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TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

- - -

COMMITTEE ON FINANCE

- - -

EXECUTIVE SESSION

- - -

Washington, D. C.
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EXECUTIVE SESSION

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MONDAY, OCTOBER 31, 1983

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United States Senate,

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Committee on Finance,

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Washington, D. C.

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The Committee met at 9:45 a.m., in Room 215, Dirksen

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Senate Office Building, Hon. Robert Dole, Chairman, presiding.

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Present: Senators Dole, Bentsen, Roth, Danforth,

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Grassley, Heinz, Armstrong, Durenberger, Moynihan, Packwood,

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Wailop, Chafee, Symms, Baucus, and Boren.

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The Chairman. I wonder if I might first explain what we

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hope we can do.

16

Let me say, first of all, to the Committee members we

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have two deadlines. We have a midnight deadline on reporting

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to the Budget Committee in response to the reconciliation

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process, the budget process, and I understand if we do not

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meet that deadline, there will be objection from at least one

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or two members of this Committee, and maybe one or two other

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Senators to extending that deadline.

23

We have also on the Senate floor the debt ceiling which

24

has become a farce, I guess, with every possible non-germane

25

amendment that anybody can think of that has been offered.

1 There will be Grenada amendments, there will be abortion amend-
2 ments, there will be nuclear freeze amendments, and other
3 amendments on that package. And I am again told, and I will
4 let Mr. Chapoton reiterate it, that if we do not do something,
5 we create an expenditure over the years of \$250 million!

6 So what we hope to do is take those things where we can
7 find agreement on the spending side and the revenue side,
8 report that package to the Budget Committee. Therefore we
9 will comply at least in spirit with the budget resolution,
10 because I think we need about three or four or five days in
11 this Committee to hammer some of the proposals that members
12 may wish to offer, some of the unfinished business, and as
13 far as I am concerned, something on deficit reduction. But I
14 think the package we have before us, maybe with some suggested
15 changes, is not that controversial. We still have some areas
16 to deal with in public property leasing. Insurance is not on
17 the agenda today because there are some negotiations going on
18 in that area that we hope we might resolve. I know there will
19 be other things that members would like us to address.

20 There are some transition rules from the leasing area.
21 I asked the staff, we had a meeting yesterday, to list all
22 the transition rules and see if we could get some standard
23 that would treat everybody fairly.

24 So if there are any questions on the way we are proceed-
25 ing, I must say--I do not have any other option because there

1 has been some objection to us meeting while the Senate is in
2 session. But even if there were not any objection, I am
3 required to be on the floor. So I guess we have between now
4 and midnight to do a couple of things.

5 Senator Bentsen. Mr. Chairman, I would have objected
6 frankly because there were some items that were on the agenda
7 previously that are not on the agenda now, and I understand it
8 would require two-thirds to put them on the agenda. I am
9 sympathetic to the Chairman's plight, but he has added the
10 point that I think puts me in the position of going along,
11 when I understand we will work this week on the Committee
12 amendments and give us an opportunity to bring up these items
13 that deeply concern us, and that would then be offered on the
14 floor when this reconciliation measure is brought to the
15 floor. Of course, you have the problem on the House side of
16 trying to get a rule that the Chairman of the House Ways and
17 Means Committee can find himself in agreement on.

18 With that proviso, that we will have an opportunity to
19 bring up some things we think are important in the Committee
20 amendment, and certainly the insurance tax legislation is one
21 of those items because that is in the measure on the House
22 side, and I want us to go with some instruction from the
23 Senate as to what we do in that regard.

24 I think you have another point in that the House has
25 worked long and hard on this tax measure and have quite a

1 bit invested in it. It is very unusual for us to get into a
2 bargaining position with the Ways and Means Committee on the
3 House side where we have been having as much at stake for
4 bargaining as we see in this instant, and I do not want to
5 see us leave that kind of bargaining position.

6 The Chairman. Let me assure the Senator from Texas and
7 other Senators that I have discussed this procedure with the
8 Chairman of the Budget Committee, and also less extensively--
9 I have notified Senator Chiles of what we hope to do. I just
10 discussed it again this morning with Senator Baker. I indi-
11 cated to him we will have a Committee amendment, or however
12 we want to work it out, because there are probably 100 items
13 that we are not touching on that members have an interest in,
14 and some would like to add some things to what we would do.
15 Others would like to reduce the spending more.

16 Senator Roth?

17 Senator Roth. I would like to raise a question or two
18 with respect to the parliamentary situation.

19 I understand what you are saying, we are proposing an
20 amendment to the reconciliation today.

21 The Chairman. Yes, the budget resolution.

22 Senator Roth. I guess my question is a constitutional
23 one.

24 Can we act in this Committee on a tax measure when the
25 House has not passed over to us a bill on taxes and still

1 comply with the Constitution?

2 The Chairman. All we are doing in this--if we were act-
3 ing on it on the Senate floor, that question was raised in '82
4 on TEFRA, but all we are doing is reporting to the Budget
5 Committee. I am told, at least--I am not assured, but I am
6 advised by the Chairman of the Ways and Means Committee they
7 hope to get a rule and go to the floor this week. So it is
8 my guess, before we take any action, they will have acted.

9 Senator Roth. I still think technically we do not ful-
10 fill the requirement.

11 The Chairman. I guess they did not extend their report-
12 ing deadline, the House.

13 Mr. DeArment. No, Mr. Chairman, they do not have--with
14 the Rules Committee protection, the procedural benefits of
15 reconciliation are less significant.

16 Senator Roth. Does anyone know what exactly the expira-
17 tion date means exactly with respect to amendments offered by
18 the Committee on the Senate side? Can we offer an amendment
19 after midnight tonight?

20 The Chairman. We can do it through a motion to recommit
21 when the reconciliation is on the floor.

22 Senator Armstrong. May I speak to that point?

23 I have discussed this matter with the Parliamentarian.
24 I did not know Senator Roth was thinking about it also. I
25 thought it would be important for the Committee to understand

1 what the parliamentary situation is.

2 I understand that any action taken by the Finance Commit-
3 tee today, subject to what other limitations there may be,
4 as suggested by Senator Roth, do in fact enjoy the protection
5 and the status of the reconciliation bill if we wish them to
6 do so, but that some action taken subsequent to midnight
7 tonight, even though it may be a Committee amendment, would
8 not necessarily be a reconciliation matter--in fact, would
9 not be.

10 Let us take a hypothetical case. Let us suppose we fail
11 to take action today on a particular kind of proposal, and
12 then tomorrow or next week, or some other time, the Committee
13 recommended an amendment to the pending reconciliation bill
14 which has come over from the House, which, as you know, deals
15 only with the spending side, and has been held--it was not
16 held at the desk. It was put directly on the calendar. I am
17 told by the Parliamentarian that that would not qualify any
18 amendment from the Finance Committee as reconciliation amend-
19 ment, and I point this out, and if there are any doubts about
20 it, we ought to get that nailed down, because many of us are
21 desirous of meeting a reconciliation deadline in order to
22 preserve the integrity of the process. But at the same time,
23 we would be very much concerned about the possibility of
24 unforeseen amendments being subsequently added.

25 For example, we could put through a modest package, which

1 I understand Attachment A and Attachment B to be, sort of a
2 modest package. I have not looked at them carefully. And
3 then subsequently coming along with the proposal to delay the
4 third year, to change indexing or raise \$100 billion. That
5 would not qualify, as I understand it, as a reconciliation
6 measure, even if reported by the Finance Committee, if it was
7 sought to be added to the bill as it is presently over from
8 the House.

9 In the interest of full disclosure, it is my understand-
10 ing that if subsequently the House were to send a tax measure
11 over, and if that measure were sent to the Finance Committee,
12 not held on the calendar, but sent to the Finance Committee,
13 then the Finance Committee could recommend amendments which
14 would be considered per se germane because they came from the
15 Finance Committee with respect to a bill which had been
16 referred to the Finance Committee.

17 I just want to nail those procedural points down because
18 while a controversy might not arise, but if it does, we ought
19 to have a common understanding of what the ground rules are,
20 and I have tried to explain what the Parliamentarian told me
21 this morning.

22 The Chairman. Let me say we anticipated there would be
23 some question on this. I know Mr. DeArment, the Staff
24 Director, spent many hours with Bob Dove, the Parliamentarian.
25 If Rod has a different view from the Parliamentarian, we can

1 meet the requirements and still have the protection of the
2 reconciliation process, maybe not with a Committee amendment
3 but with a motion to recommit.

4 Is that correct?

5 Mr. DeArment. That is my understanding.

6 Senator Armstrong. I discussed that matter also with the
7 Parliamentarian, and it is my understanding from that conver-
8 sation that a motion to recommit a bill to the Senate Finance
9 Committee with instructions would be in order, but only if it
10 were sufficient to meet the reconciliation instruction, in
11 other words, \$73 billion. I discussed that point with him
12 specifically. If, for example, a 50 billion recommit motion
13 were offered, that would not be in order, according to what
14 I was told this morning. In other words, 73 billion--I did
15 not ask him if 83 billion would be in order, but he made the
16 point that the only motion of that type which would be in
17 order under reconciliation would be to rerefer with instruc-
18 tions to meet the target in the reconciliation instruction,
19 and that in this case is 73 billion, as I understand it.

20 Mr. DeArment. Mr. Chairman, there is one additional
21 point. This Committee in TEFRA, which was a reconciliation
22 bill, reported out a Committee amendment, and it was accepted
23 on the Senate floor, and ultimately was accorded the protec-
24 tion of reconciliation, while we were on the floor.

25 The Chairman. In fact, we drafted one on the floor.

1 Mr. DeArment. That was the restaurant meals amendment.

2 Senator Moynihan. Could I ask a question?

3 The Chairman. I appreciate Senator Armstrong raising the
4 question.

5 Senator Armstrong. The only reason I want to nail it
6 down--

7 The Chairman. I am not sure we can nail it down.

8 Senator Armstrong. I hope we can. And I say this par-
9 ticularly to my friends on the other side, but it applies to
10 all of us, that this reconciliation is a very potentially
11 powerful process. When you get a bill on the floor which can-
12 not be filibustered and which cannot be gotten off the floor
13 and which nonetheless is subject to unforeseen amendment, then
14 we have really got a very--potentially a very risky situation,
15 and I just want to clarify that my understanding of how you
16 get an amendment down there, because otherwise we might end
17 up with a situation where unexpectedly the Committee might
18 recommend tuition tax credit or recommend deferring indexing,
19 or the third year of the tax cut, or almost anything. And, in
20 fact, technically if this Committee were to recommend an
21 amendment on abortion, if it did it in the proper sequence,
22 it would be per se germane because it came from this Committee.
23 So I want to say we ought to exercise great discretion but
24 we ought to clear up the ground rules because otherwise you
25 would get an unforeseen amendment and no way to stop the bill.

1 if it is deemed a reconciliation bill.

2 The Chairman. Rod, while we are going through the
3 spending, maybe you can doublecheck that with Bob Dove.

4 Mr. DeArment. One of the points the Parliamentarian made
5 as to his analysis is whether a particular piece of legisla-
6 tion proposed meets the protections of reconciliation was done
7 on a predominance test, and it is difficult to precisely say
8 what is predominantly meeting the instruction, what is not.
9 There are not any mechanical tests that the Parliamentarian
10 said he would apply. So there is necessarily some impre-
11 cision in that determination.

12 The Chairman. Let me again suggest that you either bring
13 him over here or meet with him or contact him. We will have
14 a couple of hours before we are ready to take any final
15 action. I think Senator Armstrong is correct. It is my
16 understanding we can protect the members of the Committee,
17 obviously I am not going to do anything that would jeopardize
18 any member.

19 Senator Moynihan. This is clearly important. Would it
20 be possible to have Mr. DeArment report to us in writing so
21 we can have some understanding of what has--what are the
22 rules, what we think them to be? Could you do that?

23 The Chairman. If they can do it between now and 1 o'clock.

24 Let us just have the Parliamentarian contact him.

25 Senator Armstrong. Why not have him come over and talk

1 to us?

2 The Chairman. We can do that if necessary. I do not
3 want to frustrate the process. I want to make it work.

4 Sheila, can we start on the--I think the first item under
5 the spending measures?

6 Sheila, do we have all of the material we need, adequate
7 material, all in this one packet here?

8 Ms. Burke. Yes, Mr. Chairman. There are actually three
9 items before the members of the Committee that we will be
10 referring to. The first is a summary of the suggested savings
11 package. Under each item you will note that there is a page
12 reference so that the members can follow the discussion in
13 those particular documents. There are two documents which
14 are referred to in this summary as you follow it. The first
15 is the handout which are the materials attached to the agenda
16 identified as additional health provisions, noted as Attach-
17 ment A, that the members have in front of them. The second
18 is the blue book which is a copy of the original Committee
19 document. So that in referencing each of the items, the page
20 references are noted.

21 The Chairman. Is there anything in this package that has
22 not been gone over before by the Committee?

23 Ms. Burke. The only item on the budgetary side that is
24 of--that has not been discussed in detail are the provisions
25 dealing with a limitation on certain foot care services which

1 have been detailed in the services and a proposal that Senator
2 Chafee intended for recertification of intermediate care
3 patients. Both of those are items we have discussed very
4 briefly but not in detail. Everything else has been reviewed
5 in detail.

6 The Chairman. The foot care service, has that been
7 brought to us by the Administration?

8 Ms. Burke. That is right. The proposal included by the
9 House is an amendment to reduce that possibility and limits
10 the frequency with which a certain service can be provided.

11 The Chairman. Any members have any questions on any of
12 the--we have gone over these two items, with the exception of
13 foot care and the amendment by Senator Chafee. What would
14 that do?

15 Ms. Burke. Reduce the required frequency for patients
16 located in nursing homes. It is currently mandated they be
17 certified every 60 days. This reduces that to recognize that
18 patients there for a longer period of time need less review.

19 Senator Roth. I would like to ask a more general ques-
20 tion. Dollar wise, what has happened to the cost of these
21 programs in the last two years?

22 Ms. Burke. The rate of increase in the Medicare program
23 has been in the area of 15 percent on Part B which are the
24 majority of these provisions. Medicaid has increased at a
25 much slower rate, as I recall, 9 percent on an annual basis.

1 Senator Roth. Is that after inflation or before infla-
2 tion is accounted for?

3 Ms. Burke. I think it just is absolute dollars.

4 Senator Roth. What has been the cost of this program,
5 both these programs for the last two years, and what was pro-
6 jected for the following year?

7 Ms. Burke. The Medicare program is spending approxi-
8 mately 58 billion. Medicaid approximately \$20 billion of
9 Federal dollars. There is an additional \$17 or \$18 billion
10 being extended by the States.

11 Senator Roth. How much do you project the increase
12 being next year?

13 Ms. Burke. I think the current projection is 15 percent.

14 Senator Roth. This would slow down the increased cost
15 how much? How much would these amendments slow down the
16 increased cost of each of these programs?

(2) 17 Ms. Burke. The rate of growth is not projected to be
18 altered substantially by these proposals.

19 Senator Roth. If I understand what you are saying,
20 basically very little is being done in reducing spending in
21 these areas.

22 Ms. Burke. The Medicare program will continue to see an
23 increase of about 15 percent, that is correct, Senator.

24 The Chairman. In addition, I might add, Senator Roth
25 knows we have at least moved to constrain the cost with

1 respect to Medicare with respect to prospective payments to
2 the hospital. That is the one long-term thing we have done.
3 If that works, there are some that would shift that to
4 physicians. But Senator Roth is correct, we have not bitten
5 the bullet in this area. It has not exploded anyway.

6 Senator Grassley. Mr. Chairman, I would like to have a
7 reminder of the things on the list that actually spend more
8 as opposed to saving and the rationale for each.

9 The Chairman. There are two items, are there not?

10 Ms. Burke. There are three items, not including the
11 provision having to do with maternal and child health care.
12 That is a fourth. The first is delay of implementation in
13 ceiling limits for skilled nursing facilities. This is a
14 provision the Committee agreed to previously. There was an
15 attempt sometime ago to try to remove the single payment
16 level for skilled nurses, irrespective of whether they are
17 located in free standing or in a hospital. Because of the
18 work being done on nursing homes and the potential for
19 prospective payment, it was felt wise to delay the implemen-
20 tation of this provision until a reimbursement decision could
21 finally be made. That is the basis of that spending proposal.

22 The second item is identified as Item I, and that was in
23 the list of things suggested by the staff which they may wish
24 to consider, and that is an increase in limits for Puerto
25 Rico and the territories for their Medicare matching rates.

1 Under present law, Medicare matching rates for the American
2 territories, Puerto Rico, Guam, American Samoa, are fixed at
3 50 percent and do not, as you find in the States, match on a
4 spend basis. They were in the--they have been increased only
5 twice and this was a suggested increase. The request of
6 Puerto Rico, who has continued in their view to overspend on
7 the Medicaid program versus what the Federal Government spends
8 on that program.

9 The third item of additional spending is noted as Item K
10 on your list and that is also a provision previously agreed
11 to, and that would require mandatory Medicare coverage of
12 first time pregnant women who would become eligible had they
13 had a child. There is currently the ability of the States to
14 delay for a period of time the eligibility for those individ-
15 uals. This would cover them from the point at which their
16 pregnancy becomes medically established.

17 Those are the three additional proposals in this area.

18 The Chairman. I understand that Senator Bradley is not
19 here and he has raised a question with respect to Part B
20 premium, that he would be satisfied if there were for one
21 year only.

22 Senator Baucus. Mr. Chairman, I was going to raise the
23 same point. I thought it might be helpful for one year. It
24 only affects fiscal '86 anyway.

25 The Chairman. Only if there was some agreement on that,

1 that would satisfy his concern even though he cannot be here.
2 Is that right?

3 Senator Baucus. That is right. We have spoken with his
4 office and he has given us that same view. It is my view
5 too that we could hold it for one year, take the same fiscal
6 effect.

7 The Chairman. Are there other questions on the spending
8 package? If not, we can vote on that.

9 Senator Bentsen. Yes. I would like to ask a question.

10 On the maternal and child health care program, that is
11 cut from what has been spent in that particular program,
12 something in excess of \$20 million, I believe. Not that has
13 been--the MCH programs have been part of the ongoing Federal
14 program to improve health care for mothers and young children
15 for more than 40 years. There is a point at which you will
16 see the State makeup for this, but the States have not been
17 able to do that because of some of the economic problems in
18 those particular areas. I have a concern about the cutting
19 back on that particular program, and I know Senator Duren-
20 berger has been very interested in that particular work, and
21 the two of us joined together in trying to get a block
22 program for that specific utilization.

23 I would like to have the staff address that point, if it
24 will.

25 Ms. Burke. The first Concurrent Budget Resolution

1 identified specifically the area of the maternal and child
2 health additional spending of this amount. This would increase
3 the--would increase the ceiling on that block grant by \$79
4 million in 1984, 80 million in '85--

5 Senator Bentsen. That still results in a cut, does it
6 not?

7 Ms. Burke. That does bring it back up to full levels for
8 indexing, that is correct.

9 Senator Bentsen. How much does it miss it by?

10 Ms. Burke. I will have to ask.

11 The Chairman. That is not a cut from last year.

12 Ms. Burke. No. It is an increase from the prior year.
13 I believe your question was what would it have been had we
14 not folded it into the block grant. But this is a permanent
15 increase.

16 The Chairman. We have also had to decrease other funds.
17 If we had to go back and refund every program, we would have
18 a bigger deficit.

19 Senator Bentsen. It is at what level?

20 Ms. Burke. \$370 million is the permanent block grant
21 ceiling. There was an additional appropriated fund, but we
22 have never increased the actual ceiling for that amount. There
23 were appropriated funds but the Committee never increased the
24 authorization level on a permanent basis.

25 Senator Bentsen. I may at some point make a move on that,

1 a motion on that, whether here or on the floor but, for the
2 moment, I will stand aside.

3 The Chairman. Senator Grassley.

4 Senator Grassley. Are there any points, and I suppose
5 they would have to fall into the category of the three we
6 just talked about, where there is actually an increase in the
7 expenditures? Are any of those three decisions--or is there
8 anything else in here that we have not discussed that in
9 effect reinstitutes spending that was reformed downward in '81
10 or '82? In other words, are there any decisions to save
11 money that were made in '81 or '82 that we are undoing in this
12 package?

13 Ms. Burke. The only item, Senator, is the delay in the
14 single limit for skilled nursing facilities. None of the
15 other items would otherwise go backwards in the Medicare-
16 Medicaid programs.

17 In addition to the items which are spending items, the
18 Committee also had before them a number of non-budgetary items,
19 many of them at the Administration level, to increase their
20 administrative capacity, and those have been details. One in
21 particular is the hospital provision which is non-budgetary,
22 but many of those are Administration requests for additional
23 responsibility on their administrative side.

24 Senator Grassley. The term non-budgetary means no cost?

25 Ms. Burke. That is correct. There is no budget

1 implication.

2 The Chairman. Senator Durenberger, are you satisfied?

3 Senator Durenberger. I am not satisfied but I have been
4 able to follow everything. We are now looking at (a) budgetary
5 items, and (b) non-budgetary items?

6 Ms. Burke. Yes, Senator.

7 Senator Durenberger. We are going to reapprove those.
8 I am all for it.

9 I have one addition which relates to open enrollment on
10 medical plans.

11 The Chairman. We have gone over these matters at least
12 twice in the Committee. What we need to do now is make a
13 decision so we can again satisfy the budget resolution. We
14 are actually reducing spending more than the Budget Committee
15 --or the budget resolution requires, but I think, as Senator
16 Roth pointed out, we cannot take too much pride in that
17 because we are not doing very much.

18 Senator Grassley. These are the same budget items that
19 we voted out to finance unemployment health insurance?

20 The Chairman. There are some additions.

21 Ms. Burke. Items A and B.

22 Senator Grassley. If we vote these out to satisfy
23 reconciliation, what are the plans for financing health
24 insurance for the unemployed?

25 The Chairman. The Administration opposed reducing this

1 to finance the unemployed. They suggest it be done with a
2 revenue measure. As I understand, we have gone to income
3 averaging as a way of modifying that, the way to pay for
4 health care for the unemployed. We can use these budget
5 reductions in the budget resolution.

6 Is there any more discussion on these?

7 If not, we can approve the package.

8 Senator Moynihan. I would simply like to note that the
9 increases in Medicaid payments to Puerto Rico and other ter-
10 ritories are certainly welcome. They are not at the levels
11 the House has proposed, and perhaps we can come out somewhere
12 in between because there is really an inequity.

13 The Chairman. I share that view, and that is why they
14 were included.

15 Is there any objection to approving the spending?

16 Senator Heinz. Yes, Mr. Chairman.

17 We are talking about approving the whole list, is that
18 right?

19 The Chairman. Yes. We have already approved most of it
20 once.

21 Senator Heinz. I have a problem with the indexing of
22 the Part B deductible, and I think there is a better way to
23 save money than the indexing of the Part B deductible.

24 The problem I have with the notion of indexing the Part
25 B deductible is that it is simply a means of shifting

1 additional costs to Medicare beneficiaries, and while I do
2 not object to that notion, if it makes the consumer a more
3 prudent user of health care services, I do not know that
4 there has been any case made in that regard. Absent any
5 case, it would seem to be preferable that when we look for
6 savings in the Medicare program, we first look to see if
7 Medicare is wasting money, and I would submit that Medicare
8 is wasting money and there are some places we can get it
9 where Medicare is overpaying. And I have specifically in
10 mind the area of clinical laboratories.

11 We do have, under the Chairman's agenda, a first step in
12 bringing clinical lab payments under control, and I commend
13 the Chairman and his staff for doing that. But I have two
14 problems with what we have done through omission, not commis-
15 sion. We have omitted hospital outpatient laboratory
16 services. We cover physician clinical laboratory services.
17 We cover services--this is to outpatients. We cover free-
18 standing clinical laboratory services to outpatients. That
19 is fine.

20 But it would seem to me to be a major mistake to fail to
21 cover hospital services as well for two reasons. One, there
22 is a lot of money involved. Two, failure to cover them will
23 give hospitals an unfair advantage over clinical laboratories
24 and doctors' offices. They will be able to charge more. They
25 will not be subject to the same fee schedule that the Committee

1 bill would establish.

2 The second area--the second question I would have would
3 be why we set the rate at 65 percent of the prevailing charges
4 rather than 60 percent. We have a GAO study which said that
5 60 percent was really where it ought to be established. The
6 difference in these two--whether the Committee would adopt
7 these changes, going from 60 to 65, and including hospital
8 laboratory services or outpatient, would be a difference of
9 \$600 million, which would more than offset the need to index
10 the Part B deductible and, frankly, Mr. Chairman, I do not
11 understand why we would be reluctant to make sure the provisos
12 were not getting back before we squeeze the Medicare bene-
13 ficiaries. So I would like to propose that as an amendment.

14 The Chairman. Let me ask Senator Durenberger to respond.
15 I would say in a general way there are three things we have
16 to do if we are going to put Medicare back in the bottle, and
17 that addresses the physician side and hospital side and some-
18 thing on cost sharing for the patient. We cannot keep
19 excluding the patient and expect to satisfy the problem.

20 But as far as dollars are concerned, I think the Senator
21 is correct, I think yours would add money, but I would like
22 to have Senator Durenberger, the Chairman of the Subcommittee,
23 address the amendment.

24 Senator Durenberger. The first issue is the deductible
25 and the second is the reforms. Let me separate them.

1 I do not think we argue with the need for reform. The
2 question is, and I will let Sheila speak to the specific fund
3 --the question is simply how much do we know about exactly
4 what we are doing so we can go about doing it the right way?
5 While we have not included the hospital labs, we recognize
6 we do not want the hospital labs to have an unfair advantage
7 over the other labs, and we tried to put in language direct-
8 ing the Director of HCVA to deal with that. But the issue is
9 the deductible and whether or not the people that participate
10 in the Part B, which is basically an insurance program, not
11 an entitlement program, ought to bear some appropriate share
12 of the cost of utilizing services, and we come to this issue
13 every single year. We did it in TEFRA last year and then
14 lost it on the floor.

15 But the question is whether those utilized services
16 ought to pay some proportion of the cost of those services
17 through a deductible. I do not want to go through all the
18 statistics about the fact that the deductible or Part B has
19 increased only twice since 1965 and only by a total of 50
20 percent by 1967, even though there has been an increase in
21 the cost of the program, like 1,800 percent. I want to come
22 back to the point that we do have a deductible in Part A,
23 and that increases with the cost of services.

24 I think right now the deductible on hospitalization went
25 up from 302 to 356, or something like that, and I cannot see

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a good reason not to have the people on the insurance side, the medical side of the program take a small, very small increase in their portion of the overall cost of running the program. I guess it is an estimated \$5 a year. The deductible would go from 75 to 80 to 85 to 90. That is a 7 percent increase, a 6 percent increase and so on, while the costs are increasing very much.

There are really two different issues and I would argue, regardless of what we do on labs or the other reforms, that we still ought to do the deductible.

End 2
dm fls.

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1 Senator Heinz. I am, in this case, going to have to
2 disagree with my good friend from Minnesota because what we
3 are really talking about is a deductible that right now is
4 significant. It is around \$80. Indexing, it is going to
5 add \$5 or \$10 a year to it. We do not know exactly what. It
6 is a significant enough amount of money so that to the extent
7 we believe that deductibility will have an impact on consumer
8 behavior, that one would have to build a case, which we
9 have not heard anyone build yet, and which Senator Durenberger
10 did not per se try to build, that we need to have a higher
11 deductible in order to make consumers more prudent users.
12 He has argued that Medicare needs money. I agree with
13 Chairman Dole, we have to do everything we can between 1988
14 -- before Medicare becomes insolvent, to solve the problem.
15 But the issue is how are we going to raise this \$500 to \$600
16 million and with respect to my substitute for the indexing
17 of the Part B deductible, what we are talking about are
18 laboratory services that the consumer has very little
19 control over when they are ordered by a hospital. They are
20 ordered by the hospital and we pay. When they are ordered
21 at least through or by a physician, the consumer of those
22 services at least has some kind of stake in them. He has a
23 Part B coinsurance that he has to be concerned about. But
24 where the hospital is concerned, that is not at all--that
25 is not--he is going to have that kind of check and balance

dm2 1 that he could have with a physician involved.

2 I would suggest that if we are looking for a measure
3 that makes the system a little more rational, that it is
4 not good policy simply to increase what is already a
5 significant deductible without first insuring that where
6 hospital laboratory services are involved, that they be
7 subject to the same kinds of pressures, incentives, that we
8 are willing to subject independent labs and physicians
9 to.

10 Senator Baucus. Mr. Chairman, frankly, there is another
11 position. We all know we need to address the Medicare
12 deficit problem, which is horrendous, to say the least. We
13 all know the main reasons why Medicare trust fund is in
14 trouble is because health care plus generally in our country
15 are going up at a very rapid rate and Medicare is,
16 unfortunately, a part of that. That is, the Medicare trust
17 fund deficits are increasing because health care costs are
18 increasing.

19 So I suggest we freeze or sunset this deductible during
20 these three years so that we are not locked in a position
21 of continually indexing this deductible in future years.
22 That would not affect the reconciliation numbers, but at
23 least it recognizes that the major part of the problem is
24 rising health care costs and not because beneficiaries are
25 the cause. Maybe it is a compromise to keep the indexing

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but sunset the indexing at the end of these three years.

Senator Heinz. Could we just vote? I probably will lose.

The Chairman. Do you want a separate vote on your amendment?

Senator Heinz. I am proposing it as one amendment. I suppose anyone who wants to can divide it. What I am proposing is to strike a part of what you have got and instead add something.

The Chairman. Without the Baucus proposal?

Senator Heinz. I have no problem with that. We are only looking three years down the road. What he will say is at the end of the three years, freeze it.

The Chairman. Let's accept his proposal.

Senator Heinz. Let's.

The Chairman. What we we voting on?

Senator Heinz. We are voting on the Heinz amendment, which is this: It would knock out the three-year indexing of the Part B deductible and insert instead a covered hospital lab services under Part B and would lower the reimbursement from 65 to 60 percent, which is where GAO said it should be.

The Chairman. Sheila, what impact--it just seems it knocked out what we just agreed to.

Ms. Burke. Senator Heinz would like to replace the

dm 4 1 Part B deductible proposal with a modification of the lab
2 proposal by reducing the levels of freeze to 60 percent of
3 prevailings and including hospital based.

4 Senator Armstrong. Is that item E? Is Senator Heinz'
5 proposal modifying E and F?

6 Ms. Burke. Yes. It affects Amendment E and removes F
7 entirely.

8 Senator Armstrong. Could you tell us the amount of the
9 increased savings in Item E?

10 Ms. Burke. Approximately \$600 million would be added
11 to the part -- the lab services which would make it about
12 \$925 million.

13 Senator Armstrong. Would you state your proposal again,
14 to take it from 65 percent to 60 percent?

15 Senator Heinz. Yes.

16 Senator Armstrong. That is consistent with what the GAO
17 recommended?

18 Senator Heinz. Yes.

19 Senator Armstrong. What is the other part?

20 Senator Heinz. In the universe of providers you can
21 cover, two of these -- the spread sheet the Committee proposal
22 has, namely, physician-provided lab services or contract lab
23 services to independently free-standing laboratories, and
24 the third, which I propose, is hospitals.

25 Senator Armstrong. So you cover everyone and reduce

dm 5 1 everybody from 65 to 60?

2 Senator Heinz. Yes.

3 Senator Armstrong. I would like to see the motion
4 divided, because I would like to vote for the first part,
5 although reviewing the Blue Book write up on Item F, I tend
6 to be opposed to the second part. I would like to pick up
7 that \$600 million.

8 Senator Baucus. I still do not understand the second
9 part.

10 Senator Heinz. Which second part?

11 Senator Baucus. On the deductible.

12 Senator Heinz. I just want to knock out Item F on the
13 summary. It saves twice as much money.

14 Senator Baucus. Other than changing the 65 to 60, what
15 is the other part?

16 Senator Heinz. To cover hospital outpatient clinical
17 laboratory services. They are not covered under Proposal
18 A.

19 Senator Baucus. That second part raises how much?

20 Senator Heinz. I do not have a breakdown between the
21 two.

22 Senator Durenberger. Let me make a point. We are not
23 just talking dollars. It is most comfortable in a
24 reconciliation to say we are going to take dollars from here
25 and put them there. We are dealing with important diagnostic

dm 6 1 services on which judgments are made about people's health.
2 I think if there is a difference between 65 and 60, or between
3 my judgment or Sheila's, or somebody else's in the GAO, it
4 is of concern, as we go from 100 percent to some lower figure,
5 to save money, that we do not lose the incentive for quality
6 diagnostic services, and that, right now, that is the
7 important distinction. I don't think anybody can sit here
8 and say 60, 65, 70. Our concern is, as we started to change
9 the way we reimburse for labs, that we do not want to lose
10 the quality of services in the process, and it may look
11 like big bucks, but my fear, and the reason I recommend
12 against John's motion, is I do not want to lose the incentive
13 for quality diagnostic services.

14 The Chairman. Would you touch on the indexing thing?
15 It is my understanding with the Baucus sunseting, there is
16 no disagreement.

17 Now I understand there is.

18 Senator Heinz. So there is no misunderstanding, we have
19 here three years worth of, I guess, additional revenues that
20 we raise under Item F, totally \$345 million. As I under-
21 stand what Senator Baucus proposed to do, he says we will
22 waive \$345 million, but beginning fiscal '87, we are just
23 going to stop the indexing. That is fine, that is all
24 right. But it does not answer my concern of what we are
25 doing in the next three years.

dm 7 1 The Chairman. You would not even index it for the next
2 three years?

3 Senator Heinz. That is right.

4 Let me ask the Administration their view on clinical
5 labs. It is my understanding that they favor covering
6 hospital outpatient clinical laboratory services. Is that
7 right?

8 Ms. Kelly. The Department is now in the process of
9 making recommendations generally on lab payment. We have
10 not made final recommendations, but we do at the present time
11 include outpatient services. The Department does include
12 the inclusion of outpatient services.

13 Senator Heinz. That is what we seek to do, include
14 outpatient services.

15 With respect to the 65 percent of prevailing charges
16 as opposed to 60 percent, it is my understanding that the
17 Administration is also recommending 60 percent rather than
18 65 percent.

19 Ms. Kelly. We do not currently have a position on what
20 percentage of prevailing we would choose to pay at.

21 Senator Heinz. How would you feel about 60 percent?
22 Is it thought that that would be low or not?

23 Ms. Kelly. I understand that the industry is willing
24 to take about 65 percent of the prevailing, and to the extent
25 that the industry feels it can live with 65, the Administration

dm 8 1 could probably live with 60 percent of prevailing.

2 The Chairman. Let us see if we can vote on the Heinz
3 first amendment, which would in effect knock out the
4 indexing which would reduce the savings by \$345 million.

5 Senator Heinz. Would you mind awfully if we voted on
6 the clinical labs first because that is the order?

7 The Chairman. I do not care.

8 Do you want a record vote?

9 Senator Heinz. Yes.

10 The Chairman. I think they are distinct issues. We
11 cannot even face up to indexing Medicare. Then we should not
12 talk about the problem at all. It is only about a \$500
13 billion problem, and we cannot even face up to a \$345 million
14 contribution. Then we do not have to worry about the
15 problem.

16 Senator Armstrong. I do not want to delay, but having
17 a moment ago asked for division of the question, I am going
18 to change my mind, and I withdraw my request that it be
19 divided, because in the light of what Senator Durenberger
20 says, I am not convinced that the other part is desirable.

21 The Chairman. It is desirable to divide it in any
22 event.

23 Mr. DeArment. Mr. Packwood?

24 Senator Packwood. Pass.

25 Mr. DeArment. Mr. Roth?

dm 9 1 Senator Roth. No.

2 Mr. DeArment. Mr. Danforth?

3 Senator Danforth. No.

4 Mr. DeArment. Mr. Chafée?

5 (No response.)

6 Mr. DeArment. Mr. Heinz?

7 Senator Heinz. Aye.

8 Mr. DeArment. Mr. Wallop?

9 (No response.)

10 Mr. DeArment. Mr. Durenberger?

11 Senator Durenberger. No.

12 Mr. DeArment. Mr. Armstrong?

13 Senator Armstrong. No.

14 Mr. DeArment. Mr. Symms?

15 (No response.)

16 Mr. DeArment. Mr. Grassley?

17 Senator Grassley. No.

18 Mr. DeArment. Mr. Long?

19 (No response.)

20 Mr. DeArment. Mr. Bentsen?

21 Senator Bentsen. No.

22 Mr. DeArment. Mr. Matunaga?

23 (No response.)

24 Mr. DeArment. Mr. Moynihan?

25 Senator Moynihan. No.

dm 10 1

Mr. DeArment. Mr. Baucus?

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Senator Baucus. No.

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Mr. DeArment. Mr. Boren?

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(No response.)

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Mr. DeArment. Mr. Bradley?

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(No response.)

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Mr. DeArment. Mr. Mitchell?

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(No response.)

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Mr. DeArment. Mr. Pryor?

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(No response.)

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Mr. DeArment. Mr. Chairman?

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The Chairman. No.

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Senator Heinz. It was close, Mr. Chairman.

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The Chairman. The vote is 9 nays and 1 yea. The

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amendment is not agreed to.

16

Now the question occurs on whether or not we should

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index Part B premiums or not index Part B premiums. Senator

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Heinz would eliminate that provision.

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Mr. DeArment. Mr. Packwood?

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Senator Packwood. No.

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Mr. DeArment. Mr. Roth?

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Senator Roth. No.

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Mr. DeArment. Mr. Danforth?

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Senator Danforth. No.

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Mr. DeArment. Mr. Chafee?

dm 11 1 Senator Heinz. Aye by proxy.
2 Mr. DeArment. Mr. Heinz?
3 Senator Heinz. Aye.
4 Mr. DeArment. Mr. Wallop?
5 The Chairman. No.
6 Mr. DeArment. Mr. Durenberger?
7 Senator Durenberger. No.
8 Mr. DeArment. Mr. Armstrong?
9 Senator Armstrong. No.
10 Mr. DeArment. Mr. Symms?
11 The Chairman. No.
12 Mr. DeArment. Mr. Grassley?
13 Senator Grassley. No.
14 Mr. DeArment. Mr. Long?
15 (No response.)
16 Mr. DeArment. Mr. Bentsen?
17 Senator Bentsen. No.
18 Mr. DeArment. Mr. Matsunaga?
19 (No response.)
20 Mr. DeArment. Mr. Moynihan.
21 Senator Moynihan. No.
22 Mr. DeArment. Mr. Baucus?
23 Senator Baucus. No.
24 Mr. DeArment. Mr. Boren?
25 (No response.)

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Mr. DeArment. Mr. Bradley?

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Senator Heinz. Aye.

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Mr. DeArment. Mr. Mitchell?

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(No response.)

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Mr. DeArment. Mr. Pryor?

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(No response.)

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Mr. DeArment. Mr. Chairman?

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The Chairman. No.

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We will adopt the Baucus amendment which would sunset

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this in three years. There is no objection to that.

11

The nays are 12. The yeas are 3.

12

I want to raise one other thing. I understand Senator

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Baucus was concerned about psychiatric hospitals. Is there

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any problem with addressing his concern in that area?

15

Ms. Burke. We would suggest that we include a provision

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similar to one included on the House side which would include

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a phaseout for payment to psychiatric hospitals and that is

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agreeable.

19

The Chairman. If we could vote on this health portion.

CJ(4) fls 20

Senator Bentsen. First let me reiterate, as I look

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back at maternal and child health care, and I disagree with

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what I consider to be a cut in the fund amount, the \$105

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million above the authorization level still results in a cut

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from the funded amount, and this particular hike in the

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authorization level it still leaves a cut of about \$126

dm 13 1 million. On this help to crippled children and to babies
2 under three years of age, and those with genetic defects,
3 I do think it is unjustified, but I have watched this last
4 vote and I think I would defer any action until possibly the
5 floor.

6 But I would like to bring up a couple of other points
7 for Sheila and the Committee to consider. I am concerned
8 about the flexible sanctions for noncompliance for in-State
9 renal disease. We have some problems. There has been a
10 substantial improvement in the technology for home health
11 care in that situation. But you have some of these free-
12 standing facilities in areas that are quite remote from
13 major medical centers, and I would like some consideration
14 to be given to those in order that they remain efficient
15 organizations.

16 I will give you one example of one I have been in
17 Texas and spent some time in. Those people would have to
18 go to San Antonio. That is 150 miles away. It is the only
19 free-standing organization.

20 I would urge, through the report, or what have you, that
21 consideration be given to see if we cannot be of some
22 assistance.

23 The Chairman. I mentioned that to Sheila, that can be
24 addressed.

25 Ms. Burke. This refers to Item 18 in the nonbudget item,

dm 14 1 and we would suggest report language.

2 Senator Bentsen. I appreciate that. That is the
3 question of the repeal authority for payments for closing,
4 conversion of underutilized hospitals. I would like some
5 consideration to the circumstances in the area. You run
6 into a problem sometimes in trying to get a registered nurse
7 into an area where you have a two-salaried family and she
8 refuses to go into that area because her husband cannot get
9 a job because of the high unemployment in that area. I
10 do not have a lot of sympathy for these hospitals that have
11 not complied, but I would like for some consideration to be
12 given by the Administration in this particular area where
13 you have exceedingly high unemployment and then very, very
14 difficult time in meeting the requirements with registered
15 nurses.

16 Ms. Burke. Again, we suggest report language.

17 Senator Durenberger. Before we finish, I indicated
18 earlier that I was going to ask to add to the list of non-
19 budgetary items a provision for coordinated open enrollment
20 on the voucher competitive medical plan program that John
21 provided for a year or two ago.

22 The point being, if truly we are going to have
23 competition between various providers, they all ought to
24 come on line annually at the same time, much the same as
25 we do with the Federal employee health program.

lm 15

1 Senator Heinz. I hope Senator Durenberger is much more
2 successful than I was.

3 The Chairman. You do not want a rollcall?

4 Senator Durenberger. No. I just plan to have it
5 accepted.

6 The Chairman. Is there any objection to approving the
7 health section as amended and with report language suggested
8 by Senator Bentsen and this addition, plus the Baucus
9 amendment on indexing, and the Bradley psychiatric hospitals
10 and the one year?

11 Ms. Burke. I might again say that this contains both
12 the spending and nonspending, all those technical issues that
13 were detailed in the handout.

14 The Chairman. Without objection, we will approve that
15 portion.

16 Cindy, do we move over to your jurisdiction on income
17 security?

18 Is there anything in dispute?

19 Ms. Olson. These are all fairly well agreed to by
20 members of the Committee. The first two were agreed to last
21 year in reconciliation and dropped in conference. They have
22 been described previously and are Administration proposals.

23 The last two have no budget impact, but are administra-
24 tive changes that the Health and Human Services Department
25 have sought clarification on.

dm 16 1 The Chairman. Is there any objection to the income
2 security provisions?

3 If not, we will agree to those and move on to SSI.

4 Ms. Olson: The SSI provision is also a technical change
5 to deal with the problem of retroactive payment of benefits
6 and adjustment for windfalls and that is described in the
7 Blue Book on page 52.

8 The Chairman. What does it do?

9 Ms. Olson. Presently, if an individual receives SSI
10 only because the Social Security benefits are delayed, that
11 payment is not adjusted when he does receive his Social
12 Security, so this would clarify how you adjust or offset
13 when double payments occur that would be greater than the
14 individual would have gotten had the payments been made on
15 time.

16 The Chairman. That has been discussed at the staff
17 level.

18 Ms. Olson. Yes, it has.

19 The Chairman. Any objection to that provision?

20 Ms. Olson. I have heard of no objections.

21 The Chairman. If not, we can agree to that.

22 CSE?

23 Ms. Olson. That is the CBO estimate of changes to the
24 AFDC.

25 The Chairman. That is Senator Bentsen's amendment?

dm 17 1

Ms. Olson. It is just an offset that must be listed.

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The Chairman. There is no objection to that and the maternal and child health care. That takes care of this spending side.

5

Now we will move to the revenue side.

6

Senator Baucus. Senator Bradley wants to be recorded favoring the sunset provision on Part B.

7

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Senator Heinz. There are two amendments I have. One is a technical amendment is it not, Sheila?

9

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Ms. Burke. Very briefly, the amendment would allow for a modification of the way we pay for teaching physicians located in urban areas, in large institutions, that serve a substantially low-income population. There was a concern raised by Senator Heinz, a problem that came up in Pennsylvania, which is technical in nature, and the Administration has agreed, and we think that is fine.

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The Chairman. Is that satisfactory?

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Senator Heinz. Yes, Mr. Chairman.

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There is one other issue that Senator Durenberger and I have an interest in and that is pacemaker registration.

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We both agree there ought to be a pacemaker registry. We

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have a disagreement on where it is kept. We both believe

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FDA should run it. I would like FDA in fact to keep it on

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some kind of ongoing basis, collect statistics and have them available.

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1m 18

1 I think Senator Durenberger would like the FDA simply
2 to insure some kind of quality control function by the
3 companies themselves.

4 Do I misstate our modest disagreement?

5 Senator Durenberger. I guess the difference of opinion
6 is whether or not we ought to establish a brand new registry
7 or put requirements on the manufacturers, on hospitals and
8 all of the other people that deal in the system for reporting
9 information to the FDA and then having the FDA make periodic
10 reports on the issues that concern us which are performance
11 of equipment, which is an FDA responsibility, and the
12 issue that is related thereto, to cost. I do not think that
13 we are far apart. It is sort of a philosophy of how you
14 approach it.

15 Senator Heinz. What I would suggest is this, to move
16 the Committee along, have a fairly strong point of view on
17 this, but I do not think we need to put the Committee through
18 a vote on this. Let us adopt the pacemaker registry, do
19 it. We will do it Senator Durenberger's way, and I will raise
20 the issue of how we do it on the Senate floor.

21 Ms. Burke. Should I also assume that in fact includes
22 the direction of the Senate to study reimbursement for
23 physicians?

24 Senator Heinz. I would not oppose that for a million
25 years. Good point.

im 19

1 The Chairman. In other words, you will work that out.

2 Now we can move on from there to get the tax experts
3 up here.

4 Senator Baucus. I wonder if we would be coming back to
5 help because Senator Boren has a few noncontroversial matters
6 that he would like to raise and he is on his way over.

7 The Chairman. Why doesn't he talk with Sheila while
8 we are discussing taxes?

9 Is there anybody from Treasury?

10 What I would like to do in this package, as I understand,
11 there are some of these revenue measures that are not
12 controversial. If we could go down the list -- I met with
13 the staff yesterday at some length and I think, based on
14 their visits, rather extensive visits with other staff
15 representing Senators on the Committee, there are some I
16 think that may be--Rich, Mr. Belas, advised me there
17 might not be objection to. I wonder if you could -- what
18 I suggest to Mr. Belas if you think, of course, the
19 Senators will make the judgment, but at the staff level you
20 pick up no strong objection or no objection, we might be
21 able to adopt some of those. I know we will spend some time
22 on leasing. I discussed that yesterday with Mr. Chapoton.
23 The tax compliance measures, modification of income
24 averaging--there may be questions in other areas. But at
25 least if we could run down some of these and adopt some of

dm 20 1 the noncontroversial ones.

2 Mr. Belas. There was some question on the staff
3 level on the simplification of the income tax credit, the
4 first item on the list.

5 The second item was to provide for estimated payments
6 of the alternative minimum tax for individuals. There are
7 provisions for estimated tax payments to be made--to advance
8 pay during the year periodically, taxes which are not
9 otherwise collected through withholding. That is the
10 estimated tax payment provision does not include the
11 alternative minimum tax and the proposal would be to include
12 the alternative minimum tax.

13 The Chairman. Is there any objection to that?

14 Senator Armstrong.

15 How much money are we talking about? Secondly, there
16 have been no hearings on this and I am curious to know if
17 staff have considered whether or not there are any practical
18 problems for the taxpayer. As I understand it, that is a
19 tax ordinarily you would not compute until after the close
20 of your tax year.

21 Mr. Belas. That is correct. What this would require
22 is an additional tax computation for estimated tax purposes
23 as is done for the income tax.

24 Senator Armstrong. You can see no undue burden on
25 somebody in computing this?

dm 21 1

Mr. Belas. I do not believe so. It, obviously, is an additional administrative burden. However, I do not believe it would be an undue burden.

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Senator Armstrong. What are we talking about in money?

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Mr. Brockway. It is .6 this year and .1 next and after that there is no pick up. It is a total of .7.

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Senator Heinz. It is really just an acceleration?

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Mr. Brockway. It is just treating this the same as the other for minimum taxes.

10

The Chairman. Is there objection?

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Senator Moynihan. Is there a revenue sheet for these proposals?

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Mr. Belas. There is not an official list that has been made available to the public. As you know, some of these--

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The Chairman. What are the revenues involved?

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Mr. Brockway. I have several. This would be .7 over the three years.

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The Chairman. \$700 million over a three-year period.

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Senator Durenberger. I have a question on the alternative minimum tax, but it does not deal with estimation. Should I hold that and ask it later?

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Senator Grassley. Mr. Chairman, is it fair to assume to include this in the list of revenue enhancers? There is no new income coming in. It is just speeding up the payment of it.

dm 22 1

Mr. Chapoton. It will bring money into the budgetary period that would not otherwise be there. It is moving it forward from later years.

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Senator Grassley. I thought we used up all there was.

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Mr. Chapoton. This is really bringing people in the minimum tax the way other people are.

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The Chairman. The Administration does not object to that?

9

Mr. Chapoton. No. It is in the House provision.

10

The Chairman. Without objection, we will accept that.

11

Senator Heinz. I have a question on No. 1.

12

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The Chairman. We passed that one over because Senator Wallop and others have questions.

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Senator Heinz. What I would like to know is how much it is going to get and how much it divides up among the different tax credits.

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Mr. Belas. The next item was revision of the so-called collapsible corporations rules. Generally, when a taxpayer is in the business--is in a business, the gain from the operation of this business is ordinarily income. In certain circumstances, taxpayers can use corporations for short-term periods in order to turn that ordinary income into capital gain. There are provisions in the Code, the so-called collapsible corporation provisions, which are designed to limit the possibility that a taxpayer can do that. It has

dm 23 1 been identified that there is a Circuit Court case which is
2 very -- limits the collapsible corporation rules and their
3 proposal would be to overrule that case, to say that if an
4 individual set up a corporation and did not realize two-
5 thirds of the inventory property in that corporation as
6 ordinary income rates before liquidating the corporation to
7 get capital gains, the collapsible corporation rules would
8 obtain to provide ordinary income treatment for that gain.

9 Senator Bentsen. Let me understand that. You have
10 had some split court decisions on that. One of them at one-
11 third and the other at two-thirds and what you are saying
12 is the IRS, which has gone along with the one-third, you
13 would now hold that you have to have two-thirds of that
14 income stream to go through the corporation before you can
15 go to capital gains on the remainder?

16 Mr. Belas. That is correct.

17 Senator Bentsen. Do you get into the 70-30 rule?

18 Mr. Belas. Yes. There would be a conforming rule on
19 that to aggregate the different projects to determine what
20 properties would be under the rule, rather than do it on a
21 project by project basis. It would take all of the projects
22 for which it was determined under the same present law
23 standard, the objective test, that there was a view towards
24 collapsing.

25 Senator Bentsen. If you get into the cumulative effect

dm 24 1 and go to 70-30, have we had hearings on that?

2 Mr. Belas. We have not.

3 Senator Bentsen. I would like to hear the Secretary's
4 comment on that, if I might, because you could have some
5 results that I am not sure are fully anticipated.

6 Mr. Chapoton. The collapsible corporation is probably
7 the most complex provision in the Internal Revenue Code.
8 It is to prevent the opportunity of converting ordinary
9 income into capital income. We think it needs to be tightened
10 and we could agree with the adjustment of the 70-30 test,
11 but we would like to hear if there are some situations that
12 cause unintended consequences.

13 Senator Bentsen. I thought it ought to be tightened
14 too. I think it is an abuse. I am concerned about doing
15 this without a hearing. You would like to hear there are
16 unintended consequences. What would you do?

17 Mr. Chapoton. We would raise it in the conference.
18 Tightening is needed. Tightening is done very partially,
19 very small amounts in the House bill. This would go further
20 than that.

21 Senator Bentsen. This goes further than the House bill?
22 Does the House bill deal with the 70-30 cumulative effect?

23 Mr. Chapoton. No.

24 Senator Bentsen. He says yes. You say no.

25 Mr. Brockway. The House bill dealt with condominium

dm 25 1 conversions and in that case it did deal with the 70-30.

2 It was not across the board.

3 The Chairman. What is the revenue on this?

4 Mr. Brockway. .5 over the three years.

5 Mr. Belas. Mr. Chairman, I might point out that the
6 Kelly case, which is the case that the IRS eventually
7 acquiesced in, in the decision itself, the Court noted that
8 there was an abuse here and suggested, however, that it was
9 a congressional issue, not one --

10 Senator Bentsen. I am not arguing about that. I think
11 there is abuse. I am just concerned when you get into the
12 70-30, as to what you do not anticipate, where it might not
13 be an abuse, where it might be equitable and fair.

14 Mr. Brockway. In the House bill, where there is a
15 condo conversion, they entirely repealed the 70-30, and
16 this proposal would not go that far at all. It applies to
17 all property, but there we just look at the properties that
18 are collapsible properties and rather than applying the test
19 on a project by project basis, you aggregate them and see
20 whether two-thirds of that has been recognized. If it has
21 been recognized, all of the assets are for the collapsible
22 property.

23 But basically, it picks up the same thing as in present
24 law. It just says you cannot mix and match by breaking out
25 projects separately. It looks at all projects and applies a

dm 26 1 rule at one time.

2 Senator Bentsen. How much more do you pick up in the
3 Senate provision than in the House provision?

4 Mr. Brockway. I am not sure. The House bill only deals
5 with condominiums.

6 Senator Bentsen. I am trying to see how much more you
7 pick up when you become more inclusive.

8 Mr. Brockway. We do not have a number broken out because
9 the House bill has three different pieces in it. It has
10 tightening up the collapsible corporation rules for condo
11 conversions much tighter than here, but also liberalizes
12 the condo conversion rule, so there is a mixing of the
13 two. This would probably be doubled on the collapsible
14 corporation bill than what you have in the House.

15 Senator Bentsen. We might pick up double the revenues?

5) 16 Mr. Brockway. Yes. You have a broader net and not as
17 tough a rule on the aggregate.

18 Senator Bentsen. I want to warn the Committee that we
19 are doing something without hearings and we are not sure what
20 the full effect will be, the impact will be, and I normally
21 do not like to see that procedure, although I might end up
22 totally for this.

23 The Chairman. This is something the Treasury has been
24 looking at for some time.

25 Mr. Chapoton. I think Senator Bentsen's point is

dm 27 1 addressed to the 70-30 point and I just -- when I said --
2 the House bill, it is not affected in this aggregation.
3 The condominiums were removed from the 70-30 test altogether.

4 Senator, I think the change needs -- a change needs to
5 be made in the basic testing of whether assets are collapsible
6 or not and our analysis shows a great deal of logic in
7 aggregating for the 70-30 test. I cannot say there will not
8 be some taxpayers that do not like it, but basically, we
9 cannot see any situations that would be affected that we would
10 not want covered.

11 Senator Bentsen. It is not the question of whether they
12 like it or not. It is a question of equity and I am hoping
13 that all has been anticipated.

14 Do I also understand from you that you are saying that
15 those things we hear about between now and the conference,
16 you are hoping that you would be amenable to perhaps addressing
17 them in the conference?

18 Mr. Chapoton. I would expect, Senator, there are very
19 few situations that would express concern -- that the
20 Committee would be concerned about, and if we did hear of such
21 a situation, yes, we would certainly raise it to the attention
22 of the Committee.

23 The Chairman. Any objection to adopting that provision?
24 Again, we will continue to review.

25 The six-month capital gains holding period. Let

dm 28 1 me say that is strongly supported by this Committee. One
2 reason we could never get it through the House is it will
3 cost \$250 million a year. What we did was go back to where
4 were in '76, is that correct, go right back where we were in
5 '76, which eliminates any argument on the cost side, and in
6 fact I think adds some revenue.

7 Mr. Belas. That is correct. On the '78 revenue basis,
8 any loss that might accrue on the six-month holding period is
9 more than offset by allowing only \$1,000 of capital loss to
10 offset ordinary income.

11 The Chairman. Isn't that the way it was in '76?

12 Mr. Belas. Yes.

13 The Chairman. We have gone right back to the six-month
14 same loss formula.

15 Senator Moynihan. Mr. Chairman, can I say this is a
16 very important thing we are doing and you have got the right
17 place to do it, but I think it is going to happen this time
18 and it is a good thing too.

19 Senator Heinz. Who does the reduction in the loss
20 provision of that? It must affect somebody.

21 Mr. Belas. It affects individuals who have more loss
22 on their capital assets than they have capital gain.

23 Senator Heinz. Those individuals, are they business
24 people?

25 Mr. Belas. Both.

dm 29 1 Senator Heinz. What portion are small business
2 proprietorships?

3 Mr. Belas. Senator, I do not have that.

4 Mr. Chapoton. We do not have that. I guess you would
5 say what is the distribution along income lines. I think we
6 see most capital gains realized in higher incomes, so you
7 would expect to see most losses there as well.

8 If I might say, we have supported the six-month holding
9 period as well. Other than the historical marriage of the
10 loss limitation in this, it is not necessarily a natural
11 thing, two items to put together. We have some concern about
12 reducing the \$3,000, although on a theoretical grounds, I
13 think there is no real concern. It does raise the tax some-
14 what on capital investment because it makes the losses less
15 valuable. It is obvious.

16 Senator Heinz. Is that the nature of your concern?

17 Mr. Chapoton. Yes.

18 Senator Armstrong. When does that 1,000 number go into
19 the law? My impression is it was in '76, but I thought it
20 was there a long time. Maybe there is reason for leaving it
21 at 3,000, just on the basis -- I hate to use the word
22 "indexing," but maybe a higher figure than 1,000 is justified.

23 Mr. Belas. I guess the major theoretical issue is
24 whether you should have a separate basket for investment
25 gains and losses and ordinary income and gain. What the Code

dm 30 1 currently has is a limited nod toward having an offset against
2 rather than separate baskets. It is just a policy decision
3 of how much of that offset do you want to allow.

4 Mr. Wetzler. It was from 1942.

5 Senator Armstrong. At what level would that \$1,000
6 have to be escalated in order to have the same purchasing
7 power as in 1942?

8 Mr. Wetzler. My recollection is in '76 they thought
9 3,000 would be enough.

10 The Chairman. If we really wanted to change the whole
11 thing period, I can tell you you will not get it done in the
12 House unless you find some way of saying, you have a
13 legitimate argument about the cost, we have a big deficit,
14 whatever the cost, as long as we can go in and say we have
15 neutralized that. That argument is gone. We have passed
16 this three times in the Senate. If there is a better way
17 of doing this, if Treasury has a better way or the staff,
18 we are not trying to make money, we are trying to neutralize
19 that argument.

20 Senator Chafee. It may be that the compensating factor
21 is worse than the goal we attempt to achieve with the
22 reduction to six months. In 40 seconds or less, could Mr.
23 Chapoton tell us the virtues of reducing the holding period
24 to six months?

25 Mr. Chapoton. I think it is basically difficult to

dm 31 1 analyze the correct holding. On a policy -- from a policy
2 rationale. It will increase turnover and it will encourage
3 some people to get into the market that would otherwise not
4 be in. No magic in six months, no magic in one year, no
5 magic in one month.

6 The Chairman. Most countries do not have any.

7 Senator Moynihan. Would Senator Chafee let me respond
8 on this?

9 Senator Chafee. If it is an unbiased response.

10 Senator Moynihan. With respect to capital gains, I
11 am unbiased, having no capital. But it is just one of many
12 examples of the tax code influencing economic activity in
13 ways -- so that things -- people do things they would not
14 otherwise do were it not for the tax code. I think it is
15 a general objective of this Committee to lead people to make
16 economic decisions that maximize their interest where the
17 tax code is neutral in that regard. I think Mr. Chapoton
18 would agree.

19 Mr. Chapoton. It clearly influences activity. We see
20 a realization after the six-month period and the same thing
21 occurred after six months, when the holding period was 12
22 months.

23 Senator Moynihan. When we reduced the period from 12
24 months to 6, we increased income. There was more activity.

25 Senator Chafee. That must have a logical progression to

dm 32 1 it. We ought to go to zero.

2 The Chairman. Maybe we can find out how many would like
3 to reduce it to six months. How about a show of hands?

4 (Show of hands.)

5 Senator Baucus. My vote is helped along with the
6 additional revision.

7 The Chairman. That may not be the fairest way. That
8 was at least -- the 3,000 just about took care of that, from
9 1942 to 1976. Is there another way we could do this?

10 Mr. Belas. If you just wanted to make it revenue
11 neutral, picking up any amounts at all, you would have to
12 reduce the 3,000 at least down to 1,500.

13 The Chairman. Aren't there other ways, just to get away
14 from the \$3,000 altogether? Did you have another idea? We
15 can pass over this.

16 Senator Wallop. The problem I see may not be a problem,
17 but maybe needs a little bit more explanation. The proposal
18 description simply says that the holding period for determining
19 long-term capital gains is for purchases after November 1 and
20 there is no mention of the treatment of losses. If the
21 effective date applies for gains and losses on stock
22 purchases on or before November 1, there is not any problem,
23 but if the loss rule does not simply apply to stock purchases
24 after November 1, you have caused sort of a retroactive
25 change, where people that have got the purchase six or seven

dm 33 1 months ago, suddenly are transformed into a long-term loss.

2 Mr. Wetzler. This applies to all purchase and sale
3 of stocks.

4 The Chairman. Let's vote on the proposal. It is going
5 to be prospective. Let us just vote on the proposal as we
6 have it listed here. If we do not have the vote --

7 Senator Armstrong. The staff used the term "stock." We
8 are really talking about any capital assets, are we not?

9 Mr. Wetzler. Yes.

10 Mr. DeArment. Mr. Packwood?

11 Senator Packwood. Aye.

12 Mr. DeArment. Mr. Roth?

13 Senator Roth. Aye.

14 Mr. DeArment. Mr. Danforth?

15 Senator Danforth. Aye.

16 Mr. DeArment. Mr. Chafee?

17 Senator Chafee. No.

18 Mr. DeArment. Mr. Heinz?

19 Senator Heinz. Aye.

20 Mr. DeArment. Mr. Wallop?

21 Senator Wallop. Aye.

22 Mr. DeArment. Mr. Durenberger?

23 Senator Durenberger. Aye.

24 Mr. DeArment. Mr. Armstrong?

25 Senator Armstrong. Aye.

dm 34 1 Mr. DeArment. Mr. Symms?
2 (No response.)
3 Mr. DeArment. Mr. Grassley?
4 Senator Grassley. Aye.
5 Mr. DeArment. Mr. Long?
6 (No response.)
7 Mr. DeArment. Mr. Bentsen?
8 Senator Bentsen. Aye.
9 Mr. DeArment. Mr. Matsunaga?
10 (No response.)
11 Mr. DeArment. Mr. Moynihan?
12 Senator Moynihan. Aye.
13 Mr. DeArment. Mr. Baucus?
14 Senator Baucus. Aye.
15 Mr. DeArment. Mr. Boren?
16 Senator Boren. Aye.
17 Mr. DeArment. Mr. Bradley?
18 (No response.)
19 Mr. DeArment. Mr. Mitchell?
20 (No response.)
21 Mr. DeArment. Mr. Pryor?
22 (No response.)
23 Mr. DeArment. Mr. Chairman?
24 The Chairman. Aye.
25 The vote on this is what?

dm 35 1

Mr. DeArment. 13 yeas and 1 nay.

2

Senator Armstrong. Could we agree to make that other provision revenue neutral and look to see if there is some other way to solve the problem? It would be revenue neutral at 1,500 rather than 13,000.

6

Mr. Wetzler. I think you can go to 1,750.

7

Senator Armstrong. Could we do that and see if there is another way to offset it?

9

The Chairman. We just voted on the package. Let us leave it open for the rest of the day and see if we can give staff something to come up with.

12

The next is stock option straddles and foreign corporation commodity straddles.

14

Mr. LeDuc. The proposal would bring stock and stock options within the loss offset interest capitalization and holding period rules that were effected in 1981 for commodities. At that time stock and stock options were expressly carved out.

19

Additional changes to be made by the proposals would treat options to enter into regulated futures contracts as regulated futures contracts.

22

Additionally, options with cash settlement features would be -- the cash settlement feature would be disregarded for determining the character of the gain or loss on the option.

25

dm 36

1 Finally, the provisions of Senator Moynihan's bill on
2 foreign commodity transactions would be adopted. Thus, the
3 foreign investment company rules would be extended to foreign
4 corporations engaged primarily in securities or commodities
5 or interest therein. Stock in corporations formed or availed
6 of to take positions in offsetting positions would be
7 covered under the loss offset rules.

8 And finally, distributions to U. S. parent corporations
9 of earnings and profit would be U. S. source.

10 The Chairman. Senator Symms had a question in this
11 area. I cannot recall what it was. He expressed some concern
12 about one aspect of this.

13 Senator Moynihan. This is painful to many corporations,
14 most of them New York corporations. It will seem punishing,
15 but we closed that commodity tax straddle and, sure enough,
16 they thought up another one. We are closing this one, and
17 sure enough, we will be back here, perhaps two years from
18 now. But we have to do it. It is something we want to do.
19 It is a matter of equity. People must pay their share of
20 taxes.

21 Mr. Chapoton. We agree with Senator Moynihan that these
22 are changes that are needed. We have seen in the data the
23 movement from commodity straddles to use of stock options.

24 The Chairman. I think Senator Symms' question was would
25 this be covered. I think somebody --

dm 37 1 Mr. LeDuc. It was some concern as to whether we were
2 to use the general rules or the market to market rules.

3 The Chairman. That was his concern.

4 There was another concern expressed earlier with
5 reference to many of those that are now in the process of
6 being audited, particularly in the Chicago area, who believe
7 or at least understood that in the action taken a couple of
8 years ago, that if in fact there was any liability for
9 proceeding here, that they would pay the 32 percent rate.
10 I have asked Andre to check yesterday what we were talking
11 about as far as dollars were concerned. I do not know if
12 the Treasury has a position on that.

13 Mr. Chapoton. Mr. Chairman, we have met with a lot of
14 these people. The assertion is that when Congress dealt
15 with this in 1981, that we should not go back and assess
16 tax liability with respect to straddles with respect to
17 earlier years. In our testimony, and in our appearances
18 before this Committee, we made it clear that there were cases
19 pending and the '81 changes would not affect those changes.
20 The Service is proceeding with pre-'81 straddle cases.
21 The particular problem that you are alluding to has had to
22 do more with the traders -- I think solely with the traders
23 and whether or not the Service should be permitted to argue
24 in those cases an offsetting position, not whether the
25 transaction is entered into for profit, but a consolidated

dm 38

1 case -- position, that is, if you have a loss on your
2 straddle, no deduction as long as you have offsetting
3 positions on what they -- no offsetting positions on that
4 loss, closing the loss side of the transaction. The Service
5 is pursuing those cases, has lost on that argument in one
6 case, but is pursuing that argument in subsequent cases. We
7 have attempted to see if there is some basis for dealing with
8 these legislatively. We have not been able to come forward
9 with such a rule. Although I understand there was another
10 meeting within the last week in which there were some
11 suggestions that were made that we would be willing to look
12 at further.

13 Senator Moynihan. We provided a five-year transition
14 period for persons that had accumulated a large tax liability
15 in that manner which was a statement neutral with respect to
16 the propriety of these previous actions, but certainly did
17 not suggest that we thought they were necessarily improper.
18 We said neither one way or the other and left it to the IRS.
19 We would like to hear from you, that the IRS has not taken our
20 legislation to indicate that you ought to be -- it has
21 changed the IRS's attitude toward this particular activity.

22 Mr. Chapoton. I am convinced that is not the case.
23 The '81 changes have not affected these earlier years. But
24 we must recognize that there are ongoing audits and a Tax
25 Court case pending and the IRS is pursuing them without regard

dm 39 1 to the 81 changes. So you really have the result of having
2 taxpayers not being audited. That would rolled into '81 and
3 they will pay taxes on earlier than '81. They will pay at
4 a higher rate.

5 The Chairman. Is there objection to a lower rate?

6 Mr. Chapoton. There is no objection to the five-year
7 payment of the tax. That would make some sense. We have
8 some concern about going back to an earlier year and giving
9 a lower rate retroactively.

10 The Chairman. Have you estimated what the cost of that
11 might be?

12 Mr. Susswein. I do not think we have the estimate.

13 The Chairman. Do you have any figures on that?

14 Mr. Chapoton. There are very large dollar amounts
15 involved. I think it would be difficult to say--to really
16 do a revenue-type estimate.

17 The Chairman. We can adopt the tax option provision and
18 maybe before the end of the day, if Treasury and the staff--see
19 if there is any reason to make any change.

20 Senator Moynihan. You said you had a meeting recently.

21 Mr. Chapoton. There was a meeting that suggested maybe
22 the earlier--modification of an earlier rule attempting to
23 in effect split out in a measurement way, in a dollar and
24 cents way, tax motivated trades. That seems worth pursuing.

25 Senator Moynihan. Is there some report language?

Mr. Chapoton. No. I think it would take legislation.

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Senator Moynihan. There may come a time when you would propose it to us?

3 Mr. Chapoton. We will look at that in accordance with
4 the Chairman's instructions.

5 Senator Chafee. We will have an opportunity to discuss
6 it further this afternoon.

7 Senator Packwood (Presiding). That is correct.

8 We will move on to Item No. 6, expansion of sport fish-
9 ing equipment excise tax.

10 Senator Wallop. There are some amendments that are
11 routine in nature and are as a result of all of the negotia-
12 tions on depth finders and tackle boxes and a variety of
13 things.

14 Senator Packwood. There are some provisions on the boat
15 safety fund which the Commerce Committee has jurisdiction of,
16 and the changes are acceptable to us.

17 Are there any objections?

18 Without objection, it will be adopted.

19 Mr. DeArment. There has been some discussion of renaming
20 the fund perhaps to--

21 Senator Packwood. The staff in drafting this will refer
22 to it as the Wallop-Breaux amendment.

23 Mr. DeArment. Yes.

24 Mr. Chapoton. Mr. Chairman, on this I am being advised
25 that there is a concern about this prejudicing domestic

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1 manufacturers versus importers.

2 Senator Packwood. A concern about what?

3 Mr. Chapoton. The change, the tax on equipment might
4 cause domestic producers to be taxed at a higher level than
5 imported fishing gear.

6 Senator Wallop. I think that has been taken care of.

7 Mr. Brockway. That has been addressed by changes to tax
8 at the last point of retail so that imported fishing equipment
9 will be subject to the same tax.

10 Senator Wallop. I realize that there is a problem. If
11 you can find a way to make it legal with GATT, and easier
12 problems, I will work with you on that.

13 Mr. Chapoton. Okay.

14 The Chairman. For some reason, this provision seems to
15 have widespread support. Even the Vice President talked about
16 this.

17 Senator Wallop. That is important.

18 The Chairman. Let us move down to B, the following pro-
19 posals for which materials have been previously distributed.
20 Let us talk about leasing. If we can get hung up on that--
21 we may have to go on and do the ones we can do.

22 I spoke to the Secretary and I think Senator Bentsen,
23 Senator Moynihan, to see if there is some way we might save
24 that income, address part of the concern that we have expres-
25 sed. I think the REAs, a concern by Senator Boren that has

hws-3 1 been satisfactorily resolved.

2 Mr. LeDuc. Let me, if I may, recapitulate the proposed
3 amendments that were reviewed earlier in the month, as well
4 as the proposed amendments.

5 The first one would provide a service exemption to the
6 contract rules for certain solid wastewater and renewable
7 energy facilities.

8 The Chairman. Is that Senator Durenberger?

9 Mr. LeDuc. A number of members have had interest. That
10 was reviewed earlier in the month.

11 Additionally, a special rule would be provided for Rural
12 Electric Cooperative under which a Rural Electric Cooperative
13 which has been tax-exempt within five years to enter into a
14 lease would be allowed the benefit of the ACRS and the
15 applicable credit. If it had become taxable so that it
16 elected to remain taxable for a period equal to the recovery
17 period of the property, plus 15 years--

18 The Chairman. I understand Treasury is not totally
19 satisfied with that provision.

20 Mr. Chapoton. No, Mr. Chairman, but we are doing--we
21 recognize the support it has on the Committee so I will be
22 very brief.

23 We are concerned that we are allowing something which the
24 basic policy does not allow. We are allowing credit and
25 benefits where there is in effect no taxation because these

hws-4 1 co-ops are not taxed as other taxpayers. They are exempt on
2 dealing with members' income.

3 We are also concerned that we are doing it under the
4 service contract versus lease arrangement. We have attempted
5 to work with the staff so that does not have spillover effect,
6 where property is used by other tax exempt under what is
7 nominally called a service contract. The question is not
8 really whether it is a lease or subcontract but whether it is
9 used by tax exempts. Then it ought not be allowed. So we
10 have those concerns.

11 We would prefer that there not be such an exemption.
12 But I have expressed those views before.

13 The Chairman. Then I am to assume that the Committee is
14 satisfied, the compromise, whether it is a compromise or not--
15 we are satisfied with the REAs and other previous one--are
16 the members that have an interest in the first measure, the
17 sewage disposal, satisfied?

18 Okay.

19 Senator Danforth. Does this take care of Senator Warner's
20 problem?

21 The Chairman. That is correct.

22 Mr. LeDuc. An amendment would be offered to 1564 with
23 respect to real estate leases which would require a minimum
24 term of at least 20 years in the absence of other disqualify-
25 ing factors, such as a sell-lease back or IDB financing. The

h's-5

1 Treasury held minimum use by tax exempt entities would be
2 tightened, however, and the test would be in the alternative.
3 Either a single tax exempt entity using 35 percent of the
4 space, or an aggregate of the tax exempt users--multiple users
5 using an aggregate of at least--more than 50 percent. There
6 would be a special effective date with respect to what I
7 understand to be real estate leased to the United States
8 Postal Service and the effective date there would be, instead
9 of being May 23rd, which is the general date, be the date of
10 the transaction, October 31st.

11 Mr. Chapoton. We think that is a good clear line in this
12 area.

13 Senator Armstrong. There comes to my attention a par-
14 ticular case where this effective date question I think unin-
15 tentionally catches somebody out in Colorado.

16 The original bill introduced on May 22nd, as I understand
17 it, dealt with leases involving--dealt with tax exempt
18 entities and the use of tax exempt financing. The second
19 bill introduced sometime in June dealt with leases by tax
20 exempt entities.

21 I have just been handed, within the last few minutes, a
22 case in which somebody between those two dates in Colorado
23 entered into a binding contract which was not precluded by the
24 May bill, but which is by the June bill, and yet nonetheless
25 the proposal before it reaches back to the May date. It has

hws-6 1 just come to my attention.

2 I would like to pass it on to the staff to look at it,
3 but I would hope that we can agree if the facts are what I
4 have stated, that literally after the introduction of the
5 first bill, this organization, in this case a Masonic group,
6 entered into a contract that was not covered by an initial
7 bill but was covered by a later bill subsequent to their
8 entering into a contract, that they would somehow be covered.

9 The Chairman. Let me say to the members I understand
10 there is 40, 50, 60 transition bills, and I assume this will
11 be another one. You are in the process now of cataloging
12 those and will determine which are matters of great priority,
13 not only for members of this Committee but other Senators.

14 Senator Packwood. I would just like to raise--

15 Senator Armstrong. Before we leave it, is it understood
16 that these will be taken care of and not just cataloged?

17 The Chairman. We thought we could catalog them first.

18 Senator Armstrong. I am very much interested in closing
19 up this loophole. I think it is a horrible situation and I
20 share the desire of the Chairman to put a stop to the drain on
21 the Treasury. It is unfair. But it is questionable tax
22 policy to be backdating stuff prior to the enactment of
23 legislation. And if we are going to do that, we have got to
24 do the backdating so we do not catch people like this.

25 The Chairman. Let us look at it. We will not take

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1 final action.

2 Senator Packwood. I thought this had been worked out
3 with the Portland Cultural Center, which takes care of the
4 problem. You make reference to the May 23rd date in the
5 fact sheet, but are we agreed that the other provisions, in
6 addition to that--about the substantial amount of money spent
7 on that date and the binding contract to use the property on
8 December 31st, that it will qualify?

9 Mr. LeDuc. Mr. Chairman, you have not instructed us to
10 adopt the very generous House transition rules. That is
11 properly before the Committee.

12 The Chairman. We will try to work that out. I want to
13 avoid getting into all of the transition rules. We have 15
14 from California, a number from New York. Every State has a
15 problem. If we could take the primary issues of leasing, I
16 think if we can get through those and maybe let staff work on
17 transition rules.

18 Senator Chafee. I am not sure if the problem of the
19 Navy ships falls under a transition rule or under this catch-
20 all provision.

21 The Chairman. That would be a separate item. I think
22 Navy is one of the specifics.

23 Mr. LeDuc. I believe you had a compromise position, Mr.
24 Chairman.

25 The Chairman. What is it?

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1 Mr. Leduc. If I may go back to the Post Office date to
2 clarify that, it would apply to leases entered into, in that
3 interim period, so they would not be effective.

4 Another amendment, 1564, Senator Durenberger had a
5 particular interest there, was to deal with certain high
6 technology hospital equipment. The Treasury would be given
7 authority to redetermine the class life for such property on a
8 prospective basis; in the interim, such equipment would be
9 entitled to the rules in 1564, which exempt short-lived
10 property from the bill.

11 Senator Durenberger. Would that include, Mr. Chairman,
12 would that include computers, as well?

13 Mr. LeDuc. Senator, there is a computer rule in 1564,
14 as introduced. There would be a further amendment to permit
15 leases of up to five years for computers. Currently, 1564
16 permits only a four and a half year term.

17 The Chairman. Could I get Treasury's-- Treasury to
18 review that?

19 Mr. Chapoton. The Durenberger proposal would be to allow
20 us to--really to determine if the useful life was accurate.
21 I think the complaint was that the useful life, what we use,
22 five years, is simply too short.

23 Mr. Chairman, I am just a little cold on what was finally
24 agreed to on this one. I would like to have a chance to talk
25 to Senator Durenberger about it.

s2 1 If this was the proposal that would be under the pro-
2 vision of the bill, until we came up--they would be out of
3 the provision of the bill until we came up with a shorter
4 useful life--I mean a longer useful life, or determine that
5 the useful life was longer.

6 My concern is whether--how quickly we could make that
7 determination, and whether that would be--whether that would
8 be an appropriate way to handle it.

9 Let us consider that further, and get back to you on that,
10 Senator.

11 Senator Durenberger. I think what we are trying to get
12 at is at least five, and then if there is a useful life less
13 than that, the word would be five years or less. So we will
14 take care of that.

15 Mr. Chapoton. But it would be without regard to the term
16 of the lease.

17 I think we had some concern about that. I would like to
18 determine that.

19 The Chairman. Can we work that out fairly quickly? I
20 think that is going to be our problem here when we get into--

21 Mr. Chapoton. Yes, we can work that out very quickly.

22 The Chairman. Senator Roth wanted to raise a question
23 now, about a matter that he had an interest in. Maybe we can--

24 Senator Roth. Mr. Chairman, there has been some concern
25 that the change of rules could adversely affect the export

ws3 1 of American-made goods, and I know that negotiations are being
2 carried on to try to take care of that situation.

3 I think Senator Bentsen is also concerned about this
4 question of the impact of this rule on exports of American-
5 made goods, and I would just like to know where we are. Does
6 there seem to be some possibility of resolving this, so that
7 we could--

8 Senator Bentsen. The Senator is quite correct. I
9 certainly share the concern, and am looking forward to the
10 compromise.

11 Senator Moynihan. Could I join in the concern, and see
12 what we could do?

13 The Chairman. Again, I visited with Secretary Chapoton
14 yesterday, and he thought he had some ideas, maybe on a
15 phase in of some kind.

16 Mr. Chapoton. We had been concerned with tax policy
17 ground, if you will, but solely on the export policy. That
18 is, we do not give depreciation deductions in this country to
19 make European countries have more productive equipment. We
20 give deductions with--greater deductions in investment tax
21 credit if the property is used here, and you make America more
22 productive.

23 So when you change this rule, it is probably consistent
24 with that tax policy, that is, that the property is going to
25 be used abroad, no accelerated deductions, and already no

ws4 1 investment tax credit, with some exceptions for airplanes.

2 But we are concerned when you make that rule with the
3 impact on exports, and particularly exports at this time, so
4 we had opposed making changes, and the Chairman has suggested,
5 well, if there is a compromise, then I guess a compromise of
6 that type, that that arrangement might well be a phase in of
7 the change in the rule, or a deferred effective date in any
8 change in the rule, so that you do not affect exports cur-
9 rently, but that you get to the point, assume the eventual
10 point would be that the benefits are not available for property
11 used abroad.

12 Senator Moynihan. I did not hear your last sentence.

13 Mr. Chapoton. That eventually if you would, that type
14 of compromise, the accelerated depreciation would not be
15 available for property used abroad.

16 Senator Roth. I do not believe that proposal has been
17 tabled yet. But in any event, maybe the resolution is to try
18 to work it out this afternoon.

19 I think we have submitted a number of proposals too, to
20 try to work it out. I doubt that we can do it this morning.

21 The Chairman. Senator Bentsen has indicated that he
22 would be willing to try to work one out if Bill would, and
23 Senator Moynihan.

24 I think it is rather important, because it is a very,
25 very expensive provision, and about \$1.7 billion over three

1 years, and it is a rather heavy subsidy, and the part that
2 concerns me is where say a bank is the lessor, they do not do
3 anything but handle the money, and they end up with profiting
4 rather handsomely.

5 I do not really understand what that does for exports.

6 Senator Moynihan. Well, is not the question really whether
7 the property being leased is a manufacturer here, is that not
8 what--

9 The Chairman. I think that is the criteria.

10 Is there some way you think you could put that together
11 between now and three o'clock, or four o'clock--well, between
12 now and midnight, I guess is our reporting time.

13 Mr. LeDuc. Mr. Chairman, we have met with the staffs
14 of the members who are interested, and with the Treasury
15 Department. I think we could come to a package very quickly,
16 if we were instructed on a revenue target.

17 The Chairman. As I understand, again, I do not know
18 whether the revenue should be the sole guiding purpose in any
19 of these decisions, but if we do not at least modify it some,
20 we are going to be much, much lower than the House bill, which
21 does not do much, in any event, but there is about a \$500
22 million--is that about right, about a half billion dollars,
23 that we might be able to work on with this amendment, some
24 phase in, is that correct?

25 Mr. LeDuc. We have identified options at \$500 million

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1 for changes from 1564, and also amendments in excess of ⁷⁶that.

2 I am instructed that the computers have been down this morning,
3 and we do not have the latest round of proposals.

4 The Chairman. I think rather than try to set some revenue
5 target, we ought to just see how we could tighten it up some.
6 If Treasury is willing to help us on that.

7 Mr. Chapoton. Yes, sir, we will work with the staff on
8 that.

9 The Chairman. We will get all the principals involved.

10 Senator Roth. That is fine.

11 The Chairman. What about the Navy, what other area--what
12 is the compromise on Navy ships that we went over yesterday?

13 Mr. LeDuc. Mr. Chairman, one compromise would be to
14 permit the Navy to lease these ships, and obtain the full
15 accelerated cost recovery deductions, but to deny to the Navy
16 the investment tax credit on these ships.

17 The Chairman. That did treat them like everyone else?

18 Mr. LeDuc. Mr. Chapoton may want to comment on it.

19 I believe that there is substantial uncertainty as to
20 whether these ships would ever have been entitled to the
21 investment tax credit, although the taxpayers believe that
22 the Internal Revenue Service would have given them a ruling,
23 if they were so entitled.

24 The Chairman. Mr. Chapoton, do you have any--

25 Mr. Chapoton. The taxpayers involved thought they got

ws7 1 credit. It is basically a factual questions.

2 The question again is whether it is a service contract,
3 or a lease. The Navy, as I understand the arrangement, did
4 guarantee the benefit, so that if it were lost, it would not
5 all on the taxpayer, and I think that is, at first blush, I
6 think that bothers the members on the House, such a guarantee,
7 but from our standpoint, the guarantee makes sense, because
8 it means that if you are going to make the lease on the
9 arrangement, on the assumption the taxpayer gets the tax bene-
10 fits, then you better make sure that he gets the tax bene-
11 fits, or he is going to be charged something for the risk,
12 and that charge falls back on the Navy.

13 So if you made it clear that the credit were not avail-
14 able, that would remove that possibility, and would cost the
15 Navy some more money for the ships.

16 The Chairman. It would cost the taxpayers either way,
17 does it not?

18 Mr. Chapoton. It would cost the taxpayers either way,
19 that is correct.

20 The Chairman. It would cost them more under what we are
21 doing, under appropriations, as I understand it.

22 Mr. Chapoton. That has been a hotly contested issue.
23 I think it goes to the--

24 The Chairman. Thirteen percent more this way.

25 Mr. Chapoton. I think it is our judgment that there is

1 more cost. It goes to two questions.

2 One is the cost of credit, if you have an intermediate
3 rather than a government directly borrowing the money, and
4 the second aspect is the efficiency of the passthrough of the
5 tax benefits to the Navy. If less than 100 percent of those
6 benefits are passed through to the Navy, obviously the ulti-
7 mate cost to the government is a bit more.

8 The Chairman. Who is going to own the ships?

9 Mr. Chapoton. The private taxpayer would own the ships.

10 The Chairman. I mean, if some individual owned one of
11 our destroyers--

12 Mr. Chapoton. But these are transport tankers, I believe.

13 Mr. Brockway. Right now the ships--the owners are not
14 identified. On this particular transaction there are some
15 limited partnerships that will ultimately own them, but they
16 do not necessarily--all of these partnerships, they do not have
17 all the participants yet, but it will probably be large
18 corporations that will be the ultimate owners, and they are
19 going to other corporations to operate them.

20 The Chairman. What kind of ships are we talking about?

21 Senator Chafee. Five tankers, and 13 cargo ships.

22 Mr. Brockway. They are supply ships for the Rapid
23 Deployment Force, that 13.

24 The Chairman. Does the Navy have first call on them,
25 like on weekends?

hws9 1 Mr. Brockway. I think at least the 13 ships, for the
2 Rapid Deployment Force, are basically designed as support
3 ships for that service, that they have aspects about them, or
4 they would not be generally useful.

5 The Chairman. It is a floating tax shelter, is that it?

6 Senator Chafee. It can be used for anything, except
7 wars.

8 The Chairman. I must say I do not get very excited about
9 leasing ships, but is this going to end, finally?

10 Mr. Brockway. Under the bill it clearly is going to be
11 ended, however you effect this transitional role, it clearly,
12 in the future, will stop, because it will take away the tax
13 advantage for the Navy.

14 The Chairman. But then it would have to go through the
15 Congress, through the appropriations process, and not use this
16 backdoor approach, through the tax code.

17 Mr. Brockway. Yes, they just would not get any advantage
18 from doing so. They are not likely to do it, unless it is
19 solely to get around the budget process, and the appropria-
20 tions process.

21 The Chairman. But is it the mission of the Navy to
22 promote tax shelters? I mean, I thought they had another
23 mission.

(2) 24 Mr. Brockway. Certainly, that is the basic rationale
25 behind the legislation, at least with respect to the future,

1 to stop, but the Federal Government should not be out pro-
2 moting facts, oriented investments in having its military
3 equipment being owned by people in the private sector, and
4 not operated directly by their Army.

5 The Chairman. Well, we do not want to spend--is there
6 any interest in the compromise, Senator Chafee?

7 Senator Chafee. Well, I do not know what the compromise
8 was.

9 The Chairman. Andre, go over it one more time.

10 Mr. LeDuc. Senator, the--

11 The Chairman. The investment tax credit.

12 Mr. LeDuc. The investment tax credit would be dis-
13 allowed--

14 Senator Chafee. Well, Mr. Chairman, it seems to me that
15 what was--apparently there was some doubt in this matter,
16 and what we are trying to say is we will decide it here. As
17 I understand it from Mr. Chapoton, there is some doubt.

18 I do not think we want to get into that. They made a
19 deal, if there is doubt, then let them thrash it out in the
20 courts, but I do not think we want to be stepping into it,
21 and rightly or wrongly, an agreement was entered into by our
22 government.

23 Now, one way or another we are going to pay for it. One
24 way is to not give this exemption, and thus we will look good
25 in the Finance Committee, by making a big savings, but it

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hwsll 1 will come out of the taxpayers' pockets, as I stand, with a
2 little surcharge added to it.

3 The Chairman. The surcharge is on this side, is it not?
4 It is easier--you save money on appropriations.

5 Mr. Chapoton. The deal is to save money on appropri-
6 ations, and some of the cost is paid through the tax system,
7 and the point is that there is in fact the surcharge, due to
8 the fact that not all the benefit is passed through the Navy.

9 Senator Chafee. So my view is let us knock it off, cut
10 it off at the future, but rightly or wrongly, we are in on it,
11 and I think we ought to march through this exemption.

12 The Chairman. Could I just ask the Treasury, you are not
13 taking any position on this?

14 Mr. Chapoton. No, we would support, Mr. Chairman, a
15 grandfathering of these transactions, which basically were
16 --where we are grandfathering these transactions, the Admin-
17 istration has supported that.

18 As Senator Chafee says, we would cut it off for the
19 future.

20 The Chairman. Why do we not just do that?

21 Senator Symms. Mr. Chairman, I think that we should--I
22 agree with Senator Chafee on this. But I think, Mr. Chairman,
23 I can tell you are fairly concerned about it, but there is
24 historical precedent for this kind of thing.

25 Remember Sir Francis Drake owned his own ship, and he

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1 worked pretty well for England.

2 The Chairman. I think it is great. I mean, I do not
3 know who owns it, I am just trying to get more information
4 where to line up for the--where you can buy one of these ships.

5 But we will accept the inevitable, and adopt it, without
6 the compromise.

7 Are there any other major issues?

8 Senator Boren. Mr. Chairman, on the foreign property
9 section, the foreign leasing, has the staff been working on
10 the way that the drilling rigs, and the supply ships would
11 be created? I know that is a situation where they are often
12 in and out for a very short period.

13 Senator Long and I think Senator Wallop also expressed
14 concern about that problem, and I was just wondering if staff
15 was working on that?

16 Mr. LeDuc. Senator, we have been working on that prob-
17 lem. We are awaiting a revenue estimate of a proposal which
18 would carve out short-term leases, and permit the investment
19 credit in those circumstances.

20 We understand that would be acceptable to the affected
21 industry.

22 Senator Boren. I think that would be right, if we had
23 a provision for short-term, I think that would take care of
24 it.

25 The Chairman. Now, as I understand, that takes care of

1 the major questions on--

2 Mr. LeDuc. It does, Mr. Chairman.

3 I had, earlier, in an earlier markup, reviewed some tech-
4 nical changes. I am not sure that that is necessary to take
5 time to run through those again.

6 The Chairman. Not if they are technical.

7 I also understand that between now and, hopefully, five
8 o'clock, or six o'clock, we will have an opportunity to go
9 over the matter that concerns Senators Moynihan, Bentsen and
10 Roth, on the foreign property, of foreign aspects of leasing,
11 plus we will try to get together on the transition rules,
12 because there are a lot. How many transitional rules are
13 there, proposed?

14 Mr. LeDuc. As of the close of business yesterday, we
15 had identified 14 cases for members of the Committee, and sub-
16 stantially more that are of concern to other members of the
17 Senate, Mr. Chairman.

18 The Chairman. Let us move on.

19 I think we have resolved most of the areas on leasing
20 that we can. Maybe we can wrap this up before we get on the
21 debt limit on the floor.

22 The next item is the postponement of the effective date of
23 the 15 percent net interest exclusion. That was an amendment
24 that Senator Schmitt offered on the Senate floor. I do not
25 quarrel with the amendment, but in an effort to try to satisfy

1 some of the demands of the Budget Resolution, this did pro-
2 vide some opportunity, and it is the House bill, is that
3 correct, Dave?

4 Mr. Brockway. It is in the proposed amendment of the
5 Chairman.

6 The Chairman. Rich, do you want to comment on this?

7 Mr. Belas. All it is is postponement by two years, so
8 it would go into effect in 1987, rather than 1985.

9 Senator Symms. Mr. Chairman, I would really object to
10 us going along with this. This is the first step where we
11 have actually opened up for all taxpayers an exclusion, and
12 an encouragement for savings, and it is a meager, meager step.
13 We are only talking about 15 percent of the net interest, and
14 I just quote to the Committee what the Federal Reserve Board
15 study says about IRA's.

16 We put the IRA's in, which most of us here support, and
17 I think it is a generally good thing, but the Federal Reserve
18 Board makes this quote. It says, "there is no hard evidence
19 of the amount of new savings that was stimulated by IRA's.
20 Investors may simply have shifted assets, and it can be con-
21 cluded in the past, most IRA contributors were part of the
22 income group that typically had enough assets to fund IRA's,
23 without saving more, to the extent that they held these
24 assets solely for retirement."

25 And so forth. But the 15 percent net exclusion will

1 affect all taxpayers, and not just those that in effect get
2 into IRA's. It just seems that it is such a small thing.
3 How much revenue are you talking about?

4 The Chairman. About \$4 billion, that is not too small.

5 Senator Symms. But what about the fact that our savings
6 rate has been going down since the U. S. personal savings rate
7 has actually declined since the passage of ERDA?

8 The Chairman. I am not sure that this would rescue it,
9 but, Rich?

10 Mr. Belas. Mr. Chairman, this is not an incremental rule.
11 There would not be necessarily any new savings. All it would
12 say is that in computing your tax liability you would take
13 your saving--your interest earned, subtract out your interest
14 paid, consumer interest, and get 15 percent of that amount as
15 a deduction, up to a cap.

16 There is no incremental rule, as in the R&D credits.

17 Senator Symms. But, Rick, this is an incentive for people
18 to try to save. And if we repeal it, it is like, you know,
19 Federal deficits are also financed by personal savings, and
20 this is the first single thing that we have had to--and if we
21 repeal it, well, it is like delay it, we are not putting it
22 into effect, it just seems like it would be a tragic mistake
23 in tax policy to do this.

24 And I yield to the Senator From Iowa.

25 Senator Bentsen. I do not think there is anyone on the

's16 1 Committee that has fought any harder than I have for incent-
2 ives for savings, and I am sympathetic to what Senator Symms
3 says, but we are talking about a very substantial amount of
4 tax revenue here, and we have to get it some place.

5 So I reluctantly think that we have to go along with
6 this kind of a recommendation.

7 The Chairman. Could I just say, before we go to Senator
8 Grassley, you know it is the dilemma we have. We were man-
9 dated by Congress to come out here with \$73 billion, obviously
10 we are not going to do that in this package, and probably, it
11 is doubtful that we are going to do it in another package,
12 although some of us are going to try.

13 But if somebody has--

14 Senator Symms. Well, Mr. Chairman, I hear what you are
15 saying, but we are talking about taking it out of savings,
16 where we have all been talking about where we need it, instead
17 of out of consumption.

18 The Chairman. But it is talking about a two year defer-
19 ral. We are not talking about repealing the law, and if some-
20 body has a better idea, why--I am concerned about the deficit,
21 more than I am this provisions.

22 Senator Grassley. Mr. Chairman?

23 The Chairman. Senator Grassley.

24 Senator Grassley. To what extent, if we were to adopt
25 all 13 of these separate items on here, do we come up with

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1 the amount of money that is the goal to reach, according to
2 reconciliation?

3 The Chairman. We are still far--what you get on the
4 total, if you have everything in the package, about 16 billion?

5 Mr. Belas. That is correct, Senator.

6 The Chairman. We are only about 57 short.

7 Senator Grassley. No, wait a minute. State that again?

8 If you adopt all 13 of these, you would raise how much
9 money?

10 The Chairman. About 16 billion over three years.

11 Senator Grassley. And reconciliation says we have to
12 raise how much?

13 The Chairman. Seventy-three. Just technical difference
14 --and I do not know how we do it. Obviously we cannot--I
15 voted against the resolution, it was all taxes, but I might
16 say to the members, we did double the savings we were asked to
17 do by the Budget Resolution, which was not very much.

18 In addition, we have had other savings in this Committee
19 on revenue sharing, trade adjustment assistance--

20 Mr. Brockway. Railroad retirement.

21 The Chairman. Railroad retirement, so if you probably
22 added up those savings, we have six or seven billion dollars
23 in spending reductions. We were only asked to do 1.7.

24 I think we just ought to vote on it, I know there are
25 differences.

ws18 1 Senator Moynihan. Well, Mr. Chairman, before we do, can
2 I just say that you are right. We have got to raise revenue
3 in this Committee.

4 The Chairman. We have to raise some. I would like to
5 cut spending, too.

6 Senator Grassley. Mr. Chairman, I think on a higher
7 plateau, than just the immediate issue, we all have had a
8 general agreement, at least in the years that I have been on
9 the Finance Committee, that our tax system has been tilted
10 towards encouraging consumption, and this is the first effort
11 to not necessarily penalize those who are buying things, and
12 having consumer interest, and having the deductibility from
13 the income tax, but for those who want to try to save beyond
14 what they are paying in consumption taxes, this is the first
15 effort to tilt the income tax towards savings, and away from
16 consumption, and do it in a way that really is not penalizing
17 those who must borrow.

18 But to give them a solid alternative, that if they do
19 save, instead of consume, it is to their tax advantage to do
20 it.

21 The Chairman. Well, we might modify the IRA's, as pro-
22 posed indirectly by Senator Symms, on the theory that they are
23 just transfers of money. We have looked at that, and we find
24 most members want to expand the IRA's, on the theory that it
25 goes provide some incentive, and I am just trying to meet the

hws19 1 minimum requirements of the Budget Resolution.

2 There are no penalties if you do not meet it.

3 Senator Symms. Would the Chairman yield?

4 The Chairman. Sure.

5 Senator Symms. Mr. Chairman, if the Committee is really
6 serious about raising revenue, then maybe we should consider
7 doing away with the consumer interest deduction, so we can
8 keep the savings incentive.

9 Now, I do not think we would have the votes here. We
10 sure would not have it in an open session. Maybe we would in
11 a closed session. Because it certainly--

12 The Chairman. We have a proposal that does that, except
13 for mortgage interest, and a certain amount of other inter-
14 est.

15 Senator Symms. It just seems to me like we all--most of
16 us know that the right thing to do is to cut spending, number
17 one.

18 Number two, if you cannot do that, put taxes on consump-
19 tion. But by the time we get around to raising revenue, here
20 we are taking away one of the meager little incentives in
21 savings that we know we need, out of our tax code.

22 Senator Bentsen. Mr. Chairman, the comment has been made
23 that this is the first instance. That is not correct.

24 We, on this Committee, we worked very hard to encourage
25 and put in incentives savings, whether we are talking about

1 IRA, or whether we are talking about KEOUGH, or we are talking⁹⁰
2 about other pension benefits.

3 We have pushed very hard to accomplish that, in this
4 instance, and I voted for this one, but we have to get to a
5 deferral, or we are not going to pick up enough money to meet
6 the mark that the Chairman and this Committee is charged with,
7 so I support the Chairman in his effort here.

8 Senator Chafee. Mr. Chairman, I would just like to say,
9 I do not think it is quite fair to dismiss the IRA's as merely
10 a transfer of money from other sources, other savings. I do
11 not think that the record shows that, certainly the bankers I
12 have talked with at home do not do that, and I think that is
13 a very substantial incentive for savings, and I agree with
14 the sentiments expressed here, that what we need is something
15 to reduce this deficit.

16 Sure, we ought to cut some spending, and we will do that,
17 and hopefully more, and sure, we have to raise some taxes.
18 Here is a very modest one that had not even gone into effect
19 yet.

20 So that is about as painless as it can be, so I would
21 hope, Mr. Chairman, that you would press forward with this.

22 The Chairman. Right.

23 Senator Roth wants to speak, and thenaybe we can vote,
24 because we have about eight other items, and we have to leave
25 by one.

1 Senator Roth. Mr. Chairman, I agree with what Senator
2 Chafee said about the IRA's. I think it is too early and too
3 soon to try to evaluate their value.

4 Frankly, I think they are going to prove to be a great
5 boon. I share, however, the concern that we are not trying
6 to move in the direction of encouraging savings, because that
7 has been, I think, a key factor, particularly in the case of
8 Japan.

9 But let me go just for a moment to those who are saying
10 that we have to raise revenue. It is true that we apparently
11 are saving, and spending twice as much, if we save \$3 billion.
12 But I would like to raise one question with respect to the
13 seven and a half billion dollar savings that was made on the
14 spending side.

15 What was that a baseline from? Was that from actual
16 spending, or is that from the Congressional Budget Resolution?

17 Mr. DeArment. This is the seven and a half billion--

18 Senator Roth. You mentioned a number, a savings had been
19 made in a number of other areas.

20 Mr. DeArment. They are savings that are made relevant to
21 the Budget Resolution. The Budget Resolution provided for a
22 certain level of spending, and a certain level of tax increases.

(3)

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1 Senator Roth. Just let me make one short comment, Mr.
2 Chairman.

3 The congressional budget resolution I think raises
4 spending something like \$32 billion over a three-year period.
5 So when we talk about slowing down that increase, that is
6 no real savings.

7 I think one of my basic concerns here is that we are
8 going to raise -- we are going to raise revenue \$16 billion;
9 on the spending side we are going to do something like
10 \$3 billion and yet we have to face the fact that Medicare and
11 some of its programs have increased by 15 percent. So let
12 us not kid ourselves about making any substantial savings
13 on spending.

14 The Chairman. Could I just say, Senator Roth, if you
15 look at the overall package, we think it is still going to
16 be that balance of savings because your Committee saved about
17 what, 5 or 6?

18 Senator Roth. Yes, but let me point out that \$9 billion
19 that we made in my Committee was not contingent on the
20 revenue.

21 The Chairman. But at least we get a better resolution
22 than we got from the Budget Committee.

23 Senator Durenberger. Mr. Chairman.

24 The Chairman. Yes.

25 Senator Durenberger. The subject of the -- the thing

dm 2 1 that concerns me about this is not just the incentives for
2 savings, it is the double taxation of savings and the whole
3 issue of whether we sent the right signals in 1981 about
4 encouraging or discouraging consumption and clearly a tax
5 on savings is double taxation.

6 What did happen to the proposal that we approve the
7 change in the consumer interest deduction? Could we not bring
8 that up right now?

9 The Chairman. Well, it is not on the agenda. That is
10 in a package that I guess I did not release. But in an
11 effort to reduce the deficit by \$120 billion, that was one
12 of the items on the revenue side that we thought not many
13 would object to even though -- I think, Rich, what was that
14 specific proposal?

15 Mr. Belas. The proposal was to disallow the deduction
16 for consumer interest paid otherwise, the non-mortgage, the
17 non-business, except for \$2,000. That is what was under
18 consideration last summer.

19 The Chairman. We considered that last summer and I
20 do not think it was ever pushed to a vote.

21 Mr. Belas. No.

22 The Chairman. But it is still our hope, as I indicated
23 earlier, that we are going to be able to put together a
24 deficit reduction package which will satisfy Senator Roth
25 on the one hand and others on the other hand, whether it

dm 3

1 has a lot of spending reduction and most of the revenue
2 changes are not increases.

3 Could we vote on this? Do you want to vote, Steve?

4 Senator Symms. Yes, we want a vote.

5 Mr. Chairman, I want to say one thing before we do vote.

6 I do not want to leave my colleagues on the Committee with
7 the impression that they will be valuable. What I quoted
8 is what the Federal Reserve Board has said. I just want to
9 make that clear. I think the IRA's are a real plus and we
10 should continue to use them and boost them and encourage them
11 and eventually they will, I think, be helpful.

12 But I would think we would be better off to do as
13 Senator Durenberger suggested, to put a limitation if it is
14 the same amount of money on consumer interest, so that there
15 is taxes on savings. It is a better tax policy to tax
16 consumption than it is savings. And if we have a choice
17 here, and which I do not want either choice, but if we have
18 to make a choice, I would rather have the choice to tax
19 consumption and not tax savings.

20 I would like to just see us do that, if that is
21 possible.

22 The Chairman. Why do not we vote on this? If it fails,
23 we will figure out some way to vote on the other one. I have
24 not figured it out yet. All we are doing is deferring,
25 this will make it clear, we are not repealing it. There may

dm 4 1 be some other things that we will have to defer like COLA
2 adjustments and other areas that we do not want to do
3 it --

4 Senator Moynihan. Mr. Chairman, the tax does not now
5 exist, just on the statute books like Mr. Chafee said.

6 Senator Armstrong. Say that again?

7 Senator Moynihan. This provision does not exist in the
8 economy. It is something that we are delayed from implement-
9 ing.

10 Mr. DeArment. The vote is to -- the item in the package,
11 to postpone for two years the effective date of the 15 percent
12 net interest.

13 Senator Danforth. My vote supports the votes on that --

14 Mr. DeArment. That is correct.

15 The Chairman. This is a vote on the item in the
16 package.

17 Mr. DeArment. This is a vote on the item in the package.

18 Mr. Packwood?

19 Senator Packwood. Aye.

20 Mr. DeArment. Mr. Roth.

21 Senator Roth. No.

22 Mr. DeArment. Mr. Danforth.

23 Senator Danforth. Aye.

24 Mr. DeArment. Mr. Chafee.

25 Senator Chafee. Aye.

dm 5 1 Mr. DeArment. Mr. Heinz.
— 2 Senator Heinz. Aye.
3 Mr. DeArment. Mr. Wallop.
4 Senator Wallop. No.
5 Mr. DeArment. Mr. Durenberger.
6 Senator Durenberger. No.
7 Mr. DeArment. Mr. Armstrong?
8 Senator Armstrong. No.
9 Mr. DeArment. Mr. Symms?
10 Senator Symms. No.
11 Mr. DeArment. Mr. Grassley?
12 Senator Grassley. No.
13 Mr. DeArment. Mr. Long?
14 (No response.)
15 Mr. DeArment. Mr. Bentsen.
16 Senator Bentsen. Aye.
17 Mr. DeArment. Mr. Matsunaga.
18 (No response.)
19 Mr. DeArment. Mr. Moynihan.
20 Senator Moynihan. Aye.
21 Mr. DeArment. Mr. Baucus.
22 Senator Baucus. Aye.
23 Mr. DeArment. Mr. Boren.
24 Senator Boren. Aye.
— 25 Mr. DeArment. Mr. Bradley.

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(No response.)

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Mr. DeArment. Mr. Mitchell.

3

(No response.)

4

Mr. DeArment. Mr. Pryor.

5

(No response.)

6

Mr. DeArment. Mr. Chairman.

7

The Chairman. Aye.

8

(Pause.)

9

The Chairman. The yeas are 9 and the nays are 6.

10

The provision is agreed to.

11

All right, No. 3 is modification of income averaging.

12

Mr. Belas. Mr. Chairman, the agenda item has alternatives.

13

The first alternative would be to raise the amount by which

14

a person's income would have to increase by a greater

15

percentage in the current year in order to meet the threshold

16

for the application of the income averaging rules. That

17

proposal still suffers from the problem that the IRS does not

18

have sufficient data capability in its computers to look at

19

the five years that must be considered for income averaging

20

under current law.

21

The second proposal in the agenda item is to increase

22

by a smaller amount the percentage increase that an individual

23

must have in its income, in order for the income averaging

24

rules to apply, but to apply income averaging over the

25

current year and the last two prior years rather than the

dm7 1 last four prior years. It would be that simple.

2 The Chairman. All right.

3 Now, what are we talking about from the standpoint of
4 revenue plus this gets involved in another matter that is
5 pending on the Senate floor, health care for the unemployed.
6 As I understand, if in fact the change were made there
7 would be-if health care of the unemployed were passed there
8 would be enough raised to fund that program for a two-year
9 period?

10 Mr. DeArment. The program for a two-year period is
11 estimated to cost about \$1.8 billion. The income averaging,
12 modification of income averaging that Rich might add is
13 about 3.6 over three years.

14 The Chairman. So part of that would satisfy the
15 budget resolution and the other part would--

16 Mr. Brockway. If you take your second option that
17 Rich outlined, it is 4.1 over the three years. So a net
18 2.3 above the health care.

19 The Chairman. I do not know how Treasury views this
20 because they were involved in other legislation.

21 Mr. Chapoton. Well, Mr. Chairman, I think our main
22 concern, I take it this would be that the motivation of this
23 change would be principally revenue raising and we have
24 expressed concern about that. The general context unless
25 it is coupled with a spending cut, I know the Chairman is

dm 8

1 fully aware of the Administration's views on that. So just
2 addressing that from a structural standpoint, I think our
3 only concern was if you limit the number of years, when you
4 limit the number of years you have two effects: One is
5 you narrow the bracket, the effect of the averaging
6 provision is to widen the brackets. As you limit the number
7 of years, you narrow the bracket widening. That is, you
8 remove some of the progressivities from the system if you
9 use averaging.

10 Senator Armstrong. Could you say that again?

11 Mr. Chapoton. If you use a five-year base period, you
12 divide the income over a threshold by 5, apply to determine
13 your marginal rate, so obviously you divide it by 5, you
14 have had a 5th, you would have a lower marginal rate than
15 if you had 5 times as much income. So you have reduced
16 your marginal rate and then you multiply the result by 5.
17 So you in effect do not allow that additional income to move
18 the taxpayer into the higher brackets.

19 Senator Heinz. Bob, just so I understand, do you like
20 having a lower or a larger number?

21 Mr. Chapoton. No, what I am suggesting is, if you want
22 to have the bracket narrowing effect, which does have that,
23 that is less troublesome to us than using the smaller number
24 of years where you could have some in and out activity. We
25 would suggest use the larger number of years but have the

dm 9 1 same bracket narrowing effect.

2 The Chairman. Rod.

3 Mr. DeArment. Although there was one concern in terms
4 of lowering the number of years related to the IRS's ability
5 presently to enforce a four-year look-back where they only
6 have two years of data that is readily available to do any
7 audits or checking --

8 The Chairman. O.K. Why do we have this provision in
9 the law in the first place? How long has it been there,
10 Dave?

11 Mr. Brockway. Well, you had it since 1964, but it was
12 originally put in, I think your base was 133 percent and then
13 it was adjusted down to 120. It was put in there for when
14 tax rates have a real sharp jump in income and what the
15 problem--

16 The Chairman. Like some athlete going from high school
17 -- college into --

18 Mr. Brockway. Or whatever. If you are earning very
19 little, then --

20 Senator Moynihan. A person who publishes a book after
21 5 years.

22 Mr. Brockway. That would be a good example. And one
23 of the problems is that originally it was supposed to be
24 directed when people get a real sharp jump. Now what has
25 happened, is that people -- more and more people are going

dm 10

1 on -- now the increase only has to be over 120 percent of
2 your income, plus with putting indexing in the Code that that
3 adjusts for a lot of the natural growth so you have a lot
4 of people come on that do not really have a very sharp
5 increase in come. So what the proposal, by changing from
6 120 to 130 is designed to target really back to where it was
7 originally intended, a real sharp growth in income.

8 The Chairman. And if you do what you suggest, to
9 sort of bring it back where it was, what are the revenue
10 implications of that?

11 Mr. Brockway. Well, the package -- this, what is
12 outlined, would not go exactly back to 133, that the proposal
13 is only 130.

14 So going back to it originally, you would go higher.
15 So all that is being proposed here is to go to 130 percent
16 and that is the \$4.1 billion and the two-year base period
17 so that you could have a computer check to make sure that
18 the taxpayer actually qualifies.

19 Senator Bentsen. You go how many years on 130?

20 Mr. Brockway. It is 130 percent and then a two-year base
21 period.

22 The Chairman. Senator Grassley.

23 Senator Grassley. Mr. Chairman, I do not suppose
24 agriculture is the only economic class that uses this. In
25 fact, they might use it less than others do as well. But I

dm 11 1 looked at this from the standpoint of agriculture because
2 my State being an agriculture state, in fact every member
3 of this Committee would have a large section of the economy
4 of their State dependent upon agriculture and in going to
5 some of the people who prepare income tax returns, I find
6 that in my State 10 to 15 percent of agriculture use income
7 averaging and 80 percent of agriculture has used income
8 averaging at least once in a recent period. And of course
9 if this is increased to the percentage that the staff has
10 suggested, 34 percent of the farmers who currently qualify
11 for income averaging will be unable to qualify for it in the
12 future. And if this provision is enacted, 64 percent of the
13 farmers will see an increase in taxes. And I guess the
14 reason that I looked at agriculture with some concern is
15 because farmers generally have less control over the markets
16 and of course, even more importantly, they have less control
17 over the weather and what their production is.

18 And so you are going to find agriculture to have
19 greater ups and downs because of things that are beyond
20 their control, maybe not greater ups and downs within things
21 that they can control or other groups control.

22 But I think in southeast Iowa now as an example, where
23 they had a drought this year, last year in 1982 they could
24 not get their crops in because of wet spring and in 1981
25 they were hit by low prices.

dm 12 1

Now, what we are going to do is limit dramatically the number of years that they can spread that low income or if they -- now if they have a period of high income, either in 1980 or 1984, the extent to which they can spread that over a longer period of time, and I think that is important.

But most importantly, it seems to me that we are getting at the young farmer who is just--if he is able to have some prosperity and get in just at a time when he is beginning to show some income, he is not going to be able to take advantage of it.

And then also for people who have suffered from lower income throughout their lifetime, that may be able to accumulate a great deal just before retiring, then as people get out of agriculture are going to be less able to benefit from income averaging as they go into their retirement years. And I have found that besides my own State, 10 to 15 percent of the farmers using averaging with 80 percent of them using it sometimes, Tennessee, I have 10 to 12 percent; New York, 10 percent; Indiana, 10 to 15 percent; Georgia, 10 to 15 percent, just to name a few of the States that I have had an opportunity to look into.

So I would ask for a separate vote on this issue.

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Senator Symms. Will the Senator yield for one question, and the staff can bear me out on this, and Mr. Chairman, I think if this passes--now, if it does not pass, it will not be necessary, but if this section passes, then there should be language, I would think, in the Committee report that says if anybody later on down the road tampers with indexing, which is a possibility that then they would have to go back to the old rules, because if you--Jim, you might want to explain this as you were the other day, Jim Wetzler.

If somebody comes in and takes away indexing, then this makes--it makes this modification worse for the taxpayer.

Mr. Wetzler. Well, Senator Symms, one of the reasons that we started looking at income averaging is that there is some double benefit between indexing and income averaging. Because when your income grows just at the rate of inflation, then one's indexing has started, your marginal tax rate will not be going up. It will be staying the same as a result of--

Senator Syms. Unless you make less money the second year and go back and file for a return.

Senator Grassley. Let me interrupt at that point.

We did not have bracket creep during the sixties to any great extent when we instituted income tax averaging, so there had to be a justified reason for instituting it regardless of income tax indexing or bracket creep.

Mr. Wetzler. And this proposal does not repeal income

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averaging. In the sixties, they came up with a 120 percent threshold which was considered appropriate with the lack of inflation back then. And you know if--once you have indexed, and let us assume that inflation is about 6 percent, then you would have to raise the threshold from 120 percent to almost 140 percent really to compensate for the--to get you back to the status quo in the sixties.

Now, if you want to simplify the provision and shorten the base period from four years to two years, then an increase all the way to 140 would not be appropriate, only to about 130, which is why we sort of drafted the alternatives this way. We have some data, Senator Grassley, on the farm question.

Senator Durenberger. Mr. Chairman.

The Chairman. Senator Durenberger.

Senator Durenberger. Yes.

I guess I probably would not have spoken to this issue except for the fact that somehow we got this tied in with a brand new health care program, and my concerns are that while we may only be adjusting the averaging slightly now, we may be tied to whatever we do for some longer period of time, and the reality of what we are doing here is we would not have this problem if we had a flat rate tax, for example. We would not be worrying about it because everybody would pay the same percent. Or if we shifted from income taxation to consumption, we would not have the problem.

hws-3 1

2 The reason we have the problem is we have a progressive
3 tax system which is designed to bring some fairness and
4 equity into the system. But then we also have the accounting
5 problem that once each year we sit down and look at everybody
6 in this country, make comparisons between people and say that
7 certain people are going to pay more in a given year than in
8 another year because of the fact, as an inventor, baseball
9 player, Senator who got trapped between honorarium limitations,
10 whatever the case may be, we need to do something about that
11 unique year or two. I think that is probably why in the
12 middle seventies, and I think it was under the Ford Administra-
13 tion, that we had some strong recommendations that we look at
14 income tax policy in terms of the lifetime burden of taxation
15 so that we can fairly compare people differently situated who
16 have different years during the course of their life. So I
17 just want to go on record as being bothered, to the extent
18 that it looks like we are moving away from income averaging
19 by what we are doing.

20 I just want to go on record as saying that is not my
21 version of what income tax policy to be in this country. I
22 know that we are not changing it all that much, but I think,
23 from my perspective, I need the record to show that I care a
24 great deal about a progressive tax system that relates to
25 lifetime burden so that all of us get pretty much the same
treatment.

hws-4

1 Senator Heinz. Mr. Chairman, I would like to ask this
2 impressive array of experts here whether I am right or wrong
3 on a matter of Congressional intent when this was put in the
4 sixties.

5 It was my understanding that the purpose of income
6 averaging was to recognize that people, there are certain
7 classes of people, certain professions who put in several
8 years of work to produce a work product, and that a notion of
9 income averaging where people have spent three years writing
10 a book or three years writing a play or two years painting a
11 --the Mona Lisa, was that their income should in effect be
12 spread over the time period that they worked to achieve that
13 income producing end result.

14 Now, if we want to talk about tax policy, I think we
15 ought to talk about whether that is the policy or whether
16 there are some ends we want to serve through income averaging.
17 I would like to see the farmers taken care of too, but--and
18 maybe the fault is not with the income tax system, it lies
19 some place else, but my concern is that income averaging, for
20 example, has been now used as a way for some people of catch-
21 ing up with inflation, that people who have in law school and
22 get a 50,000 or 75,000 job out of law school can now use income
23 averaging, my understanding was that that was not the intent
24 of income averaging.

25 I would like a little historical update, if I may.

hws-5

1 Mr. Wetzler. Senator Heinz, before 1964, there was
2 special averaging provisions for certain types of compensation
3 from services such as inventions and types of artistic work,
4 and what the 1964 Act did was try to consolidate all these
5 ad hoc provisions into one general provision that was avail-
6 able to everybody. The idea being that, you know, athletes
7 and, you know, actors, for example, and the ones mentioned in
8 the Committee report, farmers, fishermen, attorneys, archi-
9 tects, all had basically the same problem as inventors and
10 writers and, therefore, there should be the same general
11 provision. But in the sixties, only about 300,000 people a
12 year were electing income averaging. Then in 1969 it was
13 liberalized and went up to about a million people a year.
14 Now, as a result of inflation, it has gone up over 5 million
15 so the provision is really now quite a bit broader in its
16 scope than was originally intended back in 1964.

17 Senator Heinz. Now, how many of these five million
18 people are farmers?

19 Mr. Wetzler. About 5 percent.

20 Senator Heinz. Well, although it is probably not good
21 tax policy, given what I think the intent is, maybe a way to
22 get about 95 percent of what the Chairman asks, is to leave
23 the farmers alone here and make this a three-year provision,
24 come back and look at it again in three years.

25 The Chairman. It has just been suggested by Rich

hws-6 1 Belas that maybe the best way to do it, you would lose some
2 revenue, but again that is not the criteria, is to keep it at
3 five years and change that percentage to 130 percent--

4 Mr. Belas. 140 perhaps.

5 The Chairman. 140.

6 Senator Moynihan. Mr. Chairman, 140 would really probably
7 get you closer to the original intention of this provision.

8 The Chairman. That would not have any--it would still
9 have an impact revenue wise, but--

10 Mr. Brockway. That would pick up about 3 billion as
11 compared to 4 billion, but you would be closer to where you
12 originally were with the provision when it was adopted.

13 Senator Armstrong. Over the four-year period?

14 Mr. Brockway. It would be over the same year four-year
15 back averaging, total five-year period.

16 The Chairman. Would that be satisfactory? It might not
17 answer every question but it would put you where you were.

18 Senator Armstrong?

19 Senator Armstrong. Well, I just want to clarify one
20 issue.

21 That sounds to me like it might be all right but I want
22 to be sure that this is not in some way related, this item is
23 not in some way related to a proposed spending item.

24 The Chairman. Well, it is related only in the sense that
25 if in fact health care provision passes, that a portion of

hws-7 1 this--I do not think it is earmarked, but that--the Admini-
2 stration said they do not want spending cuts to pay for
3 health care of the unemployed and that they wanted to find a
4 revenue item. Well, we looked up and down for revenue items,
5 and none of those satisfied the Administration. I get a
6 feeling that there is not strong support for the program.
7 But that is, I guess that is the tie. I do not know how you
8 break it out.

9 Mr. DeArment. Mr. Chairman, it was also contemplated
10 that when the health insurance for the unemployed, legisla-
11 tion reached the floor, it would have in it an amendment that
12 dealt with the same subject.

13 The Chairman. But the only credits you would get on the
14 budget side is the difference between the health care package
15 costs of 1.7 billion for what, three years?

16 Senator Armstrong. We are not talking about putting the
17 health care item in this bill.

18 The Chairman. No.

19 Senator Armstrong. Well, if that is the case then, I do
20 not see how the savings or the increased revenue could apply
21 to that because even with everything, if we adopt everything
22 on the table, we are not going to be close to our reconcilia-
23 tion target on the revenue side.

24 The Chairman. Not today.

25 Senator Armstrong. Based on what is before us today.

hws8 1 The Chairman. We are about up to 9 billion and slowly
2 inching forward.

3 Well, if we made that change, I mean I do not know if the
4 health care of the unemployed is going to pass or not.
5 Senator Heinz would like to get an agreement to get it up on
6 the floor. A number of us have been beating on it. But, I
7 think notwithstanding we ought to adopt this provision.

8 Senator Chafee. Mr. Chairman, what would be the effects
9 revenue wise if we--and I may have stepped out so I was not
10 sure if you maybe covered this, if you went to your 140 percent
11 and three years. Did you discuss that?

12 The Chairman. Well, we thought rather than disturb what
13 concerns many, including Senator Grassley, just leave it at
14 five years, make the percentage adjustment, then you are
15 about where you were at, as I understand, originally.

16 Is that the case?

17 Senator Chafee. It is four years. Is it five years?
18 Previous four.

19 Mr. Brockway. Previous four plus the current year so
20 you divide by five.

21 Senator Chafee. Is that the big point with these
22 gentlemen?

23 The Chairman. That is one, I think, that Senator
24 Grassley raised. It does not address it totally but it
25 certainly improves it.

hws-9 1 Senator Chafee. Well, each time you change from the pro-
2 posal here, you are losing revenue, and as I understand the
3 proposal as set forth, gives you 3.6.

4 The Chairman. 3.3.

5 Mr. Brockway. Well, there is two. The proposal with
6 the two-year based period and the--

7 Senator Chafee. The proposal as set forth--

8 Mr. Brockway. That would be about \$4 billion. This
9 proposal be about \$3 billion.

10 Senator Chafee. So--oh, I see. If you went to 140, but
11 kept the five years, you would get 3 billion.

12 Mr. Brockway. That is correct.

13 Senator Chafee. So you lose a billion.

14 Mr. Brockway. That is correct.

15 Senator Chafee. So I take it that the percentage seems
16 to be more important than the years.

17 Mr. Brockway. Yes.

18 The Chairman. I think we probably, if we can agree on
19 the three, I would rather lose one than four. I think there
20 is strong feelings on doing the other. There may not be
21 quite as strong if we change the percentage and leave--

22 Senator Chafee. How would they feel if you, instead of
23 five years, you had four years? Would that pick you up a
24 little?

25 Mr. Brockway. That gets you back to the 4.0. At 140 and

hws-10

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three years.

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Senator Grassley. Since they made a big deal of only 5 percent of it affecting farmers, I would just move to exempt agriculture, leave the old rules for agriculture and the new rules for whatever you want.

3

Well, I make that amendment.

4

Mr. Brockway. I think that would end up to be rather complicated at that point of applying the income averaging rules because you then have to bifurcate your income between that which was from agricultural services and that which was from other types of services, and it would become a very complicated provision.

5

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The Chairman. He can still make the amendment even though it is complicated.

10

Do you want a vote on that amendment?

11

Senator Grassley. Yes.

12

The Chairman. Okay.

13

Mr. DeArment. The amendment would be simply to exempt agriculture--

14

15

The Chairman. Could we do this just to speed up the process? We hopefully can finish by 1. Agree to the \$3 billion package and then you would amend that proposal, or shall we vote on the 3 billion first and then you would amend that?

16

17

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Senator Heinz. I think--I thought he was in favor of a

hws-11 1 \$4 billion package as long as you exempt agriculture. Maybe
2 I got it wrong.

3 Senator Grassley. I am against the whole thing, I might
4 as well be honest with you.

5 I think income averaging, I think it is stupid to argue
6 that we ought to have middle income people finance our
7 program for health insurance for the unemployed. If you
8 want to improve the Tax Code, it is one thing, but I have been
9 trying to argue that these are people, basically who do not
10 have control over annual income like a lot of people who can,
11 who do not use it, who have steady income from year to year.
12 I am trying to make the tax more--to average the tax out for
13 those people who cannot control their income.

14 The Chairman. Could we--

15 Senator Grassley. And I argue that agriculture can do
16 that less than any other group to a large extent.

17 The Chairman. Chuck, could we first vote on the \$3
18 billion proposal and then you offer your amendment to that if
19 it passes, and if not, offer it to the floor?

20 Senator Grassley. I would like to exempt agriculture
21 regardless. So I want my amendment to both packages.

22 The Chairman. Okay.

23 Let us see if we can adopt the 3 billion. I think the
24 3 billion, even though it is a billion dollars, makes more
25 sense, and I think Treasury would agree to that.

hws-12 1

Mr. Chapoton. Yes, sir.

2

Mr. Chairman, is that five years or the 140?

3

Mr. DeArment. That is correct, the proposal--

4

The Chairman. Could we vote on that and then vote on--

5

Senator Baucus. Mr. Chairman, are we also going to vote

6

on the Grassley amendments?

7

The Chairman. Yes.

8

Senator Heinz. Mr. Chairman, may I just ask Mr. Wetzler

9

one last question?

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What level of income people use average income averaging,

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are they people above 50,000, below 50,000?

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3 Mr. Wetzler. They're scattered throughout the
4 income distribution. I have some data on the number of people
5 there are about--I think it is more interesting to look at
6 who get the tax savings rather than just numbers because there
7 are a lot of people get very small benefits from it, for whom
8 it does not make much difference.

9 But I would say about a third of it is--or let's see,
10 about over half of it is people with incomes over \$50,000.

11 Senator Heinz. Over half the tax savings comes from
12 people over \$50,000. Okay.

13 That is current law?

14 Mr. Wetzler. Actually, I would say it is about two-
15 thirds.

16 Senator Heinz. Two-thirds of the tax.

17 Is that when you--just so I understand that, when you say
18 that it is people over \$50,000 get two-thirds of the tax
19 advantage, do you mean--what is that \$50,000 a measure of,
20 average income over the four-year period, or the amount of
21 income they have in the year in which they claimed income
22 averaging, or what is that?

23 Mr. Wetzler. It is the current year's income.

24 Senator Heinz. So that would be the--

25 Mr. Wetzler. The year in which they claim income aver-
aging.

Senator Heinz. In which they claimed income averaging

1 they have \$50,000 or more in income.

2 That is a big year.

3 The Chairman. I wonder if we could vote on the \$3
4 billion and then we will vote on Senator Grassley's exception,
5 if it passes. If it does not, we'll vote on the \$4 billion,
6 whatever.

7 Senator Symms. Mr. Chairman, just a Parliamentary in-
8 quiry that I would rather have \$3 billion than \$4 billion in
9 tax increases, but I would prefer to have no billion to \$3
10 billion.

11 Is there a choice here for those of us?

12 I do not want to end up casting my vote no on \$3 billion
13 and then you end up with \$4 billion.

14 The Chairman. It might be a good time to make a phone
15 call.

16 (Laughter.)

17 Senator Grassley. Mr. Chairman, I offered my proposal
18 in the form of an amendment to whatever the pending proposal
19 is. I offer as an amendment, the exception to the amendment
20 to the proposal.

21 The Chairman. Well, the proposal that we have on the
22 agenda is \$4 billion, so I guess the amendment would be to
23 that proposal.

24 You want to vote on that now?

25 Senator Grassley. Yes, and then I will offer it.

1 The Chairman. Well, this may pass.

2 Senator Grassley. I want to offer it now for sure.

3 The Chairman. Okay.

4 Is agriculture defined in the Act anywhere, what is it, one
5 chicken?

6 Mr. Brockway. I would think we would have to--

7 The Chairman. There ought to be some definition.

8 How do you define agriculture?

9 Senator Grassley. Well, I am not a tax preparer, but
10 everybody makes out a Schedule F.

11 Mr. Wetzler. We would probably have to do a little bit
12 of thinking on this, but I suppose one way you can do it is
13 to say if, say, half your income comes from agriculture, you
14 can use, you know, present law, and if less of your income
15 comes from agriculture, then you use the new law.

16 But we would have to probably do a little more thinking
17 to see if we could come up with a better scheme in that.

18 The Chairman. Is that right, Chuck?

19 Senator Grassley. Subject to my reviewing the definition
20 they come up with.

21 The Chairman. You would need some threshold, otherwise
22 everybody would claim they are farmers.

23 Senator Grassley. Well, heavens, we have four or five
24 different definitions for farmers, depending on what program
25 they want to use.

1 One of the things you can do, a service for the farmers
2 as well as the taxpayers and the IRS is get one definition of
3 who is a farmer.

4 Mr. Wetzler. I think in the estimated tax rules there is
5 a special rule that applies that if more than two-thirds of
6 your income is for farming.

7 Senator Grassley. You have another definition for people
8 qualified for soil conservacy credits, you have got another
9 definition to qualify for investment tax credits, and one
10 definition of a farmer would be a good thing.

11 The Chairman. Let us vote on the farmer amendment. The
12 exception to the--this would be an exception--an exemption
13 from the proposal that is printed on the agenda.

14 Mr. DeArment. Mr. Packwood.

15 Senator Packwood. No.

16 Mr. DeArment. Mr. Roth.

17 Senator Roth. Aye.

18 Mr. DeArment. Mr. Danforth.

19 Senator Danforth. No.

20 Mr. DeArment. Mr. Chafee.

21 Senator Chafee. No.

22 Mr. DeArment. Mr. Heinz.

23 Senator Heinz. No.

24 Mr. DeArment. Mr. Wallop.

25 Senator Wallop. No.

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

1 (No response.)

2 Mr. DeArment. Mr. Chairman.

3 The Chairman. No.

4 (Pause.)

5 The Chairman. The "nays" are nine and the "yeas" are
6 six, so the amendment is not agreed to.

7 I still think the \$3 billion proposal is a better one.
8 That would satisfy some of the concerns expressed. I wonder
9 if there is any objection to substituting the \$3 billion pro-
10 posal for the four point one?

11 Senator Moynihan. I would so move, Mr. Chairman,
12 simply because I think it retains the original intention of
13 this provision.

14 Senator Grassley. I will withdraw my proposal to put the
15 exemption on that.

16 The Chairman. So if there is no objection, we will agree
17 to the \$3 billion.

18 That would satisfy Treasury?

19 Mr. Chapoton. Yes, sir, we think that is a better way to
20 go.

21 The Chairman. All right.

22 Let us move on to tax compliance measures.

23 I think these are some of Senator Grassley--some of these
24 came from hearings you had in your Committee, is that correct?

25 I would state to the members that we hope to have the

1 Parliamentarian here in about ten minutes.

2 Senator Boren. Mr. Chairman, I wonder, before Senator
3 Durenberger leaves, if I could take up a couple--or would you
4 rather wait to do that this afternoon on those?

5 There are a couple of--one is non-budget. I think we can
6 approve in about thirty seconds. If we run into difficulties--

7 The Chairman. I understand.

8 I do not want to not do it, but I understand the Adminis-
9 tration objects to all the amendments and wants to be heard.

10 So I don't know how we can--

11 Senator Boren. They do not object to the hospital certi-
12 fication, do they?

13 The psychiatric hospital and the other hospital certifi-
14 cation?

15 The Chairman. Without objection, we will adopt that one.

16 The other three that--we will take that one.

17 Senator Boren. Do they object to the earnings of students
18 even if we applied the in-school requirement?

19 I understood that if we applied the in-school require-
20 ment they might not object to that.

21 The Chairman. Maybe you can negotiate with the--

22 Senator Boren. We will see what we can do.

23 Senator Armstrong. Say that again, David.

24 Senator Boren. On earnings of children, AFDC households,
25 if the government helps them find a job, we do not include the

1 earnings of that minor child in terms of qualifying a family.
2 If the child finds a job on his own, we disqualify--we could
3 very well disqualify the family from aid and this amendment
4 would say, as long as that child remains in school, if that
5 child finds a job on his own, that those earnings should not
6 be treated any differently than if the government finds that
7 child a job.

8 The Chairman. Senator Boren, as I understand, the
9 Administration would not object if it limits it to full-time
10 students and four-month periods on earnings.

11 Senator Boren. They would not object if limited to four
12 months, is that the same limitation applied to government
13 jobs, four months?

14 All right, that would be--

15 All right, full-time students.

16 The Chairman. All right with you, Bill?

17 Senator Armstrong. Yes, I wanted to hear what he was
18 saying because I have an amendment which I believe fits in at
19 this point, it is not a revenue gainer or loser, but it solves
20 the problem that we should--

21 The Chairman. Let us take care of that one. That is two
22 out of the four.

23 Senator Boren. All right.

24 I know the monthly reporting is the other one, they may
25 have some objection to. I wonder, the other is simply allowing

1 five States to have demonstration projects to use a common
2 definition of AFDC, food stamps and Medicaid to see if savings
3 could be obtained.

4 The Chairman. I understand they have projects going on
5 in three States now.

6 Senator Boren. Do they object to expanding that to make
7 it five?

8 The Chairman. Until they get the results from the three,
9 they would rather not expand it.

10 Senator Boren. We could take that one up with them
11 later.

12 The Chairman. The other one they're strongly opposed to.

13 Senator Boren. Strongly opposed to. All right.

14 Well, we can--

15 Senator Moynihan. Is the other one the monthly report-
16 ing?

17 Senator Boren. The monthly reporting is the other, and
18 it just seems to me there is no demonstration at this point
19 that the States are saving any money by the monthly require-
20 ment, monthly reporting. In fact, they may be losing money
21 and my amendment simply makes that optional, so if the State
22 tried to its error rate down, felt that the monthly reporting
23 certain categories was helpful, they could use it, but if they
24 found it was costing them more than they were saving, I don't
25 see any sense in subjecting them to the mountain of paperwork

1 that may be costly.

— 2 The Chairman. We have the same problem in the food stamp
3 program.

4 I know in hearings last week or two weeks ago, we were
5 trying to figure out some resolution to that. Maybe we could
6 work on that for awhile.

7 Senator Moynihan. Could I speak to that, Mr. Chairman,
8 very briefly?

9 In New York State, which is a big State, the largest
10 county with the smallest population, that has cost us \$2,000
11 a month, and that is about what that income is; down to New
12 York City, the smallest county with the largest population,
13 this thing is just not working.

14 Senator Boren. It is not working?

15 Senator Moynihan. Yes, it is not working.

16 They are not against it if it is working, but they find
17 it is just not working.

18 The Chairman. Well, if it is okay, we have taken care of
19 two of them.

20 Senator Boren. We will try to work out the other two
21 and if we cannot, then we will probably need a vote, at least
22 on the monthly report later, Mr. Chairman.

23 The Chairman. Can we go quickly now, since Senator
24 Grassley is here, to the tax--Bill, did you have an amendment
— 25 that fits into here now?

1 Senator Armstrong. I believe it does, Mr. Chairman.

2 It is an issue that the Committee and the Senate is
3 familiar with. It has to do with the controversy over taxing
4 the tuition waivers, the scholarships of medical and dental
5 students, and I thought under an amendment put through by Bill
6 Roth we had this all worked out but what happened is, as I
7 understand it, the Treasury has now about three weeks ago,
8 issued a ruling where if a student goes to school and gets a
9 scholarship or a tuition waiver, and promises that he or she
10 will practice medicine or dentistry for a certain period of
11 time in a certain location, that that is not taxable income,
12 if it is pursuant to a Federal program, but it remains taxable
13 income pursuant to a State program, and there is 29 States
14 including Colorado affected.

15 Now on several occasions the Senate, and I guess both the
16 House and the Senate, have acted to prevent this from happening
17 and I believe, Bill, it was your amendment that did this, but
18 about three weeks ago, until that the Treasury Department hand-
19 ed down a ruling which permanently solves the problem with
20 respect to national research service awards, which are the
21 Federal part of it, but does not for the State part.

22 And what we are told is that in the case of the Colorado
23 dental school, for example, and I think 28 other States are
24 affected, that it will just wreck them, that they cannot make
25 it.

1 So what I would like to do is propose an amendment
2 similar to what we have done before.

3 The Chairman. Could I ask just a chance to look at that,
4 while we maybe go through these other things?

5 Senator Armstrong. Sure, certainly.

6 The Chairman. If it is some technical matter and it is
7 not on the agenda, but if it is technical in nature, then
8 maybe we could take care of it.

9 Senator Armstrong. That would be fine.

10 I know of no controversy. I do not know what the vote
11 was on the amendment before, but I believe it was either
12 unanimous or overwhelming.

13 But, which is why the Treasury's ruling on it took me by
14 surprise, but it is terribly significant to the schools af-
15 fected.

16 Senator Chafee. Mr. Chairman, could I touch on a very
17 similar subject?

18 I do not know whether it is a problem that we have, I do
19 not know whether Treasury is aware of it, but some high tech
20 companies are giving loans to graduate students and in the
21 sciences and then they are excusing those loans if the stu-
22 dent stays on and teaches in the university, which is somewhat
23 akin to this situation.

24 Has that come up yet, do you know?

25 Mr. Chapoton. No, I am familiar with Senator Armstrong's

1 situation and I thought Colorado had adjusted their--when I
2 met with the Dean of the Dental School, I believe, he had
3 adjusted the facts for future cases where they are convinced
4 that they do not have a problem for the future. And I think
5 there is some concern about the past.

6 I am not familiar with the ruling that you are talking
7 about, Senator Armstrong, but I would like to look at that.

8 No, I am not--the question in every case is whether the
9 loan is turned in to compensation and it is--if the forgive-
10 ness of it is related to specific performance of services, then
11 it is considered compensation.

12 Senator Chafee. Well, I do not want to raise a problem
13 that has not come up but it seems to me that this is exactly
14 akin to the situation that Senator Armstrong pointed out, that
15 the gift, the loan is excused if the student will stay on, the
16 graduate student will stay on and instruct in computer techno-
17 logy, for example.

18 Senator Armstrong. Well, Mr. Secretary, I do not want to
19 quibble, but there is an important point that we should not
20 gloss over.

21 In those Federal loans, the national research service
22 awards which have been taken care of, there is exactly the
23 same kind of work-related post-graduation requirements that
24 exist in the Colorado case. In other words, where--I think
25 there are six conditions in all that you have to meet, and

1 where you work and what you do is one of them. So I think we
2 really should get together on it because I know that the
3 Department did not--

4 Mr. Chapoton. I know that Colorado for the future pro-
5 gram has amended this program, but the work can be performed
6 anyway, it does not have to be performed in Colorado, and they
7 are convinced, and I think we would agree, that that relieves
8 a problem for the future.

9 I do express some concern about students in pre-1983
10 years have received.

11 Senator Armstrong. Let us follow the Chairman's advice
12 on that.

13 The Chairman. Why do not you work on that detail with
14 Mr. Pearlman right now, then?

15 Andre, could we go through the compliance measures rather
16 quickly?

17 First of all, I know number 7 on that list, that is one
18 that passed the Senate about three times and Sam Gibbons
19 knocks it out in every conference.

20 I do not think there is any objection. That was in
21 Malcolm Wallop's original proposal, and they just sort of took
22 the teeth out of their proposal.

23 I think you still support that provision.

24 Senator Wallop. I do.

25 The Chairman. That is withholding on gains from foreign

1 investment, it is on this first sheet.

2 If there is no objection, we will re-adopt that provision
3 for the fourth time.

4 Now, let us go back to tax compliance.

5 Mr. LeDuc. Mr. Chairman, there are seven specific items
6 that fall in three classes.

7 They are provisions that deal with compliance in the tax
8 shelter area, there is a single provision that deals with
9 compliance with respect to illegal source income, and other
10 cash payments, and the final item provides for expanded re-
11 porting of mortgage interest payments.

12 The Chairman. Now, some of these are the result of the
13 hearings in Senator Grassley's Committee?

14 Mr. LeDuc. Yes, they are.

15 Several were suggested by the Treasury Department at that
16 hearing, others are responding to problems that were identi-
17 fied by the Treasury Department and the Tax Court.

18 The Chairman. Are there some of the seven that are not
19 controversial?

20 Are any of the seven controversial?

21 Mr. DeDuc. Mr. Chairman, I believe that there may be
22 concerns with some of them. It is my understanding that the
23 provision which would require promoters to keep track of their
24 investors and tax shelters is non-controversial.

25 It is my understanding that the proposal to increase the

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Tax Court small case limit from \$5,000 to \$10,000, is non-controversial.

The Chairman. Is there any objection to increasing the Tax Court?

Senator Grassley. I have a question about it.

The Chairman. Sure, go ahead.

Senator Grassley. I do not think I have any objection, but my question is around the definition of a tax shelter syndicate.

Do we have a common understanding of what that is, so that people operating on their own know?

It is my understanding this is to get at people who will really stretch the law to the limit and promote tax shelters with the idea of knowing that they're illegal to begin with, or at least of questionable legality, and then people are out on a limb.

That is the group of people we are getting at, right?

Mr. LeDuc. With respect to the increase in interest?

Senator Grassley. Yes.

Mr. LeDuc. That is correct, Senator, and the definition would be limited to investments with at least 35 investors in which the principal purpose of the investment was the evasion or avoidance of Federal income tax, which is a standard in the law today.

Senator Grassley. Okay.

1 Then do we also have that same definition applicable to
2 the term "promoter," under number one on the list?

3 I am speaking from the material that was handed out to
4 us.

5 Mr. LeDuc. Senator--

6 Senator Grassley. Under compliance options, number one.

7 Mr. LeDuc. Let me give you a little bit of background.

8 In 1982, we provided a similar requirement with respect
9 to all partnerships regardless of the purpose and it was
10 thought that this would be the requirement that promoters keep
11 lists, should apply to entities which are not partnerships.
12 And there was--it was my thought as drafted that there would
13 be a more narrow definition, although that could be done.

14 Senator Grassley. All I am interested in, do we have a
15 common understanding of the term "promoter," and "syndicated,"
16 and "tax shelter syndicate"?

17 Mr. LeDuc. Senator, a syndicate definition is borrowed
18 from another provision in the Code, and they promoter, the
19 notion of the promoter is again a concept that we have used
20 elsewhere in the Internal Revenue Code.

21 Senator Grassley. Okay.

22 Then, the other question I would have on the Tax Court
23 backlog. Are we going to use the same standard for the insti-
24 tution of the higher interest that we use in all Tax Court
25 cases, or are we going to have a higher standard in the case

1 involving tax shelter syndicates?

2 Mr. LeDuc. There will be a higher standard, Senator.

3 It would, however, be limited to the tax shelter engaged
4 in with the principal purpose of avoiding tax.

5 Senator Grassley. So then the way of avoiding people
6 who innocently are pursuing something in the Tax Court, as
7 long as they are doing it individually, separate from a tax
8 shelter syndicate, because they would not be penalized then
9 by the higher interest rate?

10 Mr. LeDuc. That is correct, Senator.

11 Senator Grassley. Okay.

12 Then the only other question I have, Mr. Chairman, is in
13 regard to an issue that did come out when we were talking
14 about interest withholding. The argument always came back,
15 or we always used the argument why we were after interest
16 withholding was because the IRS could not handle the 1099s.
17 They just could not match them up with the income tax. They
18 do not have them in many instances, but where they did have
19 them, they did not have the personnel to put them in the
20 computer and everything.

21 Are we going to be able to handle the information report-
22 ing that comes from the 1099s? I guess I maybe ought to be
23 asking Buck.

24 Mr. Chapoton. This is not a 1099.

25 Senator Grassley. No, I know it, but it is similar to

1 that. We got a report, it is keeping the list.

2 Mr. Chapoton. These will be cases where an audit is
3 underway. The problem on the withholding provision was not
4 that you could not match. When they came in on tape, for
5 example, there was 100 percent matching, but it was pursuing
6 the audit and this would be after the audit is in existence
7 or the promoter would just be required--

8 Senator Grassley. No, I am sorry, I am off that point.

9 I am on mortgage interest receipts. And I am asking the
10 question about--I raise the problem about not being able to
11 make use of the 1099s because we did not have the personnel to
12 put it into the computer so we did not have an effective
13 match.

14 You were asking for this information coming from people
15 who are receiving mortgage interest or paying mortgage inter-
16 ests?

17 Mr. Chapoton. No, the information reporting on cases
18 such as this and dividends and interests as well, increases
19 compliance significantly.

20 Our point was, in withholding that it does not actually,
21 except to the extent you generate voluntary compliance and
22 except to the extent that you have information to assist you
23 on audit, it is not a 100 percent collection process.

24 This would increase compliance as do other changes that
25 require--that provide more information for the service than it

1 can use. That is not to say it is comparabel in any sense to
2 withholding. That is the point we ought to understand.

3 The withholding problem was not that you did not do the
4 matching, but that you could not go and audit everybody that
5 you found a problem on.

6 Senator Grassley. I'm not trying to say it is comparable.
7 I'm just trying to say that the IRS told us they needed with-
8 holding because they did not have the personnel to get the
9 information into the computer system, and if you do not get it
10 in there, you cannot match, are we going to be able to match
11 in this case, or why have the report?

12 Mr. Chapoton. To the extent it comes in on tape, there
13 will be 100 percent matching and I repeat that the informa-
14 tion will always be helpful, it will increase compliance, yes,
15 sir.

16 Senator Grassley. Well, it was my understanding that you
17 were trying to get at the single individuals here who might--
18 like somebody sells a farm on contracting, and you want--

19 Mr. Chapoton. No, it is the institution that receives
20 payment of interest would report the interest received.

21 Senator Grassley. Well, then, all you're talking about
22 here are institutions reporting. You are not talking about
23 individuals reporting.

24 Mr. LeDuc. That is correct, Senator.

25 Senator Grassley. Though it was my understanding you were

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trying to get at the individuals who--

Mr. LeDuc. That has been talked about, Senator, that would obviously impose a more substantial record-keeping burden.

Senator Grassley. So we are talking about financial institutions like S&Ls reporting?

Mr. LeDuc. Many of those, of course, today, furnish all their customers with that same information.

Senator Grassley. Okay.

The Chairman. Does that satisfy?

Senator Grassley. I guess I do not have anymore problems with this whole section.

The Chairman. I think these are out of Senator Grassley's Subcommittee, so unless there is--I understand Treasury has one problem with cash reporting.

Mr. Chapoton. Our concern, the cash reporting, is not that this is not a problem area, this is a significant problem area, tracing cash through our system; it is whether it would really work, whether the payers that use case, if they want to cheat, would simply give the wrong information in any event, so we are concerned about the effectiveness of that.

Senator Armstrong. What is the estimated revenue impact to that?

Mr. Brockway. There is about .3, most of it is typical to the reporting on mortgage interest.

1 The Chairman. You are reporting about the whole package.

2 He's talking about the--

3 Senator Armstrong. I'm talking about the cash reporting.

4 Mr. Brockway. I do not think there would be a substan-
5 tial amount of revenue involved in that.

6 Senator Armstrong. Mr. Chairman, Senator Symms, who had
7 to leave in order to Chair the Senate at one o'clock, asked me
8 to point out that he has great concerns about it and maybe if
9 it is not a revenue item, it is more a policy item, maybe it
10 could be dropped out so that we could take it up another time.

11 The Chairman. I think the only question, I guess, what
12 is it, \$10,000?

13 Mr. LeDuc. The current proposal would be \$10,000.

14 It was added, Mr. Chairman, because of some concerns
15 expressed by Committee members that we have done nothing in
16 1982 to go after the cash economy and the illegal source in-
17 come, and it is intended to respond to that concern.

18 The Chairman. I do not know how many people pay \$10,000
19 cash for cars or other things, but if we are ever going to go
20 after the illegal side of this, maybe this is not the time to
21 do it.

22 I do not have any strong feeling.

23 Senator Grassley, what is your feeling?

24 Senator Grassley. Well, I think as far as the hearings
25 on our Subcommittee were concerned, that this was well received

1 by everybody who participated and that, you know, it is
2 questionable, people who would want to get around the law in
3 a way, to the extent to which they complied, but I think if
4 you look at the \$50 to \$100 billion of lost revenue out there,
5 that comes from illicit things and we are going to get a
6 handle on it, this is the place to start.

7 Mr. Brockway. Mr. Armstrong, it is my understanding
8 that if the level is raised to \$10,000 rather than \$5,000, the
9 original proposal, that has been described, going to \$10,000,
10 and those businesses that already have to report right now
11 because they are involved in trading in currency, that the
12 concerns of the people have raised about it, they no longer
13 have any objection is what I have been informed.

14 The Chairman. It was raised from five to ten, Bill?

15 Senator Armstrong. I must confess, Mr. Chairman, I have
16 already stated everything I know about this subject.

17 The Chairman. Is there any objection to adopting that
18 provision, or that change?

19 It would seem to me if we are ever going to get a handle
20 on people floating cash around--

21 Senator Moynihan. Mr. Chairman, I think we very much
22 shared--and I think we owe a debt to Senator Grassley for his
23 Committee hearings on this. That is not a small proposition
24 that there are \$90 billion worth of taxes being evaded each
25 year.

1 The Chairman. Okay.

2 Let us move on, then, to the one that Senator Bentsen--we
3 will adopt the tax compliance measures.

4 Mr. Chapoton. Mr. Chairman, if I could, let me raise two
5 additional points that we have suggested earlier, just quick-
6 ly, if the Committee wishes to look at them.

7 One is where the taxpayer is--avoids a penalty by saying
8 that he would have to seek permission of the Commissioner to
9 change the method of accounting and thus avoid the penalty.

10 In other words, now--taxpayers are to change the method
11 of accounting, are required to seek the permission of the
12 Commissioner of Internal Revenue. We have pointed out in the
13 past that some taxpayers can use an improper method and impro-
14 perly pay their tax, and then on audit they are assessed a
15 penalty, hide behind the fact that they would be required to
16 request permission and have not done so.

17 Initially, we said that they should positively be re-
18 quired to request permission but there is some concern about
19 that, so we are now saying that at least that should not avoid
20 the penalty if the penalty is otherwise appropriate.

21 Senator Moynihan. I so move.

22 The Chairman. Did you have another point, then?

23 Mr. Chapoton. The other area is the question of audit
24 insurance.

25 We testified that we thought audit insurance of the tax

1 system was a bad policy.

2 We would now simply suggest that--that we require informa-
3 tion reporting by third party insurers who sell policies pro-
4 viding indemnification against tax deficiencies. There would
5 be no real penalty in doing so, there would be some concern I
6 think on the companies offering such insurance and we think
7 that it would be appropriate that it does not be used to
8 insulate people from fear or concern about--

9 The Chairman. It is probably a good idea.

10 I wonder, unless there is some urgency, from what I
11 understand from staff, there has not been an opportunity,
12 really, to address that. If it is a matter of major impor-
13 tance, we can try to conclude it now, but we have one other
14 item that I know Senator Bentsen wants to discuss, and then we
15 have number six, and then we have the Parliamentarian here, and
16 Senator Baker calling for me to be on the floor.

17 Senator Armstrong. What about five?

18 The Chairman. Five is the one we are going to next.

19 Mr. LeDuc. Mr. Chairman, can I clarify?

20 There was an additional Treasury proposal that was not
21 identified on the agenda, which would allow the Internal
22 Revenue Service to regulate appraisers who practice before it
23 in the same manner that they regulate attorneys and accountants
24 and I think the staff-

25 The Chairman. Is there any reason that they should not?

1 I mean, they regulate everyone else.

— 2 Mr. LeDuc. That is correct, Senator.

3 Senator Grassley. I do not think we want to get into
4 that just on the basis of the proposition being presented here.
5 It may be a worthy thing, but this is straight off the top of
6 the head.

7 Mr. Chapoton. No, no, this we had testified to hearings
8 on this, on this side, too, yes, sir.

9 The whole question is, whether the appraiser, as now
10 attorneys, can be disqualified in extreme cases that practice
11 before the Treasury Department Internal Revenue Service. We
12 are very concerned about appraisals that are simply unsupport-
13 ed in any context and would like to have the authority to say
14 they cannot practice before us if they engage in such conduct.

15 The Chairman. In other words, somebody in effect--

16 Mr. Chapoton. It would be through the General Counsel's
17 Office and Treasury.

18 The Chairman. Engages in fraudulent or dishonest acti-
19 vity, would not be able to--

20 Mr. Chapoton. Yes.

21 There would have to be standards produced that would
22 deny him the right to practice before Treasury.

23 The Chairman. All right.

24 There is no objection to that as far as I know.

— 25 Let us move on to the matters, Rich, that Senator Bentsen

1 the modification of loss treatment.

2 Senator Bentsen. If I might comment on that, Mr.
3 Chairman.

4 You are talking about a very major change in the tax
5 treatment, goods or assets used in trader business and that is
6 being done without a hearing, and I think leads to some very
7 serious problems. In addition to that proposal, I think it is
8 substantially unfair. Because you are talking about a situa-
9 tion where, for example, on the recaptured depreciation you
10 charge the taxpayer with ordinary income and then you talk
11 about if you have a loss in that regard it has to be first
12 attributable to capital gains and limited to that, and then
13 if you took that on the corporation side and then if you go
14 to the individual you will have to charge it against capital
15 gains plus a thousand dollars, and to do that kind of an
16 approach I just think is unfair and I have to propose it in the
17 form in which it is presented, and I think it will lead to an
18 awful lot of problems. And I think you're certainly going to
19 hear from those who are affected, and rightfully so.

20 Senator Armstrong. Mr. Chairman, I was going to suggest
21 the same concern as Senator Bentsen. I do not know where this
22 has come from and there may be a way to finance it but I,
23 personally, think this should be dropped or modified or per-
24 haps have a hearing on it, or something.

25 The Chairman. Okay, let us do that.

end 6

1 Whatever. Let us move on to--

2 Senator Armstrong. Does that mean it is out of the
3 package?

4 The Chairman. Right.

5 I think we ought to make some changes there, but I think
6 until we have had a chance to look at whether Treasury has
7 some view on that or not.

8 Mr. Chapoton. Well, we have some of the concerns ex-
9 pressed. The problem addressed is moving the gains in one
10 year and the losses in the other. But we are now satisfied
11 that this adequately--

12 The Chairman. If there is some abuse it ought to be
13 corrected, obviously that is the responsibility that this
14 Committee has, but I think that we could--if there is some
15 major problem there, maybe we ought to gin up a hearing right
16 quick.

17 Now, what about number six?

18 We think we have modified it to such an extent that those
19 who raised questions earlier may not object.

20 Mr. Belas. Mr. Chairman, the materials that were dis-
21 tributed to the members do not reflect any change. They pro-
22 posal I believe you were describing would be to phase out the
23 graduated corporate rates which are on the first \$100,000 of
24 corporate taxable income, between taxable income of \$1 million
25 and \$1.4 million.

1 Effectively, that would mean that the rates for income in
2 that range would be 51 percent and then would drop after \$1.4
3 million back down to 46 percent.

4 The impact of this would be on somewhere between 7,000
5 and 14,000 corporations in the country, or less than 1 percent
6 of the corporations in the United States.

7 Senator Boren. Now, we would be raising those between
8 what figure and what figure?

9 Mr. Belas. \$1 million and \$1.4 million of taxable in-
10 come.

11 Senator Boren. Of taxable income, and their rate would
12 go from 46 to 51 percent.

13 Mr. Belas. That is correct.

14 Basically, Senator, the tax benefit from the graduated
15 corporate rates goes to every corporation and amounts to just
16 about over \$20,000, and it would recapture, this proposal
17 would recapture, that \$20,000 of tax benefit over that \$1
18 million to \$1.4 million of taxable income figure, and in order
19 to get that, the way to do it would be to raise the 46 percent
20 by 5 percent for that range of income.

21 Mr. Brockway. This would raise it up .5 as modified over
22 a three-year period.

23 Senator Chafee. I do not understand the 46 to--where
24 does the 51 percent come from?

25 Mr. Belas. Basically, all you are doing is--

1 Senator Chafee. I know what we are doing, but--

2 Mr. Belas. If he is taking the \$400,000 of income,
3 distributing that \$20,000 of tax benefits and multiplying it
4 through, it just comes out to 5 percent on that spectrum of
5 income. An additional surtax essentially of 5 percent on that
6 spread of income. And that would be sufficient to collect
7 back the \$20,000 benefits from the earlier income.

8 Senator Boren. If we are trying to regain that much
9 revenue, why are we doing it on corporations of this partic-
10 ular size as opposed to larger corporations?

11 Mr. Belas. It would be effective for all larger corpora-
12 tions because you would have to run through that income level
13 which would be at that 51 percent bracket, in order to get to
14 the higher level of income. So, essentially, it would be
15 imposed, recapturing that tax benefit for any corporation, or
16 at least a part of that tax benefit for any corporation that
17 had more than a million dollars of taxable income, any corpora-
18 tion larger.

19 Senator Chafee. So the more income you have, the less is
20 the effect on you?

21 Senator Boren. That is correct.

22 Mr. Brockway. It is the same for anyone over \$1.4, you
23 lose the \$20,000 advantage from having this graduated rates.
24 It was about 10 years ago that the corporate rate was 46
25 percent of everything over \$25,000, and then in order to give

1 a benefit to small business, gradually additional changes of
2 spreading the amount over \$100,000 and putting in a graduated
3 risk, the effect of that, though, was it not only went to
4 small business who was less than \$100,000, but it also went to
5 any business over that amount, and it would just take away
6 that \$20,000 advantage for any business with more than \$1.4
7 million of taxable income in the year.

8 Senator Bentsen. The way you would do in effect, you
9 would recapture it from the large corporations, is that right?

10 Mr. Brockway. That is basically it.

11 Senator Boren. If we want to raise that much money, why
12 do not we just put that much additional tax in the large
13 corporations and not raise it on those that are in that
14 particular bracket you are talking about.

15 Mr. Brockway. This raises the same amount on all corpora-
16 tions. It starts phasing in at \$1 million of income, and then
17 at \$1.4 million of income all corporations have that--all
18 large corporations, that is more than one corporation--

19 Senator Boren. What does it phase in now?

20 Mr. Brockway. Well, right now--

21 Senator Boren. 51 percent phases in at what level?

22 Mr. Belas. There is no 51 percent in the current law.
23 Basically, the problem that is being addressed by this pro-
24 posal is that all corporations, large and small, get the
25 benefit of this \$20,000 of reduced tax because of the

1 corporate graduated rates and the proposal would simply target
2 that special tax incentive to the smaller corporations and not
3 give it to the larger.

4 Mr. Brockway. There is no 51 percent rate as such.

5 Anytime you have a phaseout of a provision, that during
6 the phaseout period you aggregate obviously a higher rate than
7 normal.

8 The Chairman. Assuming that provision is modified, do
9 you think we have taken enough?

10 Without objection.

11 Now, what we have done now, we have just dropped number
12 one and we have dropped--the first group, because I think a
13 number of Senators had concerns about that. We have dropped
14 number five in the second group, modification of loss treat-
15 ment for trade or business property, and we have adopted the
16 others subject to working on this afternoon on some transi-
17 tion rules, with reference to public property leasing. And I
18 have the Parliamentarian here, who will assure us, I think,
19 that we can make the necessary changes on the Senate floor.

20 Senator Moynihan. Mr. Chairman, just for the record,
21 you indicated that we should also have some transition rules
22 on the tax, the stock option straddle.

23 The Chairman. I think that may be necessary, would not
24 it, but on the stock option straddles and foreign corporation
25 commodity straddles.

1 Mr. Chapoton. Yes.

2 Are you asking on transition rules?

3 The Chairman. Yes.

4 Mr. Chapoton. You are not talking about the past
5 liability, the pre-1981?

6 The Chairman. Oh, no.

7 Mr. Chapoton. I just have to look at the effective date
8 again on the changes but it ought to be a prospective effective
9 date. I do not know of any basic transitional moves,
10 though. But we will talk about it.

11 The Chairman. As I understand, you might have in mind
12 some report language on the past straddle legislation.

13 Mr. Chapoton. We were discussing that with some of the
14 staff now, report language or actually putting something in
15 the statute.

16 The Chairman. And the technical amendment that Senator
17 Armstrong suggested can be taken care of.

18 Mr. Chapoton. I have got a report.

19 As soon as I have a chance to talk to Senator Armstrong
20 about it.

21 Senator Armstrong. Mr. Chairman, I am advised that
22 subject to Secretary Chapoton's approval, it has been worked
23 out by staff.

24 The Chairman. That leaves us with the Parliamentary
25 situation.

1 What I would like to do is to have the Committee adopt
2 what we have done, but I want to make certain that you are
3 satisfied that we are going to have an opportunity for the
4 larger effort, because some have transition rules.

5 Senator Heinz. Mr. Chairman, one other, I don't want to
6 interrupt--

7 The Chairman. No, go ahead.

8 Senator Heinz. There is an amendment that Senator
9 Percy has a great interest in.

10 The Chairman. Right, he is going to offer that on the
11 debt ceiling today.

12 It is the MacArthur Foundation?

13 Senator Heinz. No, this is the coal gasification.

14 The Chairman. Oh, well, that would have go in our second
15 effort.

16 Senator Heinz. Well, it is supposed to be part of the
17 leasing.

18 The Chairman. Oh, it is?

19 Mr. DeArment. It is safe harbor leasing.

20 The Chairman. Well, that is Scott Paper Company, is it
21 not?

22 Senator Heinz. No, it is Allis-Chalmers.

23 The Chairman. Allis-Chalmers, yes.

24 Senator Heinz. If it was Scott Paper Company, I would
25 be offering it myself.

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The Chairman. I think we took care of them last year at your request, did we not?

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Senator Chafee?

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Senator Chafee. Mr. Chairman, I am anxious to get--are you finished?

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Senator Heinz. Yes, I think so.

7

Senator Chafee. I'm anxious to get at that 30 percent withholding in foreign purchases of U. S. corporate bonds illuminated, and we have been through that time and again. Mr. Chapoton has testified, he has been supportive of it. Now, I understand from Mr. DeArment that there is some problem.

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Each time we start up an alley with this, we seem to get blocked off. What is the problem here, Mr. DeArment?

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Mr. DeArment. What I stated to you, Mr. Chafee, was that it is not entirely clear based on the Joint Committee's analysis that it was a revenue gainer. That was the only point I made.

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And the Joint Committee can speak for their analysis. Senator Chafee. Mr. Chairman, I just thought that the testimony we had was overwhelming in favor of this. Senator Bentsen is familiar with this. It seems to open up our markets to additional capital in the U. S., that is what we have all been looking for.

I never thought it was a revenue gainer. I thought it

1 was a wash but Mr. Chapoton and his folks testified that it
2 was a revenue gainer, modest though it was, and I do not see
3 why we do not go with it.

4 The Chairman. Let me say that is the category, I think
5 everyone of us probably has--I know Senator Chafee is concern-
6 ed about this. What we tried to put on the agenda were things
7 that we thought would float. Two of them did not float.

8 But we are going to be assured, I hope now by the
9 Parliamentarian, that there are other areas, if we put together
10 a package, that we can submit on the Senate floor, and that
11 would be in that group.

12 Senator Armstrong. Well, Mr. Chairman, I do not want to
13 prejudge what the Parliamentarian is going to tell us, but if
14 this is a reconciliation bill, it is my understanding that an
15 amendment which is not germane to material already in the bill
16 would not be in order, and the Parliamentarian is here and he
17 will advise us, but if that is the question we ought to settle
18 it before we act on this bill.

19 The Chairman. Bob, why do not you go down front so you
20 can give us a better--

21 Mr. Dove. The Parliamentarian--I think I have explained,
22 and I know Senator Armstrong, and I think maybe earlier Mr.
23 DeArment, talked to you.

24 What we want to do today is report out what we have
25 agreed on, on spending restraint, and revenue changes to

1 satisfy the budget resolution requirement which we're obligat-
2 ed by midnight tonight to report to the Budget Committee.

3 We made some decisions that would in a minimal way comply with
4 our obligation.

5 We also have probably, I would guess, 70, 50, 40 other
6 items that we--there was no way we could possibly do today, if
7 we had 50 hours and what I want to determine is, if we can
8 spend the balance of this week or whatever trying to put
9 together all these other items, plus there are some of us, I
10 cannot speak for all of us, who are looking at the larger
11 picture on deficit reduction to include all these matters in
12 some amendment, either Committee amendment from the Finance
13 Committee, or whatever we might need to do to make certain
14 that we do not foreclose the rights of members.

15 Mr. Dove. The reconciliation bill is subject to germane-
16 ness requirement under Section 305, but Section 305 being in
17 Title 3, is subject to a motion to waive that germaneness
18 requirement; that has been done on one previous occasion. So
19 if the Committee wished to offer a non-germane amendment and
20 to secure a majority vote on the motion to waive pursuant to
21 Section 904, then they, indeed, could add further items on the
22 floor while the reconciliation bill is being considered. That
23 is a debatable motion, the debate is limited to one hour.

24 Senator Moynihan. Could I ask what would be germane and
25 non-germane in this context?

1 Mr. Dove. There are four items that are considered
2 germane under Senate precedent.

3 Amendments which add sense to the Senate or Congress
4 language in the jurisdiction of the various reporting Com-
5 mittees, amendments which strike any language that is con-
6 sidered to be germane, amendments which change figures or
7 dates are considered germane, and, finally, amendments which
8 add language which restrict some power already in the bill,
9 are considered germane.

10 Those are the only four categories of amendments that
11 are considered germane.

12 Senator Armstrong. Mr. Chairman, may I pursue that with
13 the Parliamentarian?

14 The Chairman. Oh, sure.

15 Senator Armstrong. So that, for example, when we have
16 before us this laundry list of things in the bill, none of
17 which deal with personal income tax rates, therefore presum-
18 ably an amendment dealing with those rates would not be ger-
19 mane.

20 Mr. Dove. Yes.

21 Senator Armstrong. Well, I think it is important that
22 the members of the Committee understand that and if I could
23 beg the indulgence of the Chair, I would like to comment on
24 Mr. Dove's answer about a waiver.

25 It is true that under that section, that a waiver is

1 possible, and I regret that Senator Long is not here because
2 he and I have discussed this privately. It would take a
3 majority to do that, but I would trust that even people who
4 might favor a specific amendment in question, would be loath
5 to grant such a waiver because once you start down that road,
6 you are permitting non-germane amendments on a bill which is
7 limited in its time and that really, I think, raises ques-
8 tions not only for the permanent minority, but for the minor-
9 ity on any particular issue, and if we began to be permissive
10 in the use of that power to waive it would quickly bring it
11 around our ears.

12 Senator Moynihan. Could I ask Senator Armstrong, is it
13 your understand that the one hour is part of the 20 hours
14 overall?

15 The hours debate on a motion to waive the germaneness
16 rule would come out of the 20-hour allowance?

17 Senator Armstrong. It would.

18 Senator Bentsen. I would like to know if the Senator
19 said the permanent minority or the present minority?

20 The Chairman. Current.

21 Senator Armstrong. My point is this, Lloyd, and we
22 really do need to think a bout this.

23 It is not just cash legislation that could be put on the
24 bill under that kind of a waiver, it is anything. It could
25 be an abortion amendment, it could be a tuition tax credits,

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it could be any kind of tax provision, it could be Davis-Bacon, and you're talking about a bill which must be voted on because once the time expires then it is before us for final passage.

So as one Senator, I would be very, very reluctant even in support of an amendment which Personally might favor, to vote to waive the germaneness requirements when we have a time limited bill, and I think others would feel the same.

The Chairman. All right, that is one procedure.

Are there other procedures that could be used?

Senator Roth. Could I raise one additional question?

The Chairman. Sure.

Senator Roth. Assuming that a waiver is voted on that amendment, are you limited by the rules of germaneness?

Mr. Dove. Yes, second degree amendments to that amendment would have to be germane.

The Chairman. And it just applies to that one amendment.

Mr. Dove. That is correct.

The Chairman. So a blanket waiver for the process.

Mr. Dove. You could adopt a blanket waiver, yes.

The Chairman. I do not think that would ever happen, but it might.

Go ahead, Bob.

Mr. Dove. As to your question, was there any other way?

If the proposal of the Committee is to bring the Committee

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1 into compliance with the resolution that was adopted, H. Con.
2 Res. 51, you could have used the motion to recommit with
3 instructions, without using a waiver.

4 That is only in the case that your amendment would bring
5 the Committee into full compliance.

6 Senator Armstrong. May I also pursue that question?

7 The Chairman. Sure.

8 Senator Armstrong. Since we have talked about this
9 earlier, Mr. Dove, an issue has arisen as to whether or not
10 full compliance means exact compliance or more than exact
11 compliance?

12 In other words, in this case we are talking about \$73
13 billion, I guess, would constitute full compliance.

14 And when we talked about it privately, I asked you does
15 that mean fifty billion would not comply, therefore a motion
16 to recommit with instructions to come back with a \$50 billion
17 package would not be eligible.

18 How about \$74 billion or \$84 billion, or \$100 billion?

19 Mr. Dove. Compliance means compliance, and therefore
20 over-compliance is just as out of order as under-compliance.

21 The Chairman. But you can also modify the instructions.

22 Mr. Dove. There are ways of modifying the instructions.
23 They can be modified by unanimous consent, by simple resolu-
24 tion, or by concurrent resolution.

25 Senator Armstrong. Could you just discuss each of those

1 and whether or not the simple resolution or concurrent resolu-
2 tion, the course of such resolution, its referral, and whether
3 or debate on such resolutions is limited.

4 Mr. Dove. Well, as to both unanimous consent and the
5 simple resolution, that is pursuant to the Senate's own
6 rulemaking power. The provisions about the concurrent resolu-
7 tion on the budget were pursuant to that power, and therefore,
8 the Senate maintains the right to change those through its own
9 processes of unanimous consent or simple resolution.

10 As to the concurrent resolution, that would have to be a
11 concurrent resolution on the budget, reported from the Budget
12 Committee. It would be under the 50-hour time limit that is
13 provided in the Act, but it should be noted that 50 hours can
14 be reduced to any smaller amount of time by non-debatable
15 motion.

16 Senator Armstrong. But the concurrent resolution would
17 have to be reported by the Budget Committee.

18 Mr. Dove. It would have to be reported by the Budget
19 Committee.

20 Senator Armstrong. With respect to a simple resolution,
21 do I understand that that is subject to debate?

22 It is not a privileged matter?

23 Mr. Dove. It is not a privileged matter, and it is
24 subject to all of the vagaries of Senate resolutions going over
25 under the rules, Senator.

1 Senator Armstrong. Any amount of debate?

2 There are no Budget Act protections?

3 Mr. Dove. There are no Budget Act protections.

4 Senator Armstrong. And, of course, a concurrent resolu-
5 tion, even if adopted by the Senate, would not be effective
6 until adopted also by the House?

7 Mr. Dove. That is correct.

8 Senator Armstrong. So I point out that while it is
9 theoretically possible to change the instruction, as a practi-
10 cal matter, it would not be easy to do.

11 The Chairman. Any other light you can shed on anything
12 we have not asked Bob, Mr. Dove?

13 Mr. Dove. I think you have covered the situation.

14 Senator Armstrong. I have one other question.

15 I do not think this is an issue in controversy, but just
16 as a point of information.

17 This Committee is going to presently decide whether or
18 not to act favorably upon a bill we have been considering.

19 What are we literally doing if we intend to qualify it
20 for conciliation; are we reporting it to the Senate, or are
21 we simply referring it to the Budget Committee?

22 end 7 Mr. Dove. There is no report involved.

23 This is a submission to the Budget Committee.

24 Senator Armstrong. In other words, the Chairman pre-

25 sumably in some way would sidle up to the Chairman of the Budget

1 Committee and say, here is what we did. He might give him a
2 letter or whisper in his ear or whatever it was.

3 Mr. DeArment. We have in 1980, we followed the same
4 procedure, and we basically report to the Budget Committee
5 the draft language, the Budget Committee then meets and
6 assembles the submission from other Committees and reports
7 that out.

8 Senator Armstrong. That was my next question.

9 This bill, then, would not be on the calendar for action
10 by the Senate unless it were subsequently reported by the
11 Budget Committee.

12 Mr. Dove. That is correct.

13 Senator Armstrong. Thank you.

14 The Chairman. That would be true of every other
15 Committee.

16 Senator Roth. What is the significance of the expira-
17 tion date if we do not file it today, but file it tomorrow?

18 Does that--what difference does that make?

19 Mr. Dove. It is my view that that is of overriding
20 significance.

21 Your instructions are to report by today. If you report
22 to the Committee tomorrow, you have not complied and your
23 submission will not be part of the reconciliation.

24 Senator Roth. It would not be part of the reconcilia-
25 tion?

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1 Mr. Dove. No.

2 Senator Roth. Then let me ask you this: under our
3 Constitution, revenue has to be initiated in the House. We
4 do not have a bill at this time from the House.

5 Could that point be raised?

6 Mr. Dove. Of course, any Constitutional point of order
7 can be raised during the consideration of a bill, yes.

8 Senator Roth. Let us assume that if we do not have at
9 this time any bill from the House, then we go ahead and report
10 it out tonight, before twelve o'clock, what would the ruling
11 of the Chair be if that point was raised?

12 Mr. Dove. Well, until a bill is pending on the floor,
13 a point of order cannot lie against it and once a bill is
14 pending, a Constitutional point of order is never ruled on by
15 the Chair. No advice is given.

16 Senator Roth. It goes back to the Senate?

17 Mr. Dove. It has to be decided by the Senate.

18 The Chairman. Could I interrupt there, Bill?

19 Senator Roth. Sure.

20 The Chairman. But, then, in the meantime if the House
21 takes action, we understand they are about to do, maybe to-
22 morrow or the next day, that bill comes to our--comes to the
23 Senate, then that question is moot.

24 Mr. Dove. It might not be moot.

25 The Senate Budget Committee will not have that bill before

1 us--before it and therefore--let me revise that.

2 It really depends on whether they reported out the
3 Senate bill. Right now, of course, they do not have it before
4 them, but the bill coming over, if it is only dealing with
5 finance matters, would be referred to this Committee and not
6 to the Budget Committee.

7 I really do not see how the Budget Committee could take
8 the recommendations and report them out as an amendment to the
9 House tax reconciliation bill.

10 Mr. DeArment. If the Budget Committee were to report
11 out a bill in response to the reconciliation instructions,
12 including those instructions to the Finance Committee, and
13 there was pending on the Senate calendar the Budget Committee
14 bill, the House Ways and Means Committee bill in response to
15 the reconciliation instruction comes over, would not that
16 bill automatically go on the calendar?

17 Mr. Dove. If it--

18 Senator Chafee. Could you speak a little louder and in-
19 to the mike so that we can follow this?

20 The Chairman. Say it again, please.

21 Mr. Dove. If the Budget Committee has reported out a
22 bill which is a companion to the measure sent over by the
23 House, yes, the House bill would automatically go on the
24 calendar.

25 Senator Armstrong. Please say all that again. Some of

1 us did not follow what the point was.

2 Mr. DeArment. If this Committee were to say to the
3 Budget Committee, as the instruction requires, our tax matters
4 that have been--or a portion of them, that bill as reported
5 out of the Budget Committee is pending on the Senate calendar

6 --

7 Senator Armstrong. As a part of a reconciliation bill.

8 Mr. DeArment. As a part of a reconciliation bill. Then
9 the Ways and Means Committee bill in response to their re-
10 conciliation instruction completes action, reports their bill
11 to the House floor, the House passes it, sends it to the
12 Senate. That bill, then, would automatically go on the
13 calendar.

14 Senator Armstrong. Why would it go to the calendar?

15 Why would not it be referred?

16 Mr. DeArment. Because there is already pending on the
17 calendar a bill responding to the same instruction, dealing
18 with the same matter.

19
20 Senator Roth. Is not the Budget Committee bound by the
21 expiration date?

22 Mr. Dove. There is no time limit for the Budget Com-
23 mittee in reporting out their reconciliation bill. The time
24 limits are only on the various Committees submitting their
25 actions to the Budget Committee.

1 Senator Armstrong. Mr. Dove, would you just respond,
2 did Mr. DeArment state your understanding of the case?

3 Mr. Dove. Yes.

4 This is the normal process, when a companion bill has
5 been reported from a Senate Committee, the House companion
6 automatically goes on the calendar without being referred.

7 Senator Roth. But does that take care of the Constitu-
8 tional question?

9 Mr. Dove. No if we call up the Senate bill.

10 We would have to call up the House bill to avoid the
11 Constitutional point of order.

12 Mr. DeArment. But last year when we debated the Tax
13 Equity and Fiscal Responsibility Act, we debated that bill, I
14 think, on the basis of--I believe an S number bill. We took
15 it to third reading and awaited the House passage.

16 Mr. Dove. Well, I am not saying we have not taken up
17 Senate revenue bills before, because such point of order would
18 be submitted to the Senate, it would be presumptuous for me to
19 advise what point of order might derive.

20 Senator Wallop. Mr. Dove, if we have no choice but to
21 take the House bill, anything that we have in our bill would
22 be non-germane.

23 Mr. Dove. No.

24 The Committee amendment which would contain the
25 recommendations of the various Committees submitted to Budget

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1 are per se germane.

2 When we are dealing with any bill to which a Committee
3 amendment is pending, under our standard unanimous consent
4 agreement, the bill and the Committee amendment form the
5 context for germaneness.

6 Senator Wallop. Are the provisions in the House bill
7 therefore germane, too?

8 Mr. Dove. They are.

9 The Chairman. One other question.

10 Would it be appropriate, after reporting this to the
11 Budget Committee, which I assume I do uniformly or by letter,
12 whatever, there is no--

13 Mr. Dove. That is not spelled out, no.

14 The Chairman. Would it then be possible to have an
15 extension of time for this Committee to report a Committee
16 amendment when the Budget Committee reports to the floor?

17 Mr. Dove. It would be possible through any of the three
18 procedures, unanimous consent, Senate resolution, or concurrent
19 resolution.

20 The Chairman. In other words, my point is, we have
21 different views on the Committee, but a lot of members have
22 matters they want to add to the bill. Some may lose revenue,
23 some may gain revenue, and there are not too many of those.

24 But there might be an exception, and then there are
25 others of us who think we still can put together a deficit

1 reduction package if the White House would listen, and so
2 we do not want to foreclose any of those possibilities, dif-
3 ferent members have different views on different items.

4 So I guess it can be done.

5 Mr. Dove. Yes, there are ways.

6 Senator Heinz. Mr. Chairman, may I just take a minute
7 to go through that one very carefully.

8 The Chairman is quite right that there are two sets of
9 issues that a number of the members are at least interested
10 in.

11 One is deficit reduction, the other are some problems
12 that a number of us have with very specific instances involv-
13 ing leasing.

14 The Chairman is well aware of many members' transitional
15 rules.

16 The Chairman. We are going to try to work those out this
17 afternoon.

18 Senator Heinz. I hope we do, because as I understand it,
19 what the Parliamentarian, Mr. Dove, is saying is, unless
20 those are worked out it is going to be very difficult to, in
21 effect, get a waiver.

22 Senator Armstrong. No, Mr. Chairman, I do not see why.
23 Because that is in the bill. And so any amendment would be
24 germane because it relates to material that is in this bill.

25 Senator Boren. Not if it produces revenue, it would not

1 be germane.

2 Senator Heinz. Let us ask Mr. Dove about that, because
3 hypothetically, let us say there is a provision in the bill
4 that says that certain kinds of leasing practices from here on
5 out are going to be prohibited, and an amendment is offered on
6 the floor which says, with the exception, with the following
7 exception.

8 But if it was started, you know, three months ago, it
9 would not be prohibited.

10 Would that be a germane or non-germane amendment?

11 Mr. Dove. It would be a germane amendment as restrict-
12 ing a power that is given in the bill.

13 Senator Heinz. There is some question in my mind as to
14 whether that is a restriction on the power in the bill. The
15 bill does restrict powers. This would appear to expand a
16 power by doing--by in effect broadening the application in the
17 bill.

18 Mr. Dove. Well, the question is whether it expands power
19 generally or whether it expands the power in the bill. The
20 only question of germaneness is whether it expands or restricts
21 some power in the bill. If the bill is already restrictive,
22 that is the power that is in the bill which you are changing.

23 You could eliminate the entire leasing provision which I
24 would assume would greatly expand the power of the bill.

25 The Chairman. Could I ask one question?

1 We have ten members present, I think there is maybe
2 one in the back room.

3 Do we need a vote to send this to the Budget Committee?
4 Do we need to notify a--

5 Mr. DeArment. We do not necessarily need a roll call
6 vote, but we need to have an expression of the Committee that
7 we should report it.

8 Senator Boren. Now, these other items that are still
9 hanging, are we going to be able to work on those later this
10 afternoon, or this evening before this is finally reported?

11 The Chairman. You have one matter that we are working
12 on, but with the exceptions that I have noted in the record,
13 plus, I guess you want to vote on the reporting requirement.

14 The Chairman. Is there any objection to reporting what
15 we have approved, subject to the transitional rules, the
16 reporting requirement, we will have to vote on that right now.

17 Senator Boren. We can vote on that if we want to, on that.

18 Senator Chafee. Mr. Chairman?

19 The Chairman. All I want to is satisfy the Budget
20 Committee so I can go to the floor on the debt ceiling.

21 Senator Chafee. But what happens with the measure such
22 as the one I have been interested now on that 30 percent with-
23 holding?

24 The Chairman. We are going to try to work the rest of
25 the week, because Senator Bentsen, I know, and others have

1 items that they want to raise.

2 My own view is that we are going to be able to get a
3 waiver for a Committee amendment because there is going to be
4 enough juice in it to affect 51 members, and so I am not so
5 concerned about that problem. I know it may sound tough, but
6 it will be in that package.

7 Senator Chafee. In the unanimous consent route?

8 The Chairman. Well, you may not get unanimous consent.
9 You might have to move.

10 Senator Moynihan. Mr. Chairman, so your plan is what?

11 The Chairman. What I would like to do is--

12 (Laughter.)

13 The Chairman. I am not sure what the plan is.

14 But in case one develops. But at least we know we have
15 to report what we have done to the Budget Committee by mid-
16 night, otherwise I guess nothing happens, we just blow the
17 process.

18 Senator Moynihan. We might go to jail, you know.

19 The Chairman. I do not think that is in there.

20 And then, secondly, we have debt ceiling on the floor,
21 but more importantly we hope to meet the rest of this week
22 and we can finish what whatever is going to happen on the
23 debt ceiling to put together what I would hope would be a
24 Committee amendment that we will then offer on the floor when
25 the budget reconciliation package is on the floor, and we

1 could get a waiver then with the majority vote, right?

2 Mr. Dove. That is correct.

3 Senator Roth. Are you talking about one amendment or
4 two amendments? One for your so-called deficit deduction and
5 one for the goodies, or are you going to combine them?

6 The Chairman. I think the best strategy would be a sort
7 of a package arrangement of some kind.

8 Senator Roth. Mr. Chairman, I might dissent.

9 Senator Armstrong. I really hope you will reconsider the
10 notion of putting together a package and offering it as a
11 Committee amendment to a reconciliation bill.

12 The Chairman. Do you have a better idea?

13 Senator Armstrong. Sir?

14 I do have a better idea, but even as one who hopes to be
15 in support of whatever package you are putting together, that
16 is an abuse, in my opinion, of the reconciliation process and
17 an abuse which seriously jeopardizes the rights of Senators.

18 The Chairman. We are doing it to try to preserve the
19 rights of Senators, unless there is another way to do it.

20 Senator Armstrong. Well, no, because if the Committee
21 uses the reconciliation process to advance an amendment or
22 amend a reconciliation bill on which debate is limited, it
23 does not protect the right of Senators and even if I were for
24 the package, I would not personally favor such a process and
25 I just want to state again that the issue then is not one of

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1 tax policy or revenues, but a more fundamental procedural
2 issue. There are some other ways to get the matter before the
3 Senate but I really beg you to think again about doing it.

4 The Chairman. Well, if there is a better way, obviously
5 I want to find a better way.

6 That is just one way we can do it. It may not be the
7 best way, if there is a better way, but I think the thing we
8 need to do now is to send this to the Budget Committee. I hope
9 we might vote on that and then subject to--

10 Senator Boren. If you want to, we can vote on this other
11 now, if you want to, on the monthly reporting requirement on
12 the AFDC.

13 The Chairman. I think we have accommodated two of those
14 amendments. I think this is one that we are dealing with it
15 in food stamps, I think Senator Long has an interest in it.

16 Is that a matter that we might be able to take up later
17 this afternoon if we can meet off the floor someplace?

18 Senator Boren. It is fine with me.

19 Just so that we have the right to do so.

20 Senator Roth. Mr. Chairman, before we have a vote, I
21 would like to know exactly what we are voting on.

22 How much are we raising revenue and how much are we
23 cutting spending by this reconciliation statement?

24 Mr. DeArment. The amount that we are reducing our
25 restraining spending growth is fairly firmly fixed at about

1 two point nine.

— 2 Senator Moynihan. Excuse me, Mr. Chairman.

3 If Mr. Dove is leaving, we would like to express our
4 appreciation to him.

5 The Chairman. I do not know if he wants to express his,
6 but we want to express ours.

7 Mr. DeArment. \$2.9 billion on the tax side.

8 It is more difficult to precisely fix it because of the
9 issues that were left open with respect to public property
10 leasing.

11 But the portions agreed upon I would say would be approxi-
12 mately \$10 to \$12 billion.

13 Mr. Brockway. I think in the aggregate you will end up
14 with around \$12 billion once you finish leasing. You have
15 dropped about \$2.5 from the package, so the two items you
16 left out, and then you have whatever amendments you are going
17 to have in leasing. In the aggregate, we do not have a bottom
18 line yet.

19 Senator Roth. Mr. Chairman, I just will make one further
20 comment.

21 Again, much like we did two years ago, we are ending up
22 raising revenue and doing nothing basic about spending.

23 I would just like to recall that when we passed TEFRA two
24 years ago, and I supported that, Mr. Chairman--

— 25 The Chairman. And I appreciate that.

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1 Senator Roth. That we were supposed to cut spending by
2 \$3 for ever \$1 increase of revenue, and I guess the figures are
3 roughly that we ended up really increasing spending about a
4 \$1.14. So I do not really see that by raising revenue we are
5 really doing much about the deficit problem.

6 The Chairman. Okay.

7 Well, I think overall, though, if this is all that ever
8 happens, that I would be disappointed, but I think we have a
9 total of all the Committees, we do not have the entire spend-
10 ing jurisdiction of this Committee, we have about \$12 billion
11 in spending reduction and about \$12 billion in revenues so
12 there is some balance. It is far short.

13 We will not get the award from the Budget Committee this
14 year, not that we want it, but I wonder if we might just re-
15 port this to the Budget Committee.

16 Mr. DeArment. Mr. Packwood?

17 Senator Packwood. Aye.

18 Mr. DeArment. Mr. Roth.

19 Senator Roth. No.

20 Mr. DeArment. Mr. Danforth.

21 Senator Danforth. Aye.

22 Mr. DeArment. Mr. Chafee.

23 Senator Chafee. Aye.

24 Mr. DeArment. Mr. Heinz.

25 Senator Heinz. Aye.

1 Mr. DeArment. Mr. Wallop.
— 2 Senator Wallop. Aye.
3 Mr. DeArment. Mr. Durenberger.
4 (No response.)
5 Mr. DeArment. Mr. Armstrong.
6 Senator Armstrong. No.
7 Mr. DeArment. Mr. Symms?
8 (No response.)
9 Mr. DeArment. Mr. Grassley.
10 Senator Grassley. No.
11 Mr. DeArment. Mr. Long.
12 (No response.)
13 Mr. DeArment. Mr. Bentsen.
14 Senator Bentsen. Aye.
15 Mr. DeArment. Mr. Matsunaga.
16 (No response.)
17 Mr. DeArment. Mr. Moynihan.
18 Senator Moynihan. Aye.
19 Mr. DeArment. Mr. Baucus.
20 (No response.)
21 Mr. DeArment. Mr. Boren.
22 Senator Boren. Aye.
23 Mr. DeArment. Mr. Bradley.
24 (No response.)
— 25 Mr. DeArment. Mr. Mitchell.

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(No response.)

Mr. DeArment. Mr. Pryor.

(No response.)

Mr. DeArment. Mr. Chairman.

The Chairman. Aye.

We will try to regroup--Baucus is aye.

We will try to regroup off the Senate floor. We are going to be in late tonight.

In the meantime, I will visit with staff right after this and maybe Buck next door, and start working on the transition.

Senator Moynihan. You do not plan to come back to the Committee room today?

The Chairman. I think we will have to do it somewhere off the floor, since we are in charge of that bill over there.

On this vote, the yeas are ten and the nays are four.

(Whereupon, at 1:55 p. m., the Committee was recessed.)

COMMITTEE ON FINANCE
EXECUTIVE SESSION
MONDAY, OCTOBER 31, 1983
Room SD-215
9:30 p.m.

A G E N D A

1. Reconciliation Spending Reduction Options
(Proposals previously distributed plus items described in Attachment A)
2. Reconciliation Revenue Options
 - a. The following new or revised proposals described in Attachment B:
 1. Simplification of income tax credits
 2. Estimated payments of alternative minimum tax.
 3. Revision of collapsible corporation rules
 4. Six month capital gains holding period and capital loss offset
 5. Stock option straddles and foreign corporation commodity straddles
 6. Expansion of sport fishing equipment excise tax
 - b. The following proposals for which materials have been previously distributed:
 1. Public Property Leasing, S. 1564
 2. Postponement of effective date of the 15% net interest exclusion
 3. Modification of income averaging
 4. Tax compliance measures
 5. Modification of loss treatment for trade or business property
 6. Phase out of graduated rate for large corporations
 7. Withholding on gains from foreign investment in U.S. real property

Note: Under the First Concurrent Budget Resolution, as modified, the Finance Committee is instructed to report out its changes by midnight on October 31st and we understand a number of Members will strenuously oppose any further extensions of the reporting date.

Since one Committee Member has registered objections to the Committee meeting while the Senate is in session, the Committee will either have to complete action on the above matters by 2:00 p.m. or continue the markup session on Monday evening after the Senate recesses.

October 28, 1983

ADDITIONAL HEALTH PROVISIONS

RECONCILIATION OPTIONS

1. Modify Part B Premium
2. Freeze "Reasonable Charges" For Physician Services
3. Hepatitis B Vaccine
4. Limitation on Certain Foot Care Services
5. Coverage of Hemophilia Clotting Factor
6. Fee Schedule for Clinical Laboratory Services
7. Increase Medicaid Ceilings for Puerto Rico and the Territories
8. Increase Authorization for Maternal and Child Health Block Grant Program

PROVISIONS WITHOUT BUDGETARY IMPACT

(Previously agreed to and included in S. 951)

1. Elimination of Part B Deductible for Certain Diagnostic Laboratory Tests
2. Payment for Services Following Termination of Participation Agreements with Home Agencies
3. Repeal of Special Tuberculosis Treatment Requirements of Medicare and Medicaid
4. Medicare Recovery Against Certain Third Parties
5. Indirect Payment of Supplementary Medical Insurance Benefits
6. Elimination of Health Insurance Benefits Advisory Council
7. Information From Accreditation Surveys of the American Osteopathic Association

8. Flexible Sanctions for Noncompliance With Requirements for End Stage Renal Disease Facilities
9. Use of Additional Accrediting Organizations Under Medicare
10. Repeal of Exclusion of For-Profit Organizations from Research and Demonstration Grants
11. Requirements for Medical Review and Independent Professional Review
12. Flexibility in Setting Rates For Hospital Furnished Long-Term Care Services
13. Authorize Secretary to Issue and Enforce Subpoenas
14. Repeal Authority For Payments to Promote Closing and Conversion of Underutilized Hospitals
15. Appointment of and Pay Rate for Administrator of HCFA
16. Exclusion of Entities Owned or Controlled by Individuals Convicted of Medicare and Medicaid Related Crimes
17. Judicial Review
18. Access to Home Health Services
19. Publication of Physician Assignment List

ADDITIONAL PROVISIONS WITHOUT BUDGETARY IMPACT FOR CONSIDERATION BY THE FINANCE COMMITTEE

1. Provider Representation In Peer Review Organizations (PROs)
2. Prospective Payment Assessment Commission
3. Medicaid Clinic Administration
4. Eliminate Part B Penalty for Working Aged
5. Hospital Emergency Room Services
6. Nurse Anesthetists
7. Prospective Payment Wage Index
8. Hospice "Core Service" Contracting

October 28, 1983

RECONCILIATION OPTIONS

1. Modify Part B Premium

Current Law

By law, the Secretary of Health and Human Services has been required to calculate each December the increase in premiums of those who elect to enroll in the Supplementary Medical Insurance (or Part B) portion of the Medicare program. The new premium rates have been effective on July 1 of the year following the year in which the calculation was made. Ordinarily, the new premium is the lower of: (1) an amount sufficient to cover one-half of the costs of the program for the aged or (2) the current premium amount increased by the percentage by which cash benefits are increased under the cost-of-living (COLA) provisions of the social security programs.

Premium income, which originally financed half of the costs of Part B, has declined - as the result of this formula - to less than 25 percent of total program income. The "Tax Equity and Fiscal Responsibility Act of 1982" (TEFRA) temporarily suspended the limitation for two one-year periods, beginning on July 1, 1983. During these periods, enrollee premiums would be allowed to increase to amounts necessary to produce premium income equal to 25 percent of program costs for elderly enrollees. The limitation would again apply with respect to periods beginning July 1, 1985 and thereafter.

The "Social Security Amendments of 1983" (Public Law 98-21) postponed the scheduled July 1, 1983 increase to January 1, 1984 to coincide with the delay in the cost-of-living increase in social security cash benefit payments. Future increases will occur in January of each year based on calculations made the previous September. Public Law 98-21 further provided that the suspension of limitations as authorized by TEFRA are to apply for the two-year period beginning January 1, 1984.

Proposal (Previously agreed to and included in S. 951)

The proposal provides that beginning in 1985 the limitation on premium increases would be repealed. As a result, the proportion of program costs to be met by premiums would permanently be set at 25 percent.

Effective Date

January 1, 1985.

Cost Savings

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
-	-	-359	-359

2. Freeze "Reasonable Charges" For Physician Services

Current Law

Under present law, medicare pays for physician services on the basis of medicare-determined "reasonable charges." "Reasonable charges" are the lesser of: a physician's actual charges, the customary charges made by an individual physician for specific services, or the prevailing level of charges made by other physicians for specific services in a geographic area. The amounts recognized by medicare as customary and prevailing charges are updated annually (on July 1) to reflect changes in physician charging practices. Increases in prevailing charge levels are limited by an economic index which reflects changes in the operating expenses of physicians and in general earnings levels.

Proposal (Previously agreed to and included in S. 951)

For all physician services, revert to the prevailing charge limits that were in effect prior to the annual updating that occurred on July 1, 1983. For nine months until July 1, 1984, prevailing charge limits for all physician services would remain at the levels applicable during the 1982-1983 fee screen year.

Effective Date

For services rendered on or after October 1, 1983.

Cost Savings

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
-309	-453	-521	-1,283

3. Hepatitis B VaccineCurrent Law

Current law precludes medicare coverage of immunization against viral hepatitis, an infectious disease that produces acute and chronic inflammation of the liver which may then lead to serious illness or death. However, end stage renal disease patients are currently monitored by monthly testing for the virus, and these tests are covered and paid for under the medicare program.

Proposal

Permit medicare coverage of Hepatitis B vaccine for ESRD hemodialysis patients.

Effective Date

October 1, 1983.

Cost Savings

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
+2.2	-1.5	-2.2	-1.5

4. Limitation on Certain Foot Care Services

Present Law

Routine foot care is not covered under the medicare program, however, medicare does allow reimbursement to physicians for trimming toenails with a fungal infection (known as debridement of mycotic toenails).

Proposal

The proposal would require the Secretary to issue regulations establishing coverage guidelines under the medicare program for debridement of mycotic toenails. Unless the Secretary determines otherwise, such services should not be performed more frequently than once every 60 days. Exceptions could be authorized if medical necessity were documented by the physician.

Effective Date

Services furnished on or after January 1, 1984.

Cost Savings

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
-28	-40	-40	-110

5. Coverage of Hemophilia Clotting Factor

Background

Hemophilia is a life-long disease in which a patient lacking a clotting factor is subject to spontaneous hemorrhages. In the past 13 years hemophilia patients have had the benefit of a human blood derived concentrate which, when infused, stops hemorrhaging, and when appropriately given in advance may prevent bleeding. This clotting factor is considered to be a biological by medicare.

Recent studies have demonstrated that individuals, with the appropriate amount of training, are able to self administer this clotting factor.

Current Law

Drugs and biologicals are generally excluded from coverage unless they are administered by a physician. In the case of the clotting factor, it is currently covered when provided by a physician to a patient, on either an inpatient or outpatient basis.

Proposal

Permit coverage of the supplies and products necessary for the self-administration of the clotting factor.

6. Fee Schedule for Clinical Laboratory Services

Current Law

Under present law, outpatient diagnostic laboratory services are reimbursed on the basis of reasonable charges when furnished by an independent laboratory or by a physician. Payment for such services to hospital outpatients is on the basis of reasonable cost. These laboratory services are covered under part B of the medicare program; thus, the beneficiary is subject to the part B deductible and coinsurance requirements.

Proposal

A fee schedule would be established for all clinical laboratory services provided to medicare beneficiaries except for hospital-based laboratory services to inpatients and outpatients. The schedule would be applied on a carrier-wide basis for two years. The fee schedule would be set at 65 percent of prevailing charges and would be updated annually by the same percentage increase as the Consumer Price Index. The clinical laboratory would be required to bill either the program or the patient directly. Medicare assignment would be optional. If assignment is taken, the laboratory would be reimbursed 100 percent of the fee schedule amount (or, if lower, the billed charge), with the deductible and coinsurance waived.

When the physician directly provides, or supervises the provision of, clinical laboratory services, and where he agrees to accept medicare assignment, the physician would be reimbursed at 100 percent of the fee schedule amount (or, if lower, the billed charge) with deductible and coinsurance waived. Physicians not accepting assignment would continue to be reimbursed at 80 percent of the fee schedule amount or (if lower, 80 percent of the billed charge) with the usual deductible and coinsurance.

The Secretary would be directed to reduce unnecessary paperwork but must require data sufficient to counter fraud and abuse. The Secretary would also be required to report to the Congress by June 1985 on the appropriate treatment of hospital-based laboratories, direct payment of all lab fees to physicians, the basis for the formulation of a nationwide fee schedule, and an appropriate indexing mechanism for such a schedule.

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The Secretary would be directed to reduce unnecessary paperwork but must require data sufficient to counter fraud and abuse. The Secretary would also be required to report to the Congress by June 1985 on the appropriate treatment of hospital-based laboratories, direct payment of all lab fees to physicians, the basis for the formulation of a nationwide fee schedule, and an appropriate indexing mechanism for such a schedule.

Effective Date

March 1, 1984

Cost Savings

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
-\$74	-175	- 83	-\$333

7. Increase Medicaid Ceilings for Puerto Rico and the Territories

Current Law

Under present law, the Federal Medicaid matching rates for Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marianas are set at 50 percent and Federal matching is subject to annual dollar ceilings. The dollar ceilings are: \$45 million for Puerto Rico; \$1.5 million for the Virgin Islands; \$1.4 million for Guam; \$350,000 for the Northern Marianas; and, \$750,000 for American Samoa.

Proposal

Increase funding to Puerto Rico and the Territories by the following amounts: Puerto Rico, \$18.4 million ; Virgin Islands, \$600,000; Guam, \$600,000; Northern Marianas, \$200,000; American Samoa, \$400,000. Total approximate increase: \$20 million.

Effective Date

October 1, 1983.

Cost

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
+ \$20	+ 20	+ 20	+ 60

8. Increase Authorization for Maternal and Child Health Block Grant Program

Current Law

The present authorization level for the Maternal and Child Health (MCH) Services block grant program is \$373 million. Congress originally appropriated this amount, but has since added (under P.L. 98-8) \$105 million in additional appropriations to increase the availability of essential health services for disadvantaged children and mothers.

Proposal

The proposal permanently increases the authorization level for the MCH block grant program by \$82 million to \$455 million by 1986.

Effective Date

Enactment.

Cost

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>3-Yr. Total</u>
+ \$79	+ 80	+ 82	+ 241

The expenditures resulting from this proposal are assumed in the Senate Budget Resolution.

PROVISIONS WITHOUT BUDGETARY IMPACT
(Previously agreed to and included in S. 951)

1. Elimination of Part B Deductible for Certain Diagnostic
Laboratory Tests

Current Law

Present law authorizes the Secretary to negotiate a payment rate with a laboratory that is considered the full charge for diagnostic tests. Payment is made to the laboratory on the basis of an assignment at 100 percent of the negotiated rate (that is, the beneficiary is not charged any coinsurance amounts). However, payments made on the basis of the negotiated rates are subject to the annual part B deductible (\$75).

Proposal

The proposal would eliminate application of the annual part B deductible in the case of diagnostic tests performed in a laboratory which has entered into a negotiated rate agreement with the Secretary.

Effective Date

Enactment

2. Payment for Services Following Termination of Participation Agreements with Home Agencies

Current Law

Under current law, if the participation in medicare of a home health agency or a hospice is terminated, the Secretary is required to continue to pay for services provided to a beneficiary until the end of the calendar year in which the termination took place. This requirement is only applicable to services provided under a plan established prior to the termination of the agency.

Proposal

The proposal would change from the end of the calendar year to 30 days after termination, the ending of coverage for services provided under a plan established prior to the termination date of the participation agreement.

Effective Date

Terminations issued on or after date of enactment.

3. Repeal of Special Tuberculosis Treatment Requirements of Medicare and Medicaid

Current Law

Present law contains a number of provisions intended to assure that institutional services provided to medicare and medicaid patients suffering from tuberculosis are not custodial in nature and that such treatment can reasonably be expected to improve the patient's condition or render the condition noncommunicable.

Proposal

The proposal would repeal such provisions, since advances in the active treatment of tuberculosis make such safeguards against paying for custodial care for tuberculosis patients unnecessary. The proposal also eliminates the special provider category in present law for tuberculosis hospitals in the Medicare and Medicaid programs.

Effective Date

Enactment

4. Medicare Recovery Against Certain Third Parties

Current Law

Under the present law, the Medicare program may make benefit payments for services for which other third party insurance programs (e.g., workmen's compensation, auto or liability insurance, employer health plans, etc.) are ultimately liable for some or all of the costs of such services. However, the Secretary does not now have the right of subrogation to become a party to claims against other liable parties or to recover directly from such parties.

Proposal

The proposal would establish the statutory right of Medicare to recover directly from a liable third party, if the beneficiary himself does not do so, and to pay a beneficiary, or on the beneficiaries behalf, pending recovery where such third party is not expected to pay promptly. The proposal would also permit the Secretary to recover directly from the third party whether or not the beneficiary brings suit to recover and subrogate to the United States the right of the individual or anyone else to payment from the third party.

Effective Date

Enactment

5. Indirect Payment of Supplementary Medical Insurance Benefits

Current Law

Present law, in general, prohibits payment of supplementary medical insurance (SMI) benefits to anyone other than a beneficiary or an entity providing services.

Proposal

The proposal would permit SMI payments to be paid to a health benefits plan whose payment is accepted by the physician or other supplier as payment in full.

Effective Date

Enactment

6. Elimination of Health Insurance Benefits Advisory Council

Current Law

Present law (Section 1867) provides for a 19 member panel of health experts (the Health Benefits Advisory Council or HIBAC) appointed by the Secretary to advise on matters of general policy with respect to the Medicare program.

The Council was very active in the early years of the medicare program when regulations were first promulgated. As the Federal Government gained experience in administering the medicare program, the Council's advisory functions with respect to regulations became less important. With passage of the Social Security Amendments of 1972, Public Law 92-603, the Council's authority to review regulations and recommend changes was specifically deleted, and its role limited to advice on matters of "general policy". Also, its purview was extended to include the medicaid program. However, HIBAC has not been called upon to advise the Secretary since late in 1976, and there are currently no members.

Proposal

The proposal would repeal Section 1876. The council has not been active for a number of years.

Effective Date

Enactment

7. Information From Accreditation Surveys of the American Osteopathic Association

Current Law

Present law contains certain disclosure safeguards relating to survey information used by the Secretary in connection with the hospital certification process under Medicare. However, the law only specifically refers to surveys conducted by the Joint Commission on the Accreditation of Hospitals (JCAH).

Proposal

The proposal would extend the same disclosure protections given JCAH survey information to similar survey information provided to the Secretary by the American Osteopathic Association.

Effective Date

Enactment

8. Flexible Sanctions for Noncompliance with Requirements for End Stage Renal Disease Facilities

Current Law

Present law and regulations provide for decertification of end-stage renal disease (ESRD) facilities that are not in complete compliance with Medicare program requirements.

Proposal

The proposal would allow the Secretary to apply intermediate sanctions, such as a graduated reduction of reimbursement to ESRD facilities, when noncompliance does not jeopardize patient health or safety or justify decertification of such facilities. Noncompliance would, in these cases, deal primarily with administrative requirements.

Such an amendment makes the treatment of ESRD facilities comparable with the treatment of nursing homes who are out of compliance.

Effective Date

Enactment

9. Use of Additional Accrediting Organizations Under Medicare

Current Law

Under present law, the Secretary has authority to rely on certain accrediting organizations in determining whether hospitals, skilled nursing facilities, home health agencies, ambulatory surgical centers and hospice programs meet Medicare requirements.

Proposal

The proposal would extend the Secretary's authority to permit him to rely on such organizations in determining whether rural health clinics, laboratories, clinics, rehabilitation agencies, and public health agencies meet Medicare requirements (and clarifying his authority with respect to ambulatory surgical centers). The standards of an accrediting organization must be at least equivalent to those of the Secretary, and it must have a satisfactory record of application of such standards.

Effective Date

Enactment

10. Repeal of Exclusion of For-Profit Organizations
from Research and Demonstration Grants

Current Law

Present law limits the awarding of grants (under section 1110 and 222(b) of the Social Security Act) for the conduct of research and demonstrations to non-profit organizations. However, contracts are permitted to be awarded to both for-profit and non-profit organizations.

Proposal

The proposal would extend the research and demonstration grant authority to for-profit organizations as well as non-profit organizations.

Effective Date

Enactment

11. Requirements for Medical Review and Independent Professional Review

Current Law

Under current law, medical review requirements for skilled nursing facilities (SNFs) and independent professional review for intermediate care facilities (ICFs) under Medicaid both call for teams of physicians, registered nurses and other appropriate personnel to conduct virtually similar kinds of review.

Proposal

The proposal would make consistent State plan requirements for medical review and independent professional review. Such an amendment would clarify that there is no substantial statutory difference between review of these organizations. The proposal also corrects a technical error in present law to assure the Christian Science sanatoria are excluded from the revised medical review/independent professional review requirements.

Effective Date

Enactment

12. Flexibility in Setting Rates For Hospital
Furnished Long-Term Care Services

Current Law

Present Law establishes a very specific methodology for Medicaid reimbursement for hospital-furnished long-term care services.

Proposal

The proposal would eliminate the specific requirements for setting payment rates applicable only to hospital furnished long-term care services, and provide instead that such rates meet the same general criteria applicable to rates for other similar services provided by long term care institutions to medicaid recipients.

Effective Date

Enactment

13. Authorize Secretary to Issue and Enforce Subpoenas

Current Law

Present law authorizes the Secretary to issue and seek enforcement of subpoenas under Medicare to obtain information needed in connection with hearings, investigations and other matters related to program fraud and abuse.

Proposal

The proposal would authorize the Secretary to issue and enforce subpoenas under Medicare to the same extent that he has authority under the Medicare program.

Effective Date

Enactment

14. Repeal Authority For Payments to Promote
Closing and Conversion of Underutilized Hospitals

Current Law

Under present law, the Secretary may make Medicare and Medicaid payments to cover capital and increased operating costs associated with the conversion or closing of underutilized hospital facilities. The law, which has never been implemented, restricts the number of facilities which may receive these funds to no more than 50 prior to January 1, 1984.

Proposal

The proposal would repeal this authority.

Effective Date

Enactment

15. Appointment of and Pay Rate for Administrator of HCFA

Current Law

Under current law, the Administrator of the Health Care Financing Administration (HCFA) is in the Senior Executive Service and is appointed by the Secretary of Health and Human Services.

Proposal

The proposal would provide for appointment of the Administrator of HCFA by the President, with the advice and consent of the Senate, and increase the position and pay of the Administrator to Level IV of the Executive Schedule.

Effective Date

Applies to appointments to the position made after enactment.

16. Exclusion of Entities Owned or Controlled
by Individuals Convicted of Medicare and Medicaid Related Crimes

Current Law

Present law authorizes the Secretary to deny participation in the Medicare and Medicaid programs only in the case of providers in which a significant interest is held by a person convicted of program-related criminal offenses.

Proposal

The proposal would extend the Secretary's authority to also exclude from participation any entity or supplier of services in which a significant ownership or control interest is held by a person convicted of program related criminal offenses.

Effective Date

Enactment

17. Judicial Review

Current Law

The 1983 prospective payment legislation permits groups of providers to bring action in the judicial district in which the largest number of them are located. Under prior law, group judicial appeals could only be made in the District of Columbia. The 1983 legislation also requires certain appeals by providers which are under common ownership or control to be made as a group.

These provisions were included in a section of the 1983 legislation entitled "Conforming Amendments" and were not assigned a specific effective date. Therefore, like most of the other prospective payment changes, the new judicial review provisions will "apply to items and services furnished by ... a hospital beginning with its first cost reporting period that begins on or after October 1, 1983."

Proposal

Make the provision effective with court action brought on and after the date of enactment of this proposed legislation.

18. Access to Home Health Services

a) Current Law

A physician must certify to a patient's health needs and establish a plan for his care before the patient can qualify for home health benefits. The Secretary is directed, however, to prescribe the regulations to disqualify physicians from carrying out these functions for patients of any agency in which they have a significant ownership interest or a significant financial or contractual relationship.

The regulations, which were intended to prevent potential conflicts of interest, create a serious problem for the relatively few patients whose physician has an interest in the only agency in the area. These patients cannot qualify for home health benefits unless they switch physicians.

Proposal

Permit a physician who has a financial interest in an agency which is a sole community provider to carry out the certification and plan-of-care functions for patients who will receive services from the agency.

b) Current Law

In specifying which physicians are disqualified from carrying out the certification and plan-of-care functions for the patients of a home health agency, the Secretary's regulations include physicians who are uncompensated officers or directors of incorporated agencies even though they have no financial interest in its operation.

Proposal

Since such physicians do not stand to gain or lose financially from referrals to the agency, it is proposed that they be deleted from the list of disqualified physicians.

Effective Date

Enactment (for both proposals)

19. Publication of Physician Assignment ListCurrent Law

Under current law, there is no established mechanism to provide Medicare beneficiaries with information as to whether or not a physician accepts assignments.

Proposal

The proposal would require the Secretary to annually prepare lists containing the names, assignment ratios and volume of services for all participating physicians. Copies of the lists shall be made available in district Social Security Offices and at other appropriate locations.

Effective Date

Enactment

ADDITIONAL PROVISIONS WITHOUT BUDGETARY IMPACT
FOR CONSIDERATION BY THE FINANCE COMMITTEE

1. Provider Representation In Peer Review Organizations (PROs)

Current Law

Under current law, no health care facility, such as a hospital may contract to provide peer review (except under specific rules for delegated review). The law specifically prohibits the Secretary of HHS from contracting with an entity which is or is affiliated with (through management, ownership or common control) a health care facility. The Secretary, by regulation, has interpreted this to mean that the governing body of a PRO may not have as a member any individual who is a governing body member, officer, or managing employee of a health care facility.

Proposal

In the case of a PRO with a governing body of 15 or fewer members, one such member may be a governing body member, officer, or managing employee of a health care facility; and in the case of a PRO with a governing body of more than 15 members, no more than two such members may be a governing body member, officer, or managing employee of a health care facility.

Effective Date

Enactment

2. Prospective Payment Assessment Commission

Current Law

The recent medicare prospective payment legislation established a new, independent commission to help the Department of Health and Human Services (HHS) and the Congress deal with the numerous issues that will arise under the new payment method. This Prospective Payment Assessment Commission will also assess medical technology and suggest guidelines for appropriate patterns of health care.

Proposal

The proposal includes a number of amendments to clarify the manner in which the Commission is to function. These amendments would make it clear that the Commission is an independent authority and responsible for requesting appropriations. The Commission would be exempt from competitive public advertising (considered to be too cumbersome for an organization of the Commission's size) and from open-meeting requirements. Also, HHS would be directed to provide the Commission with basic support services and be reimbursed out of funds of the Commission. Provision would also be made for the appointment of an executive director.

Effective Date

Enactment

3. Medicaid Clinic Administration

Current Law

Under current law, States may cover "clinic services" as part of their medicaid programs. To assure that these services are safe and appropriate, Department of Health and Human Services regulations limit coverage to situations where they are furnished under the direction of a physician. In some cases, this physician-direction rule has been interpreted as requiring that clinic administrators be physicians.

Proposal

It is proposed that the Department of Health and Human Services be directed to modify the physician-direction requirement to make it clear the administrator of the clinic need not be a physician.

Effective Date

Enactment

4. Eliminate Part B Penalty for Working Aged

Current Law

Under the provisions of TEFRA, employers are required to offer employees aged 65 to 69 the same health benefit plan offered to younger workers and to make medicare secondary to those plans. Aged employees who elect enrollment in such employer offered health benefit plans may wish to delay enrollment in Part B because Part B coverage may be duplicative. Under current law, however, the monthly Part B premium is increased by 10 percent for each full 12 months that an individual delays enrollment in the program beyond his or her initial enrollment period.

Proposal

Waive the Part B delayed enrollment penalty for aged workers who elect private coverage under the provisions of TEFRA for the period of such coverage.

Effective Date

Enactment

5. Hospital Emergency Room Services

Current Law

Section 104 of the Tax Equity and Fiscal Responsibility Act of 1982 authorizes the Secretary of Health and Human Services to limit reimbursement for physician services performed in outpatient departments by reducing the prevailing charge screen to eliminate the overhead component. An exception to this reduction in reimbursement is made for "bona fide" emergency services.

In October of 1982 the Department published regulations regarding this provision which contained a definition of "bona fide" emergency services. Objections to the Department's definition were raised and have resulted in discussions between the Department, emergency room physicians and the Congress.

Proposal

To include in Section 1861 (v) the following definition of "bona fide" emergency:

Services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonable be expected to result in --

- (A) Placing the patient's health in serious jeopardy,
- (B) Serious impairment to bodily functions, or
- (C) Serious dysfunction of any bodily organ or part.

Effective Date

Enactment

6. Nurse Anesthetists

Current law

Under the new prospective payment system, medicare will pay a hospital amounts based on the diagnoses of its medicare patients. Each "diagnostic-related group" (DRG) payment is intended to cover all the services that hospitals customarily furnish in caring for patients with the specific diagnosis.

Certified registered nurse anesthetists (CRNAs) who are paid by the hospital often assist at operations by anesthetizing the patient. A part of each hospital's DRG payment is intended to cover these costs. However, a physician might also provide the anesthetic, and in these cases the physician can bill medicare separately. Since the hospital will be paid the same amount regardless of whether it pays CRNAs to perform the procedure or a physician gives the anesthetic at no cost to the hospital, there is a clear financial incentive for hospitals to have physicians replace CRNAs.

Proposal

To eliminate this economic incentive to substitute physicians for nurses, it is proposed that the costs a hospital actually incurs in employing CRNAs be reimbursed on a reasonable cost basis. Such costs may not be based on a greater number of CRNAs than were employed by a hospital in 1982, unless, as determined by the Secretary, patient volume, patient mix, or a loss of physicians' services requires otherwise.

The Secretary is directed to conduct a study and report back to the Congress on an alternative method for reimbursing for these services which does not discourage the use of CRNAs.

Effective date

Hospital reporting periods beginning on and after October 1, 1984, until such time as the Secretary reports to the Congress.

7. Prospective Payment Wage Index

Current Law

Under current law hospitals are paid on the basis of prospective rates. The Secretary is required to adjust those rates for area differences in hospital wage levels compared to the national or regional average hospital wage levels. The Secretary relies on a Bureau of Labor Statistics wage index to make the adjustment. However, the BLS index, while the best available, is an inadequate measure of wage differences because it fails to accurately reflect the use of part time versus full time employees in calculating the index.

Proposal

The proposal requires the Secretary to work with BLS, identify a resolution to the problem, and report to the Congress by May 1, 1984 on changes found necessary. In addition the Secretary is required to adjust, if found appropriate, a hospital payment to reflect changes made in the index. Such adjustments shall be made for reporting periods beginning in or after October 1, 1983. In making any necessary adjustment for the first reporting period beginning on or after October 1, 1984, there shall be included any overpayment or underpayment that may have occurred in the previous cost reporting period.

Effective Date

Enactment.

8. Hospice Contracting

Current Law

Under current law a hospice must routinely provide directly, substantially all of the following "core services": nursing care, medical social services, physician's services, and counseling services. The remaining "non-core services" may be provided either directly by the hospice or under arrangements with others. Under existing regulations, a hospice may use contracted staff to meet the "core service" needs of its patients but only when necessary to supplement hospice employees during periods of peak patient loads or under extraordinary circumstances.

Proposal

The proposal allows the Secretary to waive the nursing care "core services" requirements for hospices which serve rural areas and which have demonstrated a good faith effort to hire their own nurses. A waiver request will be granted automatically unless expressly denied by the Secretary within 60 days. The granting of a waiver would not preclude the favorable consideration of a subsequent waiver request should such a request be necessary.

The Secretary would be required to study the necessity and appropriateness of the core service requirement and report his/her findings to the Congress within 18 months of enactment.

Effective Date

Enactment

SIMPLIFICATION OF
INCOME TAX CREDITS

Present Law

A taxpayer's liability may be reduced by use of nonrefundable income tax credits. These credits, which were added to the Internal Revenue Code on an ad hoc basis, must be applied in the chronological order in which they were added to the Code and may be used only to the extent the taxpayer's tax liability is not consumed by previously applied credits. Some of the effects of this rule were probably not intended. For example, a taxpayer may be unable to use certain credits for which no carryover is provided, while an earlier enacted (and lower-numbered) credit that has a carryover is used up.

The manner in which the different tax credits may be used varies. Carryovers are useable in different chronological orders. For example, the investment credit carryovers are used on an earliest year basis; other credits require that the credit available in the current year be used first. Also, the tax liability against which the credits apply differ. The investment tax credits (other than the energy tax credit) may be used to reduce 100 percent of the first \$25,000 of tax and 85 percent of tax in excess of \$25,000. The targeted jobs credit may be used against 90 percent of tax liability. The ESOP credit may reduce 100 percent of the first \$25,000 of tax liability and 90 percent of the tax in excess of \$25,000. The remaining business credits (including the energy tax credit) may reduce 100 percent of tax liability. Special rules apply to the amount of tax liabilities against which the use of the foreign tax may be applied.

Finally, some of the credits have differing carryback and carryforward periods. The investment credit, targeted jobs credit, research activities credit and ESOP credit have a 3-year carryback and a 15-year carryforward period; the alcohol fuels credit has a 15-year carryforward period but no carryback period.

Proposal

The proposal would reorder the use of credits and provide uniform tax liability limitations and carryover rules.

Personal income tax credits--the dependent care credit, the credit for elderly and disabled, residential energy credit and political contribution credit--would be taken before other credits. The foreign tax credit, credit for clinical testing of certain drugs and the fuel production credit would be allowable against any remaining tax liability under the provisions of

current law. The research activities credit would be taken next, as allowable under current law.

The business credits--the investment tax credit (both regular and energy), targeted jobs credit, alcohol fuels credit, and ESOP credit--would be combined into one general business credit and would be allowable against 100 percent of the first \$25,000 of tax liability and 85 percent of the remainder. The credit would be used on a FIFO basis with a 3-year carryback and 15-year carryforward period.

This proposal would apply to taxable years beginning after 1983. Credits earned in pre-1984 years would continue to be carried to post-1983 years under the substantive rules (apart from tax liability limitations) under which they were earned. Credits earned in post-1983 years could be carried back to pre-1984 years, subject to the new liability limitation rules imposed by the proposal.

This proposal is included in H.R. 4170 as reported by the Committee on Ways and Means.

ESTIMATED PAYMENTS OF
ALTERNATIVE MINIMUM TAX

Present Law

Generally, the alternative minimum tax is a broad-based tax imposed at a rate of 20 percent of the economic income of an individual in excess of \$30,000 (\$40,000 for a joint return). The minimum tax is paid only if the amount of the minimum tax exceeds the amount of the regular tax. Estimated tax payments of the alternative minimum tax are not required.

Proposal

The proposal would require individuals subject to the alternative minimum tax to make estimated tax payments. The proposal is included in H.R. 4170 as reported by the Committee on Ways and Means.

Effective Date

The proposal would be effective for taxable years beginning after December 31, 1983.

CONVERSION OF ORDINARY INCOME
INTO LONG TERM CAPITAL GAINS
THROUGH "COLLAPSIBLE CORPORATION" TRANSACTIONS

Present Law and Background

The collapsible corporation rules of the tax code are designed to prevent taxpayers from converting ordinary income into long-term capital gains by operating through a corporation that is liquidated or "collapsed" prior to the realization by the corporation of income attributable to the corporation's business activities. The rules generally treat as ordinary income (rather than capital gains) gain from certain liquidations of "collapsible corporations", and gain from sales or exchanges of stock in such corporations.

Collapsible corporations are generally defined as corporations used with the intent of selling or exchanging the corporation's stock before realization by the corporation of a substantial part of the income to be derived from the corporation's business activities from the manufacture, construction, production, or purchasing of property. The courts have split on the issue of whether this test requires that a substantial majority (e.g., two-thirds) of the corporation's business income be realized on the corporate level, or whether a smaller amount (e.g. one-third) is sufficient. The IRS has acquiesced in the court decisions allowing the collapsible corporation device to be used as long as no more than two-thirds of the income involved is converted from ordinary income into capital gain.

Explanation of Proposal

The collapsible corporation would be amended to clarify that at least two-thirds of the corporation's income must be realized on the corporate level to avoid collapsible corporation treatment. Limitations on the collapsible corporation rules would also be amended to allow an exception only where one-third or less of the corporation's gain is attributable to so-called "collapsible assets." The proposal would be effective for transactions after the date of Senate Finance Committee action on the proposal.

CAPITAL GAINS TAX TREATMENT

Present Law and Background

Gains and losses on the sale of assets held for more than 1 year are treated as long-term capital gains and losses. Individuals include in their taxable income 100 percent of the excess of net short-term capital gains over net long-term capital losses, and they include 40 percent of the excess of net long-term capital gains over net short-term capital losses. When capital losses exceed capital gains, they may be deducted against \$3,000 of ordinary income. Long-term capital losses realized after 1959 must be reduced by 50 percent when they are deducted against ordinary income.

Corporations pay an alternative rate of 28 percent on the excess of net long-term capital gains over net short-term capital losses. They may not deduct net capital losses against ordinary income.

The holding period was lengthened from 6 months to 1 year in 1976. At the same time, the limit on the deductibility of capital losses against ordinary income was increased from \$1,000 to \$3,000.

Proposal

The holding period determining long-term capital gains would be reduced to 6 months, effective for assets purchased after November 1, 1983.

The limit on the deductibility of capital losses against ordinary income would be reduced from \$3,000 to \$1,000, effective for calendar year 1984 and subsequent years. The special rule for pre-1970 losses would be repealed.

STOCK OPTIONS STRADDLES AND
FOREIGN CORPORATION COMMODITY STRADDLES

Present Law and Background

Under the straddle rules adopted in the Economic Recovery Tax of 1981, a taxpayer is required to defer losses to the extent of unrecognized gain on offsetting positions in a straddle and is subject to certain other sanctions. Positions consist of interests in actively traded personal property and are offsetting, and thus constitute a straddle subject to the rules, if the risk of loss to the taxpayer from holding one position is substantially diminished by virtue of his holding another position. Stock and certain stock options are excluded from the straddle rules. That exclusion was made in 1981 because it was represented that stock options did not present the same potential for deferral or conversion. It has become clear over the past two years that stock options have been used for very effective deferral and conversion tax straddles.

The exclusion for stock options is limited to those types of options which are traded on an exchange and which must be exercised within a period that is less than the long-term holding period (currently 1 year). The exercise period for most exchange-traded stock options presently is 9 months and thus they are excluded from the straddle rules. Stock options resulting in ordinary income or loss may be subject to the straddle limitations if the exercise period exceeds the long-term holding period.

A syndicate is a limited partnership or other flow-through entity, more than 35 percent of the losses of which are allocable to limited partners or limited entrepreneurs. Syndicates are ineligible for the exception from the straddle rules for hedging transactions but may qualify for the exclusion for short-term options, even if they result in ordinary income and loss.

Under present law, if otherwise offsetting positions are held by foreign corporations and individuals, the commodity tax straddle rules do not apply. Moreover, foreign corporations may invest in regulated futures contracts without paying United States tax. United States investors in such corporations can obtain long-term capital gain treatment of gain realized on the stock of such corporations.

Explanation of Proposal

The proposal would extend the straddle rules to stock options and stock to the extent offset by stock options.

Stock in foreign corporations principally engaged in holding positions in personal property would be made subject to the commodity tax straddle rules, as recommended by the Treasury Department. Additionally, foreign corporations investing in commodities would be made subject to the rules governing foreign investment companies and such income would be treated as United States source income.

SPORT FISH AND BOATING SAFETY PROVISIONS

Present Law and Background

Present law imposes a 10-percent manufacturers excise tax on the first sale of fishing rods, creels and reels, and certain other types of fishing equipment. Payment of this excise tax generally is required on a semimonthly (monthly or quarterly in the case of smaller manufacturers) basis--the same basis as is required for most other manufacturers' excise taxes. Amounts attributable to the tax are distributed to the States in partial reimbursement of costs they incur in approved sport fish restoration programs (the "Dingell-Johnson" fund program).

Excise taxes are imposed on fuels used in motorboats at a rate of 9 cents per gallon. An amount attributable to the revenue from these taxes is divided between the National Recreational Boating Safety and Facilities Improvement Fund and the Land and Water Conservation Fund.

Import duties are imposed on yachts, pleasure crafts, and certain types of fishing equipment. Revenues from these duties are deposited in the general fund.

Explanation of H.R. 2163 - As passed by the House of Representatives

Expansion of the excise tax on fishing equipment.--As passed by the House of Representatives, the bill would expand the articles of fishing equipment subject to the 10-percent excise tax and would impose the tax at a special 3-percent rate on electric outboard boat motors. (A proposal by the House Merchant Marine Committee to tax fish finders at the 3-percent rate was deleted by the Ways and Means Committee. The Ways and Means Committee Report also instructed the IRS to enforce more closely the constructive sales price provisions of present law to insure that importers and domestic manufacturers are taxed in an equivalent manner.)

Time of payment of the tax.--The House bill also would extend the time for paying the fishing equipment excise tax, with payment generally being required quarterly.

Fund provisions.--The House bill would amend in several ways the Dingell-Johnson and Boating Safety Fund programs--

- (1) Motor boat fuels tax receipts would be reallocated with the Dingell-Johnson fund program, the Boating Safety Fund, and the Land and Water Conservation Fund all receiving part of this revenue.

(2) Import duties on yachts, pleasure craft and fishing equipment would be transferred to the Dingell-Johnson fund program (rather than the general fund).

(3) The Dingell-Johnson fund (Sport Fish Restoration Program) and the Boating Safety Fund would be transferred to the Trust Fund Code of the Internal Revenue Code, as separate accounts within a newly established Aquatic Resources Trust fund.

(4) The expenditure purposes for the programs would be amended, with the Coast Guard being given part of the boating safety monies.

Other provisions of the House bill

National Fish and Wildlife Foundation.--The bill would relieve the National Fish and Wildlife Foundation, proposed to be established by H.R. 2809, from making certain applications to the IRS as a condition of receiving tax-exempt status as a section 501(c) organization. H.R. 2809 has been referred to the Senate Committee on Environment and Public Works.

Excise tax on crossbow arrows.--The bill would also expand the present 11-percent excise tax on bows and arrows to certain crossbow arrows, i.e., those under 18 inches but suitable for use on a taxable bow.

Proposal

H.R. 2163, as passed by the House of Representatives, would be modified as follows: The point of collecting the tax would be changed from the manufacturer to the last point before the retail sale. The extension of the time for payment of the excise tax would be 3 months for payors who have gross income of \$100,000 or less. The tax on tackle boxes would be changed from 10 percent to 3 percent and the Treasury Department would be required to implement regulations that would impose the tax only on tackle boxes that are primarily designed and intended to be used to store and organize fishing paraphernalia. Certain sonar depth sounders would be taxed at a rate of 3 percent with a maximum tax of \$60 and the Treasury Department would be required to implement regulations which would impose the tax only on sonar depth sounders that are primarily designed and intended to be used to locate fish. Finally, only Title III, the Sport Fish Restoration Revenue Act of 1983 would be reported by the Committee.

Effective Date

Generally, the provision would be effective July 1, 1984 except that the tax on tackle boxes and sonar depth sounders would be effective after final regulations have been published.