

1 EXECUTIVE COMMITTEE MEETING

2 THURSDAY, MARCH 24, 1994

3 U.S. Senate,

4 Committee on Finance,

5 Washington, DC.

6 The meeting was convened, pursuant to notice, at  
7 10:03 a.m., in Room SD-215, Dirksen Senate Office  
8 Building, Hon. Daniel Patrick Moynihan (Chairman of the  
9 Committee) presiding.

10 Also present: Senators Baucus, Riegle, Rockefeller,  
11 Daschle, Breaux, Conrad, Packwood, Roth, Danforth, Chafee  
12 and Grassley.

13 Also present: Lawrence O'Donnell, Jr., Staff  
14 Director; Lindy Paull, Chief of Staff, Minority.

15 Also present: Les Samuels, Assistant Secretary for  
16 Tax Policy, Treasury; Joseph Gale, Chief, Tax Committee,  
17 Majority; Gregory Powell, Chief, Tax Committee, Minority;  
18 Peter Cobb, Deputy Chief of Staff, Committee on Joint  
19 Taxation.

20 [The press release announcing the hearing follows:]

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1           The Chairman. A very good morning to our  
2 distinguished guests from the administration and, of  
3 course, to our very able staff.

4           Secretary Samuels, it is very good of you to be here  
5 today sir. Mr. Cobb, Mr. Gale, and Mr. Powell. We have a  
6 dual purpose. We are going to be holding another hearing  
7 in our series on health care as soon as we dispose of a  
8 tax matter which is a matter of very considerable concern  
9 to any number of members of this committee. That has to  
10 do with the tax treatment of crop insurance proceeds and  
11 disaster payments.

12           Senator Packwood, would you like to make an opening  
13 statement?

14           Senator Packwood. No, I have no opening statement.

15           The Chairman. I see that in order of appearance, Mr.  
16 Daschle, Mr. Conrad, Mr. Grassley, who are very much  
17 ceased of this matter are here. Would you like to make an  
18 opening statement, sir?

19           Senator Daschle. Mr. Chairman, it will be very  
20 brief. Let me thank you for your cooperation and  
21 assistance in addressing this matter. It is of some  
22 concern and urgency, I think, for a lot of our people in  
23 the upper midwest. Last year, of course, a number of farm  
24 communities and farmers themselves were inundated by  
25 floods and as a result of a very coordinated and

1 successful effort, we were able to respond to many of the  
2 serious problems that resulted as a consequence of the  
3 floods.

4 Disaster payments, however, have been very slow in  
5 coming. In many cases, in fact in most cases, those  
6 disaster payments have just now been received and in many  
7 cases, I must say, have not been received. For good  
8 reason. It is the calculation of these disaster payments  
9 and the eligibility among farmers that has caused the  
10 largest share of the problem.

11 But the interpretation by the Internal Revenue  
12 Service has caused us some concern. While farmers are  
13 able to shift income forward, they are not able to shift  
14 income backward. That causes very serious problems for  
15 many of these farmers now receiving disaster payments.

16 Ironically, these farmers, through no fault of their  
17 own, are receiving income in a year when they may actually  
18 receive a crop. So they will be subject to taxation on  
19 really a double income -- first, the disaster payment; and  
20 secondly, the payment of the crop -- and unable,  
21 therefore, to deduct many of the 1993 deductions that may  
22 have resulted from losses that have occurred last year.

23 So it has compounded their financial circumstances  
24 very significantly. And as a result, this legislation  
25 simply would clarify farmers' ability to count as income

1 disaster payments received in the year for which the  
2 disaster occurred. That is all it does. It is a bill  
3 that I think is not only necessary but just good policy.  
4 I am hopeful that this morning we can pass it.

5 It is timely because it is very important we address  
6 this issue if at all possible prior to the filing deadline  
7 of April 15. Farmers are hoping that this can be done and  
8 certainly the action taken this morning would send the  
9 right signal.

10 But, again, Mr. Chairman, thank you for your  
11 cooperation and leadership in this regard.

12 The Chairman. Thank you very much, Senator Daschle.

13 Senator Conrad, I know this is of concern to you as  
14 well.

15 Senator Conrad. Thank you very much, Mr. Chairman.  
16 First of all, I want to thank the Chairman for holding  
17 this markup. The Chairman has been extraordinarily  
18 responsive on this issue as on all issues. I just want  
19 him to know how much we appreciate his being sensitive to  
20 an issue that we know is not a high priority matter in his  
21 State.

22 But he has been kind and gracious enough to listen to  
23 those of us who do have a serious problem. In the  
24 interest of time, Mr. Chairman, let me just say that  
25 Senator Daschle has described the situation perfectly.

1           It is a fundamental principle of tax law that you  
2 marry income to expenses that arise from the same  
3 operations. That is an underlying principle of most tax  
4 laws. And this measure is designed to accomplish that.

5           Mr. Chairman, I do not think anything else is  
6 necessary to say on my part, other than to indicate this  
7 is important to really thousands of farmers in our part of  
8 the country.

9           The Chairman. It surely is.

10          Senator Grassley?

11          Senator Grassley. Mr. Chairman, I think it is an  
12 extraordinary accommodation that you have made for rural  
13 America in holding this meeting. I always say that for  
14 the farmers of America, just the sense of showing  
15 sensitivity towards problems that they have, a lot of  
16 problems that are beyond their control, is very important  
17 and I think you show that sensitivity.

18          I want to thank you very much for that. There were  
19 deemed 96,000 farming units in Iowa, made up of about  
20 300,000 people that would be involved in those family  
21 farming operations. Of course, not everyone of those  
22 would be impacted by this legislation or see the need of  
23 this legislation.

24          But they would obviously share my view that this  
25 extraordinary markup having a very unique bill, a single

1 bill, get out of this committee to meet a current  
2 situation is extraordinary and they are thankful for it.

3 I cannot say anything beyond what my two colleagues  
4 have said, except to probably emphasize just one point.  
5 That is that this is a situation where government  
6 bureaucracy, probably for reasons even beyond the control  
7 of a bureaucracy had to cut and issue some checks later  
8 than would be normal for income for the farmers and so you  
9 are going to have in some instances two years income in  
10 one year and obviously that is not fair, particularly it  
11 is not fair if it is beyond the control of the  
12 individuals. We are just trying to establish that.

13 I will, Mr. Chairman, put my entire statement in the  
14 record.

15 The Chairman. It will be so ordered.

16 (The prepared statement of Senator Grassley appears  
17 in the appendix.)

18 The Chairman. May I simply point out that Senator  
19 Packwood is as much involved in this decision as I am.

20 Mr. Cobb, would you explain the matter before us in  
21 brief terms, sir?

22 Mr. Cobb. Thank you, Mr. Chairman.

23 The markup document which I think you have in front  
24 of you -- one page, two sides -- has two items, the first  
25 is the measure which has just been referred to, the second

1 is the revenue offset for that measure.

2 Under present law the farmer who is on the cash  
3 method of accounting and receives insurance or similar  
4 payment for damaged or destroyed crops may have income  
5 from that payment in a different year than he would have  
6 had had the crops been sold in the ordinary case of his  
7 business.

8 As has been discussed, this can result in the  
9 bunching of income which can have a variety of adverse tax  
10 consequences. Under current law, a farmer in this  
11 position can elect to defer this income by a year in some  
12 circumstances, but not in a manner -- that relief is not  
13 helpful in the situation that people are discussing right  
14 now.

15 The proposal would expand the current relief of this  
16 sort in two ways. First of all, it would permit the  
17 acceleration of such income as well as the deferral, where  
18 the acceleration would match the income to the timing it  
19 would have had had the crops been sold in the ordinary  
20 course of the business.

21 Second, it applies to a somewhat larger class. It  
22 expands relief to a somewhat larger class of federal  
23 assistance payments than under current law.

24 The Chairman. Thank you, Mr. Cobb.

25 Secretary Samuels, has the administration anything it

1 wishes to say on this matter?

2 Secretary Samuels. Mr. Chairman, we have reviewed  
3 this situation and we are concerned about the difficulties  
4 that people are experiencing because of the delay in  
5 payment and we do not oppose this proposal.

6 The Chairman. Thank you very much.

7 Senator Packwood?

8 Senator Packwood. I just have a question somewhat  
9 unrelated to this. You are aware we put a tight volume  
10 cap on private activity bonds in 1986. Now you have a  
11 large number of natural disasters in States that are up  
12 against their private volume caps. What would the  
13 Treasury, and I might ask the Joint Committee, to think of  
14 taking a look at easing the volume caps in a very narrow  
15 way to allow them to be used as replenishment of those  
16 private buildings that are destroyed in the disaster. We  
17 did not think about it. But the State cannot issue them  
18 because of the volume cap.

19 Secretary Samuels. Senator Packwood, we would be  
20 pleased to study this matter. I think as a general matter  
21 we believe that the caps that were put on in the 1986 Act  
22 was an appropriate step given the fact that the tax  
23 expenditure, involved with tax exempt bonds, may not  
24 always be the most efficient way for us to deliver in fact  
25 a government subsidy.



1           So with that background, we would be, as I say,  
2 pleased to review this with you.

3           Senator Packwood. Could you give me a report back in  
4 three months? Heaven, I put the caps in and I remember  
5 them. I am not suggesting we also violate them. What we  
6 are basically doing is trying to replace things that we  
7 never envisioned were being destroyed. It is not like you  
8 are trying to expand it for new purposes. But if you  
9 could give me a report in three months, I would appreciate  
10 it.

11           Secretary Samuels. Sure.

12           Senator Packwood. Thank you.

13           The Chairman. Thank you, sir.

14           Senator Packwood has indicated that he has no  
15 objection to a rolling quorum on a matter of this kind.  
16 And in that case, I mean to ask that -- point out, this  
17 bill was introduced originally by Senator Daschle. It is  
18 co-sponsored by members of this committee -- there are 17  
19 co-sponsors in all, Senator Boren, Senator Breaux, Senator  
20 Conrad, Senator Dole, Senator Durenberger, and, of course,  
21 Senator Grassley. Is there a motion to adopt S.1814.

22           Senator Riegle. I so move.

23           The Chairman. They are saying we have to have 11 to  
24 start.

25           Senator Packwood. I know what the problem is. When

1 we do this, we frequently do not have a quorum. We used  
2 to report bills out in this committee without any quorum  
3 at all until a particular member began to object on the  
4 floor as to whether or not we had a quorum. We did not do  
5 it for controversial things. But I will leave it up to  
6 you, Mr. Chairman.

7 I have no objection to trying to ease the workload by  
8 saying that when we get a rolling quorum that we can go,  
9 so long as you do face that slight possibility that can be  
10 raised on the floor that we did not have a quorum when we  
11 reported it out.

12 The Chairman. Specifically so. The Senate was in  
13 session until 3:30 this morning. At one point the Clerk  
14 was reading what seemed to be -- it sounded like  
15 Whethering Heights to me.

16 (Laughter.)

17 The Chairman. Senator Breaux? Because not everybody  
18 is here; not everybody is awake yet.

19 Senator Breaux. Thank you, Mr. Chairman.

20 I would like to ask a question on an unrelated  
21 problem to this bill, since we have Les Samuels and the  
22 tax folks here because I support what we are doing on the  
23 bill.

24 When we did last year, Les, the removal of the luxury  
25 tax on boats, the way we paid for it was to call on

1 recreational boaters to pay the federal excise tax, which  
2 they had been exempt from. The problem that has  
3 developed, which is a very serious problem for anybody who  
4 has recreational and commercial boating is that the law  
5 requires that commercial boaters be exempt from the tax.  
6 So there is a requirement that they have clear diesel  
7 fuel, which indicates it would be tax free.

8           Recreational boaters on the other hand would have to  
9 pay the tax and the requirement is that they buy dyed  
10 diesel fuel in order to know the difference.

11           The problem in the real world is that marinas all  
12 over the country generally do not have -- small marinas,  
13 which are most of them, do not have two separate diesel  
14 tanks and fueling stations. Therefore, most of them who  
15 are serving commercial boating and fishermen and what have  
16 you, they have clear tax exempt fuel. So we have created  
17 a real problem for recreational boaters to be able to find  
18 the dyed diesel fuel for them to pay the tax on and for  
19 them today to have fuel for their boats.

20           This affects Maine. It affects California. It  
21 affects everywhere. Florida big time. I am trying to get  
22 just the members of the Finance Committee that it affects.  
23 But it is a real problem from a practical real world  
24 standpoint.

25           I am not advocating, I do not even think the boaters

1 are, that we do away with it. But allow them to buy the  
2 fuel that is clear for commercial boaters and have the tax  
3 collected by the marina operator so that they would be  
4 assured that the money would still be collected.

5 We have a real practical problem. It is not working.  
6 So do you have any thoughts on what we do? I understand  
7 Treasury does not have the authority to do that, it would  
8 take legislation.

9 Secretary Samuels. Right. Senator Breaux, we are  
10 aware of this problem. You are correct that we do not  
11 believe that we have the regulatory authority to deal with  
12 it, that we would need a statutory amendment.

13 We have been looking at it, and I think we would like  
14 to obtain some more information about exactly what the  
15 problems are. I know that I have heard that there is this  
16 issue of additional expense for the marina operators. We  
17 have heard from others that there is an additional  
18 expense. So you always have to decide how to draw the  
19 line as to which group should obtain, you know, a  
20 particular type of treatment.

21 I think that if we were going to have an amendment we  
22 would prefer an amendment where you were able to sell dyed  
23 fuel to recreational boaters and then have the marina  
24 collect the tax. I think we need to work on the  
25 administrative kind of issues of making sure that the tax

1 would be collected in due course and also to get an  
2 estimate of what the revenue consequences of that would be  
3 because I believe that you might not have quite as good of  
4 compliance as you otherwise would have.

5 Senator Breaux. What we have now is a real serious  
6 problem. I think the recreational boaters are not trying  
7 to get out of the tax, just trying to find a way to buy it  
8 because they cannot right now find any of the clear fuel.

9 So the other practical problem is there are not a lot  
10 of vehicles floating around here to add something like  
11 this to. I do not want to mess anything up. But would  
12 the administration, do you know, be in a position to  
13 support some type of a fix?

14 The Chairman. No, no, some type of a solution.

15 (Laughter.)

16 Senator Breaux. That is probably a better phrase.  
17 An equitable, adequate solution to this problem.

18 Secretary Samuels. As I said, we have been studying  
19 it --

20 Senator Breaux. That is my problem, I do not want to  
21 study it too long.

22 Secretary Samuels. My only reservation is, I think  
23 we would like to get a little more information. For  
24 example, there have been some comments that this problem  
25 arises in installing a second tax --

1 Senator Breaux. Sure, it is a big expense.

2 Secretary Samuels. -- because of EPA or Interior  
3 rules.

4 Senator Breaux. Oh, I know.

5 Secretary Samuels. We were trying to make sure that  
6 we understood exactly what those constraints were so that  
7 we could really understand the problems of the marinas as  
8 compared to problems of others who also have to install  
9 second tanks.

10 Senator Breaux. Well, most marinas are net wetland  
11 areas and nobody is going to get a permit to dig in  
12 wetland areas to install a new fuel tax. I mean, you  
13 know, you can wait for a decade to get that to happen.

14 Secretary Samuels. Right.

15 Senator Breaux. So anyway, I am not trying to  
16 belabor it, Mr. Chairman. But I think that we can get  
17 something. We are not talking about removing the tax, we  
18 are just trying to find a better way of collecting it.  
19 And hopefully we could get something that the  
20 administration could do in a timely fashion so that maybe  
21 one of the bills that are going through we could add it on  
22 as an amendment which would be noncontroversial and not  
23 mess up anything else that is going through.

24 I would really urge that you all get someone down  
25 there to kind of pay some timely attention to it, because

1 it is very time sensitive as well. Thank you.

2 Secretary Samuels. We will work with your staff on  
3 this.

4 The Chairman. Thank you, Senator. Thank you, Mr.  
5 Secretary.

6 Is there a motion to adopt the legislation before us?

7 Mr. Gale, do you have a point?

8 Mr. Gale. Mr. Chairman, may I request that the staff  
9 be given the customary authority to make such technical  
10 drafting changes as are necessary.

11 The Chairman. Of course. First, we must adopt the  
12 bill.

13 Senator Daschle. I so move.

14 Senator Packwood. Second.

15 The Chairman. And there is a second. All those in  
16 favor will say aye.

17 (A chorus of ayes.)

18 The Chairman. Those opposed.

19 (No audible response.)

20 The Chairman. The measure is adopted without  
21 opposition, pending the appearance in the committee of 11  
22 members.

23 Thank you, Senators. Thank you, Mr. Secretary.

24 Thank you, Mr. Cobb. Thank you, Mr. Gale. Thank you, Mr.  
25 Powell.

1           May I also record that 11 Senators, now 12, having  
2 appeared, a quorum is present and our legislative matters  
3 are disposed with.

4           (Whereupon, at 10:24 a.m., the meeting was  
5 adjourned.)

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## C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Meeting, Committee on Finance, United States Senate, held on March 24, 1994, were transcribed as herein appears and that this is the original transcript thereof.



CARLA A. STURGIS

Court Reporter

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**Treatment of Certain Crop Insurance Proceeds and Disaster Payments**

**Present Law**

A taxpayer engaged in a farming business generally may use the cash receipts and disbursements method of accounting ("cash method") to report taxable income. A cash method taxpayer generally recognizes income in the taxable year in which cash is received, regardless of when the economic events that give rise to such income occur. Under a special rule (sec. 451(d) of the Internal Revenue Code), in the case of insurance proceeds received as a result of destruction or damage to crops, a cash method taxpayer may elect to defer the income recognition of the proceeds until the taxable year following the year of the destruction or damage, if the taxpayer establishes that under his practice, income from such crops would have been reported in a following taxable year. For this purpose, certain payments received under the Agricultural Act of 1949, as amended, or title II of the Disaster Assistance Act of 1988, are treated as insurance proceeds received as a result of destruction or damage to crops.

**Description of Proposal**

S. 1814 would amend the special rule of section 451(d) to allow a cash method taxpayer to elect to accelerate (or defer) the recognition of certain disaster-related payments so long as the taxpayer establishes that, under the taxpayer's practice, income from the crops lost in the disaster would have been accelerated (or deferred). The bill also would expand the payments for which these elections are available to include disaster assistance received as a result of destruction or damage to crops caused by drought, flood, or other natural disaster, or the inability to plant crops because of such a disaster, under any Federal law (rather than only payments received under the Agricultural Act of 1949, as amended, or title II of the Disaster Assistance Act of 1988).

Thus, for example, the bill would allow a calendar-year, cash method taxpayer who has received disaster assistance payments in 1994 relating to the destruction of crops by a flood in 1993 to elect to treat such payments as received in 1993, so long as the taxpayer establishes that, under the taxpayer's practice, income from such crops would have been reported in 1993. Without the benefit of the bill, the income of such a taxpayer would be "bunched" in 1994, possibly resulting in the loss of itemized deductions in 1993, a higher marginal income tax rate in 1994, and the loss of several AGI-based deductions and exemptions in 1994.

**Effective Date**

S. 1814 would be effective for payments received after December 31, 1992, as a result of destruction or damage occurring after such date.

## **Indexation of Threshold Applicable to Excise Tax on Luxury Automobiles**

### **Present Law**

The 1993 Act indexed the threshold above which the excise tax on luxury automobiles is to apply.

### **Description of Proposal**

The proposal would correct the application of the indexing adjustment so that the adjustment calculated for a given calendar year would apply for that calendar year rather than in the subsequent calendar year. This would conform the indexation to that described in the conference report to the Omnibus Budget Reconciliation Act of 1993.<sup>1</sup> The intent of Congress, as reflected in the conference report, was that current year indexation be effective on the date of enactment of the 1993 Act. The proposal would, however, be effective on January 1, 1995, to alleviate the difficulties that both taxpayers and the Treasury would experience in administering a retroactive refund effective for the period from August 10, 1993 through December 31, 1993. (The proposal has no effect on the threshold for calendar year 1994. Under present law, the threshold for calendar year 1994 was indexed to \$32,000, which is the same as it would be under the proposal if the proposal were effective for calendar year 1994.)

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<sup>1</sup> See Conference Report on H.R. 2264, Omnibus Budget Reconciliation Act of 1993 (H. Rept. 103-213), August 4, 1993, at page 558.