

OFFICIAL TRANSCRIPT

*Bob*

COMMITTEE ON FINANCE

**UNITED STATES SENATE**

EXECUTIVE SESSION

Friday, September 26, 1980

Washington, D. C.

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## EXECUTIVE SESSION

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FRIDAY, SEPTEMBER 26, 1980

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United States Senate,

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Committee on Finance,

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Washington, D. C.

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The committee met, pursuant to adjournment, at 11:25 a.m., in room 2221 Dirksen Senate Office Building, the Honorable Russell B. Long (chairman of the committee) presiding.

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Present. Senators Long, Talmadge, Ribicoff, Byrd, Bentsen, Matsunaga, Moynihan, Baucus, Dole, Packwood, Danforth, and Heinz.

15

The Chairman. This meeting will come to order.

16

Senator Moynihan. Mr. Chairman.

17

The Chairman. Senator Moynihan.

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Senator Moynihan. Mr. Chairman, a number of senators have been wondering how we might seek to deal with the question of the Superfund legislation, as it is called, the toxic waste legislation which has been marked up and reported out in the Committee on Environment and Public Works.

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However, of course, it is tax legislation as well as environmental legislation, and our committee has held

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1 hearings on it, but it has not been referred to us. The  
2 question arises, how shall we proceed? Time is running, and  
3 this is a very important measure to many of us on this  
4 committee and all of us in the Senate. I know you,  
5 yourself, support the principle and want to see something  
6 done.

7       The Chairman. I would like to act on the Superfund  
8 bill, but I think that we ought to have the bill before us  
9 to act on it. It has not been referred to us. I have  
10 suggested to Mr. Randolph, who is the Chairman of the Public  
11 Works Committee, no later than this morning that they refer  
12 the bill to us, and we will act.

13       It is definitely a revenue bill, and the Senate rules  
14 say that revenues bills generally shall be referred to the  
15 committee on Finance, and no where in the rules does it  
16 suggest that a bill to raise revenue should be referred to  
17 any other committee.

18       So we do have jurisdiction over the aspects of it that  
19 would raise the revenue for the bill, which is a large  
20 amount of money no matter which version you take. If they  
21 will refer the bill to us, I will seek to obtain prompt  
22 action in the committee.

23       As a matter of fact, the thought occurs to me that in  
24 view of the fact that it is late in the session, we could  
25 avoid the three-day rule by simply reporting the bill out

1 with whatever amendments we want to recommend, but without a  
2 committee report. If you don't file a committee report, you  
3 can bypass the three-day rule and thereby save some  
4 additional time.

5 Let me ask the staff. How long has that Superfund bill  
6 been in the Senate? I know the House passed it, but when  
7 did the House pass it?

8 Mr. Stern. The House has only just passed their  
9 version. One part of it late last week, and another part  
10 this week. But the Senate bill has been on the calendar for  
11 several months since the Public Works Committee finished  
12 with it.

13 The Chairman. The Senate bill, if it were sent to the  
14 House, it would be sent back to us with a blue slip because  
15 it entails a measure to raise revenue to the tune of at  
16 least \$1 billion, does it not?

17 Mr. Stern. That is correct.

18 If you are looking at how long the House bills have  
19 been in the Senate, the one relating to oil slicks passed  
20 the House on September 19, according to my information, and  
21 the one on the hazardous substances passed on September  
22 23rd. In fact, they have not actually been sent to the  
23 Senate yet. Those have only passed the House without being  
24 sent to the Senate.

25 The Chairman. They have not been sent here?

1 Mr. Stern. They have literally not been sent, and they  
2 have not been referred to the committee.

3 The Chairman. Well, then, we cannot act on a bill we  
4 don't have. I would very happy to help move the bill. It  
5 is very important that the bill become law, And it should  
6 not fail in this Congress, it ought to be enacted.

7 Those of us on the Senate Finance Committee have  
8 exclusive jurisdiction over the revenue raising measures,  
9 and this is a revenue raising measure. So I would hope that  
10 the bill would be referred to the committee. If they would  
11 let us have the bill, we would act.

12 Senator Moynihan. We could certainly proceed to deal  
13 with the Senate bill by having it referred to this  
14 committee. Certainly you would wish that that would be  
15 done.

16 The Chairman. I would willing to even try to act on  
17 that, but I would point out that if that is the case we will  
18 have to amend some other revenue bill that is over here,  
19 because otherwise, if it is not added to a revenue bill, a  
20 bill that originates in the Senate will be sent back to us.  
21 It would be unconstitutional.

22 Mr. Shapiro, you are a lawyer, is that correct or not?

23 Mr. Shaprio. Oh, yes.

24 (General laughter.)

25 Mr. Shapiro. Maybe I should just stop there, but in

1 view of the discussions of a tax bill originating on other  
2 things, the House is protecting its jurisdiction very  
3 strongly, the Ways and Means Committee and the House  
4 Leadership.

5       The Chairman. Is there any doubt about that in your  
6 mind, Mr. Lubick, that a billion dollar tax bill is a bill  
7 to raise revenue, and that therefore such a bill must  
8 originate in the House?

9       Mr. Lubick. I agree with that, Mr. Chairman.

10       The Chairman. I am glad to know that because I thought  
11 that that was what the case was.

12       Senator Bentsen. Mr. Chairman, if I might give some  
13 background on this.

14       The Chairman. Senator Bentsen.

15       Senator Bentsen. I think that it is very important  
16 that we do act, and that we get a Superfund bill out. The  
17 one that passed the Environmental and Public Works has a  
18 much more extensive liability provision, and brings about  
19 some major changes in the tort law, some of which frankly I  
20 think go too far.

21       The Administration bill, at least in my viewpoint, is a  
22 much more reasonable one in that regard. I understand that  
23 a great deal of work is being done now to try to reconcile  
24 some of the differences. If that can be done, we will be in  
25 a much better position to get this job done.

1           The Chairman. I think that we ought to make it clear  
2 that if they refer the bill to us, we will report it out,  
3 and we will do everything we can to bring about expeditious  
4 consideration.

5           Now, let's look at a bill that we might be able to do  
6 business on here this morning. We broke up for lack of a  
7 quorum at our last meeting, and we could not get a quorum  
8 for the day that followed, so we have what I hope will be  
9 our principal tax simplification achievement with regard to  
10 this installment sales bill.

11           I would suggest that we resolve the point that was  
12 rather heatedly debated the last time we were doing business  
13 here by simply striking from the bill that part which says  
14 that the Secretary would have the authority to waive. We  
15 would simply strike the part that he would waive, so you  
16 would have specific bases upon which the taxpayer would be  
17 entitled to claim the benefit of the capital gains  
18 treatment.

19           You might want to add one or two things that occur to  
20 you that might appear an obvious basis for claiming the  
21 favored treatment, and simply leave this question for a  
22 future Congress about these matters that don't readily occur  
23 to you so that we can argue next year about what if any  
24 basis there should be for the Secretary to waive some  
25 additional matter that might arise.

1 I think that I suggested that to some of you on the  
2 staff when we met the last time.

3 What can you suggest about that, can that be taken care  
4 of? You know what I am talking about, Mr. Lubick, don't  
5 you?

6 Mr. Lubick. What you are suggesting, Mr. Chairman, if  
7 I understand it correctly, is that the statute contain only  
8 specified exceptions to transactions between spouses with  
9 respect to appreciable property, and if it is not specified  
10 as a named exception, then the installment treatment is not  
11 available. We will deal with the question of how to resolve  
12 the cases we have not thought of in a future Congress.

13 The Chairman. Yes.

14 Senator Byrd. Mr. Chairman.

15 The Chairman. Senator Byrd.

16 Senator Byrd. I think that it would be impossible for  
17 the Congress to foresee all the situations that might arise,  
18 and that was why an effort was made when this bill was  
19 developed to give some leeway to the Commissioner.

20 I think that we can work this matter out, Mr. Chairman,  
21 if the chairman is reasonable and I find always to be  
22 reasonable. Let me state the situation in this way.

23 I have no problem with the need to tighten up the use  
24 of installment sales by related parties. There have been  
25 abuses in that, and I think that it needs to be tightened



1 up, and should be tightened up. I have no problem with the  
2 way the present bill is drawn insofar as tightening up the  
3 requirements in that regard.

4 The original bill went far too far. The staff which  
5 developed that went to an extreme which had it been enacted  
6 would over a period of time have eliminated all small  
7 businesses and small farms. But that has been cured. So I  
8 have no problem with the provisions in this bill.

9 The only point of contention is, whether as a matter of  
10 tax policy and tax principle a taxpayer should be able to go  
11 to court on an equal footing or nearly equal footing with  
12 the Federal government.

13 To resolve the problem that we are faced with now, I  
14 would throw out this suggestion. That we leave the bill as  
15 it is, but add to the bill or report language, whichever  
16 would be deemed appropriate, this which is about five  
17 paragraphs if I may read it, Mr. Chairman.

18 The Committee on Finance believes that, as a principle  
19 of tax policy, a taxpayer should be permitted to contest on  
20 an equal footing in the appropriate courts matters in  
21 dispute with the government. The committee recognizes that  
22 two sections of the pending legislation (Section 2(e)(7) and  
23 Section 2(g)) put a taxpayer at a disadvantage if he or she  
24 should seek a court ruling on the merits of the issue.

25 The committee accepts the pending legislation only with

1 the specific understanding that:

2 (1) The foregoing sections are designed to give an  
3 opportunity to taxpayers to qualify who might otherwise not  
4 be able to qualify under this legislation for the reporting  
5 of income on the installment method;

6 (2) Under the preceding sections in determining the  
7 question of tax avoidance, the Commissioner shall treat  
8 taxpayers fairly and equitably in light of all the facts and  
9 circumstances of each particular case in a manner consistent  
10 with the remedial intent of the preceding sections, and

11 (3) The preceding sections -- this I think is the most  
12 important of all from my point of view. The preceding  
13 sections are not to be considered as a precedent for future  
14 legislation.

15 I think Mr. Lubick himself said yesterday that this  
16 would not be considered as a precedent.

17 The final paragraph I put in because of the colloquy  
18 that Senator Danforth had yesterday with the staff. The  
19 concluding paragraph is this:

20 The committee shall monitor closely the administration  
21 of the sections and the Commissioner shall report annually  
22 its actions to the appropriate congressional committees.  
23 Further, the General Accounting Office shall no later than  
24 two years after the enactment of this legislation report to  
25 the Congress on the manner in which the preceding sections

1 are being administered.

2 Mr. Chairman, would that be reasonable?

3 Mr. Shapiro. Mr. Chairman, I think Senator Byrd has  
4 come up with very appropriate committee report language to  
5 explain the provision we have. I think that this is  
6 something that could very easily worked with, the language  
7 as he has read it.

8 The Chairman. Is that all right with you, Mr. Lubick?

9 Mr. Lubick. Yes, Mr. Chairman, that sounds like an  
10 appropriate guide for the Internal Revenue Service to act  
11 by, and we would agree that it is imminently fair.

12 The Chairman. That is fine, then. Without objection,  
13 agreed.

14 Can we now vote on reporting the bill?

15 Senator Byrd. Yes.

16 Senator Dole. May I just raise one question, and that  
17 is with regard to the effective date.

18 I am not certain how many calls we have had on the  
19 effective date. We have already had one call, and I guess  
20 it has been discussed with Mr. Ricketts, to see if we can  
21 have a broader retroactive effective date that could be  
22 justified.

23 I am wondering what opposition there might be changing  
24 the effective date of the 30 percent initial payment rule,  
25 and the two or more payments rule for sales occurring in

1 taxable years entering after the date of enactment of the  
2 bill.

3 Does Treasury have any problem with that? This is a  
4 bill intended to help taxpayers, as I understand it, and not  
5 to impose a new burden. I would guess that we are all going  
6 to be getting inquiries from the special interest groups  
7 wanting to add special relief provisions on retroactivity.  
8 It would provide consistency for taxpayers for the entire  
9 year.

10 Mr. Lubick. Senator Dole, I don't think consistency is  
11 a problem in this particular type of statute which is  
12 transactional. Under present law, you can elect the  
13 installment sale to some sales, and not as to other sales.  
14 So the installment sale provision itself is not a question  
15 of an annual aggregation of your income for the year or your  
16 annual gains for the year. It is a transactional statute.

17 On that basis, I think we had thought that it was most  
18 appropriate to apply on transactions after the date of  
19 enactment. In fact, what you are taking here, of course,  
20 is some of the benefits, and say we will apply them  
21 retroactively. We, of course, will not go the other way  
22 around.

23 We have consistently opposed retroactivity on the ground  
24 that the rules ought to be applicable on a prospective basis  
25 across the board. It is not the most serious problem is the

1 world, however.

2 I wonder if I could ask Mr. Bayliss to address this  
3 point? If it is not that serious a problem, it seems to me  
4 that we could do this. It seems to me that it might make  
5 more taxpayers use the option of the installment sales  
6 method.

7 Mr. Bayliss. Senator, the provision that we are  
8 talking about is merely to allow taxpayers to have the  
9 election to use the installment sales provision under more  
10 broad rules, the rules that the new bill in general  
11 provides.

12 We do have a retroactive date for the related party  
13 rules which are a burden, as Senator Byrd has mentioned  
14 earlier this morning. It would seem appropriate that you  
15 would have a retroactive date for the benefit portions of  
16 this bill.

17 The only two rules that are being affected would be the  
18 rule that says that you do not have to be limited by  
19 receiving only 30 percent or less of the total purchase  
20 price, and the rule that says that you have to have two or  
21 more payments in order to take advantage of the installment  
22 sales method.

23 Those are really fairly technical provisions which are  
24 traps for the unwary. It would seem reasonable to have a  
25 retroactive date.

1           Senator Dole.  If there isn't any strong opposition, I  
2 think we ought to do that.

3           The Chairman.  What do you want to make retroactive?

4           Mr. Lubick.  The rule that says that you can have  
5 installment treatment if your downpayment is more than 30  
6 percent, and that you can have installment treatment even  
7 though the deferred payments come due in one installment  
8 rather than more than one.

9           The Chairman.  What would you use, what date?

10          Mr. Lubick.  I think Senator Dole would use the taxable  
11 year pending after the date of enactment.  When you make up  
12 your return, you would follow those rules.

13          The Chairman.  So it would apply to the year that will  
14 end.

15          Mr. Lubick.  Yes.

16          The Chairman.  You have no strong objection to that?

17          Mr. Lubick.  No, just a mild objection.

18          (General laughter.)

19          The Chairman.  If you have a strong objection, I am  
20 going to vote against it.

21          Senator Dole.  I think that it is almost an endorsement  
22 from the Treasury

23          The Chairman.  All in favor say, aye.

24          (Chorus of ayes.)

25          The Chairman.  Opposed, no.

1 (No response.)

2 The Chairman. The ayes have it.

3 Senator Byrd. Mr. Chairman, I have two matters that I  
4 need to raise on behalf of others. There is a letter from  
5 Senator Helms posing certain questions in regard to this  
6 legislation that he feels should be clarified. Then there  
7 is one dealing with Subchapter S corporations that needs to  
8 be clarified.

9 I have no interest in either one of them, but I have an  
10 obligation to bring them up. I don't know whether we will  
11 have time to do it before this vote. We have a vote in the  
12 Senate right now.

13 Senator Dole. Could the staff look at them while we  
14 are voting?

15 Senator Byrd. If the staff could look at these two  
16 matters while we are voting, they could probably be handled  
17 very quickly.

18 Mr. Hawkins. I could announce that the Subchapter S  
19 corporation, we did look into that. It has some appeal  
20 because the Subchapter S gain is taxed only once. So at  
21 first we thought that it would fit in with the 337 gain,  
22 which is also taxed only once. However, there is a  
23 difference in the way that the tax is computed. Subchapter  
24 S uses the corporate basis, and the 337 uses the shareholder  
25 basis.

1           Our conclusion was that this would be a bad change to  
2 make in the context of the installment sales bill. The  
3 Joint Committee staff has produced a report on Subchapter S,  
4 and we are hopeful that that whole area will be under very  
5 active consideration.

6           To put it another way, to make this one change affects  
7 the whole theory or scheme on which Subchapter S  
8 corporations are being taxed.

9           Senator Byrd. So your feeling is that this matter is  
10 something worthy of consideration, but it should be handled  
11 when the Subchapter S corporation matters are handled,  
12 rather than on this particular piece of legislation?

13          Mr. Hawkins. Exactly so.

14 On the other, I believe the principle that he is raising is  
15 on the resale, if you buy a piece of property and then add  
16 other property, and resell the other property, should in  
17 fact be the first sale. We assume the answer is no.

18          I do appreciate your suggestion that we review the  
19 letter more closely, while other things are going on, and we  
20 will be able to give a more exact answer.

21          Senator Byrd. But your statement is that if an  
22 individual sells a piece of property, and then that property  
23 is improved in whatever way it might be improved --

24          Mr. Hawkins. If you buy a piece of land and then put a  
25 building on it.



1           Senator Byrd. If it is land, and then you put a  
2 building on it, and then that is resold within a two year  
3 period --

4           Mr. Ricketts. After acquiring the property, the  
5 improvements would not accelerate the recognition to the  
6 initial seller. That would be allocated out. So the fact  
7 that it had been improved would not --

8           Senator Byrd. The original seller who sold the land  
9 would not be penalized because improvements have been put on  
10 and subsequently sold.

11          Mr. Ricketts. That is correct. We would make that  
12 clear in the committee report that an allocation is intended  
13 -- Let's assume that it had been 10 acres, and the house had  
14 been put on one acre, that one acre with the improvement is  
15 sold, that should not accelerate the gain with respect to  
16 the remaining nine acres that are still retained by the  
17 related party purchaser.

18          We could clarify that in the committee report.

19          Senator Byrd. But it would affect the one acre on  
20 which the improvement was made.

21          Mr. Ricketts. Only the one acre, and only to that  
22 extent, there would be an allocation.

23          Senator Byrd. The original seller would be obligated  
24 only to the degree of the price of the land, and not to the  
25 degree of the amount realized on the structure that has been

1 put on the land.

2 Mr. Ricketts. Yes, sir.

3 Senator Byrd. I think that this probably takes care of  
4 it.

5 One other question. Under this legislation, do I  
6 understand it correctly that a person can make the complete  
7 payment and still call it an installment sale?

8 Mr. Ricketts. He can receive complete payment and still  
9 call it an installment sale; was that the question?

10 Senator Byrd. Yes.

11 Mr. Ricketts. He would have to have some portion of the  
12 purchase price deferred until a subsequent taxable year to  
13 have installment reporting.

14 Senator Byrd. That is what I thought.

15 What portion?

16 Mr. Ricketts. Under this bill, any portion.

17 Senator Byrd. Ninety-nine percent paid, and one  
18 percent owed --

19 Mr. Ricketts. The one percent would be deferred.

20 Senator Byrd. He would still be able to get  
21 installment sale?

22 Mr. Ricketts. Unless the taxpayer chose to report the  
23 entire gain for practical reporting purposes.

24 Senator Byrd. I see.

25 The Chairman. All in favor of reporting the bill say,

1 aye.

2 (Chorus of ayes.)

3 The Chairman. Opposed, no.

4 (No response.)

5 The Chairman. The ayes have it. The bill is ordered  
6 reported.

7 Senator Dole. I understand that Senator Wallop, when  
8 we return, will offer one amendment to the bankruptcy  
9 provision. That only leaves, then, the 10 or so bills that  
10 have been universally approved.

11 Mr. Shapiro. You have not discussed the House passed  
12 provisions.

13 The Chairman. I don't see any point in trying to get  
14 the senators back in here today.

15 Do we have some other thing that we are going to have  
16 to meet on?

17 Mr. Stern. This is up to you, Mr. Chairman. Our  
18 thought was that today the only thing you would try to do is  
19 to finish the bankruptcy provision. If you can't do that,  
20 and if you want to go to a subsequent meeting perhaps next  
21 week.

22 The Chairman. Let's go to next week, then.

23 Mr. Stern. Very well, Mr. Chairman.

24 The Chairman. The meeting is adjourned.

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1           (Whereupon, at 11:45 a.m., the committee adjourned, to  
2 reconvene at the call of the chair.)

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