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Stenographic Transcript Of

HEARINGS

Before The

COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

Washington, D. C.

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## 1 EXECUTIVE SESSION

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3 THURSDAY, JULY 26, 1979

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5 United States Senate,

6 Committee on Finance,

7 Washington, D. C.

8 The Committee met at 10:25 a.m. in room 2221, Dirksen  
9 Senate Office Building, Hon. Russell B. Long, Chairman of the  
10 Committee, presiding.

11 Present: Senators Long, Talmadge, Moynihan, Baucus,  
12 Boren, Bradley, Dole, Packwood and Danforth:

13 The Chairman: We have been invited down to the White  
14 House at 11:00 for the sounding of the trade bill. I think  
15 that is a tribute to everyone on this committee and the Ways  
16 and Means Committee. This committee took the lead and did  
17 more than any other committee did to bring about the  
18 legislation. That will be our limitation. We are going to  
19 have to leave here.

20 Senator Talmadge: At 11:30.

21 The Chairman: Oh. 11:30. All right.

22 I think that we ought to discuss this internal revenue  
23 matter, because it is a jurisdictional matter and it is  
24 important and it is of very serious concern to this committee.

25 Mr. Shapiro: Mr. Chairman, you can see that Mr. Kurtz,

1 Commissioner of the IRS is here. I would like to give the  
2 Committee a little background and let the Commissioner speak.

3 Senator Dole: Before that, I am wondering if I might  
4 just state for the record, since I listened to the President's  
5 press conference last night, I was not certain what he was  
6 saying, but there is a lot of emphasis on putting pressure on  
7 the Finance Committee and putting pressure on the Senate to  
8 somehow bring these big oil lobbies into line.

9 What we have done is look at what we will pick up in  
10 additional income tax, even without a windfall profits tax.  
11 In 1980 and 1990, eleven years, there will be a pick up of  
12 \$173.5 billion, just because of increased federal income tax  
13 revenue and increased federal royalty payments.

14 I would just say to the President, we are going to have a  
15 pretty good increase without any windfall profits tax. That  
16 does not mean that we will have a tax, but it seems to me to  
17 say that the whole world is waiting to see what we are going  
18 to do with the windfall profits tax, whether or not he can  
19 have his Energy Security Corporation depends on it.

20 I think it overlooks the fact that we are going to have a  
21 lot of additional revenues because of the higher prices and  
22 more taxes. I am not certain those are the same figures that  
23 Mr. Shapiro would have. I think that it should be stated that  
24 it should be focused on by this committee and the Senate  
25 itself.

1           The Chairman: I would hope that you would put your chart  
2 in the record when we get to the windfall profits thing, which  
3 is the next order of business.

4           I think that is a very useful chart.

5           Senator Packwood: I want to do this damn IRS thing now.  
6 I have an amendment.

7           The Chairman: Well, the first order of business is to  
8 talk about it. What is your suggestion, Mr. Shapiro?

9           Mr. Shapiro: I would like to give the committee some  
10 background as to the status of the procedure. Then I think  
11 the Commissioner should present the case from his perspective  
12 as to how the IRS has gotten involved in this situation and  
13 where they stand right now and how they see the effects of the  
14 Congressional action from their point of view.

15           Let me say the parliamentary situation, the procedure,  
16 is that the House put on an appropriations bill, put on  
17 income tax-related amendments, related to the private school  
18 issue, the third one that is related to a tuition payment  
19 relating to any type of private school.

20           Fourth, collection practices by the Internal Revenue  
21 Service. The fourth one is of course, is what the  
22 Commissioner is directly involved in.

23           Our concern is the private school issue, although the  
24 other two clearly have an effect on the Internal Revenue  
25 Service.

1           The action that was done by the House and by the Congress  
2 last year used the appropriations process as a means to  
3 provide some kind of substantive legislative effect regarding  
4 the Internal Revenue Service and certain tax policy that has  
5 some effect over the jurisdiction of the tax-writing  
6 committees.

7           What was done was to add an amendment either in committee  
8 or on the Floor of the House and the Senate to restrict the  
9 Internal Revenue Service from using its funds to carry out  
10 certain policies or rules and procedures.

11           One of these is whether or not those procedures should be  
12 done in the committee rather than through the appropriations  
13 process, that if the Congress wants action by the Finance  
14 Committee, they should do it through an amendment.

15           One of the problems is that you cannot initiate  
16 legislation without having a bill from the House. The Finance  
17 Committee does not have a bill available to add amendments to.

18           So, if the House does not send a related bill over, it  
19 kind of ties your hands so that you do not have a processor  
20 vehicle to offer an amendment.

21           That is the situation that we have right now, that some  
22 Senators are concerned about.

23           The situation is there may be some concern for this  
24 particular issue and to have a positive amendment dealing with  
25 it, but not having a bill to carry it out.

1           The Chairman: Let me ask you this question. Has Mr.  
2 Ullman raised this question? Has it been voted on on the  
3 House Floor?

4           Mr. Shapiro: It was raised on the House Floor. The  
5 Committee did not deal with it. The vote was by a  
6 Subcommittee of the Ways and Means Committee. Hearings were  
7 held on it.

8           On the House Floor, Chairman Ullman did raise the issue  
9 and argued against it. \*A procedural matter, that it  
10 should be handled in the Committee.

11           Other members also argued on the merits of the case. The  
12 House, however, voted overwhelmingly to agree to the one  
13 amendment and voted by division to agree to the second  
14 amendment.

15           Now, at this time, there is a question of procedure  
16 whether it should go on the appropriations bill.  
17 there is a problem of having a vehicle, and whether the  
18 committee should go to the merits of it.

19           Having given you the background, I think that it would be  
20 appropriate to have the Commissioner state their case as to  
21 why the Internal Revenue Service promulgated the revenue  
22 procedure and as to how this will affect them as to what they  
23 will do.

24           Mr. Kurtz: Thank you.

25           The revenue procedure, which is now in proposed form,

1 states that general guidance to determine whether certain  
2 kinds of schools are being operated on a racially  
3 discriminatory basis. That is important because under  
4 501(c)(3) of the Code, it sets the standards for the  
5 deductibility of contributions.

6 There is an overriding requirement that organizations who  
7 qualify for the charitable exclusion not operate in a way  
8 that is contrary to well-defined public policy.

9 It was in 1971 in a litigation that was brought by a  
10 group of parents of black school children, the district court  
11 of Washington held. The decision was confirmed by the Supreme  
12 Court of the United States that the Internal Revenue Service  
13 would enjoin continuing tax exemptions for schools which  
14 discriminate.

15 In the course of that litigation, the Internal Revenue  
16 Service, for the first time, set rules which call for schools  
17 in order to qualify for tax exemption have in their by-laws or  
18 whatever their governing instrument is, a requirement that  
19 there be a statement that the school will be operated on a  
20 nondiscriminatory basis and to publicize that fact.

21 Essentially it is a paper test. If the school met the  
22 paper test -- that is, met that provision and published that  
23 fact in the newspaper or in literature, that exemption, in  
24 fact, was continued.

25 In 1976, the original plaintiffs in the Greene case went

1 back to the District Court of Washington to reopen that case.  
2 They complained\* that the Internal Revenue Service was  
3 violating the existing court injunction, that there were  
4 schools which were operated in fact on a discriminatory basis,  
5 notwithstanding what their charter or by-laws said, and that  
6 they continued to have tax exemption.

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1 This is still pending as a result of the instigation of  
2 that lawsuit.

3 We reviewed what, in effect, we were doing and concluded  
4 that there were problems in the administration of that  
5 provision.

6 For example, there were a number of schools that had been  
7 held to be discriminatory in various federal court actions  
8 involving textbooks, various HEW state actions, that were held  
9 to be discriminatory after a full court hearing which,  
10 nevertheless, still continued their tax exemption because, on  
11 the paper record, they would appear to be nondiscriminatory,  
12 that is, they had this policy.

13 So at that point, we reviewed what the law was in the  
14 area and developed a revenue procedure for the guidance of our  
15 own agency, for the guidance of the field, and we published it  
16 in proposed form.

17 Let me say that it is a revenue procedure which is not a  
18 regulation and there is a substantial difference between the  
19 regulation and the revenue procedure, a regulation, if it is  
20 reasonable within the bounds of the statute, is given great  
21 weight by the court.

22 A revenue procedure is simply a statement of the agency's  
23 position and generally is given very little weight, if any, in  
24 a litigation. That is, the court will look at what the law is  
25 in the cases and decide it on that basis.

1 It is not a regulation.

2 Revenue procedures are normally issued routinely. This  
3 one, because of the complexity of the problem, we held public  
4 hearings in August. There were extensive public hearings.

5 We received a huge number of comments. As a result of  
6 that, we significantly revised the revenue procedure. We put  
7 it out again in notice form in February. That is where it  
8 stands.

9 Since that time, the Ways and Means Oversight  
10 Subcommittee had four or five full days of hearings and had  
11 not yet issued its report although that is being worked on.

12 Senator Byrd's subcommittee also had a day of hearings to  
13 consider the question.

14 The problem that we face if an amendment such as various  
15 ones that have been offered which would, in effect, say that  
16 we would not prohibit the Internal Revenue Service from  
17 implementing the action, we are in a position there is  
18 developed case law in this area where we have an obligation in  
19 making determinations whether a school is entitled to an  
20 exemption in the first place when it applies, or whether it is  
21 entitled to continue with that exemption on examination.

22 We have that problem of what rules to apply.

23 There are cases on that subject. There are some  
24 decisions. But, without some guidance from the national  
25 office, it is inevitable that different agents in different

1 parts of the country will interpret the cases differently.

2       The purpose of the revenue procedure, simply to try and  
3 establish a degree of uniformity in the administration of  
4 Section 501(c)(3) in this requirement in a further attempt to  
5 provide uniformity and to assure ourselves that the revenue  
6 procedure in this area was not abused, the procedure itself  
7 does provide that, in every case where this is in issue, the  
8 final determination will be made at the national office,  
9 central, so that uniform rules can be developed and applied  
10 and that we can make sure that we are not going into  
11 disallowances of marginal cases, and that we wind up in  
12 litigation if that is the end result of only those cases where  
13 we are convinced that the law requires that the exemption be  
14 revoked.

15       I might also say, as a general matter, under the exempt  
16 organizations provisions of the Code, in any case in which the  
17 Service revokes an exemption, or in any case where the Service  
18 denies an application for an exemption or does not act on an  
19 application for an exemption, that the taxpayer has the right,  
20 the organization has the right, to go to the Tax Court and have  
21 that issue tested and in the case of a revocation of an  
22 exemption, the revocation is not effective for an organization  
23 until a final decision is reached in the court.

24       The exemption continues. Contributions can continue to  
25 be made during the pendency of the proceeding, subject only to

1 a limitation of \$1,000 so that in the end these issues will,  
2 in fact, be decided by the court against the standard of  
3 existing law.

4 The revenue procedure, or something like it, whatever  
5 document it is, we feel is essential to give guidance both to  
6 schools in determining what information to submit on an  
7 exemption application, what kinds of showings to make, and for  
8 the agents in the field charged with the responsibility of  
9 seeing that Section 501(c)(3) is being complied with by all  
10 exempt organizations.

11 Senator Dole: What about existing procedures? Have you  
12 not denied tax exempt status to about \$100 schools?

13 Mr. Kurtz: Only as to those schools that refuse to  
14 adopt, as a part of their by-laws, a statement that they would  
15 operate on a nondiscriminatory basis. There are 100-some  
16 schools immediately after Green that refused to amend their  
17 by-laws.

18 Those exemptions were revoked, but those are the only  
19 cases.

20 The Chairman: Can you show us what was required that  
21 they put into those by-laws? You say that they had to amend  
22 their by-laws to be nondiscriminatory.

23 Can you show us what the actual language of the revisions  
24 were that you required them --

25 Mr. Kurtz: Essentially the language -- I do not have the

1 language right here -- essentially they had to provide that  
2 they would not discriminate on the basis of race, religion or  
3 national origin. That is the extent of it, Senator.

4 The Chairman: Was the language that terse, or far more  
5 elaborate than that?

6 Mr. Kurtz: Pretty much that terse.

7 Here they have to provide that the school admit students  
8 of any race, color or national origin to all the rights,  
9 privileges, programs or activities generally accorded or made  
10 available to students at the school, does not discriminate on  
11 the basis of race, color or ethnic origin in the  
12 administration of its educational policies, admission  
13 policies, scholarship and loan programs, athletic and other  
14 school administered programs.

15 Essentially that is the language.

16 Senator Packwood: I have a question. When we had the  
17 hearings before Senator Byrd's subcommittee and you testified,  
18 at that time, you had set down certain guidelines and presumed  
19 discrimination if the guidelines were not met.

20 Is that still true?

21 Mr. Kurtz: It is not a presumption in the sense or  
22 different from a requirement of coming forward with evidence.  
23 The way the cases have developed -- and that is reflected in  
24 this revenue procedure -- if this school has been adjudicated  
25 to be discriminatory or a school was formed at or about the

1 time of public school desegregation orders, or voluntary  
2 plans, and the formation of the school is related, in fact,  
3 which is a finding that has to be made to the public school  
4 desegregation, then the school has a burden to show that,  
5 notwithstanding the circumstances of its formation that it is,  
6 in fact, open to all on a nondiscriminatory basis, and that is  
7 shown by any combination of activities, including publicity,  
8 contact with the minority community, or other things.

9       There are examples of things that will show that in the  
10 revenue procedure but it is not an exclusive list, and there  
11 are no negative inferences drawn from the absence.

12       Senator Packwood: You have taken those guidelines and  
13 said, if you were formed after an order for integration in  
14 this district occurred and these other two or three steps, you  
15 are presumed to discriminate. The burden is not on you, the  
16 school, to prove that you do not. Is that right?

17       Mr. Kurtz: Senator Packwood, the word "presumed" is used  
18 because it is a convenient word. I have not feeling about  
19 changing that word.

20       What we do have to have, as in any tax case, is a  
21 requirement that the person planning the tax benefit come  
22 forward with whatever evidence is required because they have  
23 the evidence; we do not.

24       As to how the final decision is made, the final decision  
25 is made taking into account all of the facts and circumstances

1 that are present. If there is an objection to the use of that  
2 particular word, I have no objection at all to taking it out,  
3 so long as the organization does have the requirement to  
4 furnish evidence that is reasonably requested.

5 Senator Packwood: Mr. Chairman, unless the Finance  
6 Committee acts, I am going to support the Appropriations  
7 Committee and deny IRS any money to enforce this regulation.  
8 I think it is a continuing harrassment on their part of  
9 private, religious schools.

10 There is a second issue coming up that is even worse than  
11 this one in my mind, indicating their distaste for private  
12 schools. So I would hope that we would delay or postpone the  
13 effective date of this particular enforcement and deny them  
14 the power to do it. If not, I am going to support the  
15 Appropriations Committee.

16 The Chairman: Let me say this about this problem. The  
17 approach that is being sought -- in the first place, we do not  
18 have an appropriations bill. We do not manage appropriations  
19 bills here. An approach being sought on the appropriations  
20 bills apparently is to say that no money will be appropriated  
21 under this bill, or maybe any other bill, under their  
22 jurisdiction will be used to implement this particular  
23 function.

24 We really do not have jurisdiction. If someone wants to  
25 use that particular tool, I do not see that we have

1 jurisdiction.

2 Senator Moynihan?

3 Senator Moynihan: Mr. Chairman, surely we have a view  
4 about such practices which we do not encourage them.

5 The Chairman: That is correct.

6 I do not think anybody here will argue that a private  
7 school has the right to segregate.

8 Senator Moynihan: No, Mr. Chairman, I meant the prior  
9 question of determining what will be the policies of the  
10 Internal Revenue Service and whether you appropriate money to  
11 carry them out or not. That is not the way we do it.

12 The Internal Revenue Service policy should report to this  
13 committee and be left alone by the appropriations process, I  
14 would think.

15 Am I wrong?

16 Senator Packwood: That would be my preference, but if  
17 this committee chooses not to act --

18 Senator Moynihan: That is different. Then we have not  
19 performed our responsibilities and other people will usurp it  
20 from us.

21 Senator Bradley: The question is, what time frame do we  
22 choose not to act? I feel that the gun is at our head now,  
23 because action taken in the House has circumvented the  
24 committee of jurisdiction, and even the Appropriations  
25 committee, and I see no reason for us to act today on this

1 matter, just as I see no reason why we should not convey to  
2 the Appropriations Committee that we do not think it is  
3 appropriate for them to act, that this is a matter that deals  
4 with tax law, which is in our jurisdiction.

5 I have plenty of things that I would like to appropriate,  
6 but I am not on the Appropriations Committee.

7 Senator Packwood: If we do not act, IRS will go ahead  
8 and enforce this procedure.

9 Senator Bradley: That is correct.

10 Senator Packwood: It is not a question that you say to  
11 the Appropriations Committee, we are not quite ready to do the  
12 work, please defer; this is our jurisdiction. In the  
13 meantime, the IRS wholeheartedly, full steam ahead is going  
14 ahead with this enforcement.

15 Senator Bradley: It seems to me there are bills before  
16 the Senate now that deal with this, introduced by Senator  
17 Byrd, Senator Stephens, Senator Young, Senator Hatch, two  
18 separate bills. That is the appropriate way to consider it,  
19 and not at this time.

20 Senator Baucus: Mr. Chairman, I strongly believe that we  
21 should retain jurisdiction over this for reasons the same as  
22 Senator Moynihan suggested, either in the Committee report or  
23 a substitute amendment, that we retain jurisdiction for a  
24 certain period of time until this committee acts.

25 The point of order would not lie against that, if I

1 understand the rules. The House has already in effect,  
2 legislated in their appropriations bill. The door is open.

3 Senator Packwood: What we ought to do, if we do nothing  
4 else, is pass an amendment suggesting deferral of enforcement  
5 of this regulation until December 31, 1980, giving us the rest  
6 of this Congress to decide what we are going to do.

7 That clears up the procedure and indicates that we do not  
8 want them to act at the moment until we decide.

9 Senator Bradley: You are speaking of deferral of the  
10 regulation as changed in February, as amended after the  
11 hearing process in February?

12 Senator Packwood: That is correct.

13 The Chairman: How does that strike you, Mr. Kurtz? I do  
14 not know the answer to this; I am looking for an answer. How  
15 does it strike you?

16 Mr. Kurtz: The problem -- let me say, if I may, maybe it  
17 is a little bit out of my area -- but as a jurisdictional  
18 matter, obviously the appropriations process is very awkward  
19 for handling substantive tax matters. This matter was the  
20 subject of very extensive hearings in the House and also in  
21 the Senate.

22 The Appropriations Committee in the House did not act on  
23 it, did not consider it, and, in fact, Mr. Steed, the Chairman  
24 of the Appropriations Subcommittee argued vigorously against  
25 it on the Floor.

1 But on deferral of the revenue procedure, it does leave  
2 the problem of what happens in the interim, as to what rules  
3 should be applied when a school is examined or what rules  
4 should we apply to the disposition of pending exemption  
5 applications.

6 I believe that to grant an exemption application to  
7 schools which are being operated in a discriminatory manner  
8 raises serious constitutional questions.

9 Senator Packwood: You have an existing procedure which  
10 you were working on by a case by case method. My objection is  
11 to your presumption in your new procedures where you are  
12 returning the burden back to the school and saying, just  
13 because you were built in Denver after a busing order and  
14 happen to be a Seventh Day Adventist school and these other 50  
15 criteria, we are going to assume you discriminate.

16 That, to me, is extraordinarily unfair.

17 Mr. Kurtz: Well, as I say, I do not believe that what  
18 you characterize as a presumption is in any way an integral  
19 part of this revenue procedure, that it is simply a question  
20 of availability of the facts.

21 If the Committee wishes to legislate that there shall be  
22 no presumption in the revenue procedure of any kind, I would  
23 find that entirely satisfactorily.

24 Senator Bradley: Is it also that none of these are  
25 applicable if 20 percent of the minority population of the

1 area exists in the school population?

2 Mr. Kurtz: There is a safe harbor in the revenue  
3 procedure, a matter again of examination guidelines. If the  
4 minority population of the school is equal to 20 percent of  
5 the percentage of minority population in the area, then the  
6 examination will go no further. But there is no converse  
7 application.

8 Senator Packwood: Do you make any distinction in your ew  
9 rules for religious schools, day schools that do not have 20  
10 percent minority students?

11 Mr. Kurtz: There is a provision in the revenue procedure  
12 that goes to that point.

13 Let me see. There is a provision in the revenue  
14 procedure that says, whether a school's minority student  
15 enrollment is significant depends on all relevant facts and  
16 circumstances. Consideration would be given to special  
17 circumstances that limit the school's ability to attract  
18 minority students, such as an emphasis on special programs or  
19 a special curriculum which, by their nature, are of interest  
20 only in an identifiable group which are not composed of  
21 significant numbers of minority students, as long as such  
22 programs or curricula are not offered for the exclusion of  
23 minorities.

24 Senator Bradley: Is there not also a provision that  
25 excludes that an entire system has met minority qualifications

1 in the past? That does not mean that for a particular school  
2 that they do not have to meet the requirement.

3 Mr. Kurtz: Yes.

4 Senator Packwood: That provision was put in particularly  
5 because of the justifiable argument of many Catholics.

6 Senator Bradley: I agree.

7 Senator Packwood: The IRS would never have put that in  
8 if they were not forced to do it.

9 Mr. Kurtz: It is not a question of being forced. That  
10 is why we had a hearing on the revenue procedure. We made  
11 very significant changes as a result of the hearings.

12 Senator Packwood: Mr. Kurtz, you and I have met in the  
13 office several times. This ruling and the other one about  
14 deductibility of contributions is an ongoing, continuing bias  
15 of the Internal Revenue Service against private, religious  
16 education in this country.

17 Mr. Kurtz: I assure you it is not, Senator Packwood.

18 If I might refer to the other one for a moment, that  
19 revenue ruling on contributions is almost word for word a  
20 quote from the case that was decided by the First Circuit.  
21 You may think that was wrong, but that is a judicial decision  
22 we followed.

23 Senator Packwood: Of one circuit, the IRS has clutched  
24 to its bosom to justify an action it wanted to reach all  
25 along, anyway.

1 The Chairman: Senator Moynihan?

2 Senator Moynihan: Mr. Chairman, Senator Packwood and I  
3 have joined in many efforts to provide some relief for the  
4 nonpublic schools, and I would have to say to Mr. Kurtz, I  
5 would hope you will listen to me, that while I will be  
6 prepared to see the rules as revised, the revenue procedure as  
7 revised, given an experiment, a work-out with Senator  
8 Packwood, what might be best.

9 I agree with him that the Internal Revenue Service is  
10 distinctly biased against religious-based schools, so biased  
11 the thing wreaks of a distaste for anything not controlled by  
12 the state.

13 Remember that not a person on this committee who is not  
14 altogether opposed to racially discriminatory schools, but  
15 there is something hidden in this and the organization that  
16 you most rely on have been organizations -- you want to see  
17 religious education in this country stamped out as if it were  
18 some kind of infamous thing.\*

19 You may not know it, sir. We know it. It wreaks of  
20 distaste, or even hatred, for religious-based schools.

21 That is our problem. Under the guise of opposing racial  
22 discrimination, we are opposing denominational schools. It is  
23 something hidden here and it is just appalling to me. I must  
24 tell you -- I was not going to speak so strongly but I  
25 thought, in response to Senator Packwood, you indicated our

1 feelings on this matter.

2 We have great respect for you, sir, but this thing has  
3 shaken us.

4 The Chairman: Well, it just seems to me with the  
5 House-passed amendment, the matter will be challenged in the  
6 courts, and more power to them. Everyone has a right to go to  
7 court. That they can do.

8 But I think, in view of the fact that we do not have any  
9 bill over here -- they have sent us practically no bills, you  
10 know -- this is July, almost the 1st of August. If we were  
11 waiting for the Ways and Means Committee to send us something,  
12 we would really have had nothing to do. We would have had a  
13 long vacation for the first six months of this year.

14 So that we do not have any bill that has anything to do  
15 with this problem, sending over here, that we can amend. We  
16 do not have any appropriate bill to amend.

17 So rather than complain about the fact that someone acts  
18 on a bill that is within our jurisdiction, it seems to me that  
19 I would just say that anybody who wants to can offer any  
20 amendment he wants to on that appropriations bill. If it is  
21 an amendment on authorization and they have jurisdiction over  
22 that, I am inclined to think when they report it, they can  
23 report it with, or without, an amendment. Let their  
24 conscience be their guide.

25 Out there on the Floor, anyone who wants to can insist on

1 a vote for the House amendment, or against the House  
2 amendment, table the House amendment.

3 But the whole fiasco is not something we created. I do  
4 not know whether we should try to get too much involved in  
5 these things. It seems to me it would be just as well for  
6 everybody to let their conscience be his guide. By the time  
7 they are through, it will be challenged in the courts. It may  
8 very well be declared unconstitutional.

9 So be it. I do not know how we are going to do this, how  
10 these committees will help the schools. You have the courts  
11 charged to run the schools. They have HEW trying to run the  
12 schools. Now they have the IRS trying to run the private  
13 schools as well as the public schools and we do not have  
14 jurisdiction over any of it.

15 I am inclined to say, more power to them; let them have  
16 their day. Anybody can vote however he wants to on that  
17 amendment out there.

18 Let them do what they want to do about it.

19 It is within their jurisdiction. It is strictly a  
20 limitation on appropriations, is it not, Mr. Shapiro?

21 Mr. Shapiro: That is correct.

22 The Chairman: In that regard, it is within their  
23 jurisdiction.

24 Senator Packwood: What are you suggesting we do about  
25 the second one where they are going to prohibit contributions

1 to private schools if you happen to send your child there and  
2 you do not pay any tuition to go to the school, or the value  
3 of the education, how you figure that is less than the amount  
4 of your contribution.

5 And they are going to deny the deductibility -- this has  
6 nothing to do with race. This is clearly for private schools,  
7 basically religious schools.

8 The Chairman: In that area, whenever we are acting on  
9 some bill, we have jurisdiction over you. You can offer an  
10 amendment, Senator. It is all right with me to vote on it,  
11 and offer your suggestion.

12 I am not on the subcommittee. I did not attend that  
13 hearing. I do not know the answer. I am looking for answers.

14 For the moment, I do not see any point in our trying to  
15 get involved in that here. In due course, we will hold a  
16 meeting about that. I hope that you and others will have some  
17 suggestions to make about it.

18 Senator Packwood: I have some suggestions, but following  
19 your admonition that we will follow our consciences on the  
20 appropriations bills that are on the Floor, as we indicated, I  
21 intend to support it if we are unable to act here.

22 Senator Baucus: Mr. Chairman, I do not know the answer  
23 on the merits myself. Obviously there are two sides on this.

24 I am not a member of that subcommittee. I did not attend  
25 the hearings. I somehow still think we should keep

1 jurisdiction over this.

2 One way, perhaps, is the way that Bob suggested; at least  
3 the flavor of jurisdiction over it.

4 I think we should proceed.

5 The Chairman: It is fine with me. I am willing to vote  
6 on anything of that sort that anyone here wants to vote on.

7 Senator Packwood: Do we have any bill at all?

8 The Chairman: At this point, we are just talking about  
9 what the House did and what the Appropriations Committee of  
10 the Senate is talking about.

11 The more I look at it, the more I find myself thinking we  
12 cannot solve that problem for them here. They can vote that  
13 limitation down or up, one way or the other; however it goes,  
14 we will have to vote on that on the Floor.

15 Senator Baucus: I am suggesting perhaps if we could  
16 modify the limitation, as Bob suggested.

17 The Chairman: Let me just say this, Mr. Baucus, when we  
18 have to vote on that measure up there on the Floor I honestly  
19 think that some of us would be just as well advised to vote on  
20 the merits of it, rather than vote on the jurisdictional  
21 aspects of it.

22 I suspect that from where I come from in looking at the  
23 people who I represent, who I will have to report to, it is  
24 probably easier to vote for the amendment than explain why I  
25 did not.

1           Every Senator can be the judge of his own conscience  
2 about that matter.

3           Senator Baucus: I would just suggest a substitute  
4 amendment that suspends the implementation of the rulings,  
5 revenue procedures, until the end of 1980. That would have  
6 that effect.

7           The Chairman: That may be fine. I would think, though  
8 -- I have not had any indication from Mr. Kurtz that he would  
9 advocate that solution.

10          Have you advocated that, Mr. Kurtz?

11          Mr. Kurtz: That is essentially what is in the  
12 appropriations bill because it applies to next year's  
13 appropriation for fiscal year 1980, and if I had to have it  
14 one way or the other, I would rather have it here than there,  
15 as a matter of procedure.

16          The Chairman: You mean in this committee rather than  
17 that committee?

18          Mr. Kurtz: Yes.

19          The Chairman: But they have a bill to amend, they have a  
20 bill headed down to the White House that will have to become  
21 law one way or the other unless the President vetoes.

22          Senator Boren: Mr. Chairman, suppose the Appropriations  
23 Committee went ahead and reported it out without that  
24 amendment in it, but our committee, through proper channels  
25 sought from them language through the channels and they were

1 going to do this for one year, suspend it for one year, to  
2 give the Finance Committee time to look at the rule and  
3 regulation.

4 That, in a sense, would be their expression about our  
5 jurisdiction and would allow the thing to go on.

6 The Chairman: It may be that they do not have  
7 jurisdiction to do business that way.

8 Senator Baucus: Bob, could you agree to a time period  
9 somewhat shorter than December 31, 1980?

10 Senator Packwood: We will have enough tax bills coming  
11 along by that time. Frankly, the second part of this is the  
12 one that concerns me in a greater capacity.

13 Senator Moyihan: May I add, Senator Packwood and I are  
14 somewhat concerned about the second one. It is in the context  
15 of the second one that the first seems to us to lose  
16 coloration.

17 Senator Packwood: The second one is not going to be  
18 limited to schools. It is going to be volunteer fire  
19 districts, ambulance districts, where you are giving a service  
20 that allegedly you do not have to pay for.

21 You make contributions and deny the deductibility and it  
22 is another blow at volunteerism.

23 The Chairman: Let me say his, gentlemen, that it is now  
24 11:06. A meeting with the President is going to sign that  
25 trade bill at 11:30, or he is supposed to sign it at 11:30.

1 We have been invited to be there in view of the  
2 contribution we made. I think we should recess right here and  
3 now and go on down. There will be cars at the 1st and C  
4 entrance. That is down in that corner.

5 We will recess at this time.

6 (Thereupon, at 11:05 a.m. the Committee recessed, to  
7 reconvene at the call of the Chair.)

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