

OFFICIAL TRANSCRIPT

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COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

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WEDNESDAY, NOVEMBER 19, 1980

United States Senate,
Committee on Finance,
Washington, D. C.

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

Present: Senators Long, Talmadge, Ribicoff, Byrd, nelson, Gravel, Bentsen, Matsunaga, Moynihan, Baucus, Boren, Bradley, Dole, Packwood, Roth, Danforth, Chafee, Heinz, Wallop and Durenberger.

The Chairman. I would suggest that we call this meeting to order.

I think it is plain that we have not yet everybody here this morning to have our picture taken, a picture of the entire committee at a time when we have everyone here. Meanwhile, until we get full attendance, let's get on with the business.

Mr. Shapiro, what is the first measure you have that we might want to consider?

Mr. Shapiro. The first item, Mr. Chairman, is the bankruptcy provisions.

1 I do not intend this morning to review all of the
2 substantive provisions of the Bankruptcy Act. They are
3 highly technical and complicated. With regard to corporate
4 tax provisions, they have been the subject of hearings. The
5 staff materials have been submitted for quite a while now,
6 so that all the provisions have been available to the
7 members of the staff and the public, and they have
8 comments.

9 Let me try to summarize the situation, and some of the
10 more important provisions that you should note.

11 First, as far as background is concerned for this whole
12 area, in 1973 the Commission on Bankruptcy Laws was
13 established by the Congress. This Commission on Bankruptcy
14 Laws issued a report recommending changes and clarifications
15 in both the substantive rules and the tax rules of
16 bankruptcy. So there are two parts, and there are two
17 committees that deal with them.

18 On the one hand you have the substantive bankruptcy
19 laws that are dealt with by the Judiciary Committees. Then
20 you have the corresponding tax provisions that are handled
21 by the tax writing committees.

22 After this report was issued, there were extensive
23 hearings held by the Judiciary Committees with respect to
24 these recommendations. The 95th Congress enacted
25 legislation that significantly revised and modernized the

1 substantive law of bankruptcy, as well as the bankruptcy
2 court procedures.

3 The 1978 legislation also repealed the provisions of
4 the Bankruptcy Act which had contained rules for the Federal
5 income tax treatment of debt discharges of bankruptcy, and
6 thus making it necessary to develop new bankruptcy tax
7 legislation.

8 What you have is a situation where in the last Congress
9 the bankruptcy laws were revised, and the tax provisions
10 were not dealt with for the sole reason that the tax writing
11 committees have been very heavily involved in recent years
12 in energy tax provisions.

13 As you know, in 1978, in addition to an energy tax
14 bill, you also had the Revenue Act of 1978 relating to the
15 capital gains provisions and the other cuts that completely
16 absorbed the time of the tax writing committees. The
17 agreement at that time, or the understanding was that the
18 Judiciary Committee reported out the bill which had a
19 one-year deferred effective date to allow the tax writing
20 committees the opportunity to deal with the bankruptcy tax
21 provisions in this Congress.

22 As you very well know, when this Congress first
23 started, the first major item that these tax writing
24 committees had before them was the windfall profits tax bill
25 which completely absorbed the efforts of both the Ways and

1 Means Committee and the Finance Committee for some time. As
2 a result, the bankruptcy tax provisions did not have the
3 opportunity to get reviewed as quickly as it was anticipated
4 before the notion of a windfall profits tax was developed.

5 The House started working on the bankruptcy tax
6 provisions after the windfall profits tax passed the House,
7 while it was over in the Senate. They developed a bill that
8 ultimately passed the House. It was passed in March of 1980
9 by a vote of 324 to zero.

10 Essentially the bill, which is H.R. 5043, completes the
11 process of revising and modernizing the bankruptcy laws by
12 providing the corresponding tax provisions that deal with
13 the tax aspects of bankruptcy to correspond with the changes
14 in substantive bankruptcy provisions.

15 The tax bill that ultimately passed the House, and is
16 before the committee, was developed by a broad group of
17 outsiders. In other words, the staff consulted with Bar
18 Association groups, both tax and bankruptcy groups,
19 accounting groups, bankruptcy attorneys, tax attorneys, as
20 well as other outside practitioners along with the Treasury
21 Department, the Internal Revenue Service, and the Justice
22 Department.

23 Let me summarize the four principal topics covered by
24 the bill H.R. 5043.

25 First, the bill provides rules for Federal income tax

1 treatment of debt discharge in the case of bankrupt or
2 insolvent debtors, and makes related changes in the rules or
3 present law for cancellation of indebtedness in the case of
4 solvent taxpayers.

5 Second, the bill gives debtor corporations and
6 creditors that take over those corporations more flexibility
7 in structuring tax free reorganization, and more favorable
8 rules on carryovers of cash attributes to the corporation
9 that comes out of bankruptcy.

10 Third, the bill clarifies Federal income tax treatment
11 of the bankruptcy estate of an individual debtor, and
12 provides rules for allocating income and deductions between
13 the debtor and the estate.

14 Fourth, the bill coordinates the provisions of the
15 Internal Revenue Code that relate to the assessment and
16 collection procedures with rules that were enacted in the
17 bankruptcy tax provisions.

18 The legislation that you have really is needed because
19 the formal rules that provide the tax treatment on debt
20 discharge that was provided in the Tax Act has been
21 repealed. So you really do need to provide some of the
22 corresponding tax provisions to coordinate with the
23 bankruptcy law.

24 The House passed bill seeks to accommodate the tax
25 policy in the circumstances of bankruptcy in three

1 respects. First, there is no income on debt discharge.

2 Second, the debtor can elect to reduce basis and
3 depreciable assets before reducing net operating losses, and
4 that is a very key item of bankruptcy, because as you incur
5 debt and as you have losses, the businesses have net
6 operating losses which carry over. The question that arises
7 after they go into bankruptcy is, to what extent are these
8 net operating losses carried over as the businesses try to
9 continue.

10 The third item is that the surviving tax attributes
11 will carry over to the successor corporation in their
12 reorganizations as they try to carry on for their future.

13 The witnesses at the Senate hearings raised issues that
14 dealt with debt discharge rules, and the effective date for
15 the bankruptcy cases. These areas are the ones that we are
16 assuming the committee would like to consider.

17 With respect to this, the representatives of the
18 banking community and of the Bankruptcy Bar argued that the
19 bankruptcy tax rules should subsidize or favor the
20 rehabilitation of a failing business, to encourage them to
21 provide the incentives to continue.

22 There were a number of suggestions that were made
23 during the course of the hearings, and the witnesses
24 generally agreed that rehabilitation would be further
25 encouraged if the bill modified the House bill, and the

1 Senate would adopt a rule of present law that there are no
2 tax consequences to the debtor corporation if it issues
3 stock in exchange for claims of its creditors.

4 This is an amendment that Senator Byrd, during the
5 course of his hearings on the bankruptcy, heard from the
6 witnesses. He asked the staff to develop with him a rule
7 that would accommodate the principal concerns of witnesses
8 that testified at the hearings that Senator Byrd had on the
9 bankruptcy bill.

10 An example of the particular issue is, assume that you
11 have stock that is worth \$75, and it is issued to a creditor
12 in cancellation of a \$100 short-term debt. So you have a
13 debt of \$100. You issue stock at \$75 in cancellation of
14 that debt. So you have turned a creditor into a
15 shareholder.

16 The House passed bill would require that the debtor
17 reduce its net operating losses by the difference, that
18 means the \$25 that the corporation does not have to pay,
19 unless the debtor elects to reduce the basis in depreciable
20 assets by that \$25.

21 In other words, you had \$100 of debt. You cancelled
22 that \$100 of debt with \$75 of stock. Thus, you have had a
23 benefit of \$25 that was not paid. The House bill would
24 require the debtor corporation to either reduce its net
25 operating losses, or its depreciable assets.

1 In other words, the net operating losses were generated
2 because of losses, and that is because of the debt. To the
3 extent that you don't have to pay those losses, what the
4 House bill says is that you have received a benefit in a
5 prior year that you did not have to pay in future years. So
6 you reduce your operating loss as if you did not have that
7 debt.

8 There was a concern that this rule was not the most
9 appropriate for rehabilitating a failing business. As a
10 result the interest was that when you use stock to cancel
11 debt, you not be required to take into income or to reduce
12 the net operating loss, or to reduce the depreciable assets
13 by that amount of debt that you do not have to pay.

14 The rule that was suggested at the hearing, the debtor
15 would not have to reduce the tax attributes. The witnesses
16 argued that the more favorable treatment for stock, when you
17 issue stock to cancel debt, should be continued which is the
18 rule under present law on the ground that the economy is
19 better served if the creditors become shareholders and keep
20 the failing companies from what otherwise may be required to
21 be a liquidation.

22 This modification was the only substantive change in
23 the bill that was specifically urged at the hearings by the
24 ABA Tax Section, and actually was termed the most important
25 issue in the bill by the American Institute for Certified

1 Public Accountants when they testified.

2 The Treasury Department at the hearing supported the
3 stock to debt rule in the House bill, but they did not
4 support the change that was recommended. The argued that
5 the bill adequately accommodates bankruptcy concerns.

6 The Treasury's argument was that the House bill
7 properly coordinates the tax treatment of short-term
8 creditors, who get a bad debt deduction, for the difference
9 between the debt amount and the stock value, with the tax
10 treatment of the corporate debtor who would have a
11 corresponding debt discharge under the House bill.

12 That is generally the background of what came out of
13 the House bill. I understand that Senator Wallop
14 subsequently will offer another amendment. But let me
15 summarize the amendment that Senator Byrd has asked the
16 staff to mention to the committee that was developed out of
17 his hearings in the subcommittee.

18 Essentially, it is a stock-debt rule. It says that
19 there will be no tax consequences when you extinguish debt
20 through the issuance of stock, except where there is only a
21 nominal or token amount of stock that is issued. That is to
22 get around the potential abuse where you have a debt, for
23 example, of \$1,000. and you issue one dollar of stock just
24 to get around the rules. So it is a nominal, de minimis
25 rule.

1 In effect, if a creditor who receives stock for debt
2 takes a bad debt deduction, any gain on a later sale of that
3 stock would be recaptured in ordinary income up to the
4 amount of the deduction. This is the amendment that Senator
5 Byrd developed during the course of his hearings from the
6 witnesses that testified specifically from the AICPA, and
7 the Tax Section of the AEA.

8 The second modification that Senator Byrd discussed
9 with the staff to bring up is with regard to the effective
10 date. The fact that considerable time has passed since the
11 bill has been introduced, the committee may want to move the
12 effective date up to January 1, 1981, instead of the
13 retroactive date.

14 However, that raises a problem which Senator Byrd
15 believes should be dealt with specifically, the fact that
16 some taxpayers may have entered into bankruptcy
17 reorganizations on the assumption --

18 Senator Bentsen. Mr. Chairman, could I interrupt just
19 a minute for a question?

20 The Chairman. Senator Bentsen.

21 Senator Bentsen. When you talk about exchanging stock
22 for debt, and then the later sale of that stock, and the tax
23 being incurred on income. Who would incur the tax?

24 Mr. Shapiro. The gain would be subject to tax by the
25 seller, the one who holds the stock, the former creditor.

1 Senator Bentsen. Let me understand that. If the debt
2 is paid, that is not a gain.

3 Mr. Shapiro. That is correct. There is no gain when
4 it is paid.

5 Senator Bentsen. He gets stock, and then he sells
6 that. Are you saying that that is then a gain?

7 Mr. Shapiro. If it goes up in value.

8 Senator Bentsen. Fine. So it is just the incremental
9 part, and you did not say that.

10 Mr. Shapiro. That is right.

11 Senator Bentsen. Fine.

12 Mr. Shapiro. Continuing on with the effective date,
13 the suggestion is that you move the effective date to
14 January 1, 1981, but because some taxpayers have entered
15 into bankruptcy reorganization under the new rules that
16 Congress passed and the substantive changes in the
17 bankruptcy, these bankruptcy reorganizations were made under
18 the assumption that the bill would be enacted with a
19 retroactive effect for the bankruptcy cases.

20 The suggestion would be that under these situation
21 there would be an election to have the provisions of the
22 bill apply retroactively as under the bill at present. The
23 effect would be that prior to 1981, those who have gone into
24 bankruptcy would have a choice of either the present law or
25 these new provisions. But as far as the future is

1 concerned, the new rules would apply prospectively beginning
2 January 1, 1981.

3 In addition, the staff has a number of technical
4 modifications that were worked out with the Tax Section of
5 the ABA, the AICPA. They have all been distributed to the
6 members, the staff, and everyone as far back as September
7 when this topic first came up. Essentially these are
8 technical modifications that have all distributed.

9 The Chairman. Let me just make this statement here. I
10 was hoping that we were going to have every member of the
11 committee here. Apparently, Senator Moynihan has time
12 reserved to speak on the floor and, therefore, cannot be
13 here at this moment. Senator Nelson is not here at the
14 moment. He was here earlier.

15 I would suggest that we just stop and go ahead and take
16 the picture, because we might not be able to get the entire
17 committee here between now and the time we go home.

18 (The committee recessed briefly for official
19 photograph.)

20 The Chairman. Mr. Shapiro, why don't you continue.

21 These are amendments that were worked out with the
22 outside practitioners. These are not substantive
23 amendments. These are technical modifications.

24 I understand that Senator Wallop also has a change to
25 the bill that we have not seen as yet, which he intends to

1 present to the committee. I have already outlined the
2 Senator Byrd amendment.

3 The Chairman. Let me just make this point, because to
4 me it is obvious on the face of it. At this stage of this
5 Congress, any one of these revenue bills here can't overcome
6 more than just a whisper of opposition, because if there is
7 any serious opposition out there on the floor this late in
8 this session, I know what the leadership will do. They will
9 say, if we can't get unanimous consent to vote and get on
10 with the business, we will just lay this bill aside.

11 I would hope that we could pass this bill. If we do,
12 it will have to be something that can almost pass on the
13 consent calendar because otherwise it will have to be
14 brushed aside for some other measure that takes a higher
15 priority. So I would hope that we might be able to report
16 this with a minimal amount of controversy.

17 You have told us about Senator Byrd's amendment.

18 Mr. Shapiro. I have just summarized it. It is a
19 modification of the stock for debt rule, to go back, in
20 effect, to present law that would issue stock to reduce the
21 debt, then there would be no reduction in either the net
22 operating losses of the corporation, or a requirement that
23 you reduce the basis of any depreciable assets of the
24 corporation.

25 The second change was the effective date, to make it a

1 prospective date of January 1, 1981. But prior to that
2 date, any business that was in bankruptcy reorganization,
3 that may have relied on the fact that the bill had a
4 retroactive date, would have a choice to either use the new
5 provisions or the present law. It would be their choice.
6 This is because of the delay in the bill that was not the
7 fault of anyone, other than the fact that more immediate
8 legislation was before the tax writing committees.

9 The Chairman. What is the Treasury position with
10 regard to the amendment?

11 Mr. Halperin. Mr. Chairman, as Pobby indicated
12 earlier, we have opposed the proposed amendment in our
13 testimony. However, in the interest of trying to get a bill
14 out this year, we are prepared to go along with some
15 modifications of the stock for debt rule.

16 As the amendment itself indicates, there needs to be
17 some kind of a de minimis protection to make sure that
18 people just don't issue one share of stock in order to take
19 advantage of the rule.

20 As we understand it, the idea of this amendment is that
21 when the creditors of the corporation are prepared to come
22 in and take over, and continue the business of the bankrupt
23 corporation, that is something worthy of giving special tax
24 relief to. We have been discussing with the staff certain
25 modifications to Senator Byrd's proposal which would more

1 closely require that this purpose be fulfilled.

2 What we are talking about here, Mr. Chairman, is a
3 fairly obvious tax result. We are talking about people who
4 borrowed money, and then went out and lost the money. So
5 they borrowed \$1,000 and they lost it. They don't have it
6 anymore. But then they don't pay back the debt, so they
7 really did not lose their own money, and they are asking to
8 keep the net operating loss.

9 They are saying, we do not lose the money.
10 Nevertheless, we want to keep the net operating loss. If
11 the theory is that we need to give them this special
12 treatment, which is obviously inconsistent with measurement
13 of net income to give losses to people who do not suffer
14 them, we ought to make sure that we are carefully targeting
15 it on those corporations that are really being
16 rehabilitated, and being permitted to stay in business.

17 We have discussed certain modifications with the staff
18 that are based on some of the testimony that was given. If
19 those are acceptable, then we can live with a change in the
20 stock for debt rule.

21 The Chairman. You indicated that you can go along with
22 the Byrd amendment, or that you could go along with it only
23 if it is modified?

24 Mr. Walperin. We have indicated that we can go along
25 with it. Senator Byrd has a de minimis rule in his

1 amendment, and we would like to see that developed a little
2 bit more along the lines that we have been discussing with
3 the staff, based on some of the testimony that has been
4 received.

5 Senator Byrd. Mr. Chairman.

6 The Chairman. Senator Byrd.

7 Senator Byrd. I think the chairman is certainly right
8 that if there is any controversy over this proposal, it will
9 not be enacted in this session.

10 As I understand it, the Tax Section of the American Bar
11 Association favors the amendment that Mr. Shapiro outlined.
12 Is that correct?

13 Mr. Shapiro. Yes.

14 Senator Byrd. It is an immensely complicated piece of
15 legislation. If the Treasury is not happy about it, I don't
16 know whether we want to waste time in going ahead with it or
17 not. If it is going to be contested on the floor, there
18 just will not be any bill. I thought the Treasury was
19 satisfied with it.

20 Mr. Halperin. Senator, we were just asking that the de
21 minimis rule in your bill be modified in certain respects to
22 more clearly carry out the purposes as we understand them.

23 Mr. Shapiro. Senator Byrd, as I understand it, the
24 Treasury does not oppose your amendment. They support it
25 with modifications. They want to make the de minimis rule

1 defined a little bit more specifically.

2 Senator Byrd. I see no objection to that.

3 The Chairman. Why don't you see if you can modify it
4 to that effect. Then, if there is no objection to that
5 modification, then we will agree to that amendment.

6 Senator Wallop wanted to offer an amendment.

7 Mr. Shapiro. Before that, let me just say one thing.
8 We are assuming that you agree with both parts of Senator
9 Byrd's amendment, the stock for debt plus the effective date
10 changes?

11 The Chairman. I don't think that the effective date
12 would create any problem.

13 Senator Wallop.

14 Senator Wallop. Mr. Chairman, I will not be long with
15 this. I would hope that the Treasury and members of the
16 committee would listen to the arguments for restoring the
17 old rule under bankruptcy.

18 I have asked to be distributed letters from Senator
19 DeConcini to me, and from Congressman Edwards, and from
20 Congressman Hyde, Chairman and Ranking Member of the Civil
21 and Constitutional Rights Committee of the House. I will
22 refer you in each of those to the penultimate paragraph as
23 to what it is, while I try to explain why we think that it
24 is important. The interest of the country lies in the
25 rehabilitation of corporations or companies going into

1 bankruptcy.

2 Section 2 of 5043 provides for reduction of tax
3 attributes in an amount equal to indebtedness which is
4 discharged in the bankruptcy reorganization. This is
5 contrary to old law which did not recognize income for
6 forgiveness of debt.

7 I support what Senator Byrd has done, and I just want
8 to go one yard farther, and I think that the arguments are
9 there.

10 The provision in the bill now contravenes the whole
11 purpose behind the Bankruptcy Reform Act which was intended
12 to encourage, rather than discourage, successful
13 rehabilitations, and to avoid liquidations wherever
14 possible.

15 As an original sponsor of that bill, I am confident in
16 stating that the tax attribute reductions provided for in
17 Section 2 of the bill will undermine successful Chapter 11
18 reorganizations. Senator DeConcini, as I pointed out, has
19 endorsed this amendment.

20 It is a shortsighted approach from the standpoint of
21 revenue collection, and I hope that the Treasury will
22 listen. Each dollar of tax loss carry forward which is
23 denied the debtor in reorganization deprives that debtor of
24 badly needed working capital and reduces the cash flow
25 available to pay the creditors who are the victims of those

1 losses.

2 The net effect is a vicious circle which takes dollars
3 out of the creditors' pocket, which is reflected in bad debt
4 deduction, while decreasing the chance the debtor has for
5 successfully emerging from bankruptcy.

6 I guess the point that I am trying to make there is
7 that the Treasury gets the loss on one side or the other,
8 either a bad debt which is reduced from the tax liabilities
9 of the creditor, or they get it on the side of the debtor
10 who is trying to rehabilitate.

11 Under old law, successful rehabilitations were fostered
12 through the preservation of tax attributes which, in turn,
13 resulted in additional tax revenues from the elimination of
14 bad debt deductions by creditors, and the potential
15 restoration of a viable taxpayer.

16 Moreover, when you consider the benefits that are
17 derived from a reconstituted and on-going business in a
18 community, the end results of rehabilitation far outweigh
19 the tax consequences to the Treasury in the short-term.
20 Many businesses and jobs are saved, and the local economy
21 may stabilize. The alternative, which is liquidation,
22 leaves Uncle Sam and the creditors with nothing, and may
23 leave many workers jobless.

24 Thirdly, it has been argued that the preservation of
25 net operating loss carry overs confers an unfair advantage

1 on reorganized debtors. The argument that it gives the
2 debtor a head start rather than a fresh start totally
3 ignores the reality of the business world and the
4 marketplace.

5 Firstly, with only one in four companies successfully
6 emerging from reorganization, it is hardly true that
7 companies seek bankruptcies for this mythical head start.

8 Secondly, preservation of a debtor's net operating
9 losses is not going to help it sell its product to a public
10 skeptical about its continued existence. I point to
11 Chrysler.

12 Thirdly, with years of experience under old law, there
13 has been no case that the law was anticompetitive. If this
14 is the case, the law itself should be reexamined, but in the
15 absence of substantiating evidence there is no compelling
16 reason to change the law, especially since we just passed it
17 last year.

18 I will provide an example. Daylin, Incorporated, is a
19 Los Angeles based firm that would have failed without the
20 tax carry forward provision in the old law, and in this
21 amendment that I propose. With its disappearance would have
22 been the claims of 3,000 businesses, and the jobs of Bayland
23 employees in more than 200 small retail drug, fabric and
24 dress shops across the country.

25 It survived because of the old law. Employees retained

1 their jobs, and the small and large business suppliers were
2 reimbursed. Subsidiaries of Bayland that were saved as a
3 result of this were located in Hampton, Portsmouth, Virginia
4 Beach, Norfolk, Diana Dress Shops and Value Drug Stores in
5 Virginia, Brownsville, Austin and San Antonio, Texas, and
6 many other places around the country, including California.

7 The point that I am trying to make is that I think in
8 attempt for modest, momentary savings that we are actually
9 disserving both the country and the ultimate effect on the
10 Treasury.

11 I would hope that we would simply restore old law. I
12 cannot see how old law can be controversial, when it is, in
13 fact, the way we are operating the country now, and have
14 been demonstrably successful.

15 Senator Dole. Does the Treasury support the
16 amendment?

17 Mr. Halperin. Senator Dole, we are opposed to this
18 approach. What we are talking about doing, as I indicated
19 earlier, is allowing losses that have not been incurred, in
20 fact never paid for, to be retained and to be usable against
21 future profits. So we clearly are not properly measuring
22 income.

23 What we are talking about is some kind of a subsidy to
24 corporations in financial difficulty. If we are going to do
25 that, we ought to do it in a targeted way, as I think is

1 done under the amendment that Senator Byrd has proposed, and
2 that the committee has just approved.

3 Under Senator Wallop's approach, it would be available
4 in all cases. The corporation that goes into bankruptcy,
5 even one that is basically down the drain, has no assets
6 left, would be sitting there, and its losses would be
7 preserved. It would be a target for somebody to take over.
8 Obviously, to the extent that somebody is willing to pay for
9 those losses, there would be some money to pay creditors.

10 But what we are talking about here is a subsidization
11 of companies which have failed, and we are not talking about
12 targeting that to any serious consideration as to whether
13 that company is worthy of rehabilitation, and whether its
14 creditors are willing to become stockholders to keep that
15 company going, as it is under the approach that Senator Byrd
16 has introduced.

17 So we find this suggestion unacceptable. This bill has
18 been around for six or seven years. It has been studied by
19 all kinds of commissions, and all kinds of Bar Associations,
20 and there has not been a suggestion that this kind of thing
21 is needed.

22 We think, at this late date, we ought not to go back
23 and eliminate the kinds of proposals that have been
24 discussed continuously for six or seven years.

25 Senator Wallop. Isn't true that Treasury has rules

1 that substantially eliminate the consequences of
2 take-overs?

3 We are not talking about take-overs. We are talking
4 about individual reorganizations under Chapter 11. The
5 rules for take-overs clearly obviate the kind of concern
6 that was expressed there.

7 The second point is, in every instance you are not
8 talking about illegimate debts. These are debts that have
9 been accumulated over a period of years, and you are going
10 to get them deducted on one side or the other.

11 It seems to me that a healthy, small business
12 community, free of take-overs, is a good deal stronger
13 eccnomical proposition than losing it on the failure to
14 collect a legitimate obligation.

15 Mr. Halperin. Senator Wallop, in most cases, we are
16 going to get deducted under both sides, because the
17 creditors are treating these debts as worthless and have
18 taken the losses, and the corporations which have never paid
19 them have also taken the losses. So we have both people
20 claiming a loss.

21 That is what will generally happen, unless the company
22 eventually turns around, and maybe somebody will report some
23 gain in the future. But by the time this transaction takes
24 place, they both will have, basically, reported the loss.

25 Senator Wallop. You are not going to get any tax from

1 a defunct company in the first place. That just dies there
2 with the corporation. So you only get it on one side
3 primarily.

4 There may be a couple of instances, but I don't think
5 it is worth challenging what has been the successful
6 practice of the country under bankruptcy up until the
7 passage of this bill will change it. The idea in mind,
8 hopefully, is the rehabilitation of companies, and not
9 hastening their demise.

10 I again point out that a company under reorganization
11 faces a skeptical public for its products anyway. The more
12 you challenge their ability with capital, the less likely
13 successful rehabilitation will be.

14 The Chairman. Let me ask Mr. Hawkins about this
15 matter.

16 Have had any experience with this type of thing out in
17 the real world, Mr. Hawkins?

18 Mr. Hawkins. I used to represent a couple of small
19 business investment companies that would go out and look for
20 shaky companies they thought could be turned around, and
21 then invest in them and, hopefully, turn them around. Some
22 we could, and some we couldn't.

23 My feeling was that the existing law, before all these
24 changes, on bankruptcy was too shaky. We would try, if they
25 were headed down the drain, to grab the loss carry over

1 before they went under.

2 What can be done under existing law, and I think under
3 the changes proposed now, if you have a shoe factory that is
4 going bankrupt, and the question is trying to preserve the
5 shoe factory. In addition to that, you can use the loss
6 carry over as sort of a fund for other purposes.

7 We invested in a company which made boats with hydrojet
8 marine engines, which had the unfortunate effect of making
9 the boat sink. As a result, no matter how much money we put
10 into it, we could not turn the company around.

11 So we invested in another company which was making a
12 lot of money on title insurance. We took the loss carry
13 over from the boats, and used that to shelter the title
14 insurance.

15 We had another one that insisted on making coke
16 dispensing machines that were horizontal, and the whole
17 world was switching to vertical. We could not turn that one
18 around either. But we had another company that was making
19 rubber products, so we took the loss from the coke machine
20 vendor and used that to shelter the rubber products.

21 That sounds terrible, and the Treasury is much against
22 it, and all that kind of things, but I think it performs a
23 useful function.

24 Going along with what you are talking about. A
25 critical moment is not simply when the company goes into

1 bankruptcy. There is also the willingness to help them
2 while they are going down. One thing that made us more
3 willing to do that was the fact that there was this loss
4 carry over that could be moved around.

5 On the other hand, it is different from saving the shoe
6 factory. At a certain point, by the time you get into
7 bankruptcy, often the shoe factory is going down the drain,
8 and the loss carry over is going to be used for something
9 very different.

10 I think a difference between that and the bankruptcy
11 case is the debts were not forgiven. We were the creditor.
12 We were the dominant creditor. It is very analogous to
13 Senator Byrd's amendment in that that we felt that it was
14 our money that had been lost in those last few years. We
15 ended up with the stock. It is consistent, it seems to me,
16 with what the committee is talking about in reference to
17 Senator Byrd's amendment.

18 It seems to me that Senator Wallop's amendment deals
19 with the case where if the creditors take over the company,
20 as I understand Senator Byrd's amendment, the loss carry
21 over would be preserved. What we are talking about is the
22 case where the creditors will not take the stock.

23 We were talking this morning when those cases would
24 arise. If you offered a creditor stock in the company, why
25 would he say, no, I would rather have a total wipe-out than

1 the stock. There is one situation where they might do that,
2 namely, under the bill if he has deducted the debt and he
3 gets the stock, he would lose his deduction to the extent of
4 the value of the stock. I think most cases would be covered
5 by that.

6 I think a more difficult question really is, to achieve
7 what Senator Wallop is trying to do, I think the more
8 customary case would not be the one where the creditors
9 refused to take stock. I think if the stock is fairly
10 valued, and they would have to miss by a factor of two for
11 it not to be worthwhile -- I think if you offer the
12 creditors the stock, they will take it. We always did.

13 I think a real problems comes with the Section 382.
14 The committee will get a shot at that next year, because in
15 1975 they completely revised 382, but have kept postponing
16 the effective date, so it comes up again in 1981, where it
17 will either have to be extended or something will have to be
18 done about it.

19 It would be quite possible to pass Senator Wallop's
20 amendment and lose the ballgame under 382, it seems to me,
21 under the situation as it stands now. I think what Senator
22 Wallop is primarily concerned about is the shoe factory,
23 where they are going to stay in the shoe business and they
24 are going to try to turn it around.

25 Senator Wallop. Primarily what this is aimed at is,

1 more often than not, small businesses rather than large
2 businesses in which the stock transfer has some value, but
3 the small business's may not have that same kind of
4 advantage. This is primarily, I think, where this has been
5 used.

6 Mr. Hawkins. I think that what you are trying to do is
7 preserve the original business. You don't want the factory
8 closed down, and the workers thrown on the street, and all
9 that kind of thing.

10 Senator Wallop. All the burdens on the Federal purse,
11 if not the revenues for Treasury.

12 Senator Dole. Are you suggesting that he wait until
13 next year?

14 Mr. Hawkins. Let me make a suggestion, with the
15 reservation that my only objection to it is that on things
16 this complex, I hesitate to suggest that the Finance
17 Committee do something dramatic all at once.

18 Senator Dole. Time is running out.

19 Mr. Hawkins. I think, in the long run, the way to deal
20 with Senator Wallop's problem is not to deal with this
21 unusual situation where the creditors will not take stock.
22 I think in rewriting Section 382, there should be a
23 provision that if in bankruptcy --

24 What hurts you now in bankruptcy is that usually it
25 will modify the business. If you are going to take over a

1 company in bankruptcy, you will figure out what it was that
2 was creating the loss and change it.

3 Under the Treasury regulations that plus a change in
4 stock ownership will kill the loss carry over, regardless of
5 everything else. Even if everything else works out. I
6 think that should be modified to permit in these insolvency
7 cases a restructuring of the business, whether inside or
8 outside bankruptcy, to make it more economic, provided that
9 the core of the business goes forward.

10 I think that would achieve what you want, and at the
11 same time, in the straight bankruptcy issue, 99 percent of
12 the cases would be covered by Senator Byrd's amendment
13 because the creditor would simply take the stock.

14 Mr. Shapiro. Let me point out to the committee, there
15 were changes that were made in the 1976 Act that changed
16 Section 382, which was the carry-over and operating losses,
17 that have been deferred. They were put in. They were put
18 in late. The Congress said that they were not going to go
19 on for a couple of years to allow the Commission to review
20 them.

21 You have been so busy with energy bills, and tax bills,
22 that you have not had an opportunity to review Section 382.
23 So that now has been extended until the end of 1981 by
24 previous legislation. What Ed is suggesting, as I
25 understand it, is that that would be the appropriate area to

1 review Senator Wallop's amendment.

2 You have to look at it next year in any event because
3 it expires at the end of 1981. It is related to those
4 changes, as I understand what you are saying.

5 Mr. Hawkins. I think Senator Wallop's objectives could
6 be better achieved in more cases that way, than by this
7 change. This change in the bankruptcy Act, I think, would
8 not aid in very many cases, and would not be targeted to the
9 shoe factory we are trying to save.

10 Senator Wallop. Might I say that it is not a change in
11 the Bankruptcy. What I am trying to prevent is a change in
12 the Bankruptcy Act.

13 Mr. Hawkins. It seems to me that in the revision of
14 Section 382, we could make --

15 Senator Wallop. But wouldn't it be true that both
16 would better serve the interest of the economic stability
17 for the time being?

18 There are two stabilities that we are talking about.
19 One is the revenue loss contemplated under this which is not
20 munificent by any stretch of the imagination. The revenue
21 consequences of failure between now and then may be rather
22 heavy, especially with the rash of bankruptcies that is going
23 on.

24 The Chairman. I don't really understand this, but I am
25 trying to resolve a question, if we can, and get this bill

1 out of here now.

2 In view of the fact that you have this section that we
3 are talking about, Section 382, where you have to act on it
4 next year, could we consider just accepting Senator Wallop's
5 amendment for one year, so that that amendment as well as
6 Section 382 would come up together next year? Could we do
7 that?

8 Frankly, what we are facing otherwise is this thing not
9 becoming law at all. We will just have the whole bill go
10 over until next year.

11 Mr. Halperin. Mr. Chairman, we remain opposed to
12 Senator Wallop's amendment for one year, or on a permanent
13 basis. I think there are an awful lot of groups that have
14 indicated that they think it is important to have a bill,
15 and that the proposal made by Senator Wallop should not
16 interfere with going forward this year.

17 I think that our feeling would be that if the bill
18 cannot go forward without it, then perhaps it would be
19 better that the thing be reconsidered in the future.

20 Senator Wallop. The only reason that that would be the
21 case is if you maintain your opposition to the one year
22 extension. There would be nothing to prevent it from going
23 forward if you dropped your opposition for the year's
24 extension as suggested by Senator Long.

25 Mr. Halperin. I think that a one-year extension is

1 likely to be no different than a permanent continuation of
2 the existing law. I don't see that our opposition should
3 change between one and the other.

4 The Chairman. The only thing I can suggest, then, is
5 that the situation exists at this moment that unless this
6 matter can be resolved by some kind of compromise between
7 the contending parties, all we can do for the moment is to
8 pass this thing, and hope to come back and look at it maybe
9 tomorrow or the next day, if and when some compromise can be
10 worked out.

11 Otherwise, it will still the bill in such a situation
12 that it cannot pass, because Senator Wallop wants to insist
13 on his amendment, and the Treasury --

14 Senator Wallop. Mr. Chairman, I will not get in the
15 way of the passage of the bill, as long as we can have
16 Senator Byrd's amendment on it.

17 But I have got to express a substantial amount of
18 bitterness at the lack of willingness to compromise on an
19 issue for one year, when it appears by everybody's judgment,
20 the National Association of Credit Management, the Bar
21 Association, and others, that this is a logical and
22 reasonable thing to do in the interest of economic
23 stability, for a minimal consequence to Treasury revenue.

24 If they want to insist on that, I am not going to stand
25 in the way of the rest of the bill because I think it is an

1 important bill. But I cannot let it go by without saying
2 that I think this is a piece of hideboudedness which may be
3 the reason that the Administration is in the trouble that it
4 is in right now, its refusal to compromise.

5 The Chairman. You will have some other people to talk
6 to in the Treasury next year, so maybe you can work this
7 thing out more to your satisfaction next year.

8 Without objection, we will report the bill with the
9 Byrd amendments.

10 Senator Talmadge has something that he has asked be
11 given immediate consideration. He wanted to bring it up
12 yesterday, and I hope that we could accommodate him by
13 bringing up his proposal now.

14 Senator Talmadge. Thank you, Mr. Chairman.

15 This is a matter that has been kicking around for some
16 time. Hearings have been held on it. We considered it at
17 one phase in the Finance Committee, and adopted a
18 proposition that Senator Nelson was interested in, and the
19 proposition that I was interested in was carried over
20 because of my absence.

21 This bill passed the House on the suspension of the
22 calendar call Monday by unanimous consent. It deals with
23 REITs, Mr. Chairman. The House passed bill was held at the
24 desk at my request. It is a bill to make certain minor
25 technical changes in the Internal Revenue Code regarding the

1 net operating loss carry-over period for former real estate
2 investment trusts.

3 This bill was unanimously approved by Ways and Means,
4 and I have asked that it be held at the desk. I introduced
5 a similar bill in the Senate, which has been the subject of
6 hearings and mark-up by this committee. At earlier mark-up
7 no final action was taken because of my absence.

8 As the House has recognized, this bill is necessary to
9 correct a serious tax inequity which exists between real
10 estate investment trusts, former REITs and regulator
11 corporation, concerning pre-1976 net operating loss
12 carry-over periods.

13 This legislation is essentially a self-help measure to
14 allow former REITs who were forced to give up their REIT
15 status in 1974 and 1975 in order to survive the recession,
16 and attempt to finally get back on their feet again.

17 In 1974 and 1975, during the height of the real estate
18 recession, many REITs gave up that trust status in order to
19 put a more hands-on management of their foreclosed
20 properties which they were unable to do as REITs. At that
21 time, REITs had no loss carry-over, while corporations had a
22 five-year loss carry-over.

23 In the 1976 Tax Act, the Congress determined that it
24 was unfair to treat REITs differently from from regular
25 corporations regarding losses, therefore, provided REITs

1 who maintained their status an eight-year carry forward.
2 Those former REITs, prior to the 1976 Act, were left as
3 before with only a five-year carry forward.

4 My bill would correct this inequity created by the 1977
5 Act. The Treasury Department's concern has been that these
6 former REITs gave up their status in 1974 and 1975 only as a
7 way of acquiring the five-year loss carry-over period then
8 available to corporations.

9 This was clearly not the case, but rather
10 disqualification as REIT was primarily to gain the
11 management flexibility necessary for the trusts to deal
12 effectively with their serious financial set-backs. Most
13 trusts which disqualified did not even have incomes on which
14 to apply their net operating losses.

15 To address the Treasury's concern, however, I suggested
16 an amendment which states that if Treasury determines that
17 the principal purpose for disqualification was to gain the
18 tax advantage, rather than for management of properties,
19 then no additional carry-forward would be allowed. My
20 recommendation was agreed to by the Treasury Department as
21 an improvement in the bill, and this safeguard was included
22 in the House passed bill.

23 Senator Dole. Which one is that?

24 Mr. Shapiro. It is number 16 on the list. The list is
25 a compilation of non-controversial, miscellaneous items that

1 are either pending, or have been previously approved by the
2 Senate Finance Committee.

3 As you will recall, the committee instructed the staff
4 to bring back a list of all measures that had been submitted
5 which would be non-controversial. This was a joint list
6 that was reviewed by the majority staff, the minority staff,
7 the Treasury Department, the Joint Committee staff.

8 What you have before you now is a compilation of all
9 those provisions. The measure that Senator Talmadge is
10 referring to is item 16 on that list.

11 It is a two-part provision. There are two REITs that
12 are involved. One is in Wisconsin, and the other one is in
13 Georgia. The committee previously reviewed this matter, and
14 at the time was Senator Talmadge was not here, the Treasury
15 Department had reservations and opposed the part that
16 relates to the Georgia REIT.

17 The committee approved the aspect of it that deals with
18 Wisconsin, and the committee reserved the aspect that
19 relates to the Georgia REIT until Senator Talmadge could be
20 with the committee to address the matter.

21 As Senator Talmadge has indicated, subsequent to that
22 time, there was a modification of that proposal that dealt
23 with the concern that Treasury had. I would not say that it
24 completely satisfied the Treasury, but it went part-way
25 where they softened their reservation.

1 That modification was incorporated in the House passed
2 bill, and was passed by the House. So that, as Senator
3 Talmadge indicated, both versions of the REIT, the one
4 dealing with Georgia and the one with Wisconsin, have been
5 approved by the House. This is now at the desk, and it is
6 number 16 on our list on page 3.

7 Senator Dole. My question is, it is on this
8 non-controversial list which means that it has been approved
9 by the minority, the majority, and the Treasury.

10 Mr. Shapiro. I will say, to be completely fair on the
11 Treasury's position, the modification that Senator Talmadge
12 had, that the house agreed to, softens the Treasury
13 reservation. I don't know that they have said that they
14 endorse it, but they did not object in the House Ways and
15 Means Committee when it was dealt with.

16 Senator Dole. Is that a fair statement?

17 Mr. Halperin. As Senator Talmadge indicated, we had
18 opposed the bill he is interested in. But I think in view
19 of the House action, I don't think that you ought to view us
20 as a obstacle to going forward.

21 Senator Dole. I move we approve it.

22 The Chairman. All in favor say, aye.

23 (Chorus of ayes.)

24 The Chairman. Opposed, no.

25 The eyes have it.

1 Senator Dole. Are we going to have to go through these
2 one at a time?

3 Mr. Shapiro. Let me summarize some of them, and some
4 of them need some changes.

5 This list is dated November 19, 1980. As you will
6 recall, the committee instructed the staff to bring back a
7 list of noncontroversial measures. Some of these are House
8 passed provisions. Some of them are provisions that the
9 committee has already approved and have been out on the
10 floor. Also it includes a list of the items that are new
11 provisions that the committee had the last time you met to
12 discuss tax provisions.

13 This list incorporates all of the provisions that the
14 majority, the minority, and the Joint Committee staff, along
15 with the Treasury, have reviewed and judged not to be
16 controversial. The suggestion is that some of them require
17 some modifications, mainly in effective dates, since they
18 have been on the agenda for quite a while. They have no
19 significant controversy that we are aware of.

20 There are two items on the list on which the only
21 question that remains is that there were no hearings. We
22 listed those separately. One of them, there is a question
23 as to whether the hearings should have been in Senator
24 Byrd's subcommittee, or the Pension Subcommittee, because it
25 is a pension issue.

1 It may be easier for me to go through these very
2 quickly, and just to point out some of the changes.

3 The first one,, H.R. 4155 deals with disclosure of
4 mailing addresses of individuals defaulting on loans made
5 under the Cuban Loan Program. We think there should be an
6 effective date change there, which would be after the date
7 of enactment.

8 The Chairman. Is that all there is to that?

9 Mr. Shapiro. We are not aware of any objection to that
10 at all. It was worked out in the House. Treasury supports
11 it. Hearings were held in Senator Byrd's subcommittee.

12 The Chairman. Without objection, agreed.

13 Mr. Shapiro. That is number one.

14 I would like to suggest that some of these bills, for
15 example this next one, H. R. 4746, there are sections in the
16 bill that there are objections to. Therefore, instead of
17 just agreeing to the bills as such, the suggestion should be
18 that after the committee goes through the list, and agrees
19 generally on these provisions, Mike Stern and Bob Lighthizer
20 would try to sit down and coordinate the best means to
21 package these bills to the appropriate bills to encourage
22 Senate floor considerations.

23 The feeling is that unless you develop noncontroversial
24 packages that you can get consent on, that there would not
25 be. Some of these bills, for example, the next one 4746

1 does have some sections that there are objections to. So
2 the suggestion is to take the sections here that the
3 committee agrees to and put them on other bills.

4 Senator Byrd. Mr. Chairman.

5 The Chairman. Senator Byrd.

6 Senator Byrd. I would like to ask a question in that
7 regard.

8 You mentioned private foundations, and there is nothing
9 on that --

10 Mr. Shapiro. That is not on this list, Senator.

11 Section 2 of that bill, and that is the exact provision that
12 I am referring to, it is not included on this list, and the
13 suggestion is not to use H.R. 4746 as a vehicle, but to take
14 those sections that the committee agrees to and put them on
15 another bill, and H.R. 4746 just stays in the committee.

16 Senator Byrd. It stays in the committee?

17 Mr. Shapiro. That is correct.

18 Senator Byrd. Fine.

19 Senator Dole. That is the only one in 4746?

20 The Chairman. Let me see if I understand this. You
21 are suggesting that you put these provisions on various
22 other bills that would be reported by the committee?

23 Mr. Shapiro. That is correct.

24 The Chairman. So that those bills would not be as
25 heavily loaded with amendments, and they would have a better

1 chance to pass.

2 Mr. Shapiro. That is correct.

3 Mike Stern and Bob Lighthizer would sit down and work
4 this through, and get the approval of the chairman and the
5 ranking member.

6 The Chairman. These proposals here, one through
7 eight, those are, you think, noncontroversial matters that
8 could pass, provided that they are not on some bill where
9 there is something else that is objected to.

10 Mr. Shapiro. That is correct. In other words, that
11 would not include Section 2 of that bill. Essentially, H.R.
12 4746 would stay in the committee, but these sections would
13 be added to other bills that would be noncontroversial.

14 The Chairman. Without objection, agreed.

15 Mr. Shapiro. The only suggested change on this list,
16 under item 2, H.R. 4746, would be that Section 1 of the bill
17 that you move the effective date from 1979 to 1980, and that
18 you also provide an amendment that says that foundation
19 managers need not furnish copies to other persons designated
20 under Treasury regulations. This is something that has been
21 worked out. It is a technical modification that should be
22 made.

23 Other than that, there are no controversies over these
24 provisions. They are House passed provisions. The Treasury
25 does not oppose them. Senator Byrd's subcommittee has held

1 hearings on all of them.

2 The Chairman. Without objection, agreed.

3 Mr. Shapiro. The next provision is item 3 on your
4 list, which is H.R. 5391. It deals with a problem that
5 developed in a foundation second-tier tax. It has passed
6 the House. Senator Byrd's subcommittee held hearings. It
7 is an appropriate modification that needs to be made.

8 The Chairman. We just report that out, then.

9 Mr. Shapiro. Either report that out, or maybe other
10 amendments would be added to that bill. That bill could be
11 reported out, but in addition it may be that the committee
12 wants to put other amendments on it.

13 The Chairman. We can agree to the bill, and then we
14 can decide what amendments we want to put on it.

15 Mr. Shapiro. That is right.

16 The Chairman. Then we will do that much for the time
17 being.

18 Mr. Shapiro. The next item is H.R. 5505, that is item
19 4 on your list. There are three sections on this list.
20 Some of the other sections have already been enacted into
21 law, or have objections to them.

22 The first one is Section 8, which deals with the excise
23 tax treatment of domestic wines used by embassies. The next
24 one is Section 9, which deals with refunds of tread rubber
25 excise tax. That has been around for years, and it has even

1 passed both Houses, but on versions of bills that did not
2 become law. The next one is Section 11, which provides for
3 the exempt status of certain fraternal organizations.

4 These three sections have passed the House. There have
5 been hearings in Senator Byrd's subcommittee. They have no
6 controversy attached to them.

7 Senator Chafee. I assume that this means the
8 Treasury.

9 Mr. Shapiro. It is Treasury, the staff members.
10 Everything on this list has been reviewed by the majority
11 and the minority staffs, along with the Treasury
12 Department.

13 The Chairman. Without objection, we will agree to
14 that.

15 Mr. Shapiro. The next item, item 5, is H.R. 5973.
16 There are two sections in that bill. Section 1 deals with
17 the waivers of residence time requirements for Americans
18 working abroad. Section 2 deals with rollover treatment for
19 lump sum distribution from money purchase plans.

20 The first one deals with the situation of Iran. These
21 are the workers who had to leave and had not satisfied their
22 residence requirements. The second one is just a rollover
23 treatment of lump sum distributions from money purchase
24 plans. Both of these are noncontroversial.

25 The Chairman. At the time that we agree on this, are

1 we agreeing that we approve of this, and that we are going
2 to try to add this to some other bill, or are we just
3 agreeing that we will modify that particular bill that way?

4 Mr. Stern. You are agreeing to the substance. The
5 packaging, we will work out a suggestion for you by the end
6 of the day.

7 The Chairman. So we agree to the substance, with the
8 understanding that the packaging will be worked out
9 subsequently.

10 Mr. Stern. Yes.

11 Mr. Shapiro. The next one on page 2, item 6, H.R.
12 7171, that has two sections. One is annuities purchased by
13 the Fed-Med employees. The second is Sections 4 and 5 which
14 deal with the tax treatment of members of an affiliated
15 group, which included a ConRail transferror railroad. There
16 is also an amendment that was suggested by Senator Heinz to
17 deal with certain comparable cases. It is a technical
18 amendment that needs to be made.

19 Let me make one observation with this bill, H.R. 7171.
20 It has three other provisions on it. Section 1 deals with
21 scholarship extension, and that was already passed as an
22 extension bill. The other provisions are Section 3, which
23 deals with the Railroad Retirement Betterment provision, and
24 Section 6, which deals with the wine provisions. Both of
25 those provisions are supported by the House, however, there

1 are certain controversies because Treasury, for example,
2 opposes the modification of the Railroad Retirement.

3 The suggestion here for the committee is that since the
4 Retirement and the wine, although the wine has been approved
5 in a Senate passed bill before the recess, the committee may
6 want to use H.R. 7171 as a vehicle for some of the
7 provisions that the House has now considered where there
8 either will be a conference or some review by the House.

9 Senator Talmadge. Would you yield at that point?

10 Why should the retirement be stricken by the Finance
11 Committee?

12 Mr. Shapiro. The Treasury Department has objected to
13 that. The staff was instructed not to bring back any
14 provisions on which the Treasury had objection, or on which
15 there was controversy.

16 Senator Dole. I am just reading here from Mr.
17 Halperin's statement in the House, "On that assumption, and
18 the further understanding that we assume everybody agrees
19 that if Congress were to take a further look at depreciation
20 in the future, this matter would be reconsidered in that
21 context. On those assumptions, we are prepared to reduce
22 our level of objections to this bill." That is RFB, which I
23 think ought to stay in there.

24 Do you still hold to that position?

25 Mr. Halperin. Senator Dole, the thing that has changed

1 since then is that you have considered depreciation.
2 Apparently you will not go forward with that tax measure
3 this year, and we all understand that it will be
4 reconsidered next year. We think that that is the
5 appropriate time to decide what to do about the railroad.
6 We ought not to freeze what everybody agrees is a proper
7 accounting method.

8 We are not going to revoke existing rulings at the
9 IRS. So I think that the railroads clearly will be
10 protected. You will have a chance to consider the
11 depreciation issue next year, when either you will fold the
12 railroads into whatever you do on depreciation, or
13 grandfather the RRB. I think that that is the time you
14 ought to look at the issue.

15 We are concerned that if you specifically put it in the
16 law at this time, the pressure to look at it next year will
17 be reduced. It is our hope that you will look at it next
18 year, and that is why we would like to keep it open at this
19 point. I don't think that the railroads are under any great
20 risk.

21 Senator Talmadge. Why don't we put it in for a year,
22 and then it can be reviewed.

23 Mr. Shapiro. The committee has two options, let me
24 say. First of all, the staff was not able to put it in the
25 list because it has a Treasury objection. So under our

1 guidelines, we could not put it there.

2 The Chairman. I don't think we ought to put anything
3 in here that is going to have a Treasury objection. I say
4 that, not agreeing with Treasury about this matter, but I
5 have learned by now that if this committee meets, and we
6 unanimously vote down a Treasury objection, Treasury still
7 has enough influence to find somebody among the 100 senators
8 out there to object to it.

9 Then, we get out there with the bill. The bill does
10 not become law, and everything that is added to the bill
11 along with it goes down with it.

12 If we can have something about the railroad betterment
13 that the Treasury would be willing to agree to, that would
14 be different. If not, then I think that we ought to just
15 leave it out.

16 Senator Talmadge. It is Mr. Shapiro's suggestion that
17 it would be in conference anyhow, and will be considered by
18 the conferees. My understanding is that one railroad has
19 been filing its tax return this way for 70 years. Now
20 Treasury by regulation is changing what they have been doing
21 for 70 years. Congress did not change it, Treasury did.

22 Mr. Halperin. Senator Talmadge, we have not changed
23 anything. We have not done anything. Let me indicate,
24 obviously I will not have any influence in a month, but it
25 is not our intention to change the thing either.

1 The Chairman. Basically, if I understand it, you have
2 not changed it. The railroads are afraid that you are going
3 to change it.

4 Mr. Halperin. Because they are going to get a change
5 from the ICC, and they are afraid that we will follow.

6 The Chairman. But it has not been changed, and this is
7 something that we could look at next year, I take it. While
8 I know the railroads would like to resolve it to their
9 advantage, on the other hand, if we try to do that, it looks
10 like this bill will not pass. We can talk about it
11 conference.

12 Mr. Shapiro. H.R. 7171 should be one of the bills that
13 other amendments are put. PRR, at least, is in the House
14 version of that bill.

15 The Chairman. Yes.

16 Mr. Shapiro. Going to the next item, number 7, H.R.
17 7956. This is the so-called Miscellaneous Revenue Act of
18 1980. This is a series of House passed provisions. These
19 are the sections on that bill which have no controversy.
20 The only one change that we would like to suggest. These
21 are the ESCP changes.

22 I should point out that in the Finance Committee bill,
23 the ESCP changes are different than the House passed bill.
24 So in order to get them in conference, you would have to add
25 these.

1 The first one deals with an effective date that affects
2 a provision related to Time Magazine, where the House made
3 it prospective, the Senate bill made it retroactive. If you
4 agree to this provision, and take it to conference, you
5 would have to incorporate the provision that you had in your
6 committee. I am assuming that the committee would want to
7 do that because that is the provision you adopted.

8 The Chairman. You don't know of any objection to that,
9 do you?

10 Mr. Halperin. Certainly the House had objection to it
11 when they considered this bill. I think generally we see no
12 reason for violating the general principle that legislation
13 ought to be prospective only.

14 Mr. Shapiro. Generally, it would mean that you would
15 put it conference. You may want to report it out the same
16 way you had done before.

17 The Chairman. You are saying that we may want to
18 report it the same way as we had done it before?

19 Mr. Shapiro. This is a House passed provision. The
20 only difference between the House passed provision and what
21 the Senate Finance Committee had done earlier, is that you
22 made this particular provision retroactive to take into
23 account the way the change is made under the 1976 Act. The
24 House did no. You may want to add that retroactive date
25 back in to at least have it in conference, so you could

1 discuss it with the House.

2 The Chairman. We have to decide now whether we would
3 want to do that.

4 Mr. Shapiro. You would have to do that here.

5 The Chairman. Is the Treasury going to oppose the bill
6 if we do that? Or do you want to wait until we emerge from
7 conference to see if we want to do that?

8 Mr. Halperin. Mr. Chairman, I think that we would
9 oppose it in conference. I guess I cannot speak as to what
10 we would do on the floor. I suppose that it cannot be that
11 big a concern.

12 The Chairman. If it is not that big a concern, then I
13 would suggest that we go ahead and leave the date the way we
14 recommended. We can talk about it in conference. I would
15 be willing to recede on it if it were to defeat the bill.

16 Mr. Shapiro. The next provision is an amendment that
17 deals with the passthrough of the voting rights on ESOPs.
18 The House left that out. The Finance Committee had
19 previously agreed to it. In order to have that in
20 conference as well, you would have to add that provision
21 back in.

22 The Chairman. There is no objection from Treasury on
23 that?

24 Mr. Halperin. As you know, Mr. Chairman, we have felt
25 very strongly about that particular provision, and continue

1 to feel very strongly that that objectionable change.

2 The Chairman. Does Treasury object to what we are
3 proposing here, or do they object to what is in the House
4 bill?

5 Mr. Halperin. We have no problem with the House bill.

6 The Chairman. I am very much in favor of the provision
7 on the passthrough of voting right, but if that is going to
8 hold the bill up, I think that we ought to drop it out.

9 Mr. Shapiro. So it is the effective date change that
10 the committee has added back.

11 The next change that the staff would like to suggest is
12 in Section 302.

13 Senator Byrd. Before you get to 302, what about 301?

14 Mr. Shapiro. That is correct.

15 The Chairman. Are we through with the ESOP matters
16 now.

17 Mr. Shapiro. Yes, we are finished with the ESOP. Now
18 we are in Section 301.

19 Senator Danforth. Have we agreed to these?

20 Mr. Shapiro. Yes. Since these are coming back as
21 noncontroversial, I assume that the committee has agreed to
22 them, unless they have an objection as we go through them.

23 Senator Danforth. It is my understanding that there is
24 no disagreement on that in the committee, but the Treasury
25 opposes that? It is in the House bill.

1 Mr. Halperin. The House specifically dropped it and
2 did not approve it.

3 Senator Danforth. The House has not agreed to this.

4 The Chairman. As I understand it, here is the problem
5 that we are talking about. I differ with Treasury on it,
6 but I guess I will yield on this point if we are going to
7 get anything at all in that area.

8 The biggest single impediment to companies establishing
9 an Employee Stock Ownership Plan for their employees is the
10 fact the people who put this stock aside for the employees
11 don't want to lose voting control of their companies.

12 Mr. Mondale brought this thing up some years ago, and
13 suggested that if we had a provision in here to help
14 employees own stock, the trustee would have to pass the
15 voting right through to the employees.

16 In most cases, the employees are getting stock, and
17 they have not paid anything for it. They are getting as a
18 gift from management, but management gets a big tax
19 advantage for doing that, and that is to help employees own
20 stock in the company.

21 It happens more often than not that management looks at
22 it, and says: "Look, we would be glad to give stock to
23 employees, but there is only one problem. If that is going
24 to jeopardize our ability to run our company, of we are
25 going to have to give away voter control of ou company, I am

1 sorry we can't do it."

2 Treasury wants to hang on to the idea of the all or
3 nothing type of thing. In other words, management would be
4 delighted to give the employees a big block of stock, but
5 they don't want to give away the voting control of the
6 company. Treasury wants to get the voting control of the
7 companies into the hands of the workers. Treasury would
8 insist on that, and in doing so the workers don't get any
9 stock.

10 It is kind of like the situation that Mr. Bentsen
11 worked for about the pension thing down through the years.
12 People want so many safeguards that they don't get a
13 pension. It is the same situation here.

14 But rather than fight it now for what little we have
15 got in here, I would be willing to drop that because I know
16 you defeat the Treasury's objection at this point.

17 Senator Danforth. Mr. Chairman, you and I have
18 discussed this on several occasions, and I am in total
19 agreement with your position. As I recall, the Senate
20 Finance Committee has dealt with this before, and I think we
21 were unanimous in our position on it.

22 I would hope that we could pursue this at the earliest
23 date next year, because it is certainly noncontroversial in
24 the Senate. I cannot believe that there is any controversy
25 in the House.

1 Senator Dole. If there was agreement, that would be
2 enough.

3 Senator Bentsen. Mr. Chairman, I am totally supportive
4 of what you are saying there. I want to make clear that I
5 am sure you did not mean that I was for so many safeguards
6 that people did not get pensions. I am not. It is quite
7 the opposite.

8 The Chairman. No. Your view is the same as mine in
9 this case.

10 Senator Bentsen. That is right.

11 The Chairman. The point is, where you are giving
12 somebody a pension, or you are giving them a big block of
13 stock, they don't get it because somebody wants to give them
14 a lot more than that. The result is that you keep squeezing
15 the package until there is nothing to give away.

16 Senator Danforth. There is no chance that the Treasury
17 would reconsider this as sort of a farewell present to the
18 Finance Committee?

19 (General laughter.)

20 Senator Byrd. If the Treasury persists in that
21 attitude over the years, it is just not going to be
22 operative. No one is going to give the stock away under
23 those conditions. I think Senator Danforth is exactly
24 right.

25 The Chairman. So I suggest that we drop that

1 provision, and then we will go to the next thing.

2 Mr. Shapiro. The next item is Section 301. It deals
3 with the election of estate tax alternate valuation. Let me
4 comment on this because there is a question or a
5 controversy.

6 Under present law, the alternate valuation with regard
7 to the election of an estate tax, the alternate valuation
8 must be elected by the executor on a estate tax return that
9 is filed within nine months of the date of death or any
10 period of extension that is granted by the Internal Revenue
11 Service. The Internal Revenue Service has no discretionary
12 authority to grant extension exceeding six months. So that
13 is firm in the law.

14 The House has passed a bill that says that it permits
15 an election of an alternate valuation on either a timely
16 filed estate tax return, or the first late return. The
17 problem here is that if certain cases come about, you have a
18 situation where you have someone who missed the first filing
19 return, did not do it in six months, and they stuck and
20 cannot elect an alternate valuation date. It has been
21 agreed that they should be able to have an alternate
22 valuation date, if they filed a late return.

23 The issue that has come up is that result has come
24 about from a situation where a certain individual had died,
25 had a series of circumstances that came about, and missed

1 the date when he would have liked to elect the alternate
2 valuation date, but there is no statutory authority, and the
3 Internal Revenue Service had no discretionary authority.

4 When the House reviewed the case, they made it
5 prospective. It was agreed that the change was right, but
6 they did not want to do it on a retroactive basis to pick up
7 this particular case.

8 The Senate actually previously approved this provision
9 with the retroactive date. It went with a special
10 transition rule to pick up the particular case that brought
11 about the change in law. So that is the issue in this
12 particular section.

13 Senator Byrd. Mr. Chairman, this is a matter that
14 Senator Sasser is very much interested in, and Senator Baker
15 also, because it affects someone in Tennessee.

16 Here is the situation. The estate tax return was filed
17 late because the executor responsible for the return had
18 open-heart surgery one month before the return was due.
19 When filed, the return required more than 50 pages of
20 schedules. So because of the open-heart surgery, the time
21 limitation was not complied with.

22 It seems to me that under those conditions there should
23 be some reasonable way of adjudicating that.

24 Senator Bradley. Mr. Chairman, I would like to respond
25 to Senator Byrd in saying that I think it is a reasonable

1 position. Maybe a way to handle it is if it was in appeal
2 already. You could make it retroactive, if it was already
3 in the appeal process for a ruling.

4 Senator Byrd. I think that that is a good suggestion.
5 If it is in the appeal process at the time of enactment of
6 this legislation, then this legislation would cover it. It
7 would be in that sense retroactive. Is that what you are
8 saying?

9 Senator Bradley. Yes.

10 Senator Byrd. I think that is a very good suggestion.

11 Senator Dole. It is under appeal?

12 Senator Byrd. That would take care of this matter.

13 The Chairman. What is your position on that?

14 Mr. Halperin. Mr. Chairman, let me say two things.

15 First of all, when you adopted this procedure a couple
16 of months ago, and suggested that there be a list brought in
17 on which there was no controversy, including no Treasury
18 objections, Mr. Lubick's phone started ringing off the hook,
19 and people trying to see if we could reconsider some of the
20 past positions that we had taken.

21 We generally felt that wherever we might come out on
22 the merits on particular issues, that we were in an
23 impossible position if we were going to sit down and try one
24 by try. We felt that we had to stick to our position that
25 we took in testimony for purposes of this exercise,

1 otherwise we could just not tolerate the situation. I think
2 we are following along those lines.

3 On the merits on this one, this was the subject of a
4 roll call vote in the Ways and Means Committee, and they
5 specifically rejected by a roll call vote the proposal that
6 Senator Byrd has introduced. So I would assume that there
7 would be some difficulties with it in conference in any
8 event.

9 We have felt strongly that there should not be
10 retroactive legislation. If there is, in this case, you
11 favor those who have in effect ignored the law, and filed a
12 tax return which made an election which they are not
13 entitled to make.

14 They have kept the issue open in litigation for a
15 number of years, as opposed to all those people who may have
16 been in the same situation but understood what the law was,
17 therefore realized that they did not have the option to
18 elect the alternative valuation date on the late return.

19 To try to go back and find all those other people who
20 filed late, and see whether they would want to elect the
21 alternate valuation date is, obviously, an immense
22 administrative problem.

23 Senator Byrd. That is not involved in the suggestion
24 made by Senator Bradley and myself.

25 Mr. Halperin. That is correct.

1 You either face the administrative problem that,
2 obviously, none of us want to face, or you favor those who
3 filed a return that was improper under the law, as opposed
4 to those who understood what the law was and realized that
5 they just did not have the option.

6 You get into that trouble if you try enact legislation
7 retroactively. The general proposition that you make
8 changes prospective only is sound, and we ought to stick to
9 it.

10 The Chairman. I find Senator Byrd's argument to have
11 enormous merit. The problem here is that notwithstanding
12 that, if we agreed to what the senator suggested, we are
13 going to have a Treasury objection when we go out there.
14 That being the case, I don't think that it is going to
15 become law.

16 I think that we had better withhold this, and try to
17 put it back next year.

18 Senator Byrd. I am afraid that you have a good point,
19 Mr. Chairman. The Senate Finance Committee has already
20 approved the retroactive provision.

21 Senator Dole. Would that be in conference then?

22 Mr. Shapiro. No, it would not.

23 I should point for the record, so you will know, that
24 there are other cases. There is one big case that
25 precipitated the provision, and that is the one in

1 Tennessee, of course. But there are at least four others
2 that have been brought to our attention that are much
3 smaller but which have the same problem. The statute is
4 open on all these cases.

5 The Chairman. But we will have a Treasury objection
6 out there. As I say, you can explain something here in this
7 committee, and you can get 20 votes out of 20 for the
8 Senator's position. You go out there on the floor, and you
9 run into objection because Treasury is still going to oppose
10 it, and they will find somebody to object to it out of the
11 100 Senators. Then, not only does that measure not move,
12 because the Senators don't want to cave in on it out there
13 on the floor, and then whole bill goes under along with
14 everything in it.

15 Senator Packwood. Mr. Chairman, explain again why
16 Treasury's objection is going to hold this up on the floor.

17 The Chairman. If Treasury is objecting to it, I am
18 assuming that at least one of the 100 senators will object
19 to it out there on the floor.

20 Senator Packwood. Object to what?

21 The Chairman. To this particular proposal.

22 Senator Packwood. To the substance of this proposal?

23 The Chairman. That is right.

24 Senator Packwood. That is not going to defeat the
25 proposal.

1 The Chairman. At that point, you have got to vote this
2 fellow down. At that point he suggests the absence of a
3 quorum. At that point the debate starts, so you just have
4 to yank the bill down. This has happened a thousand times
5 out there.

6 Senator Packwood. If you are saying that we are not
7 going to schedule any bill for hearing to which there is any
8 objection, that is one thing. I don't know whether that is
9 Senator Bob Byrd's provision or not, if there is any
10 objection he will not bring it up.

11 But I think that any number of these, simply because
12 Treasury objects, if they are offered on the floor are going
13 to be the subject of a filibuster and quorum calls. I think
14 Treasury will just get beat.

15 The Chairman. That has not been how it works. I have
16 been out there with these bills. I am the one that gets
17 beat standing there supporting the bill for the committee.

18 Senator Packwood. I can't remember that happening.

19 (General laughter.)

20 The Chairman. You are completely overlooking the time
21 element. Sometimes Mr. Proxmire objects. Sometimes Mr.
22 Kennedy objects. Sometimes Mr. Metzenbaum objects, but
23 somebody objects.

24 Senator Dole. In this case, Baker and Sasser could
25 offer the amendment on the floor.

1 Mr. Shapiro. They could.

2 Senator Dole. They have some influence.

3 The Chairman. The situation that we are going to have
4 with a measure of this sort puts a single person in the
5 position of being a complete tyrant. He can just stand
6 there --

7 Senator Packwood. I want to ask the question again,
8 because Bob Dole has asked about amendments being offered on
9 the floor.

10 Are tax bills going to be brought up that do not have
11 any unanimous consent agreement, and any amendments can be
12 offered to them.

13 The Chairman. I would assume that measures will be
14 brought up, if they can pass without objection, or somebody
15 wants to offer an amendment that has been shown to the
16 manager of the bill and nobody objects to it, perhaps that
17 can be taken care of.

18 If once the measure is called up, and somebody objects
19 to it, if they are determined in their opposition we will
20 just have to yank the bill.

21 Senator Packwood. My question is this, I want to make
22 sure, if anyone wants to offer amendments, will there be a
23 tax bill on the floor, even if there is no unanimous consent
24 agreement as to time limits, germaneness, or limitation on
25 amendment?

1 The Chairman. I would hope so, but we don't have that
2 agreement.

3 Senator Packwood. My hunch is that you cannot get that
4 kind of agreement. Somebody is going to object to a tax
5 bill going through on unanimous consent. I want to know if
6 there is going to be a bill. I am assuming that there will
7 be objection.

8 The Chairman. I think there will be some measures
9 called up, but whenever they hit a snag, if the manager of
10 the bill doesn't in prompt order move to resolve it by
11 giving ground on behalf of the committee, then the
12 leadership will have to move to set that bill aside, and to
13 get on to something else that can clear without hitting a
14 snag.

15 The Senator has just seen me yield on something on
16 which I feel strongly. I think I am as right as I can be
17 about it. At the time, feeling as strongly as I do about
18 the matter, I had to yield on it and do what we think we can
19 do. I think the same thing is true of this.

20 Senator Dole. We can report to Senator Baker and
21 Senator Sasser, and they can the move.

22 The Chairman. If they bring that amendment up and it
23 is objected to, they will be in the same position we would
24 be in if we brought it up and it was objected.

25 I think that we ought to proceed under the assumption

1 that if Treasury is objecting to something, Treasury will
2 find one of the 100 senators out there who will object to
3 it. That being the case, I would suggest that we drop this
4 now. If somebody wants to offer it on the floor, they can
5 address that right.

6 Without objection, I think we ought to drop it.

7 What is the next thing?

8 Mr. Shapiro. The next item is Section 302. This
9 provides for an extension of time to conform charitable
10 split-interest transfer. The staff suggestion here is that
11 when this bill was originally going through, it had an
12 effective date at the end of 1980. We are close to the end
13 of 1980. Since they were not able to conform the wills with
14 the short period time, it would appear that it would be
15 appropriate to extend it through 1981.

16 This is to allow wills to be conformed to agree with
17 the previously enacted legislation on charitable
18 split-interest transfers.

19 The Chairman. There is no objection to that?

20 Without objection, agreed.

21 Mr. Shapiro. The next item, item 8 on the list, has
22 two provisions on which there were no hearings. We wanted
23 to note those specifically. There are no objection to the
24 bill other than the fact that there have been no hearings.

25 The first one deals with Section 101 of H.R. 7956, the

1 bill that we just discussed, and it provides for the
2 treatment of community income for spouses that live apart.
3 The second one is Section 201 of that bill which provides
4 for the prevention of abuse of certain employee benefit
5 requirements.

6 That particular provision, the second one, is the
7 pension law, and there is a question as to whether that
8 should have gone to Senator Byrd's subcommittee or Senator
9 Bentsen's subcommittee. I think that Senator Bentsen may
10 have introduced that bill in the Senate.

11 This bill was introduced in the Senate. It has passed
12 the House. It deals with the particular problem that occurs
13 when there are certain abuses.

14 The only reservation on those two provisions is the
15 fact of the lack of hearings, other than that they have been
16 supported all the way.

17 Senator Byrd. My office has had calls in regard to
18 this legislation, Section 201.

19 The Chairman. Are they in opposition to it?

20 Senator Byrd. They are in opposition to it.

21 The Chairman. If there is opposition to it, I think we
22 ought to drop it.

23 How does the Treasury feel about this provision?

24 Mr. Halperin. Mr. Chairman, this is one of the few
25 bills on this list that we want, I suppose. There is

1 significant revenue involved which is needed to balance some
2 of the revenue losses in these bills.

3 What we are talking about here is where two lawyers are
4 in practice, but instead of being in partnership they each
5 form their own corporation. Corporation A and Corporation B
6 become partners, and they claim that they have no employees
7 working for them, so the secretary and everyone else in the
8 law firm are left out of the pension plan. The only people
9 who are in the pension plan are the employees of the
10 corporation, which are only the lawyers. That is,
11 obviously, total nonsense, and we ought to be able to
12 legislate to stop it.

13 As far as I know, there were no objections raised on
14 the House side to the bill.

15 Mr. Shapiro. In the hearings in the House, no one
16 testified against this.

17 Senator Fentsen. Let me say, Mr. Chairman, that we did
18 not have hearings on the Senate side because it just came
19 over from the House side, as I understand it. I did not
20 know of any objections. But we did not have the time to
21 have any hearings.

22 The Chairman. What do you think we ought to do about
23 this, Senator Byrd?

24 Senator Byrd. We did not have hearings on this side.
25 As a matter of policy, although I want to defer to Senator

1 Packwood on this, I hate to see us handle legislation where
2 there have not been hearings.

3 The Chairman. It seems to me that in view of the fact
4 that you have had notice that some people are opposed -- I
5 would assume that I would not agree with them. You have
6 indication that there are people opposed to it, and no
7 hearings have been held, I think that we ought to drop it.

8 Would that be in conference?

9 Mr. Shapiro. If you use this bill H.R. 7956 as one of
10 your vehicles, it would be in conference.

11 The Chairman. We will leave this section out, but it
12 could be considered in conference.

13 Mr. Shapiro. We do have to make a date change on the
14 Section 101. It is in 1979 right now, and we would have to
15 make it apply in 1980.

16 The Chairman. No objection there.

17 Do I understand that you know of no objection to this
18 measure at all?

19 Mr. Shapiro. We are not aware of any objection to
20 Section 101.

21 The Chairman. Is Treasury?

22 Mr. Halperin. It cannot hurt anybody. It can only
23 help people, so I would assume that there is no objection to
24 it.

25 The Chairman. Without objection, we will agree to

1 that, then.

2 Mr. Shapiro. Next we go to number 9, which is Senate
3 bill 401 that was introduced by Senator Moynihan. It
4 provides for private relief for the Manhattan Bowery
5 Corporation. It corrects a certain problem.

6 Senator Moynihan. Mr. Chairman, could I just say that
7 the Manhattan Bowery Corporation is a charitable activity
8 that looks after alcoholics in that part of New York. It is
9 a non-profit corporation.

10 Mr. Shapiro. There was just a mix up, and what
11 happened in that case, since it was a corporation, it was
12 withholding social security taxes from its employees' wages,
13 and they have been paying those taxes. They found out that
14 they were not liable for those taxes subsequently. What
15 this does is allow them to recover the amount that they
16 previously paid, to correct a foul up internally. So it is
17 special relief in that particular case. There is no
18 objection that we are aware of to that particular
19 provision.

20 The Chairman. Without objection, we will agree to
21 that, then.

22 Mr. Shapiro. Now we go to page 3, item 10. This is
23 S.1775, which deals with the deductibility of employer
24 pension contributions for foreign employees. I am going to
25 have Mr. Brockway explain this particular one. This has not

1 passed the House yet, although there have been hearings in
2 both the House and the Senate.

3 Mr. Brockway. Under present law dealing with pensions,
4 deferred compensation, an employer gets a deduction on a
5 qualified where he contributes to the pension plan. If he
6 does not meet the requirements of ERISA the employer only
7 get a deduction when it is brought in as income for the
8 employee.

9 These rules work reasonably well in the domestic
10 situation. When you go into the international situation,
11 there is a certain difficulty. If these rules apply for
12 pension of foreign subsidiaries, or pension plans of foreign
13 branches of U.S. corporations, then in order to get a
14 deduction for their foreign pension plans they would have to
15 either meet the requirements of ERISA, which are fairly
16 detailed, and it would be difficult to conform with both
17 those in foreign law and ERISA.

18 However, if it is non-qualified plan, they don't get
19 the deduction when it is included of the foreign employee,
20 and that would create problems in a number of situations.
21 In certain places, they would not get any deduction at all
22 if they could not segregate out the amount of income that is
23 taxable to the foreign employee.

24 Senator Bentsen. Mr. Chairman, I don't know of any
25 opposition to it. There are a number of companies that are

1 in this situation where the applicability of ERISA just is
2 not there, involving the foreign laws that in conflict with
3 it. I think unless we do this, you are going to see a lot
4 of people who will just not have the benefit of a pension
5 plan.

6 Mr. Brockway. Let me suggest that there are a lot of
7 changes that the staff has worked out with Treasury, and the
8 taxpayers, to try and refine the package to make sure that
9 the amount of deduction is the same and does not exceed the
10 amount that would be available under foreign law. So you
11 would not have certain problems of foreign tax credits.

12 The major problem is in countries like Germany where
13 there are funds at all in the reserve plans, and no amount
14 is paid into a pension fund. So it is somewhat difficult to
15 coordinate. We have done work to try to coordinate the
16 system. It is my understanding that there is no objection
17 to it.

18 Senator Bentsen. It is my understanding that it does
19 not do violence to the objective that we had sought with
20 this piece of legislation.

21 Senator McNihan. Mr. Chairman, I am a co-sponsor of
22 this measure. I appreciate Senator Bentsen having brought
23 it forward.

24 For what interest it may have for the committee, one of
25 the reasons that this difficulty arises, for example, in

1 Germany is that as a matter of economic policy that
2 government does not want full funding of its pension, but
3 rather wants the corporations to keep the money for capital
4 formation, and only have a revolving account for its pension
5 obligations. It is an economic aspect of the economy of
6 West Germany, for example, that I think we should be
7 interested in at some point, just as an aside.

8 The Chairman. There is no objection to it, right?

9 Mr. Shapiro. No, Mr. Chairman.

10 The Chairman. Without objection, we will agree to it.

11 Mr. Shapiro. The next item on page 3 is 11, S.2904.
12 It deals with the adjustment of the excise tax on tires.
13 The present law imposes a manufacturer's excise tax of 10
14 cents a pound on these new tires. What the bill does is
15 provide a special rule for the determination of an excise
16 tax credit or refund with respect to tires for which a
17 warranty or guarantee adjustment is made.

18 As a result of that a credit or a refund would be
19 allowed for a warranty or guarantee adjustment of any tire
20 after 1982. To compensate for that, the bill reduces the
21 rate of manufacturer's tax on the tire by 2.5 percent
22 starting in 1981.

23 We are not aware of any controversy with this bill.

24 The Chairman. Without objection, we will agree to it.

25 Mr. Shapiro. The next bill is 12 on the list, which is

1 S.3080 which deals with the time for payment of gift taxes.
2 Right now there are quarterly filings, and this would
3 require an annual return to be filed.

4 Because this bill is coming at the end of this year,
5 and we need time to make the adjustment and take it into
6 account, it has been suggested that the effective date be
7 changed to gifts after 1981 for this small administrative
8 type change in the provisions.

9 Senator Byrd. Gifts made in 1981 would still be
10 reported on a quarterly basis?

11 Mr. Shapiro. That is right. After 1981, gifts that
12 are made, the return would have to be filed on an annual
13 basis rather than a quarterly basis. This would be a
14 one-time revenue loss of \$85 million only because of the
15 timing. It is not the loss of liability. When you go to
16 one return rather than four returns, you push it into
17 another year. You lose several quarters.

18 From an administrative point of view, it is much easier
19 because it is one return for practitioners rather than four
20 returns.

21 The Chairman. Does Treasury favor this measure?

22 Mr. Halperin. Yes, we do, Mr. Chairman.

23 The Chairman. Without objection, we will agree to
24 that.

25 Mr. Shapiro. The next item is item 12. Senator

1 Matsunana has introduced it. It is a modification of the
2 foreign convention expenses. It goes back to a rule that
3 was discussed in 1976. What the 1976 action did was that
4 you could limit it to two conventions. You had a series of
5 paperwork, you had to report in and report out, and that is
6 because of differences between the House and the Senate.

7 This would go back to a proposal that refers to a
8 reasonable test. In other words, as long as you held that
9 it was reasonable to hold a convention outside the United
10 States as well as it is to hold it in, you would be able to
11 get it. It eliminates all the administrative rules, the
12 paperwork, the per diems, and so forth, which are presently
13 in the law.

14 Senator Matsunaga. Mr. Chairman, the Treasury has been
15 seeking passage of this measure. I think it will ease the
16 burden that the Treasury now has under the existing
17 statute.

18 As you recall, we took this matter up earlier this
19 year, and upon the request of Senator Moynihan and Senator
20 Heinz, we had postponed it. We could not get a quorum on
21 August 9, when we were supposed to have passed it.

22 The Chairman. Is Treasury for this measure now?

23 Mr. Halperin. Yes, we are.

24 The Chairman. There is no objection to it at this
25 point?

1 (No response.)

2 The Chairman. Without objection, we will agree to it.

3 Mr. Shapiro. The next item is item 14, S.2396 which
4 was approved by the Finance Committee earlier. It deals
5 with the treatment of certain finance companies as personal
6 holding companies. You have already agreed to it, but we
7 have put it in this list so that you can repackage it in
8 your noncontroversial package.

9 The Chairman. Without objection.

10 Let me make this point. I am going to have to leave
11 shortly to make some preparations for the conference this
12 afternoon. I also have to fulfill a couple of appointments
13 that I have.

14 Are we scheduled to meet tomorrow to discuss more of
15 these bills?

16 Mr. Stern. Mr. Chairman, you had three days set aside
17 for the superfund bill. So the time has been set aside for
18 a committee meeting.

19 The Chairman. That being the case --

20 Senator Moynihan. Could we go through a few more, Mr.
21 Chairman, while we are here.

22 The Chairman. I guess everybody has something that
23 they would like to consider. What concerns me is that we
24 are going to get to a very small number here. That being
25 the case, I think that it would be better to break and come

1 back tomorrow.

2 Senator Matsunaga. Mr. Chairman,, on item 13, I have
3 an amendment which I intended to offer.

4 The Chairman. You want to offer an amendment to 13?

5 The Chairman. Yes.

6 Senator Matsunaga. Yes.

7 The Chairman. What is the amendment?

8 Senator Matsunaga. To address the concerns expressed
9 by Senator Danforth. The language would make plain that any
10 person who makes a travel award to another person, or who
11 pays the expenses of an individual attending a foreign
12 convention, will be denied a deduction for the travel award
13 or expenses if the travel award or expenses are includible
14 in the taxable income of the recipient, and if the person
15 paying for such expenses or making such an award complies
16 with any information reporting requirements.

17 I think that that takes care of the problem that
18 Senator Danforth raised.

19 Secondly, I propose to exclude from the general cruise
20 ship proscription the business conventions on board American
21 registered ships on cruises solely between American ports.
22 This is to clarify. The language is not clear.

23 The Chairman. Okay.

24 Mr. Shapiro. I am not sure whether Treasury objects.

25 The Chairman. Does Treasury go along with that?

1 Mr. Halperin. Mr. Chairman, on the first one, we have
2 not seen it. I would appreciate the opportunity to look at
3 it. We obviously have had a long debate about this issue,
4 and we have been very careful about what the language says
5 in the various times that it has come up.

6 If we have the same safeguards that we have had in the
7 other situation where it has been brought up, I think that
8 there would be no problem. But I am not quite sure what is
9 going off here.

10 The Chairman. Try to get your problems worked out with
11 Treasury between now and the time we come back tomorrow. We
12 will make that the first order of business.

13 I would be willing to come in early tomorrow, if you
14 want to. Should we meet at 9:30?

15 Mr. Stern. You have scheduled 10 o'clock, Mr.
16 Chairman.

17 Senator Moynihan. Why don't we meet at 9:30, Mr.
18 Chairman.

19 The Chairman. Should we come in at 9:30 tomorrow? Is
20 there any reason why we could not come in at 9:30?

21 Mr. Stern. No.

22 The Chairman. We will come in at 9:30 tomorrow
23 morning.

24 Senator Chafee. How do you envision the travel of
25 this. We report it out, and then we have to wait the three

1 days? With time so short, how is this thing going to work?

2 The Chairman. I would suggest that we talk about it
3 between now and the time we get those bills out there. We
4 will do whatever we can to get them out.

5 We will stand in recess until 9:30 tomorrow.

6 (Whereupon, at 12:05 p.m., the committee recessed, to
7 reconvene at 9:30 a.m., Thursday, November 20, 1980.)

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