

1 EXECUTIVE SESSION

2 THURSDAY, SEPTEMBER 19, 1985

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

6 The committee met, pursuant to notice, at 9:40 a.m.  
7 in Room SD-215, Dirksen Senate Office Building, the  
8 Honorable Robert Packwood (chairman) presiding.

9 Present: Senators Packwood, Dole, Roth, Chafee,  
10 Heinz, Wallop, Durenberger, Armstrong, Symms, Grassley,  
11 Long, Bentsen, Matsunaga, Moynihan, Baucus, Boren, Bradley,  
12 Mitchell and Pryor.

13 Also present: Roger Mentz, Assistant Secretary for  
14 Tax Policy, Treasury Department; Mickel Rollyson, Tax  
15 Legislative Counsel, Treasury Department.

16 Also present: Bill Diefenderfer, Chief of Staff;  
17 Ed Mihalski, Deputy Chief of Staff; John Colvin, Chief  
18 Counsel; Frank Cantrel, Counsel; Tom Preston, Counsel;  
19 Ann Moran, Counsel; Dave Brockway, Chief of Staff, Joint  
20 Committee on Taxation; Leonard Santos, Trade Counsel; Sydney  
21 Olson, Joseph Humphries, Bob Hoyer, Special Professional  
22 Staff Members; Donald Muse, Professional Staff Member;  
23 Michael Stern, Minority Staff Member; Randy Weiss, Tax  
24 Counsel, Joint Committee on Taxation; William Wilkins,  
25 Chief Tax Counsel, Minority Staff.

(THE PRESS RELEASE ANNOUNCING THE HEARING FOLLOWS:)

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1           The Chairman. The committee will come to order,  
2 please.

3           It would be my intention when we start to have a few  
4 more members here to go on with the issue of the coal tax,  
5 and do the two issues involving railroad retirement and the  
6 taxation of certain railroad benefits. And then move on to  
7 a variety of smaller items that a number of members have.  
8 Senator Mitchell has some, Senator Grassley has some,  
9 Senator Moynihan. In some cases, they are controversial,  
10 but they are all relatively smaller items. And then conclude  
11 with the cigarette tax, however we wish to dispose of it.  
12 The Majority Leader wants to be here. And I want to give  
13 him notice that the cigarette tax will probably come up  
14 closer to 11:00.

15           I want to go through a quick reading of a list of  
16 items involving Customs' user fees. And, Lyn, if there is  
17 any question, I want you to answer these. The staff has  
18 indicated these are minor issues that we need to mention  
19 so that they can take care of them.

20           One, approval of processing fees on passengers arriving  
21 on scheduled airlines shall preclude additional airline  
22 charges such as for overtime for Customs' officers.

23           Two, user fee shall be credited to proprietary accounts  
24 in the general fund of the Treasury.

25           Three, user fees will not be credited directly to the

1 appropriation as is currently the case for some reimbursable  
2 charges.

3 Four, the Administration is to use increased user fees  
4 to the extent possible to strengthen the Customs Service  
5 commercial operations and provide better service to the  
6 importing community.

7 Five, follow Ways and Means language on manner by which  
8 commercial carriers shall collect fees and the continuation  
9 of pre-existing user fees, except in the case of airlines.  
10 And then to make necessary technical and conforming  
11 amendments.

12 And Lyn is open to questions if anybody has questions  
13 on that list of items.

14 Did you have a question about ferries, George?

15 Senator Mitchell. Yes, I did, Mr. Chairman.

16 My staff spoke yesterday with the Customs Service to  
17 determine their understanding of what a commercial vessel  
18 of 100 tons or over is for purposes of the user fee.

19 And according to Customs, this was meant to apply to  
20 ocean-going cargo ships and not to passenger-carrying ferry  
21 vessels. The definition of the commercial vessel is unclear.  
22 They have no problem with a clarifying amendment to specify  
23 that commercial vessels do not include ferries.

24 And I would like to make that request that we clarify  
25 it.

1 Mr. Santos. It would have no effect on the spending  
2 reductions, as far as we know.

3 The Chairman. So ordered, then.

4 Senator Mitchell. Thank you, Mr. Chairman.

5 Senator Moynihan. Mr. Chairman, we give a general  
6 understanding -- just individuals moving across the waters  
7 in the normal traffic of a ferry program.

8 The Chairman. I believe we excluded all.

9 Mr. Santos. We excluded all movements across borders  
10 from Canada or Mexico.

11 The Chairman. Good.

12 All right. Does that take care of it, Lyn?

13 Senator Grassley. What list are you referring to?

14 The Chairman. None of you have it unfortunately.

15 Senator Grassley. Okay. That's all right, I guess.

16 The Chairman. I just got it about 5 minutes ago. I  
17 can read it once more if you want.

18 Senator Grassley. No, you do not need to.

19 The Chairman. All right.

20 Now as we left Pauline yesterday, she was bound and  
21 gagged at the bottom of a 5,000 foot mine shaft. Senator  
22 Chafee was claiming she could not get black lung disease no  
23 matter how long she was left there.

24 (Laughter)

25 The Chairman. And we will take up today with the

1 adventure, and start on coal. And I believe Senator Chafee  
2 mentioned a proposition which a number of other committee  
3 members seemed to nod in acquiescence of prohibiting any  
4 further borrowing from the general fund by the Black Lung  
5 Trust Fund. Am I correct, John?

6 Mr. Colvin. That's correct.

7 The Chairman. And what have you discovered over the  
8 evening?

9 Mr. Colvin. Joe Humphries has discovered that in 1981  
10 the Senate Finance Committee approved an identical provision  
11 which was deleted in later action on the bill. And under  
12 that provision, the unlimited authorization for advances  
13 from general revenues would have been deleted from the law  
14 effective September 30, 1985.

15 The Chairman. You mean if we don't do anything at  
16 all, the authority to borrow runs out this year anyway?

17 Mr. Colvin. No, sir. That was the position taken by  
18 the Finance Committee in 1981 in its report. That was  
19 deleted. And so as I understand the proposal of Senator  
20 Chafee, it would be to renew that Finance Committee position,  
21 and to provide that the unlimited authorization would sunset  
22 September 30, 1986. And that allows one year for the  
23 authorizing committee to review the program.

24 The Chairman. Let's go through this again.

25 We tried to do what Senator Chafee suggested in 1981,

1 the committee tried to do it. We were unsuccessful in  
2 getting it into the law.

3 Mr. Colvin. Yes.

4 The Chairman. All right.

5 John, we are right where we left off yesterday. Did  
6 you hear the explanation about the borrowing from the  
7 general fund?

8 Senator Chafee. Yes. I've got a letter here from the  
9 Department of Labor from Secretary Brock. And as I  
10 understand the situation, in 1977 or 1978, this was  
11 incredibly liberalized. And so it became extremely easy to  
12 get benefits. And a lot did, a lot of people did.

13 Then in 1981, we tightened up on the benefits and the  
14 benefits are now something like 4 percent of applications  
15 whereby after the 1978 -- Was it 1978 or 1977? Or whatever  
16 it was. Seventy-eight -- 40 percent of applicants were  
17 receiving benefits so that there has been a tightening up.

18 Now I guess I missed the other part of the explanation  
19 that if we don't do it, they just, what, just goes to the  
20 Appropriations Committee and they just appropriate it. Is  
21 that right?

22 Mr. Colvin. That would be the effect.

23 Senator Chafee. Well, we are between a rock and a  
24 hard place. I suppose that the chances of anybody reviewing  
25 these beneficiaries and saying A, B and C aren't entitled to

1 it is pretty slim. Once somebody is on a benefit program,  
2 at least in the U.S., they stay there.

3 I don't have a solution, Mr. Chairman. I don't have  
4 a solution. There is little satisfaction in saying I told  
5 you so, but I will wring that bit out of it and let it go  
6 at that.

7 So where are we?

8 The Chairman. Well, I sense if we adopt what you are  
9 talking about, it will have the effect that you hoped for  
10 yesterday.

11 Isn't that correct, John?

12 Mr. Colvin. That's correct.

13 The Chairman. It's no guarantee of a reform of the  
14 fund. Maybe they will get the money from the Appropriations  
15 Committee to pay all the benefits they want, but at least  
16 you will have precluded them from borrowing from the general  
17 funds.

18 Senator Wallop. It at least is a more responsible way  
19 of dealing with this problem. And it keeps it visible as  
20 a problem rather than shuffling it under a carton some place  
21 where you can't ever see it.

22 The Chairman. Further discussion?

23 Senator Chafee. Well, let me just say this: That in  
24 all fairness in this approach, I think we've got to consider  
25 what Secretary Brock says in his letter. He says, "If the

1 proposed amendment is adopted" -- that's the amendment I  
2 proposed yesterday -- "it will do great damage to our  
3 effort to restore financial integrity to the Black Lung  
4 Program, and it will shift inappropriately the burden of  
5 financing the program from the coal industry, which  
6 assumed this obligation in 1978, to the taxpayers. The  
7 cost arising from this amendment will result in an enormous  
8 and indefinite drain on the nation's Treasury. Pursuant to  
9 the 1978 amendments, the number of beneficiaries in the  
10 Labor Department's program grew from 6,000 in 1977 to  
11 over 80,000 in 1980. But as tax revenues were not sufficient  
12 to pay the full cost of benefits, the fund developed a  
13 billion dollar deficit. In 1981, therefore, at the  
14 Administration's urging, Congress enacted concensus  
15 legislation to tighten eligibility requirements and  
16 temporarily double the tax rate.

17 "The tightening of the eligibility criteria worked  
18 well in providing the program with more traditional  
19 workmen's compensation, worker's compensation, framework  
20 for making eligibility decisions. Under these revised  
21 criteria, approval rates, which at one time ran over 40  
22 percent under the 1978 amendments, have been reduced to  
23 approximately 4.5 percent now. On the other hand while the  
24 revenue provisions have reduced the growth to the deficit,  
25 they will not for various reasons achieve their primary



1 purpose of making the trust fund solvent.

2 "This prompted the Administration's new coal tax  
3 proposal. In submitting the tax proposal, we have stated  
4 our willingness to consider any reasonable alternative that  
5 would also achieve solvency. Unfortunately, the proposed  
6 amendment before the Finance Committee to repeal the  
7 trust fund's borrowing authority does not meet that  
8 objection. Indeed, to the contrary. The amendment would  
9 produce alternative consequences, neither of which would be  
10 sound public policy.

11 "With one alternative, the amendment would result in  
12 there being insufficient funds to pay benefits to persons  
13 legally entitled to them under the law.

14 "With the second alternative, Congress would respond  
15 to this prospective denial of benefits by appropriating  
16 funds from general revenues to cover the shortfall. In so  
17 doing, Congress would shift the financial responsibility  
18 for this program from the coal industry to the general  
19 public.

20 "I do not believe that either result would be  
21 acceptable. The black lung program is a worker's compensation  
22 program. Historically, employers have always borne the  
23 expense of financing such a program. While today much of  
24 the black lung program continues to be financed from general  
25 revenues through the original provisions, one of the major

1 purposes of the 1978 and 1981 amendments was to begin  
2 placing that responsibility in the coal industry.

3 "What is needed is responsible legislation to address  
4 the long-term solvency of the fund, mindful of the  
5 statutory rights of current beneficiaries and the statutory  
6 financial obligations of the industry.

7 "I, therefore, urge the committee to reject the  
8 proposed amendment."

9 Well, I think he makes a pretty good point. It  
10 clearly isn't my objective in this to shift the financing of  
11 it away from industry to the general fund.

12 Senator Armstrong. John, would you yield to me for  
13 just a second?

14 Senator Chafee. Sure.

15 Senator Armstrong. I sure agree with you. I don't  
16 want to move this burden off the backs of the industry to  
17 the general fund taxpayers, but it seems to me there is a  
18 non sequitur here.

19 The present system does exactly that. It permits  
20 a sort of an open-ended or nearly open-ended borrowing from  
21 the general fund without any discretion, without any  
22 oversight really effectively by the Congress. And to put a  
23 stop to that borrowing really requires the fund managers to  
24 come before Congress and either convince us that we need an  
25 increase in this tax, or convince us that we need general

1 fund revenue.

2 And so I think your original proposal was right on  
3 target in the sense of mandating accountability, and  
4 mandating that this not be financed through a back door.

5 Senator Wallop. If you would yield to me, John. That  
6 is exactly the result that would take place that satisfies  
7 the sentence in Brock's letter that said what is needed is  
8 legislation to address the long-term solvency of the fund.

9 We are not going to get it increasing taxes and  
10 throwing money at it; unrestrained borrowing and throwing  
11 money at it. The only pressure that will come to deal with  
12 the problem that the secretary has identified, I think,  
13 correctly is by the means which you just suggested.

14 And I would suggest that he is wrong when he said the  
15 coal industry assumed the burden. I think it was dropped  
16 square in the middle of their backs.

17 And it provides benefits to people who have not been  
18 harmed by the coal industry. And that's what I think is  
19 needed in here, and I think what your original amendment  
20 would do.

21 Senator Chafee. Well, what I was trying to do in my  
22 amendment was to make the committee that had jurisdiction,  
23 which isn't us, take a look at this thing. And, as you know,  
24 we went through in this committee, we mandated some reviews  
25 of Social Security disability payments, and sure we ran into

1 a firestorm on it, but I think there was some instances  
2 where there were justifiable denials of benefits to those  
3 who had been collecting them, but weren't entitled to them.

4 Senator Wallop. Well, I think that's the principal  
5 result your amendment will force on the Congress. And I  
6 don't see another way to get it done.

7 Senator Grassley. Mr. Chairman.

8 The Chairman. Senator Grassley.

9 Senator Grassley. Yes. Would the counsel tell me  
10 the extent to which the \$678 million would make the program  
11 self sustaining, and for how long a period of time? Will it  
12 make it self sustaining? And if so, for how long a period of  
13 time?

14 Mr. Colvin. It would eliminate the need for borrowing  
15 from general revenue by September 30, 1989.

16 The Chairman. Eighty-nine?

17 Mr. Colvin. Nineteen eighty-nine. And it would enable  
18 repayment of the debt from general revenue by the year  
19 2000.

20 The Chairman. Are you confident of that?

21 (Laughter)

22 Mr. Colvin. Those are current projections.

23 The Chairman. Senator Long.

24 Senator Long. I'd suggest Mike Stern explain the  
25 history of this matter. He's familiar with it. And I would

1 just like to have Mike explain what would happen.

2 Mr. Stern. This amendment, as Mr. Colvin mentioned,  
3 was agreed to by the Finance Committee in the Senate in  
4 1981. At that time, you substantially increased the taxes  
5 on coal and made a small cutback in the benefit side.

6 But mostly you paid for it by increasing the taxes.  
7 And at that time, you put in a limitation that  
8 beginning -- after 1985 when the projection showed that the  
9 Black Lung Trust Fund would no longer need to borrow money,  
10 that borrowing authority would terminate.

11 If you do that sort of thing here, you are not putting  
12 in an authorization for general fund financing. What you  
13 are doing is you are providing one-year announcement to the  
14 legislative committees that they will have to look at the  
15 program, and if they want to authorize general revenue  
16 financing, then they would do that. But it wouldn't come  
17 out of the trust fund.

18 So I don't think it's quite as automatic as Secretary  
19 Brock would assume in his letter. He assumes that you are  
20 never going to do anything to benefits, and the only choice  
21 is either you are going to increase the coal taxes, or you  
22 are going to have general revenue funding. That's the  
23 premise of his letter.

24 But you might have a third alternative. You might  
25 decide, or the authorizing committees might decide, to look

1 at the program and deal with it in a somewhat different way.

2 Senator Long. Mr. Chairman, if I might just comment  
3 on this. In my judgment, this is the most over-funded  
4 program in government. It's the most -- there is no  
5 program that goes to the ridiculous extent of saying if  
6 a rock falls on a man's head and kills him that in view of  
7 the fact that he had been working in a coal mine that he was  
8 presumed -- even though he had only been there a short  
9 time -- that he is presumed to have died of black lung. A  
10 rock fell on his head and cracked his skull and he died  
11 right there on the spot rather than black lung where you  
12 gradually get worse and worse.

13 No, sir. Just as if you had been around a coal mine,  
14 you are presumed to have died of black lung, notwithstanding  
15 all the precautions they are taking to see a person doesn't  
16 have black lung.

17 So that if you had experienced what I have, you see  
18 how frustrating it is, though, because I was in that  
19 conference. Who was the Chairman of the Conferees of the  
20 House? He's a number one pleader for black lung. You go to  
21 his district and there is a mealticket to keep him in  
22 Congress as long as he lives. And it worked. And it worked.

23 Who are the beneficiaries of black lung, the number  
24 one beneficiary, the Congressman from that district. So  
25 when you go to Congress, how are you going to win that

1 conference? The guy has got the votes. Nobody is going  
2 to make any concession at all. So that about all you can  
3 do is -- not to mention who the other problem members of  
4 the Congress are involved in all of this.

5 And so it is hopeless. It is absolutely hopeless.  
6 You have no chance. And they will hate you forever if you  
7 kill their bill for them. You know, just won't sign a  
8 conference report of any sort. And that means you have got  
9 to hold up other things along with it, too.

10 But what ought to be done, I think, as a minimum is  
11 to say that, look, you have got the most over-funded program  
12 in government -- something like some of us tried to do on  
13 Social Security -- you have got to live within your income.  
14 Give them the power to write some regulations to reexamine  
15 some of these people.

16 We were talking about what we have with disability when  
17 we had four times the number of people on that we planned  
18 to have on there. And we are soon going to have eight  
19 times what we thought we had voted to put on the rolls.

20 So I would think that something along this line, which  
21 I would hope to lead to a situation where they are told,  
22 look, you have got to live within your income. To keep  
23 putting more and more people on the rolls and paying more and  
24 more money just can't be the answer to it.

25 And for the lack of any better proposal, I'll vote for

1 it. Is that your motion, Senator Chafee?

2 Senator Chafee. Yes.

3 The Chairman. I think that's as good as we are going  
4 to do here today in terms of at least putting this program  
5 under some strictures so they will have to justify the  
6 expenditures.

7 And they may succeed in doing it.

8 Senator Chafee. Mr. Chairman, I would like to see a  
9 date in there that would give the government a chance to get  
10 this word out. What did you say, 1986?

11 The Chairman. A year's notice, I think, is --

12 Senator Chafee. Yes. September 30, 1986.

13 The Chairman. September 30, 1986.

14 Further discussion on the amendment?

15 (No response)

16 The Chairman. Is there objection to adopting it?

17 (No response)

18 The Chairman. Without objection.

19 Let's move on to Item Number 8, which is the railroad  
20 retirement repayment tax to restore program solvency.

21 Sydney, as I recall, we have two issues involving  
22 railroad retirement. This is the one that is not particularly  
23 controversial. Both railroad labor and railroad management  
24 agree to this one; is that right?

25 Ms. Olson. That's right, Senator. This proposal



1 applies to the railroad unemployment account, and does not  
2 affect railroad retirement benefits.

3 The Chairman. It has to do with borrowing.

4 Ms. Olson. That's right.

5 The Chairman. Comments on the proposal? I have heard  
6 of no complaints from any of the member or, frankly, any of  
7 the people affected.

8 (No response)

9 The Chairman. Is there objection to adopting it?

10 Senator Grassley. I'd like to ask some questions.

11 The Chairman. Yes, by all means.

12 Senator Grassley. Am I right? We did not discuss  
13 this yesterday or did we?

14 The Chairman. We did not discuss this yesterday.

15 Senator Grassley. Did not.

16 I'd like to raise the point about the taxing of the  
17 difference between what people get on Social Security --

18 The Chairman. That's the next issue. That is right,  
19 Sydney, that is Number 9? And that one is controversial.

20 Ms. Olson. Right.

21 Senator Grassley. Now what is this one then, Mr.  
22 Chairman?

23 The Chairman. This one has to do with borrowing for  
24 railroad unemployment, the funds from the retirement fund.  
25 But it does not deal with the taxing of the retirement

1 benefits. We are going to get to that on the next issue.

2 Senator Grassley. Then I'm sorry, Mr. Chairman. I  
3 stand corrected.

4 The Chairman. Any objection to the adoption of Number  
5 8?

6 (No response)

7 The Chairman. Number 9. Sydney, you want to explain  
8 it?

9 Mr. Colvin. Mr. Chairman, Number 9 refers to a Ways  
10 and Means Committee proposal to treat railroad retirement  
11 benefits, which are in excess of Social Security benefits,  
12 as income to the retiree. Currently, the Social Security  
13 exclusion applies to railroad benefits in an amount greater  
14 than Social Security benefits.

15 And the purpose of this provision would be to  
16 standardize the treatment of the two different programs.

17 The Chairman. Comments?

18 Senator Moynihan. Mr. Chairman, could John say that  
19 once more? I don't think I followed. I heard you say  
20 railroad retirement benefits both times.

21 Mr. Colvin. Currently, a portion of Social Security  
22 benefits are taxed, and a portion is not taxed.

23 Senator Moynihan. Under the 1983 legislation --

24 Mr. Colvin. Yes, sir.

25 Senator Moynihan. -- \$25,000.00 for an individual;

1 \$32,000.00.

2 Mr. Colvin. That's right.

3 Senator Moynihan. Right.

4 Any income above that adjusted gross income,  
5 your Social Security income is taxed. Yes, right.

6 Mr. Colvin. Railroad retirement benefits are divided  
7 into two groups -- Tier I and Tier II. Tier I is treated  
8 like Social Security, the rule you just stated.

9 Senator Moynihan. Yes.

10 Mr. Colvin. However, Tier I benefits exceed Social  
11 Security benefits in a couple of respects. And the  
12 proposal would be to treat those benefits which are larger  
13 than Social Security as Tier II is treated now. And the  
14 result would be that railroad retirement benefits would be  
15 taxed like Social Security to the extent of Social Security,  
16 but would not receive the benefits of the Social Security  
17 exclusion in the larger amounts.

18 Senator Moynihan. Mr. Chairman, I don't claim to have  
19 mastered the subject, but we are speaking of treating this  
20 rather small group of retirees in the manner that we have  
21 established for the whole of the nation's principal retirement  
22 system, Social Security. And which already applies to part  
23 of the railroad retirees.

24 Thank you, Mr. Chairman.

25 Senator Grassley. Are you raising a question?

1           Senator Moynihan. No. I'm just saying that I'm  
2 trying to figure out what it was, and I think that is what  
3 it was. And it sounds right to me.

4           Senator Grassley. Well, I would like to raise the  
5 point in a question. First of all, what would be the  
6 income level of maybe the average recipient or something?  
7 I don't know how you would want to put it. Let's say  
8 average recipient who might be taxed on this portion of  
9 their income who are not presently taxed.

10           In other words, what kind of -- what income groups are  
11 we hitting?

12           Mr. Weiss. I don't think we have that information  
13 readily at hand, but presumably it's -- these are likely to  
14 be relatively --

15           Senator Grassley. Low-income people.

16           Mr. Weiss. Lower than average. It depends on the  
17 particular benefits that we are talking about. The major  
18 cases in which railroad retirement benefits, computed using  
19 the Social Security formula, the so-called Tier I benefits,  
20 are more generous than Social Security, or in the case of  
21 so-called occupational disability, railroad retirement has  
22 a more lenient standard for disability.

23           And that piece of railroad retirement benefits under  
24 this proposal would be reclassified from the favorable  
25 treatment to full taxation.

1           And then the other case is early retirement benefits.  
2           You can get retirement benefits under railroad retirement  
3           earlier than you can under Social Security and also without  
4           any reduction. And that piece would also be reclassified.

5           And I would guess those -- since in both of those  
6           cases they tend to be people who aren't working, it would  
7           be relatively lower than average.

8           Senator Grassley. The lower than average income.

9           To what extent would this group of people, considering  
10          the necessary changes that had to be made in railroad  
11          retirement a decade ago because it wasn't sound -- to what  
12          extent are those people today getting less benefits than they  
13          would have gotten if the railroad retirement system had been  
14          actuarially sound and they had stayed under the older  
15          system?

16          In other words, I'm trying to make a case. Are these  
17          people actually getting less under the present system of  
18          which then we would tax a portion of it than they would have  
19          gotten if we had -- we and the railroads had kept our  
20          obligation to them?

21          Mr. Weiss. I'm not specifically familiar with the  
22          changes that have been made in the benefits, but I would  
23          guess that a lot of the people who would be at least  
24          immediately affected by this change were already getting  
25          benefits, and whatever changes were made in the benefit

1 structure probably didn't affect current recipients.

2 I don't know if anyone else is familiar with the  
3 benefit side.

4 Senator Grassley. I'd like to know whether we are  
5 taxing a portion of income that is already less because of  
6 changes Congress made than people could have legitimately  
7 anticipated prior to retirement.

8 Mr. Weiss. In most cases, since these are people who  
9 ultimately will be getting their Tier I benefits, at  
10 least after age 65, I believe, they would be the same as  
11 what they would have gotten had they gotten Social Security.  
12 The changes would only apply for a specified period of  
13 time until they got to age 65. I believe that's the effect  
14 of the proposals.

15 Senator Grassley. We aren't talking about taxing people  
16 over 65?

17 Mr. Weiss. I don't believe this change applies to  
18 people 65 or over. That's correct. These are only people  
19 who are either disabled, not as disabled as necessary to  
20 get onto Social Security disability, but disabled to get on  
21 through railroad retirement. Or these are people who have  
22 retired, say, at age 60 with full benefits, which wouldn't  
23 be possible under the Social Security system. And only  
24 until they get to age 65.

25 Senator Heinz. Mr. Chairman.

1 Senator Chafee. Yes.

2 Senator Heinz. Mr. Chairman, I want to speak in  
3 strong opposition to this proposal.

4 First, just practically speaking, I don't think we  
5 need the money at this point to make our targets. Is that  
6 right, John?

7 Mr. Colvin. That's correct.

8 Senator Heinz. Secondly, this is the third time in  
9 three years that we will hit up the railroad retirees for  
10 spare change. And maybe I'm sensitive to this because I  
11 have, I guess, about 60,000 railroad retirees in my state,  
12 but I have had a very difficult time explaining to them  
13 the last change and increased taxes on their Tier I benefits.

14 Now we agreed to tax Social Security benefits kind of  
15 over the dead bodies of a lot of us. We did it only in the  
16 context of the need to save the Social Security system. It  
17 was the last item on which the commission agreed in spite  
18 of the fact that in two previous years -- and I offered one  
19 of the amendments -- the Senate voted unanimously never to  
20 tax Social Security benefits ever. Well, it just goes to  
21 show that necessity will require you to do things that  
22 nobody wants to do.

23 By the way, that proposal to tax Social Security  
24 benefits is still controversial, as you know. There are  
25 continued efforts to roll it back.

1 We also started taxing in 1984 for the first time  
2 Tier II benefits, Tier II benefits, which are not Social  
3 Security-type benefits. They are different.

4 And I just think that we don't need to do this for the  
5 solvency of the railroad retirement fund. We bit that  
6 bullet two years ago. The railroad retirees have given  
7 up COLAs that other Social Security beneficiaries haven't had  
8 to give up. They have had a COLA offset provision that  
9 went into effect, gain, this year. So they are unique  
10 among the retirees in having had their COLAs frozen.

11 Of the some 40,000 railroad retirees nationally who  
12 this provision would substantially hit and pay higher taxes,  
13 half of this group are disabled railroad workers who meet  
14 the railroad's occupational disability test, but are not  
15 qualified under Social Security's almost impossibly strict  
16 definition of disability. And the other half are widows and  
17 retirees aged 60 to 62, who are deemed under the law to be  
18 age 62.

19 I must say, also, as I have gone through this, if you  
20 have ever tried to sit down and figure out how you would  
21 calculate, how you would calculate, your tax liability, this  
22 is an enormously complex proposal.

23 You have got to first know -- well, you have to figure  
24 out how you would be taxed if you were under Social Security,  
25 which you are not, and then compare that to the way you are



1 taxed now as a railroad employee. And I don't think I can  
2 even explain it.

3 I really must say I think it is an onerous and  
4 unnecessary proposal. I think it is unjustifiable on its  
5 face, and I hope that the committee will not adopt it.

6 The Chairman. Senator Durenberger.

7 Senator Durenberger. Mr. Chairman, I won't take a  
8 lot of your time. I would just endorse 1,000 percent what  
9 my colleague said about not only the unfairness, but the  
10 lack of any sense of either decent income security or tax  
11 policy in this recommendation. I strongly hope we don't  
12 take this recommendation.

13 Senator Mitchell. Mr. Chairman.

14 The Chairman. Senator Mitchell and then Senator  
15 Grassley.

16 Senator Mitchell. I'd like to address a question to  
17 Mr. Rollyson and Mr. Mentz. Mr. Rollyson, you have been  
18 before this committee several times stating over and over  
19 again the Administration's opposition to any tax increase.  
20 You will recall our colloquy on a variety of matters here.

21 I'd like to ask you two questions: Is this a tax  
22 increase? Does the Administration support it?

23 Mr. Rollyson. It certainly would be a tax increase on  
24 a relatively narrow spectrum of the population, the railroad  
25 retirees who are receiving these benefits.

1           Of course, the effect recall is nothing more than to  
2 bring the tax treatment of these retirees into conformity  
3 with the tax treatment of all the other retirees in the  
4 country.

5           Yes, we do support the amendment. It is one of our  
6 initiatives. And the inconsistency that you allude to, I  
7 think, is not there. We have consistently opposed any  
8 broad-based tax increases. This would be a tax increase on  
9 a relatively narrow spectrum. Nevertheless, we think the  
10 tax policy considerations and the narrowness of the tax are  
11 sufficient to distinguish it.

12           Senator Mitchell. Well, this would raise taxes for  
13 500,000 Americans. What number, in your judgment, has to be  
14 reached before it moves from the category of narrow to  
15 broadly based?

16           Mr. Rollyson. I do not have any such numbers, Senator.

17           Senator Mitchell. Well, Mr. Chairman, I merely  
18 say that I subscribe to the statements made by the Senator  
19 from Pennsylvania. I think this should be defeated.

20           The Chairman. Senator Grassley.

21           Senator Grassley. I also would like to say that I  
22 lean towards what Senator Heinz said, but I would like to  
23 ask a question in this vain. Is this a suggestion of taxing  
24 in the sense that this is an unintended windfall to these  
25 people? Is that the legitimacy for the taxation of the

1 surplus amount over Social Security?

2 Mr. Rollyson. No. I don't think it's fair to say  
3 that it's a windfall. It's simply to bring the taxation of  
4 these retirement benefits in line with the taxation of all  
5 the other retirement benefits in the country. That these  
6 retirement benefits are in a sense from the tax policy  
7 standpoint too generous.

8 Senator Grassley. The only thing is though that what  
9 we are taxing here is not the private part of the pension  
10 suit. This is what has always been considered the public  
11 equivalent of Social Security -- I mean the railroad  
12 equivalent of the Social Security, which then would be  
13 referred to as the public part of the pension system as  
14 opposed to the private, right, and this would be the first  
15 instance in which we would be doing something like this.  
16 It's a precedent from that standpoint.

17 Mr. Rollyson. But we have done it with Social Security,  
18 and this would simply be bringing the taxation of these  
19 benefits in line with the taxation of Social Security.

20 Senator Grassley. But on the other hand, we are  
21 taxing railroad or Tier -- let me put it this way: We are  
22 taxing Tier I the same as Social Security, the extent to  
23 which they are over \$25,000.00 or \$32,000.00.

24 Mr. Rollyson. Under current law, the Tier I benefits  
25 of Social Security are not taxed equivalently with Social

1 Security benefits. They receive more favorable treatment.

2 Senator Grassley. Even to the extent that they are  
3 over that \$32,000.00 figure that Social Security is taxed  
4 today?

5 Mr. Rollyson. I believe that's correct. I believe  
6 under the Tier I benefits there are a number of ways that  
7 the Tier I benefits can differ from the Social Security  
8 benefits. They can be received at an earlier point in  
9 time, and I believe -- also, it's my understanding that they  
10 can be received in larger amounts and, therefore, receive  
11 more generous treatment both as to timing and amount than  
12 Social Security benefits.

13 Senator Grassley. What I want to know is a railroad  
14 worker who is 70 years old today, as opposed to a Social  
15 Security recipient who is 70 years old today, and if he has  
16 got income over \$32,000.00, is that -- is one-half of his  
17 retirement being taxed?

18 Mr. Rollyson. Under current law?

19 Senator Grassley. Yes.

20 Mr. Weiss. The Tier I benefits for that person are  
21 being taxed exactly like Social Security.

22 Senator Grassley. Okay. That's what I'm saying. So  
23 then I go back to my question: For Tier I benefit, which I  
24 am going to refer to as a public part of the retirement  
25 system as opposed to the private part which is Tier II, and

1 we are taxing for the first time a public retirement system  
2 in this way, right?

3 Mr. Rollyson. We've taxed Social Security in this  
4 way before.

5 Senator Grassley. Okay. But in the case of where I  
6 gave --

7 Mr. Rollyson. And we are bringing this in conformity  
8 with the Social Security treatment.

9 Senator Grassley. By answering my previous question,  
10 you said that the railroad retiree who is 70 years old is  
11 being taxed presently the same way as the Social Security  
12 retiree.

13 Mr. Rollyson. And we would not change that. What we  
14 would change are the taxation of the younger railroad  
15 retirees who are not taxed equivalently with Social Security  
16 who are receiving better treatment than Social Security  
17 recipients.

18 Mr. Weiss. Just to clarify again, the Tier I benefits  
19 are computed using the Social Security formula, but they are  
20 available under different conditions and different  
21 eligibility standards than Social Security. So that's the  
22 difference that this proposal is designed to deal with.

23 Senator Grassley. All right.

24 The Chairman. Let me ask a question. Chuck, I'm almost  
25 inclined to just take this off the committee -- ask if the

1 committee wants to.

2 I wonder if there is somebody here who wants to speak  
3 strongly for this item.

4 Senator Moynihan. Well, Mr. Chairman, I don't know that  
5 I want to speak strongly for it, but I don't want -- I do  
6 want to make the point that we have agreed on this  
7 principle in Social Security about the existing arrangements  
8 that exist for some retired railroad workers. And please  
9 let us not get into the thought where we are talking about  
10 all retirees. This is a very special class of retired  
11 railroad workers who have incomes over \$32,500.00 a year.

12 What is the present rate? I guess we were a little  
13 surprised at how many persons, retired persons, filed incomes  
14 on Social Security in the last year. What was it? About  
15 40 percent of returns of persons over 65.

16 Mr. Weiss. My understanding is that about 10 to  
17 11 percent of all beneficiaries reported taxable Social  
18 Security in 1984.

19 Senator Moynihan. Yes.

20 So about 10 percent of the actual class of people. So  
21 we are not talking about, you know, a large number of  
22 persons. The people we are talking about are very secure.

23 Senator Grassley. The Senator from New York, would you  
24 yield?

25 Senator Moynihan. Yes.

1           Senator Grassley. I previously on my first round of  
2 questions asked the counselor what class of people were  
3 being hit by this tax and he said it would be lower, middle  
4 income groups of people that would be hit.

5           Senator Heinz. The Senator from Iowa is correct,  
6 Senator Moynihan, I believe. This is not going to just  
7 hit those few railroad retirees who have high incomes. This  
8 is a change that will affect -- well, I will let Mr. Weiss  
9 explain it.

10          Mr. Weiss. That's correct. These are people whose  
11 Tier I benefits are now being taxed under the Social Security  
12 formula. And the Social Security formula has essentially  
13 no tax for people whose income is less than \$25,000.00 or  
14 \$32,000.00.

15          So these people who are affected by this proposal are  
16 now having their benefits totally excluded from tax because  
17 they fall under that formula.

18          The proposal would get them out of the formula and  
19 fully tax their benefits regardless of their income level.

20          Senator Heinz. And then the Administration can turn  
21 around, I suppose, and say having made this change in  
22 railroad retirement, we should tax all Social Security  
23 benefits.

24          Senator Chafee. Well, let me just ask a question here.

25          As I understand what we are trying to tax is the

1 difference between what the person would have received under  
2 Social Security and what he does receive under the railroad  
3 retirement.

4 Mr. Weiss. That's correct.

5 Senator Chafee. And we are dealing principally with  
6 disability, aren't we?

7 Mr. Weiss. Two groups -- the disability and people who  
8 are less than aged 62 or are getting higher benefits between  
9 age 62 and age 65 than they would have gotten under Social  
10 Security.

11 Senator Chafee. So what we are saying is if you had  
12 been on Social Security, you would have received X dollar.  
13 Since you are on railroad retirement, you are getting X  
14 plus 10, thus we are taxing the 10.

15 Mr. Weiss. That's correct.

16 Senator Chafee. The trouble is I don't know who pays  
17 in -- how the payments are made into this. This is an  
18 esoteric subject, I think.

19 Mr. Colvin. Senator Chafee. payments are made by an  
20 employee tax and employer tax in a structure similar to the  
21 Social Security financing.

22 Senator Chafee. Same amount?

23 Mr. Colvin. The rates are slightly higher than Social  
24 Security.

25 Senator Chafee. Well, if they pay slightly higher, I



1 suppose in all fairness they are entitled to slightly  
2 higher benefits.

3 Well, I have trouble with this.

4 The Chairman. Well, I'm just going to move and ask  
5 for not a roll call vote, but oral vote -- just move to  
6 take this item from the agenda. I don't think we ought to  
7 be considering it now.

8 All those in favor, say aye.

9 (Chorus of ayes)

10 The Chairman. Opposed, no.

11 (No response)

12 Senator Durenberger. Mr. Chairman.

13 The Chairman. Yes.

14 Senator Durenberger. Mr. Chairman, I'm not sure  
15 exactly what your rules are, but I would like to move to  
16 reconsider the previous item, the increase in the railroad  
17 retirement loan repayment tax to restore program solvency.  
18 If somehow I have violated the rules by getting here late  
19 on that one, I just want to say to my colleagues that I  
20 don't intend to go on record any more in this committee for  
21 raising payroll taxes. I can talk to the merits of that  
22 particular one, but --

23 The Chairman. Dave, let me ask you. You are entitled  
24 to reconsider. You cannot vote after the gavel has fallen  
25 on the changes. But on that one, we had no vote, so that is

1 one that both railroad labor and railroad management support.  
2 It has to do with borrowing for unemployment from the  
3 retirement fund. But it was not a tax issue.

4 Senator Durenberger. Well, I understood it to be a  
5 tax issue to the extent that we were increasing a tax which  
6 we had imposed on the Railroad Retirement Solvency Act of  
7 1983 then at 2 percent of payroll, the first \$7,000.00 of  
8 payroll, up to -- then it would increase at three-tenths of  
9 a percent a year. You have voted -- or you didn't vote, but  
10 you agreed to increase that amount to 4.3 percent of  
11 payroll of the first \$7,000.00 of payroll in 1986, to  
12 4.7 in 1987, to 6 percent in 1988.

13 The Chairman. The it drops after that.

14 Senator Durenberger. Then it drops all the way to  
15 2.9 and 3.2. So, yes, it is a tax issue. It is an increase  
16 in payroll taxes.

17 The Chairman. I wonder if you might do this: Would  
18 you postpone your reconsideration. We can bring it back.  
19 But I promised several other members, some of whom have  
20 got to leave -- we have got a whole variety of relatively  
21 minor items that I would like to see if we could get as  
22 many out of the way as possible.

23 I'm willing to come back to it, although, frankly, I  
24 think with both railroad labor and railroad management in  
25 favor of it --

1           Senator Durenberger. Mr. Chairman, if no one else  
2 cares about the issue, I just wanted to be recorded in  
3 strong opposition to it. And I won't press it to a vote  
4 here.

5           The Chairman. I appreciate it very much. Thank you,  
6 Dave.

7           Now we have got a variety of issues involving airline  
8 passes for parents, unemployment taxes for fishermen,  
9 faculty housing, farm coops, attorneys' fees in tax  
10 cases, and quite a number more. I would like to call on  
11 Senator Armstrong first, if I might, on the issue involving  
12 airline passes for parents. And if there are other items  
13 that I have not mentioned that members have, we will bring  
14 them all up.

15           And we will take up cigarette tax when we finish these.  
16 And I hope we won't be on these miscellaneous items too long.

17           Senator Armstrong.

18           Senator Armstrong. Mr. Chairman, thank you. I'll only  
19 take a minute.

20           As all members of the committee are aware, it has been  
21 the practice since time in memorial for airlines to give as  
22 a benefit to their employees free passes for employees and  
23 members of their family.

24           Last year in conference, we put into the law a new  
25 provision which the Senate had not considered, which simply

1 said that to the extent these passes were used by the  
2 parents of airline employees a tax would be imputed to the  
3 airline employee on the value of that ticket.

4 I think we made a mistake. It was done without any  
5 real thought given to it. And I would just like to move  
6 that we reverse that. And the argument in favor of going  
7 back to the old practice is very simple. The change hurts  
8 the airline employees and their families. These are people  
9 who have really been through the wringer from an economic  
10 standpoint. This is an industry in which unlike most  
11 industries the unions involved have agreed to substantial  
12 pay cuts. And so they have really, you know -- they have  
13 given up a lot in order to make their airlines viable.

14 And I wouldn't even argue so strenuously that we ought  
15 to be concerned about that if this were a big revenue  
16 gainer. But it doesn't produce any revenue at all. It's  
17 negligible. It's just an asterick.

18 And so to sustain sort of an abstract principle here,  
19 we are really hurting a good many thousands of people around  
20 the country. And the reason why it doesn't produce any  
21 revenue -- and I think there is no dispute about that,  
22 that it's a -- I think the word used in the committee report  
23 is "negligible." The reason is that it just isn't worth it.  
24 This privilege is simply not used, but the tax outweighs  
25 the benefit.

1           And so just on the grounds of restoring the prior  
2 historical practice and helping some people who are pretty  
3 hard pressed and the fact that it isn't going to cost  
4 anything, I would move that we go back to the old law.

5           The Chairman. Comments?

6           Senator Durenberger. Mr. Chairman.

7           The Chairman. Senator Durenberger.

8           Senator Durenberger. This is a dangerous subject  
9 because we all depend on airlines for our services. But  
10 I'm a little flabbergasted by the notion that every airline  
11 employee in this country is under some kind of economic  
12 hardship and that we are adding some way to that burden by  
13 denying their parents access to the system.

14           Gosh, I hate to get any farther because I'm going to  
15 be deluged at 5:00 tonight and then again tomorrow morning.  
16 But my impression is that they have somehow adjusted to  
17 this, to these rules. And I don't -- I hate to put Bill  
18 to the proof of the fairness, but --

19           Senator Armstrong. Can I borrow the microphone?

20           Senator Durenberger. Certainly.

21           Senator Armstrong. Well, Mr. Chairman, I didn't mean  
22 to imply that every airline employee has suffered  
23 excruciating economic disadvantage, but it's a fact that in  
24 airline after airline there have been give backs, where  
25 literally contracts have been renegotiated to lower the rates

1 of pay and to cut back on the benefits.

2 Now I don't say that that necessarily in and of itself  
3 justifies any particular tax treatment of any particular  
4 benefit. But this is a benefit which is historic, which  
5 has been a practice of the airline industry forever, I  
6 guess -- back to the beginnings of the industry.

7 It was changed without any consideration really by the  
8 Senate. It was never the subject of a hearing in the Senate.  
9 It was never debated in the Senate. It was just sort of  
10 added in in conference.

11 And it turns out that it doesn't raise any money. And  
12 so since it's of negligible consequence from a revenue  
13 standpoint and since it is a matter of great interest to  
14 this group of people who really have taken a lot of economic  
15 punches in the last couple of years, it just seems to me  
16 this is a case where we can do some good for a group of  
17 people who are worthy without doing violence to historical  
18 tradition and without costing anything.

19 The Chairman. Let me take the assistant secretary first,  
20 who has got his hand up, and then Senator Chafee.

21 Mr. Mentz. Thank you, Mr. Chairman.

22 I would just like to clarify this matter. Technically,  
23 in the 1984 Act, employees of airlines and their spouses and  
24 their dependent children were entitled to this benefit,  
25 basically tax free. The question of parents is one that the

1 Treasury and Internal Revenue Service has been wrestling  
2 with in regulations. The proposed regulations that came  
3 out first said that there would be a tax of parents of  
4 employees at 50 percent of the lowest tourist class fare.

5 We've been under pressure to liberalize that, and we  
6 expect to liberalize it. So I think that really we are  
7 talking about fairness here. And I think the regulations  
8 as they are going to end up are going to be quite fair to  
9 the parents of the employees.

10 The Chairman. Senator Chafee.

11 Senator Chafee. As I recall when we did this, there  
12 was a package, wasn't there? Didn't we deal with tuitions  
13 for various peoples. And now we are nipping away on it.

14 I just don't think it's fair. We are not taxing the  
15 cost of it -- I mean we are not charging them the cost. We  
16 are levying a tax on what it is worth. And it's really  
17 infinitesimal, I think, in the big picture and for the  
18 individual who receives it. And if we are going to do this,  
19 then we are going to unravel all the other things we have  
20 done.

21 And if this passes, well, then, what about what we did  
22 in tuition. And let's look at the whole package. I just  
23 don't think it's fair, Mr. Chairman. We are all busy giving  
24 firey speeches on deficit reduction and I have done my  
25 share.

1 Senator Armstrong. But this doesn't --

2 Senator Chafee. Well, it certainly doesn't help.

3 And what it entails coming next. I think the next proposal  
4 is that in service food people who supply the airlines with  
5 food are going to get free airline passage. And so it goes.

6 And, boy, I'm going to be reluctant to get on U.S. Air  
7 tonight.

8 (Laughter)

9 Senator Chafee. But nonetheless, certain things I  
10 think we have got to --

11 The Chairman. Let me set the record clear on this  
12 because Senator Chafee is not far off. There is probably  
13 no bigger champion of tax-free employee benefits on this  
14 committee than me.

15 Senator Chafee. Than you.

16 The Chairman. That's correct.

17 (Laughter)

18 The Chairman. I don't apologize for it at all. And  
19 I would infinitely rather have the employers providing them  
20 than the government providing them. Whether or not the  
21 government would ever get into the business of paying for  
22 the employees' parents to fly or not, I don't know.

23 But I do remember the deal that was made last year. We  
24 have had these perpetual battles about the taxation of  
25 employee benefits and we reached a compromise with the House.



1 Some of them that were in limbo, we just every year or two  
2 would say that the IRS cannot enforce any regulations to  
3 collect the money -- were made statutorily exempt. Others  
4 were brought in.

5 And we had a debate over what kind of benefits you  
6 could get if you were a retail employee from the store. A  
7 lot of things were codified in a compromise.

8 What we discovered, could not discover -- we couldn't  
9 discover any other industry where the parents of employees  
10 got employee benefits. Children did, spouses did, but we  
11 couldn't find any with parents.

12 And part of the package agreement was the concept that  
13 no matter what industry you work in, the benefits are  
14 roughly for the same dependents that get them. Now, again,  
15 I don't think there is a bigger supporter of employee benefits  
16 than me, but that is the background of how this agreement  
17 came about.

18 Senator Symms. Mr. Chairman, the question I would  
19 like to ask Mr. Mentz is at what price would the IRS compute  
20 the value of the ticket. Is it the cost to the airline? Or  
21 at the highest going rate of a ticket? Or the bargain price  
22 specials for the weekender?

23 Mr. Mentz. Well, Senator, as I indicated before, the  
24 regulations that were initially proposed would set it at  
25 50 percent of the lowest tourist class fare. And because of

1 substantial criticism of that rule, the IRS is going to come  
2 out with a new rule, and it's going to be more liberal than  
3 that. It's going to be lower.

4 The Chairman. Was that going to be the tax or was  
5 that going to be the value --

6 Mr. Mentz. That would be the value of the income.

7 The Chairman. The value of the flight upon which you  
8 would pay the tax.

9 Mr. Mentz. That's correct. And the income, of course,  
10 is to the employee; not to the parent.

11 Senator Symms.. Fifty percent of tourist class.

12 Senator Chafee. Of the cheapest fare.

13 Mr. Mentz. Of the cheapest tourist fare.

14 Senator Chafee. Where do we apply for these?

15 Senator Mitchell. Well, the problem is -- Senator  
16 Armstrong is correct in saying "general revenue." But the  
17 reason for that is this is a standby ticket, and given the  
18 tremendous discounting that has occurred as a result of  
19 deregulation, 50 percent of the lowest coach fare is  
20 frequently higher than some of the alternative discount  
21 airlines offer. That's why nobody uses this.

22 Mr. Mentz. Senator Mitchell, just to answer you, we  
23 will make sure that will not happen in the regulation.

24 Senator Mitchell. The answer to the problem is  
25 precisely in what Mr. Mentz has implied. And that is to

1 establish a realistic level of valuation which puts it  
2 in terms of relative value of other alternative discount  
3 fares at a basis that people will actually use it.

4 Therefore, pay the tax, and still be deriving some benefit.

5 The problem is that this rule is unrealistic given the  
6 current fare structure and what is being purchased here.

7 Senator Symms. Well, Mr. Chairman, I would just like  
8 to finish up with my question of Mr. Mentz.

9 If this is the case, I would venture to say the IRS  
10 has already spent more money worrying about this thing than  
11 they will ever get out of it. I mean I think Mr. Armstrong  
12 is right on the target.

13 It's this kind of thing that leads to tax revolution  
14 in the United States. I mean it's such a minor thing. I  
15 don't know what the Congress really intended. But for just  
16 a few people that are going to be flying on these airlines  
17 at the cost to the airline and they fly on space available,  
18 I would think that the Treasury could spend their time on  
19 better issues than this.

20 Mr. Mentz. Senator, I certainly appreciate your point,  
21 and I would just like to say that we are going to make sure  
22 that those valuation rules, as Senator Mitchell indicated,  
23 are going to be very reasonable.

24 The Chairman. Senator Long.

25 Senator Long. I want to ask a question about this. Now

1 I take it that -- it sounds to me as if you would be  
2 willing to settle for something where you are collecting  
3 the tax on 50 percent of the lowest fare that is available  
4 for these people to fly on, other than the privilege of  
5 being a parent of an airline employee. Is that the kind of  
6 thing we are talking about?

7 Mr. Mentz. Well, really lower than 50 percent of the  
8 so-called Y fare, the standard tourist fare.

9 Senator Long. Correct.

10 Mr. Mentz. If you try and set it to whatever the  
11 discount fare of the week is, you have an impossible job  
12 of administering it. And for that reason, we are hanging it  
13 to the Y fare, which is what the industry has requested that  
14 we do.

15 Senator Long. Let me get this straight now because  
16 I'm not clear in my mind what we are talking about here.

17 Would it be the practice -- if this was in effect,  
18 would it be the practice of the industry to let the people  
19 fly free as far as the airline is concerned? Only pay a  
20 tax to the federal government?

21 Mr. Mentz. Sure.

22 Senator Long. Let me just get this straight in my  
23 mind. So here is an airline employee, he or she had the  
24 right of flying around the world free as a fringe benefit.  
25 They have got that. They have got it for their children as

1 well, right?

2 Mr. Mentz. Right.

3 Senator Long. They have got it for their spouse.

4 Mr. Mentz. That's right.

5 Senator Long. They've got it for all those. Now if  
6 they want mama and daddy to go flying around the world on  
7 it, let's see what they would have to pay. As I understand  
8 it, they wouldn't have to actually pay for their ticket. All  
9 they have got to do is pay for a tax that would apply to  
10 the ticket if they had paid for their flight. Is that the  
11 idea?

12 Mr. Mentz. That's exactly right.

13 Senator Durenberger. Would you yield to that point?

14 That's not quite right, is it? Isn't it my understanding  
15 that the taxable income to the employee is increased by  
16 50 percent of the cost of that.

17 Mr. Mentz. Exactly. I thought that was what Senator  
18 Long said.

19 Senator Long. That's what I want to get to. Let's us  
20 assume that the tourist flight, the Y fare, which is -- I  
21 think that is already the tourist flight -- would be \$100.00.  
22 So \$50.00 would be 50 percent of the ticket. Now do I  
23 understand that all they would owe on it -- what would be the  
24 tax? Is that 8 percent or is that income tax?

25 Mr. Mentz. Well, it's income so it's \$50.00, and if

1 the employee happens to be at the maximum rate, 50 percent  
2 would be \$25.00.

3 Senator Long. Well, let's put it where it is more  
4 likely to be.

5 Mr. Mentz. All right.

6 Senator Long. I don't feel sorry for airline pilots.  
7 I mean some of them are making more money than a U.S.  
8 Senator and I just don't feel sorry for them.

9 (Laughter)

10 Senator Long. So about how much are we talking about  
11 if we are talking about that little hostess I meet on the  
12 airline?

13 Mr. Mentz. Maybe 25 percent rate. So \$12.50.

14 Senator Long. So let's say \$12.50 on what would be  
15 a hundred dollar ticket for mama and daddy to fly all over  
16 the world. That's what you are talking about. I mean  
17 depending on where it is, but here is what it would cost  
18 you and so they can fly all around and see all these things  
19 and basically they are getting there for \$12.50  
20 on what my mother or father -- bless them, they are  
21 gone -- but just as far as the ordinary person is concerned  
22 for what somebody else's mother or father would pay \$100.00  
23 for, they get it for \$12.50. Is that right?

24 Mr. Mentz. Well, that's right except that because of  
25 the discount fares it is possible that someone else could get

1 a fare for lower than \$100.00. So I think the \$100.00 may  
2 be a little bit overstated as to what a fare could be  
3 purchased for.

4 But the essence of your point is exactly right.

5 Senator Armstrong. Senator Long, would you yield to  
6 me?

7 Senator Long. Sure.

8 Senator Armstrong. There are a couple of points that  
9 your analysis doesn't take into account. First, the fact  
10 that affording this status to parents has been the practice  
11 of the industry ever since the beginning of the industry.  
12 It's not a new idea.

13 Second, this is a different kind of ticket than any  
14 other passenger would have. It's a standby ticket. It  
15 means that if you are going to fly, for example, from New  
16 Orleans to Denver and you have to change planes in Dallas,  
17 that you stand by in New Orleans, you stand by again in  
18 Dallas; you might stand by again in Los Angeles, if you are  
19 going overseas. And so it's a ticket that has significantly  
20 less value.

21 And what happens as a practical matter is that since  
22 they have implemented this procedure, nobody uses it. Now  
23 whatever we might think of it, the employees and their  
24 families involved do not think it's a bargain because they  
25 don't use it.

1           And the thing that I would urge you to take into  
2 account as we vote on it is that it doesn't produce any  
3 revenue. That the reality of it is that we have upset a  
4 lot of people who really feel we have taken something away  
5 from them that belonged to them all their lives. And in  
6 many cases, it's not a question of sending their spouse  
7 or their children or their parents, because a lot of these  
8 flight attendants and so on don't have spouses. Some do  
9 and some don't.

10           But it's a traditional historic benefit, and putting  
11 this tax isn't helping anybody. It isn't bringing in  
12 any revenue to the Treasury.

13           (CONTINUED ON NEXT PAGE)

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1 Senator Armstrong. I mean, granted, I am only trying to  
2 go as far as --

3 The Chairman. I think we are ready to vote.

4 Senator Long. Now, I want to hear Treasury's side of  
5 the argument. I don't want to cast a vote without hearing  
6 both sides of the argument.

7 Mr. Mentz. I would simply say that, if you look at the  
8 broad spectrum of employee benefits, once you start on  
9 airline tickets, what about automobiles?

10 From time immemorial, companies have been giving their  
11 employees automobiles--free use of automobiles--and they  
12 haven't been taxed.

13 Senator Armstrong. No, Mr. Secretary, that is entirely  
14 different because, if I give my employees an automobile, I  
15 have to go out and buy that automobile.

16 The difference is we are talking about airline seats on  
17 planes that are moving which would not otherwise be sold,  
18 which are given at the last minute to standby passengers at  
19 no cost to the airline; and that is quite different.

20 Mr. Mentz. How about an automobile company like General  
21 Motors?

22 Senator Armstrong. That I can't speak to, but --

23 Mr. Mentz. I think you have the same problem, and I  
24 would suggest to you it is a pretty serious problem. I mean  
25 it is real money.

1           Senator Armstrong. I would suggest to you that even to  
2 General Motors the cost of that automobile is not free.  
3 There is a manufacturing cost, an incremental cost of produci  
4 producing it, and that is quite different than an empty seat  
5 on an airplane that is going some place. It just is a  
6 different thing.

7           Mr. Mentz. Just to finish it, Senator, we really are  
8 trying to get these regulations--to take into account many  
9 of the points that you have made in terms of the standby  
10 problems and others.

11           The reason that it would be an inappropriate discount,  
12 and it seems to me that that is the answer and not to expand  
13 what you did last year on fringe benefits.

14           Senator Armstrong. Mr. Chairman, I think we are ready  
15 to vote. The issue is that Congress did this and I don't  
16 think really understood the consequences of it.

17           It is a small matter in the cosmic scheme of things,  
18 but it is a big deal to the people directly affected; and  
19 it won't cost anything to correct it.

20           The Chairman. I think the issue is relatively simple  
21 to understand.

22           Senator Chafee. And also, Mr. Chairman, we did a lot  
23 of other things in the same package, and this is starting to  
24 unravel it.

25           Mr. Mentz. Mr. Chairman, I might also offer --

1 Senator Bradley. Why parents and not grandparents?  
2 What is the rationale?

3 Senator Armstrong. Because we are going back to the  
4 historical tradition, where they were. I am not aware that  
5 grandparents were previously covered. Maybe they were.

6 Senator Bradley. No grandparent was able to fly free?

7 Senator Armstrong. I am not aware of that.

8 Senator Bradley. Why weren't the airlines that --

9 Senator Armstrong. The way it is presented to me is  
10 that parents were --

11 The Chairman. The answer is no. They were not allowed  
12 to fly free.

13 Senator Armstrong. So, we are just going back to where  
14 we were.

15 The Chairman. He is right about it being a historic  
16 benefit in the airlines industry. Senator Chafee is right  
17 about the compromise that was made last year, and Senator  
18 Armstrong's argument is precedent. That is where they were.

19 Senator Symms. I would say just one last thing. I  
20 think that if we take the Armstrong amendment, then the  
21 Treasury could do something that is worth their time and  
22 effort, instead of going out here and harassing the hell  
23 out of everybody on that.

24 The Chairman. Let's vote. All those in favor of the  
25 Armstrong amendment will say aye.

1 (Chorus of ayes)

2 The Chairman. Those opposed, no.

3 (Chorus of noes)

4 The Chairman. Let me see a show of hands. All those  
5 in favor say aye, or raise their hands.

6 (Show of hands)

7 The Chairman. Seven. All those opposed?

8 (Show of hands)

9 The Chairman. Seven. We are going to have to have a  
10 roll call.

11 Senator Long. Senator Boren wants to be --

12 The Chairman. Let's call the roll.

13 The Clerk. Mr. Dole?

14 Senator Dole. (No response)

15 The Clerk. Mr. Roth?

16 Senator Roth. Aye.

17 The Clerk. Mr. Danforth?

18 Senator Danforth. (No response)

19 The Clerk. Mr. Chafee?

20 Senator Chafee. No.

21 The Clerk. Mr. Heinz?

22 Senator Heinz. Aye.

23 The Clerk. Mr. Wallop?

24 Senator Wallop. Aye.

25 The Clerk. Mr. Durenberger?

1 Senator Durenberger. No.  
2 The Clerk. Mr. Armstrong?  
3 Senator Armstrong. Aye.  
4 The Clerk. Mr. Symms?  
5 Senator Symms. Aye.  
6 The Clerk. Mr. Grassley?  
7 Senator Grassley. Aye.  
8 The Clerk. Mr. Long?  
9 Senator Long. No.  
10 The Clerk. Mr. Bentsen?  
11 Senator Bentsen. Aye.  
12 The Clerk. Mr. Matsunaga?  
13 Senator Matsunaga. Aye.  
14 The Clerk. Mr. Moynihan?  
15 Senator Moynihan. Aye.  
16 The Clerk. Mr. Baucus?  
17 Senator Baucus. No.  
18 The Clerk. Mr. Boren?  
19 Senator Boren. Aye by proxy.  
20 The Clerk. Mr. Bradley?  
21 Senator Bradley. No.  
22 The Clerk. Mr. Mitchell?  
23 Senator Mitchell. No.  
24 The Clerk. Mr. Pryor?  
25 Senator Pryor. No.

1 The Clerk. Mr. Chairman?

2 he Chairman. Aye.

3 The Clerk. The vote is 11 yeas, 7 nays.

4 The Chairman. Adopted.

5 Let's move on to the issue of airline passes for  
6 employers of related businesses. Both Senator Moynihan and  
7 Senator Bentsen have an interest in that issue.

8 Senator Moynihan. Mr. Chairman, this is a matter that  
9 has been before us in our last legislation.

10 We inadvertently left out of our arrangements the  
11 employees of subsidiaries of various airlines--Pan American,  
12 American, I think Continental also--who were excluded from  
13 the line of business rules simply because they are  
14 technically part of a different corporate entity, although  
15 they are in exactly the same line of business.

16 And this would just grandfather those who have  
17 previously been employed. It doesn't change the rules for  
18 anybody prospectively--no new employees. Any new employee  
19 understands the conditions of employment.

20 And my understanding and that of Senator Bentsen is  
21 that Mr. Mentz and the Treasury Department accept this  
22 provision.

23 The Chairman. Discussion?

24 Senator Bentsen. Let me comment.

25 Mr. Mentz. May I comment on that?

1 The Chairman. Just a moment, Mr. Secretary.

2 Senator Bentsen. Senator Moynihan is absolutely  
3 correct. What we put in was the line of business test.

4 And if it is the line of business, then they issue the  
5 passes. If it is not, then they do not; and I think that is  
6 the right rule, but it did cause some unintended problems.

7 And he speaks absolutely correctly as to the PanAm  
8 feature of it, but you have some other situations where you  
9 have those that could be done in-house, and at times was  
10 done in-house, and then affiliate companies were created to  
11 do the same job.

12 And that is the situation with American Airlines, with  
13 their Sky Chefs; and that is also the problem with Continental  
14 Airlines with CCS.

15 I don't think that there should be a serious question  
16 that if an airline does its catering, ticketing, and so  
17 forth in-house, then the employees should have that pass  
18 privilege.

19 Now, what you have seen here is the affiliate companies  
20 created and people moving over there and assuming that they  
21 were going to continue to have it.

22 And we tried to take care of it in this piece of  
23 legislation. We have another one with the Air Transport  
24 Association. They have got about 700 employees, and that is  
25 owned by related entities doing, once again, those kinds of

1 services.

2 And that is what the amendment does, and I hope the  
3 committee will favorably consider it. I defer to the  
4 Secretary.

5 The Chairman. May I ask you a quick question, Lloyd?  
6 On the Air Transport Association, you are suggesting they  
7 are more or less in the same relationship to the airline  
8 industry as Sky Chefs or the Pan American employees and  
9 therefore should have the same benefits?

10 Senator Bentsen. I would suggest that. Their entity  
11 is owned entirely by or composed entirely of a variety of  
12 airlines.

13 The Chairman. Questions? Comments? Senator Chafee?

14 Senator Chafee. How far does this go? Suppose you  
15 are EXXON and you provide gasoline for the airplanes?

16 Senator Bentsen. No.

17 Senator Chafee. No?

18 Senator Bentsen. No, no.

19 Senator Chafee. Why not?

20 Senator Bentsen. It is not considered an airline  
21 service. It is not something that is normally done by the  
22 airline itself.

23 Senator Chafee. And the Air Transport Association,  
24 they get it because--

25 Senator Bentsen. They provide a variety of services



1 for the airlines. They could have been done in-house.

2 As I understand, their own entities are owned entirely  
3 by airlines, and they do things such as ticket clearing,  
4 communications, information dissemination.

5 It is my understanding this has been addressed and  
6 considered by Treasury.

7 The Chairman. Mr. Secretary, do you want to comment?

8 Mr. Mentz. Yes, I would be glad to. The Senator from  
9 Texas and the Senator from New York are correct that  
10 basically, if nonaffiliated organizations do substantially  
11 all their business with airlines, they have traditionally been  
12 entitled to airline passes.

13 And the issue here is the integrity of the line of  
14 business test.

15 It is the position of Treasury that, as long as there  
16 is that substantial nexus between the two, that the benefit  
17 ought to be extended.

18 And therefore, as Senator Moynihan indicated, we would  
19 support it on that basis.

20 I think that goes to answer Senator Chafee's question  
21 about EXXON selling gasoline. Obviously, EXXON doesn't  
22 have substantially all of its revenues from selling gasoline  
23 to airlines.

24 The Chairman. Does this include the Air Transport  
25 Association in Treasury's approval?

1 Mr. Mentz. I don't know that we have looked at that,  
2 Senator, at least not in this exact connection.

3 I don't know that your proposal deals with that, does  
4 it?

5 The Chairman. I believe it did.

6 Senator Bentsen. It did address that.

7 Mr. Mentz. It seems to me the same test is the  
8 appropriate one. If substantially all the revenues comes  
9 from that source, that would be okay.

10 And Senator Symms isn't here, but I would just like to  
11 tell him that Treasury has been spending some of its time  
12 trying to write a regulation along that same line. Oh,  
13 there you are.

14 It isn't that we are always trying to mess things up,  
15 Senator.

16 (Laughter).

17 Senator Symms. I think we ought to help you by making  
18 the law as simple as possible.

19 Mr. Mentz. Good. I agree with that.

20 The Chairman. I question the separation with the Air  
21 Transport Association. I know what it is. It is an  
22 association that the airlines belong to, and they all pay  
23 their dues into it like any other association.

24 And what you are suggesting is that all of their  
25 employees and members, I guess, will get to fly for nothing

1 on airlines, just like Sky Chefs or others that have a direct  
2 relation to one airline.

3 Mr. Mentz. I don't think our position goes to the Air  
4 Transport Association.

5 Senator Bentsen. Why don't we do this perhaps? Why  
6 don't we deal with that in the report after study, that part  
7 of it? And stay with the rest of it in the statutory  
8 language.

9 The Chairman. We will separate out the Air Transport  
10 Association, which you will look at, and go forward and  
11 vote on the others.

12 Senator Bradley?

13 Senator Bradley. I was just curious. The amendment  
14 does two things, is that it? It redefines what airline  
15 business is and includes ticket-takers and food personnel and  
16 so forth? Is that correct?

17 Mr. Mentz. That is right. It clarifies, really, the  
18 line of business test, to not make it dependent upon stock  
19 affiliation, but simply amount of business--substantially all  
20 of business with the airline.

21 Senator Bradley. Is this an expansion of those  
22 eligible?

23 Mr. Mentz. I think there is authority under present  
24 statute, Senator Bradley, to deal with this, and indeed, I  
25 think Treasury would, but we would be happy with the

1 amendment.

2 We don't think we are liberalizing the law.

3 The Chairman. Did I understand that Senator Moynihan  
4 is applying only to grandfathering the bill?

5 Senator Moynihan. Yes.

6 Mr. Mentz. Only to grandfather?

7 The Chairman. Only to grandfather. We are back to  
8 grandparents--that is right.

9 (Laughter)

10 Mr. Mentz. I can't object to that.

11 The Chairman. No, no. I don't think you object to it.

12 Mr. Mentz. Oh, I am sorry. I thought you were talking  
13 about grandparents, as well as parents.

14 The Chairman. No, no.

15 Senator Moynihan. Oh, no.

16 (Laughter)

17 Senator Moynihan. I meant only grandmothers.

18 (Laughter)

19 Senator Bentsen. I don't want to get mixed up with this  
20 lineage here. I want to make the point that on Pan American,  
21 as I understand it, that is a grandfathering clause.

22 That is not the case on the rest of this.

23 The Chairman. Further comments?

24 (No response)

25 The Chairman. Is there objection to the adoption of the

1 amendment?

2 (No response)

3 The Chairman. Without objection.

4 Senator Baucus. Mr. Chairman, I have a related  
5 amendment, very quick here.

6 The Chairman. To employee benefits?

7 Senator Baucus. That is right.

8 The Chairman. What is it?

9 Senator Baucus. It seems to me that if parents of  
10 airline employees can get free tickets on a standby basis,  
11 I think grandparents--grandfathers and grandmothers--should  
12 also have the same treatment.

13 The Chairman. I will put that to a quick vote.

14 All those in favor of including grandparents say aye.

15 (Chorus of ayes)

16 The Chairman. Those opposed, no.

17 (Chorus of noes)

18 Senator Baucus. Mr. Chairman, I ask for a recorded vote.

19 The Chairman. You want a recorded vote?

20 (Laughter)

21 Senator Baucus. I am opposed to going down this road.

22 Let me wrap this up. I think it is wrong for us to  
23 legislate again more liberal fringe benefits, and that is  
24 why I voted against granting the parents of airline employees  
25 more liberal treatment.

1 I think if parents can get it, my gosh, grandparents  
2 should get it, too.

3 Senator Chafee. How about grandnieces?

4 (Laughter)

5 The Chairman. The Clerk will call the roll on including  
6 grandparents along with parents on flying on the airlines.

7 The Clerk. Mr. Dole?

8 Senator Dole. (No response)

9 The Clerk. Mr. Roth?

10 Senator Roth. No.

11 The Clerk. Mr. Danforth?

12 Senator Danforth. (No response)

13 The Clerk. Mr. Chafee?

14 Senator Chafee. No.

15 The Clerk. Mr. Heinz?

16 Senator Heinz. No.

17 The Clerk. Mr. Wallop?

18 Senator Wallop. No.

19 The Clerk. Mr. Durenberger?

20 Senator Durenberger. Aye.

21 The Clerk. Mr. Armstrong?

22 Senator Armstrong. No.

23 The Clerk. Mr. Symms?

24 Senator Symms. No.

25 The Clerk. Mr. Grassley?

1 Senator Grassley. No.

2 Senator Durenberger. It doesn't cost anything. Vote  
3 for it.

4 (Laughter)

5 The Clerk. Mr. Long?

6 Senator Long. Aye.

7 The Clerk. Mr. Bentsen?

8 Senator Bentsen. No.

9 The Clerk. Mr. Matsunaga?

10 Senator Matsunaga. No.

11 The Clerk. Mr. Moynihan?

12 Senator Moynihan. No.

13 The Clerk. Mr. Baucus?

14 Senator Baucus. No.

15 The Clerk. Mr. Boren?

16 Senator Boren. No.

17 The Clerk. Mr. Bradley?

18 Senator Bradley. Aye.

19 The Clerk. Mr. Mitchell?

20 Senator Mitchell. No.

21 The Clerk. Mr. Pryor?

22 Senator Pryor. No.

23 The Clerk. Mr. Chairman?

24 The Chairman. No. The noes have it.

25 I would like to move on to attorney's fees, of Senator

1 Grassley's. I would like to move on after that to certain  
2 unemployment taxes on the fisherman.

3 And then we have a great variety to go. So, let's start  
4 Chuck on attorney's fees.

5 Senator Grassley. And this would be on the alternate  
6 minimum income tax?

7 The Chairman. No, this is the attorney's fees in the  
8 cases.

9 Mr. Colvin. This is the attorney's fees provision that  
10 Senator Grassley and Senator Baucus have sponsored.

11 Senator Grassley. Senator Baucus, I was deferring to  
12 you to take the lead on this.

13 Senator Baucus. All right. Essentially, this is an  
14 amendment to even out the provisions in the earlier statute  
15 Congress passed--the Equal Access to Justice Act--and  
16 another act that we passed in TEFRA with respect to  
17 attorneys' fees and the tax court.

18 The problem is that there are two different standards  
19 in the law.

20 The one under the Equal Access to Justice Act, and the  
21 other under TEFRA with respect to the tax court; and the  
22 purpose of this is to make the standards the same so that  
23 taxpayers and citizens who are in litigation with Uncle Sam,  
24 and when they prevail, and when they are looking toward  
25 attorneys' fees, have to meet the same standard.



1           Essentially, the standard under our bill, which would  
2 make the standard with respect to taxpayers and the tax  
3 court the same as other citizens under the Equal Access to  
4 Justice Act is that the Government would have to show that  
5 its position is not unreasonable.

6           The Chairman. This committee has passed this several  
7 times in the past.

8           Senator Baucus. That is correct.

9           The Chairman. But we lose it in conference each time  
10 with the House, but I know of no objection on this committee.  
11 In fact, in the Senate, we have had no problems in passing  
12 it.

13          Senator Baucus. That is correct.

14          Mr. Mentz. Mr. Chairman, Treasury would like to express  
15 its objection.

16          The Chairman. All right.

17          Mr. Mentz. And I want to reflect the views of the  
18 Justice Department, Chief Judge Sterrett of the Tax Court,  
19 and the Internal Revenue Service that, making these changes,  
20 while they may seem fair, will have a very adverse effect  
21 on the administration of the tax laws that you gentlemen are  
22 involved in writing.

23          Particularly, the shift in the burden of proof would  
24 make it very, almost necessary under the malpractice rules  
25 for attorneys to sue for attorneys' fees in cases where they

1 prevail in tax litigation.

2 And that is a very major shift. It is also going to  
3 result in many fewer out-of-court settlements, both with the  
4 IRS and at the trial stage because it raises the stakes.

5 It is really a matter of how badly do you want to gum  
6 up the administration of the tax laws, and we think that  
7 these proposals would do that.

8 So, that is the reason I am registering objections, not  
9 just of Treasury but of those other agencies.

10 The Chairman. Mr. Secretary, past Administrations have  
11 been opposed to this. It is not unique to this.

12 Most Administrations have been opposed to attorneys' fees  
13 in any kind of taxes. Prosecutors don't like them. The  
14 Government doesn't like them because it makes it easier for  
15 the taxpayer to possibly recoup some of his or her money.

16 And I frankly don't think you have a leg to stand on  
17 in terms of fairness. I understand the objection. It makes  
18 it easier for you to be sued, and you might have to pay  
19 something out.

20 Mr. Mentz. But it affects the administrative process.  
21 These days, you can work out matters. I know; I have  
22 practiced law for many years, Mr. Chairman, and you can work  
23 many of the disputes out with the IRS, either at the agent  
24 level or at appeals and ordinarily not go to court.

25 This change would apply to any position taken, even by an

1 Internal Revenue Agent; so that if that position was not  
2 substantially justified, there is a case for attorneys' fees.

3 It is going to detract from out-of-court settlements  
4 and basically make it-- It is going to frustrate your  
5 ability to have the laws that you legislate become  
6 administratively effective.

7 The Chairman. Yes.

8 Mr. Mentz. That is my leg to stand on, Mr. Chairman.

9 The Chairman. Well, you have one good leg.

10 (Laughter)

11 The Chairman. All those in favor of the amendment will  
12 say aye.

13 (Chorus of ayes)

14 The Chairman. Opposed, no.

15 Senator Chafee. No.

16 The Chairman. Adopted. Senator Mitchell?

17 Senator Mitchell. Thank you.

18 The Chairman. Oh, excuse me. The ayes have it. It  
19 is adopted.

20 Senator Mitchell. I want to put a statement in the  
21 record on that last amendment.

22 The Chairman. By all means. Senator Mitchell and then  
23 Senator Bentsen.

24 (THE PREPARED WRITTEN STATEMENT OF SENATOR MITCHELL  
25 FOLLOWS:)

1 Senator Mitchell. Thank you, Mr. Chairman. I offer an  
2 amendment which would make the definition of self-employment  
3 for fishing crew members under the Federal Unemployment Tax  
4 conform to the definition now used in connection with the  
5 Social Security and Federal Income Taxes.

6 As a result of the 1967 Tax Act, and what I believe was  
7 an inadvertent error, the method of defining self-employment  
8 was different for unemployment than it was for the other two  
9 taxes.

10 The Chairman. This also is a provision that has been  
11 in the law before, and we have passed it before.

12 Senator Mitchell. That is right. We have delayed it  
13 twice, and that delay is about to expire; and my amendment  
14 would make permanent the change.

15 The Chairman. Any comments?

16 Senator Chafee. I support Senator Mitchell's amendment.

17 Senator Symms. Mr. Chairman, I support what he is trying  
18 to do also.

19 I might just say that I don't know whether it is  
20 appropriate to add this as an amendment to it or whether  
21 you would rather take it up separately, but we have the H2  
22 workers that come into this country and do agricultural work  
23 who are ineligible to receive unemployment compensation.

24 And if we don't extend the exemption that they have had  
25 since the 1940s, their exemption runs out in January of this

21  
1 year--January 1, 1986. If we don't extend that, they they  
2 are going to be in the same boat.

3 People will be asked to pay unemployment compensation  
4 on workers who are ineligible to get it.

5 That is the same situation, if I understand the Senator  
6 correctly.

7 Senator Mitchell. No, I believe this is somewhat  
8 different.

9 The Chairman. These are independent contractors.

10 Senator Mitchell. That is right. In this case, fishing  
11 crew boat members generally are not paid a salary.

12 The Chairman. They have to share in the profits of the  
13 catch.

14 Senator Mitchell. They are paid on the basis of the  
15 profits of the catch on the specific trip that they make.

16 The Chairman. And they are treated as independent  
17 contractors for the purposes of Social Security and income  
18 tax now. So, this is to make them --

19 Senator Symms. Then, I will just accept that amendment,  
20 and then I will bring this amendment up next.

21 The Chairman. Is there objection?

22 Mr. Rollyson. Mr. Chairman, I would like to note that  
23 Treasury has no objection to making that provision permanent  
24 we would prefer that it not have retroactive effect; and I  
25 am not sure whether your amendment does go back in time or

1 not, but there is also an additional technical correction  
 2 which we would like to work with your staff on--with Senator  
 3 Mitchell's staff--to ensure that certain dependents of  
 4 fishermen are not unnecessarily made subject to the SICA  
 5 tax.

6 Senator Mitchell. That is right.

7 Mr. Rollyson. So, we would like to work with you to  
 8 add that, which I think was a technical oversight.

9 Senator Mitchell. Yes. I have no problem with the  
 10 second part, but the first part I do.

11 The Chairman. The retroactivity?

12 Senator Mitchell. Yes. The previous exemption expired  
 13 December 31st of 1984.

14 The Chairman. I am not sure the Treasury wants to go  
 15 back and try to pick up in that little window some  
 16 unemployment taxes.

17 Senator Mitchell. This creates a greater problem.

18 The Chairman. All right.

19 Senator Mitchell. I would like to make it effective as  
 20 of January 1, 1985--this year.

21 The Chairman. Recorded as-- Without objection.

22 And I said we would go to Senator Bentsen, but I wonder  
 23 if, John, in 30 seconds, you could explain the unemployment  
 24 tax on the summer camp employees, and maybe we can adopt it  
 25 at the same time?

1 Mr. Colvin. Yes. For 1983, there was exempted from  
2 unemployment tax full-time students employed by summer  
3 camps, and that provision has expired.

4 The Chairman. I think we should extend it. It is  
5 Senator Danforth's provision.

6 Is there objection?

7 Senator Bradley. Mr. Chairman, if I could, not to point  
8 out some of the binds that we get ourselves into, but now for  
9 students who work, we are exempting them from the Social  
10 Security tax.

11 But to those students who work and then get a job, we  
12 are not allowing them to income average. So, not that there  
13 need be inconsistency pointed out, but there is no real  
14 reason in this bill why we should deny income averaging to  
15 students, particularly if in the same bill we are saying  
16 you don't have to pay Social Security if you work a  
17 particular job.

18 The Chairman. Is there objection to adoption of the  
19 amendment?

20 (No response)

21 The Chairman. Adopted. Senator Bentsen?

22 Senator Bentsen. Mr. Chairman, I am offering an  
23 amendment to take care of a technical problem that has arisen  
24 from an amendment that Senator Tower and I added to the  
25 1982 Tax Bill.

1           And that is one for the Regional Waste Control Commission  
2 that was organized along the Houston ship channel with the  
3 purpose of buying from private companies their waste disposal  
4 systems and coordinating the effort and charging a fee for  
5 those services.

6           Now, what happened in that regard is that it is further  
7 written into it that consideration would have to be given to  
8 that part of the service that had been privately held before  
9 and services being rendered therefor and caused a different  
10 charge to be made to different customers in the fees.

11           Under the Texas law, that can't be done. It has to  
12 truly reflect what the costs are.

13           The results are that they have not been able to acquire  
14 a single one of these private pollution control disposal  
15 systems.

16           Now, what we have tried to work out with Treasury, as  
17 I understand it, is a listing of those that were going to be  
18 acquired..

19           In effect, it is a--and I hesitate to use the word--  
20 grandfathering in clause that takes place here.

21           Senator Graham, my colleague from Texas, has also had  
22 a deep interest in this and is also very much in favor of  
23 trying to get it done; and I would urge the adoption of it,  
24 Mr. Chairman, and such comments as Treasury or staff has in  
25 mind.



1 Mr. Colvin. Senator Bentsen, your amendment would make  
2 the 1982 provision work exactly as it was intended at the  
3 time to work.

4 The Chairman. Comments?

5 Mr. Mentz. Treasury has no objection, Senator.

6 The Chairman. Is there objection to adoption of the  
7 amendment?

8 (No response)

9 The Chairman. Without objection, it is adopted.

10 Let's move to farm cooperatives. Senator Grassley, are  
11 you ready to do minimum tax relief for insolvent taxpayers?

12 Senator Grassley. Yes, I can do that, too. Which one  
13 do you want me to do?

14 The Chairman. The farm cooperatives was the one that  
15 Senator Mattingly had. We had the debate on it on the floor,  
16 and we had hearings.

17 If you want to explain that, fine, or I can call on  
18 staff to do it.

19 And we will take Senator Durenberger next after these  
20 two.

21 Senator Grassley. Go ahead with the one on the coops.

22 The Chairman. On the coops?

23 Senator Grassley. Yes.

24 The Chairman. John?

25 Mr. Colvin. The proposal before the committee relates

1 to the taxation of cooperatives and whether they are permitted  
2 to net profits from one activity with losses from another  
3 activity.

4 Senator Mattingly introduced legislation which would  
5 clarify that that netting is permitted, and for the future,  
6 that certain notice requirements would apply to cooperatives'  
7 patrons.

8 I should add, Mr. Chairman, that there has been  
9 considerable discussion about the nature of the notice  
10 requirements and exactly what it should specify, and there  
11 is not yet agreement between Treasury and staff and I  
12 believe Senator Mattingly's staff with respect to the exact  
13 terms of the notice requirement.

14 The Chairman. Treasury?

15 Mr. Mentz. Just to elaborate on that, Mr. Chairman,  
16 you may recall I testified in July about the coop netting  
17 problem before this committee.

18 And basically, there has been a dispute--a series of  
19 disputes--involving the IRS and a number of cooperatives  
20 that have been going on for quite some time over whether it  
21 was permissible for a cooperative to net where it has  
22 patronage activities in two different types of activities.

23 The case law is not clear. I have read the cases, and  
24 they really are kind of all over the lot; but where we came  
25 out in the testimony and where we are satisfied to be right

1 now is that, with the proper notice so that patrons know that  
2 if you are a chicken farmer and you know that you are going  
3 to wind up possibly having an income from the chickens but  
4 it is going to be offset against losses from corn, there is  
5 adequate notice; the netting should be acceptable, and we  
6 would not object to it.

7 But as I understand it, the industry is not on board  
8 with that at all, and their proposal would basically have a  
9 no-notice, no effective notice requirement.

10 So, we have got a real problem on notice, and that is  
11 a key element of our suggestion.

12 The Chairman. Senator Grassley?

13 Senator Grassley. Could I ask that this be-- There is  
14 a problem that has developed lately. Could we not have this  
15 on the agenda right at this point and go on to something  
16 else?

17 The Chairman. Yes, we can go on to something else. I  
18 might say I think we are going to face this sooner or later  
19 on the floor. We have just barely kept it off, as an  
20 addition on an appropriations bill; and sooner or later we  
21 will face it, but I will take it off for the moment.

22 Mr. Mentz. Mr. Chairman; could I make just one more  
23 point? The other problem we have with the proposal is that  
24 it is retroactive for 23 years, which seems to me to be an  
25 extraordinary piece of tax legislation that goes by 23 years.

1 I would think that that-- If you do nothing else, you  
2 should make it prospective.

3 Senator Baucus. Absolutely, Mr. Chairman.

4 Mr. Colvin. Mr. Chairman, if I could state the  
5 justification for the effective date? 1962 is the date that  
6 the provisions of law were enacted, that it amends; and the  
7 sponsors of the bill cite the consistent line of court  
8 interpretation that netting was permitted.

9 And they believe it is appropriate to, in effect, mandate  
10 that result --

11 The Chairman. Let me ask you if I phrase this correctly?  
12 The law was passed in 1962. The coops, in their litigation,  
13 have won all of their cases.

14 Mr. Mentz. Not all of them.

15 The Chairman. All of those that have gone to final  
16 litigation they have won, haven't they?

17 Mr. Mentz. No.

18 The Chairman. Which one did they lose?

19 Mr. Mentz. There is a circuit court case. I have it  
20 right here. They lost in 1980.

21 Senator, as I indicated, the case law is not black and  
22 white.

23 The Chairman. No, I know that.

24 Mr. Mentz. As the industry would suggest.

25 Farm Service Cooperative v. Commissioner; it is the

1 Eighth Circuit Court in 1980, reversing the Tax Court.

2 It is a netting case.

3 Now, let me just say that I don't think there is any  
4 justification for a statute that amends the law back 23  
5 years.

6 If there is a problem with the law, that is a matter for  
7 the courts and the Internal Revenue Service and taxpayers to  
8 work out, but it is simply not the appropriate legislative  
9 procedure to go back 23 years. I just don't see how you  
10 can even contemplate that.

11 The Chairman. I am going to take this off the agenda  
12 for the moment at the request of Senator Grassley; but it  
13 would be justified if we thought all along the law had been  
14 one thing, the taxpayer had won most of the cases on that  
15 basis, and we said that is what we meant all along; and you  
16 are not to go back and harass them with your interpretation  
17 of the law.

18 Mr. Mentz. I don't agree with you. I think that, once  
19 you have enacted a statute, and you have put in whatever  
20 legislative history there is, it is the obligation of the  
21 courts to determine what that statute means.

22 And if you put legislative history in a subsequent Act,  
23 that says "here is what we meant," the case law says that that  
24 legislative history has no binding effect.

25 So, it just seems to me that we are off very strongly on

1 the wrong track if we want to try and make it --

2 Senator Bentsen. Mr. Secretary, give me some feel about  
3 what has happened in these decisions. Give me a numerical  
4 idea.

5 Are they three to one against you, or ten to one against  
6 you?

7 Mr. Mentz. Senator, the cases involve fact patterns  
8 where there are two activities--let's say purchasing and  
9 marketing--and there is an overlap, a substantial overlap, of  
10 patrons.

11 The IRS, for whatever reason, brought those cases and  
12 said that there shouldn't be any netting in that situation.

13 And the IRS has lost, and they have lost several of  
14 those cases.

15 And there has not been a case, and in the language of  
16 the decisions, the courts suggest that they may go the other  
17 way, where there is a corn farmer and a chicken farmer, and  
18 there is no overlap between those two sets of patrons.

19 So, it is not correct to say that the law is clear and  
20 the IRS has lost every case.

21 All I am saying is I don't think you want to go  
22 retroactive.

23 Senator Bentsen. But you have lost most of the cases,  
24 haven't you?

25 Mr. Mentz. I think the answer is that the wrong cases

1 have been brought.

2 (Laughter)

3 Senator Bentsen. You got my attention when you said  
4 23 years retroactive, because that shook me up; and so I  
5 started listening a little closer.

6 But it sounds to me like you certainly have lost most  
7 of the cases and continue to try to say that the courts are  
8 just wrong in interpreting what the law was.

9 Mr. Mentz. As I have indicated in my testimony and  
10 here today, we are prepared to go along with the netting  
11 concept. That should not be a bone of contention, but I  
12 think it is more of a procedural point that I just don't see  
13 how this committee can pass tax legislation that is  
14 retroactive for 23 years.

15 The Chairman. For the moment, we are going to take this  
16 item off, anyway, at the request of Senator Grassley.

17 Senator Baucus. Fine because I agree with Mr. Mentz.  
18 I don't think we should go down that road and pass  
19 retroactive legislation.

20 I don't know how many members here know what the  
21 Congressional intent was in 1962. Certainly, this Senator  
22 doesn't know, and I just think it is wrong to go down that  
23 road.

24 The Chairman. The Majority Leader is here, and I would  
25 like to move now if we could to the issue of the cigarette

1 tax, which we have postponed until he arrived.

2 I call upon the Majority Leader.

3 Senator Dole. Mr. Chairman, I appreciate it. I was  
4 here yesterday, and I raised the question of whether or not  
5 we might just not extend the cigarette tax, keep it at 16  
6 cents per pack, and then also include in that the Tobacco  
7 Improvement Act.

8 And somebody said, well, why don't you just go back and  
9 do that in the Agriculture Committee?

10 The problem is that we don't have any jurisdiction in  
11 the Agriculture Committee of the tax course, and they don't  
12 have any real jurisdiction on the tobacco portion; and it  
13 seems to many of us that if you are going to keep this and  
14 save some money, we need to do it in one committee or the  
15 other.

16 And I doubt that this committee will want to get into  
17 the excise tax business in the Agriculture Committee.

18 So, I would suggest that we go ahead and approve this  
19 proposition. It might be that we will want to add smokeless  
20 tobacco and chewing tobacco, and say 24 cents per pound on  
21 smokeless tobacco, and chewing tobacco at 8 cents.

22 That would give additional revenue. It would be an  
23 additional tax on tobacco products.

24 And then, keep the cigarette tax at 16 cents and add to  
25 that the so-called Tobacco Improvement Act, which was



1 explained by counsel yesterday to members of the committee.

2 Senator Bentsen. Would the Senator tell us how much  
3 more money you are talking about, that you are saying this  
4 morning you would add on smokeless tobacco?

5 Senator Dole. How much additional revenue does that  
6 raise, with 24 cents on smokeless and 8 cents on chewing  
7 tobacco?

8 Mr. Weiss. That would raise about \$100 million over  
9 the period of three years.

10 Senator Dole. Is that on both?

11 Mr. Weiss. On both, the combination of the two together.

12 The Chairman. \$100 million on smokeless and chewing  
13 tobacco over three years?

14 Mr. Weiss. Right.

15 Senator Dole. That is an increase. There is no tax at  
16 all now, so that is fairly substantial.

17 What they have done is they have gone back to 1965 rates,  
18 as I understand--the excise tax rates on cigarettes--and  
19 indexed that to the present time, and that gives you 24 cents  
20 on smokeless and about 8 cents on chewing tobacco.

21 Senator Chafee. Twenty-four cents on what? Per pound?

22 Mr. Weiss. That would be per pound.

23 Senator Dole. And it is zero now.

24 Senator Chafee. And how much on chewing tobacco per  
25 pound?

1 Mr. Weiss. Eight cents.

2 Senator Dole. And it is zero now.

3 Senator Chafee. Eight cents.

4 The Chairman. If I might, I will explain the situation  
5 as to why we have the farm bill here. It is no secret as  
6 to where it came from.

7 In an exchange for a 16 cents a pack tax, for which we  
8 will get the support of a good many Senators who would  
9 otherwise filibuster, they are asking for this piece of  
10 legislation.

11 It is not new. We have done this before. We did it  
12 last year with the airport development fund, which we put  
13 into reconciliation, in which I think all of the members of  
14 this committee supported because all of our airports supported  
15 it, and they all wanted it; and there was no particular  
16 opposition.

17 The House reconciliation bill--the Ways and Means  
18 Committee bill--has a tobacco support program in it. It  
19 takes a penny of the tax-- It is about a \$1 billion expense  
20 over the three years.

21 The particular tobacco support bill that is before us  
22 saves about \$500 million over three years. I can't remember  
23 the three-year figures, but I assume it is roughly  
24 proportional. \$235--thank you, Bill.

25 So, we have got a bill that, in terms of the tobacco

1 part of this program, saves money over the existing program  
2 and sunsets it.

3 Senator Bentsen. Does the Finance Committee get credit  
4 for that?

5 The Chairman. The Finance Committee gets credit. As  
6 a matter of fact, it is a savings rather than on the  
7 expenditure side; we get credit for it.

8 The House bill has about a \$1 billion expenditure in  
9 its reconciliation package, and it is a straight-out tobacco  
10 support--a different format--but it is an expenditure. It  
11 doesn't save. It is \$1 billion over what we now spend.

12 Senator Grassley. Mr. Chairman?

13 The Chairman. Yes.

14 Senator Grassley. In other words, the \$1 billion or  
15 so that will be a cost to the Treasury, if the CCC buys up--or  
16 I mean, if the Government buys up, or forgives those loans,  
17 I guess is the way to put it.

18 That is also a part of this? That is included in this  
19 savings, right?

20 Senator Dole. I had better check on counsel. I am  
21 not a tobacco expert.

22 The Chairman. Is this Mr. Franks who is coming?

23 Senator Dole. Yes, Bob Franks.

24 Mr. Franks. Mr. Chairman, it is my understanding that  
25 the savings figures that were given by CBO and also by the

1 Department of Agriculture looked forward only--looked  
2 prospectively only.

3 In other words, they would not take into consideration  
4 any possible net loss to the Government from the discounting  
5 of the tobacco that is already under inventory.

6 Now, the point is that those expenditures have already  
7 been made. The loans have been made. The money has already  
8 been spoken for. So, they do not take that into  
9 consideration.

10 Senator Grassley. But I need to know if that is part  
11 of the deal that has been made. Has that been assumed--that  
12 that is going to be done?

13 It is my understanding that, at least a month or so ago,  
14 that was still under discussion.

15 Mr. Franks. No. This proposal--the Tobacco Improvement  
16 Act that Senator Dole has mentioned--would include provisions  
17 for the companies to purchase this hold inventory--inventory  
18 already on hand.

19 Basically, it is inventory from the 1976 through 1984  
20 crop years.

21 Senator Boren. How much did the Government pay for that  
22 inventory?

23 Senator Grassley. About \$1 billion.

24 Mr. Franks. Roughly--these are rough figures. I will  
25 give you rough figures, Senator Boren. I would say the

1 principal and the interest owed on those loans for those  
2 crop years would be approximately \$3 billion.

3 Senator Boren. \$3 billion? And how much will it be  
4 sold to the tobacco companies for?

5 Mr. Franks. Again, I don't have specific figures on  
6 that. It is my understanding that the purchase program would  
7 be--the payments would be somewhere under \$2 billion. They  
8 would be close to \$2 billion.

9 Senator Boren. So, there would be a \$1 billion loss  
10 by the Government?

11 Mr. Franks. You would have some of that picked up through  
12 the application of the no-net cost assessment. In other  
13 words, the assessment that producers have paid into these  
14 funds, some of that would be offset by that. There would be  
15 a profit, for example, on the --

16 Senator Boren. What would be the net loss to the  
17 Government?

18 Mr. Franks. Again, these are rough calculations because  
19 we don't know exactly when this would take effect and so on.

20 I think it is --

21 Senator Boren. About \$500 million?

22 Mr. Franks. \$800 to \$900 million.

23 Senator Boren. An \$800 to \$900 million net loss, and  
24 no books will ever be kept on that. We just wipe that off  
25 the books under this proposal?

1           Senator Grassley. When CCC goes broke, as it does every  
2 so often, we appropriate money out of the Federal Treasury  
3 for it.

4           Senator Boren. Then that is charged as an agriculture  
5 function in the budget, is it not?

6           Senator Grassley. Yes.

7           Senator Boren. So, what we are doing here is: We are  
8 in the Agriculture Committee now, and we are struggling.

9           The Chairman of the Agriculture Committee said yesterday  
10 that he thinks we have to cut wheat, rice--I would say to  
11 my friends around the table--cotton. In the Agriculture  
12 Committee, we are going to have to cut back on all of those.

13           And we are eventually going to have to have it charged  
14 up against the Agriculture budget--the replenishment of this  
15 CCC fund, which will again come out of wheat, rice, cotton,  
16 corn, the other products that are around this table.

17           And then we will have \$500 million of savings which could  
18 help us write a better farm bill, which will not be  
19 attributed to the Agriculture Committee. Is that correct?

20           And I would like to know which portion of S. 1418  
21 levies a tax? What provision in S. 1418 deals with revenues?  
22 What excise tax does it levy? What income tax does it levy?  
23 That would give this committee jurisdiction of S. 1418.

24           What provision of S. 1418 deals with revenue in any form  
25 whatsoever?

1 Mr. Franks. Mr. Chairman, I don't think there is any  
2 provision in S. 1418 that levies a tax.

3 Senator Boren. So, under what basis would we have  
4 jurisdiction in this committee, since there is no revenue  
5 whatsoever, even brought up under S. 1418, except for the  
6 fact that it seems to be some sort of deal to enable us to  
7 pass a revenue measure, deprive the Agriculture Committee  
8 --and we know the situation in agriculture is desperate--  
9 deprive the wheat, cotton, rice, corn producers of some  
10 benefit of whatever action we are taking so that we can then  
11 charge off, I would say, a net \$1 billion \$300 million loss  
12 for wheat, corn, cotton, and all these other commodities in  
13 provide it for tobacco?

14 The Chairman. I would say this to my good friend from  
15 Oklahoma: In theory, it is no different than what we did  
16 the ADF, the Airport Development Fund.

17 The Commerce Committee came here with a program. It was  
18 a spending program. We didn't have any power to tax. This  
19 committee levied the tax.

20 And put the taxes on it. We had no jurisdiction over the  
21 spending of it, but it was done at the request of the Commerce  
22 Committee, or --

23 Senator Boren. Well, I can see that if we put the tax  
24 on and then let the Agriculture Committee determine how this  
25 will be done, but I don't understand how we then can write--

1 unless we want to write--and I would be very happy to have  
2 the savings attributed by this committee to the wheat program.

3 If we want to write the wheat program in here, I think  
4 the Senator from Kansas and I can write a good wheat  
5 program.

6 Senator Dole. We don't want the tax though. We don't  
7 want any tax on wheat. That is the one difference.

8 Senator Boren. I would say if we got the net income  
9 figures out of the wheat farmers, I suspect that the wheat  
10 farmers and the rice farmers are doing worse than probably  
11 the corn farmers and worse than the tobacco farmers.

12 And I am just concerned. Is there any way that these  
13 savings can at least be transferred to the Agriculture  
14 function, especially if Agriculture is eventually going to  
15 have to pick up money to replenish the CCC.

16 Is there any way these savings can be transferred from  
17 our committee to the Agriculture Committee and attributed to  
18 the Agriculture function?

19 Senator Matsunaga. Mr. Chairman, may I ask the proposer  
20 of the amendment to tax chewing tobacco and what is the  
21 other tobacco?

22 Senator Chafee. Snuff.

23 Senator Matsunaga. Snuff. Will that be an amendment to  
24 S. 1418?

25 Senator Dole. This is going to be a package. Yes. It



1 will be an extension of the cigarette tax, which would  
2 otherwise sunset, and continue the 16 cents, and add 24 cents  
3 a pound on smokeless tobacco and --

4 Senator Matsunaga. I realize that, but will that be an  
5 amendment to S. 1418, as you propose it? If that be so,  
6 then it would answer the question raised by the Senator from  
7 Oklahoma.

8 Senator Dole. Right. I assume that is what we would  
9 be amending. It would be a part of a package. I don't know  
10 how it would be when you draft it.

11 Senator Chafee. Is that the answer?

12 Senator Dole. I don't know how it is going to be  
13 drafted, John. I think this is however you draft it.

14 Mr. Colvin. It would be drafted as amendments to the  
15 reconciliation bill.

16 Senator Dole. It would be part of S. 1418 then?

17 Mr. Colvin. S. 1418 is the bill as it was introduced by  
18 Senator Helms and several other Senators. The reconciliation  
19 bill will be assembled by the Budget Committee at the end  
20 of next week.

21 Senator Dole. So, it will include S. 1418 and the  
22 extension and the amendment if we adopt it, and the smokeless  
23 and the chewing tobacco?

24 Mr. Colvin. That is correct.

25 Senator Matsunaga. Then the proposal now before us, as

1 proposed by the Senator from Kansas, does not include S.  
2 1418. It is just in the reconciliation package, but it does  
3 not include --

4 Senator Dole. It includes the substance of it.

5 Senator Matsunaga. That is not what I am getting from  
6 the staff here.

7 Mr. Colvin. I am sorry if I created a misimpression.  
8 Senator Dole's amendment has the whole thing.

9 Senator Matsunaga. And this is what you are offering?

10 Senator Dole. Yes.

11 Senator Boren. Now, the reconciliation package cannot  
12 be filibustered, can it?

13 The Chairman. No.

14 Senator Boren. That is the reason I wondered why, if we  
15 put the cigarette tax in without this farm provision and  
16 let the Agriculture Committee write it, how can the bill  
17 be filibustered?

18 There was a comment made that the opponents of the  
19 tobacco tax would give up their filibuster against this bill  
20 if we would put this farm program in.

21 Senator Dole. There are other ways, I might suggest,  
22 that you could probably stall the reconciliation bills.

23 Senator Bentsen. It is quite difficult, though, is it  
24 not?

25 Senator Dole. I wouldn't want to say it publicly, but

1 it is not too difficult.

2 Senator Bradley. The Majority Leader should wouldn't  
3 want that to happen, though, would you?

4 Senator Dole. Talk to me when it gets to the Bradley  
5 tax reform bill--as soon as we can.

6 (Laughter)

7 Senator Bradley. When you agree to entertain it.

8 Senator Dole. Pardon?

9 Senator Bradley. When you agree to take it up.

10 Senator Dole. Oh, I am ready. I can hardly wait.

11 (Laughter)

12 The Chairman. Senator Roth and then Senator Wallop.

13 Senator Roth. I have two questions. Going back to  
14 Senator Bentsen's question about how the CBO will record  
15 this.

16 Will this \$500 million saving help answer the  
17 requirements for revenue?

18 The Chairman. Spending.

19 Senator Roth. So, it has no relevance. Now, if I  
20 understand what you said about the House, they would allocate  
21 one cent or \$1 billion for additional spending.

22 If we compromise with them on these two factors--and I  
23 know they are different in approach--where does that put us  
24 with respect to revenue? Do we still satisfy the revenue  
25 requirements of the reconciliation?

1 The Chairman. If we compromised-- The approaches are so  
2 different, I am not sure where we would come out.

3 It is very clear we are going to adopt the cigarette  
4 tax, of some kind, and we are going to meet a revenue total.  
5 I don't think the debate here, Senator, is around the  
6 cigarette tax per se, and we are going to meet our totals on  
7 revenue. I am not worried about that part.

8 Senator Wallop?

9 Senator Wallop. Just following on the line of Senator  
10 Boren, it would seem to me that the appropriate breakdown  
11 in there, if there was to be credit, we would be credited  
12 with the revenue and let Agriculture have the credit for the  
13 savings--expenditure savings.

14 It seems to me that ought to be able to be worked out.  
15 Revenue is our purpose here. The \$235 or whatever that  
16 figure was ought to go to the Agriculture Committee for the  
17 very reasons that the Senator from Oklahoma was saying.

18 I don't see any reason why we couldn't work that out.

19 Senator Moynihan. Mr. Chairman, I can see a good many  
20 reasons why we couldn't work that out. This committee has  
21 been offered by the Majority Leader an opportunity to involve  
22 itself in an arrangement that provides us some revenues for  
23 purposes that many of us think are very necessary in this  
24 committee.

25 And to just take the tax and give up the revenue seems

45  
1 to me we could do the tax on our own. Why even consider the  
2 matter?

3 I am correct? We can do this tax on our own, can we not?

4 The Chairman. Oh, yes. The tax itself?

5 Senator Moynihan. Yes. So, why have this measure  
6 before us at all if we are not going to have some advantage  
7 from it? I am not saying that there are not members who  
8 wouldn't want it in any event, but if we want it, let's have  
9 some advantages from it.

10 The Chairman. We voted yesterday on a tax, on a 32 cents  
11 a pack tax, and it failed eight to ten.

12 Senator Moynihan. We don't need any farm legislation  
13 in here, unless we get something to show for it.

14 Senator Long. Can I ask a question? How much money does  
15 this 16 cents a pack bring in?

16 Mr. Colvin. Over current law, \$4.9 billion.

17 Senator Long. \$4.9 billion?

18 Mr. Colvin. For the coming three fiscal years. That  
19 is the total.

20 Senator Long. That is for three years? So, in each  
21 year then, it works out to how much--about \$1.5 or \$1.6?

22 Mr. Colvin. Yes, sir.

23 Senator Long. \$1.6 billion a year. So, if you made it  
24 32 cents, would that get you twice that figure, or --

25 Mr. Colvin. No, Senator Long. It is considerably more

46  
1 than that because the \$4.9 billion figure reflects the 8 cent  
2 increase over current law.

3 Senator Long. How much would you pick up if you went to  
4 32 cents? What is your estimate?

5 Mr. Colvin. We would pick up \$14.4 billion over the  
6 period.

7 Senator Long. \$14.4 billion? So, in other words, you  
8 would pick up almost \$5 billion a year if you go to the 32  
9 cents?

10 Mr. Colvin. That is correct.

11 Senator Long. Thank you.

12 The Chairman. Further discussion?

13 Senator Wallop. Mr. Chairman, I would really question  
14 that figure because that is a straight-line projection, and  
15 all the arguments that have been made by the proponents of  
16 going to that is that it would be a deterrent.

17 Mr. Colvin. The estimates do take account of what the  
18 estimated reduction in tobacco consumption would be, as the  
19 tax goes up.

20 Senator Wallop. It doesn't look like it. It looks like  
21 a straight-line projection.

22 Mr. Colvin. I don't think it is straight line. The  
23 \$4.9 billion --

24 Senator Wallop. It may have a tiny kink in it, but it  
25 doesn't have much of a one.

1 Mr. Colvin. The \$4.9 billion times three would be  
2 higher than \$14.4, so there is some allowance made for  
3 reduction in smoking.

4 I believe that the studies show that the overall  
5 elasticities are relatively small, but there are some larger  
6 effects in certain groups.

7 But there is some effort made in the estimates to take  
8 account of that.

9 The Chairman. Further discussion?

10 The Chairman. Senator Chafee was next. Then Senator  
11 Boren and then Senator Pryor.

12 Senator Chafee. Mr. Chairman, on this smokeless tobacco,  
13 we had some hearings on this the other day, and I think the  
14 proposed tax is too modest.

15 Now as I understand the basis for the proposed tax, it  
16 is what the tax used to be and then I guess it was taken off  
17 and then indexed forward to the present.

18 As I understand it from the discussion we had the other  
19 day, an ounce of chewing tobacco--chewing tobacco is sold in  
20 three ounce packets. Who is the expert here on this?

21 That sells for about a little less than \$1.00. Now,  
22 what I am thinking of proposing is that we make the tax the  
23 same percentage as the cigarette tax--16 percent.

24 So, I would go to-- The proposal is that it be 8 cents  
25 a pound on chewing tobacco. I would make it 40 cents a

48  
1 pound, which would make it 2.5 cents an ounce, or about 8  
2 cents a pack, a three-ounce pack.

3 Now, on the snuff, the proposal was 24 cents a pound.  
4 I would go to \$1.20 a pound, which would make it 7.5 cents  
5 an ounce; and that snuff is sold in ounce packets.

6 The Chairman. Are you offering that as an amendment  
7 to Senator Dole's?

8 Senator Chafee. Yes.

9 Senator Bradley. Mr. Chairman, I was not aware that  
10 there was anything pending.

11 The Chairman. I thought Senator Dole offered it.

12 Senator Dole. I offered it

13 Senator Bradley. He withdrew it at the end of the  
14 session. So, you reoffered it today?

15 Senator Dole. Right.

16 Senator Bradley. And you added snuff and chew, so it  
17 wasn't the same amendment. But it is now pending, is that it?

18 Senator Dole. Yes. Mr. Chairman, could I indicate  
19 there I think you are hitting low income chewers and snuffers?

20 (Laughter)

21 Senator Dole. Most of the people, or 60 percent of  
22 the people who use smokeless tobacco and chewing tobacco are  
23 in the \$25,000.00 or less income category. It is sort of  
24 like beer.

25 The Chairman. Senator Baucus?



49  
1 Senator Baucus. Mr. Chairman, I think it is important  
2 to help the tobacco producers here. After all, they are an  
3 important segment in our country.

4 I needn't remind the chairman and other members of this  
5 committee, though, that other agricultural producers are  
6 even in worse shape than are tobacco producers today--wheat,  
7 corn, soybean, cotton, peanut producers, and rice in  
8 particular--all are in very difficult straits today.

9 The total outstanding farm debt today is about \$200  
10 billion. That is the total outstanding farm debt. Some  
11 estimates are up to, say, \$35 or \$40 billion of that is  
12 bad loans.

13 And I can tell you that in some parts of the country  
14 it is even worse than that.

15 The problem is that the present farm program expires  
16 at the end of this month--about 11 days from today. We don't  
17 yet have a farm program.

18 The House and the Senate probably are not going to pass  
19 a farm program. Even though we are here today helping the  
20 tobacco producers, it seems to me that we should also take  
21 advantage of this opportunity to help other producers.

22 It seems to me, therefore, that at the very least for  
23 a very important commodity facing America, that we should as  
24 part of this package, amend this package to help write a  
25 farm bill for other commodities in addition to tobacco.

50  
1 And for that reason, Mr. Chairman, I very much think  
2 that we should take part of this and amend this provision to  
3 freeze the target price of wheat for four years.

4 That will give the wheat producers a little bit of  
5 cushion, a little bit of help. They will know that, even  
6 though we haven't taken the bull by the horns and met the  
7 guts of the problems facing the farmers, we can give them  
8 a little bit of assurance that we are moving ahead on this.

9 So, I would, at the appropriate time, amend this package  
10 to include a four-year target price for wheat.

11 The Chairman. Senator Boren?

12 Senator Boren. We have corn production--Senator Grassley  
13 has got corn, in addition to wheat. Those losses would not  
14 be charged against this committee, I assume, and I just  
15 think, Mr. Chairman, as a serious matter, if we are going  
16 to write the farm bill, the tobacco program and the tobacco  
17 farmers have been supported.

18 I am not against them. I have voted for their programs  
19 as a part of a farm coalition. They have been supported at  
20 the rate of roughly 90 percent of parity, or at the present  
21 time.

22 It has been since 1952 that the wheat producers were  
23 supported at 90 percent of parity. They are supported at a  
24 very low level. Farmers in my State had a \$14.00 per capita  
25 net income last year. They are primarily wheat farmers.

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1 I would guess that on this committee if we are going to  
2 be responsible and write the tobacco program, we should have  
3 before us the net income figures for rice farmers, wheat  
4 farmers, corn farmers, the others, peanut farmers, cotton.

5 I would even put in sugar cane for the Senator from  
6 Louisiana. We ought to know what the growers of these  
7 commodities are getting in terms of their net income.

8 Senator Dole. We always had the sugar program in this  
9 committee until a few years ago.

10 Senator Boren. I would be perfectly willing to see us  
11 do that. If we tack on a four-year freeze from target prices  
12 for corn and wheat and cotton and rice.

13 Otherwise, Mr. Chairman, I think that we should at least  
14 have-- We have not had one minute's worth of discussion on  
15 this matter in the Agriculture Committee.

16 I think we should-- The Agriculture Committee has a  
17 meeting scheduled this afternoon and in the morning, and we  
18 should at least postpone consideration in this committee  
19 because yesterday the chairman said that he was going to  
20 make a motion to reduce target prices on wheat, on corn, on  
21 rice, and the other commodities in the Agriculture Committee.

22 And it would be ironic if we were to proceed in the  
23 Agriculture Committee to reduce the target price supports on  
24 all of those commodities, while at the same time have an end  
25 run in the Finance Committee to continue a program that is

52  
1 already at 90 percent of parity for the tobacco raisers.

2 And I just think that here we might be really doing a  
3 disservice to the producers of all other commodities and that  
4 we should at least--and I am not saying that I will oppose  
5 it--I would certainly like to have an airing of this in the  
6 Agriculture Committee to know what the tobacco interests in  
7 the Agriculture Committee are willing to negotiate with those  
8 of us who have other commodities before we pull the rug out  
9 from under wheat and corn and all the rest of us around this  
10 table.

11 As I look around this table, there are members here who  
12 have--probably half the members here--significant amounts of  
13 other commodities grown in their States, and I would just  
14 urge that we delay action until the Agriculture Committee  
15 has had an opportunity to meet on this and to at least have  
16 some discussion there.

17 Then, we can perhaps go ahead without the controversy  
18 in here, but in conscience, I feel that we have heard the  
19 possibility that the CCC might be charged down the line to  
20 make up for this \$900 million.

21 There has not been agreement. The Senator from New York  
22 has raised some question about transferring the savings over  
23 to the Agriculture Committee on the spending side.

24 And we could end up not only removing any bargaining  
25 power we have to get support from the tobacco interests to

1 help these other commodities if we move, but we could end up  
2 actually hitting these other commodities another \$1.3 billion  
3 negative lick.

4 And these people are broke. They can't afford it. They  
5 can't afford to have to take another \$1.3 billion. You  
6 couldn't raise \$1.3 billion if you asked the farmers in  
7 Oklahoma to pool all their cash right now and give it to  
8 the tobacco farmers--we couldn't raise that much.

9 They don't have that much to give. If they emptied out  
10 all their pockets. So, I just, in conscience, think that  
11 we ought to not be proceeding willy-nilly here on this  
12 proposal until the Agriculture Committee and those that are  
13 interested on this committee in other commodities have a  
14 chance to sit down and discuss it.

15 I think that there is going to be a great rebellion on  
16 this matter across the farm belt--the mid part of this  
17 country--where tobacco is not raised if we do this and we  
18 don't take adequate care of their problems.

19 And I don't think it is going to reflect well on the  
20 reputation of this committee if we have shown preference to  
21 one commodity over another.

22 The Chairman. Senator Pryor?

23 Senator Pryor. Mr. Chairman, I would like to address a  
24 question to Mr. Franks, please, if I might?

25 Mr. Franks, if we adopt this proposal or this action this

1 morning that you are proposing, does this totally remove at  
2 that point, after this vote, the jurisdiction of the  
3 Agriculture Committee in the Senate over any aspect or all  
4 other aspects of the tobacco program?

5 Mr. Franks. No, sir, it would not.

6 Senator Pryor. Then, what jurisdiction would be  
7 remaining for the Agriculture Committee to exercise, should  
8 we take this action this morning?

9 Mr. Franks. The Agriculture Committee would still have  
10 the jurisdiction which it presently has, which includes  
11 jurisdiction over price support programs.

12 I think the point was in bringing it up here that this  
13 committee is adding a tax on cigarettes which could adversely  
14 affect producers. If the tobacco producers do have  
15 particular problems, the Tobacco Program Improvement Act  
16 would help mitigate some of those problems and that,  
17 therefore, treat those two issues together.

18 Senator Pryor. It seems, Mr. Chairman, like most  
19 committees in the Senate love to have jurisdiction of  
20 legislation, and this is one piece of legislation that, just  
21 watching around the room today, I don't think this Committee  
22 wants the jurisdiction over.

23 I don't think we are looking forward to trying to start  
24 dealing with what has normally and traditionally been an  
25 agriculture bill, where it has been resting in the past,

1 which is the Agriculture Committee, the Tobacco Program  
2 therein.

3 Mr. Franks. Yes, and it would continue to be within  
4 the jurisdiction of the Agriculture Committee, Senator Pryor.

5 The Chairman. Senator Chafee?

6 Senator Chafee. I don't want to get into corn and wheat  
7 and sugar. I am just dealing with smokeless tobacco here  
8 --an attack.

9 And the proposal was that it be 24 cents a pound, and  
10 my proposal is that it be \$1.20 a pound on snuff.

11 And on chewing tobacco, it would be 40 cents a pound  
12 instead of 8 cents a pound.

13 Now, why am I proposing that? It about works out on  
14 the sale price to 16 percent. Secondly, I don't want to  
15 get into the income of those who chew or don't chew. I know  
16 an awful lot of baseball players chew who are making about  
17 \$400,000.00 to \$700,000.00, but I do think that we have got --

18 Mr. Chairman, I think that I would like to press this  
19 tax matter and get at least that decided, regardless of  
20 anything else.

21 When the appropriate time came up, I was going to move  
22 for the tax on smokeless tobacco because we are in the open  
23 session, and we are taking up various things, anyway.

24 The Surgeon General has not yet come out with a report  
25 on smokeless tobacco, but there are other organizations that

1 have looked into it, and they have come to the conclusion  
2 that it is bad for your health.

3 It is bad for the inside of your mouth. It leads to  
4 cancer, and it is extremely harmful.

5 So, the steps I am taking aren't solely for revenue.  
6 It is only a \$700 million industry, so it is a very modest  
7 industry; and the amount we are going to raise, I will admit,  
8 is modest, but I am looking at it as a preventative measure  
9 for health.

10 Now, I don't have the Surgeon General's report to hang  
11 my hat on. That will be out in the spring, but I am  
12 absolutely sure that it is going to corroborate what I have  
13 mentioned here.

14 So, Mr. Chairman, I would like to have a vote on my  
15 proposal.

16 Senator Bradley. Mr. Chairman, is the Senator intending  
17 to offer this amendment to the Dole package and ask for a  
18 vote now?

19 I would hope that he wouldn't ask for a vote at this  
20 time.

21 Senator Chafee. I was going to raise it. In all  
22 fairness, I was going to raise it regardless of any other  
23 thing.

24 It was just like this smoking tobacco tax. This is the  
25 smokeless.



1           The Chairman. I had hoped that we could finish this  
2 today, and we clearly are not going to. And I am going to  
3 once more pull it from the agenda, and we will meet in the  
4 morning; and we are going to finish it, one way or the other  
5 in the morning.

6           We do have a few more items we can finish today,  
7 relatively minor matters that are still on this agenda;  
8 and I would like to continue for 15 or 20 minutes and see  
9 what we can do.

10           But for the moment, we will take this issue off the  
11 agenda. Could we move to the farm coop issue? Senator  
12 Grassley?

13           Senator Grassley. Mr. Chairman, on the coop bill, I  
14 feel now that we have come considerable in the direction of  
15 having something that is satisfying between the various  
16 parties, but maybe not completely.

17           I would ask if the counsel could explain this, please.

18           The Chairman. John?

19           Mr. Colvin. Senator Grassley, I apologize. I have  
20 just received a copy of the agreement.

21           Senator Grassley. It provides for notice, and I think  
22 that is the big difference. And now, if there is anything  
23 left undone, it can be worked out without any trouble at all.

24           The Chairman. Further comments?

25           (No response)

1 The Chairman. Treasury?

2 Mr. Mentz. Just one question. What happens if the  
3 notice isn't provided under this proposal?

4 Do you have it there?

5 The Chairman. It would be my hope while they are  
6 discussing that, to finish today the proposal that Senator  
7 Durenberger has, that Senator Symms has.

8 I am not sure that there are any others that have to  
9 be brought up today. We have five or six other minor ones.  
10 I am not sure if the members are still pushing them or not.

11 If the members would talk to me, I would appreciate it.

12 Mr. Colvin?

13 Mr. Colvin. In the proposal that I have received, it  
14 indicates that if notice is determined to be insufficient,  
15 the organization, following such a determination, shall make  
16 available a revised notice which does comply with the  
17 subsection.

18 Mr. Mentz. But what happens to the patronage deduction  
19 in the meantime? Doesn't it say something about it?  
20 Doesn't it affect it?

21 Mr. Colvin. I believe that is correct. The deduction  
22 would thus be preserved.

23 Mr. Mentz. Mr. Chairman, without beating a dead horse,  
24 we are going to object to any notice provision that doesn't  
25 provide for effective notice, and I think this one doesn't.

1 So, that is Treasury's position.

2 Senator Grassley. Mr. Chairman, I would have to say  
3 that, respecting Treasury's point of view but taking  
4 exception, I think that we probably have in a situation  
5 like this where Treasury could not be satisfied and still  
6 have an effective piece of legislation, but we have come  
7 considerable from where we were when I asked you to take  
8 this off the agenda.

9 From that point of view, I would ask the committee to  
10 favorably report it out.

11 The Chairman. Further discussion?

12 (No response)

13 The Chairman. Those in favor of reporting it out will  
14 say aye.

15 (Chorus of ayes)

16 The Chairman. Opposed, no.

17 Senator Chafee. Mr. Chairman, is the notice in there?

18 The Chairman. The notice is in there as it was read.

19 Senator Grassley. There is notice in there. Treasury  
20 is still saying that it does not satisfy them. I have said  
21 we have come a long ways, and in the final analysis, I don't  
22 believe we are going to be able to satisfy Treasury.

23 Senator Chafee. And is it prospective or retroactive  
24 to 1962?

25 Mr. Colvin. The notice requirement is prospective.

1 Senator Chafee. No, no. I mean the coverage. It goes  
2 back to 1962?

3 Mr. Colvin. The proposal is not modified in that  
4 respect, so it does. It is retroactive to 1962.

5 Senator Grassley. And from that standpoint, I would  
6 reiterate what the chairman said. Basically, what we are  
7 saying is the law is the law, and as it has been determined  
8 through discussion here, every court case but one has upheld  
9 Congress' point of view and rejected the IRS'.

10 The Chairman. This is one of those situations, John,  
11 where you may disagree with what we thought the law was, but  
12 indeed the IRS has lost most of the cases.

13 Now, maybe you can say the IRS' view of the law is  
14 right and we shouldn't make it retroactive, but in making  
15 it retroactive, we are doing what we said we thought the  
16 law was.

17 The Chairman. Senator Baucus?

18 Senator Baucus. I am just wondering what the application  
19 would be if we were to make this prospective only and  
20 limiting it to trying to determine what the law was--what  
21 the 1962 law was. What the outcome would be for that  
22 litigant.

23 The Chairman. That is where the IRS has lost most of  
24 the cases.

25 Senator Baucus. My question really goes to: What if we

1 pass this but make it prospective only?

2 In a month or two months after enactment of the law,  
3 a litigant comes in and litigates a case prior to the  
4 passage of this statute, but subsequent to 1962.

5 What would the effect on that litigant be?

6 Mr. Mentz. I would say in that case, it seems to me,  
7 the IRS is kind of in a tough spot, once you pass the  
8 legislation even with it being prospectively only.

9 I just don't think they are going to be litigating in  
10 the same manner that they have because you have a statute on  
11 the books that clearly evidences Congress' intent.

12 I would like to answer a question that came into my  
13 mind, Senator Baucus, when you asked that question.

14 It goes back to 1962. There are a lot of taxpayers  
15 over the years that are closed. The statute of limitations  
16 has run; and wherever they are, they are.

17 This legislation does not open those years. In cases  
18 that have been decided--once the case is decided--the case  
19 is over. No statute, no amendment by Congress can affect  
20 that decision.

21 So, that is one of the problems that you get into with  
22 a retroactive legislation of this dimension. That is why I  
23 would suggest to you that--go prospective, and we can  
24 administer the law, and I will tell you we will in any manner  
25 that you intend.

1           Senator Baucus. If it is prospective, will the Service  
2 go back and litigate a subsequent case that applies to  
3 situations, subsequent to 1962 but prior to the enactment  
4 of this?

5           Mr. Mentz. Let me just say that, without tying the  
6 hands of the Chief Counsel of the IRS, they have got to take  
7 Congress' intention into account.

8           Senator Baucus. Even though it is prospective?

9           Mr. Mentz. I would say so. It is a matter of realism.

10          The Chairman. I don't think he can answer that question.

11          Mr. Mentz. I can't answer the question because I am  
12 not speaking for the IRS.

13          The Chairman. But if they didn't take it into account,  
14 they would have to litigate it again; and the defendants  
15 would be put through the cost of defending the case.

16          And the IRS, if past history is correct, would lose  
17 most of them, and I think what you would end up with is  
18 different opinions in different circuits.

19          And if the Supreme Court never took it up, that would  
20 be the end of it retroactively.

21          Mr. Mentz. And they have got attorneys' fees, too.

22          Senator Chafee. Mr. Chairman, could I ask one question?

23          The Chairman. And they would get attorneys' fees--that  
24 is correct--thanks to Senator Grassley.

25          Senator Chafee. On the notice, what is the effect on

1 the user, that is the member, if the coop he belongs to, and  
2 he thinks he is primarily dealing with corn for example; and  
3 suddenly he discovers that all the losses for fertilizer are  
4 going to be offset against him?

5 How does this affect the consumer--the member--when  
6 there is not proper notice? It seems to me that notice is  
7 something that is beneficial to the member.

8 Mr. Mentz. That is precisely our point. We agree with  
9 you, Senator.

10 Senator Chafee. I would think having notice--I mean,  
11 clarifying the notice--would be good.

12 Senator Grassley. Let me suggest a special problem here  
13 for farm-related coops is that you really don't know the  
14 financial position of the coop until after the crop is  
15 harvested and what the price is, how much business they  
16 are doing, and all that.

17 Just look at the-- We practically broke a lot of these  
18 businesses through the PIC program in 1983, as an example.  
19 Some are still suffering from it. That is a political  
20 decision that was made, but it is still one that is pretty  
21 difficult for them to interpret.

22 And I think you have to look at the special situations  
23 here with agricultural related organizations that you don't  
24 have maybe with other organizations that their business and  
25 stuff isn't based on what the crop year or the weather is

1 going to be.

2 The Chairman. Further discussion?

3 (No response)

4 The Chairman. All those in favor of reporting the  
5 measure out will say aye.

6 (Chorus of ayes)

7 The Chairman. Opposed, no.

8 (Chorus of noes)

9 The Chairman. The ayes appear to have it. The ayes  
10 have it.

11 Now, we are going to take three more items and then  
12 recess for the day until 9:30 in the morning.

13 Senator Durenberger and then Senator Mitchell.

14 Senator Durenberger. Thank you, Mr. Chairman.

15 The Chairman. I am sorry. Senator Symms first.

16 Senator Symms. Mr. Chairman, I have in my hand here a  
17 letter from Senator Hawkins and I would just like to read  
18 the first paragraph. It is very explanatory what the  
19 amendment is about.

20 "Under current law, wages of workers who come into this  
21 country under the H2 Program to perform agricultural labor  
22 are exempt from Federal unemployment compensation tax.

23 "The reason for this exemption, which has existed since  
24 the program began in the early 1940s, is that these workers  
25 are not eligible for unemployment compensation since they are



1 residents of this country and must return to their home  
2 country after the work is completed.

3 "A good portion of the..." And it goes on.

4 "The present exemption, however, is due to expire at  
5 the end of this year. In order to ensure that this does not  
6 take place, I propose that the program be extended for at  
7 least three more years until January 1st of 1989."

8 And I just ask if counsel has any comment to make on it,  
9 and I would like to move that. I have the amendment right  
10 here.

11 Mr. Colvin. We would concur with your explanation of  
12 your amendment and current law.

13 Senator Symms. And there is a minimal loss to Treasury  
14 on this.

15 The Chairman. Treasury?

16 Mr. Weiss. We do have a -- It is less than \$5 million.  
17 It is very small.

18 The Chairman. Comments from Treasury?

19 Mr. Mentz. I guess we can afford it.

20 Senator Symms. I so move the amendment.

21 The Chairman. Is there objection?

22 (No response)

23 The Chairman. Adopted. Senator Durenberger?

24 Senator Symms. Thank you very much, Mr. Chairman.

25 Senator Durenberger. Mr. Chairman, your package includes

1 a requirement that HHS issue life safety code regulations for  
2 intermediate care facilities for the mentally retarded.

3 John Chafee and I, and I think others, are suggesting  
4 that we expand that requirement to include all five parts  
5 of the current ICFMR regulations that are on the Secretary's  
6 desk.

7 HHS does not necessarily have a large objection; they  
8 just want at least the 60 days to do it.

9 And so, I would move that we add that requirement to  
10 your package.

11 The Chairman. Comments?

12 Is there objection?

13 (No response)

14 The Chairman. Adopted. Senator Mitchell?

15 Senator Durenberger. Mr. Chairman, this is a three-part  
16 item.

17 The Chairman. Oh, I thought that was all you were going  
18 to propose.

19 Senator Durenberger. I am sorry. I thought these two  
20 were just part of your package, and I was expanding.

21 The other is the on lock Medicare-Medicaid waiver in  
22 San Francisco Chinatown, which I think has been discussed  
23 all the way around. It is in the Ways and Means package.

24 I just wanted to make sure we did it.

25 The Chairman. What is that?

1           Senator Durenberger. It is a capitation program for  
2 the elderly that combines Medicare and Medicaid monies in  
3 a unique way that ends up saving money. They need their  
4 waiver extended.

5           The Chairman. In San Francisco's Chinatown?

6           Senator Durenberger. In Chinatown in San Francisco.  
7 You may wonder how I got involved with that.

8           I went to visit it. It is a terrific program. And I  
9 move that addition to extend the waiver, to conform with  
10 the Ways and Means package.

11          The Chairman. Mr. Mihalski, do you say it is all right?

12          Mr. Mihalski. Yes, sir.

13          The Chairman. Comments? Treasury? Randy? John?  
14 Audience?

15          (Laughter)

16          Senator Durenberger. Mr. Chairman, on behalf of Senator  
17 Heinz and myself, I would propose the --

18          The Chairman. Wait a minute. Without objection, it  
19 is adopted.

20          Senator Durenberger. Thank you. This is a proposal for  
21 health insurance continuation which I believe has been  
22 presented to everyone's staff.

23          The proposal would require employers in this country to  
24 include in their group health plan a continuation option for  
25 those qualified beneficiaries who fall in the category of

1 the divorced, legally separated spouses, widows of covered  
2 employees, dependents of the divorced, separated, or widowed  
3 spouse, Medicare-ineligible spouses, covered employees who  
4 lose their jobs, and children of employees who would otherwise  
5 lose coverage because they have reached majority age.

6 Mr. Chairman, this whole issue was part of our effort  
7 in the last two years to resolve the problem of health care  
8 for the unemployed.

9 It does not cost the Government anything because the  
10 widows, the ex-employee, the dependents in effect would be  
11 getting access to the employed person's health plan, the  
12 benefits and the price at 102 percent of the group cost.

13 And that extra two percent is for administrative purposes  
14 but they would have to pay it.

15 The Chairman. The full amount? They would have to pay  
16 the employer and the employee contribution if there is an  
17 employee contribution?

18 Senator Durenberger. Yes.

19 The Chairman. The employer would pay nothing. In other  
20 words, let's say you have an employer plan where the employer  
21 has paid for the employee. The employee dies, and the  
22 employer has been paying \$100.00 a month.

23 Does the widow--or if it is a divorce--does the divorcee  
24 have to pay the \$102.00 a month, in the case of the two  
25 percent?

1 Senator Durenberger. The employer-employee can contract  
2 to do anything they want, and half of them do that now. The  
3 minimum requirement, however, is that in the case you just  
4 cited, the widow would pay 102 percent of the total in  
5 order to get the benefits, even though the employee would  
6 not have paid anything at all.

7 The Chairman. Absent any other contractual provision,  
8 I take it?

9 Senator Durenberger. That is right.

10 The Chairman. The widow, divorcee, or whatever pays  
11 the full amount of the premium?

12 Senator Durenberger. That is right.

13 The Chairman. Comments?

14 Senator Moynihan. Mr. Chairman, I made a proposal here  
15 about three years ago, and we couldn't get it through, but it  
16 is a good proposal.

17 The Chairman. Senator Heinz?

18 Senator Heinz. Mr. Chairman, I just want to commend  
19 my Health Committee chairman on the work that he has done on  
20 this. I think it has been very well thought out.

21 He has worked with the National Association of  
22 Manufacturers and others to ensure that this is not only  
23 going to do the job for the women it will help in particular,  
24 but it is also going to be quite tolerable and acceptable to  
25 most employers.

1 The Chairman. Further comments?

2 Mr. Mentz. Senator, just for the record, I want to  
3 express a mild objection, consistent with the Administration's  
4 testimony earlier this week, to keep the Federal Government  
5 out of the health insurance business.

6 The Chairman. Further comments?

7 (No response)

8 The Chairman. Is there objection?

9 (No response)

10 The Chairman. Adopted. Senator Mitchell?

11 Senator Chafee. Mr. Chairman, could I ask one quick  
12 procedural question?

13 The Chairman. Yes.

14 Senator Chafee. I have an amendment dealing with health  
15 care also, which I would like to raise, but --

16 My question is: Are you cutting off any more amendments  
17 today and the idea is we would bring them up tomorrow?

18 Or are you saying everything has got to be done today,  
19 and the only thing tomorrow will be the cigarette taxes?

20 The Chairman. No, no. Everything is still open for  
21 tomorrow, and Senator Bradley has raised a point.

22 We are not necessarily done on spending reductions.  
23 There is a number of other items that could have been  
24 considered. They are still open for consideration.

25 Senator Bradley. Mr. Chairman, if the Senator would

1 yield. What is yet to be determined is if there is this  
2 Agriculture Committee tobacco bill that passes this  
3 committee, who gets the savings?

4 I mean, that seems to be fairly fundamental.

5 The Chairman. We get the savings.

6 Senator Bradley. We get the savings? That won't be  
7 contested at a later time? We can get that?

8 The Chairman. CBO will allocate them, and I suppose  
9 anybody can contest anything; but at the moment, they are  
10 allocated to us.

11 Senator Chafee. Mr. Chairman, the other procedural  
12 question is: Have you put a limit on? I have one I would  
13 like to bring up. I would like to bring it up today because  
14 things seem to be going well.

15 (Laughter)

16 Senator Chafee. What is your rule?

17 The Chairman. John, I can't. I simply have to adjourn  
18 or recess until tomorrow morning. I cannot stay any longer.

19 I thought we would be done by now.

20 Senator Chafee. Can you guarantee us the same  
21 receptivity of the committee on these matters tomorrow?

22 (Laughter)

23 The Chairman. I can guarantee the same receptivity of  
24 the committee. I am never sure about Treasury.

25 Mr. Mentz. We can't make any promises, Senator.

1 The Chairman. Senator Mitchell?

2 Senator Mitchell. Thank you, Mr. Chairman. I offer an  
3 amendment to change the treatment in the Social Security  
4 system of those Federal judges who retire but continue in  
5 active service.

6 The amendment would treat their compensation as  
7 retirement income, not as earned income, and would acknowledge  
8 that these judges are performing their services voluntarily.

9 This would return it to the treatment that existed  
10 prior to the Social Security amendments of 1983.

11 I have a fairly lengthy, detailed explanation. I don't  
12 think it is necessary. If there are any questions --

13 The Chairman. I don't think it is controversial. It  
14 has been great harassment to senior judges because they are  
15 reluctant to come back and serve in districts where they are  
16 desperately needed because of case loads.

17 Senator Moynihan. Mr. Chairman, as a Social Security  
18 Committee person, on this side, I very much support this.

19 The Chairman. Is there objection?

20 (No response)

21 The Chairman. Adopted. Now, Senator Moynihan, last  
22 item?

23 Senator Moynihan. Mr. Chairman, the IRS has had some  
24 difficulty reaching agreement on how to assess the value of  
25 faculty-provided housing in those institutions that do this.



1           And an agreement has been opposed that there be a  
2 permanent rule for the future that requires the rent charged  
3 to be at least five percent per annum of the appraised value  
4 of property.

5           There is a provision here for a number of institutions  
6 which there is still some litigation--dispute--I don't know  
7 if there is litigation--that this future rule will apply to  
8 them as well.

9           And Treasury also, as I understand, Mr. Secretary,  
10 agrees that the committee report language would include a  
11 qualification such that, so long as an institution charges  
12 its employees at least as much as the average rent it  
13 receives from nonaffiliated renters in comparable housing,  
14 those rental arrangements would be respected.

15           The Chairman. Does Treasury agree?

16           Mr. Mentz. Yes. May I elaborate just a bit, Mr.  
17 Chairman?

18           The Chairman. You may.

19           Mr. Mentz. This is a meddlesome problem that has plagued  
20 us for some time. There is still a moratorium with respect  
21 to this issue, even though the fringe benefit moratorium was  
22 generally eliminated last year.

23           We have tried to take what I think is quite a reasonable  
24 position in solving this. Prospectively, there would be an  
25 appraised value of the housing--faculty housing.

1 We have a study that shows that the rental income  
2 generally ranges between five and ten percent. We took the  
3 low end--five percent--and made it a safe harbor, so that if  
4 a faculty member rents for five percent of the appraised  
5 value, he is okay. Absolutely, it is a safe harbor.

6 If he can show something less, which might well be the  
7 case in certain circumstances, particularly where there are  
8 rents to unaffiliated persons, you take the average. If  
9 it is less, the faculty member is okay. There is no income  
10 in that situation.

11 And that would be mentioned in the committee report,  
12 not in the statute. And on the retroactive feature, again,  
13 I think we would just deal with it in the committee report  
14 and simply say that we basically use the five percent rule.

15 It wouldn't necessarily be an appraisal. It might be  
16 whatever value could be found, but I think it is a reasonable  
17 way of solving it.

18 The Chairman. I know of this problem. It has been  
19 around for five years, it seems to me. I hope this problem  
20 is solved with this action.

21 Senator Moynihan. Mr. Chairman, Mr. Mitchell asked to  
22 be made a cosponsor.

23 Senator Chafee. I would like to be a cosponsor, too.

24 The Chairman. Without objection, it is adopted. May  
25 I say to the members who are here, and to any staff, any

1 amendments you are going to offer tomorrow, I would greatly  
2 appreciate it if you would get to us today.

3 I have tried to bring them all up and accommodate you  
4 all, and I will look very unkindly upon amendments that are  
5 sprung on me tomorrow without notice.

6 Senator Bradley. Mr. Chairman?

7 The Chairman. Yes?

8 Senator Bradley. You mean any new amendments?

9 The Chairman. Any new amendments. We are recessed  
10 until tomorrow.

11 (Whereupon, at 12:14 p.m., the hearing was recessed,  
12 to be reconvened on Friday, September 20, 1985, at 9:30 a.m.)

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## C E R T I F I C A T E

1  
2 This is to certify that the foregoing proceedings of  
3 an Executive Session of the Committee on Finance, held on  
4 Thursday, September 19, 1985, were held as herein appears  
5 and that this is the original transcript thereof.  
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8   
9 WILLIAM J. MOFFITT  
10 Official Court Reporter  
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15 My Commission expires April 14, 1989.  
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