in ensuring that taxpayers will be protected and notified of what their rights are when dealing with the IRS.

I wish I could say, however, that I like everything contained in the Chairman's mark. I have some serious concerns about the creation of an accountant-client privilege in this context. I am concerned that we are using the Internal Revenue Code to effectively amend the Federal Rules of Evidence. We have a clear procedure for amending these rules already set out. Changing these rules is no simple matter. It should only be done through careful, deliberate evaluation of the change and the effect it will have on the judicial system. It should only be done with input from the Judicial Conference of the United States, and others.

I thank the Chairman and Senator Mack for listening to my concerns throughout the process of preparing this remark. Both you and your staff have worked with me to try to address these concerns. Unfortunately, we were unable to find a solution to my concerns, and I continue to oppose the provision as written.

However, my belief in the need for significant IRS reforms and taxpayer rights supersedes my opposition to this provision. I will not vote against this legislation based on my opposition to this provision. IRS reform is just too important to the American taxpayer.

Again, I commend the Chairman on this mark.

STATEMENT BY SENATOR DANIEL PATRICK MOYNIHAN

SENATE FINANCE COMMITTEE MARKUP

REFORM AND RESTRUCTURING OF THE IRS

MARCH 31, 1998

*Put in
records*

Mr. Chairman:

I commend Chairman Roth for his commitment to making a real difference for taxpayers in their dealings with the IRS, and for his determination to restore public confidence in this agency. We should also acknowledge the efforts of Senators Bob Kerrey and Chuck Grassley who, starting with their work on the IRS Restructuring Commission, have contributed significantly to this legislation, and have been leaders in the effort to transform the IRS into a "customer-based" agency.

There is certainly room for improvement in the IRS, and this Committee and this Congress took a major first step last November when we confirmed Charles Rossotti to be Commissioner of the Agency. Mr. Rossotti has already made a difference. I am pleased that the Chairman has included a number of items in the mark to create flexibility for Mr. Rossotti in the area of

personnel and in paving the way for implementation of his taxpayer-focused internal reorganization.

I am generally supportive of the direction of this legislation. In particular, I want to thank the Chairman for modifying his mark to include two provisions of interest to me. The first would require the staff of the Joint Committee to provide an analysis of complexity and administrability issues associated with pending tax legislation. Many of the problems faced by the IRS are because of tax legislation. It is Congress that has charged this Agency with implementing the ever more stupefying complexity of the Internal Revenue Code. If enacted, the legislation before us today will be the 64th Public Law to amend the Internal Revenue Code since the landmark Tax Reform Act of 1986.

The IRS has had some well-publicized difficulties with its computer modernization efforts. These problems have been exacerbated by programming changes required by the Taxpayer Relief Act of 1997, and by the so-called "year 2000 problem."

The GAO testified in September of last year that the year 2000 problem could be "catastrophic." With time to accomplish the year 2000 conversion running short, I am concerned about the impact of new changes to the Code that take effect before January 1, 2000. So I thank the Chairman for including a provision in his modification that requires the IRS to report back within 14 days after the Committee reports this bill, on the impact this legislation will have on their year 2000 computer conversion project. At minimum, this will give us an opportunity to consider whether effective dates need to be delayed until after the century date change modifications are completed.

Like the House-passed bill, this bill creates an IRS Oversight Board. But we ought to include the Secretary of the Treasury as a member of that Board, as the House did, and I will have an amendment to that effect.

One final point on the cost of this legislation. I know the Chairman was prepared to fully offset the cost of the bill, but circumstances dictated otherwise. As a result, the mark is fully

offset in the first five years but underfunded by \$10 billion over the second five. Regardless of how desirable are the taxpayer rights contained in this bill, it is a source of concern that this Committee would go on record as spending a portion of the "surplus" at this early stage. All taxpayers will benefit from the positive economic effects of reducing the debt, which I would suggest is the best use of any surplus. It is my hope that before this bill is sent to the President the Congress will find a way to completely offset its cost.

I thank the Chairman and look forward to a discussion of the amendments.

Moynihan
For Record w/out objection

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

March 31, 1998

The Honorable Daniel Patrick Moynihan
United States Senate
Washington, D.C. 20510

Dear Pat:

As Commissioner Rossotti noted in his letter earlier today, the IRS is engaged in one of the largest information systems challenges in the country today. At a projected cost of nearly \$850 million through FY99, the IRS efforts to make its 75,000 programs and thousands of computers Y2K compliant is a truly massive undertaking and requires every available resource to ensure that the Service will be ready to meet the Year 2000 deadline. Because of the demands this effort will impose on the IRS, I am writing to underscore the Commissioner's concern.

Specifically, I urge the Committee to set the effective date for the many provisions in the IRS restructuring bill which will require systems changes no earlier than January 31, 2000. Provisions with earlier effective dates could imperil the IRS' efforts to prepare for the century date change.

I look forward to working with the Committee to make sure that the important work that you are engaged in can be implemented effectively and as quickly as possible.

Sincerely,



Robert E. Rubin



COMMISSIONER

For Record

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

March 31, 1998

Honorable William V. Roth, Jr.
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to provide the Senate Finance Committee information about provisions under consideration as part of the IRS restructuring bill which, in order to implement, will require changes in IRS computer information systems.

As is noted in one of the provisions of the restructuring bill, it is essential that the work needed to make the IRS computer systems comply with the Century Date Change be given priority. If these changes are not made and tested successfully, computer systems on which the IRS directly depends for accepting and processing tax returns and tax payments will cease to function after December 31, 1999. In order to accomplish this change, a massive effort is underway now and will continue through January 2000. This project, one of the largest information systems challenges in the country today, is estimated to cost approximately \$850 million through FY 1999 and requires updating and testing of about 75,000 computer applications programs, 1400 minicomputers, over 100,000 desktop computers, over 80 mainframe computers and data communications networks comprising more than 50,000 individual product components. In addition, the data entry system that processes most of the tax returns must be replaced.

Most of the work to repair or replace these individual components must be done prior to the tax season that begins in January 1999, and thus is at its peak during calendar 1998. During this peak period, the IRS must also make the changes necessary to implement the provisions of the Taxpayer Relief Act of 1997 which are effective in tax year 1998. These changes are still being defined in detail but are currently estimated to require about 800 discrete computer systems changes.

The most critical systems to which these changes must be made are systems that were originally developed in the 1960's, 1970's and 1980's, and many are written in old computer languages. A limited number of technical staff have sufficient familiarity with these programs to make changes to them. Furthermore, the IRS suffered attrition of 8% of this staff during FY 97, which attrition has continued at the same or higher rate until recently. In part, this attrition reflected the very tight market for technical professionals as well as a perceived lack of future opportunities at the IRS.

Honorable William V. Roth, Jr.

This extraordinary situation has required the IRS to commit every available technical and technical management resource to these critical priorities and to defer most other requests for systems changes at least during calendar year 1998.

For these reasons, it will not be feasible to make any significant additional changes to the IRS systems prior to the 1999 filing season, pushing the start of all additional work to about the second quarter of calendar 1999. Furthermore during 1999, a major amount of additional work will be required to perform the testing to ensure that all the repaired or replaced components work as expected prior to January 1, 2000. Given the magnitude of the changes, it is likely that additional work will be required to repair defects and problems that will be uncovered during the testing in the second half of 1999. Thus, while some capacity to make systems changes is projected to exist in 1999, there is considerable uncertainty about how much capacity will in fact be available even during calendar 1999.

With this context in mind, we have attempted to identify the provisions in the restructuring bill that require significant changes to computer systems and estimate how much staff time would be needed to implement these changes. Based on this very preliminary analysis, we have prepared a list of recommended effective dates if these provisions are adopted. In all cases, we would strive to implement the provisions sooner if possible. In addition, two provisions entail both significant systems and policy issues. For these items, which are discussed first, we suggest an alternative approach.

Alternative approach

- 1. Require that all IRS notices and correspondence contain a name and a telephone number of an IRS employee who the taxpayer may call. Also, to the extent practicable and where it is advantageous to the taxpayer, the IRS should assign one employee to handle a matter with respect to a taxpayer until that matter is resolved.**

Concern: We agree with the objectives of this proposal, but are concerned because it would entail a total redesign of customer service systems, and would actually move the IRS away from the best practices found in the private sector. We do support the proposal that the IRS should assign one employee to handle a matter with respect to the taxpayer where it is both practicable and where it is advantageous to the taxpayer.

The proposal would affect the Masterfile, Integrated Data Retrieval System (IDRS), and any system supported by IDRS (including AIMS and ACS). In addition, the proposal is likely to decrease the customer service we are trying to improve through our expansion of access by telephone to 7 days a week, 24

Honorable William V. Roth, Jr.

hours a day. The assignment of a particular employee for a taxpayer contact could actually increase the level of taxpayer frustration as the named employee may be on another phone call, working a different shift, or handling some other taxpayer matter when taxpayers call. In addition, consistent with private sector practices, we are currently installing a national call router designed to ensure that when a taxpayer calls with a question, the call can be routed to the next available customer service representative for the fastest response possible.

Proposal: Require that the IRS adopt best practices for customer service with regard to notices and correspondence, as exemplified by the private sector. Require that the IRS report to Congress on an annual basis on these private sector best practices, the comparable state of IRS activities, and the specific steps the IRS is taking to close any gap between its level and quality of service and that of the private sector. Furthermore, the IRS could be required to put employee names on individual correspondence; it could require all employees to provide taxpayers with their names and employee ID numbers; and, finally, it could record, in the computer system, the ID number of the employee who takes any action on a taxpayer account.

- 2. The proposal would suspend the accrual of penalties and interest after one year, if the IRS has not sent the taxpayer a notice of deficiency within the year following the date which is the later of the original date of the return or the date on which the individual taxpayer timely filed the return.**

Concern: We agree with the objective of the proposal to encourage the IRS to proceed expeditiously in any contact with taxpayers, however, our systems are currently unable to accommodate some of the data requirements with the speed necessary to make this proposal workable. In addition, we are concerned that the proposal could have the perverse incentive of encouraging taxpayers to actually drag out their audit proceedings rather than work with the IRS to bring them to a speedy conclusion. Our administrative appeals process, which is designed to resolve cases without the taxpayer and the government incurring the cost and burden of a trial, could also become a vehicle for taxpayers to delay issuance of a deficiency notice.

Proposal: Require the IRS to set as a goal the issuance of a notice of deficiency within one year of a timely filed return. Mandate that the IRS provide a report to the Congress on an annual basis that specifies: progress the IRS has made toward meeting this goal, measures the IRS has implemented to meet this goal, additional measures it proposes toward the same end, and any impediments or problems that hinder the IRS' ability to meet the goal. In addition, the proposal could reemphasize the requirement that the IRS abate

Honorable William V. Roth, Jr.

interest during periods when there is a lapse in contact with the taxpayer because the IRS employee handling the case is unable to proceed in a timely manner. The IRS could be required to provide information on the number of cases in which there is interest abatement each year in the report.

Effective dates

We propose the following effective dates for specific provisions. These dates are driven by the capacity of our information technology systems, not the impact of the policy. Some of these provisions would be fairly easy to implement, but in total -- and in conjunction with all the other demands on our information technology resources -- it is simply not feasible to implement them until the dates proposed. If the situation changes, we will strive to implement the provisions sooner.

The effective date for many of these changes is January 31, 2000. Given that all of these changes must be made compatible with the Century Date Change, we believe we will need the month of January 2000 to ensure all the Century Date Changes are successful before implementing the provisions listed below.

- Allow the taxpayers to designate deposits for each payroll period rather than using the first-in-first-out (FIFO) method that results in cascading penalties.
 - Effective immediately for taxpayers making the designation at time of deposit.
 - Effective July 31, 2000 for taxpayers making the designation after deposit.
- Overhaul the innocent spouse relief requirements and replace with proportionate liability, etc.
 - Effective date: July 31, 2000. The IRS has no way of administering proportionate liability with our current systems. This provision would require significant complex changes to our systems and is likely to be cumbersome and error-prone for both taxpayers and the IRS.
- Require each notice of penalty to include a computation of penalty.
 - Effective date: Notices issued more than 180 days after date of enactment.
- Develop procedures for alternative to written signature for electronic filing.
 - The IRS is already preparing a pilot project for filing season 1999. Subsequent roll out of alternatives to written signatures for electronic filing will depend on the success of the pilot.

Honorable William V. Roth, Jr.

- Develop procedures for a return-free tax system for appropriate individuals.
 - This provision should be interpreted as a study of the requirements of a return-free tax system and the target segment of taxpayers. Actual implementation will be based on the findings and conclusions of the study.
- Increase the interest rate on overpayments for non-corporate taxpayers from the federal short-term interest +2% to +3%.
 - Effective date: July 31, 1999.
- Do not impose the failure to pay penalty while the taxpayer is in an installment agreement.
 - Effective date: January 31, 2000.
- Require the IRS to provide notice of the taxpayer's rights (if the IRS requests an extension of the statute of limitations). Require Treasury IG to track.
 - Effective date: January 31, 2000.
- Require IRS to provide on each deficiency notice the date the IRS determines is the last day for the taxpayer to file a tax court opinion. A petition filed by the specified date would be deemed timely filed.
 - Effective date: notices mailed after December 31, 1998.
- Require the Treasury IG to certify that the IRS notifies taxpayers of amount collected from a former spouse.
 - Effective date: January 31, 2000.
- Require the IRS to provide notice to the taxpayer 30 days (90 days in the case of life insurance) before the IRS liens, levies, or seizes a taxpayer's property.
 - Effective date: 30 days after date of enactment for seizures; January 31, 2000 for liens and levies.
- Require the IRS to immediately release a levy upon agreement that the amount is "currently not collectible."
 - Effective date: January 31, 2000.

Honorable William V. Roth, Jr.

- Waive the 10% addition to tax for early withdrawal from an IRA or other qualified plan if the IRS levies.
 - Effective date: January 31, 2000.
- The taxpayer would have 30 days to request a hearing with IRS Appeals. No collection activity (other than jeopardy situations) would be allowed until after the hearing. The taxpayer could raise any issue as to why collection should not be continued.
 - Effective date: January 31, 2000.
- IRS to implement approval process for liens, levies, and seizures.
 - Effective date: implement procedure manually 60 days after date of enactment; implement system for IG tracking and reporting January 31, 2000.

The following items were proposed in the Administration's FY 1999 Budget. In conjunction with the other proposals in this bill, they will also require significant systems changes:

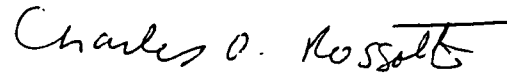
- Eliminate the interest rate differential on overlapping periods of interest on income tax overpayments and underpayments.
- Prohibit the IRS from collecting a tax liability by levy if: (1) an offer-in-compromise is being processed; (2) within 30 days following rejection of an offer; and (3) during appeal of a rejection of an offer.
- Suspend collection of a levy during refund suit.
- Allow equitable tolling of the statute of limitations on filing a refund claim for the period of time a taxpayer is unable to manage his affairs due to a physical or mental disability that is expected to result in death or last more than 12 months. Tolling would not apply if someone was authorized to act on these taxpayers' behalf on financial affairs.
- Ensure availability of installment agreements if the liability is \$10,000 or less.

Finally, we would attempt to immediately implement the cataloging of taxpayer complaints of employee misconduct and would stop any further designation of "illegal tax protesters." However, there may be some systems issues with regard to these proposals that could delay certain changes until some time in early 1999.

Honorable William V. Roth, Jr.

I look forward to working with you, the Finance Committee, and the Congress as we strive to restructure the Internal Revenue Service.

Sincerely,

A handwritten signature in cursive script that reads "Charles O. Rossotti". The signature is written in dark ink and is positioned above the printed name.

Charles O. Rossotti

cc: Senator Daniel Patrick Moynihan
Ranking Minority Member



United States

Office of Government Ethics

1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

March 27, 1998

The Honorable William V. Roth, Jr.
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Roth and Senator Moynihan:

We understand that your Committee is reviewing the provisions of H.R. 2676 in anticipation of developing a Senate bill regarding the Internal Revenue Service (IRS). As Commissioner Rossotti indicated in his testimony before your Committee earlier this year, the Administration believes that the conflict of interest and financial disclosure provisions that section 101 of that bill would make applicable to the Members of the newly created IRS Oversight Board are in need of technical revision and, we believe, should be made more consistent with the standard ethics systems applicable within the executive branch. We recognize that this part-time Board is being given far more than advisory duties, and we believe that conduct and compensation restrictions and financial disclosure requirements should be commensurate with those additional duties. Because time is of concern, we have chosen to set forth the type of requirements we believe would be most appropriate and consistent with sound ethics policies. We would be happy to work with your staff and the legislative counsel in developing the exact legislative language.

1. Status of the private sector members. The House bill specifies that the private sector members, other than the individual representing the union, are to be special Government employees "during the entire period" each individual holds appointment. We believe this language will cause unnecessary hardships on the Members of the Board and will substantially inhibit the Government in attracting the types of individuals you

The Honorable William V. Roth, Jr.
The Honorable Daniel Patrick Moynihan
Page 2

might wish to serve on the Board. Briefly, this will occur because more onerous criminal conflict of interest restrictions (particularly those applying to private compensation arrangements and matters unrelated to tax or IRS issues or policies) will apply to Members after 60 days of service. Under the House language, those restrictions will apply 60 calendar days after appointment, not after 60 days of actual service as is ordinarily the case for special Government employees.

We recommend that the bill be silent as to the status of the Members as special Government employees. We understand that it is not expected that these individuals will actually serve more than 60 days in a 365-day period, so that the regime for less than 60 days of service would apply. Then, the bill can include additional restrictions and requirements that are tailored specifically to service on this Board rather than simply service anywhere in the executive branch as a special Government employee. Recommendations for those restrictions and requirements are in points 2 and 3.

2. Additional conflict restrictions. Given the duties of the Board anticipated by the House bill, we would recommend that Board Members be subject to the following restrictions in addition to the standard criminal conflict of interest provisions applicable to special Government employees.

In addition to the restrictions in 18 U.S.C. §§ 203 and 205, members of the Board should be prohibited from representing anyone before the IRS or the Department of the Treasury on any matter involving the management or operations of the Internal Revenue Service or the internal revenue laws (or more narrowly, tax matters) or before the Board or the IRS on any particular matter.

In addition to the restrictions in 18 U.S.C. 207(a)(1) and (2), members of the Board should be prohibited from representing anyone before the IRS (or possibly the entire Department of the Treasury as are former IRS Commissioners) for one year following termination of Board service. We would not suggest that there is any need to apply the restrictions of section 207(f) to the members of the Board who do not serve more than 60 days.

In drafting these additional restrictions, we recommend that all of the exemptions and procedural mechanisms presently in sections 203, 205 and 207 apply to these additional restrictions.

3. Financial disclosure requirements. Given the substantial authorities of the Board as set forth in the House bill, we recommend that the statute be drafted clearly to reflect that the Members of the Board are required to file new entrant, annual and termination public financial disclosure statements regardless of the number of days in a calendar year that the individual actually

serves. If the Senate determines that the Board should be purely advisory, we recommend that the bill be silent so that the standard nomination form which can be made public by the confirming committee and the annual non-public financial disclosure forms will be required.

4. Union member. We recommend that the bill not include an individual who is a representative of an organization which represents a substantial number of IRS employees. Given the duties of the Board, this individual cannot serve as a "representative" -- a status recognized in applying conflicts laws to certain individuals carrying out purely advisory duties. We believe that the basic criminal financial conflict of interest statute, 18 U.S.C. § 208, will be applicable to this individual and will substantially limit that individual's ability to carry out any meaningful service on the Board. More importantly to the individual, such service will expose him or her to constant scrutiny for even the smallest official acts. While section 208 does contain a waiver provision, it applies only where the financial interest involved is "not so substantial" as to be deemed likely to affect an employee's service. We believe that it would be almost impossible for an officer of a union to legitimately meet the test set forth in the statute because of his own and the union's financial interests that would be affected by the matters before the Board. In addition, we believe that such a member will also be substantially inhibited from carrying out his or her duties on behalf of the union by the restrictions of 18 U.S.C. § 203. There are no applicable waivers for these restrictions.

As an alternative, we suggest that the Board be directed by statute to consult with, but not seek the approval of, representatives of organizations which represent substantial numbers of IRS employees when the matters before the Board would have a substantial effect upon IRS employees. It is crucial to sound government ethics policy that those who have approval authority be accountable to the public for their actions. Those who only provide the views of interested parties for the decision makers' consideration need not be subject to an array of ethics restrictions.

5. Pay. We recommend that the pay for the members of the Board be rewritten so that it references some standard Government pay schedule. Since many ethics statutes make reference to those schedules for purposes of applying provisions, this would be much simpler under the present system and most probably for any future restrictions or regulations that might be enacted or promulgated. We suggest that the reference be made to the Executive Level Schedule, which is typical for advise and consent appointees. However, we would not recommend a reference to Level I of that Schedule because positions listed at that Level (Cabinet-level

The Honorable William V. Roth, Jr.
The Honorable Daniel Patrick Moynihan
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positions) have unique post-employment restrictions that would not be appropriate for these members.

We believe that this Board is a very important Government body and that the ethics and conflicts of interest restrictions applicable to the Board should be clear, correct and appropriate. We look forward to working with your staff to address the changes to the language of the House bill that we believe are necessary to clearly meet the obvious intent of the House as well as our recommendations.

Sincerely,

Stephen D. Potts
Stephen D. Potts
Director



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

March 23, 1998

The Honorable William V. Roth, Jr.
Chairman
Committee on Finance
United States Senate
Washington, DC 20510-0801

Dear Chairman Roth:

Your staff has asked this Office to provide a brief technical overview of the application of the criminal conflict of interest laws to three types of individuals who might be appointed as members of the IRS Oversight Board should the provisions of H.R. 2676 be enacted. Section 101 of H.R. 2676 would amend 26 U.S.C. § 7802.

As the Commissioner of the IRS indicated to you in his testimony earlier this year, the Administration believes that the conflict of interest and financial disclosure provisions of the bill need to be amended. This Office has offered to work with the Committee to develop appropriate revisions and thus far has had informal discussions with your staff and the staff of the Joint Tax Committee. We will try to send a formal proposal to the committee shortly that contains our recommendations for changes, after clearance by the Office of Management and Budget. In the meantime, however, we are happy to provide this technical analysis for your information.

Special Government Employee Status

For conflicts of interest purposes, H.R. 2676 treats the private members of the Oversight Board in two separate ways. Each member who is appointed pursuant to § 7802(b)(1)(A) (the eight "private sector" members) is to be treated as a special Government employee (SGE) "during the entire period that individual [serves as a member]." Ordinarily, status as a special Government employee is determined under 18 U.S.C. 202 by calculating the number of expected days of actual service.¹ The house bill eliminates that requirement. Moreover, it also eliminates the opportunity to consider the number of actual days of service in determining when

¹Section 202 of Title 18, United States Code defines a "special Government employee" as an individual who is not expected to serve more than 130 days in any 365 day period.

certain ethics-related restrictions will apply to these individuals. Three of the criminal conflict of interest laws and the public financial disclosure law provide for additional conflict of interest restrictions and public financial disclosure for a special Government employee who has served more than 60 days. These members will meet that 60 day test after 60 calendar days, not 60 actual service days.

The status of the individual appointed to the Board pursuant to § 7802(b)(1)(D) (the union representative) is somewhat different. While the House bill uses language that might under certain circumstances create the status of a "representative" who is not covered by federal ethics laws, an individual may serve as a "representative" only if he is acting in an advisory capacity. Because the Board's duties are more than purely advisory, the union representative must be considered a special government employee, as that term is defined in 18 U.S.C. § 202, or as a regular employee if his service will exceed 130 days. The union representative's status will be determined by an assessment at the outset of his appointment of the anticipated number of days of actual service. We assume that the anticipated actual service days of a member of the Board will be less than 130 days in the 365 day period following appointment. Therefore, the union member likely will be a special Government employee. Requirements relating to financial disclosure and additional restrictions under 18 U.S.C. §§ 203, 205 and 207 will attach when the union member exceeds 60 days of actual service -- not calendar days -- after appointment.

Examples Regarding Application of 18 U.S.C. § 208

In order to assist you in analyzing the effect of H.R. 2676, your staff also asked that we use as examples three types of individuals who might be appointed to the Board. The first is an individual who is an officer or CEO of a corporation ("Corporate"); the second, an individual who is a partner in a firm that provides representational services such as a law firm, accounting firm or consulting firm ("Partner"); and third, an individual who is a paid officer or employee of a union that represents IRS employees ("Union"). The Corporate and Partner members are the type of members that would be appointed under § 7802(b)(1)(A). We are assuming the duties of the Board to be those that the House bill would grant to it.

The basic financial conflict of interest statute, 18 U.S.C. § 208, would prohibit each of these members from participating personally and substantially (through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise) in any particular matter in which:

the Board member, the Board member's spouse or minor child;

the Board member's general partner;

an organization in which the Board member serves as an officer, director, trustee, general partner or employee; or

any person or organization with whom the Board member is negotiating or has any arrangement concerning prospective employment,

has a financial interest. Section 208 requires an employee to disqualify himself from participating when the particular Government matter will have a direct and predictable effect upon that financial interest. Section 208 does not prohibit an official from having any particular financial interests or affiliations, and does not prohibit the appointment of anyone to a particular position. However, it may limit so substantially what the individual can do officially that it becomes a bar to meaningful service.

Example 1: The Corporate member is the Vice President of a technology company. The Board undertakes a study to determine if it should recommend that the IRS use a new type of technology, although the Board would not, nor could not, recommend how or from whom the technology should be procured. If the Corporate member knew his company would pursue providing the technology to the IRS, then he may not participate in the Board's discussions and recommendations or decision on this matter, absent a formal waiver. If he did not know if, or it was purely speculative whether, the IRS' potential pursuit of this technology would affect his company, he could participate in the matter. (If any member of the Board had stock in a technology company that would be directly and predictably affected by this particular matter before the Board, this stock interest would also be disqualifying. Normally, however, a financial interest in a matter arising out of the ownership of stock in a company can be resolved more easily than an employment interest because the stock can be divested, or the interest can be waived if there is not a substantial amount of stock.)

Example 2: The Board is asked to review and approve a reorganization of the IRS. The Union member may not participate in any Board discussion or action on this matter because an IRS reorganization would have a direct and predictable effect upon the interests of his employer. (The interest here would arise in at least two ways. The union would be expending funds to represent its members' interests in the reorganization, and the dues collected by the union would be affected by the fact the reorganization may eliminate or increase the number

of employees who would pay membership dues to the union.) Furthermore, as a general rule, the Union member could not participate in any matter before the Board if the union was lobbying the Board or the IRS on the same matter. Simply from reading the proposed duties of the members, we would expect that bar to extend to participation in such matters as budget issues or any matters that involved the pay or employment of union members. It would appear to us that as long as the Board retains the authority that the House bill would grant to it, an officer of a union which represents Treasury employees will be barred from acting on a substantial number of matters coming before the Board.

Example 3: The Partner member could not act on any matter that would have an effect upon the financial interests of his partnership or on any one of his general partners even if the interest was not one they held jointly. For instance, if a matter before the Board would have a direct and predictable effect on the interests of those who represented clients before the IRS, then the Partner member who had a partner with a tax practice could not act on that matter as a member of the Board.

All of the members' financial investments and the employment and investment interests of their spouses and minor children could cause disqualification. However, waivers, exemptions and divestiture may ameliorate the effects of § 208, particularly when the disqualifying interest arises from ownership of assets.²

Examples Regarding Application of 18 U.S.C. §§ 203 and 205

In addition to § 208, two other criminal conflict of interest statutes, 18 U.S.C. §§ 203 and 205, might affect the activities or the private compensation arrangements of the members of the Board while they serve on the Board. Taken together, these two statutes prohibit special Government employees who have served the Government 60 or fewer days in the preceding 365 days from representing anyone before the Government, with or without compensation, in a particular matter involving specific parties, in which they have participated personally and substantially. Section 203 specifically bars SGEs from sharing in the compensation anyone

²Special Government employees are ineligible, however, to receive Certificates of Divestiture which can be obtained from this Office to defer payment of taxes on the gain realized from the sale of property for conflicts of interest purposes. Therefore, members of the Board would suffer the normal tax consequences of selling an asset that resulted in capital gains.

else receives for making a representation on such a matter. In some ways, §§ 203 and 205 parallel the post-employment restrictions in 18 U.S.C. § 207 (discussed below). There are a few limited exceptions to the prohibitions in both §§ 203 and 205 that are not likely to be germane to the concerns you have raised.

Example 4: An attorney who left the DOJ over a year ago, and is now a partner in a law firm, may not, while a member of the Board represent another to the Government on a specific tax case he worked on at DOJ. He also may not share in any fees a partner of his might receive for representing someone on that same case.

Example 5: The Corporate member would be able to represent his corporation in a specific tax issue before the IRS as long as he had not, either in his Board member position or in some former official government capacity, personally and substantially participated in the matter.

Example 6: The Union member could represent the union on any matter before the IRS unless he had in some official government capacity, either as a Board member or earlier as a full-time government employee, personally and substantially participated in the matter.

The restrictions of sections 203 and 205 apply in the manner set forth in examples 4 and 5 only for the first 60 days of the members' appointments. After 60 days of calendar service for the Partner and the Corporate member and after 60 days of actual service for the Union member, the restrictions in sections 203 and 205 increase to prohibit a Board member from representing another on any particular matter involving specific parties that is pending in the entire Department of the Treasury. And, even if the member did not personally represent anyone before Treasury, he or she could not share in any fees earned by someone else for representing another in such a matter. The practical effect of the restriction on compensation is that the Partner and possibly the Corporate member may have to rearrange their compensation packages from their private employers and cease representing clients, their employer or others before all parts of Treasury after 60 calendar days of service. The Union member will not have to review his compensation package until actually serving 60 days.

Example 7: After 60 days of actual service, the Union member would not be able to represent the union or any individual employee to the Department of the Treasury on any matter involving parties, including, the union's collective bargaining agreement with Treasury, an individual disciplinary case, or other matter involving an identifiable group of employees. Accordingly, the Union representative will be substantially limited in his

dealings with the Department on behalf of the union. While nothing in § 205 prevents an employee from acting pursuant to the Federal Service Labor-Management Relations Statute (5 U.S.C. Chapter 71), § 203 would apply to a special Government employee who is compensated for those representations.

Example 8: Sixty calendar days after appointment, the Partner member would not be able to represent clients in matters involving parties such as a Customs matter or a supply contract matter, nor would the Partner member be able to share in any fees received by his partners for such representations. (In such cases the partnership draw at the end of the year could not be based upon any of those fees.)

Example 9: Sixty calendar days after appointment, the Corporate member would not be able to represent his corporation to the Department of the Treasury on any matter involving the corporation as a party or any matter that specifically involved other parties.

Application of 18 U.S.C. § 209 to Board Members

Section 209 of title 18, which bars supplementation of government salary, does not apply to special Government employees or to persons who serve the Government without compensation. Therefore, regardless of the number of days served, the Corporate and Partner members may continue to receive compensation from their private employers as long as receipt of the compensation does not violate sections 203 or 205. Because the Union member is not paid by the Government, he or she will not be subject to the restrictions of section 209 and may continue to receive his private compensation under the same circumstances as the Corporate and Partner members.

Application of 18 U.S.C. § 207 to Former Board Members

Certain post employment restrictions would apply to the members upon leaving Board service. Those restrictions, described at 18 U.S.C. § 207 (a)(1) and (2), would prohibit certain representations back to the Government on particular matters involving specific parties in which the members had participated (if any) or which were under their official responsibility, regardless of the pay level of the member or the number of days served. Sections 207(a)(1) and (2) would not prohibit representations with respect to new or non-party matters.

In addition, however, the House bill would specifically amend § 7802(b)(2)(E)(i) to apply the one-year cooling-off period restrictions in 18 U.S.C. § 207(c) (and consequently subsection

(f) to the Corporate and Partner members of the Board. Section 207(c) bars certain senior employees from representing another back to his former agency on any particular matter for one year after terminating Government service as a senior employee. We are unsure at this time whether the reference would actually accomplish this goal, so we are hesitant to say with any assurance whether the Corporate or Partner members of the Board would have any restrictions with regard to representations to the IRS or the Department of the Treasury on new matters after leaving Board service.

The House bill is silent on the applicability of § 207(c) to the Union member. Thus, we would look first to the level of pay to determine if that individual was paid at a rate that would trigger the restrictions, and if so, would then look to determine if, as a special Government employee, the member had actually served more than 60 days. Because the Union member is not paid by the Government for his service on the Board, we do not see that the provisions of §§ 207(c) and (f) are triggered, regardless of the number of days of actual service.

Financial Disclosure Requirements

With regard to financial disclosure, the amendments to § 7802(b)(2)(E)(ii) in the House bill contain a specific reference to the public financial disclosure provisions in title I of the Ethics in Government Act for the Corporate and Partner members, but not for the Union member. Ordinarily, special Government employees who are expected to, or who actually serve in excess of 60 days and who meet a pay or level of position threshold are required to file public financial disclosure forms. Because of the specific reference in the House bill, we believe it would be reasonable to conclude that the pay or level of position threshold would be met by statute. However, it is not clear whether members would be subject to 5 U.S.C. app. § 101(h) which excludes "officers or employees" who serve less than 60 days from filing a public form.

With regard to the Union member, all special Government employees in the executive branch have to file confidential financial disclosure reports unless they are required by the Ethics in Government Act to file a public financial disclosure report (SF 278), or they can meet the test for a waiver. We do not believe that the test for a waiver could be met here and this member would, at a minimum, be required to file confidentially. We would have to analyze the statute further to determine if the Union member would have to file publicly if he or she reached the 60 days of actual service threshold in any calendar year.

Of course, because the Corporate, Partner and Union members would have to be confirmed, the Senate confirming committee could ask the individuals to file an SF 278 for confirmation purposes and

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the Committee could make the forms publicly available. This would not ensure that members would automatically file public forms on an annual basis, however, and if they did not meet the public financial disclosure requirements on their own, the members would thereafter have to file a confidential form with the Department of the Treasury.

Conclusion

We hope this analysis has been helpful. Because it was not our intent to take any policy position in this letter, we did not clear it with the Office of Management and Budget. We do hope to provide you with a letter shortly that includes recommendations concerning proposed changes to the language of the House bill in the area of conflicts of interest.

Sincerely,

Stephen D. Potts
Stephen D. Potts
Director

KERREY AMENDMENT #1

Substitute the language of H.R. 2676, passed by the House on November 5, 1997, for the Finance Committee mark. However, unlike the House-passed bill, fully pay for this substitute over ten (not just five) years by using the repeal of Schmidt Baking with respect to vacation pay (effective for tax years ending after date of enactment) and allowing taxpayers to use foreign tax credits to reduce income for 1 year back and carryforward 7 years (effective for tax years beginning after December 31, 2000).

Using these two offsets would more than fully pay for the bill, leaving a surplus of \$738 million over the years 1998-2002 and a surplus of \$33 million over the years 2003-2007. This \$771 million surplus could be used by the Committee to pay for additional taxpayer protections.

GRASSLEY (WITH KERREY) AMENDMENT # 3

Watch

Authorize state tax agencies to participate in the existing Federal program of refund offsets. This provision raises \$12 million over five years.