

MIKEW

ORIGINAL

STENOGRAPHIC MINUTES
UNREVISED AND UNEDITED
NOT FOR QUOTATION OR
REPLICATION

**HEARINGS
Before The**

COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

TUESDAY, SEPTEMBER 28, 1982

Court Reporting Services, Inc.
201 North Fairfax Street, #21
Alexandria, Virginia, 22314

EXECUTIVE SESSION

- - -

TUESDAY, SEPTEMBER 28, 1982

U.S. Senate

Committee on Finance

Washington, D.C.

The committee met, pursuant to notice, at 4:20 p.m., in room 2221, Dirksen Senate Office Building, Senator Bob Dole [chairman of the committee] presiding.

Present: Senators Dole, Danforth, Chafee, Wallop, Durenberger, Symms, Grassley, Long, Bentsen, Matsunaga, Moynihan, Baucus, and Bradley.

Staff present: Robert E. Lighthizer, chief counsel; Roderick DeArment, deputy chief counsel; Carolyn L. Weaver, professional staff member; Michael Stern, minority staff director; Mr. Hardee, minority professional staff member; Joseph Humphreys, minority professional staff member.

Also present: Senator Boschwitz.

Also present: David H. Brockway and Mark L. McConaghy, Joint Committee on Taxation; John B. Chapeton and David Glickman, Department of the Treasury; Stephen May, Department of Housing and Urban Development; Mr. Simmons.

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. I might just say, as a preliminary matter, we have a number of items on the agenda and I am not certain just how many we can dispose of.

I would like to bring up first the amendment with reference to social security disability payments. I understand the staff is on the way. We have been trying for a matter of months to work out some area of agreement as far as disability payments are concerned. We have had a meeting. A number of Senators met with Secretary Schweiker.

I have not discussed it with Senator Long in the last day or so, but we believe we have agreed to a couple of provisions that would be very helpful. There will be some cost attached but my view is that we should try to report the amendment agreed to and see if we can pass it in the Senate and quickly in the House.

Maybe while we are waiting for Carolyn, maybe, Buck, if you and Mark could -- it has been called to my attention, and I am not certain whether it is a technical amendment or not but I have asked my colleagues not to offer any amendments on the Technical Corrections Act that we have reported, which we hope to take up today or tomorrow. I would hope that we could refrain from offering amendments to that because in my view, every change there is technical in nature.

It has been called to my attention that maybe one

1 that should be considered, if not on that bill, on another
2 bill, is relating to safe-harbor leasing and bankruptcy as
3 it relates to airplanes. Does anybody understand that
4 amendment? Is there any cost associated with that amendment?

5 Mr. Chapeton. Mr. Chairman, as I understand the
6 amendment one of the transitional rules under the safe-harbor
7 leaving provisions of TEFRA as a practical matter will not
8 work for an airline that is doing a safe-harbor lease
9 transaction with its equipment, if there is the remote
10 possibility of bankruptcy and those airplanes might be used
11 abroad following the bankruptcy, because recapture would
12 occur. To attempt to protect against the recapture of the
13 tax benefits would, in effect, take all of the benefit out
14 of the transaction or reduce significantly the benefit.

15 Therefore, I think as a practical matter what it
16 means is that that transition is not working with that threat
17 of bankruptcy.

18 The Chairman. However, can the administration
19 take care of this problem by regulation?

20 Mr. Chapeton. No. We looked at that. We could
21 not take care of it by regulation. It is simply that the
22 ultimate rule violated is the rule that equipment used abroad
23 triggers recapture of the credit, and so I would appreciate --

24 The Chairman. Would the administration support
25 a technical amendment that would solve that apparent problem?

1 Mr. Chapeton. I think this is one of a number
2 of transitional rules in the safe-harbor lease provisions.
3 I think we cannot object to a provision which would make
4 that work. Without reexamining the basic substance of the
5 safe-harbor lease provisions, it is clear that the intent
6 for this taxpayer was not carried out.

7 The Chairman. Is that the conclusion reached by
8 the Joint Committee?

9 Mr. McConaghy. I think, Mr. Chairman, that it
10 does not work in the case where clearly there is a bankruptcy
11 and that equipment is sold to a foreign purchaser, because
12 we only allow that -- it is tied into the equipment that
13 gets credit, and that is basically domestic use, so it would
14 require the legislative change.

15 The Chairman. Is there language drafted that would
16 take care of that problem?

17 Mr. Chapeton. I have seen language. We really
18 have not looked at it that closely yet.

19 The Chairman. Well, we cannot act on amendments
20 without -- what, seven or six?

21 Mr. Lighthizer. Seven.

22 The Chairman. That may be one we might wish to
23 consider.

24 As I understand now, the bill related to the Virgin
25 Islands has not been reported. Is that correct?

1 Mr. Lighthizer. That is correct, Mr. Chairman.

2 The Chairman. Therefore, we could offer a technical
3 amendment to that.

4 Senator Bentsen, do you have a matter you think
5 may be --

6 Senator Bentsen. I have a minor one here that
7 I touched on once before, Mr. Chairman, and that is one
8 concerning the Permanent University Fund, that it not be
9 put in the position of an arbitrage fund because this is
10 a situation where you have had a permanent fund over many,
11 many years, and they cannot invade the corpus. The bonds
12 that are issued have to be paid out of the income itself,
13 and I have language here that would separate that from being
14 classified as an arbitrage fund.

15 Mr. Chapeton. Senator Bentsen, we have looked
16 at that . My people have been in touch with the Internal
17 Revenue Service office that has considered the question for
18 the specific case involved. This, I believe I am correct
19 in saying, this grows out of the public ruling, the Service
20 issue involving a particular State where a new fund was
21 created and that fund was used for clearly arbitrage purposes.

22 Senator Bentsen. That is right. You are correct.

23 Mr. Chapeton. That ruling covered those specific
24 facts. It was not intended to and did not cover the University
25 of Texas' permanent fund or the other States that have similar

1 funds, and I think the concern -- I believe it would be far
2 better if we could work that one out administratively, than
3 having legislation covering on of the funds, because that
4 will give the clear implication that absent the legislation,
5 the funds of the other States are in jeopardy.

6 I think, without absolutely committing, I think
7 it is clear that there was no intent by that ruling to
8 jeopardize those arrangements. I believe that will be the
9 result administratively. Simply to go back and now hold bonds
10 issued with respect to those funds as arbitrage bonds, seems
11 to me inconsistent with longstanding practice. Therefore,
12 I would prefer that we not have legislation dealing with
13 that particular fund, and see if it cannot be worked out
14 administratively, and I think it can be.

15 Senator Bentsen. Mr. Chairman, I will give in
16 to the judgment of the Assistant Secretary as long as I have
17 a commitment of a good faith effort to try to accomplish
18 that objective because, as he has stated, it certainly was
19 not the intent in that ruling, in my opinion, to include
20 permanent funds such as this.

21 Mr. Chapeton. No, that is correct. It was not
22 the intent in that ruling. At some point we may have to
23 draw a line that will be difficult, and indeed at some point
24 we may be back before the committee on where that line is
25 drawn. I do not think this will be the case.

1 Senator Bentsen. I am not quite sure what that
2 "at some time" means but I will back his judgment and his
3 good faith --

4 Mr. Chapeton. I mean, there are other arrangements
5 beyond this one that we will be drawing a line, and on the
6 other side of the line they will be arbitrage bonds.

7 Senator Bentsen. The problem we have, Mr. Secretary,
8 is that we have an issue --

9 Mr. Chapeton. I know that.

10 Senator Bentsen. -- as I understand it, and so
11 it does --

12 The Chairman. Do you think you can accommodate
13 the time frame?

14 Mr. Chapeton. I think we can. I cannot guarantee
15 it. I believe it is possible.

16 The Chairman. However, you would rather do it
17 administratively.

18 Mr. Chapeton. I think it would be far better.
19 I think we give a wrong implication if we do it by legislation.
20 I think we then are clearly saying that the similar funds
21 are created differently, because the legislation would cover
22 only that point.

23 Senator Bentsen. All right, Mr. Secretary.

24 The Chairman. I wonder if we might return to the
25 social security disability payments? Carolyn, do you want

1 to explain what we are focusing on? I know Senator Long
2 has an interest in this, so I will not want to do anything
3 until he arrives.

4 As I understand the proposal that we will consider
5 today, if in fact we have enough people here to consider
6 anything, it would deal with two frequently mentioned
7 problems associated with the continuing disability
8 investigation process mandated by the social security
9 disability amendments of 1980: the lack of benefits during
10 the appeals process and the rate at which States must review
11 beneficiaries. There are four provisions, two of which are
12 contained in S. 2942 as introduced by Senator Cohen, and
13 the provisions are fully described in the material that has
14 now been made available to other members.

15 I would ask, Ms. Weaver, if you could quickly review
16 not only the provisions but also the cost and whether or
17 not -- well, let's go that far.

18 Ms. Weaver. There are four social security
19 disability insurance provisions described in the handout
20 which each of you have by now. They are, in effect, modifying
21 the continuing disability investigations process mandated
22 in the 1980 amendments, and/or at least they are pertaining
23 to that provision in the 1980 amendments.

24 Two of the provisions described, items one and
25 two, are taken almost directly out of S. 2942 which was

1 introduced by Senator Cohen, with some modification, and
2 then two other items have been added in the list, items three
3 and four. The first provision would continue DI benefits
4 and Medicare coverage at the individual's option through
5 the administrative law judge hearing decision for individuals
6 who are terminated by the State agency and then pursue an
7 appeal before the administrative law judge. If the
8 administrative law judge upholds the initial denial, those
9 payments would be subject to recovery of overpayment unless
10 the Secretary, for example, were to determine that the
11 individual was without fault in seeking the appeal and would
12 suffer undue financial hardship by repaying those payments.

13 The amendment would be effective on enactment and
14 would apply to any new State terminations of benefits before
15 December, 1983. No payments would be made through the ALJ
16 decision after October, 1984.

17 The first-year cost is \$195 million, and because
18 it is sunsetted and people begin paying back their overpayments,
19 the cost falls to \$40 million, \$25 million, and \$10 million
20 in the following 3 Fiscal Years.

21 The Chairman. Does the administration support
22 that provision?

23 Mr. Simmons. We have a problem with it, sir. As
24 you know, we had hoped that after all of the work we have
25 done up here on both sides of the Hill that we would have

1 had much more basic reform of the system in this legislation,
2 and I can understand the genesis of this. However, we were
3 hoping that the committee would be taking up provisions of
4 the so-called Pickle-Archer bill, which is over in the House
5 Ways and Means Committee. Among other things, it would give
6 us the power to do face-to-face reconsideration hearings
7 at the first level, and I think probably half the problems
8 that we have all seen in this program would evaporate if
9 we could do this. We are disappointed that we do not have
10 this, and we hope that both sides of the Hill will take this
11 up immediately, at the next opportunity.

12 The Chairman. Now how long would this first provision
13 be operative?

14 Ms. Weaver. For individuals who are terminated
15 by a State agency, through the end of 1983, but it would
16 sunset in 1984.

17 The Chairman. Sunset when?

18 Ms. Weaver. In January 1, 1984 it would no longer
19 apply to new termination cases. In the event you were somebody
20 who was terminated by a State agency, say, in December of
21 next year, then you could continue receiving payments through
22 the ALJ, assuming that your ALJ hearing was held by October
23 of 1984.

24 The Chairman. I only asked that question because,
25 as the administration representatives know, there were a

1 matters suggested and we tried to reduce those to the bare
2 minimum and also sunset those provisions so that you would
3 have some incentive, at least a year, to try to work out
4 many of the good provisions contained in the Pickle-Archer
5 bill.

6 Mr. Simmons. It will be helpful to have the deadline.

7 The Chairman. I know Senator Long has an interest
8 in this legislation.

9 Senator Long. First, let me see if we can get
10 this clear. What we are talking about here results from
11 legislation recommended by this committee to tighten up on
12 these disability rolls, to try to limit this not to people
13 who are handicapped but to people who are disabled. Is that
14 correct?

15 Mr. Simmons. The original legislation was to make
16 sure that all of those on the rolls did meet the statutory
17 definition, which is very strict.

18 Senator Long. Now here is the way I recall this
19 situation: I was on the committee at the time, and we
20 persuaded Mr. Walter George to be the principal sponsor,
21 and some of us joined him as cosponsors, to include disability
22 under social security. He made a speech at that time explaining
23 what that thing should cost, and since that date the number
24 of people we have on the rolls as disabled increased to where
25 it was about four times as many people as we estimated were

1 going to be on the rolls. Is that the way you recall it?

2 Mr. Simmons. Yes, sir.

3 Senator Long. Therefore, this program was running
4 out of bounds and in very bad shape. Now I guess one reason
5 we had so many people listed as disabled was because we did
6 not have an adequate program for handicapped. If we had
7 enough incentive and we could provide enough job opportunities
8 for handicapped people, we would not have all these people
9 on the rolls as disabled, and I think that that is the answer,
10 to move for a more effective program for handicapped people.

11 However, when we got to where we had four times
12 as many people on the rolls as we ever estimated were going
13 to be there, then as I recall it we passed a resolution calling
14 upon -- we passed a bill calling upon the administration
15 to review these cases and to take action where these cases
16 were not properly on those rolls of disabled. Is that correct?

17 Mr. Simmons. That is correct, sir.

18 Senator Long. All right. Since that time you
19 have reduced the roll down some. I think we probably have
20 now about three times as many people as we thought we were
21 going to have, so you have really done a great job. Out
22 of the number of people who did not belong on the rolls in
23 the first place, it seems to me, you have reduced them by
24 about one-third.

25 Now, furthermore, when we asked you to review these

1 rolls, my understanding is that about 47 percent of all the
2 cases that you examined were found to be ineligible.

3 Mr. Simmons. That is in the very early part of
4 the review. We are targeting the reviews at those most likely
5 to be found ineligible. We think over time the percentage
6 will drop down to around 25 percent. It will be in that
7 range. That is a range that the GAO seems to agree with,
8 also. It is the very early cases, the first ones we looked
9 at, which were the ones most likely to be not eligible.

10 Senator Long. Well, I have had young housewives
11 tell me at Baton Rouge that they had tried to get domestic
12 help, and practically anybody who showed up to apply for
13 the job had been put on the rolls as disabled. The proposition
14 usually was, "Well, now, I am willing to work for you but
15 it will have to be strictly on the Q.T., no records kept,"
16 you know, strictly for cash, no records kept.

17 I personally have become aware of a great number
18 of cases on these rolls where they were never intended to
19 be there. Now we are told that we ought to keep these people
20 on the rolls during the appeal because there is such a high
21 degree of reversal. Would you mind explaining that to me?
22 Was it not that for quite a while the people hearing the
23 appeals were going by a different standard than the ones
24 who were judging those people, whether they should be on
25 the rolls or not?

1 Mr. Simmons. That is correct, sir. That is one
2 of the continuing problems in the program, is that there
3 has grown up over the years two sets of rules, in effect,
4 by which different actors play. One of the advantages of
5 the Pickle bill that is now sitting in the Ways and Means
6 Committee would be that it would unify those standards.

7 We are trying to do that by administrative action.
8 It would help to have legislative action to do it, and we
9 hope to see that in the law very soon.

10 Senator Long. Well, now, I would assume that I
11 want to help you with that because there should be one
12 standard. Now which do you think is the standard that is
13 more what Congress intended, the one that those examiners
14 have been using or the one that those appellate people have
15 been using?

16 Mr. Simmons. Well, we think that there is a much
17 better balance to be struck, and we think that the balance
18 is on the side of the standard that the agency has been using
19 for the past 26 years. This other problem has grown up over
20 time; it has evolved over time. I think we have it on the
21 reverse now but it is a problem and it has been a problem.
22 It is a problem with public confidence in the system, and
23 it is a problem with people in the system who do not know
24 what rules they are being judged by at any one time.

25 Senator Long. Now if we are going to continue

1 to pay these people while those cases are on appeal, isn't
2 that likely to encourage the number of appeals that will
3 be made from the examiners?

4 Mr. Simmons. We think it will have that effect,
5 unfortunately, and we also think that it is going to be very
6 difficult to collect back money from those who ultimately
7 are not reversed on appeal.

8 Senator Long. What is your estimate as to the
9 percentage that you would be able to collect the back money
10 from?

11 Mr. Simmons. Well, I think the assumptions that
12 you have before you, the \$195 million cost assumes that we
13 will collect about half of the money back from those who
14 are ultimately found not to be eligible. That may be an
15 optimistic estimate. It may cost a little more than the
16 \$195 million but we just do not know.

17 Senator Long. I doubt you are going to collect
18 that much. Aren't most of these people who are on those
19 rolls unemployed otherwise?

20 Mr. Simmons. They may well be. Some of them may
21 be employed. Some of them may, in that time, find work.
22 Those are the ones that we are hoping to collect the money
23 back from.

24 Senator Long. Well, these people are supposed
25 to be totally and permanently disabled. I am familiar with

1 situations where a person is on the disability roll and I
2 would try to get them to do something. I could not get the
3 fellow to do it because if he did something which he was
4 capable of doing, it would embarrass the guy that put him
5 on the rolls.

6 Therefore, those who are on the rolls are usually
7 on there because they have gone to considerable pain -- I
8 am talking about people who are on the rolls and should not
9 be there --

10 Mr. Simmons. Right.

11 Senator Long. -- they are there because they have
12 gone to considerable pain to convince both themselves and
13 anybody else who would listen to them that they are disabled.
14 Now against those circumstances, it would seem to me that
15 you are being very optimistic to assume that you continue
16 these payments during the appeal. Mind you, that is after
17 the person who examined them felt that they were not supposed
18 to be there. Now if you continue these payments during the
19 appeal, I think you are very optimistic to assume you are
20 going to get half that money back.

21 Mr. Simmons. It may well be. It may well be.

22 I stand corrected. The \$195 million figure assumes
23 that we collect something on the order of one-third, not
24 one-half. I misspoke myself. It is one-third of the benefits.

25 Senator Long. Well, now, that is more like it,

1 and I think you are being optimistic at one-third, because
2 you are talking about people who have gone out here and
3 persuaded everybody that they are disabled. In order to
4 persuade the folks that you cannot do anything, you have
5 to not do anything, unless maybe play golf or go fishing
6 or something like that.

7 Therefore, it would seem to me that if we are going
8 to continue these payments during the appeal, you are just
9 asking for a lot of appeals that should never have been made.

10 Mr. Simmons. We agree with that. We had supported
11 a provision in the House bill which would have paid benefits
12 for up to 6 months after cessation but would have strengthened
13 the first review process and one it within that 6-month time,
14 so that the person who is taken off the rolls would have
15 an appeal, face-to-face, to a decisionmaker very shortly
16 after the first decision.

17 The way it works now, it is done on paper. The
18 reconsideration is done on paper, and the first time you
19 really see anybody is the ALJ which may be 6 months after
20 that. We had supported a provision that would have paid
21 benefits for four more months than is now paid, but it also
22 would have vastly strengthened that review process. That
23 is what we are hoping will pass shortly in the new Congress.

24 This provision is sunsetted, so that this would
25 be less onerous than it appears to be now. We still do not

1 like it but we do recognize what has happened here and we
 2 just cannot expect action this fall on the Pickle-Archer
 3 bill.

4 Senator Long. Let me ask you, do you favor this
 5 bill or don't you favor it?

6 Mr. Simmons. No, sir, we do not favor it.

7 Senator Long. Thank you.

8 Thank you, Mr. Chairman.

9 The Chairman. Now you were going to move on number
 10 two. I think you can move on the other three very quickly.

11 Ms. Weaver. Item two, the second provision, would
 12 provide the Secretary of Health and Human Services the
 13 authority to slow, on a state-by-state basis, the flow of
 14 cases sent to States for these reviews of continuing
 15 eligibility. The Secretary would be entrusted in the
 16 legislation to take into account State workload and staffing
 17 requirements, but would be authorized to slow the review
 18 only in States that demonstrated a good faith effort to meet
 19 their staffing requirements and to process reviews in a timely
 20 fashion. This provision would be effective on enactment.

21 The third provision would simply require that the
 22 Secretary, in reviewing continued beneficiaries subject to
 23 the continuing eligibility review, attempt to seek and obtain
 24 all relevant medical evidence within the 12-month proceeding,
 25 the review. This is currently a practice that has been

1 initiated administratively, and would put the practice into
2 law.

3 Item four is simply a reporting requirement, to
4 request that the Secretary report to Congress semiannually
5 on the number of terminations, the number of appeals requests,
6 and the number of reversals at the stage of appeal.

7 The Chairman. Are there any other questions on
8 this provision, this amendment? Are there any questions
9 on this amendment?

10 [No response.]

11 The Chairman. We do not have a quorum here to
12 act on the amendment.

13 Senator Grassley. Therefore, we are going ahead
14 with provision number one, then, the way it was introduced,
15 regardless of the points that the Senator from Louisiana
16 made?

17 The Chairman. Well, we have not agreed to do
18 anything. What we have done over the past several weeks
19 in meetings with a number of interested Senators and Senator
20 Armstrong, who is chairman of that subcommittee, members
21 on both sides, particularly Senator Cohen and Senator Levin,
22 as well as Senator Heinz, Senator Metzenbaum, and others,
23 we tried to figure out something we might do because there
24 are some areas that should be corrected. Now whether number
25 one goes too far, I think that is a matter of judgment.

1 I agree with the administration. If there was
2 a preference, and we had the Archer-Pickle bill or parts
3 of that plus other changes, that might be the best way to
4 go. However, I would suggest we are in the last three or
5 four days of the preelection session, and I do not expect
6 much to happen after the election. I may be mistaken as
7 far as the reform package.

8 Therefore, what we had hoped to do is to satisfy
9 the real concerns and, I think, the just concerns expressed
10 by Senator Long and by some in the administration, by sunsetting
11 that first provision after 12 months. It is a costly item
12 but that would still provide some incentive, leverage, or
13 whatever to make the other change the administration feels
14 must be made. I assume we could shorten -- could you shorten
15 that period more?

16 Ms. Weaver. The provision could have provided
17 benefits, say, through October 1, or on enactment through
18 October of 1983, which would be consistent with what the
19 administration would like to see where you strengthen the
20 reconsideration process effective October 1983, "strengthen"
21 meaning introducing some type of face-to-face hearing at
22 the reconsideration stage, at the State agency stage, prior
23 to the administrative law judge hearing.

24 They would also recommend closing the record, so
25 that new medical evidence is not introduced at the ALJ stage,

R _____ O _____

1 as a way of improving the decisions made at the State when
2 a decision is reconsidered.

3 Senator Long. Let me ask a question. I am thinking
4 of this as a possible compromise if it appeals to the
5 administration: Would you prefer to have it, if we are going
6 to do anything, that all cases where these people are taken
7 off the rolls that you simply continue the payments by, say,
8 a month or 60 days after a decision is made, and simply treat
9 them all the same so that those who appeal will get the same
10 break as those who do not appeal?

11 Mr. Simmons. We do now pay 2 months after the
12 date of cessation.

13 Senator Long. Oh, you do that now?

14 Mr. Simmons. We do that now. That is in present
15 law. Apparently that grew up in a humanitarian tradition,
16 and also it grew up in the fact that our system is such that
17 we cannot turn benefits off for 2 months after we do something
18 so that we have that problem. That is a continuing problem,
19 as you know, in our computer system which we inherited.

20 However, I do not think to do a gratuitous benefit
21 for a certain number of months, just for the sake of a certain
22 number of months, I do not think that we could support that
23 either.

24 Senator Long. However, as of right now they are
25 continued, they get the payments for 60 days after they are --

1 Mr. Simmons. Sixty days, that is right, but that
2 is after the first discontinuance. If they are reinstated
3 by an ALJ, by an administrative law judge 6 months down,
4 then they get a 6-month retroactive check.

5 Senator Long. Let me ask you, is there something
6 that we could do to try to make -- to try to hasten those
7 decisions? Did you have a suggestion to make, Mr. Chairman?

8 The Chairman. Did you indicate, Carolyn, that
9 we could sunset those provisions at the ALJ level?

10 Ms. Weaver. Our recommendation would simply be
11 to make this effective from October 1 or the date of enactment
12 through October of 1983, at which point have the administration
13 step in with a new administrative procedure for the State
14 reconsideration process. The first stage of appeal when
15 an individual is terminated by a State agency, he asks the
16 State agency to reconsider that case. If he is denied again
17 he may request an appeal before an administrative law judge.

18 The administration believes we would dramatically
19 cut down on that ALJ reversal rate if you much improved the
20 reconsideration process.

21 Mr. Simmons. Our plan, assuming that some version
22 of the Pickle legislation passed or something equivalent
23 to it, would be to have in place by next October 1 this
24 strengthened reconsideration process.

25 The Chairman. However, if you sunsetted the payments

R _____ O _____
1 at that point there would be some reason to do that. Right?

2 Mr. Simmons. At that point we would hope that
3 as a companion to that there would be a new provision in
4 the law that would say that the reconsideration process could
5 be as long as 180 days, and you would be paid benefits for
6 those 6 months as opposed to the 60 days that you now receive
7 benefits.

8 Senator Long. Rather than sunseting it October
9 1, why couldn't we move that forward by 3 months? What would
10 that be?

11 Mr. Simmons. By 1 July.

12 Senator Long. Why not make it July 1.

13 The Chairman. Would that work, Joe? July 1?

14 Mr. Humphreys. That would be 3 months less --
15 yes, 6 months less than the original proposal.

16 The Chairman. My own view is, unless it is something
17 that we can have total agreement on there will be nothing,
18 and I think there are some cases that should be addressed.
19 I am not certain the administration would support even that
20 much, or what the House attitude is. Congressman Pickle
21 has been trying to reach me by telephone but I have not been
22 in the office today.

23 Mr. Simmons. He is very anxious, I know, he and
24 Congressman Archer, to see a version of their bill passed.
25 They spent an entire winter on it, several markup sessions,

1 and we thought we had pretty good consensus on it and then
2 it got bottled up for reasons that are obscure.

3 Senator Long. Now, Mr. Simmons, do you favor what
4 they are trying to do over there?

5 Mr. Simmons. Oh, yes, sir. Most elements of that
6 bill we do favor. We have a whole bunch of administrative
7 reforms that we have done, and we needed a couple of key
8 pieces of legislation and they are in that bill. It is good
9 policy and I think it would go far towards eliminating the
10 kinds of horror stories that we are seeing and still preserving
11 the integrity of the program.

12 Senator Long. The thing that bothers me is, I
13 do not want to pass something that is going to give those
14 who want to keep more and more people on the rolls an incentive
15 not to pass the kind of bill Mr. Pickle is trying to pass
16 over there.

17 Mr. Simmons. Well, if you were to shorten the
18 period of payments through ALJ then that would obviously
19 accelerate the deadline and the sense of urgency about this
20 matter, and I think it might be salutary.

21 The Chairman. Would you support, then, if it were
22 sunset on July 1, would the administration support that?

23 Mr. Simmons. We would support putting the sunset
24 on July 1 and we would be much less opposed to the idea of
25 doing this kind of a stopgap thing now, but I could not tell

1 you that someone will come up and endorse it.

2 The Chairman. No, but my point is, if the
3 administration is going to oppose it, it just takes one
4 Senator at this point to lock it up. I mean, at this stage
5 of the session it will not take any genius to delay action
6 on any amendment or any proposal.

7 Therefore, you would not be up here actively opposing
8 such an arrangement?

9 Mr. Simmons. No, sir, we would not come up and
10 actively oppose it.

11 The Chairman. Well, if we had a couple more
12 Senators we could vote.

13 Carolyn, that does not cause any problem; you just
14 shorten the period.

15 Ms. Weaver. It is just simply shortening. You
16 know, it can be reauthorized at a later point or you can
17 take a more --

18 The Chairman. Provisions two, three, and four
19 would remain the same, and there is no objection to those
20 provisions from the administration.

21 All right. Does that satisfy you, Senator Long?

22 Senator Long. Well, I would be willing to do that
23 in the spirit of compromise at this point. I would like
24 to reserve judgment, Mr. Chairman, to see what we have after
25 it has been reported but I think that would improve the bill.

1 Senator Moynihan. Mr. Chairman?

2 The Chairman. Senator Moynihan.

3 Senator Moynihan. I am sorry; I was on the floor.

4 What would be the adjustment in the first provision?

5 The Chairman. Instead of sunseting December 31,

6 it would sunset July 1. Is that correct?

7 Ms. Weaver. Yes.

8 The Chairman. However, the sun may never come

9 up if two more people do not show up here.

10 Senator Long. The logic of that, Pat, is we would

11 like for the House to act on their bill and send it on over

12 here.

13 Mr. Simmons. One thing I would like to add, Senator

14 -- I should not have skipped over the second section so

15 hastily -- there is one provision here that sort of appears

16 to be a slowdown in the 3-year timetable that the 1980

17 amendments put us on. In effect, it gives to the Secretary

18 a budgetary decision that should have been made in the Congress

19 and was made in the original statute. I would like to point

20 that out. I can understand the concern that led to this

21 provision.

22 What it says is that the Secretary at his discretion

23 may violate the 3-year timetable that was set in the 1980

24 amendments. We think if the Congress wanted to change the

25 timetable, then it would be more logically done in the law

1 and, say, do it in 4 years or do it in 5 years. Don't try
2 to do it in 3 years. What this says is that the entire
3 decision will rest with the Secretary on whether or not to
4 change congressional intent.

5 I do not think the problem is going to be that
6 serious because I think the States can do the work, but that
7 is a consideration. I just wanted to be on the record as
8 pointing that out.

9 The Chairman. Well, we now have an adequate number,
10 a sufficient number of Senators to act on the amendment.
11 Is there any objection to the amendment as modified?

12 [No response.]

13 The Chairman. If not, the amendment is agreed
14 to. Mr. Lighthizer, agreed to as modified, so it will sunset
15 after 6 months. We will note your comments with reference
16 to section 2.

17 Mr. Lighthizer, now as I understand the Technical
18 Correction Act has been reported. What else do we have that
19 has not yet been reported?

20 Mr. Lighthizer. Well, the Virgin Islands bill,
21 H.R. 7093, was ordered reported but has not been reported,
22 and you can add this --

23 The Chairman. Well, because we did not have 11
24 people. We only had --

25 Mr. Lighthizer. You could add this as an amendment

1 to that or the California Utilities bill, another bill that
2 was ordered reported but has not been reported, that you
3 could add this amendment to.

4 The Chairman. Would the Senator from Hawaii object
5 to our adding this amendment -- there is a lot of support
6 for this amendment -- to the Virgin Islands proposal?

7 Senator Matsunaga. Would that make it controversial?
8 That is my fear.

9 The Chairman. Well, I do not think it would change
10 the status of it much, and it seems to me this might give
11 it some strength.

12 Senator Matsunaga. I have no objection.

13 The Chairman. Without objection, then, we will
14 amend that bill to include this provision. I think we were
15 short in the requisite number of Senators to report that
16 bill. Is that correct?

17 Mr. Lighthizer. Yes, sir. That is correct.

18 Mr. Stern. Mr. Chairman, may I raise a question?
19 When you say that you would have a cutoff on July 1, I assume
20 that to mean that no payments would be made after July 1;
21 even if a person started receiving payments under this new
22 provision, he would be cut off in any case on July 1, 1983?

23 The Chairman. That is my understanding. Is that --

24 Ms. Weaver. Yes, that is my understanding.

25 The Chairman. Is that the understanding of the

1 administration?

2 Then I wonder if the committee might authorize
3 the chairman to offer a committee amendment to take care
4 of the technical problem just referred to with reference
5 to safe-harbor leasing?

6 I think we are through with this one, Carolyn.
7 Maybe we will get Mr. Chapeon back here.

8 Mr. Lighthizer. Is that amendment to the Technical
9 Corrections Act?

10 The Chairman. How many does it take to authorize
11 that, 11?

12 Mr. Lighthizer. Eleven. The committee could make
13 the decision. You have a sufficient quorum to make the
14 decision.

15 The Chairman. All right. Run through that amendment
16 very quickly, Bob. Just give us the highlights of that
17 technical amendment.

18 Mr. Lighthizer. That amendment, Mr. Chairman,
19 would provide that in those cases that are covered, those
20 airplanes that are covered by the Gorton amendment on the
21 floor which provides that certain airplanes that were in
22 a period of being constructed could still be safe-harbor
23 leased, the transition rule for airlines, that in those cases
24 those airplanes could be sold outside of the country in case
25 of bankruptcy without having a recapture to the lessor, just

1 with respect to those airplanes covered by the Gorton amendment.

2 It was a technical error, in that the way the law
3 worked in bankruptcy cases, you would have recapture and
4 as a result, none of those people could use the benefit of
5 the Gorton amendment.

6 The Chairman. As I understand, the administration
7 would not oppose that technical change?

8 Mr. Chapeton. Well, I think we would interpose
9 no objection, in that it is designed to make that amendment --

10 The Chairman. In other words, the amendment was
11 adopted, the amendment was agreed to that was offered by
12 Senator Gorton --

13 Mr. Chapeton. That is correct.

14 The Chairman. -- but it is not operative unless
15 we make a technical change, as I understand it.

16 Mr. Chapeton. That is correct. I would prefer
17 not to be in the position of reviewing the pros and cons
18 of that amendment in this connection, but it is clear this
19 is needed to make it work.

20 The Chairman. Are there any questions with reference
21 to that amendment? We might agree to the amendment, and
22 then if we get a quorum we can agree to --

23 Senator Long. Mr. Chairman, the minority staff
24 says they need some time. They do not need much time but
25 they need a little time to study this matter, and I would

1 ask that they have it to focus on this.

2 The Chairman. Yes. David, if you could look at
3 it fairly --

4 Senator Long. I assume that that would not keep
5 us from acting in this session, if they end this session
6 today here, would it?

7 The Chairman. No. I think it can be discussed.

8 Senator Long. I would like to ask the minority
9 staff --

10 Mr. Hardee. Mr. Belas and Mr. Wilkins are going
11 over it in the back.

12 Senator Long. Okay. Good.

13 The Chairman. What is next on the agenda? I think
14 we can probably sail through these others quickly.

15 Mark, the tax treatment of property received as
16 compensation, that is a House bill, of course. Is that
17 supported by Treasury? Have we had hearings on it?

18 Mr. Lighthizer. We have had no hearings in the
19 Finance Committee on it.

20 Mr. McConaghy. I am not sure of the amendment.
21 I am sorry, Mr. Chairman. Which one --

22 Mr. Lighthizer. Number two, tax treatment of
23 property received as compensation, I believe is the one,
24 H.R. 4577. We have not had hearings.

25 Senator Bentsen. Mr. Chairman, when that is brought

1 up, I will have an amendment to attach to it, the legislation
2 I had for the exemption of the disposal of an asset of a
3 foundation. We have had hearings on that. That is the
4 Houston Chronicle, plus Senator Boren's, and I am so advised
5 Senator Armstrong would want his and Senator Durenberger,
6 I would assume, would want it. However, all of those were
7 passed by this committee and passed by the Senate and were
8 dropped in the conference. I would be urging those to be
9 adopted.

10 The Chairman. Again, as I recall the conference
11 on the TEFRA, it was announced by the House conferees that
12 they would consider basic changes in the foundation area
13 some time next year, and the result was they rejected the
14 four foundation amendments. They would not recede to the
15 four foundation amendments that were in the Senate-passed
16 bill. Is that correct?

17 Mr. McConaghy. That is correct, Mr. Chairman.
18 There were a number in there, and I think they rejected them,
19 wanting to hold hearings.

20 The Chairman. As I pointed out during that
21 conference, these amendments were discussed, we had record
22 votes. I think the vote in at least two cases was 20 to
23 0. I cannot recall now what the particular problem was in
24 the conference. I think it is because they did not have
25 any foundation amendments. Do you recall, Mark? Was it

1 substance, or just the fact they did not want to get into
2 the foundation area at that time.

3 Mr. McConaghy. I think, Mr. Chairman, that a number
4 of those amendments either -- one of them delayed the effective
5 date of the requirement to dispose of excess business holdings.
6 Another one exempted the foundation from having to dispose.
7 Another one exempted it from the provision to dispose of
8 excess business holdings and the payout rule, and another
9 amendment exempted the organization from the definition of
10 a private foundation, so there were different treatments
11 for each of the foundations, and I think they felt that they
12 wanted to hold hearings on the subject itself to see whether
13 that provision should be modified at all. Whatever rule
14 they came up with, I think they wanted to apply it to most
15 of the foundations in general.

16 Senator Bentsen. Mr. Chairman, we had hearings
17 on this, and in my particular amendment, that is one to try
18 to keep independent ownership of a newspaper in its home
19 town. It meant no loss of revenue to Treasury. It was a
20 situation where the corporation would have continued to pay
21 a tax and, in addition to that, the foundation would have
22 paid whatever taxes it might normally have accruing to it.

23 We sat there in that conference and took things
24 totally out of the scope of the conference, things that had
25 never had public hearings on the House side, and I want to

1 press and see that this is attached, this amendment.

2 The Chairman. All right. Mark, did you explain
3 the amendment itself, the tax treatment of property received
4 as compensation?

5 Mr. McConaghy. Yes. This, Mr. Chairman, was one
6 that was dealt with in TEFRA with respect to the prospective
7 rule -- in ERTA, I am sorry. The present rule is that if
8 I have restricted stock, I have to include as an employee
9 the fair market value of that transferred property that I
10 get, even though I cannot sell it, for instance, because
11 of the restriction being an insider trading rule for the
12 SEC.

13 The rule that we adopted in ERTA as to the future
14 was not to require the employee to include that amount in
15 income at the time he receives the transferred property,
16 but to require that it be included after those restrictions
17 lapse. That was the 6-month period under that Securities
18 and Exchange rule under section 16(b). The employer's
19 deduction is correspondingly delayed.

20 That rule only applied prospectively. There was
21 or at least is a case that we do know about, and this bill
22 is directed towards that case, where there was a transfer
23 of property during really an acquisition and the shareholders,
24 the employees in this case, included the value in income
25 at the time they got the restriction. They could not sell

1 it under the Securities and Exchange 16(b) rule. The stock
2 went down during that period of time. They then turned around
3 and sold it at a loss but, because of the existing rules,
4 they had to take an amount into income at the fair market
5 value at the date of the transfer of the property.

6 This is intended to correct that retroactively.
7 The beneficiaries are three people, the Franzia brothers,
8 who were involved in that transaction.

9 The Chairman. I think we have Senator Durenberger
10 on his way. Maybe we could move on.

11 Senator Moynihan. Mr. Chairman?

12 The Chairman. Senator Moynihan.

13 Senator Moynihan. Before we move on, I wonder
14 if I could ask -- there is in New York State a similar
15 situation. The B. Altman Foundation operates the B. Altman
16 department store. All the profits go to charitable purposes.
17 I wonder if I could add that to the list of foundations that
18 Senator Bentsen has.

19 The Chairman. I think there are about five or
20 six of these. If we are going to do one then I would assume
21 we would do all but I would not want to hold my breath until
22 it passed.

23 Senator Moynihan. Thank you, Mr. Chairman.

24 The Chairman. In fact, that one was discussed,
25 as I recall, in the conference with Congressman Rangel a

1 time or two. Senator Boren is not here today because of
2 illness in the family, and he has the Sand Springs Foundation.
3 Are you familiar with that?

4 Mr. McConaghy. Yes, Mr. Chairman. There was that
5 one, and I think there was one in Minnesota, there was one
6 in Colorado --

7 The Chairman. One in California.

8 Mr. McConaghy. -- there was one in Connecticut,
9 one in California, the one in New York that Senator Moynihan
10 brought up, and the one in Texas.

11 The Chairman. Well, is there any objection to
12 agreeing to these proposals? We have enough to do that.
13 We just cannot report out anything.

14 [No response.]

15 The Chairman. Therefore, without objection, we
16 will agree to the ones just mentioned by Mr. McConaghy, and
17 they will be added as an amendment to H.R. 4577.

18 Now can we go on to number three, Mark, the third
19 item on the agenda, money purchase plan revisions?

20 Mr. McConaghy. Mr. Chairman, yes. On money purchase
21 plans that bill is H.R. 4948, and this particular bill sent
22 over by the House really makes a change with respect to certain
23 kinds of salary reduction plans under a money purchase plan.
24 It makes a change similar to the rule that applies with
25 respect to salary reductions under qualified profit-sharing

1 or stock bonus plans.

2 What happened here is that we put some rules in
3 in 1974 and amended some rules of 1978 on what happens with
4 respect to salary reduction plans or cash and deferred plans.
5 They did not, when they extended the rules which permitted
6 those plans to continue, they did not extend the rules with
7 respect to money purchase pension plans. That is really
8 one where a tax-exempt organization is involved, because
9 obviously they cannot have a profit-sharing or stock bonus
10 plan. They do not have a profit, so they have money purchase
11 plans. That is their vehicle, and this bill is intended
12 to provide really the treatment that extends the rules that
13 we put in for the other plans to one of these money purchase
14 plans.

15 I think that there are a couple of things we would
16 call to the committee's attention that have been discussed
17 with all staffs. One is that the effective date really needs
18 to be moved one forward to years beginning after December
19 31, 1981, and the transitional rule of course then would
20 have to be fixed up and moved forward to close that gap.
21 I think that those changes certainly would be recommended
22 if the committee decided to act on this bill.

23 Senator Chafee. Mr. Chairman?

24 The Chairman. Senator Chafee.

25 Senator Chafee. This normally would have come

1 to the Subcommittee on Savings, Pension, and Investment Policy,
2 which it did not. I just do not know enough about it. Why
3 is it here now?

4 The Chairman. It is here because the House --
5 the Senate -- we have had no hearings and I would expect
6 we would take no action on this provision unless we stripped
7 off that provision and used the House number.

8 Does the administration support this?

9 Mr. Chapeton. Mr. Chairman, I am having a little
10 trouble recalling it but my notes say we did support this
11 bill on the House side. We testified and did support it.

12 Mr. McConaghy. Senator Chafee, I think this was
13 also reported by the Finance Committee as a bill or an amendment
14 that was sponsored by Senator Wallop in the previous, last
15 Congress.

16 Senator Chafee. In the what?

17 Mr. McConaghy. In the last Congress it was reported
18 favorably by the Senate Finance Committee, and I think at
19 that time Senator Wallop was the sponsor of that bill.

20 Senator Chafee. Well, I do not know enough about
21 it. I am not objecting. I just do not know enough about
22 it. You say it came out of the Finance Committee 2 years
23 ago?

24 Mr. McConaghy. In the previous Congress it was
25 ordered reported favorably by the Senate Finance Committee.

1 That is correct. At that time I guess it was rejected in
2 the conference because there were no House hearings, as I
3 am informed.

4 The Chairman. Therefore, the House has now had
5 hearings and the administration testified in support of this
6 measure?

7 Mr. Chapeton. That is correct. We were just looking
8 at our testimony. We did support it.

9 The Chairman. It has passed Finance? In fact,
10 it has passed the Senate. Is that correct?

11 Mr. McConaghy. That is correct, Mr. Chairman.

12 Senator Matsunaga. Mr. Chairman, is there any
13 difference from what the Senate passed the last time?

14 The Chairman. Is this any different, Mark?

15 Mr. McConaghy. The effective date is different,
16 Senator Matsunaga, and that would be that it is one year
17 later because we are operating one year later.

18 Senator Matsunaga. However, otherwise it is similar
19 to the measure passed by the Senate?

20 Mr. McConaghy. That is correct.

21 The Chairman. Is there any objection to this
22 proposal? Are there any amendments to this proposal?

23 [No response.]

24 The Chairman. Bob, is the -- there was an amendment,
25 excise tax on artificial bait. Do you have that?

1 Mr. DeArment. Yes, Mr. Chairman. That is S. 599,
2 and that would make a change in the tax that now applies
3 to the manufacture of artificial lures and bait, the 10 percent
4 tax. It would provide an exception in terms of defining
5 what artificial bait is. There really has not been any
6 statutory or IRS definition of what artificial bait is, and
7 this would make it clear that artificial bait would not include
8 any substance which contains 85 percent or more by weight
9 or plant or animal material which can be ingested by fish.

10 This grows out of a problem that a taxpayer has
11 that manufactures an artificial bait, "Zeke's Floating Bait,"
12 out of artificial cheese.

13 The Chairman. Has fishing bait ever been subject
14 to attack, natural fishing bait?

15 Mr. DeArment. No. Things like worms, or for that
16 matter, if you just used plain cheese on a hook or niblets
17 of corn or hot dogs, it is not subject to --

18 The Chairman. Is there any revenue loss in this
19 amendment?

20 Mr. DeArment. The revenue loss is negligible.

21 Mr. Chapeton. Mr. Chairman, we also testified
22 on this on the House side. We opposed this amendment. It
23 is certainly not a major revenue question. The point being
24 that the tax is intended to apply, as I remember it, on
25 manufactured baits and lures, and the content does not really

1 seem to go to that question. It is indeed manufactured.
2 The purpose of the tax is to apply to manufactured lures
3 as contrasted with worms and things that are not manufactured.
4 It does not seem to us to justify a distinction simply because
5 it is also edible.

6 In addition, the purpose of the tax is to support
7 sports activities, fishing, waterways, as I remember, and
8 that type of activity. On that ground it would be just as
9 logical to impose it on this bait as any other.

10 The Chairman. Well, as I understand, the particular
11 bait is composed of at least 85 percent of plant or animal
12 material. It is a natural bait and should not be subject
13 to the excise tax on artificial bait, and this amendment
14 clarifies the definition of artificial fish bait. Artificial
15 fish bait is not edible and cannot be ingested by fish.

16 I do not understand all this, but --

17 [Laughter.]

18 Mr. DeArment. Well, some people have suggested
19 that, looking at the distinction between what is artificial
20 and what is natural, if it is at least 85 percent plant or
21 animal material which can be ingested, that that looks more
22 like natural than artificial. This bait is competing with
23 Velveeta cheese, which does not pay any --

24 The Chairman. Well, people have been known to
25 eat this bait, haven't they? At hearings.

1 Mr. DeArment. They certainly have. Former Senators
2 have eaten this food.

3 The Chairman. At hearings, right.

4 [Laughter.]

5 The Chairman. Is there any objection to adding
6 this as an amendment to the bill just agreed to?

7 [No response.]

8 The Chairman. Without objection.

9 Now we had a hearing yesterday afternoon -- Senator
10 Chafee was presiding, I was present, and Mr. Hardee was
11 here -- on a matter that affects I guess one man or one person,
12 with reference to IRA's and lump-sum distributions. The
13 amendment would provide special relief for certain pension
14 distributions received by Mr. John W. Pope. He was not here
15 in person. He was represented by counsel and by someone
16 from a bank in North Carolina.

17 The administration did not testify. I do not
18 know whether they have any problem with that amendment or
19 not.

20 Mr. Chapeton. Mr. Chairman, we did write a letter
21 in opposition to this when it came up.

22 The Chairman. On what basis, on what grounds?

23 Mr. Chapeton. Well, we objected on the grounds
24 that it simply was private relief; that we have supported
25 amendments dealing with partial rollovers from IRA's; and

1 that of course we would propose any such change be made
2 prospectively. This would be retroactive, special relief
3 legislation, and would discriminate against other taxpayers
4 who had similar situations.

5 The Chairman. Well, we are informed this is the
6 only taxpayer who was in this position. It was a very unique
7 proposal. If that is not the case, then certainly we should
8 not act on it.

9 Mr. Chapeton. I will have to familiarize myself
10 with it again. I am informed that we did not agree with
11 that conclusion that it was the only taxpayer in this case,
12 but I must --

13 The Chairman. I wonder if the Treasury might look
14 at that? I will not press it at this time but it seemed
15 to me, as someone listening to the hearing, that it was
16 certainly -- if a man ever deserved relief, I think as Senator
17 Chafee --

18 Senator Chafee. Well, it seemed that he got caught
19 in a whole series of quandaries, "Catch 22" situations, and
20 also it was suggested that the Government would receive the
21 tax money eventually. Apparently he has paid \$73,000 of
22 taxes on this IRA already, and I must confess it was incredibly
23 complex.

24 Why don't we do this, Mr. Chairman? Give Mr.
25 Chapeton a chance to review this and tackle something else,

1 as you have said.

2 The Chairman. Right. If you would look at that,
3 Mr. Chapeton, it seemed to us that it was a rather unusual
4 case. In fact, there was about a 25-page legal brief
5 submitted. I would hope we might come back to that.

6 Also, another technical matter -- and Senator Danforth
7 is here now -- 2860.

8 Senator Danforth. Yes, it is 2860, Mr. Chairman.

9 Senator Matsunaga. Mr. Chairman, are we on item
10 four now?

11 The Chairman. Yes.

12 Senator Matsunaga. Item four, H.R. 5470?

13 The Chairman. No, wait a minute. We are on item
14 three. Excuse me.

15 Senator Matsunaga. Item three, still?

16 The Chairman. That is right.

17 Senator Danforth. Well, Mr. Chairman, on Monday
18 the committee held a hearing on S. 2860 relating to liabilities
19 for withdrawals from multiemployer pension plans. The
20 situation in this particular -- the problem corrected by
21 this particular amendment is that the Congress passed the
22 Multiemployer Pension Plan Amendments Act of 1980 on September
23 26, 1980. However, at the time that it was passed it was
24 made retroactive to April 29, 1980.

25 A trucking company had acquired another company

R _____ O _____

1 and had liquidated that other company prior to the enactment
2 of the law, without any knowledge at all that the law would
3 be passed. Then it turns out that we made it retroactive,
4 so we I think unwittingly caught this one particular employer.
5 This involves the Central States Pension Fund, and it is
6 my understanding that the Central States Pension Fund trustee
7 plus the Teamsters plus the trucking company itself all agree
8 that this is an important amendment.

9 Senator Matsunaga. Mr. Chairman, may I ask the
10 Senator from Missouri a question, whether the change in the
11 effective date for withdrawal liability applies also to the
12 special provisions for seagoing plans?

13 Senator Danforth. I would like the staff to answer
14 the question.

15 Senator Matsunaga. We did have this problem arise
16 before, and I did have the committee make an exception to
17 seagoing plans, and the Senate approved it, so that if there
18 is an exemption for seagoing plans and seagoing plans are
19 left according to present law, I have no objection. Otherwise
20 I would have to object.

21 Mr. McConaghy. I think, Senator Matsunaga, the
22 answer is no, but I think we would like technical authority
23 to make sure that is true.

24 Senator Matsunaga. Fine. Then if it is agreeable
25 with the gentleman that technical language will be provided

1 to ensure that there will be no change from the existing
2 law insofar as seagoing plans go, then I have no objection.

3 Senator Danforth. Of course. Thank you very much.

4 The Chairman. Is there objection to the amendment
5 as modified? Is there objection to offering it as an amendment
6 to item number three?

7 Senator Matsunaga. Actually, aren't we down to
8 item number seven, multiemployer plans, Mr. Chairman?

9 Mr. McConaghy. No. I think, Senator, we were
10 discussing a special problem that dealt with multiemployer
11 plans but we were not down to that bill.

12 The Chairman. We are down to money purchase plan
13 revisions, and that would be an amendment to that.

14 Senator Matsunaga. I see.

15 Mr. McConaghy. I think we would also like technical
16 authority to make sure we do not impose liability on someone
17 who it is not intended to, and I think that would be in
18 accord with --

19 The Chairman. I wonder if we might go back, with
20 reference to social security disability payments? We now
21 have a quorum, and that has been added to the proposal of
22 Senator Matsunaga with reference to withholding in the Virgin
23 Islands.

24 Mr. Lighthizer. H.R. 7093, Mr. Chairman.

25 The Chairman. H.R. 7093. Is there objection to

R _____ O _____

1 reporting H.R. 7093 with the amendment relating to social
2 security disability payments?

3 Senator Long. Mr. Chairman, I request time to
4 file additional views on that bill. We will get it as soon
5 as we can.

6 The Chairman. Without objection. That would be
7 the only amendment on that proposal. Is that correct?

8 Mr. Lighthizer. That is correct, Mr. Chairman.

9 The Chairman. Is there objection to that procedure?

10 [No response.]

11 The Chairman. If not, that bill would be reported
12 with that amendment.

13 Then at our last session we could not report, I
14 think, the California utilities bill because there was not
15 a quorum present.

16 Mr. Lighthizer. That is correct, but we reported
17 it without a quorum.

18 The Chairman. However, now that we have a quorum
19 I would like to reaffirm our action on that proposal.

20 Senator Long. Mr. Chairman, might I just make
21 one suggestion to you? I would like to see the California
22 utilities bill become law, and I think everybody else here
23 would, but I will be compelled to oppose that matter about
24 the artists and the writers. I would suggest you put that
25 amendment on one of these other bills.

R _____ O _____

1 The Chairman. The artists amendment?

2 Senator Long. Yes, the Baucus amendment about
3 the artists and the --

4 The Chairman. I would have to check with Senator
5 Baucus and --

6 Senator Moynihan. He was here just a moment ago,
7 now. Let's just hold right where we are.

8 The Chairman. Now with reference to --

9 Senator Danforth. Mr. Chairman?

10 The Chairman. Yes?

11 Senator Danforth. Are we still on the California
12 utilities bill?

13 The Chairman. We are going to pass that for the
14 moment and go back to the money purchase plan revisions.
15 I would, without objection, report that with your amendment.

16 Senator Danforth. 2860.

17 The Chairman. 2860 and S. 599. Are there any
18 other amendments to that?

19 Mr. Lighthizer. Mr. Chairman, did you want to
20 put the substance of 4948 on that, on H.R. 4577 also, along
21 with Mr. Danforth's amendment and the edible bait amendment,
22 and then keep 4948 in the committee as a hedge against having
23 to act on something during the lame duck session?

24 The Chairman. Yes, we can do that.

25 Mr. Lighthizer. The foundation, you also wanted

1 to put the foundation amendments on 4977 -- I am sorry, 4577?
2 That was agreed to, I believe, also.

3 Senator Symms. Mr. Chairman, when would you like
4 to put that loan loss reserve, to keep that ratio 1 percent
5 permanently, which bill do you want that on?

6 The Chairman. Well, let's see, now. Let's deal
7 with 4577. What did you suggest we do there, the foundations?

8 Mr. Lighthizer. Mr. Chairman, my suggestion was
9 that 4577 would have, the substance of 4577 would also have
10 the substance of 4948, plus the edible bait amendment, and
11 Mr. Danforth's pension amendment as modified by Mr. Matsunaga,
12 plus the foundation amendment.

13 The Chairman. Right.

14 Mr. Lighthizer. Now we are skipping 4948. We
15 would be on 5470, the Periodic Payments --

16 The Chairman. The Periodic Payments Settlements
17 Act.

18 Mr. Lighthizer. That bill has had no amendments
19 at this point.

20 The Chairman. Well, that bill had hearings. Does
21 the Treasury support that proposal?

22 Mr. Chapeton. Yes. We did not oppose that. Yes,
23 sir.

24 Mr. Lighthizer. We have not had hearings, is my
25 understanding.

1 The Chairman. Well, I would also, maybe, while
2 we have a quorum present, if I could have committee authority
3 to offer as a committee amendment the technical amendment
4 with reference to safe-harbor leasing that has been discussed,
5 I would offer that as a committee amendment to the technical
6 corrections act that has been reported.

7 Mr. Lighthizer. It just modifies the technical
8 corrections act.

9 The Chairman. Modifies; excuse me.

10 Now could we have a brief explanation of the Period
11 Payments Settlements Act?

12 Mr. McConaghy. Yes, sir. This deals, Mr. Chairman,
13 with damages that a person receives by reason of being injured
14 or being sick. Presently those payments are excluded from
15 gross income, whether or not they are paid in a lump sum
16 or periodic payments, as long as they are for personal injury
17 or sickness.

18 The House bill clarifies or codifies existing law,
19 and it also adds a new section that deals with what happens
20 when someone assigns the obligation to pay an amount to another
21 party. If I, for instance, am sued for personal injuries
22 and the court awards someone else, an employee, a half a
23 million dollars, I as the employer may want to assign my
24 liability to somebody else, and that somebody else may come
25 in and agree to take on my obligation to make those payments

1 for a certain amount.

2 This provision deals with the taxation of the payments
3 that I would make to that assignee. Basically, it provides
4 that if the assignee -- which could be any company -- decides
5 to go ahead and purchase an annuity or an obligation of the
6 United States to fund the periodic payments, then within
7 a certain period of time and under certain conditions, an
8 amount that I paid to that assignee, essentially the whole
9 amount is not going to be taken into income.

10 Senator Matsunaga. Mr. Chairman, I think that
11 H.R. 5470 is a good bill. It simply codifies the present
12 law in excluding from income damages for personal injury
13 and compensation for illness. This exclusion from income
14 also applies to annuity payments purchased with the amounts
15 paid for personal injury or sickness.

16 I would like, however, for the committee to include
17 a further clarification as to the excludable annuity, that
18 is, annuities issued by companies not regulated as life
19 insurance companies will not qualify. This is only a
20 restatement of the present law, and I would think that there
21 is no objection. It is a mere matter of clarifying that
22 this to to codify existing law.

23 The Chairman. Mark, I apologize. I was not --
24 Mr. McConaghy. This, Mr. Chairman, would narrow
25 it further. It would say that the provisions dealing with

R. O.

1 how that assignee is taxed and what is included in income
2 would apply if it is an annuity and it is one that is issued
3 by an insurance company. It would not, therefore, allow
4 private annuities but it would narrow it just in the case
5 where there is an annuity purchased by an insurance company.

6 Senator Matsunaga. With that clarification, I
7 have no objection.

8 The Chairman. That would further--

9 Mr. McConaghy. It would narrow it somewhat.

10 The Chairman. Are there any amendments to this
11 proposal?

12 Senator Durenberger. Mr. Chairman?

13 The Chairman. Senator Durenberger.

14 Senator Durenberger. I have several, but on this
15 bill in particular, the amendment which would exclude from
16 gross income the difficulty-of-care payments made to foster
17 parents that care for handicapped children. Under present
18 law, payments for foster care that reimburse parents for
19 expenses are not includable in income but those payments
20 that compensate parents for their services are. In this
21 latter category, I think those parents who are in the business
22 of providing foster care, foster care parents, while in the
23 former category are simply opening up their homes to foster
24 children because of what is commonly referred to as "love,
25 not money."

1 This amendment would deal with a category of foster
2 care parents who are in a special class by themselves. These
3 are the parents who voluntarily take children with severe
4 handicaps into their homes, some of the handicaps being as
5 severe as the inability to feed themselves, for example.

6 Now in the State of Minnesota, the State of Oregon,
7 and several other States, parents who care for handicapped
8 children like this receive additional payments called
9 difficulty-of-care payments, for those extra costs and
10 burdens of caring for children that cannot be receded, in
11 effect. In my own State of Minnesota, the extra payments
12 average anywhere from \$4 a day to as high as \$20 a day,
13 depending on the severity of the handicap.

14 What has happened in my State, and I do not know
15 whether it has happened in other State, is that the IRS has
16 audited a number of the foster care parents, and the audits
17 now are being put on "hold" while they examine State law
18 to determine legislative intent to the difficulty-of-care
19 payments, whether they cover expenses or compensate for services.

20 It is my opinion, Mr. Chairman, that we ought to
21 declare that those payments made to foster care parents over
22 and above payments made for nonhandicapped children, are
23 not income to the parents for purposes of taxation. I would
24 urge the adoption of this amendment.

25 The Chairman. Could we hear from the administration

1 on this proposal?

2 Mr. Chapeton. Well, we have looked at this, Mr.
3 Chairman, and it presents a classic case of a very sympathetic
4 question but I think we have to recognize whether a particular
5 payment is compensation or not is basically a factual
6 situation, and the Internal Revenue Service did issue a ruling
7 involving foster care in general. I think, as Senator
8 Durenberger points out, it drew the line between the payments
9 which were designed for reimbursement of expenses versus
10 those payments which were clearly compensation, and obviously
11 came down and said, "Reimbursement of expenses, no income;
12 clear compensation cases, income." As best I can tell, that
13 is the line the Service is attempting to draw in these cases,
14 so as sympathetic as it might be, if in fact it is designed
15 as compensation it seems to me we would have to oppose any
16 wholesale exemption. I guess the exemption would be based
17 on the grounds that the service is very meritorious, and
18 certainly it is, but I do not see how we could do anything
19 but oppose if in fact it turns out to be compensation, which
20 I guess is what the Service is trying to determine.

21 Senator Durenberger. Well, I think if you were
22 going to pay them you would approach it by a much different
23 route. Even the \$4 a day or the \$20 a day or whatever is,
24 at least in all of my experiences with these families, it
25 has been a recognition of expense. You can call it

1 compensation but it is always a recognition of the expense.
2 It is the fact that they have to go to the expense of having
3 somebody, they have to get a babysitter so they can get out
4 at night, they have to hire somebody to come in if they want
5 to take a vacation or a weekend or whatever. Those are all
6 expenses, in effect, related to raising the children.

7 If you were just going to call it a salary or a
8 wage, then you would be compensating them for being a parent.
9 This goes way beyond being a parent. The basic logic is
10 that there are expenses that they go to in one way or another
11 beyond normal parenting that are not, in effect, straight,
12 reimbursable, out of pocket expenses, and that is the whole
13 thing.

14 The Chairman. I wonder if we might, just for the
15 sake of time because we don't have much left, is there somebody
16 that might discuss that with Senator Durenberger right now?
17 What I would like to do is come back to this amendment in
18 a second, but move on to Subchapter S. I think we have some
19 agreement on the passive income question. I will come right
20 back to you after we take action on that. Maybe, in the
21 meantime, is there a way to satisfy Treasury's objection
22 to Senator Durenberger's amendment? Why don't you give that
23 a quick check?

24 Mark, let's move to Subchapter S.

25 Mr. McConaghy. Yes, Mr. Chairman. There was one

1 issue that remained, and that was corporations that had earnings
2 and profits that wanted to elect Subchapter S. The bill
3 presently says they have to meet existing passive income
4 limitations if they do so.

5 The resolution, I think, that has been accepted
6 is to raise that passive income limitation amount from 20
7 to 25 percent and to say that in the event that a corporation
8 which did have earnings and profits, or does have, did violate
9 the new 25 percent limit, then their Subchapter S election
10 would not be broken but what would happen is that there would
11 be a corporate tax imposed on that excess portion, the amount
12 by which they exceeded that 25 percent passive income
13 limitation. Only when it violated essentially that 25 percent
14 test for 3 years would that Subchapter S election be revoked.
15 I think that is the --

16 Senator Bentsen. Mr. Chairman, let me say that
17 I think that the bill itself is an excellent bill, and one
18 that I very much want to see passed, but the passive income
19 test is one that would inadvertently, time after time, terminate
20 Subchapter S election. Although this obviously does not
21 totally take care of that, it goes a long way in doing that
22 in the way of a constructive compromise. I am ready to support
23 it and accept it, with the understanding that Treasury will
24 support this over in the conference with the House and push
25 it and try to get it.

R _____ O _____

1 Then the other thing that I would like them to
2 address later is the question of an operating company. I
3 think that it is so constrained in what is truly an operating
4 company, and I am not asking for anything here other than
5 the study of that to see if we cannot rework that definition
6 too. I know that is not an easy problem I am giving you.

7 The Chairman. Will Treasury support this provision
8 in conference?

9 Mr. Glickman. Yes, Mr. Chairman, we will.

10 The Chairman. Does that satisfy you?

11 Senator Bentsen. Yes, sir.

12 The Chairman. Now I understand Senator Armstrong --
13 is that correct, Bryan? -- he is aware of this provision
14 and in an effort to --

15 Senator Bentsen. I have been advised by staff
16 that Senator Armstrong is ready to settle.

17 The Chairman. He has no objection to the amendment?
18 Then, without objection, the amendment will be adopted.
19 Without objection, we will report -- what is the number on
20 that?

21 Mr. Lighthizer. That is 6055, H.R. 6055.

22 The Chairman. Now do we also make the effective
23 date 1982?

24 Mr. McConaghy. Yes, that would be part of it,

25 Mr. Chairman. For that provision we would essentially make

1 the effective date 1-1-82. The separate issue you raised,
 2 I think, was whether or not the removal of the passive income
 3 limitation for new ones should apply starting January 1,
 4 1982. That would be a separate issue but essentially, if
 5 we made just the changes for passive income, all of them,
 6 effective 1-1-82, I think that would take care of it.

7 The Chairman. All right, then. Without objection,
 8 that bill will be reported and with the compromise amendment
 9 agreed to by Senators Armstrong and Bentsen.

10 They are still negotiating --

11 Senator Wallop. Mr. Chairman, I have one which
 12 I think is without controversy that I could offer to this
 13 bill while they are finishing up that.

14 The Chairman. Okay.

15 Senator Wallop. What it is is S. 1298, which is
 16 the Indian Tribal Governmental Tax Status Act. It is
 17 cosponsored by 12 Members of the Senate and 4 members of
 18 this committee, Senators Bradley, Baucus, Boren, and Packwood.

19 Essentially what it does is say that taxes that
 20 are imposed by tribal governments would be deductible, whereas
 21 they are not now. This confers no powers on tribes to tax
 22 or anything that they do not have, but if they are taxing
 23 legitimately you may deduct the taxes that you pay.

24 Secondly, charitable contributions to or for the
 25 use of tribal governments or subdivisions would be deductible,

1 whereas they are not now. Contributions to candidates for
2 tribal office would be eligible for the same credit allowed
3 for contributions to other political candidates. Tribal
4 governments and eligible subdivisions would be exempt from
5 the excise tax on special fuels, manufacturers' excise taxes,
6 highway vehicle use taxes, and the communications excise
7 tax. Contributions to annuities for certain employees of
8 tribal government would be excluded from the employee's income,
9 as they are in other subdivisions of government, and interest
10 on tribal government obligations would be, in limited
11 circumstances, tax-exempt. Interest on IDB's would be
12 tax-exempt if the principal activities funded are carried
13 out on the reservation.

14 Treasury testified in support of the legislation.
15 The Interior Department supports the bill and the tribes
16 support the bill, and I believe anybody who has to pay tax
17 to an Indian tribe would very much support it.

18 The Chairman. Does the Treasury support the bill?

19 Mr. Glickman. Yes, Mr. Chairman. We testified
20 in favor of the bill.

21 The Chairman. Then, without objection, that will
22 be agreed to and be an amendment to 5470.

23 Mr. Lighthizer. Mr. Chairman, can the staff have
24 technical authority to conform this to the changes that
25 were made in TEFRA?

1 The Chairman. Of course, yes.

2 Mr. Lighthizer. Thank you.

3 The Chairman. Now while we are waiting for Senator
4 Durenberger, could I move on to computers?

5 Senator Matsunaga. Mr. Chairman, while we are
6 on number four still, I have an amendment which passed the
7 Senate twice but was dropped by the House because of
8 nongermaneness, according to their rules.

9 The Chairman. What is it?

10 Senator Matsunaga. This is the Hawaii Prepaid
11 Health Insurance Program, which under ERISA, we had an amendment
12 under ERISA and it was dropped in conference, you recall.
13 They are willing to accept it this year if we send it over.
14 Congressman Erlenborn and Congressman Burton both have --

15 The Chairman. Is there objection to the amendment?

16 [No response.]

17 The Chairman. If not, it will be added to number
18 four.

19 Now let's move on to computers. This is the Apple
20 computer bill?

21 Mr. McConaghy. Yes. The next bill --

22 The Chairman. I understand that there have been
23 four questions raised concerning this bill, and that in an
24 effort to tighten up the provisions, there would be
25 recommended amendments.

1 Mr. McConaghy. That is my understanding, Mr. Chairman.

2 The bill does provide for a deduction for
3 contributions of newly-manufactured computers to primary
4 or secondary schools. The amount of the deduction would
5 equal the taxpayer's basis plus one half of the appreciation,
6 but not to exceed twice basis. Therefore, for example, if
7 a computer were manufactured for \$5 and the fair market value
8 were \$11, let's say \$11, then it would be the cost which
9 would be \$5, plus half of the appreciation. The appreciation
10 would be the difference between \$11 and \$5. That would be
11 \$6. Half of it would be \$3. The total of that would be
12 \$9 as far as the deduction is concerned. It did not exceed
13 twice basis, which would be \$10, so there would be a deduction
14 of \$9. That is the basic bill that was sent over by the
15 House.

16 The Chairman. Wouldn't \$5 and \$3 be \$8?

17 Senator Chafee. How much is \$5 and \$3?

18 Mr. McConaghy. \$5 and \$3 is \$8. Did I say \$9?

19 I am sorry, Senator Chafee.

20 The Chairman. That is the basic bill. Now there
21 have been some recommended amendments I think we ought to
22 discuss, and if there are questions we can --

23 Senator Bentsen. Mr. Chairman, I would like to
24 because when they talk about twice basis, you have a
25 situation where the company could actually make a net profit

1 by giving, and it would seem to me that we ought to reduce
2 that to 150 percent of basis or 50 percent above basis.

3 The Chairman. I think that is one of our
4 recommendations.

5 Senator Bentsen. I would urge that, because
6 otherwise you are going to have a situation that I do not
7 think is the economic result you want.

8 Mr. McConaghy. It would come very close, certainly,
9 to not causing or requiring any cost on the part of the
10 taxpayer. You are suggesting, I think, Senator Bentsen,
11 that the deduction be one-half of the appreciation but not
12 to exceed one-and-a-half times basis.

13 Senator Bentsen. That is correct.

14 Mr. McConaghy. In the example I gave, it would
15 be \$7.50 deduction instead of \$8.

16 Senator Long. Let me just read this, if I may.
17 This is apparently dated May -- earlier this year -- dated
18 May 7, 1982, and I do not know whether it still represents
19 Treasury's point of view. Mr. Chapeton, your name is on
20 this letter. I would like to have Mr. Chapeton's attention
21 because I think your name is on this letter here.

22 It says that "In many cases the value of the tax
23 benefit conferred will approximately equal the taxpayers'
24 cost of the equipment. For example, if it cost the taxpayer
25 \$1,000 to produce the equipment which he can sell for \$3,000,

R. O.

1 he will be entitled to a deduction of \$2,000. This produces
2 a tax benefit of approximately \$1,000, and the Government
3 would in effect be purchasing the equipment for cost."

4 Now I believe that it says further on down here
5 that the Government would be more than purchasing it for
6 cost, they would be giving it to them at a profit.

7 The Chairman. That is what Lloyd is going to correct.
8 I think that was one of our recommendations.

9 Mr. Chapeton. I think the point we made in the
10 testimony is, the effect is roughly purchase at cost. The
11 benefit is approximately the same as if the Government had
12 purchased, reimbursed the company for the cost of the
13 computers and put them in the schools.

14 Senator Bentsen. If I might comment, Senator Long,
15 this is what I was addressing, and Secretary Chapeton was
16 engaged in conversation. I thought we were just agreeing
17 that we would limit it to one-and-a-half times basis.

18 Senator Long. That is, the deduction would be
19 one-and-a-half times basis.

20 Senator Bentsen. Yes, so you cannot make a profit
21 on it. You are pointing out exactly what is the case. A
22 company could actually be making a profit by giving, and
23 you would be up to your eyeballs in these things being given
24 to you.

25 [Laughter.]

1 Mr. Chapeton. Let me hasten to add, the Treasury
2 Department is on the record on this point, and as I said
3 when this came up in discussions with Senator Danforth in
4 the committee hearing, a decision to do this represents a
5 decision to allocate these resources to that end. As I believe
6 Senator Danforth said at that time, "That is right; that is
7 the type of decision we make all the time."

8 In that light, let me say that the administration
9 has reviewed this question again and it has indeed made that
10 decision and does support this bill, with whatever limits
11 the committee sees fit to put on it but providing this tax
12 benefit, even though it does --

13 The Chairman. Could I indicate -- I think Senator
14 Danforth wants recognition -- as you have indicated, Senator
15 Danforth had a companion bill in the Senate. We have had
16 hearings on the measure. As I understand, there have been
17 about four -- four that I know of -- four objections raised
18 in addition to the one just raised by Senator Bentsen. Another
19 one was that the Government would be purchasing without
20 direction. Number three, it was a marketing ploy by Apple,
21 and, number four, it was a plan to dump obsolete inventory.

22 Now we have some suggested amendments that would
23 take care of those criticisms but first I wish to recognize
24 Senator Danforth.

25 Senator Danforth. Well, I am not sure I understand

1 the reasoning behind the 150 percent change. Has the House
2 passed this bill, Mr. Chapeton?

3 Mr. McConaghy. Yes, Senator Danforth.

4 Senator Danforth. What was the bill that was passed
5 in the House?

6 Mr. McConaghy. As passed by the House, the deduction
7 would be the basis on the property, the cost to the taxpayer,
8 plus one-half of the appreciation not to exceed two times
9 its cost or two times its basis.

10 Senator Danforth. Therefore, the House bill is
11 two times basis. Hasn't that bill now been supported by
12 the administration?

13 Mr. Chapeton. That is the point I was making.
14 We have supported that bill now.

15 Senator Danforth. Now, after supporting that,
16 now we are talking about reducing it to 150 times basis?
17 Your view is that if it were twice basis --

18 Mr. Chapeton. My view has not changed, Senator
19 Danforth. That is, if it is twice basis it amounts to roughly
20 the Government paying the company the cost of the computers,
21 assuming it can use the tax benefit.

22 Senator Danforth. Whereas 150 percent of basis
23 would be equivalent to what?

24 Mr. Chapeton. Something less. Let me hasten to
25 add, we did not propose 150. We are on record now as supporting

1 the bill in the House.

2 Senator Danforth. I do not see why we want to
3 reduce it to 150. I mean, it seems --

4 The Chairman. Well, we want to pass it.

5 [Laughter.]

6 Senator Danforth. Why does that make any better
7 bill or any more palatable a bill?

8 The Chairman. If I could say, Senator Danforth,
9 we discussed as recently as yesterday with Mr. Jobs some
10 of the problems we saw. There are a number of strong
11 opponents to this legislation, and even though there are
12 strong proponents -- including Senator Danforth, Congressman
13 Stark, and others, Senator Cranston -- it was my understanding
14 that they were willing to make adjustments so that the bill
15 would not meet opposition in the last days of this session.
16 Now if I have misstated that -- I think they would go to
17 175. They did not suggest 150.

18 Mr. Lighthizer. They were willing to go along
19 with 175. They asked, in exchange, to have the limitation
20 raised on the amount of computers that they can give, which
21 limitation is tied to the percent of their net income. That
22 change, I guess has not been proposed by staff. However,
23 the 175 percent, they thought they could live with that at
24 Apple Computer but I should say in return they wanted to
25 raise the limitation on the extent to which they can give

1 these.

2 Senator Bentsen. I just do not want to get in
3 the situation where the more they give, the more they make,
4 and they can cut off their sales force and load you up with
5 computers until you have them running out your ears. I just
6 do not think that is the proper objective.

7 Mr. Lighthizer. Mr. Chairman --

8 Senator Chafee. Well, isn't the only virtue, the
9 only way they get something out of this, if they have profits
10 to deduct this against, isn't it?

11 Mr. Lighthizer. Well, that is true, but --

12 Senator Chafee. Unless they are making profits
13 by selling machines elsewhere, they are not going to -- all
14 this is available is, is as a deduction, is it not?

15 Mr. Lighthizer. That is right, and they are making
16 profits. I mean, this is a very profitable industry and
17 they are making lots of profits.

18 Senator Chafee. Well, that is fine. We are not
19 opposed to profits.

20 Mr. Lighthizer. No.

21 The Chairman. However, under the present bill,
22 if the computer cost Apple \$50 it could deduct \$100 and
23 receive, as it admits \$46 of tax benefits or 92 percent of
24 its cost. Is that how it works?

25 Mr. McConaghy. That is correct, Mr. Chairman.

1 Senator Danforth. That is if it is being taxed
2 at 46 percent.

3 Mr. McConaghy. That is right, Senator Danforth.

4 Senator Danforth. What is the effective tax rate?

5 Mr. McConaghy. Well, their effective tax rate,
6 as we understand it, is 46 percent, and so they would use
7 up the maximum percentage of contributions they could at
8 the 46 percent rate, as we understand it.

9 Senator Moynihan. Mr. Chairman?

10 The Chairman. Senator Moynihan.

11 Senator Moynihan. Could I ask -- I mean, there
12 is just something so peculiar about this legislation. Is
13 it designed to indoctrinate young people in the use of Apple
14 computers? Could I ask, has the administration always supported
15 this legislation?

16 Mr. Chapeton. No, Senator Moynihan. As we discussed
17 a minute ago, the Treasury took a position in opposition
18 to it for some of the reasons that are stated here. We were
19 concerned that there would be -- I think it is incorrect
20 to say there would not be any cost. There would be some,
21 but little, net cost to the donor company. It is not limited
22 to Apple, by the way. Any other computer company that is
23 geared up and is able to use that, and is in a position to
24 make the gifts, could also utilize it. However, there was
25 concern that it was a promotion device.

R _____ O _____

1 The argument on the other side was, indeed, all
2 that being true, it would have the effect of getting these
3 computers in the schools, and if one wants that result one
4 is willing to support this.

5 Senator Moynihan. Is this the administration's
6 plan to substitute for the Elementary and Secondary Education
7 Act?

8 [Laughter.]

9 Mr. Chapeton. No, sir, but the administration
10 is supporting the bill on the grounds that it does have a
11 desirable effect --

12 Senator Moynihan. In California.

13 Mr. Chapeton. -- if the plan follows through,
14 of getting the computers in the schools throughout the country.

15 The Chairman. It will be nationwide.

16 Senator Moynihan. Yes. What is a computer?

17 The Chairman. Is it defined --

18 Mr. Chapeton. It is defined in the legislation.

19 Senator Symms. Mr. Chairman, whenever it is
20 appropriate I have an amendment I would like to offer to
21 this --

22 The Chairman. To the Apple computer bill?

23 Senator Symms. Yes, sir.

24 Senator Bentsen. Well, I would say, Mr. Chairman,
25 if there is a question on this, on the one-and-a-half, I

1 would like to move it, that it be limited to one-and-a-half
2 of basis.

3 Senator Chafee. I am not sure we should look a
4 gift computer in the mouth.

5 Senator Bentsen. Well, I just do not want to get
6 too big a bite of this apple.

7 [Laughter.]

8 Senator Long. Well, frankly, I agree with Senator
9 Bentsen completely. Why should the Government provide every
10 school an Apple computer at the expense of the taxpayer?
11 Now Apple would not pay anything for the computers. The
12 taxpayers would pay for all the computers, and I just do
13 not understand it. If we are going to provide them, why
14 can't all the other computer companies do the same thing?

15 Mr. Chapeton. They can do the same thing.

16 Senator Long. They could?

17 Mr. Chapeton. That is correct.

18 Senator Long. However, Apple is the one that wants
19 to do it, apparently.

20 Mr. Chapeton. It is for a limited period of time
21 but I assume other computer companies will do it.

22 Senator Danforth. Mr. Chairman, can I address
23 just that point? It is my understanding that some of the
24 computer companies would like to do it but it is going to
25 be a little bit difficult to gear up in the year 1983, which

1 is what this bill covers. It is a 1-year program. I wonder,
2 if we went with the 150, if we could at the same time take
3 care of these other companies by providing that the program
4 would last for 3 years but that an individual company could
5 only use it in one of those 3 tax years, so that the company
6 would have its option as to what year it would do it?

7 Senator Bentsen. Well, I would have no objection
8 to that, Mr. Chairman.

9 Senator Moynihan. However, could I ask Senator
10 Danforth, this is not something I am knowledgeable about
11 but I just happen to have heard of the Singer sewing machine
12 case. Is it not the case that the Singer sewing machine
13 case ruling would have to be overturned in order for them
14 to take advantage?

15 Mr. McConaghy. I think as presently drafted,
16 Senator Moynihan, the bill does override that case. At least
17 it would be argued that they would not have to meet the test
18 that was developed under the Singer sewing machine case,
19 and that test --

20 Senator Moynihan. Therefore, we are changing the
21 law, not just getting rid of a warehouse full of computers
22 here. Would this apply to all such promotions?

23 Mr. McConaghy. I think the report, certainly,
24 and the bill as passed by the House, creates the inference
25 that the predominant person making that contribution is

1 charitable, and to that extent it would -- at least as to
2 the contribution of the items covered by this bill, I think --

3 Senator Moynihan. Just the items covered?

4 Mr. McConaghy. I think it may also, Senator
5 Moynihan, have the same effect with respect to other things
6 that are in the tax code, such as drugs and --

7 Senator Moynihan. Yes, so this is the plan for
8 substituting the Elementary and Secondary Education Act.

9 [Laughter.]

10 Senator Moynihan. It has many ramifications. I
11 am not being against it, but it changes a fairly major court
12 decision.

13 Senator Chafee. It is the administration's answer
14 to your tuition tax credit plan.

15 Senator Moynihan. Could we put tuition tax credits
16 on this, Mr. Chairman.

17 Senator Danforth. Well, I wonder if Senator Bentsen
18 would accept as an amendment to his amendment, the 3-year
19 provision with the designation of utilization of only 1 year,
20 1 of the 3, by a particular company?

21 Senator Bentsen. I would be pleased to do that,
22 as long as it ensures your enthusiasm and support.

23 Senator Danforth. Mr. Chairman, I think that we
24 have a deal on the 150 with the 3-year --

25 The Chairman. That is the first question there.

1 Is there any objection to that?

2 Senator Chafee. Mr. Chairman, could I ask Mark
3 or somebody, I wonder if this is enough of an attraction
4 for a computer company to want to go into this, 150?

5 Mr. McConaghy. I think the answer to that, Senator
6 Chafee, is that instead of in effect recouping 92 percent
7 of the costs -- and we did check, and it would be that, they
8 are at the 46 percent bracket, Senator Danforth, in their
9 testimony, and all of the amounts would be deductible
10 essentially against that rate -- but instead of it recovering
11 92 percent of the cost, I think this would result in the
12 manufacturer recovering about 70 percent of the cost and
13 being out of pocket about 30, if you dropped it down to 150
14 percent.

15 The Chairman. Senator Moynihan? Oh, excuse me.

16 Senator Chafee. Well, it seems to me we either
17 are for the idea of them getting computers or we are not.
18 If we are, I think they ought to be able to recover their
19 cost. If not, then let's not be for the idea.

20 The Chairman. This ties right into our flat tax
21 hearings this morning, flat rates.

22 Mr. McConaghy. Senator Moynihan, in answer to
23 your question, I think if you provided that there would be
24 no inference as to whether or not this overrides the basic
25 requirement of charitable -- in other words, that these be

1 given with detached and disinterested generosity -- that
2 this does not override that, they would still have to show
3 that.

4 Senator Moynihan. Mr. Chairman, I wonder, Mr.
5 McConaghy has made what seems to me a very sensible decision,
6 that the statute should provide that there is no automatic
7 inference that this is done for charitable purposes, and
8 if that is so claimed, it must be demonstrated.

9 The Chairman. Right. I think we should state
10 that in the report, that no inference is intended by the
11 legislation. The Ways and Means report creates a specific
12 inference, as I understand it. We do not want to do that.
13 They must prove, just as anyone else who makes a gift, that
14 it was intended for charitable purposes.

15 If there is no objection to that, we should state
16 that in either the amendment or the report. Which would
17 be preferable?

18 Mr. McConaghy. I think the report could make that
19 clear, Mr. Chairman.

20 The Chairman. There is also criticism raised that
21 not only does the Federal Government purchase the criticism
22 at cost, but it has no ability to direct where the donated
23 computers may go. A manufacturer may simply donate computers
24 to wealthy schools in its prime markets. Now is there some
25 way we can address that criticism?

1 Mr. McConaghy. I think, Mr. Chairman, you could
2 specifically require or give direction that when the statement
3 is made that there should not be undue concentrations in areas
4 of economic or geographic places, that what we mean by that
5 is perhaps, you could give some guidance like no more than
6 15 percent of the contributions go to any one State, no more
7 than 35 percent of the contributions to schools go to schools
8 with parents of median income over 65 percent of the national
9 average, and at least maybe 35 percent of the contributions
10 go to schools with parents' median income below that.

11 You could indicate in the report, if you wish,
12 that that would be the guidance that the committee intends
13 with respect to what contributions mean, having to go to
14 geographic and economic areas on kind of an even basis, without
15 undue concentration.

16 Senator Danforth. Mr. Chairman, I do not understand
17 the reason for a prohibition against geographic contributions.
18 I mean, we certainly do not do that with charitable
19 contributions, do we? It is very frequent that you have
20 a charity which has all of its activities being conducted
21 in a specific geographical area.

22 Senator Long. Well, we do not pass a special bill
23 for any particular charity, either. It seems to me that
24 if they really want to give these computers away all across
25 the country, I do not know why all of us should not be able

1 to get in on the joy of it. Why should it be just limited
2 to one area?

3 The Chairman. I think that is the argument, that
4 there might be just one market where they would want to make
5 -- say, California.

6 Senator Long. Please understand, I am not excited
7 about the bill at all. I would just as soon let the whole
8 matter drop but if you are going to give this stuff away,
9 I would just as soon see somebody in Louisiana get some of
10 it.

11 [Laughter.]

12 The Chairman. That makes sense.

13 Is there objection to some language -- maybe this
14 is not the right language, maybe we can --

15 Senator Danforth. Could it be a little more flexible,
16 do you think, or could it be more of a general guideline
17 than this extremely detailed percentage allocation that Mark
18 has described?

19 Mr. McConaghy. I think, Senator Danforth, we could
20 put in something that it has to be under some sort of plan
21 that is designed to make geographical distribution and
22 distribution that would hit all income segments, essentially,
23 of schools and perhaps be a little less rigid than what I
24 stated.

25 Senator Danforth. I would not object to a statement

1 of intention or some nondiscrimination guideline of some
2 kind, but it just seems to me that --

3 The Chairman. Well, let's do this: I have to
4 leave here in about 10 minutes, but let's see if we cannot
5 work out some report language, and if there is some objection
6 to that, maybe we could make the change then on the Senate
7 floor. We are probably going to have to bring it up in any
8 event, unless there is agreement. Would that be all right,
9 Jack?

10 Senator Symms. Mr. Chairman --

11 The Chairman. Then I guess the final criticism
12 that I have is that it would be used, maybe, to dump
13 obsolete inventory. In other words, some computer company
14 might have a lot of these old computers and this might be
15 a good way to, well, not sell them. We were going to add
16 a provision that they be no more than 3 months old. I do
17 not know whether that is too rigid or not. I mean, I do
18 not understand computers.

19 Senator Danforth. The House bill is 6 months,
20 I think.

21 Mr. McConaghy. Six months.

22 Senator Danforth. Would that be good enough?

23 Senator Bradley. Six months from the manufacturing
24 date or the design date?

25 Mr. McConaghy. Six months from the date after

1 substantial completion of the construction of that computer,
2 it has to be donated, under the House bill.

3 The Chairman. All right. Six months?

4 Mr. McConaghy. That is in the House bill.

5 Senator Bentsen. Do I understand that my proposal,
6 as modified by Senator Danforth, has been accepted?

7 The Chairman. Yes. I was out of the room, but
8 I think so.

9 Senator Danforth. Mr. Chairman?

10 Senator Symms. Mr. Chairman?

11 The Chairman. Senator Danforth, then Senator Symms.

12 Senator Danforth. Mr. Chairman, also some of us
13 suggested that the contributions should also be available
14 to museums and libraries for the purpose of educating primary
15 and secondary school students, for example, the children's
16 museum here in Washington.

17 The Chairman. Is there any objection?

18 Senator Baucus. Mr. Chairman, I would very much
19 support the Senator's suggestion. I think it should be
20 available to libraries, also.

21 The Chairman. To keep track of the artists.

22 Senator Baucus. Artists, that's right. You have
23 to keep track of them.

24 [Laughter.]

25 The Chairman. Without objection.

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

Senator Symms?

Senator Symms. Mr. Chairman, listening to this interest in this bill, which I think probably is a good idea for many reasons but to be helpful to move our educational system into the technological age, it looks to me like this might be the right bill to put the amendment on that we passed in the 1981 act dealing with loan loss reserves for the banks. It sounds to me like this bill may pass, and I think this is a very critical amendment. I would just like to offer it to this bill.

My concern is, and I think it is a proper concern -- I thought Senator Bentsen addressed this very well last summer in 1981, and we kept the loan loss reserve at 1 percent -- but at the end of this year it goes down to six-tenths of 1 percent. What we are talking about doing is forcing our already distressed banking industry to get into a situation of a more tenuous capitalization arrangement, and it just seems to me that this would be a very wise time to offer this amendment.

I think all the members of the committee are aware of it. There are other ways that banks can invest their funds into municipal bonds and so forth, to make a difference in their tax liability. I do not think the cost to the Treasury would amount to much and I think, if I am not incorrect, that Treasury favors this amendment.

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

Mr. Chapeton. That is correct, Senator Symms. We have, as we stated last time, we have supported this amendment. We reviewed the types of banks that would be most significantly affected well before early in the summer and decided that it would be good to keep the 1 percent in permanently. We reviewed it with the Comptroller of the Currency, who expressed a concern about it going down.

Senator Symms. I know the FDIC, the Comptroller of the Currency, the Federal Reserve, and so forth all agree that 1 percent should be kept.

Mr. Chapeton. That is correct.

Senator Symms. I think it is just important we do that. If there is no objection, I would move that we put this amendment on this vehicle.

Senator Bentsen. Mr. Chairman, if I might, I am strongly in accord with Senator Symms' thought. I proposed this earlier this year and we were able to stop it from going to six-tenths of a point. Actually, had we not done that, the banks would have had even more serious problems than they have now. This helped with their reserve for loan losses and you are in a difficult economic time, so I strongly support it and think it is the right move.

The Chairman. Again, maybe it is no big moment but I wonder if we might make it -- Treasury supports this and I am not going to object to it -- but if we could make

1 the change effective retroactive to January 1, 1983 only
2 after interest and dividend withholding at a 10 percent rate
3 is passed, and the 1982 act itself becomes effective -- I
4 mean, the banks were not very helpful on withholding. I
5 would like to offer that amendment. Without objection?

6 Senator Symms. I am not sure I understand exactly
7 the amendment.

8 The Chairman. Well, it just seemed to me that
9 the withholding on interest and dividends is very important,
10 and we hope to retain that provision. This would just say
11 that this will be effective retroactive to January 1, 1983,
12 which would not make any change, after withholding on interest
13 and dividends takes effect. I do not know of any bank that
14 would object to that.

15 Senator Symms. Well, that is the law. They have
16 to do it, don't they? Therefore, I don't see how --

17 The Chairman. It is the law right now but I do
18 not know how long it will last.

19 [Laughter.]

20 Senator Symms. The only thing I would say, Mr.
21 Chairman, I am not going to object to the chairman's amendment
22 but I hate to have us passing -- I think this is an important
23 piece of --

24 The Chairman. No, I support the amendment.

25 Senator Symms. -- legislation, and I hate to make

1 contingent on something else.

2 The Chairman. Does that present any problem --

3 Mr. McConaghy. We can draft it, Mr. Chairman.

4 Senator Symms. I think it has something to do
5 with carrots and sticks, I think the chairman would call
6 that.

7 The Chairman. That thought had not occurred to
8 me.

9 [Laughter.]

10 The Chairman. Senator Moynihan?

11 Senator Moynihan. Mr. Chairman, you said you had
12 to go, and if you do, all of us I think have a few things,
13 some of which we have had around a long while. Do you want
14 to have us carry on tonight, or would you like to start up
15 in the morning? We do not want to be a burden to you. You
16 have been very gracious to us.

17 The Chairman. I wonder if we might accept the
18 Symms amendment as modified by my amendment, and then go
19 back and take Senator Durenberger's amendment. Is there
20 objection to Senator Durenberger's amendment?

21 Mr. Chapeton. Well, yes, Mr. Chairman. I am afraid
22 we have just come down to the point that it is inherently
23 a factual question and we cannot agree to an exclusion of
24 income which the IRS determines on factual inquiry is
25 compensation.

1 The Chairman. Well, unless there is some objection,
2 why don't we accept the Durenberger amendment. We may not
3 be able to meet again. Then if there is some way to modify
4 it on the Senate floor, we are going to have pretty good
5 control over what comes up on the Senate floor.

6 Mr. Chapeton. Well, in light of that, Mr. Chairman,
7 could I ask Senator Durenberger, would it be modified along
8 the grounds you had suggested, on the numbers?

9 Senator Durenberger. Yes. We talked about applying
10 it only to individuals, perhaps, or limiting it to payments
11 from State and local government or nonprofits, or applying
12 it for only in-home care, some of those kinds of limitations.

13 Mr. Chapeton. That would certainly help.

14 Mr. Lighthizer. That would be an amendment to
15 H.R. 5470, Mr. Chairman?

16 The Chairman. Yes. We ought to go back and try
17 to take care of Senator Baucus and the California utilities
18 provision. That is the one we did not have enough members
19 to report out the other day. We only had 8. We now have
20 11. Can we reach some accommodation, Senator Long, on that?

21 Senator Baucus. Mr. Chairman --

22 Senator Long. Well, at a minimum I think it would
23 improve that bill if that bill were made subject to the minimum
24 tax. Am I correct or not about this, that in that situation
25 if someone were making \$1 million, he could conceivably

1 reduce his tax liability to zero because he would not be
2 subject to minimum tax?

3 Mr. Chapeton. I think that is correct. Yes, sir.

4 Senator Long. Well, I would just hate to have
5 them pull out records showing that here some millionaire
6 made \$1 million and paid not one penny of tax to this
7 Government. I just think that if only for scorekeeping
8 purposes, I think that we should try to avoid that.

9 Senator Baucus. On that point, could I ask whether
10 section 170(B)(1)(a) or 179(B)(1)(b) have been repealed by
11 the last act? Those provisions of the code, at least at
12 some recent date, provided for a 50 percent and a 20 percent
13 limitation.

14 Mr. McConaghy. There is, Senator Baucus, a 50
15 percent limit on adjusted gross income in the case of
16 contributions to a public charity. That is right.

17 Senator Baucus. It is 20 percent for private
18 charities.

19 Mr. McConaghy. For private foundations, that is
20 correct.

21 Senator Baucus. Those would still apply?

22 Mr. McConaghy. That is correct.

23 Senator Baucus. Therefore, in this case mentioned
24 by the Senator from Louisiana, someone could not wipe out
25 his \$1 million income.

1 Mr. McConaghy. No. They would cut it. Potentially
2 they could cut by 50 percent.

3 Senator Baucus. Therefore, those limitations still
4 do apply in the law.

5 Mr. McConaghy. That is correct.

6 Mr. Chapeton. That is correct. That would prevent

7 Senator Baucus. As they apply to all charities,
8 all charitable deductions.

9 Mr. Chapeton. Let us consult here.

10 Senator Chafee. Mr. Chairman, what appear to be
11 your intentions? Not what appear to be, what are your
12 intentions?

13 The Chairman. We are about down to enterprise
14 zones, and I know Senator.

15 Senator Long. Well, Mr. Chapeton was going to
16 answer the question, I believe.

17 Senator Chafee. I am just trying to get your
18 schedule, though.

19 The Chairman. Well, I do not want to leave but
20 I need to go to a couple of receptions.

21 Senator Baucus. Mr. Chairman, maybe we can resolve
22 this bill. Might I suggest to the Senator from Louisiana,
23 since he is concerned, even though there are limitations
24 as I understand it in the present law which apply to
25 charitable deductions, why not write report language that

1 the Treasury will examine this provision and then come back
2 to the Congress in a year or two, and if there are abuses
3 and there are problems, then they will so mention them to
4 us.

5 Mr. McConaghy. I think, Senator Baucus, it should
6 be clarified in answer to Senator Long's question, that if
7 I had \$100 of adjusted gross income and I had a painting
8 that could be deducted because it had a fair market value
9 of \$100, that that would -- essentially I could reduce my
10 adjusted gross income by half, 50 percent of adjusted gross
11 income. I could also have other, below-the-line, itemized
12 deductions that together would result in zero income tax.

13 Senator Baucus. However, the point is, this one
14 deduction could not --

15 Mr. McConaghy. That is correct. This one deduction
16 by itself could not do so.

17 Senator Baucus. The limitation is 50 percent,
18 as it is applied to all other charitable deductions.

19 Mr. McConaghy. That is correct, Senator Baucus.

20 Senator Long. What were you going to tell us about,
21 Mr. Chapeton?

22 Mr. Chapeton. I was going to make that point.
23 The result could be, with other deductions -- they would
24 have to be so-called below-the-line deductions, personal
25 deductions, interest, that type of thing -- one could, the

1 contributor, the donor, could result in no tax liability.
2 This could only contribute half to it.

3 Senator Long. You are saying that if you had other
4 below-the-line deductions, he could reduce it down to zero.

5 Mr. Chapeton. That is correct. This could only
6 reduce your adjusted gross income by half, and you would
7 have to reduce the remaining half with other deductions.

8 Senator Long. Well, then, if you want to be sure
9 that you are not going to have somebody make a great deal
10 of money and pay absolutely no income tax at all, it ought
11 to be subject to minimum tax, shouldn't it?

12 Mr. Chapeton. Yes, I would see no objection to
13 making it subject to the minimum tax.

14 The Chairman. Is there any objection to that?

15 Senator Baucus. Well, Mr. Chairman, on that point,
16 as I understand it the minimum tax provisions now for tax
17 preference items do not apply to charitable deductions. That
18 is, the last tax act we passed limited charitable deductions
19 generally as a preference item for the purpose of minimum
20 tax. Is that correct?

21 Mr. McConaghy. That is correct, Senator Baucus.

22 Senator Baucus. If that is correct, it seems to
23 me that charitable deductions should have the same treatment
24 with respect to artists' deductions as any other charitable
25 deductions. I do not see why we should make a special,

1 additional burden here for artists, assuming we agree with
2 the principle that there should be a deduction.

3 Mr. Chapeton. Senator Baucus, the whole concept
4 of the new minimum tax is that it is an alternative minimum
5 tax. It simply says that the combination of the benefits,
6 the preference items, cannot have the effect of reducing
7 tax liability below a certain point. Therefore, in most
8 cases, indeed I would really imagine in virtually every case
9 covered by your amendment, it would not apply. However,
10 I think Senator Long's point is that in some cases where
11 it had the effect of reducing tax liability dramatically,
12 then it should not do so and the way to prevent that is through
13 a minimum tax.

14 Senator Baucus. Well, Mr. Chairman, if we can
15 agree to passing the bill out with that additional amendment,
16 that would be fine with me.

17 Senator Long. Are you willing to go along with
18 the minimum tax being applicable?

19 Senator Baucus. You bet.

20 Senator Long. I so propose it.

21 The Chairman. Now is this going to sunset in 2
22 years or 3 years.

23 Senator Baucus. Mr. Chairman, sunseting creates
24 a problem. First of all, the Treasury has to gather
25 information --

1 The Chairman. Well, the bill creates a problem.
2 It is bad legislation, but we are willing to support it if
3 we can see how it is going to operate.

4 Senator Baucus. Well, why don't we have a study,
5 have the Treasury study it and if there is a problem, they
6 will tell us.

7 The Chairman. Well, it is easier to get in than
8 it is to get out. I support the concept but unless we agreed
9 on some tightening provisions that were discussed the other
10 day --

11 Senator Baucus. We agreed on those, as I understand
12 it. We are working on it, anyway. I do not know that there
13 is any disagreement on those tightening provisions.

14 Mr. Chapeton. Well, I think as I remember it the
15 two we agreed on were to have an appraisal in every case
16 and then a requirement similar to that of existing law involving
17 gifts of personal property, that it must be the type of
18 property that the donee would use as contrasted with selling.

19 Senator Baucus. That is right.

20 Mr. Chapeton. Now the appraisal part does not
21 really add much to existing law because taxpayers must have
22 some fixed idea of the value of property on which they claim
23 a charitable deduction. The other amendment would have some
24 limitations. We had suggested some other limitations but --

25 The Chairman. However, is Treasury satisfied?

R _____ O _____

1 Let me put it this way. I do not want to hold up Senator
2 Baucus' amendment. Is Treasury satisfied that you can work
3 out these areas of agreement? Otherwise, if we report the
4 bill out and we do not get any agreement, the bill will not
5 go anywhere.

6 Mr. Chapeton. Mr. Chairman, as I said the other
7 day, this is a particularly difficult one. We have raised
8 the tax policy concerns that Senator Long has raised on treating
9 this type of gift separately, but the contrary argument has
10 been made within the administration, so the administration
11 has not taken a position on this question and it has been
12 around for some time.

13 The Chairman. Therefore, you are satisfied that
14 you can reach some accommodation with Senator Baucus, even
15 though we do not have any language?

16 Mr. Chapeton. On those limitations I think certainly
17 we can reach some --

18 The Chairman. Is that all right? All right, then,
19 without objection, with the minimum tax amendment and with
20 the representation that there will be an effort made to make
21 certain that we are not creating something here that is bad
22 policy, then we are prepared to --

23 Mr. Chapeton. I must add that I think we cannot
24 avoid the direct question that Senator Long raises: That
25 is, if you allow someone to give and claim a full deduction

1 for the fair market value of ordinary income property, you
2 are necessarily saying that in many cases it will be as
3 advantageous and indeed, perhaps more advantageous to make
4 a gift of the property than sell the property and keep the
5 proceeds. Therefore, that is a direct tax policy question
6 that we cannot solve.

7 The Chairman. However, the administration has
8 mixed views on this.

9 Mr. Chapeton. That is correct.

10 The Chairman. All right, then. Then we have the
11 California utilities bill with that amendment. I would like
12 to offer an amendment to that proposal which would reduce
13 the holding period from 12 months to 6 months. I say this
14 because this has passed the Senate on two occasions. It
15 was offered on the debt ceiling and it was passed by a vote
16 of 77 to 17, and it just seems to me that to keep faith with
17 many people who helped us on the tax reform bill, that this
18 provision should be added to this bill.

19 Senator Moynihan. I would like to second that
20 proposal.

21 Senator Symms. I would like to be a sponsor of
22 it, too, Mr. Chairman.

23 The Chairman. It will be the same amendment we
24 offered on the debt ceiling, because we made some changes
25 there to take care of certain problems.

1 Senator Long. What bill are you putting this on,
2 Mr. Chairman?

3 The Chairman. On the California utilities and
4 the artists bill.

5 Senator Danforth. Mr. Chairman?

6 The Chairman. Is this an amendment?

7 Senator Danforth. Yes.

8 The Chairman. Is there objection to that amendment?

9 [No response.]

10 The Chairman. If not, that will be agreed to.

11 Then, is there objection to reporting the utilities
12 bill with those two amendments?

13 Senator Danforth. Mr. Chairman?

14 The Chairman. Senator Danforth.

15 Senator Danforth. I would like to offer an amendment
16 to the bill. My amendment would add the provisions of S.
17 1928 to the bill, that being the Westinghouse uranium
18 settlements bill. This is a matter on which the committee
19 has held hearings. It is a matter on which Senator Harry
20 Byrd has very strong feelings, and I think that in light
21 of the fact that the California utility bill does amount
22 to private relief legislation, and because that was the same
23 criticism that was leveled against the Westinghouse uranium
24 settlements bill by the Treasury, it seems to me that this
25 is an appropriate bill to offer this to.

R. O.

1 If you remember, the Westinghouse situation was
2 as follows: Westinghouse agreed to supply uranium to a
3 number of utilities. In fact, there were utilities in 21
4 different States. Westinghouse refused to make delivery
5 of the uranium. It was sued by the utilities. A settlement
6 was entered into, and under the terms of the settlement,
7 future sales of uranium would be made at a discount. The
8 question is whether or not that discount on future sales
9 is immediately recognized as income by the utilities. The
10 point of the bill is that it should not be.

11 As I say, we have held hearings. This affects
12 21 States, including Kansas, Louisiana, Missouri, Maine,
13 New York, Oklahoma, Pennsylvania, Rhode Island, Texas, and
14 Virginia, and some 55 million consumers. Obviously it affects
15 the utility bills being paid by consumers in these particular
16 States, and therefore I would offer the amendment.

17 The Chairman. First I would like to know what
18 Treasury,'s position is.

19 Mr. Chapeton. Mr. Chairman, we would oppose this
20 amendment. We opposed it in the hearing. It is true we
21 refer to it as private relief legislation, and I think there
22 is some element of correctness when we refer to the California
23 utilities situation as private relief because, indeed, it
24 does affect only the taxpayers involved in that question.

25 However, in this case the Westinghouse matter involves

R _____ O _____

1 tax principles that have been presented to the Internal Revenue
2 Service, and the Internal Revenue Service in private letter
3 rulings held against taxpayers. The taxpayers have taken
4 their case to court and they are arguing those tax principles
5 in court. We are not in a position to determine the correctness
6 of not of the arguments that the taxpayers have made, and
7 we think that is uniquely a situation for the courts. We
8 do not even have the knowledge of the facts which would be
9 required for one to be able to say whether it is good or
10 bad.

11 The Chairman. Well, I wonder if Senator Danforth
12 might be willing to add this as an amendment to item number
13 seven, H.R. 7094, We have not considered 7094.

14 Mr. McConaghy. That is correct, Mr. Chairman.

15 The Chairman. Therefore, if that would be
16 satisfactory with Senator Danforth, maybe we could go ahead
17 and report the utilities bill.

18 Senator Moynihan. Mr. Chairman, when you are through
19 I have a proposal to be added to the California bill, too.
20 It is a very small one but I feel an obligation.

21 The Chairman. Well, Senator Danforth just agreed
22 to offer his amendment on the next item and let us go ahead
23 and report the California utilities bill. Would the Senator
24 from New York be willing to do the same?

25 Senator Moynihan. Well, I can do it very quickly

1 by finding out whether the Treasury will support or will
2 not. This has to do with faculty housing.

3 Senator Chafee. Mr. Chairman, I am not sure how
4 the system works here. Is it whoever jumps in first? I
5 have been waiting here with number eight, and I have seen
6 fish and banks and everything else, museums, come in before.
7 I will wait until the cows come home but I am afraid that
8 you are planning to leave, and if you leave the show ends,
9 I think.

10 [Laughter.]

11 The Chairman. What I would like to do is report
12 out the utilities bill, then move to number seven and consider
13 the two amendments, and then move to number eight.

14 Is there objection to reporting out the utilities
15 bill with the artists amendment and with the holding period
16 amendment?

17 [No response.]

18 The Chairman. Without objection.

19 Now we will turn quickly to number seven. Maybe
20 there won't be any controversy on number eight. Maybe it
21 can be reported out.

22 Senator Danforth. Then, Mr. Chairman, I would
23 offer the provisions of S. 1928 as an amendment to item seven.

24 Mr. Chapeton. This is Westinghouse?

25 Senator Danforth. Yes.

1 Mr. Chapeton. Okay. We have opposed that.

2 The Chairman. Let's hear from Senator Moynihan,
3 and then maybe we can work on these two together.

4 Senator Moynihan. Well, Mr. Chairman, it is a
5 very simple thing that affects colleges and universities
6 around the country.

7 Senator Symms. Which one are we on, number seven?

8 Senator Moynihan. No, I have a proposed amendment --

9 Senator Symms. To number seven? Okay.

10 Senator Moynihan. Well, to some vehicle which
11 it seems to me we ought to have a vehicle that would be
12 successful. There is presently in effect a moratorium on
13 fringe benefit regulations, which we have extended twice
14 and it expires at the end of 1983.

15 The Chairman. Could I interrupt just for a second.
16 I understand there were only 10 members present when we
17 reported out the utilities bill with the artists amendment
18 and the holding period amendment. There are now 11 present
19 so I wonder if we might, without objection, report that bill?

20 [No response.]

21 The Chairman. Thank you. Excuse me.

22 Senator Matsunaga. All other bills have been
23 reported out?

24 The Chairman. Yes, properly.

25 Senator Moynihan. We have enacted a moratorium

1 on fringe benefit regulations. One of the exceptions to
2 this, the only one of which I am aware, has to do with faculty
3 housing provided by universities because there has been a
4 court case. There is a dispute, there is a difference of
5 opinion with the Treasury on this.

6 The amendment I have would simply include in the
7 moratorium rental housing rented at cost to faculty. It
8 is not a large item but it is crucial to a great many
9 educational institutions.

10 The Chairman. Does the Treasury wish to be heard
11 on this briefly?

12 Mr. Chapeton. Well, I think we must oppose any
13 additions to the moratorium. We understand the very difficult
14 problem presented in the housing area, in the college housing
15 area. I think it is an example of what happens. We have
16 uneven administration of the law in that area, probably because
17 of the difficulty of dealing with fringe benefits.

18 I understand Senator Moynihan is limiting his case
19 to cases where costs are fully reimbursed by the professor,
20 and I think that improves it but we must object to any
21 addition to the moratorium. By definition, it would be under
22 the moratorium if it were a new type of fringe benefit. IRS
23 would already be precluded from dealing with it, and it is
24 obviously not.

25 Senator Moynihan. Mr. Chairman, I recognize the

1 situation of the Treasury. I wonder, even so, if the committee
2 could consider it. I would ask for a vote. This is provision
3 at cost, not on subsidy. I mean, it really matters to an
4 awful lot of places.

5 The Chairman. Okay. We have enough to act on
6 amendments.

7 Those in favor of the amendment of the Senator
8 from New York, indicate it by saying aye.

9 [A chorus of ayes.]

10 The Chairman. Opposed?

11 [No response.]

12 The Chairman. The amendment is agreed to.

13 Senator Symms. Mr. Chairman, I have --

14 The Chairman. Now the amendment of the Senator
15 from Missouri. Is there objection to the amendment of the
16 Senator from Missouri?

17 [No response.]

18 The Chairman. Without objection, that will be
19 adopted. They will be amendments to item number seven.

20 Now I wonder if we could move to number eight? Do
21 you have an amendment?

22 Senator Symms. Well, I will put my amendment on
23 seven but if we want to pass number eight and come back to
24 seven, I know Senator Chafee has been waiting. I guess we
25 all are, but I have a very noncontroversial, technical

1 amendment that the chairman has indicated in the past that
2 he wanted to get on the next vehicle. I think Treasury has
3 agreed to it.

4 The Chairman. Right. I really do have a time
5 problem. I do not want to leave if somebody wants to bring
6 up their amendment but I need to --

7 Senator Symms. Well, I will put it on number eight.

8 Senator Chafee. Oh, no, don't do that. Put it
9 on seven.

10 [Laughter.]

11 Senator Symms. It might help it pass. Well, if
12 you would rather, I will put it on seven right now and have
13 it done with.

14 The Chairman. We can do business with five people.
15 If five will stay, I will leave.

16 Senator Chafee. Why don't we just whip through
17 eight quickly. It is noncontroversial.

18 The Chairman. Enterprise zones? Right.

19 Senator Symms. Mr. Chairman, could I put this --
20 I swear it will only take 30 seconds to accomplish this task.

21 The Chairman. Well, let's try it in 30 seconds.

22 Senator Symms. Last year, Mr. Chairman, we
23 introduced legislation, S. 1983, which will remedy an existing
24 inequity in the tax system by providing that holders of remaining
25 interest created before the publication of the IRS regulations

1 in 1958 will have a period of 9 months after the enactment
 2 of this bill in which to disclaim their interest in a gift
 3 for gift tax purposes. Now there is clearly a need to correct
 4 this situation, particularly for those interests created
 5 prior to the publication of the IRS regulations.

6 If the IRS view prevails, the result is that holders
 7 of remaining interests in trusts created prior to January
 8 1, 1977 were and are now forever preempted from taking effective
 9 disclaimers. Strangely, section 2518 gives the holders of
 10 remaining interests created after January, 1977 -- those
 11 created with the full knowledge of the new law -- a 9-month
 12 period in which to disclaim.

13 It could not have been the intent of Congress to
 14 grant a 9-month period to disclaim to those interests created
 15 after the law was known and, at the same time, deny to those
 16 trusts already in existence the right to conform to new
 17 standards. Therefore, all we are doing is putting the law
 18 into equity and I would yield to Treasury to see if they
 19 would agree with this.

20 Mr. Chapeton. Senator Symms, I am afraid we would
 21 not agree. Number one, of course, this would be retroactive
 22 relief. Number two, this is the precise question that was
 23 considered by the Supreme Court.

24 Let me clarify: For the future, the law has been
 25 changed by the Congress to make it clear that disclaimers

1 must be made after the gift -- I am stating it wrong -- before
2 the possessory interest comes in effect. In other words,
3 for the future we have decided the law, the Congress has
4 decided the law against the position taken by the taxpayers
5 in this case. For the past, the question was left open
6 and the Supreme Court decided against the taxpayers. Therefore,
7 we must object to an attempt to reverse the Supreme Court
8 decision retroactively.

9 Senator Symms. Well, Mr. Chairman, I would only
10 say that the case that the Secretary refers to was probably
11 not the strongest case. What we have here is a certain group
12 of taxpayers out here from 1958 through 1977 that come under
13 this, who are not allowed the same thing that anybody whose
14 estate comes after 1977 is allowed. It is a gross case of
15 inequity for the taxpayers.

16 Mr. Chapeton. Senator Symms, their argument was
17 they had no notice of the law, whether they could make the
18 disclaimer at the time. In this case the gifts were placed
19 into trust back in the thirties and they had no --

20 Senator Symms. They did not even know about it,
21 though.

22 Mr. Chapeton. That is right. They say they had
23 no notice and therefore could not have made a disclaimer,
24 and the first time they tried to make a disclaimer was after
25 intervening interests had expired. They then made the

1 disclaimer, and the argument was made before the Supreme
2 Court that that should be timely. That argument was rejected
3 by the Supreme Court.

4 Senator Symms. I have to say, Mr. Chairman, that
5 the Treasury's logic on this absolutely escapes me. What
6 you are saying is that somebody before 1977 cannot disclaim,
7 and somebody after 1977 can.

8 Mr. Chapeton. No, no. After 1977 the law is clear
9 that these taxpayers could not make the disclaimer unless
10 they made the disclaimer within the period of time, which
11 I believe is 9 months, from the creation of the interest,
12 not from the time the interest becomes possessory. The law
13 has been decided against these taxpayers for the future.

14 Senator Symms. You take the person where the trust
15 was granted before 1977, they do not get notified until 1980
16 that they were a recipient of some trust, and then it is
17 too late for them to disclaim under the present law unless
18 they happen to have it happen after 1977.

19 The Chairman. I wonder if we might, on this
20 amendment -- and again, I have discussed this amendment with
21 Senator Symms -- I think the Treasury does have a strong
22 objection to this amendment. I wonder if we might see if
23 we can work out something between now and the time we consider
24 these matters on the floor.

25 Senator Symms. It is all right with me. I guess

1 that is the best deal we can do. Half a loaf of Kansas sweet
2 is better than none at all.

3 The Chairman. I think we do need to focus on this
4 because I have visited with one of the persons directly
5 involved. He is not from Kansas. He came to my office,
6 really frantic about this matter of great concern to him
7 and his family.

8 Senator Symms. Well, I appreciate that, Mr. Chairman.
9 Maybe I could ask Treasury -- and I am willing to do that --
10 maybe I could ask Treasury this next question: I brought
11 this up the other day, and have you decided what the Treasury
12 wants to do about generation-skipping, because you are going
13 to be faced with that January 1.

14 Mr. Chapeton. Senator, we have been dealing with
15 the question. As I think you know, we have stated many times
16 that there are changes we would like to propose in the
17 generation-skipping rules. We have unfortunately not developed
18 all the changes we would like. We could talk about partial
19 changes but a deferral of the date, I think particularly --
20 excuse me.

21 Senator Symms. Go ahead.

22 Mr. Chapeton. A deferral of the date I believe
23 gives us problems because we confuse taxpayers who are
24 attempting to draft wills. We send messages that you ought
25 to redraft or reexecute wills, and that is the problem we

1 want to avoid.

2 Senator Chafee. Well, Mr. Chairman, I guess that
3 is about 30 seconds, isn't it?

4 [Laughter.]

5 Senator Symms. Now the ABA does not agree with
6 that, I might say. They say that they would not have to
7 redraft, but I would just say, you know, there will be no
8 revenue loss. If you want some time, we could amend the
9 law to give you 2 years to study it more, and have a 2-year
10 moratorium on it, but I know --

11 Mr. Chapeton. No, we would prefer not. We do
12 plan to bring amendments, and we are in the middle of doing
13 that. We would like to work with the Senator to make the
14 provisions work better, and we think we are much closer to
15 reaching that goal. We have simply been preoccupied with
16 other things but we do have specific thoughts in mind.

17 Senator Symms. Therefore, what you are saying
18 is, you think you have figured it out, how to --

19 Mr. Chapeton. We have figured some of the problems
20 out and we think the way to go is to make substantive changes
21 in the generation-skipping provisions. We want to propose
22 those changes.

23 The Chairman. Therefore, even a 6-month moratorium
24 would not be helpful, then.

25 Mr. Chapeton. I do not believe, I am not sure

R _____ O _____

1 that a 6-month moratorium would be of any assistance. I
2 would be happy, if we could talk about it the same way we
3 did on the other amendment, we could work with you.

4 Senator Symms. That would be fine.

5 The Chairman. Could we move to number eight, which
6 is the final matter on the agenda and probably the last thing
7 we will consider this year. Senator Chafee?

8 Senator Chafee. Okay, Mr. Chairman. This was
9 in an administration measure we had introduced in March of
10 this year. We had hearings on it in April. It is sponsored
11 by myself, Senators Heinz, Grassley, Matsunaga, and others.

12 What it really does, it sets up 25 zones under
13 HUD with advice from other departments, 25 zones throughout
14 the Nation for each year of 3 years. In other words, in
15 3 years you would have 75 zones. The objectives of these
16 zones are set forth by certain criteria. Basically they
17 are for the underprivileged areas where there has been high
18 unemployment. There is something in there for rural areas
19 but basically it is directly toward the cities, very high
20 unemployment, as I said, low incomes.

21 The zones have to be brought forward by the cities
22 and the States, and so it is a competitive business to see
23 which zone is provided the most by the city and the State,
24 and then the Federal Government goes in. There are tax
25 advantages once there is construction in the zone.

1 Therefore, Mr. Chairman, this as I say has the
2 support of the administration. If there are any questions
3 I would be glad to answer them.

4 Senator Grassley. I have a question. In regard
5 to the credit for hiring disadvantaged workers, is it possible
6 to pyramid this credit with the targeted jobs tax credit
7 or is it a case of using one or the other? Of course, if
8 it is a case of using one or the other they would use this
9 one, because obviously it is better tax credit for hiring
10 disadvantaged people than the other one.

11 Mr. Glickman. They cannot pyramid, Senator Grassley.
12 They will undoubtedly be using this one rather than the
13 targeted jobs tax credit. They cannot get both of them.

14 Senator Grassley. Okay. That is clear.

15 Mr. Glickman. That is clear.

16 Senator Chafee. Any other questions?

17 Senator Durenberger. Yes. Well, I just have a
18 couple of amendments I want to suggest to you at the appropriate
19 time.

20 Senator Chafee. Well, I am open to final passage.

21 Senator Durenberger. Are you the chairman?

22 Senator Chafee. Sure. Go ahead.

23 Senator Durenberger. Yes, Jack. One of them is
24 the fact that -- and first I want to compliment you for how
25 far this bill has come since it was --

R O

1 Senator Chafee. Well, I do not know how far we
2 have come. I am desperate to get under the deadline tonight.

3 Senator Durenberger. One of the things that you
4 are aware of is, a lot of States, knowing that this thing
5 is a good thing and it is coming, have started their own
6 enterprise zone projects. Therefore, I am going to propose
7 an amendment, and we can work out the language, that would
8 provide for the retroactive application of Federal enterprise
9 zone tax credits to those businesses which locate in areas
10 designated as enterprise zones under State programs which
11 are later co-designated as Federal enterprise zones.

12 The reason is mainly because you have had to limit
13 the number of zones across this country, and everybody is
14 going to go into competition to be one of these zones. If
15 somebody who would like to operate under a State program
16 knows that it might at some point in the future be eligible,
17 it will just put a stop to a lot of State zone activity.

18 Senator Chafee. I will have to ask Treasury on
19 that. Go ahead.

20 Mr. Glickman. Senator Durenberger, this was something
21 that we focused on as the administration was putting the
22 package together, and we opted to make it clear that the
23 provision was only going to apply prospectively as new businesses
24 came into the zones. As a matter of fact, the way it works
25 is, even businesses that are already in the zones -- not

1 if you designate it but an organization that is already there
2 -- with respect to certain of the credits it will only be
3 incremental, in other words, increased from that point forward.

4 I think that our principal concern was that if
5 a State goes out and declares something a zone, there is
6 no assurance that the Secretary of HUD is going to make that
7 a zone. That means people are going into those zones, even
8 though they may have some idea that this could happen, they
9 are going into it based upon the pure economics of the
10 transaction.

11 We think that if you give it retroactively you
12 really are giving a windfall. It is not the inducement for
13 people to go into the zone, and that was the purpose with
14 which we limited it in the way we did. Thus, the administration
15 would hope that that would be maintained.

16 I do not have a revenue estimate, for example,
17 on how much additional that would cost. We just received
18 the amendment just a short time ago, and I have not had a
19 chance to run out the numbers.

20 Senator Durenberger. Well, perhaps if you are
21 in haste we can work on this one because I can understand
22 that logic, but I am afraid some of the logic behind it is
23 to limit the amount of so-called revenue loss. I have heard
24 from a lot of States that have worked their way into this
25 program, and I think they have pretty clearly looked at the

1 incentives and the disincentives in the program. Therefore,
2 if there is some way to accomplish your objectives, Senator,
3 and Treasury's I would like to work with you.

4 Senator Chafee. Also, I am not so sure there are
5 many States that are in this particular problem Minnesota
6 is. I know some States are doing it. Some States are
7 dependent upon the enactment of the Federal legislation.

8 Any other questions? We do not want to lose people.

9 Senator Matsunaga. Is Puerto Rico included in
10 this zone, within one of the zones?

11 Mr. Glickman. Yes, it is.

12 Senator Chafee. Right. Puerto Rico would be
13 included.

14 Mr. Glickman. Yes, Senator.

15 The Chairman. Well, have we discussed the original
16 proposal or the modified proposal?

17 Senator Chafee. We have discussed the original
18 proposal. Let me say this, Mr. Chairman. There was a modified
19 proposal, which the essence of it, one of the big features
20 of it would drop the number of zones to 10 per year for 3
21 years. That is 30 zones across the whole Nation in 3 years.
22 I really do not think we are getting very far with that.
23 The 25 zones a year spread across the whole country is really
24 very modest, and the idea is just to try it. We are not
25 going hog-wild. That makes 75 zones in 3 years to get an

1 idea of whether this is going to work. The administration
2 has not promised everything, and I think --

3 The Chairman. Does the administration support
4 the one you have been discussing?

5 Senator Chafee. Sure. That is the administration
6 bill, the 25 per year.

7 The Chairman. Is there objection to reporting
8 the bill?

9 [No response.]

10 The Chairman. If not, the bill will be reported.

11 Senator Danforth. No, Mr. Chairman.

12 [Laughter.]

13 Senator Danforth. Are rural areas included in
14 this?

15 Senator Chafee. Yes. Now describe what we do
16 for rural areas in the bill, Mr. May.

17 Mr. May. Senator, I am Stephen May, Assistant
18 Secretary of HUD for Legislation and Congressional Relations.

19 Under the bill, we estimate at this stage there
20 would be roughly 2,000 communities across the country which
21 would be eligible for designation as enterprise zones, and
22 of those 2,000, roughly 1,500 would be communities of 50,000
23 or less. It is clearly the intention of an experimental
24 program such as this to have a variety of communities in
25 terms of size, geographic location, and the city/State package

1 of incentives, so that we would envision that there would
2 be a goodly number of zones designated in so-called rural
3 areas.

4 Senator Danforth. Are there set-asides for rural
5 areas?

6 Mr. May. No specific set-asides for any size city.

7 Senator Danforth. It was my understanding that --

8 Senator Chafee. Well, Mr. Chairman, there were
9 some modified proposals here which reduced the -- I am prepared
10 to accept those if we could have the 25 per year, and accept
11 the balance of them. That does have a specific set-aside
12 for rural areas of three per year.

13 Now, I am not sure that is good to have. Really,
14 it should really be in urban areas but if --

15 Senator Danforth. I thought it was one-third
16 set-aside.

17 Senator Chafee. No.

18 Senator Danforth. Three assumes 10, see, but if
19 it is 25 it should be, say, 8..

20 Senator Chafee. Well, we do not have set-asides.
21 In the original administration legislation there is no set-
22 aside for rural areas. It is just on a competitive basis.
23 It comes in to the Secretary of HUD. He determines where
24 the most need is.

25 The Chairman. Do we reduce the cost substantially

1 if we accept the modified version with that one provision,
2 keeping it at 25 instead of 10?

3 Senator Chafee. Well, where we reduce the cost
4 is eliminating the 5 percent credit for employees for wages
5 earned.

6 Mr. Glickman. That will obviously reduce the cost
7 dramatically, as will cutting the number of zones, obviously
8 would reduce the cost.

9 Senator Chafee. Yes, but I do not think we really
10 want to cut the zones.

11 Mr. Glickman. No, no. I am not suggesting that.
12 I thought the question was whether we should and what the
13 cost effect was.

14 Senator Chafee. It is my feeling that we would
15 make a mistake by reducing the zones below 25 a year. I
16 just do not think we are getting very far in trying to see
17 if this works.

18 The Chairman. I do not have any quarrel with it.
19 The administration supports the modified proposal with the
20 25 zones?

21 Mr. Glickman. Mr. Chairman, since this was the
22 administration's proposal, I think that the administration
23 would much prefer to see the proposal as introduced move
24 forward. Obviously, leaving it with the number of zones
25 at 25 per year makes it much more palatable.

1 The bill was fairly carefully structured. One
2 item concern the employee credit which has been eliminated.
3 In our judgment this will adversely affect the bill. It
4 is something we would hope the committee thought about in
5 a little more detail before they dropped it.

6 The Chairman. Well, I wonder if we might do this,
7 because we are about to lose a quorum here -- in other words,
8 you are talking about the modified proposal. You have a
9 question about it. Let's not get into a big discussion but
10 do you have a question about the modified proposal?

11 Mr. Glickman. Yes, Mr. Chairman. It is number
12 one and number two on the bullets that --

13 Senator Chafee. Well, Mr. Chairman, let me say
14 this: I am prepared, if we get the 25, the administration
15 may feel strongly about a 5 percent credit for the employees
16 for wages earned. That is sort of combat pay for serving
17 in these zones. I do not think that is the objective of
18 the legislation. The objective is to provide jobs, not to
19 give the employee a credit. I am not holding out for that,
20 and that puts me in opposition with the administration.

21 However, the specific set-aside for rural areas,
22 I would just hate to see that go too high.

23 Senator Danforth. Well, I thought it had been
24 worked out at one-third but then you said 10, and 3 of course
25 is approximately a third of 10 --

1 Senator Chafee. Right, we have three per year.

2 Senator Danforth. -- but now you are talking about

3 25, so if it is 25 it should be 8.

4 The Chairman. Under the modified proposal, the
5 set-aside would be three per year, and that would be --

6 Senator Chafee. Thirty percent out of the 10.

7 Senator Danforth. Out of the 10, but not out of
8 the 25. It should be 8 out of the 25.

9 Senator Chafee. Well, look, Mr. Chairman, I want
10 to get the legislation. If it is necessary to have eight
11 rural areas, why don't we settle it at five?

12 [Laughter.]

13 The Chairman. If it is necessary to have eight,
14 you will settle at five? Let's see. Coming from a rural
15 area, that doesn't seem to add up. I think probably --

16 Senator Chafee. Okay, let's go with the one-third.
17 Let's go with the eight.

18 The Chairman. -- probably if it is an enterprise
19 zone, it probably should be in the cities.

20 Senator Baucus. Mr. Chairman, I would hope we
21 could keep eight, too, coming from a rural area.

22 The Chairman. All right. I have a feeling that
23 this may not be --

24 Senator Moynihan. Mr. Chairman, we get to the
25 suburbs next, do we?

1 The Chairman. I would guess that we would be looking
2 at this sometime later but let's go ahead, and in an effort
3 to move it out of this committee, agree to that figure of
4 eight and accept the modified proposal with the overall
5 ceiling at 25, and we will work out those little details
6 the administration has a problem with between now and who
7 knows when. Would that be satisfactory?

8 Senator Chafee. Yes, that is satisfactory, Mr.
9 Chairman. Do we have a quorum? Can we report this out,
10 Mr. Chairman.

11 The Chairman. We have one other amendment that
12 I bypassed that I would like to suggest we add to -- yes,
13 we do have. How many do we need, 11?

14 Mr. Lighthizer. You do not have 11. There are
15 only 10 members of the committee.

16 The Chairman. We have 7094 that has not yet been
17 reported. Can we agree to the amendment?

18 Mr. Lighthizer. This is an amendment to 7094, Mr.
19 Chairman?

20 The Chairman. Yes.

21 Mr. Lighthizer. Well, you do not have a quorum
22 present. Could we make it a committee amendment so that
23 it would not --

24 The Chairman. There is one on the way.

25 Mr. Lighthizer. Two, you need two. Senator

1 Boschwitz does not count.

2 The Chairman. That is right. I did not know Rudy
3 was here.

4 Senator Symms. Mr. Chairman, while we are waiting,
5 could I make an inquiry to Treasury? Excuse me, sir.

6 The Chairman. I was supposed to speak at 6:00.

7 Senator Moynihan. Mr. Chairman, you are going
8 to report out the other matters that we went down the list
9 on, aren't you?

10 The Chairman. They have all been agreed to except
11 7094, and that is where we need the quorum.

12 Senator Moynihan. Yes.

13 Senator Symms. Mr. Chairman, what I wanted --

14 The Chairman. I would like to add to that provision
15 the one provision that affects one person in North Carolina.

16 Mr. McConaghy. That, Senator, would be the rollover
17 contributions, S. 2232.

18 The Chairman. That is Mr. Pope, whoever Mr. Pope
19 is.

20 Senator Symms. Mr. Chairman, I wanted to make
21 an inquiry to Treasury just with respect to the two amendments
22 that we left in a state of limbo. I would like to make the
23 same request, Mr. Chairman, on the same piece of legislation,
24 and ask unanimous consent that I do so, on the amendment
25 that we have discussed back and forth all year dealing with

1 wraparound annuities. We have legislation that was sponsored
2 by Senators Grassley, Durenberger, Chafee, Baucus, and Bentsen,
3 dealing with wraparound annuities. Treasury was reluctant
4 to go along with it.

5 We have now narrowed down the scope of the language
6 on retroactivity on wraparound annuities so it merely
7 restores the status quo prior to your ruling of 81-225. For
8 example, where a person had \$100 in an annuity on the date
9 of the ruling \$100 could stay, and so forth. You are familiar
10 with it, but I would just like to have that one added to
11 the list of my other two, generation-skipping and -- so that
12 we could work on it tomorrow and hopefully have it in the
13 same status with the committee. I think the committee is
14 for it; it is the Treasury that is resisting it.

15 Mr. Chapeton. We would be happy to talk about
16 it. We have consistently opposed that, as you know, Senator
17 Symms. I assume, when we are leaving these in limbo, we
18 are talking about a committee amendment or a floor amendment?

19 Senator Symms. Yes.

20 Mr. Chapeton. We would be happy to talk about
21 it. The effective dates in that ruling were carefully looked
22 at at the time. We would be happy to look at them again
23 with you, though.

24 The Chairman. We have one member on the way.

25 Is there objection to reporting 7094 with the

R _____ O _____

1 amendments agreed to plus the Enterprise Zone Tax Act of
2 1982 as modified, the modified proposal as modified by the
3 rural agreement, as further modified?

4 [No response.]

5 Mr. McConaghy. We would like technical authority
6 with that, Mr. Chairman.

7 Mr. Lighthizer. With respect to all of the changes.
8 The Chairman. You can have technical authority.

9 Without objection, that will be approved. We will
10 stand in recess until the call of the Chair.

11 [Whereupon, at 7:00 p.m., the committee recessed,
12 to reconvene at the call of the Chair.]

13
14
15
16
17
18
19
20
21
22
23
24
25

