

1 EXECUTIVE COMMITTEE MEETING

2 WEDNESDAY, MARCH 15, 1995

3 U.S. Senate

4 Committee on Finance

5 Washington, DC

6 The meeting was convened, pursuant to notice, at
7 11:55 a.m., Hon. Bob Packwood (Chairman of the Committee)
8 presiding.

9 Also present: Senators Roth, Chafee, Grassley,
10 Hatch, Simpson, D'Amato, Murkowski, Nickles, Moynihan,
11 Baucus, Bradley, Pryor, Breaux, Conrad, Graham, and
12 Moseley-Braun.

13 Also present: Lindy L. Paull, Staff Director and
14 Chief Counsel; Lawrence O'Donnell, Jr., Minority Staff
15 Director.

16 Also present: Les Samuels, Deputy Assistant
17 Secretary for Tax Policy, Treasury Department; William E.
18 Kennard, Esq., General Counsel, Federal Communications
19 Commission; Mark Prater, Tax Counsel, Majority; Ken Kies,
20 Chief of Staff, Joint Committee on Taxation.

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1 The Chairman. The Committee will come to order.

2 I hope we are ready to act, for better or for worse,
3 on this. I am going to ask Mark Prater for a lay
4 explanation, not a technical explanation.

5 We have two issues. One is retroactivity in VIACOM.
6 There are other tax certificates involved besides VIACOM,
7 but VIACOM is the 800-pound gorilla in terms of money
8 that is involved in the certificates.

9 And the other is the issue of the tax certificate
10 preferences, where certain people are given preferences
11 over others.

12 Now there are other minor issues, but those are the
13 two major issues that we are discussing.

14 Mark, do you want to explain very quickly where we
15 are?

16 Mr. Prater. Thank you, Mr. Chairman.

17 I will go through the Chairman's Mark very briefly.
18 It permanently extends the 25 percent deduction for
19 health insurance paid by self-employed persons. That
20 provision is permanent, and is paid for with a repeal of
21 the section 1071 F.C.C. tax certificate program, the
22 program that allows nonrecognition of transfers,
23 basically a rollover, for gain where a seller sells a
24 broadcast property to, among other things, a minority
25 interest.

1 It also applies to so-called investor certificates
2 issued to minority enterprises.

3 There is also a change that denies the 1033
4 treatment to property acquired from related parties. The
5 1033 change is effective for replacements occurring after
6 February 5, 1995.

7 The final change is a denial of the earned income
8 tax credit for interest and dividends, where an
9 individual earns interest and dividends over and above
10 \$2,500.

11 The Chairman. Let me tell you what I have done.
12 You will recall that I indicated that I did not put the
13 VIACOM issue into the Chairman's Mark, one way or the
14 other. I wanted to get a feeling from the Committee.

15 You could pay for the 25 percent either with the
16 VIACOM; if they are not allowed to go ahead, you pick up
17 enough money to do the 25 percent. Or you can pick it up
18 with the earned income tax credit changes we have made.
19 That is why that is in the bill, to pay for it. You can
20 substitute one for the other if you want; you cannot add
21 both together, and get the 50 percent. We thought about
22 that, but it does not get that.

23 In other words, you could not say no retroactivity
24 and the earned income tax changes, and then go to 50
25 percent on the self-employed. The money is not there.

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1 Did I get that right, Ken, roughly?

2 Mr. Kies. That is correct, Senator.

3 The Chairman. Thank you.

4 Let us start on VIACOM, if we could, and then go to
5 the minority preferences.

6 Discussion on VIACOM, or motions?

7 Senator Moynihan. Mr. Chairman, the Democratic
8 side has caucused on this. It is our position that we
9 think retroactivity is a principle that should be upheld.
10 Without arguing other than the specific merits of the
11 principle, we would like to vote against retroactivity.

12 This is not a unanimous vote on our side but ----

13 The Chairman. Let me do this.

14 Do you want to do that right now?

15 Senator Moynihan. I would like to offer an
16 amendment which I do not have. [Laughter.]

17 Senator Nickles. Mr. Chairman.

18 The Chairman. Don. Senator Nickles.

19 Senator Nickles. Mr. Chairman, I would just like
20 to inquire of the staff. We are talking about effective
21 dates. One option would be the House effective date,
22 which I believe is in early January sometime. Is that
23 correct?

24 Mr. Kies. Yes. January 17th.

25 Senator Nickles. The 17th? And I am guessing by

1 Senator Moynihan's statement, that he is talking about
2 effective today. I might ask the Ranking Member.

3 The Chairman. That is correct.

4 Senator Nickles. That would be today. So we are
5 talking about a difference between January 17th and March
6 15th.

7 If we went with the March 15th, how many additional
8 F.C.C. certificates would go forward?

9 The Chairman. Mr. Kennard from the F.C.C. may know
10 the answer to that. He is the general counsel at the
11 F.C.C.

12 Mr. Kennard. Yes. Thank you, Mr. Chairman.

13 I have a list here of pending tax certificates, both
14 in broadcast and cable areas. There are a total of 20
15 tax certificate applications currently pending.

16 The Chairman. Including VIACOM?

17 Mr. Kennard. Including VIACOM. That is correct.

18 Senator Nickles. Twenty pending. Now, Mr.
19 Kennard, I remember your statement when we had our
20 hearing a couple of weeks ago. Correct me if I am wrong,
21 but, in the last 5 years, there was something like 100
22 and ----

23 Mr. Kennard. One hundred twenty-six, Senator.

24 Senator Nickles. One hundred twenty-six. But you
25 have 20 pending in the first two months of 1995?

1 Mr. Kennard. Yes. Some of those were filed as of
2 the end of 1994. It looks like the oldest I have here
3 was filed November 15, 1994.

4 Senator Nickles. In the past 5 years, we only did
5 126, but you have 20 that are pending for the first two
6 months of this year. Does that seem ----

7 The Chairman. I do not think he means filed in the
8 first two months, do you?

9 Mr. Kennard. No. They were not all filed in the
10 first two months, but those are pending as of yesterday,
11 March 14.

12 Senator Nickles. If we went with the effective
13 date of March 15, those 20 would all go forward? Is that
14 the understanding?

15 Mr. Kennard. That is my understanding of the
16 proposal. Yes, sir.

17 The Chairman. Let me rephrase it. It would go
18 forward, assuming the F.C.C. grants the certificates.
19 There is no guarantee that they would.

20 Senator Moynihan. That would be the condition.

21 The Chairman. Yes. That would be the condition of
22 all of these.

23 Mr. Kennard. That is correct. Assuming that they
24 met our policies, they would in fact be granted.

25 Senator Nickles. Let me ask you, do you have any

1 idea on the amount of potential tax deferral, if you
2 added those 20 together?

3 Mr. Kennard. No, Senator. Under the current
4 policy, the F.C.C. is not permitted to ask for the amount
5 of the deferral when passing on a tax certificate
6 request. So we do not compile information as to how much
7 tax would be deferred in any particular grant.

8 The Chairman. Is that because of the action of
9 Congress prohibiting you from reviewing it?

10 Mr. Kennard. Yes, Mr. Chairman.

11 The Chairman. I might say to the audience that,
12 since 1988, we have attached a rider every year to the
13 appropriation bills that prohibits the F.C.C. from
14 reviewing this program or anything to do with it, other
15 than continuing it.

16 Senator Nickles. Mr. Chairman, could I continue?
17 Do you have any idea of the value of those 20 deals?

18 Mr. Kennard. No. I do not.

19 Senator Nickles. You do not have any idea?

20 Mr. Kennard. No. And the value of the deals would
21 not necessarily be indicative of how much tax would be
22 deferred. It might suggest a range of possibilities, but
23 it would not give you any assurances of how much tax
24 would be deferred.

25 Senator Nickles. Mr. Kies, do you have anything on

1 those 20 applications? Do you have any idea?

2 Mr. Kies. Senator Nickles, the only information
3 that we can share is that we have an estimate of what
4 would be the difference in revenue raised by providing
5 the relief set forth in this amendment.

6 Our estimate is based upon some very rough
7 assumptions about what these transactions represent.
8 These transactions tend to be larger when they are cable
9 transactions, although the application process does not
10 require that the size of the transaction be included.
11 But there are a number of the transactions that are cable
12 deals.

13 Other than a few deals where we do have specific
14 information, the only deal that we have specific
15 information on is the VIACOM deal. But it is
16 substantially larger than most of the other ones, so that
17 kind of drives our estimate.

18 The Chairman. Don, I might say this. I have a
19 list of the applications and the towns. That does not
20 give you an idea as to cost, but I am just guessing that
21 smaller towns are modest.

22 On radio, Lynchburg, Tennessee. El Paso, which is
23 big. I do not know about Griffin, Georgia, Ridgefield,
24 Connecticut, Big Bear Lake, California. The television
25 ones are bigger markets--Tampa, Columbus. I do not know

1 about Rosenberg, Texas. New Orleans, Atlanta, Kalamazoo,
2 and Irving, Texas. So the television ones are larger.

3 Senator Moynihan. Mr. Chairman, we would like to
4 offer an amendment to the Chairman's Mark, which directs
5 itself to the questions of the Senator from Oklahoma by
6 repealing section 1071, to be effective, however, with
7 respect to sales or changes on or after March 15th, which
8 I believe would mean that most or all of those deals that
9 you are talking about would be allowed to go forward,
10 including the major one.

11 The Chairman. Senator Roth.

12 Senator Roth. Mr. Chairman. I would like to offer
13 a substitute for the amendment in the second degree,
14 proposing that we would repeal Code section 1071, as
15 provided in the Chairman's Mark, and add a paragraph
16 providing that the tax deduction be increased to the
17 extent that the funds are available to pay for it.

18 In other words, the effect of my substitute would
19 mean that we would go back to January 17th, so that all
20 those deals that were not accomplished afterwards would
21 fall. That would save \$500 million. And we would
22 continue the modification of the earned income tax
23 credit, so that this would give us something in excess of
24 25 percent. I do not know exactly what.

25 But many of us have been working very hard to get

1 this tax deduction permanently, and we congratulate the
2 Chairman on that. But we think that, with the additional
3 sums available, as would be true under my substitute,
4 that we provide that additional deduction for the farmer
5 and the small businessman.

6 Let me just say, on the question of retroactivity, I
7 think that oversimplifies the facts of the case. I think
8 a very serious argument can be made that it has been the
9 practice of this Committee in the past that, once a
10 proposed change in taxes is made, that is the effective
11 date to which a change would apply.

12 There are some very sound reasons for that. Once a
13 proposal comes up for consideration, one does not want
14 everyone in the private sector to rush through changes to
15 take advantage of that interim period between the time
16 the proposal is made and the date it is enacted into law.

17 So I think that is the case here. I think, if you
18 go way back to January 17th, when the House first
19 proposed that, it did put the private sector on notice
20 that change was under consideration. It is not
21 technically retroactive, by past rule, to go back to that
22 January 17th.

23 I would say that my amendment is cosponsored by
24 Senator Dole, Senator Grassley, Senator Murkowski and
25 Senator Nickles.

1 The Chairman. Let me ask, Bill, if I am sure what
2 you are doing.

3 We had two ways, as I indicated, to pay for the 25
4 percent. One was, if VIACOM was allowed to go through,
5 we were \$500 million short, and we need \$500 million. I
6 could get there on the earned income tax credit by
7 saying, if you had regular interest and dividends of
8 \$2,500 or more, then you did not get the credit. That
9 would have provided about \$500 million. Am I right, Ken?

10 Mr. Kies. I think expanding that provision to
11 include taxes and interest on net rents and royalties
12 would have brought you an additional \$500 million.

13 The Chairman. I thought I added the rents,
14 royalties and municipal bond interest in the estimate.

15 Mr. Kies. Correct.

16 The Chairman. And I want to know if this is what
17 Senator Roth is offering.

18 If VIACOM is not allowed to go through, and we adopt
19 that \$2,450 threshold of income from regular interest,
20 dividends, rents, royalties and municipal bond interest,
21 that would give enough money to go to a 30 percent self-
22 employed health premium deduction. Is that correct?

23 Mr. Kies. It would be very close to 30 percent,
24 beginning in 1995.

25 The Chairman. That is what you are talking about,

1 right?

2 Senator Roth. That is what we are talking about,
3 Mr. Chairman.

4 The Chairman. All right.

5 Senator Moynihan. Mr. Chairman?

6 The Chairman. Senator Moynihan.

7 Senator Moynihan. Just a brief remark, sir.

8 Without wishing to be disputatious, it has indeed been
9 the policy, the practice, of our Committee to announce
10 that a particular tax provision would be regarded as
11 having taken effect from the time the Committee first
12 considered it.

13 But we have never had a unilateral declaration by
14 the chairman of the Committee on Ways and Means bind us.
15 This would be the first time.

16 The Chairman. Senator Breaux, and then Senator
17 Chafee.

18 Senator Breaux. Mr. Chairman, I support Senator
19 Moynihan's proposal.

20 Number one, it takes care of small businessmen and
21 women, who are self-employed, by making permanent, as I
22 understand it, the 25 percent deduction. That is a goal
23 that I think all of us share.

24 The way Senator Moynihan pays for it is the offset
25 of people who leave this country to avoid taxes.

1 Senator Moynihan. No, no.

2 Senator Breaux. Is that it?

3 The Chairman. That is not in this provision.

4 Senator Moynihan. The amendment I will offer does
5 that, yes.

6 Senator Breaux. That you will be offering?

7 Senator Moynihan. Yes.

8 Senator Breaux. So we have got to pay for ----

9 Senator Moynihan. I have offered this amendment,
10 but there is a substitute.

11 Senator Breaux. Yes. But the proposal that you
12 were talking about, and that I support, is to make it
13 permanent at 25 percent, and to pay for it by preventing
14 people from leaving this country to avoid American taxes.
15 I think that is a good proposition.

16 The problem I have with changing the law
17 retroactively is the fact that this Congress has spoken
18 out so many times on this issue. It has been a policy of
19 the Government to allow for these tax incentives to
20 encourage minority participation in something that
21 belongs to the public.

22 We are talking about the public airwaves. And I
23 think there is a genuine need for diversity and ownership
24 of something that is public. We are talking about the
25 public airwaves. And the way Congress has decided to

1 encourage that is through these tax certificates. Now
2 that may have been a bad idea. It may have been too
3 generous. But time and time again, the Congress has
4 reaffirmed it.

5 In fact, we have added amendments that this Congress
6 has passed a number of times that liked it so much that
7 we have told the F.C.C. not to even talk about it, not to
8 discuss it, not to debate it, not to consider changing
9 it, not to modify it, not to do anything with it but
10 carry it out.

11 So, when companies rely on that strong public
12 policy, as stated by the Congress on innumerable
13 occasions, I think for us to try to change it
14 retroactively is not good tax policy; it is not good
15 public policy. If we want to change it, let us make it
16 prospective. But clearly, these deals, the one that is
17 before us to the largest degree, was a deal that was
18 essentially completed. They relied on what we told them.
19 And now we are saying they cannot do that any more. And
20 that is not the way I think Congress should operate.

21 The Chairman. Senator Chafee.

22 Senator Chafee. Mr. Chairman, the so-called
23 retroactivity argument does not bother me. These deals
24 are dependent upon receiving the certificate from the
25 F.C.C.. And, in each of these instances before us. they

1 have not received the certificate. Am I correct in that?

2 Mr. Kies. There are two transactions in which the
3 certificate was issued between January 17 and today. For
4 the other 18, there has been no certificate issued.

5 Senator Chafee. Well, the VIACOM one, for
6 example ----

7 Mr. Kies. That is correct.

8 Senator Chafee. ---- they have not received it.
9 It seems to me that there is a difference here.

10 If somebody has received their certificate, then the
11 deal is done. And it would be improper for us to start
12 to untangle it. But, if they have not received their
13 certificate, and the deals are dependent upon receiving
14 the certificate, we will say no, you cannot have that
15 certificate.

16 So I do not consider that a retroactive, unfair levy
17 upon the companies. So I support the Roth substitute for
18 the Moynihan amendment.

19 The Chairman. Yes.

20 Senator Chafee. I might say, on the Roth
21 amendment, I am not enthusiastic about using up all the
22 available money. I think what we ought to do is to
23 continue at the 25 percent, and anything extra should go
24 for deficit reduction. But your amendment might possibly
25 go to 30 percent?

1 Mr. Kies. That is correct, Senator Chafee.

2 Senator Chafee. Well, I do not think this is the
3 time to give additional tax breaks. To untangle that one
4 would be a little complicated.

5 The Chairman. Senator Conrad.

6 Senator Conrad. Mr. Chairman, first of all, I am
7 not particularly a fan of these provisions at all.

8 The Chairman. Which provision?

9 Senator Conrad. I really question the 1071
10 provisions, whether that was a wise policy to have ever
11 set out.

12 But I must say that I, unlike some of my colleagues,
13 am troubled by retroactivity. I am a former tax
14 administrator. I do not know how more clear it could be
15 that it is retroactive.

16 We have a law on the books today, on the books
17 today, that provides that people can, in good faith, go
18 forward, make business decisions, and get these
19 certificates.

20 And the fact is, in the VIACOM deal, as in the other
21 19 deals, that is precisely what people have done. They
22 relied on the law that we passed. It is on the books
23 today. They went forward in good faith, and they spent
24 millions of dollars putting together a business
25 agreement. And now we are saying, because somebody

1 issued a press release from one House of the Congress,
2 that the law that is still on the books today is undone.
3 I will tell you, I think that is a very slippery
4 proposition for this Congress.

5 And I would just say to my colleagues that I have
6 great trouble with this whole concept. I have great
7 trouble with this 1071 being good tax policy, or good
8 social policy.

9 But I am really troubled by the notion of going back
10 and telling folks who, in good faith, proceeded based on
11 the law of the land, that they wasted their time and
12 money in doing so.

13 The Chairman. I want to call on Senator Murkowski.
14 But let me explain one thing. Senator Moynihan and I
15 both saw it.

16 I asked the attorney for VIACOM, Mr. Dalmanic, I
17 think was his name, and Mr. Washington, I believe it was,
18 if this was a done deal.

19 The press release was dated January 17th They
20 signed on the 20th, or was it the 16th and the 19th? I
21 cannot remember which.

22 And I specifically said, on the 17th or 18th, could
23 you have gotten out of the contract? Were you bound?
24 And we did not get an answer. I think it was not yet a
25 binding contract. Now I say that in defense of the

1 retroactivity, going ahead and taking it away.

2 On the other side, had there not been a press story
3 about this deal, my hunch is that you would never had the
4 bill introduced in the House, or the press release at
5 that time. And they would have finished it in the two or
6 three days.

7 But had one of the major parties died, been hit by
8 lightening, or incapacitated, I do not think he had a
9 completed contract at the time of the press release.

10 Senator Murkowski.

11 Senator Murkowski. Well, that is a point I would
12 like to bring up.

13 I concur with the concerns of Senator Breaux and
14 Senator Conrad, relative to whether this is retroactive
15 or not. But, as I read it, it is not. Because the
16 Committee on Ways and Means, and I am quoting Archer,
17 said, "Any changes to section 1071 may apply to
18 transactions completed or certificates issued by the
19 F.C.C. on or after today, January 17, 1995."

20 Now that is actually the notice. On January 18, the
21 unmarked APA, the asset purchase agreement, and related
22 documents, together with signature pages, were sent to
23 counsel. And then, on the 20th, APA signed the note,
24 contingent on F.C.C. granting the tax certificate
25 concerning the sale.

1 So, if you address retroactivity, it could only be
2 applicable to the committee because the committee, on
3 February 8, 1995, basically adopted what they said they
4 were going to put in force on the 17th. So I do not
5 think you can made a case here that it is retroactive.
6 Because it is not, according to the intention of the Ways
7 and Means Committee, and the action taken by the Ways and
8 Means Committee. So I consider it not a contractual
9 agreement as of the 17th of January.

10 Senator Conrad. Mr. Chairman.

11 The Chairman. Senator Conrad. And then I hope we
12 are ready to vote.

13 Senator Conrad. Mr. Chairman, might I just say
14 that the fact is the law is on the books. And we have a
15 whole new policy if one chamber, by a press release, is
16 able to change the law of the land. The fact is that the
17 law of the land is on the books as of today, that this is
18 a permissible transaction.

19 It is clearly retroactive to go back to a date on
20 which that law was fully in effect because, in one
21 chamber, one committee chairman, puts out a press release
22 and changes the law of the land. I do not know how that
23 is possible.

24 Senator Nickles. Mr. Chairman.

25 Senator Moseley-Braun. Mr. Chairman.

1 The Chairman. Senator Moseley-Braun.

2 Senator Moseley-Braun. Thank you very much, Mr.
3 Chairman.

4 I, like the other Members of this Committee, support
5 the funding of the 25 percent deduction. But, frankly, I
6 support the proposal of Senator Moynihan which, I gather,
7 has been introduced at this point.

8 It has not yet been introduced? It is going to be
9 introduced?

10 Senator Moynihan. We have a substitute before us,
11 but we will get back to where we were.

12 Senator Moseley-Braun. All right. Then I would
13 like to suggest that my support will be for Senator
14 Moynihan's proposal substitute. By funding the 25
15 percent deduction by making it less profitable for people
16 to renounce their United States citizenship in order to
17 avoid taxes, as opposed to this effort to submit, in my
18 opinion, the glass ceiling, and locking out women and
19 minorities in the broadcast industry.

20 As I have pointed out in conversations with this
21 Committee, women and minorities constitute less than 6
22 percent of this multi-billion-dollar industry.
23 Particularly when one considers that the broadcast
24 spectrums were originally given out for free, 6 percent
25 is hardly a threat to anyone.

1 There is no question but that the visibility of the
2 VIACOM deal has given rise to a lot of this conversation.
3 But the closing of the door to get the VIACOM deal and,
4 frankly, to backdate that deal, is almost a reverse bill
5 of attainder, with implications and impacts far beyond the
6 specifics of the VIACOM transaction. And I concur with
7 Senator Conrad's observation. It is backdating it.

8 The section of the law that is involved here,
9 section 1071, was enacted by the Congress originally to
10 assure that there was diversity of voice in the airwaves.
11 The whole concept is that our whole society benefits by
12 diversity of voice. Our whole society avoids the
13 Orwellian vision of a single point of view being
14 communicated to the American people.

15 That is an important objective, I think, to be
16 preserved. We have raised the conversation as to whether
17 or not there is a nexus, in fact, between diversity of
18 ownership and diversity of voice. I believe that there
19 is. There are some who have questioned that. But,
20 certainly, the proposal that Senator Moynihan is prepared
21 to introduce as a substitute addresses that, providing a
22 moratorium that will give us a chance to study that.

23 I would say in closing, Mr. Chairman, I think it is
24 very important that, in our rush to judgment with regard
25 to the myths and fallacies around, whether or not this

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1 deal was a good deal, whether or not it was appropriate
2 policy, whether or not there is too much preference being
3 given to women and minorities in the industry, in which
4 they have 6 percent of ownership, that we not undertake
5 to do anything here that will undermine our ability to
6 have the American taxpayers have reliance on the
7 prospective nature of our decision making.

8 I think that the retroactivity issue is a very
9 serious one. I concur with Senator Conrad that it is
10 unfair for us to reach back and single out one
11 transaction, and thereupon change an entire body of law
12 that had some goals that are worthy of preservation.

13 The Chairman. What we are voting on is the Roth
14 second degree amendment.

15 The clerk will call the roll.

16 The Clerk. Mr. Dole.

17 The Chairman. Aye by proxy.

18 The Clerk. Mr. Roth.

19 Senator Roth. Aye.

20 The Clerk. Mr. Chafee.

21 Senator Chafee. Aye.

22 The Clerk. Mr. Grassley.

23 Senator Grassley. Aye.

24 The Clerk. Mr. Hatch.

25 Senator Hatch. Aye.

1 The Clerk. Mr. Simpson.
2 The Chairman. Aye by proxy.
3 The Clerk. Mr. Pressler.
4 The Chairman. Aye by proxy.
5 The Clerk. Mr. D'Amato.
6 Senator D'Amato. Aye.
7 The Clerk. Mr. Murkowski.
8 Senator Murkowski. Aye.
9 The Clerk. Mr. Nickles.
10 Senator Nickles. Aye.
11 The Clerk. Mr. Moynihan.
12 Senator Moynihan. No.
13 The Clerk. Mr. Baucus.
14 Senator Baucus. No.
15 The Clerk. Mr. Bradley.
16 Senator Bradley. Aye.
17 The Clerk. Mr. Pryor.
18 Senator Pryor. No.
19 The Clerk. Mr. Rockefeller.
20 Senator Moynihan. No by proxy.
21 The Clerk. Mr. Breaux.
22 Senator Breaux. No.
23 The Clerk. Mr. Conrad.
24 Senator Conrad. No.
25 The Clerk. Mr. Graham.

1 Senator Graham. No.

2 The Clerk. Ms. Moseley-Braun.

3 Senator Moseley-Braun. No.

4 The Clerk. Mr. Chairman.

5 The Chairman. Aye.

6 The Clerk. The ayes are 12. The nays 8.

7 The Chairman. The motion is adopted. The

8 Chairman's Mark is open for further amendment.

9 Senator Moynihan. Mr. President.

10 The Chairman. Senator Moynihan.

11 Senator Moynihan. I have an amendment which ----

12 [Laughter.]

13 The Chairman. I listen to you more than he does.

14 Senator Moynihan. This was the amendment that was

15 offered in the first instance, and Senator Roth offered

16 the substitute. It would impose a two-year temporary

17 repeal of the F.C.C. tax certificate program, thereby

18 paying for a permanent extension of the self-employed

19 health insurance deduction at an increased level of 30

20 percent.

21 As Senator Moseley-Braun said, this would allow us

22 to look this program over, and get much more information

23 than is now available to this Committee, it being a new

24 subject for us.

25 And we would have the provision to preclude tax

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1 avoidance through renunciation of U.S. citizenship. We
2 would increase the self-employed health deduction to 30
3 percent, and we would permit the State of New York to
4 continue its inpatient hospital reimbursement system. In
5 effect, this is an ERISA waiver, which was provided in
6 1993 and expires May 12 of next year. So it is time
7 sensitive.

8 And it would add a provision to exempt from tax
9 diesel dyeing rules those States which are exempt from
10 the Clean Air Act diesel dyeing rules under EPA
11 regulations. It says here "those States" but, in fact,
12 it is one State, a very large one.

13 Mr. Samuels was very helpful in pointing out that
14 this is contiguous with areas in Canada where they have
15 strictly enforced dyeing provisions. But they say there
16 are parts of Northwestern Canada where it makes no sense,
17 and they exempt them. Is that not right, Mr. Samuels?

18 Mr. Samuels. Senator Moynihan, that is my
19 understanding.

20 Senator Moynihan. Thank you very much. That is
21 the amendment.

22 The Chairman. Discussion on Senator Moynihan's
23 amendment?

24 [No reply.]

25 If not, the clerk will call the roll.

1 The Clerk. Senator Dole.
2 The Chairman. No by proxy.
3 The Clerk. Mr. Roth.
4 Senator Roth. No.
5 The Clerk. Mr. Chafee.
6 Senator Chafee. No.
7 The Clerk. Mr. Grassley.
8 Senator Grassley. No.
9 The Clerk. Mr. Hatch.
10 Senator Hatch. No.
11 The Clerk. Mr. Simpson.
12 The Chairman. No by proxy.
13 The Clerk. Mr. Pressler.
14 The Chairman. No by proxy.
15 The Clerk. Mr. D'Amato.
16 Senator D'Amato. Mr. Chairman, before I vote,
17 could I ask a question of my colleague regarding this
18 amendment?
19 There is an important provision in this amendment
20 that is critical to New York and to our hospitals. It
21 has to do with ERISA.
22 May I ask, does my colleague intend to substitute an
23 additional amendment if this fails, and carry it by
24 itself?
25 Senator Moynihan. No, sir. [Laughter.]

1 The Chairman. Would you like to know Senator
2 Dole's opinion?

3 Senator D'Amato. I would like to know Senator
4 Dole's opinion.

5 The Chairman. Senator Dole is in opposition to
6 this amendment.

7 Senator D'Amato. I understand that he is in
8 opposition to this amendment, but I am strongly
9 supportive of the ERISA provision because it is
10 absolutely essential to our State. I would have to
11 suggest that the Senator offer an amendment--I hope one
12 of legal beagles has it--separate and independent,
13 because will have a billion-dollar plus hole and the
14 collapse of our whole medical system. I do not think we
15 want to do that.

16 So I am going to offer that amendment on the floor.
17 I will certainly look to my distinguished colleague. I
18 want to note that, while I am supportive of that
19 amendment, I cannot in good conscience vote to undo what
20 we have done. I think that would be the impact of this.

21 I would hope that we could put it into the
22 Chairman's Mark. And I am going to appeal to the
23 Chairman now that we take that provision up independently
24 of this entire question.

25 Senator Bradley. You have got two votes.

1 Senator D'Amato. I am going to vote no, but I am
2 going to wait and hope that my distinguished colleague
3 will offer the ERISA amendment independently.

4 I will vote no at this time.

5 The Clerk. Mr. Murkowski.

6 Senator Murkowski. Mr. Chairman, in the spirit of
7 the majority, and with some reluctance, I will vote no,
8 recognizing that I will intend to take the issue of dyed
9 diesel up on the floor. I appreciate the commitment of
10 my friend from New York, Senator Moynihan, who assured me
11 that that would be on the first vehicle moving.

12 Thank you, Mr. Chairman.

13 Senator Moynihan. That is a correct statement.

14 The Clerk. Mr. Nickles.

15 Senator Nickles. Nay.

16 The Clerk. Mr. Moynihan.

17 Senator Moynihan. Aye.

18 The Clerk. Mr. Baucus.

19 Senator Baucus. Aye.

20 The Clerk. Mr. Bradley.

21 Senator Bradley. Aye.

22 The Clerk. Mr. Pryor.

23 Senator Pryor. Aye.

24 The Clerk. Mr. Rockefeller.

25 Senator Moynihan. Aye by proxy.

1 The Clerk. Mr. Breaux.

2 Senator Breaux. Aye.

3 The Clerk. Conrad.

4 Senator Conrad. Aye.

5 The Clerk. Mr. Graham.

6 Senator Graham. Aye.

7 The Clerk. Ms. Moseley-Braun.

8 Senator Moseley-Braun. Aye.

9 The Clerk. Mr. Chairman.

10 The Chairman. No.

11 The Clerk. The ayes are 9, the nays 11.

12 Senator D'Amato. Mr. Chairman.

13 The Chairman. The motion is defeated. I did not
14 call the retention I should have ruled here. Under rule
15 2A, nongermane amendments require a two-thirds vote to be
16 offered. And that is a rule I will suggest in the
17 future.

18 Senator Bradley.

19 Senator Bradley. Mr. Chairman, if I could, I would
20 like to offer a few amendments.

21 The Chairman. A few amendments?

22 Senator Bradley. Yes, a few amendments.

23 First, I would like to offer an amendment that takes
24 on what Senator Chafee said. As I understand it, as a
25 result of the Roth amendment, the self-employed health

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1 credit is increased above 25 percent?

2 The Chairman. To about 30 percent.

3 Senator Bradley. To about 30 percent. I propose
4 that we keep it at 25 percent, and use the extra money
5 for deficit reduction.

6 The Chairman. Discussion?

7 Senator Chafee. Mr. Chairman, I just think that
8 most serious problem facing this country are these
9 deficits. We cannot get into the habit, I do not think,
10 of every time we find some money around, to say that we
11 will apply it to a very worthwhile deduction.

12 In this instance, I do not think anybody is a
13 stronger supporter of the health care deduction than I
14 am. And I think it is unfair that individual
15 entrepreneurs can only deduct 25 percent.

16 I might say, if you are looking for unfairness, just
17 look at the individuals who are working for a company
18 where they have to pay their own health insurance, they
19 cannot deduct any of it.

20 So, yes, under the Roth proposal, we are correcting
21 an unfairness, but leaving a greater unfairness
22 untouched.

23 Now the problem is, to take care of those who are
24 working for a company where their health care is not paid
25 for, to help them with some form of a deduction would be

1 very very expensive. If we start with them, it may be 5
2 percent, rather than increasing the self-employed from 25
3 to 30 percent.

4 But the real question is, where do we stand on these
5 deficits? I think we are going down the wrong path, Mr.
6 Chairman, to increase this when we still have these
7 deficits.

8 I might say, Mr. Chairman, that we are doing
9 something very significant. We are not just extending if
10 for the year; we are making it permanent. And that, at
11 25 percent, would be a very significant achievement. So
12 I want to congratulate the Senator for his amendment.

13 The Chairman. Further discussion of the Bradley
14 amendment?

15 [No response.]

16 The Chairman. The clerk will call the roll.

17 The Clerk. Mr. Dole.

18 The Chairman. No by proxy.

19 The Clerk. Mr. Roth.

20 The Chairman. No by proxy.

21 The Clerk. Mr. Chafee.

22 Senator Chafee. Aye.

23 The Clerk. Mr. Grassley.

24 Senator Grassley. No.

25 The Clerk. Mr. Hatch.

1 The Chairman. No by proxy.
2 The Clerk. Mr. Simpson.
3 Senator Simpson. Aye.
4 The Clerk. Mr. Pressler.
5 The Chairman. No by proxy.
6 The Clerk. Mr. D'Amato.
7 The Chairman. No by proxy.
8 The Clerk. Mr. Murkowski.
9 The Chairman. No by proxy.
10 The Clerk. Mr. Nickles.
11 Senator Nickles. No.
12 The Clerk. Mr. Moynihan.
13 Senator Moynihan. Aye.
14 The Clerk. Mr. Baucus.
15 Senator Baucus. No.
16 The Clerk. Mr. Bradley.
17 Senator Bradley. Aye.
18 The Clerk. Mr. Pryor.
19 Senator Pryor. No.
20 The Clerk. Mr. Rockefeller.
21 Senator Moynihan. Yea by proxy.
1 The Clerk. Mr. Breaux.
2 Senator Breaux. Aye.
3 The Clerk. Mr. Conrad.
4 Senator Conrad. Aye.

1 The Clerk. Mr. Graham.

2 Senator Graham. Aye.

3 The Clerk. Ms. Moseley-Braun.

4 Senator Moseley-Braun. Aye.

5 The Clerk. Mr. Chairman.

6 The Chairman. Aye.

7 The Chairman. The motion fails 10-10.

8 Senator Nickles. Would the Senator yield?

9 If I understand, the amendment by Senator Roth was
10 to make it 30 percent last year and 30 percent
11 prospective.

12 What I was thinking was, if you made it 25 percent
13 for fiscal year 1994, which is what people had had in the
14 past, and then have 30 percent prospective for fiscal
15 year 1995 ----

16 The Chairman. That is the Roth amendment, I am
17 advised.

18 Senator Nickles. The Roth was 25 percent
19 prospective for 1994, and 30 percent?

20 The Chairman. That is what I am advised.

21 Senator Nickles. All right.

22 The Chairman. Senator Bradley.

23 Senator Bradley. Mr. Chairman, I think that this
24 illustrates a point that all too often is lost. And that
25 is that we spend money in a variety of ways. One way is
26 through direct appropriations and entitlements. The

1 other way is through giving it away through the Tax Code,
2 which increases the deficit.

3 This was an amendment to reduce the deficit. It was
4 rejected. Senator Chafee is a strong supporter.

5 And I would like to offer another amendment that
6 would reduce the deficit.

7 I would like Mr. Samuels' attention. Part of
8 Senator Moynihan's amendment eliminated the provision by
9 which individual Americans renounce their citizenship,
10 skip to the Grand Cayman Islands and, in the process,
11 avoid taxation, and leave the rest of us paying more tax
12 than we would otherwise pay.

13 Senator Moynihan. And obligated to defend the
14 Cayman Islands in the event of Spanish invasion.

15 [Laughter.]

16 Senator Bradley. A minor point.

17 Senator Moynihan. It happened once, it can happen
18 again.

19 Senator Bradley. You can never tell.

20 And I wondered, what amount of revenue is associated
21 with the provision that would have eliminated this
22 possibility?

23 Mr. Samuels. Senator Bradley, the Treasury
24 estimate of this provision, which was in the President's
25 budget, was \$2.2 billion over 5 years. I am not sure.

1 It might have changed slightly with Senator Moynihan's
2 amendment.

3 Senator Bradley. And how many American taxpayers
4 benefit from the \$2.2 billion in lost revenue?

5 Mr. Samuels. Senator Bradley, we estimate that
6 approximately two dozen, or 24, taxpayers would benefit
7 by this.

8 Senator Bradley. Twenty-four Americans essentially
9 take the taxpayer for \$2.4 billion by renouncing their
10 citizenship and skipping to the Grand Cayman Islands--or
11 anywhere, not singling out any one tax haven in the
12 world.

13 What I think we ought to do is to reduce the deficit
14 by \$2.4 billion. I mean, are we serious about reducing
15 the deficit or not? This provision would simply stop
16 that practice from taking place. And, if someone decided
17 to go, they would then incur taxable liability on their
18 gains, which would be established in the year they left,
19 just like they are established in a number of other
20 places in the Tax Code.

21 This is to go to 24 Americans, while the deficit is
22 increased \$2.4 billion. Why not? That is a pretty
23 simple issue. That kind of lays out a divide. You are
24 either on one side--which is that you are for the \$2.4
25 billion going to the billionaires--or you are on the

1 other side--to reduce the deficit.

2 The Chairman. Let me suggest, I am going to rule
3 this nongermane, although I am going to suggest you
4 appeal it, because I am going to read the rule. "After
5 the agenda"--and you have the agenda--"for a committee
6 meeting is published and distributed, no nongermane items
7 may be brought up during that meeting, unless at least
8 two-thirds of the Members present agree to consider it."
9 That is not proxy, that is present.

10 Senator Bradley. If I could, Mr. Chairman, would
11 that not have also applied to Senator Moynihan's
12 amendment when he offered it containing this provision?

13 The Chairman. Well, I thought about asking him to
14 separate it at the time, but he was aiming at an item
15 that was within the agenda we were considering.

16 In the future, I may move to separate those, but I
17 did not catch it at the time. So I would suggest that
18 you appeal my ruling.

19 Senator Bradley. I would appeal the ruling.

20 The Chairman. It takes a two-third vote. Those in
21 favor of considering the item, say aye.

22 [A chorus of ayes.]

23 The Chairman. Those opposed, no.

24 [No response.]

25 Senator Bradley. The item is considered then?

1 The Chairman. The item is considered.

2 Senator Bradley. I ask for the yeas and nays.

3 The Chairman. Senator Conrad.

4 Senator Conrad. Mr. Chairman, if I may, I had
5 intended to offer the same amendment, for exactly the
6 same reason.

7 And I would like to be a cosponsor of the Bradley
8 amendment. I think it is exactly the right thing to do.

9 The Chairman. Other discussion?

10 Senator Moseley-Braun.

11 Senator Moseley-Braun. Mr. Chairman, a question,
12 first, to Senator Bradley.

13 Is your provision, with regard to the expatriation,
14 applied to deficit reduction or does it fund the 25
15 percent deductibility for health care?

16 Senator Bradley. It applies to deficit reduction.

17 Senator Moseley-Braun. In that case, Mr. Chairman,
18 I would like to join with your amendment, but I would
19 also say to the Chairman that I would have an amendment
20 following on this one, also with regard to renunciations.

21 The Chairman. Also with regard to what?

22 Senator Moseley-Braun. Also with regard to the
23 renunciation of citizenship as a way of avoiding taxes,
24 as a way to fund the deductibility as well.

25 I think that, if we have a choice, in terms of

1 funding the deductibility of health insurance, I would
2 just as soon see those 23 billionaires who renounced
3 their citizenship pay for it, as opposed to all the women
4 and minorities in this country who have an interest in
5 preserving section 1071.

6 The Chairman. Senator Chafee.

7 Senator Chafee. Mr. Chairman, this sounds like a
8 good amendment. As a matter of fact, it sounds too good
9 to be true.

10 Could I ask Mr. Kies, is it?

11 Mr. Kies. K-e-y-s.

12 Senator Chafee. Mr. Kies, are we missing something
13 here?

14 Suppose somebody decides they are going to come over
15 here and become a U.S. citizen, and then decide to return
16 to the old country. Let us say that they came from
17 Italy, and want to go back and become an Italian citizen.
18 What happens under this bill we are passing?

19 Mr. Kies. If they are currently a U.S. citizen,
20 they would be treated as having disposed of their assets
21 on the date they renounced their citizenship. And they
22 would have to pay tax on the gain attributable to that.

23 I might just say that the Joint Committee's revenue
24 estimate of the proposal, which I understand to be the
25 Moynihan version, is \$1.359 billion, just so we know what

1 the money is.

2 But that would be effect in the fact pattern,
3 Senator Chafee, that you have described.

4 Senator Chafee. So, let us take the situation of
5 somebody moving to the Cayman Islands. And they have a
6 house they paid \$100,000 for. Now it is worth \$1
7 million. Under this bill, they would have to pay a
8 capital gains tax immediately on the difference, even
9 though they did not sell the house?

10 Mr. Kies. That is basically the rule. There are
11 some provisions that give them some time in which to pay
12 the tax.

13 And Mr. Samuels might want to comment on it, since
14 it is the Treasury's proposal.

15 Mr. Samuels. Senator Chafee, this proposal has an
16 exemption for the first \$600,000 of gain. So, in your
17 example, if it is a couple, they would have each have
18 \$600,000, or \$1.2 million.

19 Second, this rule does not apply to U.S. real
20 estate. So, if someone moved back, and they had a house,
21 this rule would not apply to them.

22 Senator Chafee. So it would apply to securities.
23 They own some GM stock ----

24 Mr. Samuels. Correct.

25 Senator Chafee. ---- and it has gone up tenfold.

1 So they pay the capital gains tax, even though they do
2 not sell it?

3 Mr. Samuels. Yes, sir. We have some other
4 provisions of the Code where you mark to market on
5 certain events, for example, banks and broker dealers
6 mark to market. So this would be the same.

7 Senator Chafee. All right. This is a Treasury
8 proposal?

9 Mr. Samuels. This was in the President's budget,
10 yes.

11 Senator Graham. Mr. Chairman.

12 The Chairman. Senator Graham. And then let us
13 vote.

14 Senator Graham. Mr. Kies, you indicated that, in
15 the version offered by Senator Moynihan, it had a value
16 of approximately \$1.3 to \$1.4 billion.

17 We heard that, in the version offered by the
18 Treasury, it was more than \$2 billion.

19 What are the differences between the Treasury
20 version and the Moynihan version?

21 Mr. Kies. Well, the first difference is that our
22 estimate of the Treasury proposal was only \$1.7 billion,
23 not \$2.2 billion. So our estimate of the original
24 proposal was smaller.

25 The principal difference between the Treasury

1 proposal and the current proposal is that it would not
2 apply to nonresident aliens coming into the United
3 States. It would only apply to people who are U.S.
4 citizens.

5 The Treasury proposal is, if somebody came to the
6 United States who was not a citizen, remained here for a
7 certain period of time and then left, they would be
8 subject to the proposal. And those people are left out
9 of the proposal.

10 So that is the principal change between the two
11 proposals, plus the fact that our original revenue
12 estimate was just lower than the Treasury Department's
13 original estimate.

14 Senator Graham. Could the Treasury comment on the
15 policy issues, as between Senator Moynihan's version and
16 the Treasury's version, and the difference in estimate of
17 revenue?

18 Mr. Samuels. Senator Graham, in the policy issue,
19 the administration's proposal covered both citizens who
20 renounced their citizenship, as well as green card
21 holders who were residents in the United States for 10
22 years. In developing our proposal, we thought that those
23 individuals had the benefits of being in the United
24 States under a green card for that period of time and,
25 therefore, it was appropriate to include them in the

1 proposal. And we picked 10 years as a reasonable period.

2 I think, within the context of this discussion, the
3 Committee could go to include them or not include them.
4 It is not an issue that we feel strongly about. We think
5 that it was appropriate to be in the proposal but, if the
6 Committee thinks that it is not appropriate for this
7 purpose, we would not oppose that.

8 With respect to the estimate, there were differences
9 from time to time between the Joint Committee estimates
10 and the Treasury estimates. And we looked at the data,
11 did the best we could, and came up with that number, and
12 we feel that it is an appropriate number.

13 Actually, based on some calls we have had from
14 people about the proposal, my own personal view is that
15 maybe there is more there than is reflected in the
16 estimate.

17 Senator Moseley-Braun. Mr. Chairman.

18 The Chairman. Before I recognize Carol, how many
19 more Members have amendments to offer?

20 Senator Breaux. I just have a question.

21 The Chairman. All right.

22 Senator Moseley-Braun.

23 Senator Moseley-Braun. Mr. Chairman, I would like
24 to second degree the Bradley amendment to strike the
25 retroactive repeal of 1071, and to make it prospective

1 only. And I would like to add the provision that was
2 suggested in Senator Moynihan's mark to impose a
3 moratorium thereafter.

4 The Chairman. I think we understand the amendment,
5 and I think we would be prepared to vote on it.

6 All those in favor?

7 Senator Bradley. It is the Roth vote.

8 The Chairman. No. I do not think so.

9 Senator Moynihan. No. It is our vote.

10 Senator Roth. What is the effect?

11 Senator Moseley-Braun. It repeals retroactivity.

12 Senator Moynihan. This eliminates retroactivity.

13 Senator Moseley-Braun. That is correct.

14 Senator Conrad. Mr. Chairman, if we might know
15 before we vote, what are the numbers of this proposal? I
16 am just struggling to understand ----

17 The Chairman. You mean the dollar numbers?

18 Senator Conrad. Yes. The dollar amount.

19 Are we operating off of Mr. Kies' estimate of the
20 \$1.3 billion with respect to the proposal that Senator
21 Bradley made?

22 The Chairman. We normally operate off the Joint
23 Committee's numbers here.

24 Senator Conrad. Yes. So that would be \$1.3
25 billion.

1 What is the cost of taking back the retroactivity
2 feature?

3 The Chairman. If it is just VIACOM and the
4 certificates, it is \$500 million, is it not, Ken?

5 Mr. Kies. That is correct.

6 Senator Conrad. Is that what the Moseley-Braun
7 proposal would reach?

8 Senator Moseley-Braun. Without retroactivity, it
9 would reach all the pending transactions. There are 20
10 of them.

11 The Chairman. That is \$500 million.

12 Senator Conrad. And that is \$500 million.

13 So we would have \$800 million for deficit reduction?

14 The Chairman. \$800 million.

15 Mr. Kies. If I understand the Senator's amendment,
16 it would also adopt the two-year moratorium provision
17 under 1071.

18 The Chairman. The other \$500 million then.

19 Senator Moseley-Braun. Senator Moynihan called it
20 a temporary repeal.

21 Senator Moynihan. Temporary. Temporary two-year
22 repeal.

23 Senator Moseley-Braun. Right.

24 Mr. Kies. That would cost an additional \$1.1
25 billion.

1 The Chairman. An additional \$1.1 billion?

2 Mr. Kies. Yes. Because of the two-year
3 moratorium.

4 The Chairman. For the two-year moratorium?

5 Senator Moseley-Braun. How is that so? You made
6 that up.

7 Senator Conrad. How can that be?

8 The Chairman. Vis-a-vis the Mark. But I am
9 surprised at the \$1.1 billion.

10 Mr. Kies. Here is where I understand us to be.
11 The amendment on relinquishing citizenship would raise
12 \$1.359 billion.

13 We have deleted the provision which would have
14 extended the deductibility of self-insurance to 30
15 percent. Is that correct?

16 The Chairman. No. I do not think so.

17 Mr. Kies. But Senator Bradley's amendment was not
18 adopted?

19 The Chairman. That was not adopted.

20 Mr. Kies. All right. So this amendment would take
21 us up \$1.359. To grant the retroactivity relief would
22 cost ---

23 The Chairman. Five hundred million.

24 Mr. Kies. Five hundred million. The two-year
25 moratorium would leave us with the total provision

1 raising \$189 million. Excuse me, the total would be \$194
2 million. So we would lose about an additional \$800
3 million. So we would be roughly revenue neutral.

4 The Chairman. About a wash.

5 Mr. Kies. Correct.

6 Senator Moynihan. How can that be?

7 Mr. Kies. I can explain that. The assumption on
8 the two-year moratorium is that most transactions would
9 be held, and would go forward at the end of the two-year
10 period. So the revenue gain is only the lower
11 depreciation in the two-year period. That is why.

12 Senator Conrad. A good explanation.

13 The Chairman. I think it is.

14 We are prepared to vote on Senator Moseley-Braun's
15 amendment.

16 Are you ready?

17 Senator Moseley-Braun. Mr. Chairman, I need a
18 little more edification. The moratorium feature alone
19 costs \$800 million. Is that what you said?

20 Mr. Kies. Assuming that we have first
21 grandfathered VIACOM.

22 Senator Moseley-Braun. It is not just a matter of
23 grandfathering a single transaction. It is whether or
24 not we will be retroactive in the application of this
25 repeal.

1 Mr. Kies. That costs \$500 million off of the
2 original provision, which raised \$1.386. So we are down
3 \$500 million from that piece of it.

4 Then, when we do a two-year moratorium, the only
5 revenue that is left being raised is about \$94 million.

6 So the total revenue lost from the two pieces is
7 approximately \$1.3 billion, which equals about the \$1.359
8 that would be raised by the renunciation provision. So
9 it would be about equal.

10 The Chairman. Are we ready to vote?

11 Senator Bradley. Mr. Chairman, this is an
12 amendment on hers ----

13 The Chairman. This is a vote on Senator Moseley-
14 Braun's amendment to yours.

15 Senator Moseley-Braun. Mr. Chairman, I would like
16 to clarify and substitute an amendment to my own
17 amendment, which is to take out the moratorium, and have
18 us only delete the retroactivity of the 1071 provision.

19 The Chairman. And have the \$800 million go for
20 deficit reduction?

21 Senator Moseley-Braun. That is correct.

22 The Chairman. We will vote on Senator Moseley-
23 Braun's amendment.

24 We had better have a roll call vote. The clerk will
25 call the roll.

1 The Clerk. Mr. Dole.
2 The Chairman. No by proxy.
3 The Clerk. Mr. Roth.
4 Senator Roth. No.
5 The Clerk. Mr. Chafee.
6 Senator Chafee. No.
7 The Clerk. Mr. Grassley.
8 Senator Grassley. No.
9 The Clerk. Mr. Hatch.
10 The Chairman. No by proxy.
11 The Clerk. Mr. Simpson.
12 The Chairman. No by proxy.
13 The Clerk. Mr. Pressler.
14 The Chairman. No by proxy.
15 The Clerk. Mr. D'Amato.
16 The Chairman. No by proxy.
17 The Clerk. Mr. Murkowski.
18 The Chairman. No by proxy.
19 The Clerk. Mr. Nickles.
20 Senator Nickles. No.
21 The Clerk. Mr. Moynihan.
22 Senator Moynihan. Aye.
23 The Clerk. Mr. Baucus.
24 Senator Baucus. No.
25 The Clerk. Mr. Bradley.

1 Senator Bradley. No.
2 The Clerk. Mr. Pryor.
3 Senator Pryor. Aye.
4 The Clerk. Mr. Rockefeller.
5 Senator Moynihan. Aye by proxy.
6 The Clerk. Mr. Breaux.
7 Senator Breaux. Aye.
8 The Clerk. Mr. Conrad.
9 Senator Conrad. Aye.
10 The Clerk. Mr. Graham.
11 Senator Graham. Aye.
12 The Clerk. Ms. Moseley-Braun.
13 Senator Moseley-Braun. Aye.
14 The Clerk. Mr. Chairman.
15 The Chairman. No.
16 The Clerk. The nays are 13, the ayes 7.
17 The Chairman. The amendment fails.
18 We are now voting on the Bradley amendment.
19 Senator Breaux.
20 Senator Breaux. I have a question on the Bradley
21 amendment, if I may ask Les Samuels about this.
22 The House got into this big battle on the
23 rescissions with Speaker Gingrich. It was \$17 billion in
24 rescissions of spending. And the debate in the House was
25 that that \$17 billion was going to be used to pay for tax

1 cuts.

2 So they got in this big fight. Yesterday Gingrich
3 promised that the spending cuts bill would have an
4 amendment to include what he called a lock box provision,
5 stipulating that none of those spending reductions would
6 be used to offset the deficit.

7 And, of course, the paper went on to say that is
8 budgetary fiction, because the Government's money is not
9 compartmentalized; it all goes in the same pot.

10 So my question with regard to the Bradley amendment,
11 when we talk about raising that money, and it is only
12 going to be used for deficit reduction, is there another
13 compartment over there that says "deficit reduction",
14 which money from this would go into? Or does it just go
15 into general revenues?

16 The Chairman. Where do you put the money when
17 somebody sends in their refund, and says this is for
18 deficit reduction?

19 Mr. Samuels. As I understand it, we deposit it in
20 the general fund.

21 The Chairman. All right.

22 Mr. Samuels. As you may recall, in OBRA 1993 there
23 was a deficit reduction trust fund established, to which
24 the \$500 million of deficit reduction from OBRA '93
25 was ----

1 Senator Bradley. And all we are doing is asking 24
2 former Americans to chip into that trust fund.

3 [Laughter.]

4 Senator Breaux. I agree with that. The question
5 is, does that little box still exist over there, and that
6 money would go into that box?

7 Mr. Samuels. I believe that the trust fund is
8 still in existence, but I would have to check on that.

9 Senator Breaux. So does Senator Bradley's
10 amendment provide that whatever money is raised by his
11 amendment goes into that trust fund, and does not go into
12 the general treasury of the United States?

13 Mr. Samuels. Senator Breaux, I would have to check
14 on the details. But I believe that trust fund is still
15 in existence.

16 The Chairman. Remember that song from Fiorelo
17 about the little tin box?

18 Senator Moynihan. It had real money in it.

19 Senator Graham. Mr. Chairman.

20 The Chairman. Senator Graham.

21 Senator Graham. Mr. Chairman, Senator Breaux made
22 a statement that piqued my interest. This amendment of
23 Senator Bradley's, would it apply to those persons who
24 have previously renounced their citizenship? Or would it
25 be only prospective?

1 Mr. Samuels. As I understand it, it would apply to
2 those who renounced their citizenship after the date that
3 this proposal was announced in the President's budget,
4 which was February 6, 1995.

5 Senator Graham. And have there, to your knowledge,
6 been any such people?

7 Mr. Samuels. I do not know.

8 Senator Graham. As I understand it, under current
9 law, for those persons who have already renounced their
10 citizenship, they are subject to paying tax on the
11 disposition of the same set of assets that are covered by
12 the Bradley amendment, for a 10-year period after
13 renunciation. Is that correct?

14 Mr. Samuels. There is in existing law, which has
15 been in the Code since 1966, a provision that certain
16 gains of expatriates, who expatriate for tax avoidance
17 purposes, would be subject to tax. Yes.

18 Senator Graham. Not necessarily for this
19 discussion, but for the future, I would be interested if
20 there is anything we can do to enhance the enforcement of
21 the law that exists today, which I understand has been
22 subject to significant avoidance.

23 But, to be clear, what we are talking about now are
24 persons who would renounce from a date in February
25 forward?

1 Mr. Samuels. That is my understanding of the
2 amendment.

3 Senator Graham. And the revenue estimate that both
4 of you developed took into account the suppressing effect
5 that this is going to have on the enthusiasm of people to
6 renounce their citizenship.

7 But, even in light of that, you still think it will
8 raise the \$1.3 billion plus.

9 Mr. Samuels. Indeed, Senator Graham, most of the
10 revenue probably comes from people deciding not to do it.

11 The Chairman. If we could, I would like to vote on
12 the Bradley amendment.

13 I do not think we need a roll call. All those in
14 favor, say aye.

15 [A chorus of ayes.]

16 Opposed?

17 Senator Bradley. I ask for the yeas and nays.

18 The Chairman. You do not need it. But, if you
19 want it ----

20 Senator Bradley. Well, all right. I appreciate
21 that.

22 The Chairman. You have a unanimous vote.

23 Senator Bradley. Well, that is good. Thank you.

24 The Chairman. Further amendments?

25 Senator Moynihan. Can I just say, Mr. Chairman,

1 that I appreciate that being a voice vote because, of
2 those 24 people, 22 live in Manhattan. [Laughter.]

3 The Chairman. I might ask that the staff have the
4 normal authority to make technical and conforming
5 changes. And I would ask on this, because the 25--now
6 close to 30--percent is timely, that we get any Minority
7 views filed by Monday if we can, so that we can go
8 forward on the floor.

9 Senator Bradley. M<r. Chairman.

10 The Chairman. Senator Bradley.

11 Senator Bradley. I think that this issue has two
12 dimensions. It has a tax dimension, and then it has the
13 dimension that we might refer to as the "affirmative
14 action dimension".

15 I think that, as tax policy, 1071 is a dubious
16 proposition. But I deeply regret that the House chose to
17 use this as the first loophole, and to single this
18 particular loophole out as being so bad that we had to
19 address it prior to the budget for this expiring
20 provision.

21 So, Mr. Chairman, I think there are probably other
22 loopholes in the Tax Code that will probably be voted on
23 on the floor of the Senate before this bill ever passes.
24 And I just would like you to know that.

25 In addition, I think that there will probably be an

1 effort to talk about what is affirmative action, and what
2 is not affirmative action, and to give people a choice on
3 those issues as well.

4 So I am refraining from offering a series of
5 amendments today. But I have talked to the Chairman
6 about this, and I just think people ought to know that
7 there could be a lot of votes on the floor on various
8 loopholes.

9 The Chairman. My hunch is that, since this is a
10 tax bill, there may be another amendment or two.

11 Senator Moseley-Braun.

12 Senator Moseley-Braun. Mr. Chairman, first of all
13 I would like to thank and congratulate those people who
14 sought to oppose the retroactive repeal of 1071. And I
15 think it is unfortunate because some of us who care about
16 the deductibility of health insurance are put in a very
17 difficult position.

18 And I refer specifically to myself. I agree with
19 Senator Bradley, and I would like to associate myself
20 with his remarks that there are different aspects of this
21 legislation, one of them being affirmative action,
22 another of them being just basic fairness.

23 In light of the amendment that was adopted here
24 today, I daresay that the 25 percent may find itself
25 being held up because there are some of us who will not

1 be able to go forward, in the absence of having a floor
2 debate about these larger issues.

3 I think it is most regrettable because this is a
4 complicated area, a complicated section of the Tax Code,
5 but to single out something that has a female face on it,
6 a black face on it, to fund something that we all think
7 ought to be funded, when there are other alternative
8 revenue sources, such as the expatriation issue that we
9 just passed on voice vote. That was always available.

10 We have been talking about that since this issue
11 started. So there were other ways to fund the
12 deductibility. The Committee apparently chose not to do
13 that, and to go forward with the repeal. That issue, I
14 think, has to be taken to the floor, and will be.

15 So, again, I just hope we can pass the deductibility
16 of health insurance without having it further embroiled
17 in what is no doubt a complex and difficult debate.

18 The Chairman. I want to thank Senator Moseley-
19 Braun. She talked to me about this before. By the way,
20 she is half sick, and I appreciate very much the last
21 couple of days.

22 I also want to thank the Committee for its civility.
23 You might have noticed a different attitude when this
24 bill went through the House.

25 And there is going to be a debate on the floor. I,

1 frankly, would have preferred that this battle on
2 affirmative action come on something else. I never
3 thought it would come here. But you do not choose your
4 battles in war. It happened to come here, and I think we
5 are going to have a long and, I hope, illuminating debate
6 on the Senate floor.

7 All those in favor of reporting the bill will say
8 aye.

9 [A chorus of ayes.]

10 Opposed, no.

11 [No response.]

12 The Chairman. Reported.

13 [Whereupon, at 1:02 p.m., the meeting was
14 concluded.]

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**UNITED STATES SENATE
COMMITTEE ON FINANCE**

EXECUTIVE SESSION

**Wednesday, March 15, 1995; 9:30 a.m.
211 Dirksen Senate Office Building**

A G E N D A

1. **Executive session meeting of Committee Members to discuss mark up procedures.**

Upon completion of this discussion, the Members will move to room 215 of the Dirksen Building to conduct the mark up in open session.

2. **Mark up of H.R. 831.**

A copy of the bill and the accompanying House Report (H. Rept. 104-32) are attached to this agenda.

DESCRIPTION OF CHAIRMAN'S MARK OF H.R. 831

Scheduled for Markup

by the

SENATE COMMITTEE ON FINANCE

on March 15, 1995

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

March 15, 1995

JCX-12-95

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INTRODUCTION AND LEGISLATIVE BACKGROUND

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's Mark of H.R. 831.

H.R. 831 was passed by the House of Representatives on February 21, 1995, by a vote of 381 to 44. As passed, H.R. 831 would: (1) extend permanently the 25-percent deduction for health insurance costs for self-employed individuals; (2) repeal the provision (Code sec. 1071) permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission ("FCC"); (3) provide that the nonrecognition of gain on involuntary conversions is not to apply if replacement property is acquired from a related person (Code sec. 1033); and (4) deny the earned income tax credit ("EITC") to individuals who have more than \$3,150 of taxable interest and dividend income and phase out the EITC for individuals with more than \$2,500 of taxable interest and dividend income.²

On March 7, 1995, the Senate Committee on Finance held a public hearing on the application of Internal Revenue Code section 1071 under the FCC's tax certificate program.³ The Senate Committee on Finance has scheduled a markup of the Chairman's Mark of H.R. 831 on March 15, 1995.

Part I of the document summarizes the modifications made to H.R. 831 by the Chairman's Mark. Part II of the document describes the Chairman's Mark. Section A discusses extension of the deduction for health insurance costs of self-employed individuals; Section B discusses rules applicable to FCC-certified sales of broadcast properties; Section C discusses nonrecognition of gain on involuntary conversions in certain related-party transactions and application of Code section 1033 to certain microwave relocation transactions; and Section D discusses an interest and dividend test for the EITC.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of H.R. 831* (JCX-12-95), March 15, 1995.

² For a description of H.R. 831, as reported by the House Committee on Ways and Means, see H. Rept. No. 104-32, 104th Cong., 1st Sess. (1995).

³ See Joint Committee on Taxation, *Background and Issues Relating to: (1) the Application of Code Section 1071 Under the Federal Communications Commission's Tax Certificate Program; (2) Involuntary Conversions Under Code Section 1033; and (3) the Earned Income Tax Credit* (JCX-8-95), March 6, 1995.

I. SUMMARY OF THE CHAIRMAN'S MARK

The Chairman's Mark would adopt H.R. 831, with the following modifications:

1. The prohibition against purchases from related parties for purposes of Code section 1033 would apply only to subchapter C corporations. This provision would apply to involuntary conversions occurring on or after February 6, 1995.
2. The related party purchase prohibition would not apply if the related person acquired the replacement property or stock from an unrelated person within the period prescribed in Code section 1033.
3. Certain sales or exchanges made in connection with the relocation of taxpayers from the 1850-1990 MHz spectrum as a result of the FCC's reallocation of that spectrum for use by personal communications services ("PCS") would be treated as involuntary conversions for purposes of Code section 1033. This provision would apply to dispositions occurring before January 1, 2000.
4. A taxpayer would not be eligible for the EITC if the aggregate amount of interest and dividends includible in his or her income for the taxable year exceeds \$2,500. The \$2,500 amount would be indexed for inflation. This provision would be effective for taxable years beginning after December 31, 1995.

I. DESCRIPTION OF THE CHAIRMAN'S MARK

A. PERMANENTLY EXTEND DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS

Present Law

Under present law, the tax treatment of health insurance expenses depends on whether the taxpayer is an employee and whether the taxpayer is covered under a health plan paid for by the employee's employer. An employer's contribution to a plan providing accident or health coverage for the employee and the employee's spouse and dependents is excludable from an employee's income. The exclusion is generally available in the case of owners of a business who are also employees.

In the case of self-employed individuals (i.e., sole proprietors or partners in a partnership) no equivalent exclusion applies. However, prior law provided a deduction for 25 percent of the amount paid for health insurance for a self-employed individual and the individual's spouse and dependents. The 25-percent deduction was not available for any month if the taxpayer was eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse. In addition, no deduction was available to the extent that the deduction exceeded the taxpayer's earned income. The amount of expenses paid for health insurance in excess of the deductible amount could be taken into account in determining whether the individual was entitled to an itemized deduction for medical expenses. The 25-percent deduction expired for taxable years beginning after December 31, 1993.

For purposes of these rules, more than 2-percent shareholders of S corporations are treated the same as self-employed individuals. Thus, they were entitled to the 25-percent deduction.

Other individuals who purchase their own health insurance (e.g., someone whose employer does not provide health insurance) can deduct their insurance premiums only to the extent that the premiums, when combined with other unreimbursed medical expenses, exceed 7.5 percent of adjusted gross income.

Description of H.R. 831

Section 1 of the bill retroactively reinstates for 1994 the deduction for 25-percent of health insurance costs of self-employed individuals and extends the deduction permanently.

Effective date.--The bill is effective for taxable years beginning after December 31, 1993.

Description of Chairman's Mark

Same as H.R. 831.

B. REPEAL SPECIAL RULES APPLICABLE TO FCC-CERTIFIED SALES OF BROADCAST PROPERTIES

Present Law and Background

Tax treatment of a seller of broadcast property

General tax rules

Under generally applicable Code provisions, the seller of a business, including a broadcast business, recognizes gain to the extent the sale price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is then subject to the current income tax unless the gain is deferred or not recognized under a special tax provision.

Special rules under Code section 1031

Under Code section 1031, no gain or loss is recognized if property held for productive use in a trade or business or for investment is exchanged for property of a "like kind" that is to be held for productive use in a trade or business or for investment. The nonrecognition rules do not apply to an exchange of one class or kind of property for property of a different class or kind.⁴ The different classes of property are: (1) depreciable tangible personal property; (2) intangible personal property; and (3) real property.⁵

If an exchange consists not only of like-kind property, but also of other property or money, then gain from the transaction is recognized to the extent of the money and the fair market value of the other property, and no loss from the transaction may be recognized. The basis of property received in a like-kind transaction generally is the same as the basis of any property exchanged, decreased by the amount of money received or loss recognized on the exchange and increased by the amount of gain recognized on the exchange. Special rules apply to exchanges between related persons, which generally require the parties to the transaction to hold the exchanged property for at least two years after the exchange.

Special rules under Code section 1033

Under Code section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property. The replacement property may be acquired directly or by acquiring control of a corporation (generally, 80 percent of the stock of the corporation) that owns replacement property. The taxpayer's basis in the replacement property

⁴ Treas. Reg. sec. 1.1031(a)-1(b).

⁵ Treas. Reg. sec. 1.1031(a)-2.

generally is the same as the taxpayer's basis in the converted property, decreased by the amount of any money or loss recognized on the conversion, and increased by the amount of any gain recognized on the conversion.

Only involuntary conversions that result from destruction, theft, seizure, or condemnation (or threat or imminence thereof) are eligible for deferral under Code section 1033. In addition, the term "condemnation" refers to the process by which private property is taken for public use without the consent of the property owner but upon the award and payment of just compensation, according to a ruling by the Internal Revenue Service (IRS).⁶ Thus, for example, an order by a Federal court to a corporation to divest itself of ownership of certain stock because of anti-trust rules is not a condemnation (or a threat or imminence thereof), and the divestiture is not eligible for deferral under this provision.⁷ Under another IRS ruling, the "threat or imminence of condemnation" test is satisfied if, prior to the execution of a binding contract to sell the property, "the property owner is informed, either orally or in writing by a representative of a governmental body or public official authorized to acquire property for public use, that such body or official has decided to acquire his property, and from the information conveyed to him has reasonable grounds to believe that his property will be condemned if a voluntary sale is not arranged."⁸ However, under this ruling, the threatened taking also must constitute a condemnation, as defined above.

Special rules under Code section 1071

Under Code section 1071, if the FCC certifies that a sale or exchange of property is necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the FCC with respect to the ownership and control of "radio broadcasting stations," a taxpayer may elect to treat the sale or exchange as an involuntary conversion. The FCC is not required to determine the tax consequences of certifying a sale or to consult with the IRS about the certification process.⁹ No other provision of the Internal Revenue Code grants a Federal agency or any other party the type of complete discretion conveyed to the FCC by section 1071.

Under Code section 1071, the replacement requirement in the case of FCC-certified sales may be satisfied by purchasing stock of a corporation that owns broadcasting property, whether or not the stock represents control of the corporation. In addition, even if the taxpayer does not reinvest all the sales proceeds in similar or related replacement property, the taxpayer nonetheless

⁶ Rev. Rul. 58-11, 1958-1 C.B. 273.

⁷ Id.

⁸ Rev. Rul. 74-8, 1974-1 C.B. 200.

⁹ The FCC allows sellers applying for FCC certificates in cable transactions to delete both the sales price and the number of subscribers from the transaction documents submitted with the request for the certificates.

may elect to defer recognition of gain if the basis of depreciable property that is owned by the taxpayer immediately after the sale or that is acquired during the same taxable year is reduced by the amount of deferred gain.

Tax treatment of a buyer of broadcast property

Under generally applicable Code provisions, the purchaser of a broadcast business, or any other business, acquires a basis equal to the purchase price paid. In an asset acquisition, a buyer must allocate the purchase price among the purchased assets to determine the buyer's basis in these assets. In a stock acquisition, the buyer takes a basis in the stock equal to the purchase price paid, and the business retains its basis in the assets. This treatment applies whether or not the seller of the broadcast property has received an FCC certificate exempting the sale transaction from the normal tax treatment.

FCC tax certificate program

Multiple ownership policy

The FCC originally adopted multiple ownership rules in the early 1940s.¹⁰ These rules prohibited broadcast station owners from owning more than one station in the same service area, and, generally, more than six high frequency (radio) or three television stations. Owners wishing to acquire additional stations had to divest themselves of stations they already owned in order to remain in compliance with the FCC's rules.

In November 1943, the FCC adopted a rule that prohibited duopolies (ownership of more than one station in the same city).¹¹ After these rules were adopted, owners wishing to acquire additional stations in excess of the national ownership limit had to divest themselves of stations they already owned in order to remain in compliance with the FCC's rules. After Code section 1071 was adopted in 1943, in some cases, parties petitioned the FCC for tax certificates pursuant to Code section 1071 when divesting themselves of stations. These divestitures were labeled "voluntary divestitures" by the FCC. When the duopoly rule was adopted, 35 licensees that held more than one license in a particular city were required by the rule "involuntarily" to divest themselves of one of the licenses.¹²

¹⁰ 5 Fed. Reg. 2382 (June 26, 1940) (multiple ownership rules for high frequency broadcast stations); 5 Fed. Reg. 2284 (May 6, 1941) (multiple ownership rules for television stations).

¹¹ 8 Fed. Reg. 16065 (Nov. 23, 1943).

¹² FCC Announces New Policy Relating to Issuance of Tax Certificates, 14 FCC2d 827 (1956).

Minority ownership policy

In 1978, the FCC announced a policy of promoting minority ownership of broadcast facilities by offering an FCC tax certificate to those who voluntarily sell such facilities (either in the form of assets or stock) to minority individuals or minority-controlled entities.¹³ The FCC's policy was based on the view that minority ownership of broadcast stations would provide a significant means of fostering the inclusion of minority views in programming, thereby serving the needs and interests of the minority community as well as enriching and educating the non-minority audience. The FCC subsequently expanded its policy to include the sale of cable television systems to minorities as well.¹⁴

"Minorities," within the meaning of the FCC's policy, include "Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders."¹⁵ As a general rule, a minority-controlled corporation is one in which more than 50 percent of the voting stock is held by minorities. A minority-controlled limited partnership is one in which the general partner is a minority or minority-controlled, and minorities have at least a 20-percent interest in the partnership.¹⁶ The FCC requires those who acquire broadcast properties with the help of the FCC tax certificate policy to hold those properties for at least one year.¹⁷ An acquisition can qualify even if there is a pre-existing agreement (or option) to buy out the minority interests at the end of the one-year holding period, providing that the transaction is at arm's-length.

In 1982, the FCC further expanded its tax certificate policy for minority ownership. At that time, the FCC decided that, in addition to those who sell properties to minorities, investors who contribute to the stabilization of the capital base of a minority enterprise would be entitled to a tax certificate upon the subsequent sale of their interest in the minority entity.¹⁸ To qualify for an FCC tax certificate in this circumstance, an investor must either (1) provide start-up financing that allows a minority to acquire either broadcast or cable properties, or (2) purchase shares in a

¹³ Minority Ownership of Broadcasting Facilities, 68 FCC2d 979 (1978).

¹⁴ Minority Ownership of Cable Television Systems, 52 R.R.2d 1469 (1982).

¹⁵ 52 R.R.2d at n. 1.

¹⁶ Commission's Policy Regarding the Advancement of Minority Ownership in Broadcasting, Policy Statement, and Notice of Proposed Rulemaking, 92 FCC2d 853-855 (1982).

¹⁷ See Amendment of Section 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control), 57 R.R.2d 1149 (1985). Anti-trafficking rules require cable properties to be held for at least three years (unless the property is sold pursuant to a tax certificate).

¹⁸ Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC2d 849 (1982).

minority-controlled entity within the first year after the license necessary to operate the property is issued to the minority. An investor can qualify for a tax certificate even if the sale of the interest occurs after participation by a minority in the entity has ceased. In these situations, the status of the divesting investor and the purchaser of the divested interest is irrelevant, because the goal is to increase the financing opportunities available to minorities.

Personal communications services ownership policy

In 1993, Congress provided for the orderly transfer of frequencies, including frequencies that can be licensed pursuant to competitive bidding procedures.¹⁹ The FCC has adopted rules to conduct auctions for the award of more than 2,000 licenses to provide personal communications services ("PCS"). PCS will be provided by means of a new generation of communication devices that will include small, lightweight, multi-function portable phones, portable facsimile and other imaging devices, new types of multi-channel cordless phones, and advanced paging devices with two-way data capabilities. The PCS auctions (which began last year) will constitute the largest auction of public assets in American history and are expected to generate billions of dollars for the United States Treasury.²⁰

The FCC has designed procedures to ensure that small businesses, rural telephone companies and businesses owned by women and minorities have "the opportunity to participate in the provision" of PCS, as Congress directed in 1993.²¹ To help minorities and women participate in the auction of the PCS licenses, the FCC took several steps including up to a 25-percent bidding credit, a reduced upfront payment requirement, a flexible installment payment schedule, and an extension of the tax certificate program for businesses owned by minorities and women.²²

The FCC will employ the tax certificate program in three ways: (1) initial investors (who provide "start-up" financing or purchase interests within the first year after license issuance) in minority and woman-owned PCS businesses will be eligible for FCC tax certificates upon the sale of their investments; (2) holders of PCS licenses will be able to obtain FCC tax certificates upon the sale of the business to a company controlled by minorities and women; and (3) a cellular operator that sells its interest in an overlapping cellular system to a minority or a woman-owned business to come into compliance with the FCC PCS/cellular cross-ownership rule will be eligible for a tax certificate.

¹⁹ Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, Title VI.

²⁰ Fifth Report and Order, 9 FCC Rcd 5532 (1994).

²¹ Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, section 6002(a).

²² Installment payments are available to small businesses and rural telephone companies.

Microwave relocation policy

PCS can operate only on frequencies below 3GHz. However, because that frequency range is currently occupied by various private fixed microwave communications systems (such as railroads, oil pipelines, and electric utilities), there are no large blocks of unallocated spectrum available to PCS. To accommodate PCS, the FCC has reallocated the spectrum; a portion of the 2GHz spectrum will be used exclusively for PCS, and the microwave systems will be required to move to higher frequencies. Current occupants of the 2GHz spectrum allocated to PCS must relocate to higher frequencies not later than three years after the close of the bidding process (anticipated to end in March or April, 1995).²³ In accordance with FCC rules, these current occupants have the right to be compensated for the cost of replacing their old equipment, which can operate only on the 2GHz spectrum, with equipment that will operate at the new, higher frequency. At a minimum, the winners of the new PCS licenses must pay for and install new facilities to enable the incumbent microwave operators to relocate. The amount of these payments and characteristics of the new equipment will be the subject of negotiation between the incumbent microwave operators and the PCS licensees; thus, the nature of the compensation (i.e., solely replacement equipment, or a combination of replacement equipment plus a cash payment) is unknown at present. If no agreement is reached within the 3-year voluntary negotiation period, the microwave operators will be required by the FCC to vacate the spectrum; however, the timing of such relocation is uncertain because the relocation would take place only after completion of a formal negotiation process in which the FCC would be a participant.

The FCC will employ the tax certificate program for PCS to encourage fixed microwave operators voluntarily to relocate from the 2GHz band to clear the band for PCS technologies.²⁴ Tax certificates will be available to incumbent microwave operators that relocate voluntarily within three years following the close of the bidding process. Thus, the certificates are intended to encourage such occupants to relocate more quickly than they otherwise would and to clarify the tax treatment of such transactions.²⁵

²³ The PCS auctions for portions of the 2GHz spectrum commenced in December, 1994.

²⁴ See, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993).

²⁵ The transaction between the PCS licensee and the incumbent microwave operator might qualify for tax-free treatment as a like kind exchange under Code section 1031 or as an involuntary conversion under Code section 1033. However, the availability of these Code provisions may be limited by certain technical requirements, including the treatment of cash in a like-kind exchange, and whether the transaction would qualify as an involuntary conversion under currently applicable IRS standards.

Congressional appropriations rider

Since fiscal year 1988, in appropriations legislation, the Congress has prohibited the FCC from using any of its appropriated funds to repeal, to retroactively apply changes in, or to continue a reexamination of its comparative licensing, distress sale and tax certificate policies.²⁶ This limitation has not prevented an expansion of the existing program.²⁷ The rider will expire at the end of the 1995 fiscal year, September 30, 1995.

Description of H.R. 831

Section 2 of H.R. 831 repeals Code section 1071. Thus, a sale or exchange of broadcast properties would be subject to the same tax rules applicable to all other taxpayers engaged in the sale or exchange of a business.

Effective Date--The repeal of section 1071 is effective for (1) sales or exchanges on or after January 17, 1995,²⁸ and (2) sales or exchanges before that date if the FCC tax certificate with respect to the sale or exchange is issued on or after that date. The provision does not apply to taxpayers who have entered into a binding written contract (or have completed a sale or exchange pursuant to a binding written contract) before January 17, 1995, and who have applied for an FCC tax certificate by that date. A contract is treated as not binding for this purpose if the sale or exchange pursuant to the contract (or the material terms of the contract) were contingent on January 16, 1995, on issuance of an FCC tax certificate. A sale or exchange would not be contingent on January 16, 1995, on issuance of an FCC tax certificate if the tax certificate had been issued by the FCC by that date.

Description of Chairman's Mark

Same as H.R. 831 (See pages 10 and 11 for the treatment of sales or exchanges pursuant to the FCC's microwave relocation policy).

²⁶ Pub. L. No. 100-202 (1987).

²⁷ The appropriations restriction "does not prohibit the agency from taking steps to create greater opportunity for minority ownership." H. Rept. No. 103-708 (Conf. Rept.), 103d Cong. 2d Sess. 40 (1994).

²⁸ On January 17, 1995, House Committee on Ways and Means Chairman Archer issued a press release announcing that the Committee on Ways and Means would immediately review the operation of section 1071 to explore possible legislative changes to section 1071, including the possibility of repeal. The press release stated that any changes to section 1071 may apply to transactions completed, or certificates issued by the FCC, on or after the date of the announcement.

C. PROHIBIT NONRECOGNITION OF GAIN ON INVOLUNTARY CONVERSIONS IN CERTAIN RELATED-PARTY TRANSACTIONS; APPLICATION OF SECTION 1033 TO CERTAIN MICROWAVE RELOCATION TRANSACTIONS

Present Law

As described in Part I.B., under Code section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within a specified period.

Under rulings issued by the IRS to taxpayers, property (stock or assets) purchased from a related person may, in some cases, qualify as property similar or related in service or use to the converted property.²⁹ Thus, in certain circumstances, related taxpayers may obtain significant (and possibly indefinite or permanent) tax deferral without any additional cash outlay to acquire new properties. In cases in which a taxpayer purchases stock as replacement property, section 1033 permits the taxpayer to reduce basis of stock, but does not require any reduction in the basis of the underlying assets. Thus, the reduction in basis of stock does not result in reduced depreciation deductions.

Description of H.R. 831

Under section 3 of H.R. 831, a taxpayer may not defer gain under Code section 1033 when the replacement property or stock is purchased from a related person. For purposes of the bill, a person is treated as related to another person if the relationship between the persons would result in a disallowance of losses under the rules of Code section 267 or 707(b). This provision is intended to apply to all cases involving relationships to the taxpayer described in Code sections 267(b) or 707(b)(1), including members of controlled groups under Code section 267(f).

Effective date.--The prohibition against nonrecognition of gain in certain related-party transactions applies to replacement property or stock acquired on or after February 6, 1995 (the date of introduction of H.R. 831).

Description of Chairman's Mark

Related-party transactions

Under the Chairman's Mark, subchapter C corporations would not be entitled to defer gain under Code section 1033 if the replacement property or stock is purchased from a related person.

²⁹ See, e.g., PLR 8132072, PLR 8020069. Private letter rulings do not have precedential authority and may not be relied upon by any taxpayer other than the taxpayer receiving the ruling but are some indication of IRS administrative practice.

A person would be treated as related to another person if the person bears a relationship to the other person described in Code section 267(b) or 707(b)(1). An exception to the general rule would provide that a taxpayer could purchase replacement property or stock from a related person and defer gain under Code section 1033 to the extent the related person acquired the replacement property or stock from an unrelated person within the period prescribed under Code section 1033.

Microwave relocation transactions

The Chairman's Mark would provide that sales or exchanges that are certified by the FCC as having been made by a taxpayer in connection with the relocation of the taxpayer from the 1850-1990 MHz spectrum by reason of the FCC's reallocation of that spectrum for use for PCS would be treated as involuntary conversions to which Code section 1033 applies.

Effective Date

The provision prohibiting purchases of replacement property from related parties would apply to involuntary conversions occurring on or after February 6, 1995.

The provision treating certain microwave relocation transactions as involuntary conversions would apply to sales or exchanges occurring before January 1, 2000.

D. INTEREST AND DIVIDEND TEST FOR EARNED INCOME TAX CREDIT

Present Law

Eligible low-income workers are able to claim a refundable earned income tax credit (EITC). The amount of the credit an eligible taxpayer may claim depends upon whether the taxpayer has one, more than one, or no qualifying children and is determined by multiplying the credit rate by the taxpayer's earned income up to an earned income threshold. The maximum amount of the credit is the product of the credit rate and the earned income threshold. For taxpayers with earned income (or adjusted gross income, if greater) in excess of the phaseout threshold, the credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or adjusted gross income, if greater) in excess of the phaseout threshold. The credit is not allowed if earned income (or adjusted gross income, if greater) exceeds the phaseout limit. There is no additional limitation on the amount of unearned income that the taxpayer may receive.

The parameters for the EITC depend upon the number of qualifying children the taxpayer claims. For 1995, the parameters are as follows:

	Two or more qualifying children--	One qualifying child--	No qualifying children--
Credit rate	36.00%	34.00%	7.65%
Phaseout rate	20.22%	15.98%	7.65%
Earned income threshold	\$8,640	\$6,160	\$4,100
Maximum credit	\$3,110	\$2,094	\$314
Phaseout threshold	\$11,290	\$11,290	\$5,130
Phaseout limit	\$26,673	\$24,396	\$9,230

The earned income threshold and the phaseout threshold are indexed for inflation; because the phaseout limit depends on those amounts, the phaseout rate, and the credit rate, the phaseout limit will also increase if there is inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.

The credit rates and phaseout rates for the EITC change over time under present law. For 1996 and after, the credit rate will be 40.00 percent and the phaseout rate will be 21.06 percent for taxpayers with two or more qualifying children. The credit rate and the phaseout rate for taxpayers with one qualifying child or no qualifying children will be the same as those listed in the table above.

In order to claim the EITC, a taxpayer must either have a qualifying child or must meet other requirements. A qualifying child must meet a relationship test, an age test, and a residence test. In order to claim the EITC without a qualifying child, a taxpayer must not be a dependent and must be over age 24 and under age 65.

Description of H.R. 831

Under section 4 of H.R. 831, a taxpayer is not eligible for the EITC if the aggregate amount of interest and dividends includible in his or her income for the taxable year exceeds \$3,150. The otherwise allowable EITC amount is phased out ratably for taxpayers with aggregate taxable interest and dividend income between \$2,500 and \$3,150. For taxable years beginning after 1996, the \$2,500 threshold and the \$650 size of the phaseout will be indexed for inflation with rounding to the nearest multiple of \$10.

Effective date.--The provision is effective for taxable years beginning after December 31, 1995.

Description of Chairman's Mark

Under the Chairman's Mark, a taxpayer would not be eligible for the EITC if the aggregate amount of interest and dividends includible in his or her income for the taxable year exceeds \$2,500. For taxable years beginning after 1996, the \$2,500 limit would be indexed for inflation with rounding to the nearest multiple of \$50.

Effective Date

The provision would be effective for taxable years beginning after December 31, 1995.

- Senate Finance Committee -
ESTIMATED REVENUE EFFECTS OF CHAIRMAN'S MARK
 H.R. 831

Fiscal Years 1995 - 2000

(Millions of Dollars)

Provision	Effective	1995	1996	1997	1998	1999	2000	1995-00
1. Extend 25% self-employed health deduction permanently.....	1/1/94	-487	-398	-435	-484	-536	-584	-2,925
2. Repeal section 1071 (FCC tax certificate program)	1/17/95	334	411	135	135	170	201	1,386
3. Modify section 1033 for corporations with transition rule for microwave relocation previously entitled to section 1071 (non-recognition of gain on involuntary conversions not to apply to acquisitions from related persons).....	2/6/95	5	9	23	33	47	67	184
4. Deny earned income tax credit to individuals with interest and dividend income over \$2,500 [1].....	1/1/96	---	16	316	336	351	378	1,397
NET TOTALS		-148	38	39	20	32	62	42

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

[1] Included in this estimate are decreases in EITC outlays of \$13 million for FY 1996, \$253 million for FY 1997, \$266 million for FY 1998, \$280 million for FY 1999, and \$303 million for FY 2000. The \$2,500 threshold is indexed beginning in 1997. Threshold rounded to the nearest \$50.



Committee On Finance

Bob Packwood, Chairman

NEWS RELEASE

SUMMARY OF COMMITTEE MARK UP OF H.R. 831

On Wednesday, March 15, 1995, the Senate Finance Committee, by voice vote, reported H.R. 831, a bill to extend permanently the 25 percent deduction for health insurance costs of self-employed individuals, with the following modifications:

1. The percentage of health insurance that self-employed individuals can deduct is raised to 30 percent, effective for tax years beginning after December 31, 1994 (a 25 percent deduction applies to 1994).
2. A clarification that sales or exchanges in connection with relocations of spectra under the Federal Communication Commission's (FCC) microwave relocation program are eligible for involuntary conversion treatment for federal tax purposes.
3. A clarification that the prohibition on nonrecognition of gain on involuntary conversions in certain related party transactions applies to:
 - a. Involuntary conversions on or after February 6, 1995; and
 - b. Transactions involving corporations only, not individuals.
4. The earned income tax credit (EITC) is denied to individuals with interest (both taxable and tax-exempt), dividends, net rental income and royalties in excess of \$2,450 annually, effective for tax years beginning after December 31, 1995.
5. Individuals who renounce their U.S. citizenship are treated as if they sold all of their property and are taxed on "deemed" gain above \$600,000. This provision is effective for individuals who renounce their citizenship on or after February 6, 1995.

According to Joint Committee on Taxation preliminary estimates, the Finance Committee's version of H.R. 831 will reduce the federal budget deficit by \$1.4 billion over the next five fiscal years.

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