

MIKEW

STENOGRAPHIC MINUTES
UNREVISED AND UNEDITED
NOT FOR QUOTATION OR
DUPLICATION

**HEARINGS
Before The**

COMMITTEE ON FINANCE

UNITED STATES SENATE

H.R. 6056, TECHNICAL CORRECTIONS ACT OF 1982
AND S. 2942, RELATING TO SOCIAL SECURITY DISABILITY PAYMENTS

FRIDAY, SEPTEMBER 24, 1982

Court Reporting Services, Inc.

201 North Fairfax Street, #21
Alexandria, Virginia, 22314

R _____ O _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXECUTIVE SESSION

FRIDAY, SEPTEMBER 24, 1982

U.S. SENATE

COMMITTEE ON FINANCE

WASHINGTON, D.C.

The committee met, pursuant to notice, at 1:00 p.m., in the Senate Finance Hearing Room, Dirksen Senate Office Building, Senator Bob Dole (chairman of the committee) presiding.

Present: Senators Dole, Byrd, Packwood, Symms, Grassley, Boren, Chafee, Heinz, Matsunaga, Moynihan, Baucus, and Bradley.

R _____ O _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

The Chairman. As I understand it, this morning there were only a couple members present. I guess there were three members present. We went over four technical amendments to the Technical Corrections Act. They are ones that have been approved by Treasury.

Would you give us a 10-second rundown. We now have six members present. Hopefully, we can report out the Technical Corrections Act.

Mr. McConagy. Yes, Mr. Chairman.

The first change deals with persons missing in action in the Vietnam conflict. Under present law tax benefits such as the forgiveness of taxes on death expire for persons missing in action in Vietnam the beginning of 1978. This provision would extend those benefits through December 1982.

The Chairman. In other words, if we did not act on this now, in effect, we would be trying to impose taxes on somebody who may be presumed missing in action. Is that correct?

Mr. McConagy. That is correct.

The Chairman. I am certain there would be no objection to that change even though it is not in a sense purely technical. It is one with which we have to contend.

Mr. McConagy. The next one deals with the energy tax credit provisions. A provision in the windfall profits

1 tax extended the energy tax credit for certain credits where
2 there is a commitment made by 1982 and there are engineering
3 studies made. As drafted, the windfall profits tax required
4 that the taxpayer make the engineering studies, the
5 feasibility studies. This would clarify that it does not
6 need to be the taxpayer; it can be someone else as long
7 as those studies have been made by the date. This is basically
8 a clarifying change to that effective date for the provision
9 in the windfall profits tax.

10 The next item deals with treatment of earnings
11 and profits for real estate investment trusts. This question
12 arises about how you calculate the earnings and profits of
13 a real estate investment trust so that you can pay out 95
14 percent of its earnings to qualify as a real estate investment
15 trust.

16 The way the rules work they can operate where there
17 is a gain in the sale of real estate and not include those
18 earnings and profits, so it would not be able to pay out
19 95 percent of its taxable income as a dividend and therefore
20 would lose its status. This clarifies that so that they
21 would not lose their status.

22 The final provision is just to delete a provision
23 in the House bill dealing with deposit of withheld taxes.
24 There is a provision in the House bill which has since been
25 picked up in regulations. The change in the regulations was

1 technically set up better than the House bill provision.
2 Therefore, it is suggested that provision of the House bill
3 be deleted. It already has been resolved by regulation.

4 There is also one unemployment change.

5 The Chairman. The unemployment compensation change,
6 the one you discussed earlier, is Mr. Stern aware of that?

7 Why don't you go ahead and explain it briefly?

8 Mr. Brockway. The changes requested by the
9 Department of Labor would make a technical change to clarify
10 that in handling interstate claims under the Federal
11 Supplemental Compensation Program that was just enacted that
12 we would follow the same rules as the Extended Benefit
13 Program in determining which State dictates the length of
14 benefits. Following the rules of the Extended Benefit
15 Program, it would be the State in which the recipient
16 resides.

17 The Chairman. As I understand it, the only other
18 technical amendment might be one that Senator Byrd had raised
19 and we had not had a chance to review.

20 Senator Byrd. That is correct, Mr. Chairman. I do
21 not think that is purely a technical amendment.

22 The Chairman. Senator Heinz asked me yesterday,
23 and maybe this would not be appropriate to put in the
24 Technical Corrections Act, about giving an amendment to the
25 Commerce Department with reference to steel. If it is not

1 appropriate on this bill, we do not need to bring it up. I
2 am not certain what it was. I am just asking.

3 What was that.

4 Mr. De Arment. If we are talking about the same
5 thing, I think what Senator Heinz was interested in was a
6 provision which would permit the Customs Service to require
7 import licenses on certain products. These are import
8 licenses issued by foreign countries for steel products
9 exported to this country.

10 The Chairman. That would not go on the Technical
11 Corrections Act.

12 Mr. De Arment. It is not a technical correction to
13 the tax bill.

14 Senator Long. That was a gray area, was it not,
15 Mr. Lang?

16 Mr. Lang. Yes, it would be a change from our
17 present policy. My understanding of the context is that
18 currently our Government is negotiating with European
19 governments on the question of whether there will be quotas
20 on steel imported from Europe to substitute for the
21 possibility of countervailing duty determinations against
22 steel exported from Europe to the United States. The purpose
23 of this kind of legislation would be to prevent what is
24 called leakage from the quotas; that is, exports from
25 Europe to the United States in violation of the quota

1 obligations that the European countries might undertake
2 if the negotiations were successful, so it would be a
3 change from --

4 The Chairman. It would not be a technical amendment
5 in any event on the tax bill.

6 Mr. Lang. No.

7 The Chairman. I understand Commerce supports it
8 and USDR opposes it. Is that correct.

9 Mr. Gingrich. It is our understanding that USDR
10 has asked for a moratorium to study it. They do not support
11 it at this point.

12 The Chairman. In any event, I hope we might report
13 out the Technical Corrections Act. Mr. McConagy could go
14 into great detail. However, the Joint Tax Committee, members
15 of our staff, and the Ways and Means staff have been working
16 on it for how long?

17 Mr. McConagy. About a year and a half.

18 The Chairman. About a year and a half. It is
19 rather important to hundreds of thousands of taxpayers
20 throughout the country because the technical changes should
21 be made. We have tried to restrict any additional amendments
22 to those which are purely technical in nature. I think we
23 have conformed to that in every instance.

24 I would like to suggest that we report the Technical
25 Corrections Act, although we are still short a few members,

1 with these additional technical amendments which were
2 just discussed. They have been approved by Treasury.
3 They have gone through this screening committee composed of
4 members of our staff, both the majority and the minority,
5 and the Joint Committee and Treasury. I know of no objection.

6 Is there any objection to reporting out the
7 Technical Corrections Act?

8 (No response.)

9 I think we are short a member.

10 Mr. Gingrich. Mr. Chairman, in drafting the
11 provisions relating to the windfall profits tax where we have
12 a provision dealing with beneficiaries of trust, the question
13 was raised as to whether trusts that benefit royalty
14 owners where it was a grantor trust -- we thought it might
15 be necessary to clarify in the statute the grantor trust
16 rules of the income tax would apply for purposes of the
17 windfall profits tax.

18 The Chairman. That is correct. The amendment was
19 raised the other day.

20 Mr. Gingrich. Yes. This is just a little additional
21 authority. The issue came up when we were drafting it.

22 The Chairman. I think --

23 Senator Baucus. Mr. Chairman, as I understand it,
24 you are about to report the bill. Is that correct?

25 The Chairman. As soon as I have three more members,

1 I hope to report the bill. Then we want to take up some
2 additional bills which have been sent to us from the House,
3 if we can. I know Senator Packwood wants to tak up one,
4 and I think you have an amendment.

5 Senator Baucus. My question is, When could I offer
6 my amendment?

7 The Chairman. If it is the one I think it is --

8 Senator Baucus. That is the one it is.

9 The Chairman. -- hopefully soon. In the next few
10 minutes.

11 Senator Baucus. All right. Fine

12 The Chairman. I prefer not to put it on the
13 Technical Corrections Act.

14 Senator Baucus. All right.

15 The Chairman. Are we trying to get three more
16 members?.

17 Mr. Lighthizer. Yes.

18 Senator Boren. All this list we previously agreed
19 to is included?

20 The Chairman. Yes. We understand -- there are
21 preliminary indications -- that the amendments we have
22 adopted for the most part there is no problem on the House
23 side. Therefore, maybe we can take care of that.

24 Senator Packwood asked this morning whether he
25 might bring up one of the tax bills.

1 Senator Packwood. This is the bill which relates
2 to the utilities in California and their inability to claim
3 the investment tax credit because the California PUC had
4 required them to flow it backward to their ratepayers instead.
5 You will recall that it is a bill which passed this committee
6 two years ago. It was lost in the dying days of the
7 legislature with attempted amendments to be passed to it in
8 the Senate. It passed the House twice, two years ago and
9 then again this week. It is now before us.

10 We had hearings on it yesterday.

11 Senator Long. Is this the House bill? Do we have
12 the House bill before us?

13 Senator Packwood. Yes, we have the House bill before
14 us. They passed it earlier this week. It was referred to
15 this committee yesterday. We had the hearings on it
16 yesterday morning.

17 It has been heard and reheard. I do not know what
18 the Joint Committee's position is, but the only State which
19 did this was California. An arrangement has been reached
20 and they are not going to do it anymore, but these utilities
21 in California invested on the basis of the investment tax
22 credit, as we asked them to do, as we directed them to, as
23 we hoped they would do, and then they were denied the credit
24 because of the actions of the California PUC.

25 Do I state it correctly?

1 Mr. McConaghy. That is correct, Senator Packwood.

2 Senator Packwood. In all fairness to them, it is
3 an extraordinarily onerous tax burden on them when they
4 cannot claim credit for the investments they made. I think
5 we ought to pass the bill again. We have done it before in
6 this committee. The House has passed it twice. Therefore,
7 I would move that we send it out, at least get it to the
8 Calendar in the hope that we can pass it next week.

9 Senator Long. Mr. Chairman, if I might say a word,
10 I was at the hearing with you. I just want to support what
11 your position is.

12 We on this committee, with the House colleagues
13 concurring with us, took the view that we wanted to vote
14 the investment tax credit as incentive for the companies to
15 make investments. We did not want to permit those commissions
16 to require the companies to pay the tax savings through
17 to their customers, on the theory that we wanted to provide
18 an incentive to acquire and build new equipment and to
19 modernize. You cannot spend the same dollar twice, so we did
20 not want the money used to reduce rates; we wanted it used
21 to provide better equipment and service.

22 To prevent the commissions from misusing what we
23 had in mind, to use it for a rate reduction rather than use
24 it to provide additional equipment and service, we said that
25 in the event that they are required to pay it through, then

1 they do not get the tax credit.

2 Therefore, as I understand it, the California
3 commission required them to claim the credit and pay it
4 through acting under the authority of State law. Treasury,
5 doing what we voted here, said in that case you do not get
6 the tax credit. Therefore, they had to pay it out and then
7 they did not get it. They had to pay out money they did not
8 have.

9 We hope this legislation will resolve this problem
10 with the California commission as far as our business with
11 them is concerned. As far as the companies are concerned,
12 they are innocent victims. We meant them no harm -- in fact,
13 we meant to help them -- but the way it worked out they have
14 been crucified.

15 Senator Packwood. It is not like somehow a company
16 finding an inadvertent loophole in the law. All the other
17 utilities in the country have done this and taken the credit.
18 They have done the same thing that every other company has
19 done except they have not gotten the credit.

20 Senator Long. Yes. Well, they are required to pay
21 the money out to their customers and they did not get the
22 credit.

23 Senator Packwood. That is right.

24 Mr. Chairman, I would move to report the bill.

25 The Chairman. Maybe there is some way we can at

R _____ O _____
1 least get it to the floor.

2 I have been asked by Senator Heinz not even to take
3 it up. Of course, I am not certain he can oppose taking it
4 up, but Senator Roth has indicated objection to consideration
5 of the measure at this time. I guess he wanted time to
6 review it primarily. He has not had an opportunity to do
7 that.

8 Senator Packwood. As our leader, Senator Baker,
9 said, at some stage you have to move. I am perfectly willing
10 to put it to a vote and have them vote against it, and
11 have them vote against it on the floor if we can get it up.

12 Considering this is not a new subject and that we
13 passed it two years ago, the House has passed it twice and
14 we have had hearings, I do not think we should delay simply
15 because they do not want it.

16 The Chairman. If we get three more members, I am
17 inclined to agree that we certainly have a right to have a
18 vote on it. Senator Heinz' staff is here.

19 Is Senator Heinz in town?

20 Staff Person. I have called him.

21 (Off the record.)

22 The Chairman. Are there other measures?

23 Senator Symms. Mr. Chairman, I have one which I
24 would love to have the committee move up so that you could
25 call it up at any time on the floor within the next month or

R _____ O _____

1 so while this session is still in place.

2 That is the simple extension of the highway trust
3 fund which has been introduced as S. 2932 by myself, Mr.
4 Stafford, Mr. Randolph, and Mr. Bentsen.

5 This provides a simple one-year extension of the
6 highway trust fund. I think we should all be aware of the
7 fact that if the trust fund is not extended, then highway
8 money is not going to be able to be given as it was last
9 year to our States out of the trust fund, because it is
10 going to have a dramatic change on the formulas when the
11 Byrd amendment goes into effect on it.

12 We have had four days of hearings on the subject
13 in the Public Works Committee with regard to revenues for
14 the highway program. Next year we are going to be reviewing
15 the entire cost allocation system legislatively, and
16 hopefully there will be an increase in the revenues to the
17 highway trust fund.

18 It is essential for every State in the Union that
19 we extend this trust fund before this session of Congress
20 expires. I think we ought to pass this by itself and then
21 let the chairman take it to the floor and call it up as an
22 amendment on some bill that is going to pass.

23 The Chairman. Have you had a chance to study the
24 trust bill?

25 Mr. McConaghy. Yes, Mr. Chairman, we have. We have

1 not looked at that specific draft. I think it is a simple
2 one-year extension, as I understand it. We have not looked
3 at the language of the draft.

4 Senator Symms. Can you give him a copy?

5 Mr. McConaghy. It is my understanding that a
6 similar provision was reported out of the Ways and Means
7 Committee. It does go further than just a simple extension.
8 The issue there which was raised is presently being discussed
9 in the Rules Committee, and that is whether the taxes
10 themselves should be put in the Internal Revenue Code. There
11 was some objection as to whether the taxes should be put in
12 the Internal Revenue Code, whether the trust fund itself
13 should be put in the Internal Revenue Code. That would have
14 some implications as far as jurisdiction is concerned.

15 The Public Works Committee objected to exactly how
16 the Ways and Means Committee had reported it out because they
17 felt that limited the purposes and amounts then that the Public
18 Works would appropriate.

19 I understand they are close to a resolution of
20 that issue in the Rules Committee. If they do reach a
21 resolution, I guess the question is, Would you want to put the
22 trust fund in the Internal Revenue Code under the same
23 circumstances. I do not know whether or not they have done
24 that yet.

25 The Chairman. Can we just report out the Symms

R _____ O _____
1 proposal?

2 Senator Symms. That is what I suggest. If we just
3 move it ahead in this committee, then the chairman would be
4 in a position to work that out. I do not think there is
5 anything we can do right now to solve the jurisdictional
6 problem between the Public Works Committee and the Ways and
7 Means Committee of the House.

8 However, if we pass it through the Finance
9 Committee here today, then at least if we bring it up on the
10 floor we can say it has passed the committee when we put it
11 on as an amendment or something.

12 If you have talked to your State highway directors,
13 I can assure you from conducting those hearings that every
14 single State in the Union that has testified on this is
15 saying, "Please get an extension of one year of the highway
16 program before you bog down." They all want a multiyear
17 highway program in the long run, but we have not been able to
18 accommodate that with the House. If we would do this, it
19 would be one simple thing and I think it would make it
20 easier for the chairman.

21 If there is no objection to it, Mr. Chairman, I would
22 move that we pass that simple extension.

23 Mr. Lighthizer. Mr. Chairman, you are going to
24 report that out not as an "S" number? You are going to
25 report that out as an "S" number?

1 The Chairman. Yes.

2 Senator Long. You are not talking about reporting
3 it out but that the committee make a recommendation on it
4 before we pass it. I do not think you can report out an
5 amendment.

6 Senator Symms. Introduce it as a bill.

7 Mr. Lighthizer. We can report out the bill.

8 Senator Symms. It did not originate in the House
9 the way it is. It is being introduced in the Senate.

10 Mr. Lighthizer. That is the objection to reporting
11 it out as an "S" number bill. It could never become law.
12 The House would blue-slip it as soon as you sent it over to
13 them.

14 Alternatively, you could report it out, order it
15 reported and give the chairman the right to add it to an
16 appropriate vehicle, which we have done in the past.

17 The Chairman. That would be all right, wouldn't it?

18 Senator Symms. That is all right with me.

19 Mr. Lighthizer. Or just make it an amendment to
20 whatever other bill you report out today, if you report out
21 another bill today.

22 The Chairman. Let's do the first -- agree to the
23 amendment without putting it on a bill.

24 Senator Matsunaga. As I understand it, the Symms
25 amendment would be to the Highway Revenue Act of 1982?

1 Mr. McConaghy. It would be a one-year extension.

2 Senator Matsunaga. The House also had another
3 section. They have approved it, section 504, which is a
4 two-year extension of refund of taxes on fuels used in
5 taxicabs.

6 Unless that is extended, it will expire the end of
7 this year.

8 I would move that we accept that amendment also.
9 The House already has acted on it.

10 Senator Symms. I am not familiar with the amendment.
11 I do not know anything about it.

12 Senator Matsunaga. It is just an extension, a
13 two-year extension.

14 Mr. Champoton. I am not sure how that was
15 reported out. The administration did object to the extension.
16 Is that credit for taxicabs?

17 The Chairman. I think it is an exemption.

18 Senator Matsunaga. Yes.

19 Mr. Champoton. We did object.

20 Senator Matsunaga. What has happened, they are
21 getting the exemptions but they need to file for a refund,
22 unlike the buses. It is a mere extension.

23 Mr. Champoton. An extension of current law, yes,
24 sir. As I remember, that credit was provided, or the
25 exemption was provided on an energy conservation theme, and

1 we objected to an extension of it.

2 Senator Symms. If I might say something to
3 Treasury, why would it not be a good idea just to extend
4 it this year? When we go over this whole cost allocation
5 study next year, then we could --

6 Mr. Champoton. This reduces the funds because
7 the idea, as I remember it, was that somehow an exemption
8 for taxicabs, showing an energy savings or some theory such
9 as that --

10 Senator Symms. It is only an extension of what is
11 now going on in present law. Is that right?

12 Mr. Champoton. It would now expire. It is not
13 longstanding in present law. It was enacted in 1978 and
14 extended once in 1980 for two more years.

15 The Chairman. I wonder whether we might suggest,
16 if it is all right with the Senator from Hawaii, that we
17 make it in accordance with the one-year extension, limit it
18 to one year.

19 Senator Matsunaga. All right.

20 Senator Symms. Then next year we can go through the
21 whole thing.

22 Senator Matsunaga. One year? I will accept that,
23 a one-year extension.

24 The Chairman. I am not certain we are going to get
25 it on any House-passed bill, in any event. I am willing to

1 try. I think it is something which no one objects to.
2 However, if we get it too complicated, it may not get out
3 of the committee.

4 Senator Matsunaga. Fine. I will accept that.

5 The Chairman. Without objection, we will do that.

6 I wonder if we might come back --

7 Senator Moynihan. Mr. Chairman, I am sorry to be
8 parochial, but there is one place in the United States
9 where this exemption does not obtain, New York City, because
10 of a technical advice memorandum of the IRS. We have most
11 of the taxicabs in the country and they are all at
12 LaGuardia.

13 I wonder whether we could make a point. We have
14 crime problems in the city and you are not required to share
15 a cab. People are encouraged to do so but not required to do
16 so. The IRS requires you to if you are going to get this
17 exemption.

18 I wonder whether for one year we could include
19 New York City and then have a proper hearing about the matter.

20 The Chairman. It is all right with me. I will be
21 going up there a lot.

22 Senator Moynihan. I thought you were unusually
23 met by limousines, Mr. Chairman.

24 Mr. McConaghy. Mr. Chairman, under existing law,
25 in order to get the exemption, the qualified taxicab services,

1 ride-sharing cannot be prohibited by law or by company
2 policy. If it is prohibited, then the exemption is not
3 permitted.

4 Senator Moynihan. If we could be included for one
5 year, then we can hear out the whole subject when the time
6 comes. So

7 Mr. Champoton. We are objecting to the extension of
8 it. This would remove the entire purpose of the exemption
9 in the first place, Mr. Chairman. The ride-share was the
10 theory behind the energy savings.

11 Senator Moynihan. We do encourage it. It is just
12 that we cannot in good conscience require it.

13 Senator Symms. The concern I have is that if we
14 extend this too far, if we start putting in everybody under
15 the umbrella, then the next step is going to be anybody who
16 has a carpool is going to be wanting to be included in this
17 umbrella. Soon we will have something Treasury really will
18 be objecting to, and probably rightly so.

19 I would hope we can keep this from being too
20 complicated. I do not know exactly what the implications
21 are to the fund with respect to New York City and how that
22 would come out.

23 Maybe somebody here knows. I sure do not know.

24 Mark, do you know?

25 Mr. McConaghy. No, I do not know, Senator Symms.

1 That is one they included which they wanted to reexamine
2 at some point on the House side. When the Ways and Means
3 Committee looked at that, they did provide for an extension
4 of that exemption --

5 The Chairman. I wonder whether the gentleman from
6 New York will let us get estimates and try to work it out.

7 Senator Moynihan. I would be happy to do that.

8 The Chairman. Is that all right?

9 Senator Symms. Yes.

10 The Chairman. If we take Senator Matsunaga's
11 amendment, a one-year extension, and then try to work out
12 something on New York City.

13 May we go back to the Technical Corrections Act?

14 We now have a quorum.

15 What we have done is to ask Treasury, the Joint
16 Committee staff, members of our Finance Committee staff on
17 both sides to take a look not only at the Technical Corrections
18 Act, but any amendments that might be in the nature of
19 technical corrections. They have suggested, I think out of
20 25, 5 that complied with that precedent which we have used
21 in the past successfully in this committee.

22 I would like now to report the Technical Corrections
23 Act. We might be able to take it up Monday or Tuesday of
24 next week.

25 It has been 18 months in the process. It affects

1 thousands and thousands of taxpayers. We believe the House
2 will take it if we do not start taking nontechnical
3 amendments.

4 I would ask that we report out --

5 Senator Heinz. May I ask a question?

6 The Chairman. Certainly.

7 Senator Heinz. Mr. Chairman, I think the staff is
8 familiar with a technical correction of the transition rules
9 of section 212 of ERTA. At least I feel it would be useful
10 and necessary because, when we drafted that transition
11 rule, we did not anticipate that a taxpayer undertaking
12 rehabilitation of an historic structure would not attempt
13 to secure the 25 percent tax credit that we were making
14 available under ERTA.

15 As the Senator from Kansas knows, this morning we
16 originally were told that this markup was going to be at
17 2 o'clock. I was down at the Navy Department having lunch
18 with the Secretary when I was told that it had been moved to
19 1 o'clock, and here I am.

20 Obviously I have missed some discussion, but has
21 there been discussion of that?

22 The Chairman. Let me say this to the Senator from
23 Pennsylvania: That was not discussed in committee. I
24 discussed it with members of the staff. I believe this
25 involves matters in Pittsburgh. Is that correct?

1 Senator Heinz. That is correct.

2 The Chairman. I do believe that probably is
3 technical in nature. I will leave it up to the judgment --
4 I would like to have comments from the Joint Committee.

5 Mr. McConaghy. This was a case, Mr. Chairman,
6 where, when there was a change in the rehabilitation credit,
7 some rehabilitations had begun prior to the change in the
8 effective date, and those were under the normal rules which
9 were entitled to a 10 percent credit.

10 The change went in and it stated that in order to
11 get any credit -- and now there was a new one put in which
12 was 15, 20, and 25 percent credit -- there would have to
13 be a certification that that building be qualified as an
14 historic building and that the rehabilitation itself be
15 certified.

16 The person who was under existing rehabilitation
17 could continue to get the 10 percent or could qualify as
18 to expenses after the new date for an increased credit.

19 As I understand it, a taxpayer did try to qualify
20 and the building was determined to be qualified as an
21 historic building but the rehabilitation was not quite able
22 to get certification. Because it did get designation as
23 an historic building, it then was not under the old law
24 permitted to get the 10 percent credit for that portion
25 prior to the change in the date. I think those basically

R _____ O _____
1 are the facts of it.

2 Mr. Champoton. I think our conclusion is that
3 it certainly is a sympathetic case. It is between the line
4 whether or not it is technical. It is close to the line.
5 I guess you have to conclude that the committee or the
6 Congress, had they thought of that situation, would not have
7 denied the credit.

8 The Chairman. I think it is very similar to one
9 we just addressed which Senator Byrd raised. I thought
10 his was technical, and I think this is technical.

11 Without objection --

12 Senator Baucus. Mr. Chairman, as you know, I had
13 a bill I would like to bring up. As the chairman also
14 knows, I think this bill really is technical in nature. I
15 am a little concerned as to what the definition of "technical"
16 is. We passed one of the so-called technical amendments,
17 at least apparently it is going to pass because the item is
18 on the list.

19 I have an amendment which I think is technical
20 because the 1969 change of law technically omitted artists
21 when it included the right of political figures to deduct
22 the value of their papers when they contribute their papers
23 to museums and libraries, and so forth.

24 I am wondering when I can bring up my amendment.
25 As the chairman also knows, my amendment already has 11

1 cosponsors. All those 11 members are on this committee.

2 The Chairman. Are they all here?

3 Senator Baucus. I was just wondering when I can
4 bring it up. It seems to me what is technical is what we
5 agree to rather than what we do not agree to. That is the
6 definition of our technical.

7 The Chairman. We have tried to restrict technical
8 to something that is not a new matter. I support the
9 Senator from Montana, and I want to try to be helpful. I
10 just do not want to sink the technical corrections bill. I
11 am not suggesting this would do that.

12 I have discussed it myself without any prompting
13 from the Senator from Montana as recently this morning with
14 Mr. Champoton to see if we could accommodate the Senator's
15 request. As I indicated, yesterday Mrs. Wyeth asked me about
16 the progress of this matter. Mr. Champoton, I understand you
17 have talked with Senator Baucus. Is that correct?

18 Mr. Champoton. That is correct, Mr. Chairman.

19 The Chairman. Have you come to some accommodation?

20 Mr. Champoton. I suggested to Senator Baucus some
21 limitations. The administration has not taken a position on
22 this. It is a matter which has been around for some time.
23 The Senator is correct that the rules were changed in 1969
24 because across the board in charitable contributions it was
25 determined by the Congress at that time that there was a good

1 deal of abuse where it would be more beneficial for one to
2 give away property than to sell it, and considerably more
3 beneficial to sell it and give the proceeds from the sale
4 to charity.

5 However, there has been an effort on behalf of the
6 museums and other charitable organizations to change the
7 law so that artists, particularly, would give their works,
8 their own works in which they have no basis, or very little
9 basis, would give their works to the museums for display and
10 the like.

11 We have serious questions it as presently drafted
12 from a tax policy standpoint, but I hasten to add that within
13 the administration there are other views on the strict
14 question of whether we should change the tax laws so as to
15 encourage gifts by artists.

16 What I mentioned to Senator Baucus is that our
17 tax policy questions would diminish considerably if
18 restrictions, several restrictions, were put on the bill,
19 such as limiting it to art work so that we do not have the
20 problem of someone giving away papers or a manuscript that
21 they deem of value; also, limiting the deduction by some
22 amount, perhaps 50 percent of the fair market value over
23 basis, and then doing something to establish the value.
24 The staff has discussed tying it to a prior to cash sale
25 or sales by the artist, so that the IRS can possibly know what

1 the value is.

2 Finally, it needs to be made certain that the donee
3 in fact will use the property rather than just sell it. If
4 the donee is just going to sell it, then the argument that
5 the art works are being denied the charitable world have not
6 been true, and that is not the basis of the amendment.

7 Senator Moynihan. Mr. Chairman, I am one of the
8 cosponsors. I do not want in any way to inhibit anything.
9 If you were willing to accept this much, take this much,
10 that would be my view.

11 However, I really must say that the loss to scholar-
12 ship here -- the largest single loss that has been incurred
13 by that 1969 legislation, which was just an act of meanness
14 about LBJ because he was going to give his papers away and
15 Wright Patman did not want to let him take it. The largest
16 single loss has been manuscripts.

17 The Library of Congress used to receive about 200,000
18 manuscripts a year. Since 1969 it has only received 1 as
19 a consequence.

20 It is the first draft kinds of things that have been
21 of greatest interest to libraries and the greatest loss.
22 If it is of any quality, art will end up in a museum anyway.
23 It cannot be given by the artist; that is all.

24 Senator Long. Mr. Chairman, I feel compelled to make
25 this point. This matter has been discussed before, and I

1 have been involved in it somewhat myself.

2 This clearly is not a technical correction. This
3 is a substantive piece of legislation that we have debated
4 and redebated. The Treasury has opposed it down through the
5 years.

6 To put this on the bill means that this bill is
7 no longer a technical corrections bill. I am not saying that
8 the Senator should not offer it on some measure; that is his
9 privilege. However, I do not think we in the committee ought
10 to add this amendment to the bill because we have been talking
11 about errors, omissions, and things that should have been in
12 the law or making clear what the legislative intent was in
13 these major bills that have passed. To do some of that could
14 have a substantial revenue impact on the taxpayer, but you
15 are talking about a technical correction.

16 What the Senator is proposing here is an amendment
17 that these artists and some of these charitable organizations
18 have been seeking for some time. Although it contains
19 merit, there is also plenty of room for argument at the other
20 side. It is not a technical correction.

21 I do not think we ought to put an amendment on a
22 technical corrections bill that is not a technical correction.
23 Anybody out there on that floor who has an amendment he wants
24 to offer has a standing invitation to offer his amendment on
25 almost any measure.

1 The Chairman. Senator Baucus makes a point about
2 what we decide is technical. This does inject a new matter.
3 However, I know of a couple other Senators who have said,
4 "I am willing to withhold on my amendments, but not if you
5 start taking something that is not technical." Again, I want
6 to help get this amendment passed this year if we can. I
7 think we are going to have other vehicles. If we can get
8 to them in the next few minutes, we might be able to add this
9 amendment to them.

10 Senator Baucus. What other vehicles might there be?

11 The Chairman. How many House bills are there?

12 I understand there are 10.

13 Mr. McConagy. There are 10 House bills.

14 Senator Baucus. Ten House bills over here?

15 The Chairman. Yes, and we have some where there
16 is a great deal of support. Members of the House are
17 interested in them, as is the administration, with regard to
18 two or three of those.

19 Senator Long. We reported out one a minute or two
20 ago that is a meritorious piece of legislation, but it
21 sure is not a technical correction.

22 The Chairman. We have not reported it out yet.

23 Senator Long. We are planning to do so.

24 The Chairman. Would that be all right, Max?

25 Senator Baucus. If we can put it on that bill, not

R _____ O _____

1 on the technical corrections but on some other one we are
2 about to report out.

3 The Chairman. You can offer it on any other bill.

4 Senator Baucus. I understand.

5 Senator Long. If we keep this a technical
6 corrections bill, I think it is going to pass. It is
7 impossible to predict what will happen to other measures
8 which are general revenue measures. If you are lucky and
9 you get on a good rider, get your rider on a good horse, it
10 will pass.

11 The Chairman. I think there are two or three that
12 may finish.

13 Senator Long. This bill should go through, the
14 technical corrections bill, and I think it would if we kept
15 it as a technical correction. However, once we broaden it
16 out and get it beyond being a technical correction bill, it
17 may not pass at all.

18 The Chairman. Can we go ahead and report the
19 Technical Corrections Act?

20 Senator Heinz. Mr. Chairman, may I ask another
21 question?

22 The Chairman. Yes.

23 Senator Heinz. I would like to ascertain whether
24 anybody brought up this issue and whether it is in the
25 technical corrections; namely, correction of an omission in

1 the provisions concerning the motor carrier operating
2 authority special basis adjustment that results in the
3 exclusion of noncorporate taxpayers to treatment equal to that
4 afforded taxpayers.

5 It is my understanding the omission occurred because
6 the Congress was unaware that there were affected noncorporate
7 taxpayers.

8 Mr. Champoton. Senator, we looked at that. We
9 certainly would not think it is technical. It does broaden
10 the class far beyond -- what we did on the motor carrier
11 provision was to say that, if you could have elected under
12 section 334(b)(2) to have a stepup in basis in your motor
13 carrier certificate, then you get that stepup in basis without
14 the election. This would broaden the case to where
15 individuals made the purchase of the stock and they would not
16 have had the right under 334(b)(2) to make the stepup in
17 basis but it would also give it to individuals.

18 Therefore, we objected on the ground that it was
19 not technical.

20 The Chairman. It was considered, though. It was
21 one of those considered.

22 Senator Heinz. It was considered and it was objected
23 to as being nontechnical?

24 Senator Long. Senator, I am familiar with the
25 amendment. I support your amendment on the merit. If you

1 can find an appropriate bill, I would be happy to support it.

2 Senator Heinz. I think that is what we will have
3 to do, Senator Long. I agree with you.

4 The Chairman. Is there any objection to reporting
5 out the Technical Corrections Act?

6 Senator Chafee. Those changes in subchapter S,
7 are they here?

8 The Chairman. No. That is in another bill that
9 we would like to work out, but there is still an objection
10 from Senator Bentsen and Senator Armstrong.

11 Without objection, then, we will report out the
12 Technical Corrections Act.

13 Senator Packwood?

14 Senator Packwood. Mr. Chairman, I would like to
15 report out the utility bill we talked about.

16 The Chairman. Do you want to be heard on that,
17 Senator?

18 Senator Heinz. Is that on the agenda, Mr. Chairman?

19 The Chairman. We do not have any limited agenda.
20 I noted your objection to bring that up and indicated I am
21 not certain how far it is going to get, but we might report
22 it.

23 Senator Packwood. I know your objection, but I
24 told Bob I do not think it is fair that simply because you
25 have an objection we do not consider it. I do not mind voting

1 on it, and I understand your opposition. However, it is
2 one on which I feel strongly enough that I would like to get
3 a vote on it.

4 Senator Heinz. I would like to raise a few
5 questions first. I think there is much in the bill that is
6 very meritorious. We have to act to protect the utilities
7 against the kind of situation that did occur in California
8 during the 1970s. Therefore, I do not object to that
9 basic thrust of the bill. What I am curious about is whether
10 there has been any serious consideration given to addressing
11 a situation that the California Public Utilities Commission,
12 in conjunction with the State of California Supreme Court,
13 thrust upon relatively innocent parties, in this case the
14 utilities.

15 However, having taken the accelerated depreciation
16 investment tax credit away from the utilities, which was the
17 effect of the State of California PUC action, they have
18 passed that along to ratepayers, consumers and industrial
19 customers in California. The result is that, contrary to
20 the intent of Congress, there was a subsidy given to
21 ratepayers, both consumer and industrial, in the State of
22 California.

23 The utility commission artfully drafted, notwith-
24 standing the expressed intent of Congress, a ruling that
25 prohibits effectively any Federal review of what they did.

1 My understanding is that if they had done it
2 straight up and down, they would not have been allowed to
3 do it. They would have run into a Federal court at sometime
4 that would have said, "You can't do that."

5 My question is, Does the legislation provide in it
6 a way of ensuring a Federal judicial decision by ensuring
7 some kind of jurisdiction over what the California State PUC
8 did so that what they did can be reviewed, or are we just
9 rubberstamping what the State of California did and saying,
10 "Well, we are going to let bygones be bygones. We don't
11 care that these people stole money from the Federal Treasury."?

12 Senator Packwood. Whether you put a judicial
13 review in it or not, that is not going to solve the problem
14 of what happened prior to 1980.

15 Senator Heinz. Well, you don't know that.

16 Senator Packwood. Furthermore, in this legislation
17 there is no change in judicial review.

18 Mr. McConaghy. That is correct.

19 Senator Packwood. We are trying to remedy an
20 inequity. It is a genuine inequity that has happened in no
21 other State, and there is no evidence it is going to happen
22 in any other state, through something the companies did
23 which we encouraged and thought was good, and they got
24 caught between a rock and a hard place that was not their
25 fault.

1 Senator Heinz. This we understand. Let me ask
2 the staff a question, if I may. Is there anything we could
3 add to this legislation that would give an appropriate
4 Federal court, perhaps through a rightful shot provision
5 which says that certain decisions by the State are
6 reviewable, an opportunity for a Federal court to review
7 that, measure it against the intent of Congress, and order
8 whatever they thought, if anything, was appropriate?

9 First of all, would that be possible?

10 Senator Packwood. I have no objection to the
11 substance of what Senator Heinz is trying to do. I would
12 like to be able to report this bill out this afternoon.
13 If we have that language by the time we are at the floor,
14 I am honestly willing to consider it because it does not
15 jeopardize this bill. What you are saying is that you want
16 some kind generic review --

17 Senator Heinz. The time to get answers to questions
18 such as this is at the committee level, I think.

19 Mr. McConaghy. I think, Senator Heinz, we would
20 want to do some thinking about it, but there could be
21 perhaps developed some sort of declaratory judgment
22 procedure. I am sure some of the courts obviously do not
23 like to get additional declaratory judgment procedures, but
24 one which looked at an order and determined whether it
25 satisfied the normalization requirements might be appropriate.

1 Some people would oppose it. Certainly the courts
2 would. However, it could be done.

3 Senator Heinz. Mr. Chairman, I think we ought to
4 try to do that. The overall intent of the legislation
5 I support. This relief ultimately is necessary to the
6 utilities involved. They have been caught on the horns of
7 a dilemma not of their making. Therefore, I have no policy
8 objection, either, to what Senator Packwood's goal is.
9 I must say, though, that we have had two years to address
10 this issue. It always strikes me as unique that a bill
11 which came up at the very end of the last Congress
12 should once again come up at the very end of this Congress.
13 I do not know what anybody is trying to hide. I think this
14 should be out in the open. I think we ought to look at
15 this question before we report the bill.

16 Therefore, I will object to the consideration of
17 the bill. I will vote against consideration of the bill
18 here. I will do this until this issue is looked into more
19 deeply.

20 Mr. Champoton. Senator Heinz, do you have in mind
21 a review process which would call for immediate review --
22 whether the normalization method met the requirement of the
23 Internal Revenue Code? Would that be the type of thing you
24 have in mind?

25 Senator Heinz. I hesitate to give you an answer to

1 that question because there are terms of art with which I
2 would not want to claim total familiarity, not being a
3 lawyer, let alone a tax lawyer.

4 However, I do believe in substance not the utilities
5 but the State of California played fast and loose with the
6 intent of Congress. I think that the taxpayers of this
7 country ought to get their day in court. The way the State
8 proceeded, they are not going to give us that day in court.
9 What is going to happen if we just act on this bill the way
10 it is, and if it were to go through the Congress the way it
11 is, is that we would relieve the utilities of their tax
12 obligations they are now under, which exist because we under
13 present law go after them when something goes wrong, even
14 if it is caused by the State of California. However, we
15 will never make any attempt to find out whether in fact the
16 State of California did do something. I happen to believe
17 they did, but my belief in that matter is my own personal
18 view. I would not try to impose that on the Congress or the
19 people of California.

20 The net effect of the current situation is that the
21 Federal Government has collected less in taxes, will collect
22 less in taxes, if we pass this bill. All or a substantial
23 part of that reduced collection has been passed along to
24 ratepayers in California.

25 It seems to me that that is pretty difficult to

1 justify as tax policy.

2 Senator Packwood. Except those taxes are not figured
3 in the budget, and the Federal Government is not counting
4 on collecting them. It is a \$2.1 billion figure if, indeed,
5 we collected them, but no one is assuming we are going to
6 do so because we did not intend to because of the unfairness
7 of this. They are not counted in our budget figures.

8 Senator Heinz. Whether or not they are counted
9 in there, there are lots of things which are wrong that are
10 not counted in our budget figures. This bill is not counted
11 in our budget figures, either.

12 Senator Long. May I involve myself a little bit
13 in this matter? Is the magnitude of this bill \$2 billion?

14 Mr. McConaghy. Yes. I think Senator Packwood is
15 right. At the time the legislation was passed it was
16 not anticipated that any public utility commission would
17 enter an order that would violate the normalization rule.
18 However, after that had been done and the courts had ruled
19 on it, I think that the Treasury Department, or at least
20 the budget people, will have to reflect that in their budget
21 because it has been done.

22 Senator Packwood. I do not want to leave the
23 impression we are talking about \$2.1 billion in tax credits
24 or tax revenues that we would have collected that we have not.
25 It is \$117 million involved at the moment.

1 Mr. McConaghy. Senator Packwood, there has been
2 \$117 million that has been paid to the Federal Government.
3 If the Federal Government or the Internal Revenue Service
4 in this instance is successful in court, stating that order
5 by the Public Utility Commission did not conform to the
6 normalization rules, then there would be an additional \$2.1
7 billion that would have to be paid into the Treasury.
8 However, that would not be decided, we believe, until sometime
9 after 1986.

10 Senator Long. I want to get the figure as to the
11 amount of tax credit which is disallowed by Federal law
12 because of what that California commission did to the
13 companies. Can you give me that figure?

14 Mr. McConaghy. Senator Long, if the taxpayer is
15 not correct and the Internal Revenue Service is, then
16 ultimately there will be -- the figure on the tax benefits
17 is \$117 million plus \$2.2 billion, so it would be about
18 \$2.3 billion. That assumes an interest factor, obviously,
19 and assumes that will ultimately be decided after 1986.

20 Senator Long. Let's look at the justice
21 and fairness of this thing for a moment.

22 As a member of this committee, I had something to
23 do with saying, when we passed this tax credit, that we
24 wanted this tax credit to go to buy new plants, new
25 equipment, and provide a more modern service. We do not

1 want to provide this tax credit just for the benefit of
2 reducing rates to customers. We do not want the Federal
3 Treasury to pay for a rate cut. We want the Federal
4 Treasury to allow a tax credit to modernize and improve
5 the plants. That was to be an incentive.

6 The company proceeded to do just exactly what we
7 were talking about doing. Then the California utility
8 commission proceeded under the authority of the California
9 law to make that company pay out all that money. Is that
10 correct?

11 Mr. McConaghy. That is right.

12 Senator Long. Then, under the provision that we
13 put in the law, and I helped put it there, it says if they
14 make them pay it out, then the company does not get it. So
15 the company pays out the \$2.3 billion and they do not get the
16 \$2.3 billion. They pay out \$2.3 billion that they do not
17 have.

18 Thank God, the two companies involved here are two
19 of the largest companies in the world because anybody else
20 would have been utterly destroyed beyond any hope of ever
21 appearing on the scene again.

22 Having made them pay all that money in this fiasco,
23 the only fair thing to do to them is to say, "When we said
24 if you pay the money out to the customers, you don't get it,
25 in view of the fact that you have been wrongfully made to pay

1 it, it is not fair to deny it to you under those circumstances."
2 That is what is involved here.

3 Every other utility in America has gotten it except
4 these two California companies who have been crucified by a
5 position taken by a State government being contrary to a
6 position taken by the Federal Government. Those people have
7 not done anything at all that is wrong. They do not have
8 any plants in Louisiana, but that is a supreme injustice if
9 I ever saw one. Having played a part in doing that to those
10 people, I would say that we ought to try to correct it.

11 The Treasury wants to correct it, don't they, Mr.
12 Champoton? You were not here to do the fool thing, but you
13 agree it ought to be corrected.

14 Mr. Champoton. Yes, Senator Long. Our only concern
15 in this area, and I think you described the situation
16 absolutely correctly, is to make sure this does not happen
17 again. In other words, we do not want to send a message
18 to utility commissions around the country that they can
19 go ahead and order the rate reduced by the credits and
20 the accelerated depreciation and come back to Congress for
21 further relief.

22 Senator Long. But we are not going to be able to
23 get at that California commission by crucifying these two
24 companies.

25 Mr. Champoton. That is correct.

1 Senator Long. In other words, if we could put the
2 commission in the penitentiary by hurting the companies,
3 maybe we ought to do it. However, we would not do that; all
4 we would do is just crucify these people for something that
5 was not their fault. Isn't that the size of it?

6 Mr. Champoton. That is correct.

7 Senator Heinz. Would the Senator yield?

8 Mr. Champoton, let's see whether we can get a few
9 facts on the record.

10 Is it or is it not true in your judgment that the
11 Public Utility Commission of the State of California,
12 together with the decision rendered by the California
13 Supreme Court, forced the utilities in question to pass along
14 tax benefits to their ratepayers which Congress intended not
15 be passed along? Is that correct?

16 Mr. Champoton. Let me elaborate just briefly.
17 That is the way it should be viewed. Now there is still a
18 question as to whether their normalization method, the
19 normalization method adopted by the Supreme Court in
20 reversing the decision of the utility commission and
21 imposing a different normalization method, on which we
22 have taken the position that we, the Internal Revenue
23 Service, does not comply with the Federal laws. The
24 utilities will still argue that case. In our view, they
25 passed along benefits that should not have been passed along.

1 Senator Heinz. As I understand it, the utility
2 companies, quite rightfully, have taken the position that
3 they should not have been forced by the California authorities
4 to adopt this method of normalization. Is that correct?

5 Mr. Champoton. It is my understanding they
6 certainly argued that before the utility commission and
7 before the supreme court of California.

8 Senator Heinz. It is my understanding that the
9 normalization that they argued for would have been consistent
10 with Treasury interpretation of normalization and, therefore,
11 with the intent of Congress. Is that correct?

12 Mr. Champoton. That is correct. The problem would
13 not be presented.

14 Senator Heinz. It is my understanding that a
15 substantial monetary benefit accrued to California ratepayers
16 as a result of this decision by the State Public Utilities
17 Commission and the California State Supreme Court. Is that
18 correct?

19 Mr. Champoton. I would assume so. I am getting a
20 little beyond knowing the actual facts of the rates, but that
21 would be our assumption; yes, sir.

22 Senator Heinz. Is there another member of staff who
23 is able to answer that question?

24 Mr. McConaghy. Yes, they did, Senator Heinz.

25 Senator Heinz. Mark, would you care to estimate the

1 amount of benefit that was passed along, in the view of
2 Treasury and myself, improperly, by the State of California
3 to their ratepayers?

4 Mr. McConaghy. Senator Heinz, I think our best
5 estimate of that is that it was somewhere over a billion
6 dollars that was passed through.

7 Senator Heinz. Therefore, \$1 billion of money that
8 was not meant to be passed through to California ratepayers
9 was passed through by this action.

10 Mr. Chairman, I hope all the members of the committee
11 recognize that what -- in addition to preventing any
12 future problems here, we are also failing to take any action
13 at all to deal with something which in the opinion of
14 Treasury and in the opinion of this Senator, and I think in
15 the opinion of many thoughtful people, represented a very
16 bad action, a very unjust action, where the authorities in
17 the State of California basically appropriated, notwith-
18 standing our intent, over a billion dollars that would
19 otherwise have gone, had they used straight line, to the
20 Federal Treasury and put it in the pockets of California
21 consumers and taxpayers.

22 I am not against the State of California, but,
23 frankly, that is a pretty good deal that the other 49 States,
24 including Louisiana, have not gotten.

25 Mr. Champoton. Senator, let me correct one thing.

R _____ O _____

1 I think the money would have otherwise stayed in the hands
2 of the utilities for uurther reinvestment.

3 Senator Heinz. You are quite correct that it would
4 have, but if the utilities had not elected to take
5 accelerated depreciation and the investment tax credit,
6 you would have gotten difference if they had taken straight
7 line.

8 Mr. Champoton. That is correct.

9 Senator Heinz. To that extent, there never would
10 have been this argument had they elected to take what we
11 might call traditional accounting treatment. There would
12 have been no way that the State authorities could have
13 converted normalization to the extent they did. The result
14 is that, had the utilities treated these normally, our
15 revenues would have been to the Federal Government roughly
16 a billion dollars higher.

17 Mr. Champoton. That is correct. I want to emphasize
18 that these normalization methods can get very complicated,
19 and the utility commissions can force a utility to take a
20 certain method of accounting. That is how we got into the
21 normalization problem in the first place, because they could
22 force a utility to take accelerated depreciation, and then
23 the question is what happens to the tax benefit. That is
24 how we got into this problem in 1969.

25 Senator Heinz. Mr. Chairman, I just want to make

1 something clear. It is not my wish to obstruct a solution
2 to future problems inherent in S. 232. I would like to be
3 able to support S. 232, and I could support it as soon as
4 we address the problem which staff has said could be
5 addressed in terms of some form of review of what is clearly
6 an unprecedented and perverted interpretation of
7 normalization by California State authorities.

8 If we can just address that problem and
9 incorporate that solution into this bill so that it is a
10 rifle shot, my objections to moving this bill further will
11 evaporate like the morning dew.

12 The Chairman. All right. May I ask staff and
13 Treasury a question? If, in fact, we reported this bill,
14 is there some hope you might be able to satisfy the
15 concerns expressed by Senator Heinz between now and the time
16 it might be brought up next week?

17 Mr. McConaghy. We surely and certainly could explore
18 to try to develop some procedure. I think what we would be
19 talking about initially would be some sort of review
20 procedure of an order of a public utility commission to
21 see if those satisfy the normalization requirements but
22 at a time prior to when they essentially flow it through or
23 the ratemakers get the benefit.

24 SENator Heinz. I would like to see what that really
25 looks like. If it is the chairman's intention to proceed to

1 vote, I shall certainly vote against it because I am not
2 satisfied with the bill. I would certainly ask for a rollcall
3 vote.

4 If there are any other grounds to hold this up,
5 such as objecting to its consideration because it is not on
6 the agenda, I would do that as well.

7 May I ask a parliamentary inquiry?

8 The Chairman. I have taken amendment of the Senator
9 which was not on the agenda, either.

10 Senator Heinz. If the Senator wants me to give it
11 back, I will.

12 The Chairman. No. There was not any set agenda.
13 We just had a nice, informal meeting.

14 What I was trying to indicate was that if, in
15 fact, we can accommodate the Senator by the time it reaches
16 the floor, as the Senator knows, it takes only one person
17 to suggest we are not going to do anything this year.

18 Senator Heinz. On that basis, I will simply vote
19 against it at this time, and maybe we can figure out a
20 solution. I would like a recorded vote.

21 Senator Baucus. Mr. Chairman, I would like to
22 add my amendment, my artist bill amendment, to this bill to
23 make it more palatable and more likely to pass.

24 The Chairman. Do we have an agreement then? Have
25 we worked out some accommodation with Treasury?

1 Senator Baucus. I don't know whether or not we
2 have. I don't think we have. Perhaps we have agreed on one
3 or two of the various provisions, but I don't know about
4 all three.

5 Mr. Champoton. Let me review the restrictions we
6 have discussed. One is the limitation to art work. That is
7 where the problem has been. I believe Senator Moynihan is
8 correct that the Library of Congress has expressed concern
9 about manuscripts.

10 Then there needs to be some limitation on the
11 deduction consistent with current law, where in some cases
12 ordinary income property -- I am misstating that. In some
13 cases gifts are made and the deduction is limited to basis
14 plus 50 percent of the appreciation. We had suggested some
15 cutback on the deduction so that you will not have a situation
16 where it will be a net benefit from a gift as opposed to a
17 sale of the item.

18 There are two other problems. One, there needs to
19 be some determination, some help to the Internal Revenue
20 Service, in determining what the value of this property is.
21 We would like some objective touchstone, showing sales of
22 the property in advance or similar property. It is a very
23 difficult situation. We have all seen cases in the past
24 in the paper, I believe this week, where someone simply
25 claims a big deduction for a gift of a charitable item.

R _____ O _____

1 Unless that return is picked up on audit, then you do not
2 have an opportunity for reviewing that money. Obviously
3 the audit rate is low.

4 Senator Moynihan. That is no problem. No
5 reputable library or museum would want it any other way.

6 Senator Long. Mr. Champoton, I am still on the
7 Treasury's side on this, or I thought I was. I am not sure
8 now.

9 Let me just give you an example. This is something
10 I know a little bit about. I have never spent much time at
11 these art shows.

12 However, my understanding is that if somebody
13 comes to town and goes to one of the established galleries,
14 especially one of those big New York ones, and they put those
15 pictures on display, they have to charge about 50 percent
16 and maybe more to sell your picture for you.

17 If you come in with something for which you hope
18 to get \$1,000, you have to sell it for \$2,000 in order to
19 make \$1,000.

20 Let's suppose somebody comes and puts a whole bunch
21 of this stuff on display, and some of it sells but most of
22 it doesn't. It would look to me as though they could take
23 all the stuff they did not sell, that nobody would buy,
24 and in view of the fact that they had not payed the commission
25

1 on the stuff they take home with them, they could just give
 2 all that stuff to charity and make 50 cents on the dollar.
 3 That is assuming that the appraiser is not really going on
 4 the high side. My impression is that when people on the
 5 charity end accept something they are perfectly willing to
 6 cooperate in putting a high value on the paintings.

7 Mr. Champoton. I think that is certainly correct.
 8 The concern you are expressing is a concern that bothers us,
 9 exactly. In that case, you would be the same as if you
 10 were in the 50 percent tax bracket, the same place as thought
 11 you had been able to sell the picture.

12 Senator Long. It would work out the same. The
 13 stuff you did not sell to the public, you sold it to the
 14 taxpayers. You made just as much on it at the expense of
 15 the Treasury.

16 Mr. Champoton. Except the taxpayer doesn't get it;
 17 some donee gets it, but that is correct.

18 Senator Long. The taxpayer doesn't get anything.
 19 He just sees his money flow out. The Treasury loses the
 20 money, and they take a bunch of old paintings that nobody
 21 would buy. They don't have to hang those things up, you
 22 know; they can put them in a cellar and leave them there.
 23 The Government is out all that money.

24 Mr. Champoton. That is correct.

25 Senator Baucus. Two points, Mr. Chairman. First of

1 all, as the Senator from New York pointed out, I don't think
2 very many -- maybe one or two -- libraries or museums are
3 going to get involved in this kind of chicanery.

4 No. 2, collectors today get the market value
5 deduction. I do not see why we should distinguish between
6 collectors and creators.

7 Senator Long. You would be surprised what people do
8 in this area.

9 Senator Baucus. These are not just the public.

10 Senator Long. I will bet you that this happens.
11 If this doesn't happy, say you surprised old Senator Long.
12 I just think this is happening. I would bet this is happening.
13 I think I could prove it if I had to do so.

14 You have affluent people who are going to give this
15 picture to an art gallery and take a deduction for a big price
16 on this beautiful painting. Any time they want the thing
17 back to hang it up there for a party or something, they just
18 go down and get it and hang it up and use it in their homes
19 as long as they want to do so and then take it back from time
20 to time. It belongs to the gallery but, in view of the fact
21 that they donated it, they can just borrow it back when they
22 need it, hang it up, and have all their guests see it, and
23 then carry it back again.

24 (Laughter.)

25 Senator Symms. If the Senator would yield on that,

1 the point, though, is that is the way the law is right now.

2 Senator Long. I am trying to keep it from being
3 worst -- just dumping off all the stuff that nobody would
4 buy.

5 Senator Symms. We are talking about people who are
6 successful artists, authors, et cetera. Why should they
7 have -- all a guy can deduct off is what the canvas and the
8 paint cost him, which is nothing. It is his talent, his
9 creative ability, his labor.

10 Senator Long. He can take that painting. They
11 can take that painting and sell it and donate what they get
12 for it. I am not complaining about any of that because
13 that is the law now, and that is fine. I am just talking
14 about their taking a whole bunch of junk that nobody is willing
15 to buy and charging us the full value just as though somebody
16 -- as a matter of fact, charging Uncle Sam the full value of
17 the thing when nobody is going to get any benefit out of
18 that because it is not worth a Continental to begin with.

19 They take all the junk they can't sell, give that
20 to somebody, and the Treasury is stuck.

21 The Chairman. Are there any other art lovers who
22 want to be heard?

23 (Laughter.)

24 Senator Moynihan. Mr. Chairman, I am the chairman
25 of the board of trustees for the Hirschorn Museum and have

1 been for 10 years. I know something of these matters.
2 It is especially an interest of contemporary artists to
3 appear in museums. They want to do that. They will give you
4 very valuable work which they could sell because they
5 want to be a part of a particular collection. The museums
6 are meticulous in their estimates. We usually get three
7 estimates.

8 The Treasury would have no trouble whatever in IRS
9 auditing. This problem arose by chance, the chance of
10 Wright Patman to get back at LBJ for 30 years of not liking
11 him. It has done real disservice to our museums and our
12 libraries, not the least, our university libraries.

13 At one point the Stravinsky scores were going to
14 the Yale library.

15 The Chairman. Our problem is that we have a
16 floating quorum here. Right now we have 11. We need 11.
17 I think we will have 11 for about -- well, for a few minutes.

18 Can we, in fact, reach an agreement --

19 Senator Baucus. Mr. Chairman, on the last point,
20 it seems to me we could put in a provision that the artist
21 has to pay for some independent appraisal of some kind.
22 It seems to me that would take care of the problem.

23 Senator Long. Why don't we just report out the bill
24 and let the Senator put the amendment out on the floor?

25 Senator Baucus. I want it on this bill. We have to

1 have to get it out of committee right now.

2 The Chairman. Are you pretty much in agreement with
3 Senator Baucus?

4 Mr. Champoton. I have to caution you that
5 appraisals on matters such as this, when they go to court
6 both sides have appraisals. The valuation is a very difficult
7 question. I think we have to keep in mind -- and this is
8 the debate, frankly, that is going on within the
9 administration right now -- as meritorious as it is to
10 achieve these gifts, other taxpayers are not entitled to a
11 deduction for pre-tax income such as if one gives their time
12 to a museum, which a lot of people do. They get no tax
13 deduction for it. A lawyer may give his papers, or any type
14 of pre-tax item.

15 The Chairman. Can we reach some agreement? If
16 not, we will just vote on the bill.

17 Senator Baucus. I will move the amendment.

18 The Chairman. But I don't know what the amendment
19 is.

20 Senator Baucus. The one that --

21 The Chairman. He has raised some questions about
22 this.

23 Senator Baucus. The committee has it, 2225.

24 Mr. McConaghy. Are there any modifications to it?

25 Senator Baucus. Modify it to require an

1 independent appraisal on the part of the artist to take care
2 of the valuation problem. You are not disagreeing with the
3 theory, but you are just having problems with the valuation.

4 Mr. Champoton. The valuation and the tax policy
5 question I mentioned. It is certainly giving those taxpayers
6 a benefit which other taxpayers -- you are deciding to spend
7 Federal funds to allocate or to pay for these types of works
8 for museums.

9 Senator Baucus. It is my view it is for the public
10 good. We should have art work in museums, in my opinion.
11 Revenue loss estimates are between \$5 and \$15 million, anyway.
12 It is not a big item.

13 Mr. Champoton. Does your amendment apply to any
14 kind of property?

15 Senator Baucus. No, just artistic works of art,
16 literary works, and manuscripts. I think we have to include
17 manuscripts. The Senator from New York mentioned the
18 Stravinsky papers, for example. Artists do donate their
19 manuscripts to libraries.

20 Mr. Champoton. Would you take the further restriction
21 that it has to be a type of property which would be used by
22 the recipient?

23 Senator Baucus. Yes, not resold. There is some
24 holding period so that it is not resold. I will agree to that.
25 We can work out some holding period here.

1 Mr. Champoton. Whether or not we support it, that
2 does help some of the problems I have raised; yes, sir.

3 The Chairman. We can agree on that? We can agree
4 on the valuation?

5 Senator Baucus. I suggested it would require an
6 appraisal.

7 Mr. Champoton. An appraisal would be better.
8 Requiring an appraisal would be somewhat better than nothing,
9 but I have to say --

10 The Chairman. Let's do this: Let's make the
11 changes on which we can agree. If there are further changes,
12 we will just have to address those when the amendment gets
13 to the floor.

14 Senator Heinz. Mr. Chairman, given the changes,
15 which none of us have seen, may I ask whether the Treasury
16 supports or opposes Senator Baucus' amendment.

17 Mr. Champoton. As I said earlier, I believe it was
18 before you were here, when we discussed this earlier today,
19 we raised tax policy concerns about this matter in Treasury.
20 Others in the administration have concerns about the arts and
21 humanities and are pushing for such an amendment. The
22 administration has no position.

23 Senator Heinz. Mr. Chairman, I have one final
24 question.

25 Senator Baucus, as I understand him, is offering this

1 as an amendment to S. 232. Is that correct?

2 Senator Baucus. Yes.

3 Senator Heinz. As I understand it, we do have two
4 items on our agenda for the day. I assume the agenda has
5 some meaning. One was H.R. 6056, Technical Corrections Act.
6 We have disposed of that. I do not know that we have taken
7 a vote on it, but we have disposed of it.

8 Senator Baucus. Would the Senator yield for just
9 one point?

10 Senator Heinz. Yes.

11 Senator Baucus. The Senator is a cosponsor of
12 my amendment.

13 Senator Heinz. The Senator is a strong supporter
14 of your bill; there is no question about it. Whether or not
15 I am prepared to support it as an amendment to some other
16 bill that I oppose is another question. We are going to get
17 to that issue in a minute.

18 The other item on the agenda is S. 2942, the
19 social security disability payments. I assume that we are
20 going to take that up. Is that correct?

21 Senator Long. I objected to the committee's meeting
22 on that today, Mr. Chairman.

23 Senator Heinz. You objected? Does that mean an
24 objection to S. 232 would be equally well taken?

25 The Chairman. He objected this morning when the

1 agenda specified the two areas --

2 Senator Long. I objected.

3 Senator Heinz. Mr. Chairman, I object to S. 232.

4 The Chairman. Go ahead and object. I don't think
5 that is in the same area. We are trying to work out the
6 disability payment bill which was introduced yesterday.
7 Just give me a little bit of time, if you can. Maybe I can
8 accommodate you.

9 Senator Heinz. I am not opposed to Senator Long's
10 delaying consideration of S. 2942. I think he has every
11 right to do that. I am sure he wants something with which
12 he can be satisfied, as we all do. We are all committed to
13 trying to solve that kind of problem.

14 However, if it is the right of a member to
15 object, for a perfectly good reason, as Senator Long has
16 exercised his right to object to something that is on the
17 agenda, then I would suggest that it is perfectly proper
18 to object to something that is not on the agenda.

19 The Chairman. Senator Long?

20 Senator Long. Let me just state my position. I
21 came here this morning without knowing that there was going
22 to be any committee meeting. After I was in my office an
23 hour or so, I was informed that there was a request for the
24 committee to meet. I was also informed that there were some
25 things the committee might want to act on which I might find

R _____ O _____

1 objectionable. That being the case, I objected. I asked
2 that an objection be entered on my part for the committee
3 meeting. I simply wanted to protect my rights and the rights
4 of every other Senator who might not know what we were
5 meeting about.

6 Subsequent to that, Mr. Dole told me he wanted to
7 meet to discuss the technical corrections bill and he would
8 like to discuss this other bill.

9 The Chairman. We have about 10 bills from the
10 House.

11 Senator Long. Anyway, he mentioned he wanted
12 to discuss the technical corrections bill. I said, "I am
13 willing to withdraw my objection to the committee meeting
14 if what we are going to be talking about is the technical
15 corrections bill." I withdrew my objection and agreed the
16 committee would meet. The technical corrections bill is
17 what I thought we were going to talk about.

18 I did not know we were going to vote on all these
19 other bills. I do not pass judgment on that with regard to
20 the disability bill. I fully expected to have a difference
21 of opinion with the Senator on the disability bill, but I am
22 not saying I would not be willing for the committee to vote
23 on it in due course. I think the committee will vote on it.

24 As far as the technical corrections bill which we
25 have been working on, I was willing to meet and discuss that

1 bill. That is where I stand.

2 As far as this Senator is concerned, I agreed to
3 withdraw my objection on the Senate floor for the committee
4 meeting on this, with the understanding we were going to meet
5 on the technical corrections bill.

6 The Chairman. As is generally the case, in the last
7 few days of the session there are a number of members, both
8 on and off the committee, who either want to do something or
9 don't want to do something. I am just trying to accommodate
10 those who want to do something and those who don't want to
11 do something.

12 (Laughter.)

13 We can move to take up S. 232 -- I am not even
14 certain of the number. I would say to the Senator from
15 Pennsylvania that I discussed briefly with Senator Long
16 2942. I think there are a couple areas which we should
17 address. I am trying to work that out. It has been a matter
18 of some concern to about a dozen Senators, including the
19 Senator from Pennsylvania, both Senators from Michigan,
20 Senator Cohen. Again, we are in that time of the year when,
21 if somebody doesn't want it to go anywhere, it will not go
22 anywhere. I don't have any dog in that fight at all.

23 I would hope we might consider S. 232 with the
24 Baucus amendment. I think Senator Moynihan as a matter
25 he would like to discuss. There are still nine House bills.

1 If not, we can adjourn and meet again next week, next Monday
2 or Tuesday.

3 Senator Packwood. Could we get a vote on S. 232?

4 Senator Heinz. Mr. Chairman, it is not my wish to
5 frustrate Senator Packwood or anybody else who is a big fan
6 of S. 232. However, the procedure of our committee is fairly
7 clear. I think it would be a rather fruitless effort to
8 press ahead on S. 232 right now.

9 The Chairman. What are the rules?

10 Mr. Lighthizer. The rules say that the chairman
11 prescribes the agenda and that variations from the agenda
12 are only made with a two-thirds vote.

13 Senator Packwood. I believe I announced on
14 Wednesday that I wanted to bring this up at the end of the
15 week.

16 Senator Moynihan. Why not have a vote?

17 Senator Long. Read what it says.

18 Senator Heinz. Why not have a two-thirds vote on
19 whether or not to take it up. If that succeeds, then Senator
20 Baucus can offer his amendment. Right now his amendment can't
21 be offered because the measure isn't --

22 The Chairman. I think the request that Senator
23 Baker made on my behalf was that we be authorized to meet
24 at 1 o'clock to consider legislation.

25 Senator Long. There is something in the rule there

1 about each Senator's right to know what we are going to meet
2 about.

3 Mr. Lighthizer. "Members will be notified of the
4 committee meeting at least 48 hours in advance unless the
5 chairman determines that an emergency situation requires a
6 meeting on shorter notice."

7 The Chairman. That is what this was.

8 Mr. Lighthizer. "This notification will include
9 a written agenda, together with materials prepared by the
10 staff relating to the agenda. After the agenda for a committee
11 meeting is published and distributed, no nongermane items
12 may be brought up during the meeting unless at least
13 two-thirds of the members present agree to consider those
14 items."

15 The Chairman. Let's have a vote, then, on whether
16 we can bring up S. 232.

17 All in favor -- do you want a rollcall?

18 Senator Heinz. I would like a rollcall vote, Mr.
19 Chairman.

20 Mr. Lighthizer. Mr. Chairman, it is 1523, the House
21 bill.

22 The Chairman. Whatever it is. I don't know what
23 the number is.

24 Mr. Lighthizer. Mr. Packwood?

25 Senator Packwood. Aye.

1

Mr. Lighthizer. Mr. Roth.

2

Senator Packwood. Aye.

3

Mr. Lighthizer. I am sorry, but it is just those
who are present.

5

The Chairman. He is here.

6

(Laughter.)

7

Mr. Lighthizer. Mr. Danforth?

8

(No response.)

9

Mr. Lighthizer. Mr. Chafee?

10

Senator Chafee. Aye.

11

Mr. Lighthizer. Mr. Heinz?

12

Senator Heinz. No.

13

Mr. Lighthizer. Mr. Wallop?

14

(No response.)

15

Mr. Lighthizer. Mr. Durenberger?

16

(No response.)

17

Mr. Lighthizer. Mr. Armstrong?

18

(No response.)

19

Mr. Lighthizer. Mr. Symms?

20

Senator Symms. Aye.

21

Mr. Lighthizer. Mr. Grassley?

22

Senator Grassley. Aye.

23

Mr. Lighthizer. Mr. Long?

24

Senator Long. Pass.

25

Mr. Lighthizer. Mr. Byrd?

1 (No response.)

2 Mr. Lighthizer. Mr. Bentsen?

3 (No response.)

4 Mr. Lighthizer. Mr. Matsunaga?

5 Senator Matsunaga. Aye.

6 Mr. Lighthizer. Mr. Moynihan?

7 Senator Moynihan. Aye.

8 Mr. Lighthizer. Mr. Baucus?

9 Senator Baucus. Aye.

10 Mr. Lighthizer. Mr. Boren?

11 (No response.)

12 Mr. Lighthizer. Mr. Bradley?

13 Senator Bradley. Aye.

14 Mr. Lighthizer. Mr. Mitchell?

15 (No response.)

16 Mr. Lighthizer. Mr. Chairman?

17 The Chairman. Aye.

18 Senator Heinz. Mr. Chairman, I am delighted we had
19 that vote because I really wanted to know where people stand
20 on the issue. We can amend it.

21 The Chairman. Do you have any objection to the
22 Baucus amendment?

23 Senator Heinz. No.

24 The Chairman. The ayes are nine; the nays are one,
25 and one pass.

R _____ O _____

1 Senator Long. Mr. Chairman, if we are going to
2 vote on the Baucus amendment, I do want to offer a couple
3 amendments to it.

4 One is that only donations to public museums which
5 display art would be eligible for this deduction to be
6 claimed.

7 Can we agree on that?

8 Senator Chafee. That would affect libraries --

9 Senator Baucus. Manuscripts.

10 Senator Long. You are trying to include manuscripts
11 now?

12 Senator Baucus. Yes.

13 Senator Long. I thought you had agreed to limit
14 this to art.

15 Senator Baucus. No.

16 Mr. Champoton. We had suggested that.

17 Senator Baucus. I had not agreed to that.

18 Senator Long. Then I would suggest we limit this
19 that this cannot be deducted from income other than income
20 from art or from this purpose.

21 Mr. Champoton. Related income? Income from the
22 activity that gave rise to the donation?

23 The Chairman. Do you object to that?

24 Senator Symms. The problem with that is that it
25 is so inequitable. You take somebody who collected art or a

1 manuscript of Ernest Hemingway, for example. It would
2 be worth a fortune. He could give it away and get a big
3 tax writeoff, but if the author himself wrote it and gave
4 it away, he could not get anything but the price he paid
5 for the paper at the local drugstore or something.

6 Senator Long. No. I believe right now, Mr.
7 Champoton, if someone bought a work of art, he has no problem
8 deducting what he paid for it?

9 Mr. Champoton. Right, or -- this does not affect
10 that type of situation either way, Senator. This affects
11 a situation where the property is created by the donor, the
12 author, or the artist. If it is a collection matter, then
13 a person has paid tax on the amount he has spent on it.
14 That is not the problem being addressed.

15 Senator Long. If that were Ernest Hemingway, for
16 example, he could shelter his income from writing but he
17 couldn't shelter his income from investments.

18 Mr. Champoton. We considered this type of limitation
19 does prevent an artist who is simply, if you will, claiming
20 to be an artist -- it does have an effect on the limitation,
21 on the value. If it is that valuable, he will have income
22 from a similar source.

23 Senator Baucus. Mr. Chairman, I understand the point
24 that the Senator from Louisiana is trying to address. We
25 still have the appraisal provision written into this. IRS

1 has an audit. We still have the appraisal provision written
2 into this.

3 It seems to me if someone, a Member of Congress,
4 for example, maybe somebody who works for the Treasury
5 Department, likes to paint and wants to donate something,
6 why shouldn't he or she get a deduction as a collector gets
7 it for contributing to a charitable cause?

8 Senator Long. Let's talk about that appraisal
9 for a moment. Let's just take a work of art. If you sell
10 that, if you take it to one of these galleries and you have
11 the gallery sell it for you, they are going to take half.
12 If it is \$2,000, you only net \$1,000. What is the appraisal
13 value, \$2,000 or \$1,000?

14 Mr. Champoton. The appraisal value would be \$2,000.
15 It would be the fair market value.

16 Senator Long. So you couldn't sell it down there
17 but it is easy enough for those people to go along with you
18 and say, yes, \$2,000 would be fair. It is true that I
19 didn't buy it but if I bought it, sure enough, \$2,000 would
20 have been a fair value.

21 That is the appraisal value, what the price is before
22 you pay the commission. Then you take the -- you deduct
23 50 percent and you are deducting a figure that is twice what
24 you would have netted. If the commission is more than 50
25 percent, Uncle Sam is going to be paying more than 100 percent

1 by just giving it to someone.

2 I have had to yield on the point that you are not
3 even giving it to somebody who is going to put it on display,
4 but give it to somebody to put it in the basement somewhere.

5 Senator Baucus. Mr. Chairman, let me read some
6 limitations now in the law which apply to charitable
7 deductions.

8 This is section 170(b)(1)(a): "An individual is
9 allowed a deduction for contributions to public charity
10 only to the extent that such contributions do not exceed
11 50 percent of the adjusted gross income."

12 (2) under another section, (b)(1)(b), "An
13 individual is allowed a deduction for contributions to a
14 private foundation only to the extent that such contributions
15 do not exceed 20 percent of the adjusted gross income."

16 There are others here, too, of the same magnitude.
17 For all I know, there are even stricter limitations. There
18 are all kinds of safeguards to prevent against the kinds of
19 things the Senator from Louisiana suggests.

20 For the sake of art, musuems, and libraries, I
21 think this is the kind of change that we should allow.

22 The Senator from New York pointed out what has
23 happened to the Library of Congress. I have a letter here
24 from Daniel Borenstein which states it in more graphic
25 terms.

1 That the drop is dramatic is an understatement.
2 The drop in manuscripts given to the Library of Congress --
3 now they are not received because of the change.

4 Senator Long. I just got through demonstrating
5 that if there is stuff people cannot sell they can give away
6 and make just as much money net --

7 Senator Baucus. Or the libraries and museums.

8 Senator Long. At the expense of the taxpayers, just
9 as much money net as they would if they had sold it.

10 The Chairman. Can we reach some agreement on
11 the amendment?

12 Senator Baucus. Mr. Chairman, we already had reached
13 some agreement.

14 The Chairman. Senator Long wanted to make a further
15 amendment.

16 Senator Baucus. I cannot agree only to works of
17 art. I don't know what other change he had in mind.

18 Senator Long. I suggest we amend it to say you cannot
19 deduct it against income other than for the same type of
20 activity.

21 Senator Matsunaga. You want to vote on the amendment?
22 Vote on his amendment.

23 Senator Baucus. I see no need for any restriction
24 frankly.

25 The Chairman. Shall we vote on the amendment?

1 Senator Baucus. That is fine with me. Vote on
2 the amendment.

3 The Chairman. The Long amendment, yes.

4 Mr. Lighthizer. Vote on the Long amendment.

5 Mr. Packwood?

6 Senator Packwood. This is on which amendment?

7 Mr. Lighthizer. This is a vote on the Long amendment
8 to the Baucus amendment.

9 The Chairman. It is the second Long amendment, which
10 says you have to limit --

11 Senator Long. Limit the deductions to deductions
12 against income for the same types of source.

13 Senator Packwood. No.

14 Mr. Lighthizer. Mr. Roth?

15 (No response.)

16 Mr. Lighthizer. Mr. Danforth?

17 (No response.)

18 Mr. Lighthizer. Mr. Chafee?

19 Senator Chafee. No.

20 Mr. Lighthizer. Mr. Heinz?

21 Senator Heinz. No.

22 Mr. Lighthizer. Mr. Wallop?

23 (No response.)

24 Mr. Lighthizer. Mr. Durenberger?

25 (No response.)

R _____ O _____

1 Mr. Lighthizer. Mr. Armstrong?
2 (No response.)
3 Mr. Lighthizer. Mr. Symms?
4 (No response.)
5 Mr. Lighthizer. Mr. Grassley?
6 Senator Grassley. Aye.
7 Mr. Lighthizer. Mr. Long?
8 Senator Long. Aye.
9 Mr. Lighthizer. Mr. Byrd?
10 (No response.)
11 Mr. Lighthizer. Mr. Bentsen?
12 (No response.)
13 Mr. Lighthizer. Mr. Matsunaga?
14 Senator Matsunaga. No.
15 Mr. Lighthizer. Mr. Moynihan?
16 Senator Moynihan. No.
17 Mr. Lighthizer. Mr. Baucus?
18 Senator Baucus. No.
19 Mr. Lighthizer. Mr. Boren?
20 (No response.)
21 Mr. Lighthizer. Mr. Bradley?
22 (No response.)
23 Mr. Lighthizer. Mr. Mitchell?
24 (No response.)
25 Mr. Lighthizer. Mr. Chairman?

1 The Chairman. Aye.

2 For this vote, the ayes are three and the nays are
3 six. The amendment is not agreed to.

4 The question arises on the Baucus amendment. All
5 in favor say aye.

6 (Chorus of ayes.)

7 Senator Long. How about those who want to say no?

8 The Chairman. Excuse me. No?

9 Senator Long. No.

10 The Chairman. That is part of our conservative
11 speedup.

12 Now the question arises on the Packwood amendment.
13 What is the H.R. number?

14 Mr. Lighthizer. This is 1524.

15 The Chairman. H.R. 1524 as amended by the
16 amendment of Senator Baucus. Senator Heinz wants a rollcall.
17 Is that correct?

18 Senator Heinz. We might as well have a rollcall on
19 it.

20 Mr. Lighthizer. Mr. Packwood?

21 Senator Packwood. Aye.

22 Mr. Lighthizer. Mr. Roth?

23 Senator Packwood. Aye.

24 Mr. Lighthizer. Mr. Danforth?

25 (No response.)

R _____ O _____

1 Mr. Lighthizer. Mr. Chafee?

2 Senator Chafee. Aye.

3 Mr. Lighthizer. Mr. Heinz?

4 Senator Heinz. No.

5 Mr. Lighthizer. Mr. Wallop?

6 (No response.)

7 Mr. Lighthizer. Mr. Durenberger?

8 (No response.)

9 Mr. Lighthizer. Mr. Armstrong?

10 (No response.)

11 Mr. Lighthizer. Mr. Symms?

12 (No response.)

13 Mr. Lighthizer. Mr. Grassley?

14 Senator Grassley. Aye.

15 Mr. Lighthizer. Mr. Long?

16 Senator Long. No.

17 Mr. Lighthizer. Mr. Byrd?

18 Senator Long. Just the bill itself.

19 Mr. Lighthizer. Mr. Byrd?

20 (No response.)

21 Mr. Lighthizer. Mr. Bentsen?

22 (No response.)

23 Mr. Lighthizer. Mr. Matsunaga?

24 Senator Matsunaga. Aye.

25 Mr. Lighthizer. Mr. Moynihan?

1 Senator Moynihan. Aye.

2 Mr. Lighthizer. Mr. Baucus?

3 Senator Baucus. Aye.

4 Mr. Lighthizer. Mr. Boren?

5 (No response.)

6 Mr. Lighthizer. Mr. Bradley?

7 Senator Packwood. Aye.

8 Mr. Lighthizer. Mr. Mitchell?

9 (No response.)

10 Senator Packwood. Senator Byrd w ted to be voted
11 aye.

12 Mr. Lighthizer. Mr. Chairman?

13 The Chairman. Aye.

14 Senator Symms is here.

15 Senator Symms. Aye.

16 The Chairman. Senator Matsunaga?

17 Senator Matsunaga. I have voted aye.

18 The Chairman. The vote on this amendment is 12 to
19 1.

20 Senator Long. Did you get Senator Byrd as voting
21 aye?

22 Senator Heinz. I want to be shown for the Baucus
23 amendment.

24 The Chairman. Right.

25 Senator Long. Mr. Chairman, might I ask that you

1 poll the committee so absentees can be recorded? I am not
2 sure whether I was supposed to record for Senator Byrd.

3 The Chairman. We may lose our quorum.

4 Senator Long. We can do that before we report the
5 bill.

6 The Chairman. I promised Senator Matsunaga he
7 might discuss the matter. If we don't resolve it today, we can
8 put it at the top of the list for Monday or Tuesday.

9 Senator Matsunaga. Mr. Chairman, this is strictly
10 noncontroversial. The Treasury supports it. We have H.R.
11 7093. I introduced a similar bill in the Senate. This would
12 even be classified as technical. It pertains to the Virgin
13 Islands. The Virgin Islands have what we call a merit tax
14 code, exactly as the Federal, but then they were having some
15 problems because the withholding tax on passive income is
16 up to 30 percent. They are having some real problems getting
17 investors out there. Therefore, the House has passed a measure
18 reducing that to 10 percent and giving the local legislature
19 the authority to lower it.

20 The Chairman. Does Treasury support the amendment?

21 Mr. Champoton. Yes. This is part of a broader
22 problem we have worked with. We have worked with Representative
23 DeLugo from the Virgin Islands.

24 Under present law, because of the merit code which
25 has a lot of problems, this simply being one of them, the 30

1 percent withholding under U.S. law applicable to dividends
2 and interest paid from U.S. to foreigners is applicable on
3 amounts -- dividends and interest paid to U.S. investors who
4 make investments in the Virgin Islands. That is drying up
5 investment there. This would authorize the Virgin Islands
6 to reduce its own withholding. It is cost to the Virgin
7 Islands, not to the United States. Therefore, we have
8 supported this change.

9 Senator Matsunaga. I move it, Mr. Chairman.
10 I move that we report the bill out.

11 The Chairman. Without objection, the bill will be
12 reported.

13 Mr. Lighthizer. This is H.R. 7093, Mr. Chairman?

14 The Chairman. Yes.

15 We are not going to be able to complete action on
16 the House-passed bills. I know there are other Senators
17 not here now who may want to offer amendments to some of
18 those bills.

19 Senator Moynihan wanted to discuss something on
20 collectibles. Have you reached some agreement on IRAs?

21 Mr. Champoton. No, sir. We were going to meet with
22 Senator Moynihan. We have not done so yet.

23 The Chairman. You might do that now rather than
24 just bringing it up if there is no agreement. It will save
25 time.

R _____ O _____

1 I don't want to get into a difference of opinion with
2 any member of the committee, but there are a number of matters
3 pending. I am not sure how many we will be able to address
4 next week, but we are going to try to give the appropriate
5 notice because I know that is the best way to proceed. We
6 will list the House bills we have not disposed of, plus 2942.
7 I hope we might take action on those, if we can, early next
8 week.

9 There will be amendments. I know some members may
10 want to offer amendments because they were rejected as not
11 being technical in nature. I will ask the staff to check
12 with staff of the members to see if we protected everyone's
13 rights.

14 I assume Monday is a bad day for meeting.

15 How many will be here Monday?

16 We might check --

17 Mr. Lighthizer. We did check. Eleven indicated
18 they would be out of town on Monday, Senator. Eleven will
19 be out of town on Monday morning. Maybe in the afternoon --

20 The Chairman. Tuesday, Wednesday, and Thursday
21 mornings we have the flat rate tax hearings. We will try to
22 find some time where we can get some consent to meet in the
23 afternoon.

24 Senator Moynihan, I asked Secretary Champoton. He
25 said they had not yet had a chance to discuss or reach an

1 agreement --

2 Senator Moynihan. Mr. Chairman, may I ask a
3 question?

4 Mr. Secretary, Professor Ginsburg has been talking
5 with Mr. Glickman about this. They seem to have reached an
6 agreement but inasmuch as he is not here -- would we have
7 a chance next week sometime?

8 The Chairman. Yes. I asked Mr. Champoton if he
9 might meet with you right now.

10 Senator Moynihan. Fine.

11 The Chairman. We will stand in recess until we can
12 determine when we might have a quorum. We will give
13 appropriate notice.

14 (Whereupon, at 3:00 p.m., the committee recessed,
15 to reconvene at the call of the chair.)

16
17
18
19
20
21
22
23
24
25

