

OFFICIAL TRANSCRIPT

Mike W

COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

Thursday, November 20, 1980

Washington, D. C.

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EXECUTIVE SESSION

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THURSDAY, NOVEMBER 20, 1980

United States Senate,
Committee on Finance,
Washington, D. C.

The committee met, pursuant to call, at 9:55 a.m., in room 2221, Dirksen Senate Office Building, The Hon. Russell D. Long (chairman of the committee) presiding.

Present: Senators Long, Talmadge, Byrd, Gravel, Bentsen, Moynihan, Baucus, Boren, Dole, Packwood, and Danforth.

The Chairman. The committee will come to order.

Let me announce a rule that we are going to go by here to try to get some things done. Let's understand this, anything we do here, if somebody wants to come in tomorrow and reconsider it, I will be glad to entertain a motion to reconsider.

Anybody who is not here wants to hold it up on the Senate floor by a single objection, we will hold it up. We are not going to run over anybody.

I saw the editorial about the superfund bill being the super-rush bill. If somebody wants to take a day or two to talk about it or think about it on the floor, that is all

1 right with me.

2 We have a lot of good measures here that are going to
3 die by default, and we know of no objection to them, unless
4 we get them out there on the floor. I am going to ask that
5 we stick by this rule.

6 Let's let Mr. Shapiro lay before for us the things that
7 he has to lay before us that so far as he knows have no
8 objection. Then, let's consider what the Senators want to
9 do. He has a whole list that he can run right through, he
10 believes, we will just stay right with him and look at
11 them. If anybody has an objection, it has to go over. What
12 we are talking about is doing unanimous consent business.

13 Go ahead, Mr. Shapiro.

14 Mr. Shapiro. We left on item No. 15, that is S.650.
15 It is agreed to as modified by the Senate Finance Committee
16 on June 27, 1980. You previously reported it, but it has
17 some modifications.

18 It deals with the exemption from unrelated business
19 income tax for certain real estate investments of qualified
20 employees' trusts. Since the committee has already agreed
21 to it, it has just been put back on the list.

22 The Chairman. Without objection, agreed.

23 Mr. Shapiro. Item No. 16 you took care of yesterday.
24 Senator Talmadge brought it up, and it is the former real
25 estat investment trusts.

1 The Chairman. Without objection, agreed.

2 Mr. Shapiro. Item No. 17 is S.2275. The Senate
3 Finance Committee agreed to this earlier. It deals with the
4 amendments relating to general stock ownership
5 corporations.

6 The Chairman. Without objection, agreed.

7 Mr. Shapiro. Item No. 18 is S.2367. It has also been
8 previously agreed to by the committee. It deals with the
9 treatment of gain from the sale of stock of a foreign
10 investment company.

11 The Chairman. It has been agreed to before?

12 Mr. Shapiro. Yes.

13 The Chairman. Without objection, agreed.

14 Mr. Shapiro. Item No. 19 is Section 401 of bills that
15 you have previously agreed to. It deals with transfers of
16 proven oil and gas properties to a controlled corporation.
17 There are amendments, however, that have been worked out
18 between Senator Boren and the Treasury Department.

19 The Treasury had opposed it previously, but it modified
20 it in the committee. Consequently there were other
21 amendments that Senator Boren has agreed to. So with those
22 modifications, it should be appropriate.

23 The Chairman. Is that okay with Treasury?

24 Mr. Halperin. Yes.

25 The Chairman. Without objection, agreed.

1 Mr. Shapiro. Item No. 20 is Section 406 of H.R. 1212
2 and 2492. It deals with the extension of cash and deferred
3 plan rules to salary reduction arrangements under money
4 purchase pension plans. That has previously been agreed to
5 as well.

6 The Chairman. Without objection, agreed.

7 Mr. Shapiro. The next item is Section 204 of H.R.
8 1319. It deals with the tax treatment under Rhode Island
9 Indian Claims Settlement Act. That has been previously
10 agreed to.

11 The Chairman. Without objection, agreed.

12 Mr. Shapiro. Section 202 of H.R. 2297 deals with the
13 exception to private foundation "self-dealing" rules for
14 continuation of certain leasing arrangements.

15 The Chairman. Without objection, agreed.

16 Mr. Shapiro. The next one is H.R. 3755. It is
17 exemption from excise tax on wagers and occupational tax on
18 wagering. The committee has previously reported that out as
19 well.

20 The Chairman. Without objection, agreed.

21 Mr. Shapiro. Item No. 24 is Section 404 of H.R. 1212
22 and H.R. 2492. It deals with the elimination of the
23 withholding tax on pensions paid to certain nonresident.
24 The committee has already agreed to that previously.

25 The Chairman. Without objection, agreed.

1 Mr. Shapiro. The last item on page 4 is Section 201 of
2 H.R. 1319. It deals with the tax treatment of employees of
3 charities working abroad. These are the missionaries that
4 you have heard of recently, and this is what the committee
5 has previously agreed to.

6 The Chairman. Without objection, agreed.

7 Senator Talmadge. Mr. Chairman.

8 The Chairman. Senator Talmadge.

9 Senator Talmadge. I have been asked to bring up
10 S.2484, which was introduced to extend the transitional rule
11 contained in the Tax Reform Act of 1976. Under the 1976
12 Act, as originally passed, the transitional rule was
13 provided to give corporations an opportunity to close
14 foreign corporations and not be covered by the new law.

15 However, corporations were given less than 90 days to
16 terminate their foreign corporations, and this proved far
17 too little time to accomplish the task of shutting a major
18 manufacturing operation. The bill would seek to extend this
19 transitional rule date from December 31, 1976, until
20 December 31, 1977.

21 I understand the Finance Committee held public hearings
22 on this bill on May the 30th. I don't know what the
23 attitude of the Treasury is on this bill.

24 Mr. Halperin, can you address yourself to that?

25 Mr. Halperin. Senator Talmadge, we have opposed this

1 bill. There was a transitional rule written in the original
2 bill in 1976, which was for the benefit of at least one of
3 the companies now interested in further extension.

4 Secondly, what we are talking about here is getting the
5 double benefit of a loss. One, the companies get the loss
6 applied against their income; secondly, they want to get a
7 foreign tax credit, even though as a whole they have no
8 foreign source income.

9 Senator Talmadge. Is the Treasury opposed to it?

10 Mr. Halperin. The Treasury is opposed to this.

11 Senator Talmadge. I will not pursue it further, Mr.
12 Chairman.

13 The Chairman. Senator Dole.

14 Senator Dole. I just want to express the interest of
15 Senator Durenberger in this legislation. It was, as Senator
16 Talmadge pointed out, brought before the committee on the
17 27th of June at the behest of Senator Bradley and Senator
18 Durenberger. It was passed by a voice vote then.

19 I wonder if we cannot pass it again, and then let
20 Treasury make their case on the floor.

21 The Chairman. You would like to just report it out
22 with the understanding that it will be objected to if called
23 up on the floor?

24 Senator Dole. Yes.

25 The Chairman. Is that all right with the Senators?

1 Let's understand that, then, that we fully anticipate
2 that the bill will be objected to when it is called up, but
3 we will report it out at the request of the Senators.

4 Without objection, we will report the bill out.

5 Senator Byrd. Mr. Chairman.

6 The Chairman. Senator Byrd.

7 Senator Byrd. Mr. Chairman, may I call up a bill that
8 I understand there is no controversy over?

9 It is H.R. 6806, to clarify the rules relating to the
10 normalization requirements for public utility property
11 eligible for investment tax credit and accelerated
12 depreciation. A hearing was held on this yesterday. The
13 Treasury says that it has no objection.

14 Mr. Shapiro, you could take over from there.

15 Mr. Shapiro. Senator Byrd is correct.

16 This bill has passed the House. It deals with a very
17 complicated provision which provides certain rules as to
18 whether or not a company is eligible to use the investment
19 tax credit or the accelerated depreciation, and trying to
20 simplify to determine whether or not the benefits are
21 maintained by the company or passed through to the
22 shareholders or the users.

23 The Congress, in 1969, wanted to make sure that the
24 benefits of accelerated depreciation, and then in 1971, that
25 the investment credits were available to the company in the

1 so-called normalization rules, meaning that the passthrough
2 is done in a normal method, rather than each year it passed
3 through so the Federal Treasury is just benefitting the
4 consumers rather than the company.

5 The Chairman. I think that all of us are familiar with
6 that bill. It has been discussed by various members off and
7 on, and the representatives of the industry have discussed
8 it with us from time to time.

9 Do I understand the Treasury has no objection to the
10 House passed bill?

11 Mr. Halperin. That is true, Mr. Chairman.

12 The Chairman. You think that it ought to be reported,
13 Senator Byrd.

14 Senator Byrd. I think that it would be well if it
15 could be reported, yes.

16 The Chairman. I suggest that we report the bill.

17 Is that all right with you, Senator Dole?

18 Senator Dole. Which one is this?

19 Senator Byrd. It deals with investment tax credits for
20 public utilities.

21 The Chairman. Tell us a little more about the bill, if
22 you will.

23 Mr. Shapiro. It deals with a very complicated
24 provision which is referred to as normalization as to what
25 time the benefits of the investment tax credit and

1 accelerated depreciation may be passed through to the
2 consumers or shareholders.

3 In other words, what Congress was concerned about in
4 1969 and 1971 was that you provided benefits, and instead of
5 the companies being able to use it for their own capital
6 formation purposes and productivity, utilities required
7 those benefits to be passed through to consumers
8 immediately. So the Federal Treasury was just providing the
9 benefit directly to the consumers.

10 You provided normalization rules which allow them to
11 continue --

12 Senator Dole. I discussed this with Senator Hayakawa,
13 and I think this is the one in which he has a very strong
14 interest.

15 Senator Byrd. He is in favor of it, yes.

16 Senator Bentsen. In this situation we have been
17 frustrated in our objectives by the California Utilities
18 Commission, as I understand it. Therefore, we have not
19 accomplished what we desired to do with the tax
20 legislation.

21 The Chairman. I know of no opposition to the bill.

22 Senator Bentsen. It passed in the House also.

23 Mr. Shapiro. That is right, it is not the companies'
24 fault, but the commission's fault.

25 What you are doing, you are providing a forgiveness, in

1 effect, for the past, and specifying that you really
2 intended these rules for the future. It puts it on record,
3 so it covers the past.

4 Senator Bentsen. I think that we ought to proceed with
5 it.

6 The Chairman. All in favor of reporting the bill say,
7 aye.

8 (Chorus of ayes.)

9 The Chairman. Opposed, no.

10 (No response.)

11 The Chairman. Have we considered S.2775 that Senators
12 Bentsen and Dole have been urging that this matter be
13 considered with regard to foreign pensions?

14 Mr. Shapiro. Yes, we have. It was number 17 on the
15 list. It was acted on yesterday. It is a provision that
16 was agreed to yesterday.

17 Senator Moynihan. Mr. Chairman.

18 The Chairman. Mr. Moynihan.

19 Senator Moynihan. Mr. Chairman, I have a bill, S.394,
20 which is a private relief bill for some 105 writers and
21 artists on the New Yorker magazine.

22 In 1944 that journal began something special which is a
23 pension plan for its employees. It went along without any
24 notice from the IRS one way or the other, and they seemed
25 approved. But in 1977, the IRS suddenly declared that these

1 artists were really free-lancers and not employees.

2 This bill would simply say that any writer or artist
3 who was covered by the plan on December 31, 1977, would
4 remain covered. I understand the Treasury has no objection
5 to it.

6 Mr. Halperin. Senator, as you know, we have been
7 trying for some time to work out a satisfactory solution to
8 that. I am not sure that we have reached anything that we
9 are all completely happy with. The provision that you have
10 just expressed is the agreement that we made to go along
11 with, and we will stand by it.

12 Senator Moynihan. I appreciate that very much. It is
13 a small group, but it is very distinguished. It is the
14 first such effort of this kind to give a stable income to
15 artists.

16 The Chairman. Without objection, it will be reported.

17 Let me direct the attention of the committee to a note
18 I received here. This may be Senator Ribicoff's last day on
19 the Senate floor. The Senators are paying tribute to
20 Senator Ribicoff's service today, and I am sure that
21 everybody here would like to say something about that before
22 the day is up.

23 Senator Moynihan. Mr. Chairman, could I raise one
24 other matter as I do want to go to the floor for Senator
25 Ribicoff, who has been my neighbor and friend all these

1 years.

2 In our main bill, H.R. 5929, we adopted an amendment
3 proposed by Senator Nelson to exempt firms for one year from
4 the Thor Power Tool ruling. I would like now to propose a
5 second amendment parallel to that, to be a part of this
6 package, which would amend Section 227 of the bill to say
7 that it applies only with respect to books, maps,
8 sheet-music, monographs, periodicals, and similar printed
9 materials.

10 Mr. Chairman, if we don't act now, there is going to be
11 a really dreadful amount of just pulping of the vast list of
12 the major publishers in this country of their monographic
13 books that sell slowly over long periods of time. It is
14 just having a chilling impact on the whole publishing
15 industry.

16 It goes through things you don't even think of, such as
17 the sheet-music of modern composers who might sell 50 copies
18 a year of their third symphony, as it were. These can now
19 be written down by the publishers, and continue to be sold.

20 Thor Power Tool, which did not intend to have this
21 effect on publishing, a straight decision by the Supreme
22 Court on the question of a small business and its inventory,
23 nonetheless would have a devastating effect.

24 Pending some general legislation, I would like to
25 propose that publishers be exempted from the rule for one

1 year. The revenue effects would be negligible. Anything
2 lost in the coming year -- for the entire economy it is
3 estimated to be \$10 million -- would be retrieved in the
4 course of the next decade. So the net loss would be
5 nothing.

6 This probably would be much, much less than a million
7 dollars, surely. But this is a very important subject on
8 which there is a great deal of public concern.

9 The Chairman. Does the Treasury want to go along with
10 that?

11 Mr. Halperin. Mr. Chairman, we have opposed this
12 legislation in general, and we would oppose it if it applied
13 to only a particular industry.

14 The question of the substantive treatment is whether or
15 not the publishing industry is entitled to special
16 treatment. It is not one that has been considered by this
17 committee.

18 It is something on which we have indicated to the
19 industry that we are willing to sit down and talk with them
20 about. That is something that I would think you would get
21 into next year.

22 The issue as to whether we should postpone the impact
23 of a Supreme Court decision, we are talking about a rule
24 that was within the regulations for 50 years. The IRS has
25 certainly indicated several years ago that it was going to

1 take a more active interest in this area.

2 The Tax Court decided the case in 1975, The Circuit
3 Court in 1977, and the Sureme Court in 1979. We don't
4 understand the argument that people did not hvae time to
5 consider the impact of that decision and get into the
6 question as to whether or not substantive legislative
7 changes were in order.

8 There seem to be a lot of suggestions around that
9 people can ignore a Supreme Court decision. The idea that
10 the IRS is going to enforce a Supreme Court decision is
11 somehow retroactive rulings.

12 As we understand it, people have been complying. We
13 have got 1,500 corporations that have already changed their
14 method of accounting to comply with the decision. I think
15 that it will just add confusion to the subject if suddenly
16 at this late stage to delay the impact.

17 We are talking about tax returns for 1979, which were
18 already due on September 15 in most cases for calendar year
19 corporations.

20 Senator Moynihan. Mr. Chairman, I understand the view
21 of the Treasury.

22 I tell you that this is going to have a pervasive and
23 altogether deplorable effect upon the publishing industry in
24 this country. The publishing industry is very small and,
25 in the main, marginal industry. Right now they continue to

1 publish books that sell 15 copies a year over 20 years, and
2 they are not unimportant books. Now, they will no longer
3 print such books.

4 The New York Times has a long story on the subject that
5 simply says, "Millions of Books Endangered as a Result of
6 Tax Ruling." The Washington Star, "Books into Pulp." The
7 New York Times, "Taxing Books to Extinction." We are doing
8 something mindless here that we are going very much to
9 regret.

10 The Chairman. Let's just think about this point. How
11 would you hope to get this bill to the President's desk, get
12 him to sign it, between now and the time this Congress
13 adjourns.

14 Senator Moynihan. To the extent that the bills that we
15 are approving here get to the President's desk, this would
16 be one of them. It would just give a one-year moratorium on
17 this ruling, so we can consider legislation.

18 The Chairman. Senator, you are aware that whatever
19 bill we put this amendment on, it is going to sink with the
20 amendment itself if it is objected to out there on the
21 floor, and then it is likely not to pass. The probability
22 is very slight that it would pass, but the Treasury would
23 probably recommend a veto.

24 Senator Moynihan. Mr. Chairman, you underestimate my
25 estimate of your powers. I am of the conviction that you

1 can do anything.

2 The Chairman. I am just asking for your estimate of
3 your powers in this respect.

4 Senator Moynihan. I consider the number of people in
5 this Administration who are about to write their memoirs,
6 likely to be small moving, I think this bill would get
7 through. I think that this little provision might add to
8 the attractiveness of this bill.

9 The Chairman. It is all right with me for the
10 committee to agree to the amendment, provided that you offer
11 it on the floor with something that looks like it is going
12 somewhere.

13 Senator Moynihan. All right, sir, I will try that,
14 too. We have already, as you know, adopted a more general
15 amendment, and we adopt the more narrow one.

16 The Chairman. How can we handle what Senator Moynihan
17 wants without torpedoing somebody else's measure?

18 Mr. Stern. You could put it as an amendment to a
19 separate measure.

20 Senator Moynihan. Fine, I will be happy to do that.

21 The Chairman. Like what?

22 Mr. Stern. For example, you have on the calendar a
23 bill H.R.3755 which at the moment has only one amendment in
24 the nature of a substitute, the wagering tax amendment. You
25 have agreed this morning to that again. You can put that

1 one that you have already agreed to as part of your package
2 of noncontroversial amendments, and put the Thor Power Tool,
3 instead, as a committee amendment to that bill on the
4 floor.

5 Senator Moynihan. Could we do that, Mr. Chairman?

6 Mr. Stern. There is nothing else on that bill.

7 Senator Moynihan. I am quite prepared to see the bill
8 stand on its own. I think, in fact, once they think about
9 it, the Administration will want to be for this amendment.

10 The Chairman. Senator Dole.

11 Senator Dole. It is going out on its own?

12 Senator Moynihan. Yes, sir.

13 The Chairman. Without objection, we will agree to the
14 amendment. We will agree that it can be offered as a
15 committee amendment. Let's understand that if there is a
16 snag out there on the floor, it will just have to be
17 withheld, I suppose.

18 Senator Moynihan. Yes, sir.

19 The Chairman. Senator Boren.

20 Senator Boren. Mr. Chairman, once again, I am sorry I
21 was not here a little earlier.

22 Senator Chafee, Senator Danforth, and Senator Nelson,
23 and I believe Senator Packwood was on this bill also, which
24 we approved earlier on the excise tax on fishing tackle.
25 The problem with the situation is that the fishing tackle

1 manufacturers, which nearly all of them are very small
2 businesses, are having to pay the excise tax when they ship
3 out the products. This being a very seasonal business, it
4 hurts them.

5 All our bill did was defer when they had to pay it by
6 one-quarter. All of it is earmarked for this Dingell-Johnson
7 Fish Restoration Fund, so the amount of money would
8 eventually be the same. It would not have any kind of
9 permanent fiscal impact.

10 It passed the House. It passed this committee. I
11 wonder if the Treasury might have reconsidered in terms of
12 their opposition, because I don't understand why they would
13 be opposed to it since it all goes in an earmarked fund and
14 does not have any financial impact.

15 It really does give problems. I know Senator Chafee
16 and Senator Danforth are aware of this, and Senator Nelson
17 has been a co-sponsor. These people are really sort of a
18 garage operation, where they have eight or ten employees.
19 The seasonal nature of it really gives them problems.

20 Does Treasury maintain its opposition, or would they
21 perhaps consent to allow it to be considered a
22 noncontroversial measure?

23 Mr. Halperin. Senator, as I indicated yesterday, our
24 feeling is that we have to maintain the positions that were
25 taken in our testimony. We have been opposing this fishing

1 tackle bill for four years. It has been passing various
2 Houses over the course of the four years, but somehow never
3 makes it into law.

4 Generally the principle is that taxes ought to be paid
5 at the point they are incurred. The fishing tackle people
6 have to pay their rent, they have to pay their employees.
7 Even though they are producing tackle that will not be sold
8 until the season, they still have to pay all their other
9 bills on time, and the government should be paid along with
10 all other creditors.

11 So this is a serious precedent. There is already a
12 bill in from at least one other industry saying they would
13 like the same treatment. They would like to delay paying
14 their excise tax until they hit their sale season.

15 We have been trying for a number of years to establish
16 the principle of "pay as you go" on taxes, and we think if
17 you move away from it in this one case, you will find that
18 the rest of the industries are going to be right behind.

19 Senator Boren. Do the funds go into an earmark fund on
20 the others?

21 The Chairman. Senator, I think next year you and I
22 ought to get together to try to get the public some relief
23 from the hard-hearted attitude of the Treasury. I
24 personally want to try to help the Christmas Trees. At a
25 time when they would fight against a guy who is trying to

1 produce a Christmas tree for a little child, the fishing
2 tackle people don't have much chance.

3 Senator Boren. I will join you in that, Mr. chairman.

4 Senator Dole. We have one that Senator Talmadge and I
5 have an interest in, 2916, to allow the investment tax
6 credit to offset the alternative minimum tax in excess of
7 regular taxes if the credit is attributable to the active
8 conduct of trade or business by the taxpayer.

9 It is my understanding that there is no objection to
10 that now, is that accurate.

11 Mr. Shapiro. As I understand, Treasury has agreed to
12 the modifications that have been suggested, and that this
13 has been approved.

14 Mr. Halperin. We have worked out a modification with
15 your staff. I am not sure that I can remember it.

16 Senator Dole. With that modification, can we pass
17 that?

18 The Chairman. Without objection, agreed.

19 What should we put this on, Mr. Shapiro, the same
20 ground rule as the others?

21 Mr. Shapiro. I think that you are better off, after
22 you get through with everything, to let Mike Stern and Bob
23 Lighthizer coordinate the bills.

24 The Chairman. Okay.

25 Senator Packwood.

1 Senator Packwood. Mr. Chairman, I have three
2 prospective amendments. One relates to the Plamat (?)
3 Indian Tribe. They chose to terminate themselves, and the
4 Federal government approved it over a generation ago. They
5 had timberlands, and the Federal government took the
6 timberlands, put them in national forests, was going to put
7 the money into a trust, and the Indians would get it.

8 In 1975, we passed an Act that said that they would not
9 be subject to tax on the capital gains paid into the trust,
10 and that is passed. Unfortunately, the Federal government
11 did not pay the money into this trust until 1980, and the
12 government paid some money in the nature of a penalty
13 because of their late payment.

14 This amendment would simply say that it is not the
15 Indians' fault, and that they will not be subject either to
16 a tax on this additional interest that has been paid in
17 because the Federal government was late in paying the money
18 into the trust.

19 Mr. Shapiro. The committee has previously approved an
20 amendment dealing with the tax treatment Plamat Indians, and
21 this just clarifies a portion of that particular provision
22 which deals with the interest with regard to the treatment
23 of taxation.

24 I am not aware of problem. The only reason that it was
25 not on our list is because it was not the subject of

1 hearings in the Senate. But other than that, there has been
2 no objection in the House, and I am not aware of Treasury's
3 objection.

4 The Chairman. Does Treasury have an objection?

5 Mr. Halperin. There has not been a hearing on it, as I
6 understand it --

7 Senator Packwood. The reason there wasn't, the
8 government did not pay the money until the middle of this
9 year. That is the reason there wasn't any hearing.

10 Mr. Halperin. We are not opposed to this bill.

11 The Chairman. There is no objection from Treasury, and
12 there is no known objection from anybody. The Treasury is
13 thoroughly familiar with the bill. At this stage of the
14 game, I think we ought to be willing to report it.

15 Senator Packwood. I have a second amendment, and this
16 is on behalf of Senator Cranston and Senator Hayakawa. Mr.
17 Wexler, I think you know about it. It is a technical
18 amendment relating to the windfall profits tax bill as it
19 relates to the tax produced on state lands, which I know is
20 a subject you are familiar with.

21 Jim, can you give a technical explanation of what this
22 is?

23 Mr. Wexler. The problem arises from the oil owned by
24 the State of California and the City of Long Beach. They
25 have a sort of unusual arrangement there whereby they share

1 the net profit interest in the oil. I think it is 95.5 for
2 California, and 4.5 for the companies.

3 The companies incur all the costs, and then they
4 receive enough oil to reimburse them. So economically it is
5 as if the oil were owned 95.5 percent by the government, and
6 4.5 percent by the companies. But for tax purposes, the way
7 we drafted the tax, the companies are taxed not only on the
8 4.5 percent of the oil, but also on their recovery oil.

9 The state royalty exemption exempts less than 95.5
10 percent of the oil. What Senator Cranston's bill, which
11 Senator Packwood brings up, would do is to say, in the case
12 of these net profit interests, as here, the windfall profits
13 tax is apportioned among the producers in proportion to
14 their net profit interest, instead of in proportion to their
15 so-called economic interest, which is sort of an income tax
16 concept. It does not work very well in this case.

17 Senator Packwood. I think that it is fair to say that
18 we did not intend to tax that. We had a great debate on
19 that between the person on my left and the person on my
20 right.

21 Mr. Wexler. In fact, I think Treasury supports, and I
22 believe Treasury drafted the bill.

23 Senator Danforth. What is the revenue impact?

24 Mr. Wexler. Our original estimates assume that the tax
25 would work the way that Senator Packwood's amendment would

1 make it work.

2 Senator Danforth. The question is, what is the revenue
3 impact?

4 Mr. Wexler. I am not sure how much oil is involved.

5 Senator Dole. I understand that Senator Wallop has a
6 direct interest in this, and would like to be present before
7 any action is taken.

8 The Chairman. Does Treasury oppose this?

9 Mr. Halperin. No, we are not opposed to it. In fact,
10 it could solve some situations where people could take
11 advantage of it to avoid taxes that they should otherwise be
12 paying under the bill. So it does work both ways.

13 Whether there is a revenue effect depends upon whether
14 people are going to start playing some games that this bill
15 would prevent them from doing. But it does mean a
16 significant amount of money to the State of California. I
17 don't remember what it is at this moment.

18 Senator Danforth. I was not here earlier when the
19 committee dealt with the investment credit issue for the
20 California utilities.

21 I would not have objected to it at the time, but I
22 would point out that while it is my understanding that the
23 impact of that bill is on the utilities rather than the
24 State of California.

25 The consequences of it are that about \$1.8 billion for

1 that particular amendment, in essence, is going to be
2 coughed up by the people of this country in order to pay for
3 a special passthrough of the investment credit, contrary, as
4 I understand it, to the Internal Revenue Code, for the
5 benefit of the people of California. Here is a state, as I
6 pointed out at some length last December, is the wealthiest
7 state in the union.

8 The Chairman. If you are right about that, Senator, we
9 should not report the bill.

10 Let me ask, Mr. Shapiro, what your impression is. If
11 the Senator is right about that, we ought to reconsider.
12 Would you mind explaining what the other side of that
13 argument is?

14 Mr. Shapiro. You are talking about the utility one?

15 The Chairman. Yes. The one that the House passed by
16 unanimous vote, I think, and that we voted out this
17 morning. This is one where we intended the utilities, as I
18 understand it, to have investment tax credit. Then their
19 utility commission forced them to pay it out --

20 Mr. Shapiro. -- more currently than should be the
21 case.

22 The Chairman. Would you mind explaining that, because
23 if this is something where the people of California get a
24 special break that the other people don't get, we ought to
25 reconsider.

1 Mr. Shapiro. What you did, overall, was to say that
2 you wanted the utility companies to maintain the revenues.
3 When you have companies that get the benefit of the
4 investment tax credit that are not utilities, they invest
5 the money, they get the investment tax credit, and then they
6 determine whether they want to pay dividends, or price their
7 products internally.

8 Utilities, on the other hand, are being told by the
9 regulatory commissions what fees they can charge, and what
10 returns they can get, both to their shareholders and with
11 respect to the fees to their consumers.

12 What you wanted to do was to make sure that they would
13 have the opportunity to maintain the benefits that Congress
14 provided with regard to the investment tax credit and
15 accelerated depreciation, so you put in a provision in 1969
16 in the case of accelerated depreciation, and in 1971 you put
17 in a provision with respect to the investment tax credit to
18 require a normalization of the tax incentives, meaning that
19 the companies would keep the tax incentives, and they would
20 be flowed through to the consumers during a ratable basis
21 rather than all at once.

22 In the case of California, the regulatory commissions
23 did not go along with that. They said, in effect, that they
24 would require the companies to flow it through to their
25 consumers.

1 They did not take that into account in their rate base,
2 and they did not allow the company to keep the money, but
3 allowed the money to flow through more rapidly than Congress
4 intended.

5 The utilities were fighting it all the way along. They
6 said, "This is not what Congress intended." They went
7 through all the litigation. They even took it up to the
8 State courts, and up to the Supreme Court, and they lost,
9 meaning that the Commission had the authority to do it.

10 What they are coming in now and requesting the Congress
11 to do is to forgive them for any taxes they may owe because
12 they did not comply with the law, because it was not their
13 choice. The utility commissions required them to do it.

14 What the bill does, in effect, is to give them a
15 forgiveness for the past by saying that it was in dispute,
16 and they did everything they could to try to keep the tax
17 incentives that the Congress intended. "It was not your
18 fault, the utilities required it. So we will not require
19 you to pay the money back." In other words, they filed
20 their tax returns assuming that they had the benefits.

21 Essentially, what you are doing is giving them
22 forgiveness. It is money that they will not have to pay to
23 the Treasury. It is not money coming out of the Treasury.
24 Then the law says that for the future, in order to maintain
25 the benefit, the regulatory commissions have to comply with

1 what Congress intended, and the utility companies intend to
2 fight that out with the utility commissions.

3 What you have done is forgiven the past, because you
4 are saying that it is not the utilities' fault. As far as
5 the future, if the utility commissions require them to pass
6 through, the utility companies will not get the tax
7 incentives.

8 Senator Danforth. Mr. Chairman, I would have had no
9 objection to the amendment. I think that, as a matter of
10 fact, it probably equitable because the utilities here had
11 no alternative. Certainly, they did not reap any undue
12 benefit.

13 What happened, as I understand it, is that the State
14 utility commission, which is a portion of the State
15 government of California, in effect said to the utilities:
16 "Do not use the investment tax credit for the purpose that
17 Congress intended it to be used. But, rather, pass that on
18 to the consumers of energy in California."

19 The effect of this was that about \$1.8 billion, which
20 should have been spent for plant modernization and what the
21 investment tax credit is supposed to be used for, was
22 instead used to reduce utility rates for the people of
23 California.

24 Now, because of this situation, the upshot is that the
25 rest of the country is subsidizing the utility rates of

1 California to the tune of about \$1.8 billion. If there was
2 some way to recover the \$1.8 billion from the State of
3 California, which caused the problem, rather than from the
4 utility companies which were left holding the bag, or would
5 be left holding the bag, I would be the first to suggest
6 it. But I don't think that it is the case here. So I would
7 not have objected to it.

8 Now we have another proposal brought up which confers,
9 I am told, substantial additional sums to California. We
10 have already gone through this so many times. They are
11 going to come out with a whole new adjustment of the revenue
12 sharing formula, and they will do very well on that because
13 they happen to produce oil. Now we have yet another thing
14 cooking for them, and I just wanted to ask a few questions.

15 The Chairman. What do you want to do about, that is
16 even more important?

17 Senator Danforth. With respect to the utility
18 question, that is done with, and I have no objection to
19 that.

20 Senator Baucus. Would the Senator yield on that
21 point?

22 Senator Danforth. Yes.

23 Senator Baucus. On the question of the utility, it is
24 not only the State of California, but the State of Montana
25 has the same problem. The Montana Public Service Commission

1 has ruled on a similar matter, which has deprived a very
2 small co-op in Montana, the Ronnane Telephone Co-op, the
3 same benefits of accelerated depreciation and investment tax
4 credit. I want to point out that it is not only a
5 California problem.

6 Secondly, I find it strange that a California telephone
7 company would be entitled to investment tax credit when it
8 has not used the benefit for investment. It seems to me
9 that you want to give investment tax credits only, in fact,
10 when there is money spent on investment.

11 The reason for the commission's ruling, I think, is not
12 what you have said, but rather they just don't think that
13 utilities should have the benefit of the investment tax
14 credit of this kind.

15 I would like to ask whether in the Treasury
16 Department's view a company not the size of Pacific
17 Telephone and Telegraph, but rather a little company called
18 Ronnane Telephone Co-op, would be entitled to the same
19 treatment if this bill were passed.

20 Mr. Halperin. I was not aware of that case, Senator,
21 but the bill by its terms would not be limited to
22 California. It is limited to any orders that took place
23 before a specified date. If that order was before that
24 date, it would be covered. The date is not today, so you
25 would have to check and find out when that problem arose. I

1 had, not heard of that situation.

2 Senator Baucus. My understanding is that others at the
3 Treasury Department have indicated that it is covered.

4 Thank you very much.

5 Senator Talmadge. Senator Danforth.

6 Senator Danforth. As far as I am concerned, Mr.
7 Chairman, this utility question is behind us. I think that
8 it is an unfortunate situation. I really think that the
9 State of California has really stuck the rest of the country
10 with \$1.8 billion, but I don't know what to do about it.

11 But I am curious about the revenue effects of this Long
12 Beach.

13 Senator Packwood. May I ask this, Jack, before we get
14 to the revenue effects.

15 I am offering this on behalf of Senator Cranston and
16 Senator Hayakawa. As I understand the amendment, what we
17 are attempting to do with this amendment is treat the
18 revenues in California from state lands, although they have
19 a quasi-funny relationship with the companies, in the same
20 way that we treat the other revenues from state lands.

21 I know that Senator Danforth and Senator Long disagree
22 on how it should be treated. But isn't that the intent of
23 the amendment?

24 Mr. Wexler. That is right.

25 Senator Talmadge. Is there any objection from

1 Treasury?

2 Senator Dole. Senator Wallop wants to be heard on
3 this, so I don't think we will be able to complete it.

4 Senator Danforth. Seven million dollars a year is the
5 consequences.

6 Senator Packwood. I have a third amendment, if we can
7 wait until Senator Wallop gets here.

8 Senator Talmadge. Sure.

9 Senator Packwood. Mr. Chairman, this is an amendment
10 that has passed the House. It has had hearings in the
11 Senate. The Treasury opposes it. It is a special interest
12 amendment for the Tillimack, Oregon, YMCA. If there was
13 ever a justifiable, equitable argument for an argument, this
14 is it. I can hear the chairman say right now, "For all of
15 you who want little children to be able to swim, you ought
16 to be able to support this amendment."

17 This is the only recreational facility in the Town of
18 Tillimack, Oregon. It is a small town. It is depressed.
19 It is a lumber town with a declining lumber base. In 1949
20 the Tillimack YMCA bought a city block of property, and they
21 converted it to a grocery store use, and they leased it to
22 the grocery store, and they also used part of the facility
23 for their recreational facilities.

24 In 1964, the YMCA got a \$104,000 loan. It demolished
25 the grocery store, and built a new facility to house it and

1 leased it to the grocery store. This is unrelated
2 activity. Then in 1964 the Tillimack YMCA began to raise
3 funds to build an entirely new facility with a swimming
4 pool. This town has no swimming pool.

5 By 1976, it had raised \$100,000, and it decided to use
6 that money plus the proceeds from the sale of the grocery
7 store, the sale of the building, to build their new YMCA.
8 They unwittingly made a mistake, and used bad legal advice,
9 because the law says that if you sell property that is debt
10 financed, and this was financed with a loan, you have to pay
11 a tax on it, unless you hold the money for more than a
12 year.

13 They held it for nine months, and then proceeded to go
14 ahead. Now there is an outstanding \$30,000 tax liability.
15 Bear in mind that it took this community 12 years to raise
16 \$100,000, and there is an outstanding \$30,000 tax
17 liability. The IRS has held up collection at the moment,
18 pending the outcome of this legislation.

19 It has passed the House. It has had hearings in the
20 Senate. Treasury opposes it because it is special interest
21 legislation. I think that it is clearly equitable, and this
22 committee ought to adopt it, and forgive this \$30,000
23 liability so that this town can have a swimming pool.

24 Senator Talmadge. What is the position of the Treasury
25 Department?

1 Mr. Halperin. Senator Talmadge, we have opposed this
2 bill. As Senator Packwood said, it is special interest
3 legislation. The issue came six or seven years after the
4 legislation was enacted in 1969. So there should have been
5 adequate notice of what was going on.

6 Senator Packwood. I might say that not only was it
7 legal advice, but the Tillamack YMCA found the mistake
8 itself and reported it to the IRS. This is not something
9 that was caught in an audit. Had they not reported it, they
10 probably never would have been caught.

11 Mr. Halperin. The question as to whether it is bad
12 legal advice, when this bill was enacted in 1969 it said
13 that the sale of debt financed property would be subject to
14 tax. It was recognized that people could avoid that by
15 paying off the liability today, and selling the property
16 tomorrow.

17 So, specifically, the one year requirement was put in
18 to say that you had to have the debt off for one year prior
19 to the sale in order to prevent people from, in effect,
20 avoiding the purpose of the tax.

21 If you are suggesting, I guess, that everyone can avoid
22 the purpose of the tax, then maybe we ought to look at the
23 substantive legislation.

24 Senator Packwood. I am not saying that everybody
25 should. They waited nine months instead of a year. This

1 was not an effort to somehow subvert the law.

2 If it is the job of this committee to do equity in a
3 case where you are trying to help a community, this
4 certainly falls in that area.

5 Senator Talmadge. Any objection to reporting the
6 amendment on the same basis we did two or three others?

7 Without objection, it is so ordered.

8 Senator Dole. This will go out by itself, then?

9 Senator Talmadge. Yes.

10 If there is objection on the Senate floor, the chairman
11 will be authorized to withdraw it.

12 Senator Packwood. What is this?

13 Senator Talmadge. We have agreed to several amendments
14 that the Treasury has objected to. The chairman has stated
15 that he did not want substantive legislation to fall because
16 of objection to the amendment. He reserved the right to
17 withdraw the amendment.

18 It will go out to the floor as a committee authorized
19 amendment, but if it is objected to on the floor, at that
20 point the chairman reserves the right to withdraw the
21 committee amendment to avoid killing the primary bill.

22 Senator Packwood. But it is all right, if somebody
23 objects, that we still offer the amendment?

24 Senator Talmadge. Certainly.

25 Senator Packwood. All right.

1 Senator Talmadge. Who seeks recognition?

2 Senator Packwood. I still have that other amendment,
3 and we are waiting for Senator Wallop. But I have no other
4 amendments.

5 Senator Talmadge. Any other amendments?

6 Senator Dole. I was just handed a note from Senator
7 Long's staff on a question with reference to a revenue
8 ruling.

9 Would you explain what that is, and maybe we can find
10 out right now.

11 Senator Talmadge. Would you come around and have a
12 sit, and explain to us what is under discussion here.

13 VOICE: It is my understanding that there is an
14 application pending at the Service from the International
15 General Insurance Corporation. The matter that was hoped to
16 be addressed here today was simply a request for an early
17 decision on that application, no more, no less.

18 Senator Talmadge. Can the Treasury respond to what we
19 are talking about here?

20 Mr. Halperin. If I understand the question, it deals
21 with whether certain people who have previously received
22 private letter rulings are entitled to protection for prior
23 transactions under a newly issued public ruling. The answer
24 to that is clearly yes.

25 I gather that there is some reason to try to expedite

1 the Service's performance of that. Certainly, we will be
2 glad to do what we can to move as quickly as possible.

3 Mr. Shapiro. Senator Talmadge, under the procedure you
4 are following, unless the bill has had hearings in the
5 bodies, or passed one House, generally it has not been the
6 subject at this time. As I understand it, this is not the
7 subject of any legislation that is pending.

8 So under the guidelines that the committee has set for
9 these sessions, it does not seem like that would be an item
10 that would normally be on your agenda.

11 Senator Talmadge. Senator Dole, is that explanation
12 satisfactory to you?

13 Senator Dole. I am raising it for Senator Long.

14 Senator Talmadge. Any further discussion on that
15 issue?

16 Any action you want on that issue?

17 Senator Dole. We would like to have some response from
18 Mr. Halperin, but it does not have to be part of the agenda
19 we have, but perhaps you can address it.

20 Senator Talmadge. He commented on it, I believe, while
21 you were engaged in conversation.

22 Will you repeat that, Mr. Halperin.

23 Mr. Halperin. As I understand it, they are asking that
24 an existing application, which I don't believe there is any
25 difficulty about giving the taxpayers the insurance that

1 they are asking for, be done as quickly. I said that I
2 would be glad to see what I could do to speed up the
3 process.

4 Senator Talmadge. Is that agreeable to you, Senator
5 Dole?

6 Senator Dole. Yes, thank you.

7 Senator Talmadge. Senator Packwood?

8 Senator Packwood. I wonder if I might ask this, Mr.
9 Chairman. Are we going to meet tomorrow or not?

10 Senator Talmadge. The chairman stated that if there
11 was further business to come before the committee, we would
12 have a meeting tomorrow.

13 Senator Packwood. I wonder if we could do this. On
14 this amendment that Senator Wallop is interested in, he may
15 have some objection to it.

16 I have told his staffman to have Senator Cranston and
17 Senator Hayakawa talk to Senator Wallop. If there is some
18 objection and he wants to come, I will be perfectly happy to
19 come tomorrow to consider this particular piece of
20 legislation, and perhaps Senator Hayakawa and Senator
21 Cranston will come also.

22 If not, if he says, it is fine and let it go ahead, and
23 there is no other objection, unless Senator Danforth wants
24 to object.

25 Senator Danforth. I do.

1 Senator Talmadge. Is that agreeable to you, Senator
2 Danforth?

3 Senator Danforth. I will object to the Long Beach
4 amendment.

5 Senator Packwood. Then I guess we had better meet
6 tomorrow.

7 Senator Talmadge. Is there any further business to
8 come before the committee?

9 Senator Danforth. Mr. Chairman, yesterday Senator
10 Matsunaga brought up the issue of the foreign convention
11 amendment. It is my understanding that his staff and my
12 staff were to meet with the Treasury on report language.
13 Was the report language that was proposed by our staffs
14 acceptable to the Treasury?

15 Mr. Halperin. Yes, it was, Senator.

16 Senator Talmadge. Any further business to come before
17 the committee?

18 Mr. Stern. Senator Talmadge, I would like to check
19 with Chairman Long, because if the only thing that is
20 pending is an amendment to which there is objection, there
21 would really be no reason to meet.

22 Senator Packwood. Again, I am only trying to protect
23 Senator Cranston's and Senator Hayakawa's interest. I
24 realize that there is disagreement, but just because a
25 member disagrees does not prevent an amendment from going

1 out. I don't want to waive their opportunity to present it
2 if the amendment is likely to pass.

3 Mr. Stern. I was simply suggesting that they may bring
4 it up on the floor, rather than having a committee meeting.

5 Senator Packwood. I don't know what to tell you. This
6 is the only amendment that we have left, the one that
7 Senators Cranston and Hayakawa are interested in?

8 Mr. Stern. Yes.

9 Senator Dole. They will not lose anything by offering
10 it on the floor.

11 Senator Packwood. All right.

12 Senator Dole. Then if somebody objects to it on the
13 floor.

14 Senator Wallop, I think, wants to modify it. He does
15 not have a total objection. He would like to expand it
16 some.

17 Senator Packwood. Okay.

18 Senator Talmadge. There being no further business to
19 come before the committee, the committee will stand in
20 recess subject to the call of the Chair.)

21 (Whereupon, at 10:40 a.m., the committee adjourned,,
22 subject to call of the Chair.)

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