

ORIGINAL

**UNITED STATES SENATE**

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**HEARINGS**

**BEFORE THE COMMITTEE**

**on**  
**FINANCE**

EXECUTIVE SESSION

Wednesday, June 24, 1981

FREELANCE REPORTING  
1629 K STREET, N.W.  
378-5192

**Official Reporters to Committees**

EXECUTIVE SESSION

Wednesday, June 24, 1981

U. S. SENATE,

Committee on Finance,

Washington, D. C.

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The Committee met, pursuant to adjournment, at 9:50 a.m., in room 2221, Dirksen Senate Office Building, Hon. Robert J. Dole, (Chairman), presiding.

Present: Senators Dole, Roth, Danforth, Chafee, Heinz, Durenberger, Armstrong, Symms, Grassley, Long, Byrd, Bentsen, Matsunaga, Moynihan, Baucus, Boren, Bradley and Mitchell.

P R O C E E D I N G S

1  
2 The Chairman. Mr. Chapoton, I think when we recessed  
3 yesterday, well, I know when we recessed yesterday, you were  
4 discussing an amendment that Mr. Grassley had proposed.

5 Following the session, as you recall, we had discussion  
6 in my office, on a number of amendments, that different  
7 Senators had an interest in. I assume they will be raised  
8 this morning. We haven't had a chance to discuss that with  
9 you.

10 Mr. Chapoton. Yes, on the matter Senator Grassley was  
11 raising was the treatment of single purpose agricultural  
12 structures.

13 As the Senator pointed out yesterday, in 1978, those  
14 structures -- it has been a question for a number of years  
15 whether those structures are qualified for an investment tax  
16 credit, number one, and whether they are treated as equipment  
17 or structures. The question is whether they are a building  
18 or not a building.

19 The question under existing law that was resolved in  
20 1978, as far as the investment tax credit was concerned, when  
21 the Senator asked me, I guess the week before last, whether  
22 that would mean they were in the five-year class, I answered  
23 yes, it would mean they were in the five-year class.

24 After that, we reexamined the existing law and because  
25 of the way it was drafted in 1978, it was not taken out of

1 the classification of structures specifically, but was put  
2 in to the Section 38 definition so that it does qualify as  
3 investment tax credit property.

4 The question is now being litigated for past years on  
5 whether it is structures or equipment. But we think it is  
6 reasonable to resolve that question once and for all. We  
7 would stand by my initial answer, that is, that they do  
8 qualify as equipment.

9 The Chairman. Does that satisfy the Senator?

10 Senator Grassley. Yes, and I thank the department very  
11 much for that. I think it is consistent with a decision  
12 that the Senate made and published in its report in 1978,  
13 that declared that these structures were not buildings, for  
14 that purpose of depreciation and that they should be consid-  
15 ered for investment credit.

16 This makes the same for the investment credit, as well  
17 as for depreciation. So that takes care of a problem that  
18 quite frankly we have had going back to 1972.

19 Mr. Chapoton. Senator, let me say, and I guess we  
20 should make -- we traditionally, as you well know, do not  
21 like to prejudice questions retroactively. We are talking  
22 about an ACRS proposal we would make it clear classified under  
23 ACRS.

24 Now that may or may not resolve the question for past  
25 years. We are not resolving litigation that is pending in

1 this bill. It would take care of it for future years, that  
2 is correct.

3 Senator Grassley. I appreciate that. I am not sure  
4 that is a wise decision at this point, but I am not going  
5 to argue about that, because I think it is most important  
6 that we get it nailed down in the future, better than not at  
7 all.

8 Mr. Chapoton. I agree. We ought to stop this contro-  
9 versy for future years.

10 Senator Grassley. In fact, what you say though would  
11 not preclude the IRS making some administrative determination  
12 in cases pending.

13 Mr. Chapoton. Absolutely. We would want it to be  
14 neutral. They would take that into account. The taxpayers  
15 would take that into account with pre-existing property.

16 Senator Grassley. Thank you, sir.

17 The Chairman. Well, without objection then the  
18 amendment of the Senator from Iowa would be agreed to, again  
19 on a tentative basis as we agree to other amendments.

20 I agreed to recognize the Senator from Texas, who has  
21 some amendments and who has another commitment at 10:15.

22 Senator Bentsen.

23 Senator Bentsen. I thank the Chairman.

24 I would like to offer at this time, Mr. Chairman, my  
25 amendment to exempt the first 1,000 barrels of production for

1 the independent and for the royalty owner.

2 This is very similar to the bill that I previously  
3 introduced and was passed by the Senate. Then, in conference  
4 we were able to sustain part of it, but not all of it.

5 What we have seen thus far is a substantial increase  
6 in production in this country in the way of drilling, with  
7 a record number of drilling rigs operating.

8 You are seeing today approximately 4,000 rigs operating  
9 in the United States. That is 1,000 rigs more than were  
10 operating at this time last year.

11 I can recall one of the Secretaries of Energy saying  
12 there was no use putting these incentives in there because  
13 you only had some 2,000 rigs in the country. So it wouldn't  
14 make any difference anyway. They were doing all they could.

15 So obviously the incentive is what is needed.

16 What I am talking about is not a Mom and Pop operation  
17 because drilling of oil today is a very expensive operation.

18 We have seen the cost of drilling go up some 350  
19 percent over the last decade.

20 According to the Hughes Tool Company, a 20,000 foot  
21 well in Oklahoma now, cost \$9.5 million.

22 We have aimed this at the independent, because the  
23 independent is the one that drills 90 percent of the ex-  
24 ploratory wells.

25 He is the one that brings in over 70 percent of the

1 new oil fields.

2 He is that person who always knows he is going to make  
3 the "big strike."

4 Records show that he spends 105 percent of his cash  
5 flow. He has to supplement it. Whatever that cash flow is  
6 he puts back in the ground because he knows he is going to  
7 find that big one.

8 Every once in a while, thankfully, one of them does,  
9 and that keeps the game going.

10 Last year we imported over \$80 billion worth of oil;  
11 \$80 billion.

12 That gave us problems with the dollar. It gave us  
13 problems with our balance of trade. But it means that we  
14 are going to have to encourage the drilling for oil and gas  
15 even more than we have. We ought to be doubling or tripling  
16 the amount of exploration in this country of ours.

17 As you see the cost of drilling go up substantially,  
18 and as you see the price of oil level off and even drop in  
19 price, you are going to see the higher risk will just not be  
20 taken.

21 The very deepest of wells, where the enormous gamble  
22 involved, there would be a reticence to do just that.

23 If we are talking about 1,000 barrels a day, we are  
24 talking about big sums of money. At the present price of  
25 oil we are talking about \$13 million a year in cash flow.

1 Remember, we are not talking about profits. We are  
2 talking about cash flow. But if you go out and drill that  
3 one well, to 20,000 feet in Oklahoma today, you are talking  
4 about \$9.5 million, and we can talk about other areas where  
5 the cost is even higher.

6 So what you traditionally see is a number of these  
7 independents who go together and syndicate and drill that  
8 well.

9 We want to keep them in the business of exploring, of  
10 trying to make the big strike. That is the one we read about  
11 in the newspapers and that is why we think so many of these  
12 fellows are making so much money.

13 It reminds me a lot about a fellow who goes out to the  
14 race track. What you read about is the fellow who hits the  
15 daily double.

16 But what you really ought to do is go out to the race  
17 track and look down at the pavement and see all those torn  
18 up ticket stubs.

19 Very few gamblers like to talk about those. I don't  
20 know of any bigger gamble than going out and trying to find  
21 new oil and gas production.

22 I think it is in the interest of this country that we  
23 do a great deal to encourage it. That is why I am proposing  
24 this amendment.

25 I must also tell you the cost figures and the loss to



1 the Treasury are substantial in the short run.

2 We are talking about a cost, and by the way, I would  
3 put this as a substitute for the \$2,500 exemption for the  
4 royalty owner, because this goes to the royalty owner also.

5 The cost in 1982 would be \$3.9 billion.

6 In 1983, \$4.1 billion.

7 In 1984, \$4.2 billion.

8 But it is also true that by 1984, based on what has  
9 traditionally the case in the finding of new oil, you would  
10 have over 200,000 barrels a day, in additional production  
11 that you would not have otherwise if you didn't have this  
12 kind of an exemption.

13 So, overall the Nation benefits by it.

14 I would also say that if this Committee is favorably  
15 disposed towards this amendment, then I would consider  
16 favorably developing an offset. That offset could go to many  
17 places. It could be to the depreciation schedule and trying  
18 to go to the basket approach that we had in 2-4-7-10. That  
19 would help pick it up.

20 Or we could look at this expanded leasing provision  
21 that is a back door to refundable tax credits, in my opinion.  
22 But there are those things available for that offset.

23 But first, I would like to know if this Committee would  
24 be favorably disposed to try to have this further encourage-  
25 ment for the drilling for oil and gas in this country.

1 I might say that this is co-sponsored by Senator Boren,  
2 of Oklahoma. I was impressed by Senator Armstrong of  
3 Colorado's arguments the other day that the Windfall Profit  
4 Tax is very unequitable. I think that is true. I think it  
5 is a disincentive to the exploration that could be further  
6 encouraged if we didn't have it.

7 Mr. Chairman. I offer the amendment. I am very pleased  
8 and appreciative of the fact that you have allowed me to  
9 offer it at this time, with my other commitment.

10 The Chairman. Thank you, Senator Bentsen.

11 I would just say though I am sympathetic with what the  
12 Senator wants to do, we have a problem. I talked to the  
13 Joint Tax Committee this morning. The numbers are shrinking  
14 as far as any surplus we have to work with.

15 You have indicated there are some offsets that could  
16 be taken. I think that is a responsible way to do it.

17 I would like to hear from Treasury and then perhaps  
18 we could -- you want a record vote?

19 Senator Bentsen. Yes, I would.

20 The Chairman. There is a roll call on the floor. So,  
21 if we could hear from Treasury.

22 Mr. Chapoton. Mr. Chairman, I will be very brief. We  
23 as you know, have some concerns about the Windfall Profit  
24 Tax. We are not unsympathetic to some type of approach like  
25 this, but at this time we must oppose it because of the

1 revenue constraints.

2 The Chairman. Any other discussion?

3 (No response.)

4 The Chairman. If not, the clerk will call the roll.

5 Mr. Lighthizer. Mr. Packwood.

6 (No response.)

7 Mr. Lighthizer. Mr. Roth.

8 The Chairman. No.

9 Mr. Lighthizer. Mr. Danforth.

10 (No response.)

11 Mr. Lighthizer. Mr. Chafee.

12 Senator Chafee. No.

13 Mr. Lighthizer. Mr. Heinz.

14 Senator Heinz. No.

15 Mr. Lighthizer. Mr. Wallop.

16 (No response.)

17 Mr. Lighthizer. Mr. Durenberger.

18 The Chairman. No.

19 Mr. Lighthizer. Mr. Armstrong.

20 (No response.)

21 Mr. Lighthizer. Mr. Symms.

22 (No response.)

23 Mr. Lighthizer. Mr. Grassley.

24 Senator Grassley. No.

25 Mr. Lighthizer. Mr. Long.

1 Senator Long. Aye.  
2 Mr. Lightizer. Mr. Byrd.  
3 (No response.)  
4 Mr. Lighthizer. Mr. Bentsen.  
5 Senator Bentsen. Aye.  
6 Mr. Lighthizer. Mr. Matsunaga.  
7 (No response.)  
8 Mr. Lighthizer. Mr. Moynihan.  
9 (No response.)  
10 Mr. Lighthizer. Baucus.  
11 Senator Baucus. Aye.  
12 Mr. Lighthizer. Mr. Boren.  
13 Senator Boren. Aye.  
14 Mr. Lighthizer. Mr. Bradley.  
15 (No response.)  
16 Mr. Lighthizer. Mr. Mitchell.  
17 (No response.)  
18 Mr. Lighthizer. Mr. Chairman.  
19 The Chairman. No.  
20 (Pause.)  
21 The Chairman. The Chairman it is 6 to 4.  
22 Senator Bentsen. Mr. Chairman, this is what happened  
23 to me before, but we went to the floor with this. We will  
24 be coming to the floor again.  
25 The Chairman. You have 6 to 4. I would say, looking

1 at the list, you could be in some difficulty.

2 (Laughter.)

3 Senator Bentsen. Mr. Chairman, I lost this in the  
4 Committee before, but we won it on the floor. So, we will  
5 try again.

6 Thank you very much for your consideration.

7 The Chairman. 6 to 5; you are gaining.

8 There were some others things you might want to raise  
9 on at risk, if you have time to do that.

10 Senator Bentsen. Yes, if I might. I would like to, if  
11 I might speak to the Secretary.

12 I can understand the concern for some of the deals  
13 that have been done that are really an abuse of the tax  
14 system on the at risk question.

15 We look at the lithographic deals where they pumped  
16 up values and you end up really with not an economic deal,  
17 it is something that is solely for tax purposes.

18 My concern is, as we try to close those kind of  
19 loophole, sometimes we then reach over and stop some of  
20 the legitimate deals.

21 I know that you have gone back some to say that  
22 insofar as those deals that are funded from traditional  
23 financial institutions, that that would not prevail there.

24 But when you get into a limited and general partnerships,  
25 when you get into sub Chapter S corporations, you run into

1 some concerns on some other deals that are legitimate deals.  
2 I am still concerned that you will not achieve your objective  
3 and that you will preclude some of the things we need in the  
4 way of putting together drilling rigs for further drilling,  
5 that type of a thing.

6 Mr. Chapoton. Well, Senator, we have, as you know, we  
7 have worked with the affected groups on this, and on the  
8 very question you address, whether the -- our proposal on  
9 extending the at risk to the investment tax credit would in  
10 an unintended way affect limited partnerships that are doing  
11 such things as financing drilling rigs, financing other types  
12 of equipment, in such a way as to make those legitimate  
13 transactions uneconomical.

14 That is why, in our modified proposal, we change it  
15 considerably to say that the taxpayer would be considered at  
16 risk if he is economically at risk in the cases that we  
17 thought he would clearly be economically at risk and that  
18 is where the loan, even though non-recourse is from a  
19 traditional financial institution.

20 We are reluctant, and we met with the groups. We think  
21 that does solve most if not all of the problems. It would  
22 have a possible concern in owner financing, though we think  
23 that is a problem we must -- we cannot handle at this time.

24 We did look at the proposals suggested by your staff.  
25 We still are not comfortable with them. I must concede, we

1 just received them last night. We have not had enough time  
2 to study them thoroughly. We do have some concerns about  
3 them.

4 We would be willing to work on them further, but at  
5 this time, we are concerned to go beyond what we have already  
6 proposed.

7 Senator Bentsen. Mr. Secretary, I know the hours you  
8 are putting in. We always get into one of these periods of  
9 extreme pressure and not enough sleep and trying to get the  
10 job done.

11 Yet, I understand there will be a second bill from  
12 what the Treasury says.

13 Mr. Chapoton. Yes, sir. It is becoming more and more  
14 evident.

15 Senator Bentsen. So often, when we get into one of  
16 these crunches, we end up with legislation that is a long ways  
17 from being correct and what each of us were striving to do.

18 I would urge very strongly that you not lock up your  
19 position and try to find a drafting of this piece of legis-  
20 lation truly accomplished what you are seeking, without  
21 cutting out the legitimate deals and that you give serious  
22 consideration, if you think the time constraints are so tough  
23 that you consider the second bill.

24 Mr. Chapoton. Well, the time constraints on that  
25 specific proposal have caught us, admittedly, but we have

1 been working on this provision for some time. We feel like  
2 it does work well.

3 Now, we have -- perhaps before the day is out, let me  
4 leave it this way, Senator --

5 Senator Bentsen. Fine.

6 The Chairman. We must go vote.

7 (A short recess was taken.)

8 The Chairman. On the record.

9 I will recognize Senator Heinz to offer the next  
10 amendment.

11 While we are waiting for Senator Heinz, I might just  
12 say to the members who are here, it would be my hope we  
13 could conclude work on this package today, but hopefully by  
14 12:30 or 1:00 o'clock today. There is so much activity on  
15 the floor it is going to be interfering.

16 I know a number of members have amendments. I would  
17 just suggest that yesterday the President sort of took the  
18 Republicans to the wood shed, suggested we not offer further  
19 amendments.

20 I would hope everyone could restrain themselves with  
21 a view to getting a bill passed, plus, I am told this morning  
22 by the Joint Committee, that our numbers are not all that  
23 good in '84.

24 With that reminder, I hope we can take care of most of  
25 the amendments at a later time. I can assure members we plan



1 to start hearings on a second bill not later than the first  
2 or second week in September. There are many meritorious  
3 amendments. I assume everyone in the hallway has at least  
4 one and everyone in the audience has one or two in their  
5 pockets.

6 It is an ideal place for a fund raiser.

7 (Laughter.)

8 The Chairman. But in any event, we would rather do  
9 those things later.

10 Well, I think Mr. Chapoton would like to clarify one  
11 item on the incentive stock option that may not be clear. It  
12 may be necessary you check with Senator Bentsen on that.

13 You may state that concern on the record.

14 Mr. Chapoton. Yes, Mr. Chairman.

15 Yesterday, when the incentive stock option question  
16 was discussed, the sequencing question was raised, that is  
17 whether options that are outstanding may be exercised in any  
18 order.

19 The prior law that was repealed in 1976 required that  
20 options, the oldest options be exercised first and therefore,  
21 an option granted after -- an option granted later than one  
22 outstanding could not be exercised until the other had  
23 expired or had been exercised.

24 When asked about the sequencing problem matter, I said  
25 I didn't offhand see any problem in taking them in any

1 sequence.

2 But, we studied the question further and we think it  
3 would be inconsistent with the policy behind the incentive  
4 stock options to allow them in any order, because as the  
5 option, as the value of the stock dropped, the arrangement  
6 could simply be to grant new options, and therefore, the  
7 original tie to the initial option would not longer exist  
8 with respect to that employee.

9 We think that it is important that the sequencing  
10 order be retained.

11 We would like to suggest that. I did raise that with  
12 Senator Matsunaga. I would like to raise that with Senator  
13 Bentsen, also.

14 The Chairman. Senator Matsunaga.

15 Senator Matsunaga. Mr. Chairman, are you saying now  
16 Mr. Secretary, that the answer you gave to me yesterday  
17 relative to sequencing was not correct?

18 Mr. Chapoton. That's correct.

19 Yesterday, I said that I offhand had no problem with  
20 doing away with the sequencing requirements of pre-existing  
21 law. I do think I was in error on that and that the sequencing  
22 requirement of the pre-existing options was an important  
23 aspect of the overall policy behind that statutory provision.

24 We do think it should be included in this amendment.

25 Senator Matsunaga. Is that firm? Or are you considering

1 it?

2 Mr. Chapoton. No, that is firm. We have considered it.

3 Senator Matsunaga. It is firm?

4 Mr. Chapoton. Yes, sir.

5 Senator Matsunaga. Well then, Mr. Chairman, I would  
6 need to offer an amendment. I think policy-wise, you are  
7 making a mistake. We, as I understand the stock option, you  
8 wish to encourage employees to purchase stock and to -- you  
9 can't encourage the employees to exercise the options unless  
10 you make it attractive.

11 By requiring sequencing, the employees are not going  
12 to exercise their options.

13 Mr. Chapoton. Senator, the purpose of the -- the policy  
14 of the provision, as we look at it, is that once the  
15 option is granted, the employee has a tie to the company.  
16 He is dramatically interested in the success of the stock  
17 of the company.

18 Senator Matsunaga. That is correct.

19 Mr. Chapoton. If the arrangement is that if the stock  
20 goes down he will simply be granted a subsequent option,  
21 then obviously he is not nearly as concerned about the  
22 movement of the stock, provided he is going to receive that  
23 compensation through the subsequent option.

24 We think the policy should be that he is tied to the  
25 stock at the date he receives the original grant of the

1 option, and from that point forward, is interested in the  
2 performance of the stock from that day and not from -- not  
3 with the understanding that if the stock goes down, he will  
4 have a second bit of the apple, so to speak.

5 Senator Matsunaga. Mr. Chairman, I reserve the right  
6 to offer an amendment later. I will discuss this matter  
7 further with the Secretary and others.

8 The Chairman. I have also mentioned to Mr. Chapoton,  
9 I think Senator Bentsen had an interest in that. I know he  
10 has a staff person here.

11 So, before final action on the total package, we want  
12 to resolve that.

13 I would hope we could accommodate the views expressed  
14 this morning by Mr. Chapoton and I think we can.

15 I might indicate the order. Senator Moynihan has a  
16 time problem.

17 So, following Senator Heinz, we will sort of go out  
18 of order to recognize Senator Moynihan on the commodity  
19 tax straddle issue, and we will come back.

20 Senator Moynihan. Thank you. It is thoughtful of you,  
21 Mr. Chairman. I do have a problem.

22 The Chairman. We will come back to ACRS after that.  
23 Senator Heinz.

24 Senator Heinz. Mr. Chairman, I have actually three  
25 amendments; four. I have three amendments, possibly a

1 fourth. Two of the amendments, Mr. Chairman, are frankly  
2 rather technical in nature and shouldn't take long. I would  
3 like to bring them up first and then get to the basic, and  
4 I think most important amendment.

5 The first amendment on which I don't think, but I  
6 can't guarantee there will be a lot of debate is a proposal  
7 to permit flexibility in the time of depreciation deductions.

8 The problem is that this is the so-called banking rule  
9 issue. The problem is that as ACRS is now written, the  
10 mandatory minimum depreciation deductions have to be taken  
11 and they can dilute the incentive effects intended by the  
12 Congress.

13 This happens whenever the credits or deductions may be  
14 permanently lost due to timing limitations.

15 So, the solution that we are proposing here is to  
16 allow taxpayers more flexibility in the timing of their  
17 depreciation deductions.

18 Thus, really strengthening the incentives provided in  
19 the Administration's proposal for ACRS.

20 Indeed, this particular proposal has the salutary  
21 effect of actually gaining you some revenue in the first two  
22 or three years by postponing those deductions into the  
23 years.

24 So, in terms of '82 or '83, maybe even '84, there is  
25 no adverse revenue effect that I know of.

1           The Chairman. It might be helpful if the Senator from  
2 Pennsylvania could give us all his amendments. I don't say  
3 we could vote on them en block, but we might see merit in  
4 them.

5           Senator Heinz. I would prefer to take them one at a  
6 time, if I might, Mr. Chairman.

7           The Chairman. All right.

8           Senator Heinz. Thank you.

9           The Chairman. We were trying to save one for you, but  
10 maybe we can't.

11          Mr. Chapoton, do you have --

12          Mr. Chapoton. Yes. Senator this is what we refer to  
13 as the banking of depreciation. It was proposed early on.  
14 We did review it early. We did respond to the concern of  
15 lack of flexibility in the original proposal in a couple of  
16 ways.

17                One, we allowed taxpayers to elect straight line  
18 depreciation, using the life, the 10-5, or 3 year life,  
19 otherwise the property was otherwise put into.

20                Or we allowed to use a longer life if they were required  
21 to use for earnings and profits purposes.

22                In addition, we extended the carry over period for the  
23 credit and the net operating loss from 7 to 10 years.

24                Our concern with the idea of allowing taxpayers to  
25 select which year they take depreciation deductions is both

1 one of complexity in our administration of the tax laws, that  
2 is, determining what is in the bank for depreciation from  
3 any year, how much has been used for previous years, what  
4 happens in corporate acquisitions and that type of thing  
5 and also the idea of treating this deduction differently  
6 than any other deduction in the Code so that you could select  
7 or take all or any part of it in any year, skip a year if you  
8 wish.

9 The motivation would be certainly to skip a year in  
10 which your other tax benefits are limited by other rules in  
11 the Internal Revenue Code which key off our annual accounting  
12 concept.

13 For example, there are certain foreign tax credit  
14 provisions which relate to annual income.

15 There is a limitation on capital gains during the  
16 year, the alternative capital gains tax. The charitable  
17 contribution limit applies to the annual income. And there  
18 are many others.

19 So we would propose that once you select the method  
20 of recovery that you take that recovery over a period of  
21 years. You do not have to take the fastest recovery, but you  
22 select the recovery for the year in which the asset is  
23 placed in service and are required to take that recovery  
24 over a number of years and stay with our present law rules  
25 for the annual accounting of deductions.

1           Senator Heinz. Mr. Chairman, I know that Senator Symms  
2 is interested in this amendment too. He may want to speak  
3 on it.

4           The Chairman. But could I ask a question? In  
5 addition to the reasons that you stated in opposition to the  
6 amendment, I assume.

7           Mr. Chapoton. Yes, sir. We are opposed.

8           The Chairman. Are there any revenue --

9           Mr. Chapoton. No, I think the revenue consequences  
10 would not be significant. I don't think there would be  
11 certainly a revenue pick up, because if the deductions were  
12 postponed, it would primarily be so that other deductions  
13 or credits could kick in in the year postponed.

14          The Chairman. Who benefits from the change?

15          Mr. Chapoton. Well, it is difficult to say. The  
16 timber industry would be a beneficiary because by skipping  
17 a year on deductions you could elect the alternative capital  
18 gains tax in a particular year when you have a lot of timber  
19 sales.

20          There would be other taxpayers that would, involved in  
21 a lot of foreign operations, would want to skip a year, take  
22 a smaller deduction one year and then take a bigger deduction  
23 in alternate years.

24          The Chairman. They would benefit under the Administra-  
25 tion's proposal as it is?



1           Mr. Chapoton. They would -- they could reduce their  
2 deductions under the Administration's proposal, but they  
3 would have to do that for the period they hold the asset.  
4 So they would not be able to go back and forth from year  
5 to year.

6           Senator Heinz. What Mr. Chapoton is saying is that  
7 there is only one way that a taxpayer can take advantage of  
8 any flexibility. And that is he must make an election as to  
9 what kind of depreciation he is going to take, whether it is  
10 going to be accelerated or straight line.

11           Once he makes that election, he is stuck with it for  
12 the next five, ten or fifteen years.

13           Mr. Chapoton. That is correct.

14           Senator Heinz. That is the problem.

15           Mr. Chapoton. It is not inconsistent with current law.  
16 He can reduce his deductions for an asset if he reduces it  
17 for future years as well, not under current law.

18           Senator Heinz. Mr. Chairman, as the Chairman knows,  
19 I am going to be offering an amendment to extend the carry  
20 back of unused tax credits.

21           The reason I offer this amendment first is that this  
22 will prevent the problem that the second amendment will  
23 address from occurring in the way it has in the past.

24           This will give people the necessary flexibility so we  
25 don't have in the future, the kinds of problems that my

1 second amendment, which we discussed on many occasion here  
2 is aimed at trying to cure.

3 So, I hear the Treasury saying that they think this is  
4 a little complex, but I don't hear them saying anything  
5 terribly bad in terms of policy or revenue effect.

6 I hope my colleagues will support the amendment.

7 By the way, I think Senator Symms is a co-sponsor  
8 of this amendment.

9 The Chairman. If I could repeat what I said, there are  
10 other Senators present. Again, I think everybody is entitled  
11 to offer amendments and if they have enough vote they will  
12 be accepted.

13 But I would again remind my colleagues on my right  
14 and left that there is already some indication that this bill  
15 has been loaded up and may not be able to walk out of the  
16 Committee on its own.

17 The President feels strongly, as he indicated to  
18 Republican members of this Committee, yesterday, that unless  
19 there was an agreement with Treasury, that other amendments  
20 should be opposed.

21 I don't suggest that is the final word, but again we  
22 have a very attractive piece of legislation here. It would  
23 be helpful, I think, if we knew about all the amendments the  
24 Senator from Pennsylvania had before we voted on any of the  
25 amendments.

1 Will you give us an idea of the third and fourth  
2 amendments you have?

3 Senator Heinz. Yes, I will certainly do that, Mr.  
4 Chairman.

5 Let me just say that my understanding of our meeting  
6 with the President and Don Regan, yesterday, and we were all  
7 there to hear it, is that if amendments made sense and they  
8 didn't cost more money, that wasn't going to cause a problem  
9 for Don Regan. That was what he told us all.

10 The Chairman. Well, that is why I wanted to hear the  
11 other three.

12 Senator Heinz. The other two amendments, the first is  
13 the proposal for the extended carry back of unused tax credits.

14 Do you need any more of an explanation than that?

15 The Chairman. I don't.

16 Senator Heinz. The third amendment, which is one I  
17 understand, and Buck Chapoton will correct me if I am wrong,  
18 is a minor one and it is strictly technical.

19 They are proposing under their leasing provisions, a  
20 liberalization of the limited use rule.

21 There have been some discussions as to whether or not  
22 that ought to be in the state or not. They intend to put it  
23 out by regulation, but I gather there is a general feeling  
24 now it would be a good idea to get it into the law.

25 That is a very technical amendment, because it is

1 really statutizing what the Administration wants to do.

2 The other amendment, therefore, not counting that one,  
3 is a proposal to minimally liberalize depreciation for  
4 assets with lengthy construction periods.

5 The Administration, in their ACRS proposal has changed  
6 current law, proposed a change in current law, away from the  
7 present two year rule, I believe it is, and is going to,  
8 and proposes to change the paid rule to a strict placed in  
9 service rule.

10 That is to say, no depreciation deductions could be  
11 taken on for example, a synfuels project, until the year in  
12 which that project was placed fully in service which is  
13 somewhere for a project that starts today, by all accounts,  
14 somewhere five and ten years out in the future.

15 It seems to me that this is penny wise and pound  
16 foolish. It doesn't cost a lot of pennies in terms of the  
17 synfuels projects, and that amendment which a number of  
18 other Senators are interested in and will be happy to offer  
19 if you don't want me to offer it.--

20 The Chairman. I don't care who offers it. I think we  
21 know the full extent of the amendments. I think we can tell  
22 very quickly that if we accepted all of them we would be in  
23 the red in '84.

24 What is the status now, Mr. McConaghy, for '84?

25 Mr. McConaghy. We are essentially running a little bit

1 ahead, \$200 million in '82; \$800 million in 1984, and  
2 approximately \$2 billion in 1984, meaning under the original  
3 proposal.

4 The Chairman. Right.

5 Senator Heinz. Mr. Chairman, the reason I offer the  
6 first amendment, first is that it actually picks up a little  
7 money. It doesn't cost any money.

8 Mr. Chapoton. I would say it doesn't cost any money.  
9 We fairly couldn't say it picks up any money.

10 Senator Heinz. Okay.

11 The first one doesn't cost any money. So that doesn't  
12 mess anything up.

13 The Chairman. Is there agreement on the third one,  
14 the limited use?

15 Mr. Chapoton. Yes, we would want to go over those  
16 provisions, but there would be agreement on that.

17 The Chairman. So you already have 25 percent of what  
18 you came in with.

19 Senator Heinz. Mr. Chairman, I knew you were going to  
20 count like that.

21 (Laughter.)

22 Senator Heinz. I thank you for your arithmetic, but  
23 it wasn't like the sum I had in mind.

24 The Chairman. No, but I mean I think there -- we will  
25 accept that amendment, again, on a tentative basis, if there

1 is no objection.

2 I know Senator Bentsen I think raised a question about  
3 the very thing and Senator Chafee, on limited use.

4 Now I guess we are back to the first amendment.

5 Mr. Chapoton, do you have any other --

6 Mr. Chapoton. I would say that, Senator, we do feel  
7 very strongly about this. We think it we responded to the  
8 concerns that gave rise to the banking proposal. There is  
9 no question that on this deduction and indeed on other  
10 deductions, I say this deduction, I mean the ACRS deduction  
11 and other deductions, if you gave taxpayers the flexibility  
12 of taking it in any year they wished, taxpayers might like  
13 that rule.

14 But, we do have an annual accounting concept. We  
15 think we certainly ought to stick with it.

16 Senator Symms. Mr. Chairman.

17 The Chairman. Senator Symms.

18 Senator Symms.. Thank you, Mr. Chairman.

19 We are not talking about the flexibility?

20 Buck, don't you feel like the point that whether or  
21 not the second amendment is accepted or not, that there is  
22 a real problem that Senator Heinz is addressing, and this  
23 will avoid it in the future, if I understand it correctly.

24 Mr. Chapoton. No, it won't avoid it in the future.  
25 If you are talking about postponing deductions, the present

1 value of the deductions are significantly lost. We have  
2 an extended carry over provision in any event.

3 So, the deductions in our proposal, the loss of  
4 deductions is not likely to occur, and indeed, you can extend  
5 the carry over period beyond our proposal.

6 I don't think that is the issue. The issue is whether  
7 you can select a year in which you want to take the deductions.

8 Senator Symms. The point is, you take like the lead-  
9 zinc mines in my district, in my state, are depressed price  
10 of metals right now, they are not doing very well. What is  
11 the incentive for them to expand their plant and facilities  
12 with a short write off, when they are not a a profit  
13 position anyway?

14 Mr. Chapoton. The incentive for any taxpayer that is  
15 not at current tax liability, is diminished.

16 That is why we proposed this leasing provision, but  
17 the banking of depreciation does not change that incentive  
18 unless they thought they would otherwise lose the deduction  
19 after ten years.

20 We provide that the deductions can be carried forward  
21 for ten years.

22 After ten years, the deductions are pretty far in the  
23 future. So the incentive for the current investment beyond  
24 ten years is not likely to be effective by the loss of the  
25 deduction beyond that point.

1           We talk about banking of deductions, that is, whether  
2 to take them this year or a later year. Other considerations  
3 have to be affecting the motivation for that.

4           That is, you do not want to take the deduction now,  
5 because it affects some other benefit, some other provision  
6 in the Code, which is keyed to the annual accounting concept.

7           Admittedly, all deductions have an effect on the  
8 annual accounting concept if an annual limitation is in the  
9 Code. In particular, there are a number of annual account-  
10 ing concepts, a number of annual accounting limitations in  
11 the Code now.

12           It is a rather complicated -- I don't mean to try to  
13 be vague on this. It is a rather complicated question. We  
14 examined, and we examined thoroughly and decided to oppose  
15 the banking provision.

16           We decided that it was not addressed to the question  
17 of eventual loss of the deduction, but it was addressed to  
18 the question of the desirability to alternate the years in  
19 which you take the deductions so that you would not offset  
20 other limitations in the Internal Revenue Code.

21           The Chairman. Well, if we could -- what is the  
22 pleasure of the Senator from Pennsylvania?

23           Senator Heinz. Mr. Chairman, I believe in the amend-  
24 ment. Maybe we should just vote it up or down.

25           Senator Long. Mr. Chairman.



1 The Chairman. Senator Long.

2 Senator Long. Thank you, Mr. Chairman.

3 Let me suggest this, now I don't know how we are  
4 going to do all this. I want to cooperate with the Chairman  
5 and the Administration with their problems. But generally  
6 my thought is from the beginning and agreeing on these  
7 figures, that implicit in that was that when we want to do  
8 some things that we think claim a high enough priority to be  
9 in here, we could vote to do some of this.

10 That would mean at the end we would have to have a  
11 reconciliation of what we have, and then see how we can  
12 squeeze the package to try to take care of it.

13 But, I really think that Senator Heinz is touching on  
14 a problem that is very important, basically. We have these  
15 tax credits. We have these deductions, but it is welfare  
16 in reverse.

17 The people that need the help the worse don't get it.  
18 That doesn't make any sense.

19 Usually you write a program, a tax policy so that the  
20 people who need it the worse get the help first, and the  
21 people that need it least get it last.

22 Instead this bill, this whole program tends to work  
23 the other way around. That is an anomaly the Senator is  
24 trying to get at. It seems to me we ought to try to take  
25 care of it.

1           So, I think I would have to vote with the Senator on  
2 this. If we can prevail, then try to find a way we can  
3 squeeze something out somewhere else in the bill.

4           Please understand, Mr. Chairman --

5           The Chairman. I understand.

6           Senator Long. I am fully sympathetic with your problem,  
7 trying to hold this bill within cost limitations.

8           The Chairman. I don't think this particular amendment  
9 has any revenue loss --

10          Mr. Chapoton. No, it has no revenue loss. This amend-  
11 ment, Senator Long, I don't think goes directly to the  
12 question that you are raising. I think Senator Heinz' next  
13 amendment would, that is, unused deductions and what happens  
14 to taxpayers that cannot use them for some reason.

15          Senator Long. Well, I am talking about the Heinz  
16 package. My thought is, by the time we get through with this  
17 bill, we are going to have some poor souls who really need  
18 some help and who are not going to get any, get no help at  
19 all.

20          Chrysler, for example, the way it is going, they get  
21 no help.

22          May I say, I can be a statesman about this. We don't  
23 have one single Chrysler facility, except a distributorship  
24 in Louisiana, a sales agency.

25          But this is a company we are trying to save. It

1 definitely needs to participate in all these benefits and  
2 won't get any benefit at all out of it, so far as I can  
3 figure, unless we do something, that the Senator is talking  
4 about.

5 Some of the railroads are in that trouble. Some of  
6 the airlines. Some of the steel companies. Frankly, it just  
7 seems to me it is about time we come to the end of the road  
8 and add up a list here and say, "Let's just see who these  
9 happy souls are, who are already doing very well indeed, and  
10 will do still better."

11 Trim down a little bit on what they get to take care  
12 of the folks that are going to be left out completely.

13 I guess I am just an old Share the Wealth man by  
14 nature.

15 (Laughter.)

16 Senator Long. But I just think -- in some respects  
17 this thing is working in reverse. They as has gets, and  
18 those that need it the worst get left out.

19 I am glad to welcome Senator Heinz to the Share the  
20 Wealth Club.

21 (Laughter.)

22 Senator Long. Everyone benefits, spread the benefits  
23 and so everybody gets some of it. First look out for the  
24 people who are getting the worst.

25 The Chairman. Well, I think in view of the interest in

1 this amendment -- I would just say this, I don't think that  
2 is the option we have. We are looking at a little different  
3 approach, not on legislation itself, but we have members of  
4 the Budget Committee, and I don't suggest that they dominate  
5 everything yet, they are working on it, saying that even  
6 with the reductions we have made we are still in deep trouble  
7 in 1984.

8 So, I don't think we have the luxury of suggesting that  
9 well, we have \$2 billion left, let's try to divide it up  
10 this morning before we finish consideration of the bill.

11 I have a place we could use all of that, and I am  
12 certain everyone has.

13 I also can't believe that some of these big businesses  
14 who are now looking for additional amendments aren't faring  
15 quite well under the Administration's proposal.

16 It would seem to me that we are looking at '84, based  
17 on another \$40 billion in spending cuts, and looking at a  
18 \$2 billion surplus based on the economic figures of the  
19 Administration and even at best we are probably going to be  
20 in trouble in 1984.

21 So, I would hope that we could -- as far as this first  
22 amendment, it is not a revenue loser. But the other, you  
23 talk about, there is nothing to divide up. He wants \$1.3  
24 billion, in '81. We only have \$100 million left. He wants  
25 \$1.3 billion, in '82; \$1.3 billion, in '83 and \$900 million,

1 '84.

2 Senator Heinz. Mr. Chairman, before you put your foot  
3 in it any deeper. I think I ought to tell you that the  
4 second amendment which I haven't yet offered actually makes  
5 money for the Treasury in 1984.

6 The Chairman. Well --

7 Senator Heinz. That is what that number has a little  
8 plus in front of it there.

9 The Chairman. Are there any -- could you take care of  
10 the problem of Senator Heinz, other than the banking  
11 proposal, could you allow one additional recovery period?

12 Mr. Chapoton. We would prefer to extend the recovery  
13 period. That would be preferable to us then going to the  
14 constant option of the banking provision, the complexity.  
15 We think it addresses, it deals with situations that are not  
16 before this Committee, at the present time; that is, other  
17 limitations in the Code, as I said, that are applied under  
18 the annual accounting system of taxation.

19 Senator Heinz. Mr. Chairman, of course, if we could  
20 extend the recovery period backward, that would be --

21 Mr. Chapoton. No, I was talking about forward, Senator.  
22 (Laughter.)

23 The Chairman. Forward.

24 Senator Heinz. Oh. Well, that's not too interesting.

25 The Chairman. Rod, how would that work, Mr. DeArment?

1 Mr. DeArment. Mr. Chairman, you would essentially  
2 allow a taxpayer to choose to elect the next higher recovery  
3 category.

4 So, combined with the further election, I guess, of  
5 the E & P lives, you could elect quite a longer recovery  
6 period to write the particular asset over so that it could  
7 stretch out the asset recovery over a longer period of time  
8 so that even under the Treasury's proposal, before this, you  
9 could if you were in the five-year life, you could now go  
10 to write it off over 12 years.

11 Under the proposal that Mr. Chapoton just outlined,  
12 it would permit you to write it off over 25.

13 Mr. Chapoton. It would be the next higher period.

14 Mr. De'Arment. Yes.

15 Mr. Chapoton. That would be fine.

16 Senator Heinz. Mr. Chairman, I am not sure I under-  
17 stand what they just said.

18 The Chairman. I am not certain I do, either.

19 Mr. Chapoton. Senator, what we are saying is --

20 The Chairman. Give us an example.

21 Mr. Chapoton. That if a taxpayer had a five-year  
22 asset, the present proposal would allow him to take three  
23 options, 150 percent, declining balance over five years.

24 Option two, straight line depreciation over five years,  
25 number three, utilize the earnings and profits period that

1 he is required to use in computing earnings and profits  
2 which is 12 years straight line.

3 This final option would be to use the earnings and  
4 profits of longer-lived equipment which for the 10 year  
5 class would be a 25 year straight line write off.

6 It would still require though, Senator, that some  
7 deduction be taken over the period the property is held.

8 Senator Heinz. Well, Mr. Chairman, that is what is in  
9 the Administration proposal.

10 Mr. Chapoton. Rod is suggesting adding an additional  
11 longer option.

12 Senator Heinz. An additional stretch out.

13 Mr. Chapoton. An additional stretch out, correct.

14 Senator Heinz. I don't know why anybody who could  
15 depreciate something in five years would want to depreciate  
16 it over 25.

17 Mr. Chapoton. Well, a new business might. We have  
18 talked to some taxpayers who definitely want longer periods  
19 of recovery.

20 Senator Heinz. Mr. Chairman, may I say that I appreciate  
21 Rod DeArment's suggestion. It is a very small step in the  
22 right direction because it really does not provide for much  
23 in the way of flexibility.

24 Indeed, what it does is, you have to make that election  
25 right at the beginning. You are stuck for the next 25 years

1 with that very specific decision and that very specific set  
2 of depreciation deductions over the next 25 years.

3 To me, I don't think that is a very substantial benefit  
4 In fact, I don't think it is much benefit at all.

5 Mr. Chapoton. Senator, under the law now, present law  
6 and under our proposal, for example, there is a limit in  
7 mining operations that the percentage depletion allowance on  
8 minerals now exceed 50 percent of the net income from the  
9 property.

10 That is an annual computation.

11 If you make this change, there will clearly be an  
12 incentive to put the deductions in the year when you have  
13 the smallest amount of income from the mines, because -- the  
14 50 percent, the deductions related to that mine, into another  
15 year, so that the 50 percent of net income limitation would  
16 not apply.

17 That is one example.

18 There are numerous examples in the Code that if you  
19 allow complete flexibility and now rateable recovery of  
20 cost, that there will be an obvious incentive to put this  
21 in a computer and see the best way it comes out.

22 Senator Heinz. There will be an incentive to do what?

23 Mr. Chapoton. To put these factors in a computer and  
24 see what the best year for taking the depreciation deduction,  
25 the cost recovery deduction, so that it will not offset and



1 not cause any of these other annual limitations to kick in.

2 Senator Heinz. What is wrong with that?

3 Mr. Chapoton. Well, because we have decided that we  
4 have an annual accounting system. We report taxable income  
5 annually, and as I state, there are numerous provisions in  
6 the Code that say one type of deduction or the foreign tax  
7 credit or alternative tax on capital gains is made on an  
8 annual basis.

9 You have to look at your income for that year to  
10 determine whether that benefits you or not or determine a  
11 limitation on that benefit.

12 We would then give an incentive to skip a year on this  
13 deduction and put it in another year, so that the other  
14 limitation, the annual limitation would not kick in for this  
15 year.

16 So you would have certainly an incentive in some cases,  
17 to take deductions in year one, skip year two, take them in  
18 year three and so on.

19 Senator Heinz. Mr. Chairman, I thought our purpose in  
20 passing this tax bill was to pass a supply side tax cut.

21 We want to stimulate jobs. We want to stimulate  
22 business expansion. We want to stimulate investment. We  
23 want to stimulate savings.

24 I might say, Mr. Chairman, I think that you and the  
25 Committee have done an excellent job in doing that so far.

1 I think you and the Committee should be very proud of  
2 their work. I have been very pleased to participate in it.  
3 I think you have done an outstanding job.

4 But, I also believe that what we are talking about here  
5 is totally consistent with what you and the Committee and we  
6 have been trying to do so far and that is to try and make it  
7 attractive for business to do all those things we want them  
8 to do, to invest, create jobs, to stimulate the so-called  
9 supply side, so that we get all the benefits we know flows  
10 from that.

11 As I listened to Mr. Chapoton, I hear him saying this  
12 will really help people make investments. It will be more  
13 attractive to them, they won't be penalized as much.

14 From that I take away the fact that this is good for  
15 the country. It is good for the economy. Therefore, good  
16 for the people.

17 The Chairman. Well, I think we are prepared to vote on  
18 it. I think that is one way to resolve it.

19 Senator Heinz. Yes.

20 The Chairman. The clerk will call the roll.

21 Mr. Lighthizer. Mr. Packwood.

22 (No response.)

23 Senator Danforth. Which one are we voting on?

24 The Chairman. The banking, number one.

25 Senator Heinz. The banking.

1 The Chairman. Yes.

2 Senator Heinz. There is a question, Mr. Chairman, as to  
3 which one we are voting on. This is the proposal to permit  
4 flexibility in the timing of depreciation deduction.

5 Senator Danforth. Banking?

6 Mr. Lighthizer. This is banking.

7 The Chairman. This is the banking provision.

8 Senator Heinz. Yes.

9 Mr. Lighthizer. Mr. Packwood.

10 (No response.)

11 Mr. Lighthizer. Mr. Roth.

12 Senator Roth. No.

13 Mr. Lighthizer. Mr. Danforth.

14 Senator Danforth. No.

15 Mr. Lighthizer. Mr. Chafee.

16 The Chairman. No.

17 Mr. Lighthizer. Mr. Heinz.

18 Senator Heinz. Aye.

19 Mr. Lighthizer. Mr. Wallop.

20 The Chairman. No.

21 Mr. Lighthizer. Mr. Durenberger.

22 Senator Durenberger. Aye.

23 Mr. Lighthizer. Mr. Armstrong.

24 Senator Armstrong. Aye.

25 Mr. Lighthizer. Mr. Symms.

1 Senator Symms. Aye.  
2 Mr. Lighthizer. Mr. Grassley.  
3 ~~The Chairman.~~ No.  
4 Mr. Lighthizer. Mr. Long.  
5 Senator Long. Aye.  
6 Mr. Lighthizer. Mr. Byrd.  
7 Senator Byrd. No.  
8 Mr. Lighthizer. Mr. Bentsen.  
9 (No response.)  
10 Mr. Lighthizer. Mr. Matsunaga.  
11 Senator Matsunaga. Aye.  
12 Mr. Lighthizer. Mr. Moynihan.  
13 (No response.)  
14 Mr. Lighthizer. Mr. Baucus.  
15 Senator Baucus. Aye.  
16 Mr. Lighthizer. Mr. Boren.  
17 Senator Boren. No.  
18 Mr. Lighthizer. Mr. Bradley.  
19 (No response.)  
20 Mr. Lighthizer. Mr. Mitchell.  
21 (No response.)  
22 Mr. Lighthizer. Mr. Chairman.  
23 The Chairman. No.  
24 (Pause.)  
25 The Chairman. This vote the nays are 8, the yeas are 7.

1           So, the outcome will still be in doubt. There are five  
2 unreported.

3           Senator Heinz. Mr. Chairman, should we proceed to the  
4 second amendment?

5           The Chairman. Yes.

6           Senator Heinz. This amendment is one that I think we  
7 talked about a good deal. It is frankly, more controversial  
8 than the one we just voted on.

9           This is to permit the extended carry back of unused  
10 investment tax credits that have not yet expired.

11           The problem we have, and Senator Long touched on it,  
12 earlier, is that there are an awful lot of business firms  
13 that are capital intensive. They are found in steel, mining,  
14 transportation, railroads, autos, which because of the  
15 capital intense nature of the business, sometimes, because  
16 of the extreme foreign competition, they have not been able,  
17 over the last several years, to generate the earnings and  
18 therefore, the tax receipts off of which to claim their  
19 unexpired investment tax credits.

20           I suppose the best example is that in the auto industry,  
21 and Pennsylvania is not terribly impacted by automobile  
22 manufacturers. We have some parts suppliers and we have a  
23 steel industry that sells some steel to the auto industry  
24 when they are selling American autos, that -- the best  
25 example is probably the Ford Motor Company versus General

1 Motors.

2           General Motors is a very successful firm. They are  
3 able, because they are successful, to make money. They are  
4 able therefore, to claim their tax credits and they get  
5 benefits from it.

6           The Ford Motor Company which has had large losses the  
7 last few years, is unable to benefit from the tax credits,  
8 and, as a result, the successful, wealthy companies like  
9 General Motors do very well under the present tax code.

10           The less successful, but nonetheless extremely important  
11 to employees. These companies range in size from the size of  
12 Ford on down to very small companies, are able to get in our  
13 present economic circumstances, none or very little benefit  
14 out of the investment tax credit.

15           What this amendment does is to try and do something  
16 about the rich getting richer and the poor getting poorer.  
17 It does so by allowing all firms, except utilities, who are  
18 a special category, to utilize their unexpired tax credits  
19 by applying them over the next three years, claiming them  
20 over the next three years, against taxes that they have paid  
21 since the investment tax credit first was written on to the  
22 books.

23           Now, I know that there is an objection to the amend-  
24 ment because it will cost money. This amendment, relative  
25 to doing nothing, over the next three years, will according

1 to Joint Tax estimates, cost \$1.3 billion a year, for each  
2 of the next three years.

3 In the fourth year, fiscal year '84, the best estimate  
4 is that it will actually will make some money for the  
5 Treasury, about \$500 million.

6 Indeed, the reason we have phased it in over three years  
7 is we consulted with Mr. Chapoton, and he felt that it would  
8 be helpful to the Administration, even though they don't  
9 support this amendment, that the best way to do it would be  
10 to phase it in over the first three years and then there  
11 would be a positive revenue effect in the fourth year,  
12 because that is the year we are all worried about.

13 There are some other specifics to the amendment  
14 described in the hand-out that are technical in nature.

15 Let me address the big issue which is the money.

16 We are for '82 and '83 about a billion dollars ahead  
17 of the President at the present time; \$200 million, in '82;  
18 \$800 million, in '83, as I think Mr. McConaghy or one of the  
19 staff pointed out earlier.

20 If this amendment passes, I would also intend to  
21 propose a delay in the effective date of the leasing  
22 provisions to April 1, 1982, to -- and that would pick up  
23 an additional \$700 million.

24 Thirdly, I anticipate that we are going to pass some-  
25 thing on commodity straddles which could save up to \$2.7

1 billion.

2           So, it seems to me that there is the money here in  
3 terms of some flexibility for us to pass this amendment  
4 without doing violence to our ceilings.

5           So, in that respect, I believe, it is a responsible  
6 amendment.

7           Again, Mr. President, this proposal is about the only  
8 one that is going to allow an awful lot of companies that  
9 haven't had a great deal of luck under Carter Economics, to  
10 really benefit from the President's new economic plan.

11           It does affect every industry, not just the capital  
12 intensive ones I mentioned. It will affect, I think favorably,  
13 industries and businesses in every state.

14           Hence, it is going to be good news for people, for  
15 employees in every state. There will be either fewer job  
16 losses or more jobs created.

17           I think that is what we want. All of us, every single  
18 person in this room, the Administration, all of us up here.

19           Thank you, Mr. Chairman.

20           Senator Danforth. Mr. Chairman.

21           The Chairman. Senator Danforth.

22           Senator Danforth. Thank you, Mr. Chairman.

23           Mr. Chairman, let me say that if we had an unlimited  
24 amount of money that we could put into this tax bill and  
25 there was no agreed to limitation by the members of the



1 Committee, as to what we could do, I would be the first to  
2 jump on this.

3 In fact, I had hoped from the outset that something  
4 could be worked out with the Administration to accommodate  
5 the concerns of Senator Heinz.

6 I take it, Mr. Chapoton, that the answer to that  
7 question is no.

8 Mr. Chapoton. That is correct. We are opposing this  
9 amendment.

10 Senator Danforth. Flatly rejects it?

11 Mr. Chapoton. Yes, sir.

12 Senator Danforth. Let me just say this to put it in  
13 context. If we were pitted with the question of going along  
14 with the Administration and with the Chairman and with our  
15 own prior commitment to try and keep within the Administration's  
16 figures on one hand, and on the other hand, the salvation of  
17 the automobile industry, the steel industry, airlines, mining  
18 and as Senator Heinz has pointed out, many, many industries  
19 in every state, that would indeed be a very hard choice for  
20 us to make.

21 The automobile industry alone has told us that it will  
22 have to make some \$70 to \$80 billion of capital investments  
23 over the next five years. That is just the automobile  
24 industry.

25 Now you add to that, steel and mining and everything

1 else and then take into consideration what is going to be  
2 the effect of \$1.3 billion per year, for three years, on  
3 those industries. Because basically this is a check writing  
4 operation.

5       Essentially what we are involved in in a loss carry  
6 back, is a method of the Government writing out a check to  
7 distressed industries.

8       Would a total of less than \$4 billion, spread over  
9 three years, spread over automobiles and steel, airlines and  
10 on and on and on, and as Senator Heinz says, every state in  
11 the Union, would that have any material effect on these  
12 distressed industries.

13       I think the answer to that is from their standpoint, I  
14 am sure every little bit helps, but this is, in fact, from  
15 their standpoint, a little bit.

16       Now what does it do to this tax bill? What it does to  
17 this tax bill is to say, "Well, we didn't mean it. We didn't  
18 mean what we did so far."

19       When we voted last Thursday or Friday that we were  
20 going to stay within the Administration's figures, "We didn't  
21 mean it."

22       When we said to the President, "Yes, we are going to  
23 try to restrain ourselves and not add a lot of things under  
24 this bill; we really didn't mean it."

25       We are going to add \$4 billion to the bill which would

1 be spread over a large number of industries and would be so  
2 spread that it wouldn't really do them any good or address  
3 the problem.

4 For that reason, Mr. Chairman, while I guess the  
5 principle that every little bit helps, is of some merit, I  
6 reluctantly will oppose Senator Heinz' amendment.

7 The Chairman. Senator Durenberger.

8 Senator Durenberger. Thank you, Mr. Chairman.

9 Mr. Chairman, as you know, as the mover of the amend-  
10 ment, and Senator Danforth, I have a great sympathy for the  
11 infrastructural industries of these countries and their  
12 problems and picking up on Senator Long's idea of the RITC.  
13 I introduced that as one of their salvations.

14 People over on the House side have incorporated some  
15 of this consideration into their bill. So, I am very  
16 sympathetic to the argument of the Senator from Pennsylvania.

17 However, I think John Danforth has laid out the problem  
18 that we all have at this particular point in time in terms  
19 of how much can be accomplished on this particular bill.

20 Part of the trade off, if I understand the Senator from  
21 Pennsylvania is some savings in changes on leasing.

22 The other part of it is the straddle. I went through  
23 that yesterday, John, trying to find some savings some place  
24 else to do something for me. So, I am not sympathetic to  
25 that. I am going to have a suggestion to make to you.

1 But, I wonder if I might ask Mr. Chairman, a couple of  
2 questions of Treasury on the leverage leasing side of this  
3 to try to clear up how much of your proposal has to be  
4 implemented by law, and how much of it has to be implemented  
5 or could be implemented administratively, with the notion in  
6 mind here we ought to get as much of it into the bill as  
7 possible.

8 I am thinking of revenue procedure 7521 and as one of  
9 those examples.

10 Let me give you a couple of points that I really would  
11 like a clarification on it in terms of incorporating the  
12 bill.

13 First if eliminating the existing profit cash flow  
14 test in the guidelines of 7521.

15 Second, is providing more reasonable rules dealing with  
16 residual value of leased property, which has been a problem  
17 right along.

18 The third, and I am not sure whether this is going to  
19 take care of that, eliminating the rule that precludes the  
20 lease of limited use property, including related rule and  
21 revenue procedure 7521, of any leasee investment against  
22 lease property.

23 Is it possible for us to draft language that would take  
24 care of those situations?

25 Mr. Chapoton. Senator, some of those items are taken

1 care of in the present draft. We would agree with you that  
2 we should put additional clarification in the law itself,  
3 even though we had planned on doing it in the Administration  
4 -- excuse me, in the administration of the law and in the  
5 regulations.

6 But, I think it is better to clarify precisely what  
7 the leasing proposal is in the statute so there is no doubt  
8 about it.

9 We would want to leave in the minimum investment in  
10 the property, a ten percent minimum investment and that would  
11 be throughout the life of the property, though we would have  
12 no objection to a put-call option at the end of the life of  
13 the property so that the lessee and lessor could know that  
14 the lessee had to buy the property back at whatever price was  
15 stated.

16 We would want the 10 percent requirement left in.

17 We would agree with you that we could put these in the  
18 statute.

19 Senator Durenberger. Mr. Chairman.

20 The Chairman. Senator Durenberger.

21 Senator Durenberger. Mr. Chairman, I am going to have  
22 difficulty with going along with my friend from Pennsylvania  
23 on a complete carry back. I don't know, Senator Heinz,  
24 whether you looked at a ten-year carry back which leaves some  
25 flexibility to a lot of industries to make choices as between

1 the carry back and some of these more generous leasing  
2 provisions.

3 If that costs substantially less money, it seems to  
4 me it covers more industries more equitably. Going all the  
5 way back certainly helps Chrysler and it helps steel companies  
6 or most of the steel companies.

7 But I think there is more people to be helped in a  
8 more limited time frame.

9 Senator Heinz. Let me respond to my friend from  
10 Minnesota.

11 In the amendment, we provide that firms that choose to  
12 apply tax credits against prior years' taxes cannot also take  
13 advantage of the liberalized leasing rules as proposed under  
14 ACRS in the same year.

15 There is an election, in other words, that each firm  
16 would in fact make. We know that will save some money. We  
17 don't know how much.

18 It is an attempt to make sure that we are not giving  
19 people two bites at the apple.

20 As to your second point on ten years, although it isn't  
21 ideal -- I can probably accept that, if that would make the  
22 amendment more acceptable to the Treasury and to my  
23 colleagues.

24 If I may just take a moment to however make a brief  
25 response to something my friend, Senator Danforth said

1 regarding how much benefit all of this will make. I think  
2 it is important to look at what the Administration bill,  
3 Senator Danforth, does during the first two years in '81 and  
4 '82.

5 It provides for a total amount of accelerated cost  
6 recovery benefits and static revenue loss basis of \$11 billion.

7 What the cost of this legislation is in addition to  
8 that and over the same two years, the cost would be \$2.6  
9 billion or roughly a 25 percent improvement in the stimulus  
10 of supply side economics on the business side.

11 So, at least in my judgment, we are talking about  
12 something that is a significant improvement, at least I  
13 think of 25 percent as being a pretty significant improve-  
14 ment and what has been proposed.

15 It should create a like stimulus in economic perform-  
16 ance. Otherwise, I don't think it would be worth fooling  
17 with.

18 Thank you, Mr. Chairman.

19 The Chairman. The clerk will call the roll.

20 Senator Heinz. Mr. Chairman, are we through with this?

21 Mr. Lighthizer. Mr. Packwood.

22 (No response.)

23 Mr. Lighthizer. Mr. Roth.

24 The Chairman. No.

25 Mr. Lighthizer. Mr. Danforth.

1 Senator Danforth. No.

2 Mr. Lighthizer. Mr. Chafee.

3 The Chairman. No.

4 Mr. Lighthizer. Mr. Heinz.

5 Senator Heinz. Mr. Chairman, excuse me, before we  
6 complete this vote, Senator Durenberger and I were talking  
7 about modifying the amendment.

8 The Chairman. We can modify it after we complete the  
9 vote.

10 Senator Heinz. It would be nicer to modify it before.

11 The Chairman. Just to give you a little test.

12 (Laughter.)

13 Senator Heinz. We already had one of those, already,  
14 Mr. Chairman.

15 The Chairman. I am willing to wait if you can change  
16 the vote. But I think you still have enough.

17 Senator Heinz. Mr. Chairman, the Chairman is very  
18 powerful.

19 The Chairman. No, I am not. But I would like to finish  
20 the bill today, if we can.

21 Senator Heinz. Yes. Let me -- Mr. Chairman, could we  
22 go vote while Senator Durenberger and I just discuss this?

23 The Chairman. Sure. We will ask unanimous consent that  
24 we recall the roll call.

25 Senator Heinz. Thank you, Mr. Chairman.



1           Senator Long. Mr. Chairman, before we go I think there  
2 is one matter I think Mr. Chapoton just said that the  
3 Treasury would be willing to permit a 25 year life to help  
4 the people who can't take the credits. That would not cost  
5 any money in the short term.

6           Mr. Chapoton. No, sir.

7           Senator Long. That being the case, I would hope that  
8 could be added to the bill, Mr. Chairman. If there would  
9 be no objection.

10          Senator Heinz. No objection.

11          Senator Durenberger. No objection.

12          The Chairman. Without objection.

13          Senator Long. Thank you.

14          (A short recess was taken.)

15          The Chairman. The Committee will come back to order.

16          I think Senator Heinz' matter is pending. I think  
17 this might be a good point for Senator Armstrong to raise a  
18 matter he discussed on the way over with reference to Senator  
19 Heinz' first amendment on flexibility.

20          Have you had a chance to discuss that with Treasury?

21          Senator Armstrong. I have not, Mr. Chairman. Would you  
22 like me to do that?

23          The Chairman. Yes, maybe you might do that. The amend-  
24 ment of Senator Heinz is pending, following disposition of  
25 that, then we will take up the straddle legislation. I wonder  
if we might do this while Senator Heinz is arriving.

1           Senator Moynihan. Mr. Secretary, I wonder if I go  
2 through this, if you would track with us to see if this  
3 is the situation you are generally agreeable to.

4           As you know, Mr. Chairman, we have found a problem of  
5 large and growing dimension with respect to the integrity of  
6 the Internal Revenue Code.

7           We find that devices are being used to defer taxation  
8 in massive amounts, and to convert -- Senator Heinz is here  
9 or would you want me to proceed?

10          The Chairman. Senator Heinz?

11          If you need a little negotiating time?

12          Senator Heinz. Yes. I would be happy to set my thing  
13 aside if you have something else to do.

14          The Chairman. It may take a while.

15          Senator Heinz. That is all right with me.

16          The Chairman. Fine.

17          Proceed, Senator Moynihan.

18          Senator Moynihan. Mr. Chairman, as I say, we have  
19 come upon this situation. We have learned of the extent of  
20 the problem. The Joint Committee has been diligent in their  
21 exploring and finding it was if anything, a wider dimension  
22 than we had known.

23          More than that, we have, we face the problem that  
24 if something isn't done to maintain the integrity of our  
25 commodity markets, they are going to find their reputation

1 sullied by persons invading them for purposes having nothing  
2 whatever to do with commodities in the business, and the  
3 absolutely essential role they play in maintaining stable  
4 prices and making large, high levels of production possible,  
5 profitably, reasonable, ongoing.

6 We feel that as the exchanges testified, these  
7 measures, some measures have to be taken and we have reached  
8 agreement among ourselves I believe, that these are the most  
9 feasible ones.

10 The first and basic decision is that regulated futures  
11 contracts would be marked to market either immediately before  
12 taking or making delivery or when the RFC is covered by  
13 purchasing an opposite contract or on the last day of the  
14 tax year, if the RFC, the regulated futures contract is still  
15 open then.

16 The largest provision -- this marking to market is  
17 done very day in the exchanges, we are proposing that the  
18 gains and losses from RFC's be put in a special basket and  
19 match up against each other, one another, and a taxpayer who  
20 has a net gain from the basket would be taxed as if 40  
21 percent were short-term and 60 percent long-term, an  
22 effective rate of 32 percent, this in the context of a  
23 capital gain rate which we will reduce to 20 percent in  
24 this bill.

25 We would say that a taxpayer has a net loss, can use

3  
1 the loss in the present year to offset other gains outside  
2 the basket, in the same proportions, and if a taxpayer still  
3 has a loss, he would carry the extra loss back three years.

4 This is an important change in the present rules of  
5 the exchange, and one which I think the traders would find  
6 have rather capriciously denied them by an action on the  
7 House floor some years ago, this would give them the right,  
8 which, for example, a three year carry back.

9 For non-RFC's, we would simply put in place the  
10 existing tax -- we would apply the existing Section 1233  
11 provisions which have been in the Code since the 1930's, for  
12 that purpose.

13 With respect to -- one thing to be made very clear,  
14 no firm, no individual, who is involved in the production  
15 or use of commodities and hedges his prices in the normal  
16 commercial way, would in any way be affected by this measure.

17 No farmer, no manufacturer, no broker in a particular  
18 commodity. They are not part of this legislation at all  
19 and as they have testified, the millers, for example, testi-  
20 fied that they have no need for it, we have a transition rule  
21 that persons who have carryovers, income, would pay it in  
22 this year.

23 In cash and carry transactions, we simply propose to  
24 capitalize the interest costs so that they any gain is  
25 matched by any loss, and you get a true, you don't have one

1 -- you don't have income in one year and gains in another  
2 for that purpose.

3           There is a 30-day look back rule which now applies  
4 to traders on the stock exchange, would apply to traders on  
5 the commodity exchanges at the same time.

6           That is a provision which when brokers and dealers  
7 when they buy -- have at this point, they must identify  
8 those measures, those purchases they made for themselves and  
9 those purchases they made for others.

10           It is a reasonable proposal.

11           Finally, any disposition of a capital asset which  
12 gives rise to taxable income or recognizable loss, would be  
13 treated as the sale or exchange.

14           Mr. Chairman, this is simple legislation. It involves  
15 no new counting, no new set of -- doesn't require a single  
16 additional member of the IRS. All the calculations made  
17 are now made by the exchange, they are made every day. This  
18 does not add any bookkeeping. It does not add any regulatory  
19 problems. The problem in effect solves itself.

20           We simply have a first principle, which as you know,  
21 we heard in testimony over and over again, that everyone  
22 should pay tax once a year.

23           Finally, Mr. Chairman, I should give you a measure  
24 of the significance of this measure for the tax bill which  
25 we are trying to keep within \$38 billion.

1           There would be a revenue gain in 1982, I believe, Mr.  
2 Secretary, estimated at \$1.3 billion.

3           Mr. Chapoton. Yes, sir, that is the estimate. The  
4 way we have been using it, it is difficult to be precise on  
5 that.

6           Senator Moynihan. You can't be precise. But, Mr.  
7 Chairman, I would give you the thought that in the first  
8 year if we were to gain \$1.3 billion, we have some measure  
9 of the extent of these practices and they are growing and  
10 spreading, and there you are, sir.

11          Mr. Chapoton. Senator, could I ask a clarification  
12 on one point. You mentioned the identification of securities.  
13 You referred to the 30-day look back rule, as I believe in  
14 your proposal, on January 1, 1982, you would be required to  
15 identify on the date of acquisition?

16          Senator Moynihan. That is right, sir.

17          Mr. Chapoton. Securities held for investment, versus  
18 those held for inventory.

19          Senator Moynihan. That is right, sir.

20          The Chairman. May we hear from the Joint Tax  
21 Committee on this proposal, and also -- well, first I might  
22 ask Mr. Chapoton, do you support the proposal?

23          Mr. Chapoton. We had suggested that this be done at  
24 a later time. This is basically our proposal. We have  
25 worked with the Joint Committee Staff, with your staff and

1 with Senator Moynihan's staff.

2 I guess we would say that the effective 32 percent  
3 rate is lower than we would have liked. We were talking of  
4 a rate between 35 and 40 percent.

5 But, with that qualification, we would support this.  
6 Senator Symms. How does that rate apply?

7 Mr. Chapoton. The rate applies, would apply to the  
8 income that is mark to market, that is, income that is from  
9 dealing in the futures contracts only, on the commodity  
10 exchanges.

11 The Chairman. I know Senator Symms has some  
12 questions. As I understand, you support the proposal. You  
13 have some reservations about the rate?

14 Mr. Chapoton. Yes, we would think the rate ought to  
15 be somewhat higher. We are talking about the tax rate,  
16 Senator Symms, we were thinking in terms of 35 to 40 percent  
17 rate.

18 But, basically, we agree with the method followed  
19 here.

20 The Chairman. There has been a great deal of work  
21 done on this proposal by, certainly the industry and members  
22 of our staff, Senator Moynihan's staff and the Joint Tax  
23 Committee.

24 Does the Joint Tax Committee, either Mark or Ms.  
25 Scott have any comments on the Moynihan proposal?

7  
1 Have you had a chance to analyze the proposal and has  
2 it been accurately -- I am certain it has been accurately  
3 portrayed, but any additional comments that you would like  
4 to make?-

5 Mr. McConaghy. We have had a chance, Mr. Chairman.  
6 We do think that the proposal addresses the major issues.  
7 We think we would need, of course, the required technical  
8 authority for technical problems, but certainly it does  
9 address a major issue.

10 The Chairman. Andre, do you have any additional  
11 comments? You were working on that with staff.

12 Mr. Le Duc. Mr. Chairman, if I may, I would like to  
13 summarize some -- our understanding of some of the technical  
14 rules that we understand that Senator Moynihan and the  
15 Department of Treasury concurs with.

16 The Chairman. If it is necessary to do that, yes.  
17 We have already authorized it. We don't need to  
18 summarize it. We have enough trouble understanding the  
19 straddle itself.

20 (Laughter.)

21 Mr. Lighthizer. Maybe if we give out this two-page,  
22 it has a few more of the details, Mr. Chairman. Then we  
23 could draft based on these understandings. Maybe that  
24 would be easier if we just gave out this two-page summary.

25 There are a few more of the technical points made by



1 Mr. Moynihan.

2 Senator Moynihan. I think the technical points have  
3 been very carefully handled, Mr. Chairman, by the chief  
4 counsel. I have no disagreement with them at all. I think  
5 there are technical points, but I think we covered them.

6 The Chairman. Two pages?

7 Mr. Lighthizer. Yes, sir, just so we are authorized  
8 to draft based on some of the details that haven't been --

9 Senator Moynihan. Yes, sir.

10 The Chairman. You will be authorized to do that.

11 Senator Matsunaga. Mr. Chairman, may I raise one  
12 question?

13 What is the abuse if any we are trying to prevent?

14 Senator Long. They make lots of money and paying no  
15 taxes.

16 (Laughter.)

17 Senator Matsunaga. That is a good answer.

18 The Chairman. That is a summary.

19 (Laughter.)

20 The Chairman. Senator Symms.

21 Do you have other questions?

22 (Laughter.)

23 The Chairman. We don't know how it works, but we  
24 know it works for some people.

25 Senator Symms. Mr. Secretary, one question I would

1 like to get at, and you said you thought you took care of it,  
2 and I think that Senator Moynihan thinks so, but the Coopers  
3 and Libran report that I have one before me, and I am sure  
4 you have seen it, indicates that there may be a gain in  
5 revenue, and I think this \$1.3 billion is a guesstimate.

6 I would be surprised if it sustains that much  
7 personally, because I think you will drive a lot of the  
8 futures industry to London and the Bahamas and other places,  
9 and then we won't have the vibrant revenue we have had.

10 But, that is neither here nor there.

11 What about the Treasury financing costs by converting  
12 Treasury bills to capital gains taxes and that increase.  
13 They say \$2 billion, \$3 billion a year this will cost in  
14 additional financing costs.

15 How do you answer that?

16 Mr. Chapoton. Well, we work with our people in the  
17 public finance that handle issues of Treasury bills through-  
18 out the development of this proposal.

19 We did make a modification at about the time we got  
20 that Coopers and Libran study, we had become somewhat  
21 concerned about the problem they were addressing.

22 We do think we took care of it through the -- in the  
23 modified proposal.

24 Senator Symms. How?

25 Mr. Chapoton. We took care of it by treating inventory,

1 -- a hedge against inventory, as excluded from the appli-  
2 cation of the provision altogether.

3 Senator Moynihan. Mr. Secretary, if the Senator  
4 would yield?

5 Senator Symms. Yes..

6 Senator Moynihan. If I could just see if we can't  
7 be clear. Treasury dealers with an inventory in Treasury  
8 notes would not be covered by this legislation. Is that  
9 right, Mr. Secretary?

10 Mr. Chapoton. That is correct. We excluded all  
11 together inventory, including inventory in Treasury bills  
12 from the --

13 Senator Symms. All inventory traders are excluded?

14 Mr. Chapoton. The hedges on inventory, hedging  
15 transactions to protect fluctuations on inventory are  
16 excluded.

17 The Chairman. Traders aren't excluded.

18 Mr. Chapoton. Traders are not excluded.

19 Senator Symms. How about an inventory of a warehouse  
20 that has a cash inventory say of soybeans, and have a  
21 position; are they excluded?

22 Mr. Chapoton. If it is an inventory for a taxpayer  
23 in the business of dealing in soybeans, and he enters into  
24 hedging transactions, on futures exchanges, he would be  
25 excluded, yes.

1           Senator Symms. But then I guess the next question  
2 would be the trader on the floor is not excluded, so he  
3 may not be there when the inventory hedger comes in to  
4 trade.

5           So, how are we going to protect the exposure of the  
6 Treasury to higher interest rates through financing of  
7 Treasury bills and secondly, how are we going to protect  
8 the hedger for liquidity when he uses the

9           Mr. Chapoton. The trader will pay more taxes than  
10 he pays now. There will be transactions that are now entered  
11 into on the floor that will not be entered into.

12           But, basically, we do not think it will upset the  
13 exchange. We think, indeed, it might strengthen it. But,  
14 we are not -- but, if you address the direct problem of  
15 deferral and conversion of tax by traders, then you  
16 necessarily affect traders.

17           Senator Symms. Mr. Chairman, I would say that, you  
18 know, I am certainly sympathetic to the idea that all of  
19 this you are talking about, that we do need to have every  
20 citizen having an opportunity to pay their fair share of  
21 the taxes and if you have a volunteer tax system, we can't  
22 overlook this.

23           My concern is that the futures market are such an  
24 important integral part of our whole agricultural marketing  
25 system. Now USDA is coming out with a report. I just quote

1 from it.

2 It says, "USDA is sympathetic to the Treasury  
3 position of closing tax straddle loophole of income  
4 earned on unrelated sources."

5 I am sympathetic with that. I think we should do it.  
6 However, closing the tax straddle option to floor traders  
7 would greatly reduce their incentives to trade in their  
8 own account.

9 USDA goes on to say that "While it is clear there  
10 is abuse of the futures' markets to avoid taxes should be  
11 minimized, care should be taken to avoid constraining  
12 trading activities which, while they may result in tax  
13 savings, nevertheless, serve to improve the pricing  
14 efficiency and liquidity of futures' markets, thereby  
15 help assure their markets for agriculture products better  
16 reflect underlying supply and demand conditions."

17 I wish there were some way, Mr. Chairman, that this  
18 issue could be addressed in a more careful understanding of  
19 just what we are doing in these markets.

20 What I am afraid of is, here we are cutting back  
21 on the food stamp program, as the Chairman well knows, we  
22 may end up causing the prices to be higher of groceries to  
23 the users, the consumers, and the prices lower to the farmers  
24 because we remove this liquidity out of this situation.

25 We have never had a mark to market taxing system, to

1 my knowledge.

2 Mr. Chapoton. Senator, these markets preceded the  
3 tax system. They certainly operate independently of the tax  
4 system.

5 We do not think they need a lower tax or opportunity  
6 to defer tax altogether or to convert that to income --

7 Senator Symms. I agree with that. The part I am  
8 having a problem with is the mark to market part. I think  
9 that is what the USDA economicsts are talking about, too.

10 The mark to market principle has never been used  
11 in the U. S. Tax Code; is that right?

12 Mr. Chapoton. The mark to market principle has not  
13 been used. No, it is only utilized in the futures markets  
14 in any event, but it has never been used before. That is  
15 correct.

16 Senator Symms. Well, it is used in the securities  
17 markets all the time.

18 Mr. Chapoton. No. No.

19 The securities markets you have on a margin account  
20 and you can borrow against.

21 Senator Symms. Well, now wait a minute. If a floor  
22 trader on the New York Stock Exchange, and I am amazed the  
23 stock exchanges haven't been more interested in what is  
24 happening here, because I would think they would be next,  
25 buy stock for say \$10 a share, the price goes to \$100 a

1 share and then he sells that stock against the block or  
2 gives us his dividends in order to do that.

3 But he has that money. If he is 20 years old and  
4 he lives to be 80, and never makes another transaction on  
5 it, he has that money his entire lifetime, never paying a  
6 tax on it.

7 Is that correct?

8 Mr. Chapoton. Well --

9 Senator Symms. That is the same thing as a futures  
10 contract.

11 Mr. Chapoton. Well, he has to in that case, he would  
12 have to borrow the stock.

13 Senator Symms. Except that a futures contract does  
14 finally expire. Most of this income is deferred and he  
15 has to pay taxes on it sooner or later.

16 Mr. Chapoton. In dealing in stock, you have to  
17 borrow the amount. There is no system in the stock market  
18 whereby you get on a daily basis, your accrued gains or  
19 you have to pay your accrued losses.

20 You can borrow -- it is true, against your improved  
21 position. You have to pay a cost on borrowing. In the  
22 futures exchange that is not the case. You simply -- they  
23 do mark to market. They receive the amount daily as the  
24 price, as the one leg of a contract goes up and now they  
25 do not pay tax on that, even though they have the cash.

1           They do not get a deduction for the amount they have  
2 to put up on the leg that goes down.

3           We are saying the most equitable way is to tax them  
4 currently on the difference on that tax, on an annual  
5 basis.

6           Senator Symms. Well, it would seem to me like it  
7 would be better to have a hedge trade count as one  
8 transaction, but I understand that is very difficult.

9           Mr. Chapoton. We started out that way, too, and the  
10 traders told us, and they convinced us it is virtually  
11 impossible to determine when there is a hedge in the many  
12 transactions that they are involved in.

13           Senator Symms. Mr. Chairman, I would just ask,  
14 maybe there is no sympathy on the Committee for the position  
15 that I feel like we are rushing into this thing head long.

16           Is there any way this could be put on as a Committee  
17 amendment on the tax bill until USDA can give us a report  
18 or to delay this until the second tax bill?

19           I understand that the incentive, of course, from  
20 the Committee's standpoint is if they think there is  
21 actually a \$1 billion out here to add to the tax bill.  
22 Well, that is certainly something I can see has an encourage-  
23 ment for people.

24           But, I really feel very concerned about what is  
25 going to happen to the best system of marketing of



1 agricultural products anyone has in the world, is what we  
2 have had in the United States.

3 We are talking about making a major change here in  
4 just a few days.

5 The Chairman. Well, it has been a matter that -- I  
6 would just say to the Senator from Idaho, it has been a  
7 matter that has been in the public domain for many months.  
8 In fact, it was discussed I think earlier this year in a  
9 colloquy on the Senate floor or late last year, I can't  
10 remember the time.

11 Then I indicated that we would address this at the  
12 earliest opportunity. I think I made that pledge to  
13 Senator Moynihan and Senator Metzenbaum, who may not yet  
14 feel we have gone far enough.

15 I hope you don't focus on the \$1 billion. I don't  
16 want anybody to rush in with amendments to take care of  
17 that. That is not the purpose of the amendment to add  
18 revenue to the bill to permit additional amendments to  
19 be adopted.

20 The purpose is to address what is a real problem  
21 and one we would have to address probably the first order  
22 of business on the Senate floor.

23 It seems to me that we have now reached a point  
24 where there have been negotiations. I am certain those in  
25 the industry are not totally satisfied with this package.

1 If it in fact disrupts markets, we will take another  
2 look at it.

3 I understand the USDA may be rushing out a report  
4 saying this in some way might do violence to farmers. But  
5 I haven't from any farmers.

6 So, I would just hope we could proceed with the  
7 proposal and if in fact we found that we have gone too far  
8 or in the wrong direction, I assume we could reverse our-  
9 selves.

10 Senator Danforth.

11 Senator Danforth. Thank you, Mr. Chairman.

12 Mr. Chairman, this is a matter of -- which is quite  
13 technical. I remember when the explanation was made in the  
14 Committee during the hearing, it took some doing to be able  
15 to explain exactly how it works.

16 I have had concern expressed to me by a variety of  
17 individuals that it is possible in drafting legislation to  
18 correct the problem of straddles, and there clearly is a  
19 problem with them, to do damage, to do the kind of violence  
20 to the normal workings of the economy that Senator Symms  
21 has mentioned.

22 I am not sure whether we have taken care of that or  
23 not. I am aware of the fact that a number of people have  
24 voiced concern to me.

25 I would simply like to ask Mr. Chapoton, if Treasury

1 in the process of addressing this question, and particularly  
2 in the last week or two, has had the opportunity to meet  
3 with people who have expressed concerns and whether in your  
4 opinion, if you have met with them, whether in your opinion  
5 you have exceeded in working out the problems?

6 Mr. Chapoton. Senator, we have met with them at  
7 length. I think the entire question boils down to the  
8 point that if you are making traders pay additional tax,  
9 more tax than they now pay, and under this proposal, they  
10 would certainly not pay tax comparable to other people,  
11 traders and other securities industries, even, but they  
12 would pay more tax than they do under current law, will that  
13 be a sufficient disincentive for them to not operate so  
14 that the market is somehow damaged beyond the point anyone  
15 would want it affected.

16 We studied that. There is no way to answer that  
17 scientifically, but we certainly conclude that it would not  
18 irreparably damage the markets. It would take away some  
19 trading.

20 Indeed, the basic proposal that everyone agrees to,  
21 that is that you cannot, that outsiders cannot shelter their  
22 income by coming in to the straddles, that is going to  
23 remove a lot of activities from the market.

24 But, we think the market in the long run will work  
25 better if you take away these tax distortions that are now

9  
1 occurring, and they certainly do occur when you look at the  
2 -- chart out the transactions over the year they occur, you  
3 can see what is happening.

4 We think this additional tax on traders will not have  
5 a significant adverse impact on the viability of the markets.

6 Senator Symms. Would you comment on the USDA's  
7 statement?

8 Mr. Chapoton. We have worked with the USDA informally,  
9 throughout the development of this proposal. They were given  
10 a copy of our original testimony, in this regard.

11 They said at that time, and we certainly agreed, that  
12 they wanted to work with us. They did not express any grave  
13 reservation affecting the viability of the markets.

14 We have not seen the report that you referred. We did  
15 hear about it. We did hear about it yesterday. But we  
16 simply have not heard any official expression of concern from  
17 them.

18 Senator Symms.. Well, Mr. Secretary, my concern is  
19 that the information I am getting is that the head economist  
20 down at USDA now has really started looking at this and is  
21 becoming very concerned of the liquidity that this may cause.

22 I know, for example, that the Chicago Board of Trade  
23 is 134 year old. We now have had all this Government regu-  
24 lation for the last 7 or 8 years. I wonder how they got  
25 along so well before we had the Commodity Futures Trading

0  
1 Commission, how they lasted that first 125 years always seems  
2 to escape the people who want to have more regulation.

3 Now this issue on this tax thing is going to have,  
4 I think, a tremendous, it has a potential anyway to have a  
5 tremendous impact on the agricultural markets and on the  
6 consumers of agricultural products in the United States if  
7 it in any way interferes with the liquidity from farm to  
8 market activities in the country and in our exporting  
9 business.

10 I just -- Mr. Chairman, I guess I would still say  
11 that I certainly am in favor of what Senator Moynihan is  
12 trying to do.

13 I think we certainly ought to try to keep out people  
14 that make big incomes somewhere else and use this as some  
15 mechanism to try to get away from being able to pay their  
16 fair share.

17 I really think it would be wise for the Committee  
18 to just delay this until, even if it could follow on in  
19 two weeks or something, if we want a time certain to make  
20 people more complete. Maybe I would end up voting for this.

21 I personally don't feel like I could vote for this  
22 coming from a state that not only produces agriculture  
23 products, but metals products, sugar, silver and so forth,  
24 that use the New York, the Chicago markets every day as  
25 far as their mechanism to provide liquidity, not knowing

1 any more about it than we know.

2 I know you worked on it, but USDA, from my information  
3 is saying it is going to cause problems. Everybody I have  
4 known that is in the commodity business tells me that it  
5 will cause a lack of liquidity. Of course, they have an  
6 interest in it, but as they should, but they also, I think  
7 are sincere in their concern.

8 Senator Long. Mr. Chairman.

9 The Chairman. Senator Long.

10 Senator Long. Thank you, Mr. Chairman.

11 I just think we have to act in this area. The public  
12 gains a perception that millionaires don't pay taxes and  
13 they do that because situations like this receive a great  
14 deal of publicity.

15 Now members of this Committee have had information  
16 made available to them that all sorts of people who made  
17 more than \$1 million in a year, some of them made more than  
18 \$10 million, and use this device to avoid paying any income  
19 tax at all.

20 The public is outraged about that kind of a thing.  
21 It undermines the confidence of the people in a system.  
22 They gain the impression that there is 100 people getting  
23 away with this kind of mischief for every one that is  
24 actually doing it.

25 But that type thing has to be taken care of in order

1 to maintain the public's confidence in the justice of our  
2 system.

3 The average little fellow goes down and pays taxes  
4 on his \$10,000 of income. It outrages him to hear about  
5 some millionaire who made all that money and paid nothing.

6 Now, the Secretary of the Treasury would certainly  
7 understand this fellow. Anybody in America would understand  
8 it.

9 I would like to ask Mr. Chapoton if the Secretary  
10 of the Treasury is aware of what we are talking about doing  
11 here and if he thinks this is a fair answer to the problem.

12 Mr. Chapoton. Senator, the Secretary has excused  
13 himself from this problem because of the relationship of  
14 his former firm with the dealings in commodity futures.

15 So, he -- but he does support some legislation  
16 dealing with the problem he knows exists and we all know  
17 exists.

18 But, he has excused himself from the details of this  
19 proposal.

20 Senator Long. I would think that if he thought this  
21 was going to destroy the market, any market, be it the  
22 New York market or the Chicago market, he would find some  
23 way to communicate. I don't care how he did it, if he had  
24 to do it by smoke signal.

25 (Laughter.)

1           Senator Long. He would find some way to say, look,  
2 I think that this could do a great deal of harm to this  
3 country.

4           I have visited with him about a number of matters.  
5 We have mentioned this subject. I am fully impressed that  
6 he is aware of what talking about doing here. If he  
7 thought it was something very bad, I think he would be  
8 telling us.

9           Mr. Chapoton. I certainly think that is true,  
10 Senator Long. In addition, we are all concerned about the  
11 effect on the markets. We have considered this aspect of  
12 the problem from the outside.

13           We think this proposal is fair, and as I stated  
14 earlier, would not have the adverse effect that Senator  
15 Symms is concerned about.

16           Senator Long. Now I am not sure we have the best  
17 answer here. I am not sure what you are recommending is  
18 the best way to do it.

19           It might be we would be able to improve on it. But  
20 the Chairman of the Committee, Mr. Dole, in good faith, is  
21 trying to move a bill along, and he is doing that because  
22 the President of the United States is pushing him and  
23 pushing both committees to do something.

24           If someone can find a better answer, they can look  
25 at this amendment and this Committee Report and we can still



1 consider it and offer floor amendments or make some changes  
2 if people can show us that something can be done.

3 But I would have to insist that we can't ignore all  
4 the publicity that has occurred on this subject and pretend  
5 we don't know what is going on.

6 I just think we have to do something here. As far  
7 as I am concerned, if someone can show us a better answer  
8 and maybe they can, between now and the time we finally  
9 act on this thing on the floor, I am willing to consider  
10 any of that.

11 But, I don't think we ought to vote to report this  
12 bill without doing something on this subject. Otherwise,  
13 it looks as though we are just not willing to close tax  
14 loopholes.

15 May I say that I once shared the problem Bob Dole  
16 has. I feel sensitive when somebody criticizes the Finance  
17 Committee. I think we would be subject to criticism. Having  
18 had all the publicity that has occurred during this year  
19 on this subject, if we proceed to pass a major tax bill that  
20 provides a lot of additional benefits to various people and  
21 which we believe is justified, but does nothing about this  
22 big loophole here.

23 I take it that you in good faith are trying to see  
24 that we are not going to have someone who in economic terms  
25 made \$1 million or even \$10 million and paid us no income

1 tax in that year.

2 Mr. Chapoton. That is correct.

3 Senator, we have spent a great -- we do not feel like  
4 we need more time on this. We have spent a great deal of  
5 time on it. We think --

6 The Chairman. The staffs spent a lot of time on it.

7 Mr. Chapoton. We think we have developed a proposal  
8 that works well. And, as I stated earlier, we would have  
9 proposed a higher rate of tax in the effective 32 percent  
10 rate that Senator Moynihan is proposing.

11 The Chairman. Senator Bentsen.

12 Senator Bentsen. Mr. Chairman, first let me  
13 congratulate Senator Moynihan on the amount of work that  
14 has been done here. There is no question but what there  
15 has been done here and there is no question but what there  
16 is major abuse here.

17 I would certainly agree with Senator Long and what  
18 he has stated and that we must take action.

19 I just have one question. When you make a major  
20 change in the rules, a question of whether you are doing it  
21 in a retroactive or prospective basis.

22 Mr. Chapoton. Senator, as I understand the proposal,  
23 there would be transitional rules. It is retroactive to  
24 earlier this year, however.

25 Senator Bentsen. What?

1 Mr. Chapoton. Earlier in 1981.

2 The Chairman. Ours would be June.

3 Senator Moynihan. We are saying it is retroactive to  
4 yesterday.

5 Senator Bentsen. I see.

6 Mr. Chapoton. The earlier proposal would have gone  
7 back.

8 The Chairman. The House bill would make it January  
9 26.

10 Senator Bentsen. But we are talking about June in  
11 this bill?

12 The Chairman. Yes.

13 Senator Bentsen. Thank you very much, Mr. Chairman.

14 The Chairman. Senator Symms.

15 Senator Symms. Mr. Chairman, I will make one more  
16 suggestion to the Committee. So that everybody understands,  
17 what we will be doing with this is taxing unrealized gains.

18 In other words, you will tax them, if the price of  
19 some commodity is a certain price on December 31, then they  
20 bought it at \$1 a bushel less, it is \$7.00 for soybeans,  
21 on January 1, the price starts going down, they start losing  
22 money, they will still pay taxes on what the price was on  
23 December 31.

24 Mr. Chapoton. They will pay tax on the mark to  
25 market on December 31. It is difficult to call it

1 unrealized, because they do have the cash.

2 Senator Symms. Well, they have the credit in their  
3 account.

4 Let me just say then as a suggestion to you, Senator  
5 Moynihan, I can see that the Committee is inclined to move  
6 forward with this, just make it without prejudice, that  
7 maybe in the next two weeks that a solution other than  
8 mark to market or at least get that report.

9 I can't believe that there couldn't be some way we  
10 can tax these actual tax evaders, without completely  
11 changing the taxing code. We are not talking about going  
12 out here and taxing a guy on his house, because it wouldn't  
13 be \$50,000 to \$100,000, it went up or he buys stock and  
14 it goes from \$50 to \$100. We are not talking about taxing  
15 him, but on a commodity we are.

16 Those markets are so volatile, it just seems like  
17 there should be some better way to approach this problem.  
18 I would certainly want to keep the option open as one  
19 member of the Committee, anyway, to come in with a modified  
20 version of this Moynihan Amendment.

21 I am not ready to vote for it the way it is today.  
22 I just feel there are too many questions to be answered.  
23 I am sympathetic with the Chairman's position. I don't  
24 think we can. I agree with Senator Long. I don't want to  
25 disregard what is obviously a problem. I think we all have

1 that problem. We have to have an equitable taxing code.  
2 But, the real answer, of course, is to lower the rates.  
3 Take the incentive away from people who look for tax  
4 loopholes.

5 We ought to continue to preach lowering the rate  
6 until we finally get away from all these problems.

7 The Chairman. Well, I appreciate the Senator's  
8 position. Certainly everybody can reserve their options  
9 to offer amendments before we complete final action or  
10 again on the floor.

11 I want to ask one question of the Joint Committee.  
12 In all the work that has been done on this proposal, we  
13 haven't opened the door to some other loophole, have we,  
14 that will be --

15 Mr. McConaghy. We hope not, Senator Dole. To our  
16 knowledge, we have not.

17 Senator Moynihan. Mr. Chairman, may I make one  
18 observation. I would like this to be very clear. Perhaps  
19 I could put the question to the Secretary.

20 The idea that we are taxing unrealized gains, I  
21 must reject that. I believe in tax law what we are doing  
22 is taking gains of which there has been, I think your  
23 phrase is "constructive receipt."

24 It is as if you have a bank account and there was  
25 interest accumulated. You may not have drawn out that

1 interest. It is still there for you to do. You must in  
2 fact pay taxes on it at the end of the year. The principle  
3 that the constructive receipt has occurred.

4 Because if some hypothetical increase -- it is not  
5 as if some hypothetical increase in value has taken place,  
6 it is actual income.

7 Mr. Chapoton. That is correct, Senator Moynihan. If  
8 the cash is not withdrawn, there are many instances in the  
9 tax law where a taxpayer, at the end of the year, is  
10 deemed to have constructively received income that he  
11 simply has not received.

12 The rule in the case is that a taxpayer may not  
13 turn his back on income that there is no restriction  
14 against his receipt, and thereby avoid taxation of it.

15 In many cases, they will withdraw the cash. But  
16 if they do not, they do not avoid tax.

17 Senator Moynihan. But if they wish, they can.

18 Mr. Chapoton. Correct.

19 Senator Moynihan. That being their choice, it is  
20 in fact --

21 Mr. Chapoton. The reverse is true that the deduction  
22 side will be also available on the loss side.

23 Senator Moynihan. If you have lost money, you have  
24 in fact lost it and it is not as against a stock bought  
25 in the future where there is no transaction at that time

1 and so there is no gain or loss. You deduct losses as well  
2 as pay on gains.

3 Mr. Chapoton. That is correct.

4 The Chairman. I wonder if we might have a record  
5 vote on this.

6 Mr. Lighthizer. Mr. Packwood.

7 (No response.)

8 Mr. Lighthizer. Mr. Roth.

9 Senator Roth. Aye.

10 Mr. Lighthizer. Mr. Danforth.

11 Senator Danforth. Aye.

12 Mr. Lighthizer. Mr. Chafee.

13 The Chairman. Aye.

14 Mr. Lighthizer. Mr. Heinz.

15 Senator Heinz. Aye.

16 Mr. Lighthizer. Mr. Wallop.

17 (No response.)

18 Mr. Lighthizer. Mr. Durenberger.

19 Senator Durenberger. Aye.

20 Mr. Lighthizer. Mr. Armstrong.

21 (No response.)

22 Mr. Lighthizer. Mr. Symms.

23 Senator Symms. No.

24 Mr. Lighthizer. Mr. Grassley.

25 Senator Grassley. Aye

1 Mr. Lighthizer. Mr. Long.  
2 Senator Long. Aye.  
3 Mr. Lighthizer. Mr. Byrd.  
4 Senator Byrd. Aye.  
5 Mr. Lighthizer. Mr. Bentsen.  
6 Senator Bentsen. Aye.  
7 Mr. Lighthizer. Mr. Matsunaga.  
8 Senator Matsunaga. Aye.  
9 Mr. Lighthizer. Mr. Moynihan.  
10 Senator Moynihan. Aye.  
11 Mr. Lighthizer. Mr. Baucus.  
12 Senator Baucus. Aye.  
13 Mr. Lighthizer. Mr. Boren.  
14 Senator Boren. Aye.  
15 Mr. Lighthizer. Mr. Bradley.  
16 Senator Bradley. Aye.  
17 Mr. Lighthizer. Mr. Mitchell.  
18 Senator Mitchell. Aye.  
19 Mr. Lighthizer. Mr. Chairman.  
20 The Chairman. Aye. Senator Wallop and Senator  
21 Packwood vote aye.  
22 (Pause.)  
23 The Chairman. The vote on this amendment is the  
24 yeas are 18. The nays are 2. The amendment is agreed to.  
25 Senator Symms. Mr. Chairman, could I make one more



1 question to Treasury, maybe an amendment is needed now since  
2 this amendment has passed.

3 Is there any necessity for a time or how does Treasury  
4 work it out, if there is some taxpayer, a trader that is  
5 going to have a legitimate trader, who might have a big  
6 tax liability, as a result of this amendment, will they have  
7 two or three years to pay off the liability or is there any  
8 -- what does the law state on that?

9 Mr. Chapoton. I understand it, we have considered  
10 some type of, I guess you would say, transitional rule.  
11 There is nothing in this proposal that deals with that.

12 Senator Symms. I would yield to the Chairman and  
13 some of the more experienced members of the Committee. Is  
14 there any necessity for that or does Treasury --

15 The Chairman. We have indicated, I might add --

16 Senator Symms. A transitional period.

17 Senator Moynihan. If the rule is you pay tax once  
18 a year on your income, if you have the income this year,  
19 you pay your tax.

20 Senator Symms.. How far back does this go though?

21 Mr. Chapoton. It does not go back at all, but it is  
22 true that people will have rolled income into this year and  
23 therefore, may, as the result of not having paid tax in  
24 previous years, have additional income in this year.

25 We do not have a special rule on this, for this, but

1 we do, keep in mind, have a special rate of tax.

2 It is suggested to me it is about the same rate that  
3 they would have recognized, they would have paid, had they  
4 recognized long-term capital gain in the earlier years.

5 It is certainly a much lower rate, the 50 percent  
6 rate they would have to pay on ordinary income.

7 The Chairman. Senator Heinz.

8 Senator Heinz. Mr. Chairman, thank you.

9 There is one minor modification I want to make in  
10 the pending amendment which is to make it a 10-year  
11 carry back.

12 I wish I didn't have to do that, but I have received  
13 some suggestions I thought I better heed.

14 The Chairman. Does that change the revenue figures?

15 Senator Heinz. It probably saves a little revenue.

16 Mr. Chapoton. It would save about a quarter to a  
17 third of the revenue.

18 Senator Heinz. It would save about a third.

19 (Laughter.)

20 The Chairman. This would only be a \$3 billion  
21 amendment instead of a \$4 billion?

22 Senator Heinz. Maybe a little less.

23 The Chairman. Maybe a little less.

24 Senator Heinz. It is very affordable now, Mr.  
25 Chairman.

1 The Chairman. Right.

2 We can go back to where we were. I was ahead when  
3 we ended.

4 Let's start the roll call over then.

5 Mr. Lighthizer. Mr. Packwood.

6 (No response.)

7 Mr. Lighthizer. Mr. Roth.

8 Senator Roth. No.

9 Mr. Lighthizer. Mr. Danforth.

10 The Chairman. No.

11 Mr. Lighthizer. Mr. Chafee.

12 The Chairman. No.

13 Mr. Lighthizer. Mr. Heinz.

14 Senator Heinz. Aye.

15 Mr. Lighthizer. Mr. Wallop.

16 The Chairman. No.

17 Mr. Lighthizer. Mr. Durenberger.

18 Senator Durenberger. Aye.

19 Mr. Lighthizer. Mr. Armstrong.

20 Senator Armstrong. No.

21 Mr. Lighthizer. Mr. Symms.

22 Senator Symms. No.

23 Mr. Lighthizer. Mr. Grassley.

24 Senator Grassley. No.

25 Mr. Lighthizer. Long.

1 Senator Long. Aye.  
2 Mr. Lighthizer. Mr. Byrd.  
3 Senator Byrd. No.  
4 Mr. Lighthizer. Mr. Bentsen.  
5 Senator Bentsen. Aye.  
6 Mr. Matsunaga.  
7 Senator Matsunaga. No.  
8 Mr. Lighthizer. Mr. Moynihan.  
9 (No response.)  
10 Mr. Lighthizer. Mr. Baucus.  
11 Senator Baucus. No.  
12 Mr. Lighthizer. Mr. Boren.  
13 Senator Boren. No.  
14 Mr. Lighthizer. Mr. Bradley.  
15 (No response.)  
16 Mr. Lighthizer. Mr. Mitchell.  
17 Senator Mitchell. Mr. Chairman, I was not present  
18 during the discussions. I will pass and record my vote.  
19 Mr. Lighthizer. Mr. Chairman.  
20 The Chairman. No.  
21 (Pause.)  
22 The Chairman. I think Senator Heinz has another  
23 amendment.  
24 Senator Heinz. No.  
25 The Chairman. This vote, yeas, 13; the nays, 4.  
The amendment is not agreed to. It is 13 to 5, Senator

1 Bradley voted in the affirmative.

2 Mr. Chapoton.

3 Mr. Chapoton. Mr. Chairman, it has been suggested to  
4 me that I ought to clarify what was suggested on the decision  
5 on allowing longer lives to be selected. I think we set a  
6 25-year life, for five-year property.

7 I think it would be advisable, this would be a fourth  
8 option. It would be advisable for each class of property to  
9 be able to elect the next longer life for earnings and profit  
10 purposes. That is, the earnings and profits class, earnings  
11 and profits life for the property in the class longer than  
12 the class to which it is assigned.

13 For example, the three-year property could select three  
14 years, five years, twelve years, because it is, twelve years  
15 the earnings and profits life for the five year class.

16 So, each of the properties would have that additional  
17 option.

18 Senator Bentsen. Mr. Chairman, could I ask a question  
19 on that?

20 The Chairman. Senator Bentsen.

21 Senator Bentsen. Thank you, Mr. Chairman.

22 It is something comparable on the 15 year composite  
23 on the buildings. What would be the problem of giving the  
24 option to the individual to take present depreciation  
25 schedules if they wanted to, which would save some money for

1 Senator Boren. Mr. Chairman.

2 The Chairman. Yes.

3 Senator Boren. Thank you, Mr. Chairman.

4 Let me ask a question, because as you know, I do want  
5 to offer an amendment in relationship to new oil. Are we  
6 planning now, are you still planning now to work through  
7 until you finish now or are you planning to break and come  
8 back this afternoon?

9 I just wondered what our schedule was.

10 The Chairman. I think, because we have had a couple  
11 of interruptions, roll calls, we can't finish right now.  
12 But I think we have a couple of amendments we could still  
13 act on before --

14 Senator Boren. Well, I would be glad to defer mine  
15 until this afternoon, if we are --

16 The Chairman. Maybe we could come back at 2:00 o'clock.

17 I know that Senator Bradley has another amendment. I  
18 am certain you have an amendment. Senator Matsunaga. I  
19 assume we will pick up quite a few during the noon hour.

20 (Laughter.)

21 The Chairman. Senator Danforth has a very short amend-  
22 ment.

23 Senator Danforth.

24 Senator Danforth. Mr. Chairman, the bill in present  
25 form would increase the net operating loss carry overs to

1 seven years into 10 years.

2 Mr. Chapoton. Senator, could you repeat that please?

3 Senator Danforth. The bill in its present form would  
4 increase the net operating loss carry overs from 7 years to  
5 10 years.

6 There is presently a special provision for transporta-  
7 tion corporations giving them a 9 year carry over or two  
8 years more than is generally available.

9 However, it is my understanding that the bill in its  
10 present form, the 9 year carry over is maintained for  
11 transportation corporations, companies.

12 It would seem to me that the period for transportation  
13 periods should be extended if everything else is.

14 Mr. Chapoton. We would classify that as a drafting  
15 error, Senator. I agree. It should be 10 year for all  
16 taxpayers.

17 Senator Danforth. You wouldn't go for the same differ-  
18 ential.

19 Mr. Chapoton. No. No. We would prefer that we put  
20 them all together.

21 Senator Danforth. Very well.

22 So you would be willing to agree to that change?

23 Mr. Chapoton. Yes, we would be willing to go 10 years  
24 for transportation companies.

25 Senator Danforth. That is the amendment.

1 Without objection, the amendment will be agreed to.  
2 Senator Long.

3 Senator Long. Mr. Chairman, I propose a measure with  
4 about 30 of us as co-sponsors, seeking to extend employee  
5 stock ownership and take care of some of the technical  
6 problems involved in that area.

7 I have made a point to see if the President of the  
8 United States was aware of what I was suggesting, and the  
9 Secretary of the Treasury.

10 They both expressed great sympathy for what we are  
11 trying to do in this area.

12 They also expressed concern about the cost of all this.  
13 I believe we have worked out an agreement that the Treasury  
14 can accept and it drastically reduces the cost of it.

15 Of course, in doing so, it reduces the amount of the  
16 progress we can make. But, this I believe, in terms of a  
17 cost constraints, is about the best compromise that could  
18 be worked out.

19 I think that you are aware of it, Mr. Chairman.

20 I would like to ask if Mr. Gates, who is rather a  
21 specialist on this subject could explain to us what the  
22 proposal is which I believe the Treasury could accept.

23 Would you mind explaining, Mr. Gates?

24 The Chairman. Could I say before he begins, I have  
25 discussed this with Secretary Regan. Senator Long has



1 indicated accurately the Treasury does support the proposal,  
2 as agreed to.

3 Senator Long. Would you mind just running through  
4 briefly what the suggestion is, Mr. Gates?

5 Mr. Gates. Thank you, Senator Long and Mr. Chairman.

6 The first proposal -- under current law you have an  
7 additional 1 percent investment credit for employee stock  
8 ownership plan, plus an additional half percent, provided  
9 employees put up a matching amount of cash.

10 In current law, that would expire at the end of 1983.  
11 The proposal would terminate that at the end of 1982, and  
12 phase in a credit based on payroll.

13 It would be a half a percent credit for 1983, three-  
14 quarters of a percent for 1984; 1 percent, for 1985 and  
15 thereafter.

16 The rationale being to expand this credit to all sorts  
17 of corporations, capital intensive, as well as labor intensive.

18 Also, three provisions that are interrelated that  
19 relateto the use of what we call leveraged employee stock  
20 ownership plans where a company borrows money to buy stock  
21 from employees, all of which are designed to make such  
22 financing more attractive.

23 Under current law, a company with a stock bonus type  
24 of ESOP can contribute up to 15 percent of pay, to repay  
25 principal on an ESOP loan.

1           This proposal would increase that to 25 percent of  
2 pay.

3           In addition, under current law, contributions to pay  
4 interest expense on an ESOP loan are included in computing  
5 that percentage of pay limitation.

6           The proposal would permit deduction of interest without  
7 regard to that limitation.

8           The third related provision under current law, the  
9 amount of contributions that can be added to employees'  
10 accounts each year is limited to a percentage of pay or an  
11 index flat dollar amount, amounts that cannot be added to  
12 those accounts, cannot be contributed for the employee to  
13 take a deduction.

14           The proposal would remove this annual addition  
15 limitation as it applies to interest expense of an ESOP  
16 loan and to forfeitures.

17           There are also several technical amendments relating  
18 to how ESOPS operate. Under current law, a leveraged ESOP  
19 and in a closely held company, can distribute cash in lieu  
20 of stock, provided an employee can demand stock.

21           Under the proposal, if the charter or the by-laws of  
22 a sponsoring corporation limit ownership of outstanding shares  
23 to employees, for example, through an ESOP, then the ESOP  
24 may distribute cash and a participant could not demand stock.

25           The rationale being to keep that 100 percent owned by

1 employees.

2           The second is a related change designed to encourage  
3 the use of leverage to ESOP by financial institutions.

4           Under current law, a company may distribute cash or  
5 employer's securities. If the securities are not tradeable  
6 on the established market, the employee has a right to  
7 require that the employer repurchase those securities, that  
8 being a put option.

9           Banks are generally prohibited by law from purchasing  
10 their own stock, because it is regarded as an impairment of  
11 capital.

12           The proposal provides that a bank may distribute cash,  
13 but if a participant insists on stock, he would have no  
14 right to a put option requiring the repurchase of the stock.

15           The third is a technical amendment, correcting a  
16 clerical error of prior law which would extend the cash  
17 distribution option and the put option to start bonus plans.

18           The fourth would shorten the put option period and the  
19 fifth and final provision would change current law to permit  
20 an exception to the current distribution rules regarding  
21 distributions out of tax credit ESOPS where in the case where  
22 you have a sale of all substantial assets of a division of  
23 a stock of subsidiary, and a transfer of a participant to an  
24 employment of the acquiring company.

25           Senator Long. Some of these amendments, with the

1 exception of the first amendment, Mr. Chairman, and members,  
2 there is very little cost to the others.

3         They do sound technical, but I have been assured by  
4 people who are familiar with the employee stock ownership  
5 movement, that these so-called technical amendments will do  
6 a great deal to help organize employee stock ownerships where  
7 the companies are making a contribution, as well as the  
8 employees putting some of their own money into it.

9         I really believe that this would be a very important  
10 forward move for employee stock ownership, if this can be  
11 agreed to by the Congress.

12         The Chairman. Could I ask the Joint Tax Committee, have  
13 you had an opportunity to analyze this provision?

14         Mr. McConaghy. We have, Mr. Chairman. Many of the  
15 provisions were in the bill that was reported by the Senate  
16 Finance Committee, last year.

17         Some were, however, dropped out, because there were  
18 concerns with them. So it does contain pretty much just a  
19 cut down version of technicals, aside from the one major --

20         The Chairman. As I understand the Joint Committee  
21 sees no problem with the amendment.

22         Mr. McConaghy. That's correct.

23         The Chairman. The Treasury, I think I have indicated  
24 what Secretary Regan has indicated to me.

25         Mr. Chapoton. That is correct. You indicated correctly

1 We worked with the Senator and his staff on this.

2 Senator Long. I must say, Mr. Chairman, and members,  
3 that the Treasury is very sympathetic about it. They are  
4 tough about the money, but they are very sympathetic about  
5 the problem. I want to thank them for that.

6 I want to thank the Secretary and the President.

7 The Chairman. Without objection then, the amendment  
8 will be agreed to, on the same basis, on a tentative basis.

9 Thank you, Senator Long.

10 Senator Matsunaga, if you have some amendments we  
11 could deal with.

12 Senator Matsunaga. Thank you, Mr. Chairman.

13 Mr. Chairman, I have a very non-controversial matters  
14 I think we can attend to.

15 This is under ACRS. This is a matter which was agreed  
16 to last year. It was included in the Finance Committee's  
17 tax bill.

18 The Chairman. On horses?

19 Senator Matsunaga. Horses, yes.

20 Under the proposed ACRS, I believe there was an  
21 unintended anomaly included, specifically with regard to  
22 horses; that is, race horses and breeding horses.

23 The taxpayer or the horse owner would have less  
24 incentive under the proposal of ACRS than under present law.

25 Under current law, a yearling used in racing, has a

1 four year write-off, at 200 percent declining balance.

2 Under the ACRS, the taxpayer must stretch out the  
3 depreciation period to five years, at 150 percent declining  
4 balance initially.

5 An older breeding animal may be written off over a  
6 three year period under current law, but under ACRS the  
7 taxpayer must stretch out the depreciation period to five  
8 years.

9 In all cases other than horses, the extension of the  
10 depreciation period is compensated under ACRS with a full  
11 investment tax credit.

12 But ACRS does not compensate horse owners, for some  
13 strange reason for the longer depreciation period imposed on  
14 horses because horses do not qualify under the investment --  
15 quality for the investment tax credit.

16 Now the exclusion of horses from the investment tax  
17 credit has no sound rationale at all. Other animals are  
18 granted this. That exclusion now creates less benefits for  
19 horses under ACRS than present rule.

20 I therefore propose that the bill extend the investment  
21 tax credit to horses as this Committee did unanimously last  
22 year.

23 Senator Moynihan. Mr. Chairman, may we have order  
24 while the Senator is speaking.

25 The Chairman. Yes. I haven't heard from any horses, but

1 maybe we can hear from Treasury on this provision.

2 (Laughter.)

3 Mr. Chapoton. Mr. Chairman, we have examined this.  
4 As we understand, horses are now depreciated using facts and  
5 circumstances. So it is difficult for us to tell exactly  
6 what life they are. They are excluded from the ADR. Race  
7 horses are excluded from the ADR.

8 So, we are somewhat reluctant to put them in a lower  
9 class, under the argument that they are now getting a life  
10 that we cannot actually confirm.

11 Though, I think that in most cases it is in the -- we  
12 will have to concede that it is in the four year range now.  
13 As I understand it, they do not start taking depreciation  
14 until the horse starts racing and then begins the life of 3  
15 to 4 years under some facts and circumstances.

16 So, we would certainly oppose extending the credit to  
17 race horses. We would not support dropping them. They auto-  
18 matically go into the five-year class, since they do not have  
19 an ADR life.

20 We would not support dropping them into the 3-year  
21 class. We would prefer not to deal with the assets that are  
22 in facts and circumstances in any special way.

23 So, we would not support this amendment. I am not sure  
24 it is -- well, we would just not support that.

25 Senator Matsunaga. Why the discrimination against

1 horses?

2 (Laughter.)

3 Senator Matsunaga. The credit is extended toward all  
4 other animals.

5 Mr. Chapoton. Well, the other animals that have an  
6 ADR life, for some reason historically, we have different  
7 treatment for breeding horses and for work horses. They do  
8 have an ADR life. They are put in, they have an ADR life  
9 of longer than five years and they are put in the five-year  
10 class.

11 Now race horses are not, as I mentioned, do not have  
12 an ADR life, are required, no depreciation until they begin  
13 racing and then depreciate over facts and circumstances.

14 Senator Matsunaga. Are you saying you do not oppose  
15 extension of the investment tax credit for breeding horses?

16 Mr. Chapoton. No. We are not.

17 Senator Matsunaga. You are not opposing that?

18 Mr. Chapoton. We are not supporting. We would oppose  
19 extension of the investment tax credit.

20 Senator Matsunaga. To race horses, but not to breeding  
21 horses?

22 Mr. Chapoton. No. We are opposing extension to  
23 horses.

24 Senator Matsunaga. To horses, period.

25 Mr. Chapoton. Yes.



1           Senator Matsunaga. Of course, that is the same position  
2 which was taken by the Treasury and Treasury has not changed,  
3 although the Committee, despite Treasury's position, did  
4 adopt the amendment last year.

5           The Chairman. I wonder if we might discuss this during  
6 the noon hour if there is any chance to accommodate a  
7 portion of this amendment? If not, we will be prepared to  
8 vote on it when we come back.

9           Maybe Senator Matsunaga could visit with Mr. Chapoton  
10 when we break up here.

11           Do you have any other non-controversial amendments?

12           (Laughter.)

13           Senator Boren. Mr. Chairman.

14           The Chairman. Senator Boren.

15           Senator Boren. Mr. Chairman, I just want to add, I  
16 think Senator Matsunaga has raised a good point. I don't  
17 think we set out in this depreciation proposal to make anyone  
18 substantially worse off than they are now.

19           It does appear, I think, from what Mr. Chapoton has  
20 said, this is certainly possible.

21           Mr. Chapoton. It is possible, yes, Senator Boren.

22           Senator Boren. I personally think Senator Matsunaga is  
23 correct about it.

24           The Chairman. I think --

25           Senator Boren. It should be looked at.

1           The Chairman. I think there is some room for dis-  
2 cussion. Maybe we can find some accommodation. I think we  
3 could probably do it better one on one than ten on one.

4           Senator Chafee. Mr. Chairman.

5           The Chairman. Senator Chafee.

6           Senator Chafee. Mr. Chairman, I just want to say I  
7 have trouble understanding the distinction that why some  
8 animals are treated one way. But, we will have a chance to  
9 discuss that.

10          The Chairman. Now does Senator Bradley have a non-  
11 controversial matter?

12          Senator Bradley. Mr. Chairman, I think it is non-  
13 controversial. It goes to the treatment of oil storage  
14 facilities and the kind of --

15          The Chairman. That is one they were trying to work out.

16          Senator Bradley. Yes.

17          What this is is that if the national goal is to have  
18 as much oil in storage, you should encourage the private  
19 sector to store as well as the Government.

20          The anomaly in the code or in the bill, as it is now  
21 written, is it allows a refiner who has oil storage facilities  
22 to depreciate over five years, but it forces an independent  
23 marketer of petroleum products, who has storage facilities,  
24 to depreciate over 15 years.

25          It seems to me that thwarts the national goal of

1 trying to achieve the maximum of storage in as soon a period  
2 as possible.

3 That is why I raised the question and raised it  
4 yesterday with Mr. Chapoton and was curious what the response  
5 was.

6 Mr. Chapoton. Senator, this -- it is on its face  
7 something of an anomaly. It is not limited to storage tanks.  
8 I do not know quite how widespread the anomaly could be.

9 But let me explain it very briefly.

10 Under existing law, structures, real estate, that is  
11 anything afixed to the ground is excluded from the investment  
12 tax credit and excluded, is not classified as personal,  
13 tangible personal property.

14 Then, there is a special provision that says if it is  
15 not a building and it is real estate, and it is used in  
16 manufacturing, mining, transportation I believe, then it  
17 will be treated as investment tax credit property and will  
18 be treated as Section 1245 property, which basically, under  
19 current law, means it is depreciated more rapidly.

20 We note that under that rule, if it is real property  
21 and it is used in retailing or in a distribution function,  
22 it is not treated -- it is treated as real estate. It is  
23 not eligible for the investment tax credit and is not eligible  
24 for 1245 faster depreciation.

25 We followed, we keyed off of current law in all of

1 these provisions and so that, the anomaly that is in current  
2 law in that respect is continued.

3 Obviously the policy behind the original provision was  
4 to treat manufacturing, the production side more favorably  
5 than the distribution side.

6 If we decide to change that, I think we have to consider  
7 changing it across the board, and we are not at this time  
8 certain of the overall effect.

9 I assume it would not be too great, but we would like  
10 the opportunity to see just how far reaching it might be.

11 In other words, it is beyond storage tanks.

12 Senator Bradley. Well, the point is that if you  
13 confined it to oil storage, if you targeted it specifically  
14 to petroleum products, independent marketers, it would be  
15 consistent with the national goal.

16 But if there is an oil supply disruption and you only  
17 have oil in storage in the Government or refiners and it is  
18 only crude oil, and you have missed the opportunity to  
19 increase the storage of petroleum products dramatically by  
20 allowing independent marketers a faster write off, then it  
21 seems to me that there is a much larger social loss here, an  
22 economic loss, because you will not have sufficient oil or  
23 petroleum products in this case, in stockpile.

24 You know, we both agree, it is an anomaly, but you  
25 know, it is an anomaly that conflicts directly with a stated

1 national goal that is directly related to our national  
2 security which is to have as much oil and petroleum products  
3 in storage as possible to cushion the economy against the  
4 probability of an oil supply disruption.

5 So, what this says is, let's try to encourage in this  
6 bill, an end to the discrimination among potential builders  
7 of oil storage.

8 Mr. Chapoton. So your proposal would limit it to oil  
9 storage tanks?

10 Senator Bradley. Petroleum product storage.

11 Mr. Chapoton. Petroleum product storage.

12 Senator Bradley. Yes.

13 Mr. Chapoton. Make it clear that without regard to  
14 the use or without regard to which type of industry used, it  
15 would be classified the same.

16 Senator Bradley. That's right.

17 Mr. Chapoton. I think we would have difficulty object-  
18 ing to that.

19 The Chairman. In other words you are for that?

20 If it is difficult to object to it, that means you are  
21 for it.

22 (Laughter.)

23 Senator Bradley. Well, thank you very much, Mr. Chairman.  
24 Let's quit now, this might be one I will win.

25 (Laughter.)

1 The Chairman. Right.

2 Senator Bradley. I should say one we are in agreement  
3 on.

4 The Chairman. No, I mean it is another indication of  
5 the bi-partisan input in this legislation.

6 (Laughter.)

7 Senator Bradley. Senator Mitchell said that maybe I  
8 shouldn't say another; maybe I should say the first.

9 The Chairman. Oh, there will be others. You can vote.  
10 Well, are there any other non-controversial amendments  
11 that we can -- do you have a real one?

12 Senator Matsunaga. A real technical one. I believe  
13 the Treasury has no objection to this one. This is relative  
14 to the changing of the bus fuel. Right now the bus operators  
15 pay the tax and then get refunded at the end of each year.

16 The Chairman. That sounds like a second bill item to  
17 me.

18 Senator Matsunaga. Do you know about that?

19 Mr. Chapoton. No, sir.

20 Senator Matsunaga. I have to brief you on that.

21 Mr. Chapoton. Thank you.

22 Senator Matsunaga. I will brief him on that later.

23 The Chairman. Well, we will recess now until 2:00  
24 o'clock. I would like to visit with Mr. Chapoton in my office  
25 for a few minutes.

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Mr. Chapoton. Yes, sir.

The Chairman. Thank you.

(Whereupon, at 12:50 p.m., the hearing recessed, to reconvene at 2:00 p.m., the same day.)

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AFTERNOON SESSION

1  
2           The Chairman. I might announce to the staff we have  
3 a roll call vote. Perhaps, while we are voting, I am  
4 certain why other members are not here right on time, because  
5 of the vote, I would hope we could move very quickly now on  
6 the remaining amendments.

7           There may be a number of them, but I think they can all  
8 be -- we can have quick disposition of them without a great  
9 deal of debate, so we can conclude this process by no later  
10 than 3:30 or 4:00 o'clock.

11           So, in the five or ten minutes we are gone, if the  
12 staff and the Administration will have an opportunity to  
13 get your house in order.

14           I will be right back.

15           (A short recess was taken.)

16           The Chairman. The hearing will come to order.

17           I think while other members are hopefully coming in  
18 this direction, we might review with Treasury, when we  
19 recessed at 1:00 or near 1:00 o'clock, I think I asked Mr.  
20 Chapoton to take a look at the amendments offered by Senator  
21 Matsunaga to see if there was any way we could accommodate  
22 his request.

23           Have you had an opportunity to do that?

24           Mr. Chapoton. On race horses, Mr. Chairman?

25           The Chairman. Yes.



1           Mr. Chapoton. Yes, sir. We have looked at that and  
2 we have decided that we would have to oppose that amendment.  
3 We do not want to extend the credit, the investment tax  
4 credit, beyond the -- its present breadth in the law, in  
5 adoption of ACRS.

6           Race horses, for whatever reason, have not now --  
7 horses do not now get the credit. The life, the period of  
8 recovery for race horses is we think properly in the five-  
9 year class.

10           There are a lot of variations there depending upon  
11 whether the horse might later be used for breeding purposes.  
12 We are not certain where they are on facts and circumstances.

13           We think putting them in five years is a reasonable  
14 way to go.

15           The Chairman. All right. So, when Senator Matsunaga  
16 arrives, we can advise him that that amendment is opposed to.

17           Did he have another amendment, a technical amendment  
18 that he indicated he had an interest in?

19           Mr. Chapoton. He and Senator Bentsen were interested  
20 in possible changes in the at risk limitation. We have  
21 worked with members of their staff. There are some technical  
22 problems that might result, that might -- that we might be  
23 able to accommodate, but we would need further time to work  
24 on these, on the technical aspects of it, particularly, the  
25 particular question is in what circumstances a loan by an

1 unrelated third party might qualify as risk type investment,  
2 even though not a normal banking or commercial finance  
3 institution.

4 We might be able to work that out if we had the  
5 authority of the Committee.

6 The Chairman. I would authorize the Joint Committee  
7 and members of the staff, Finance Committee staff and  
8 members of Treasury, to see if they could come to some  
9 agreement with Senator Matsunaga and Senator Bentsen.

10 If so, to include that language. Unless somebody  
11 objects to that. I will raise that with Senator Matsunaga  
12 and Senator Bentsen.

13 I think I have discussed that with a member of Senator  
14 Matsunaga's staff. I don't know of any objections.

15 Mr. Chapoton. I think that will be fine.

16 We will be happy to work with the staff.

17 The Chairman. As I understand, it is technical in  
18 nature.

19 Mr. Chapoton. It is basically technical in nature,  
20 trying to determine what type of non-recourse loan from  
21 unrelated parties are in fact loans and do not cause the  
22 purchase price of the property to be inflated, to not allow  
23 for an inflation of the purchase price of the property. That  
24 is the basic problem.

25 The Chairman. Let's see if we can work out some of the

1 concerns they have with the Joint Committee and the Finance  
2 Committee staff.

3         Would any other matter -- have you had an opportunity  
4 to discuss the incentive stock option with Senator Bentsen?

5         Mr. Chapoton. Mr. Chairman, on the stock option, our  
6 concern was on the sequential question, that if it were to  
7 be taken out, I think Senator Bentsen would want to be here  
8 to discuss it.

9         The Chairman. I see we have another vote which is  
10 frustrating.

11         Are there any other areas you were looking into during  
12 the noon hour?

13         Has there been a resolution of the first amendment  
14 offered by Senator Heinz?

15         Mr. Lighthizer. It is my understanding, Mr. Chairman,  
16 that Senator Heinz, the vote is 10 to 9, with Senator  
17 Bradley not voting.

18         Senator Heinz has agreed to go along with the proposal  
19 by the Treasury Department.

20         The Chairman. I think a staff member just advised me  
21 he would like to first discuss it with Senator Heinz.

22         Mr. Lighthizer. Then it is still 10 to 9, Senator.

23         The Chairman. Well, we may as well go vote.

24         Senator Chafee. I wonder if we could discuss briefly  
25 the demolition penalty on historic structures? Was that

1 taken up? I was unable to be here this morning.

2 The Chairman. No.

3 Senator Chafee. It is my understanding that Treasury  
4 is reluctant to go above 15 years straight line on that.

5 Mr. Chapoton. That is correct, Senator.

6 Senator Chafee. Because of the difficulty of monitoring  
7 additional years?

8 Mr. Chapoton. That's correct, yes sir.

9 Senator Chafee. But straight line wouldn't bother you?

10 Mr. Chapoton. Straight line wouldn't bother us, no.

11 Senator Chafee: Well, I would ask that that be  
12 included then.

13 Mr. Chapoton. We would support that, definitely.

14 The Chairman. Again, on a tentative basis, without  
15 objection, that would be included.

16 Senator Chafee. I had a talk with Senator Moynihan  
17 who is interested in this also. He would -- both of us  
18 would like to go as far as we could in the time, but I  
19 think, my understanding is he would be agreeable to the 15  
20 years.

21 The Chairman. As I understand, Senator Moynihan has  
22 an amendment. I think Senator Baucus has an amendment.  
23 Perhaps we could go vote and come right back.

24 Have you voted?

25 Senator Baucus. Not this last one.

1 The Chairman. Maybe you could make yours the pending  
2 amendment then.

3 Senator Chafee. Is that the trucking?

4 Senator Baucus. Yes.

5 The Chairman. We will be right back.

6 (A short recess was taken.)

7 The Chairman. The Committee will come to order.

8 Senator Baucus -- see if he is there.

9 (Pause.)

10 The Chairman. Are there any further amendments?

11 (Laughter.)

12 The Chairman. They are probably talking to the  
13 lobbyist now.

14 (Laughter.)

15 The Chairman. Have you had any change of heart since  
16 we left, Mr. Chapoton, on anything?

17 Mr. Chapoton. I can't think of anything, Mr. Chairman.

18 The Chairman. The horses still have to run without a  
19 tax credit?

20 Mr. Chapoton. The horses have not changed. They will  
21 have to run without a credit.

22 The Chairman. I am not certain Mr. Matsunaga would want  
23 a vote on that.

24 Senator Chafee. Well, Mr. Chairman, I would like to  
25 try Mr. Chapoton out on a matter we left a little bit in

1 Limbo.

2 The Chairman. Good.

3 Senator Chafee. That is the going to \$2,000 on the  
4 LIRA's.

5 Mr. Chapoton. We did discuss that back at the office  
6 further, Mr. Chafee. We concluded there must be a differ-  
7 ential between LIRA's and IRA's, between those who are  
8 covered by a plan, by an employer-sponsored plan, and those  
9 who are not.

10 Now we cannot say that \$1,000 is the perfect differ-  
11 ential, indeed, we don't know what the perfect differential  
12 is. But we think there must be a differential, because  
13 clearly the person covered by an employer-sponsored plan is  
14 receiving very significant tax benefits already.

15 It would not be correct to give him the -- to ignore  
16 that benefit in deciding the amount he may contribute on his  
17 own behalf.

18 Senator Chafee. Are the individuals receiving a  
19 significant tax benefit?

20 Mr. Chapoton. Yes. The benefit is that the employer  
21 contributes, on behalf of an individual, an amount called for  
22 under the plan, to the -- for the later benefit of that  
23 individual, on his retirement.

24 That amount accumulates in the plan, tax free. It is  
25 deductible to the employer when put into the plan, but even

1 though -- in some cases it won't be vested for a number of  
2 years, depending on the terms of the plan, but even if it  
3 is fully vested when contributed, so that that employee can  
4 never lose it, and indeed will be entitled to earnings on  
5 that which are tax free, he pays no tax on it until the  
6 amount is later paid to him after retirement.

7 Senator Chafee. The thing that bothers me, and I know  
8 Senator Baucus has an amendment. The thing that is is that  
9 we went into this program to encourage savings as one of  
10 the objectives.

11 Mr. Chapoton. Correct.

12 Senator Chafee. Oddly enough, when we are finished,  
13 because of the changes we made in the \$200-\$400, cutting  
14 that back, that really savers come out with a net loss under  
15 the program we have adopted today.

16 That is, with the Danforth amendment and with the IRA  
17 expansion and LIRA inauguration that we are doing under this  
18 legislation.

19 So, in the first year, '82, we come out with \$14  
20 million; the next year, \$332. -- these are pluses, in the  
21 key year, the crucial year, which is '84, the net savings  
22 are \$1 billion, that is, savings to the Government.

23 Mr. Chapoton. I think everyone seems to agree that at  
24 some point after the All Savers one year period is over, that  
25 something further on savings is needed. I think the Committee

1 has not addressed that problem and we have not. I think the  
2 agreement was the \$400-\$200 was not a major savings incentive  
3 and something else is needed. The something else has simply  
4 not been decided upon.

5 Senator Chafee. I just don't think \$1,000 is going to  
6 be enough of a fade out there for people to peddle these  
7 LIRA's, which takes an active, aggressive campaign.

8 I would compromise at \$1,500.

9 Mr. Chapoton. Well, I don't believe I could agree to  
10 that now, Senator.

11 Senator Chafee. The power of the Treasury.

12 The Chairman. Good.

13 Well, we will keep working on that.

14 Senator Baucus having arrived, we will be pleased to  
15 consider your amendment at this time.

16 Senator Baucus. Thank you, Mr. Chairman.

17 Mr. Chairman, as you know, my amendment is essentially  
18 to allow truckers to deduct their operating rights losses  
19 that they incurred, when the Congress passed the Motor  
20 Carriers Act of 1980.

21 Those carriers who suffered operating right losses  
22 would be able to deduct those losses over a three year  
23 period.

24 We all know when the Congress, in 1980, passed the  
25 Motor Carriers Act, those motor carriers suffered very



1 significant losses.

2 There is strong legislative history to indicate that  
3 in the event those losses do materialize, that Congress will  
4 address the situation in due course.

5 I very simply suggest that now is the time, mostly  
6 because this is a problem that Congress very definitely  
7 caused a year ago.

8 Second, the revenue loss under the modified version  
9 is, I don't think very significant.

10 I understand that Treasury agrees that the revenue  
11 loss under the modified version is about 33 to 38 percent  
12 of the earlier losses.

13 The earlier losses are estimated, roughly in total,  
14 in the neighborhood of about \$500 million over a few years.

15 In the modified version, I am willing to eliminate  
16 the \$50,000 floor, a feature that was in the earlier bill,  
17 designed to give smaller carriers more relief.

18 That floor eliminated, I understand that the revenue  
19 loss reduction will be 33 to 38 percent overall. So that  
20 will very significantly lower the loss.

21 Second, there is a big problem today facing carriers  
22 in that under the law ordinarily, whenever a company incurs  
23 a loss, that company is entitled to take that deduction in  
24 that year.

25 Consequently, motor carriers today are getting to take

1 losses today.

2 Now there is ambiguity in the law. It is unclear as  
3 to whether they can under the present law take that loss.  
4 They are taking it. These losses might be contested, perhaps  
5 even litigated.

6 Today, because of the significant losses that motor  
7 carriers incurred, those motor carriers today are taking loss  
8 deductions because customarily, under the law, whenever there  
9 is a business loss, that loss may be taken in the year of  
10 the loss.

11 Now there is some ambiguity as to whether or not this  
12 is a recognizable loss. But, nonetheless, the carriers are  
13 arguing it is and they are taking these deductions.

14 So first, there is a big ambiguity in this area.

15 I am saying that we, as a matter of legislation, should  
16 first state that yes, there is a recognizable loss, but  
17 second, that the loss cannot be taken the first year, and  
18 should be spread out over three years.

19 That really is a concession to the Treasury, because  
20 ordinarily under the law they should be able to take their  
21 deductions in the first year.

22 I think too, that because we are in this amendment  
23 recognizing the certainty of the loss and spread out over  
24 three years, that the Treasury will actually not lose quite  
25 so much, because of the litigation, potential litigation on

1 going or at least the difference in opinion between Treasury  
2 and motor carriers right now, these carriers are taking these  
3 losses, and they, in some cases may be getting refunds.

4 As a practical matter, we know that maybe some time  
5 if ever those refunds are refunded back.

6 So, by establishing certainty and by just helping  
7 carriers who were hurt very drastically when Congress passed  
8 the Motor Carrier Act, I think we should spread this out over  
9 three years.

10 My understanding is the total loss would be about  
11 \$330 million roughly over a three year period.

12 The Chairman. Well, if I could just -- this is clearly  
13 special interest legislation. I don't suggest that is  
14 totally wrong, but I question whether or not it belongs in  
15 this package.

16 I am willing to suggest there is going to be a second  
17 bill as far as the Senate is concerned. This would be a  
18 good candidate for that second proposal.

19 Again, we are talking about -- we are at the point  
20 now, and I might ask the Joint Tax Committee, for the most  
21 recent figures in '82, '83 and '84, even assuming that the  
22 numbers we started with were correct and we were going to  
23 save that \$40 billion over the next three years.

24 Then I would like to address some questions to Treasury  
25 about this particular amendment.

1 We would agree, Mr. Chairman, basically with the  
2 revenue figures that Senator Baucus is discussing. When you  
3 take the \$50,000 floor out it does reduce the revenues by  
4 more than a third, a little more than a third.

5 I think we comment that the litigation, we would not  
6 take that into account. We would assume in our revenue  
7 figures that we are going to prevail.

8 I do think that the mere fact the matter is before  
9 this Committee indicates with some validity that the question  
10 -- that where you have a diminution in the value of an asset,  
11 but their asset is not totally worthless, and that is, the  
12 piece of paper they have that gives them the right to travel  
13 their routes, has clearly, when you have decontrol, is clearly  
14 seriously decreased in value.

15 They have had a decrease in value. But it is not  
16 valueless. The tax law, it seems to me clear, unless it  
17 becomes valueless, the deduction cannot be obtained.

18 It is a matter that we would like to consider further.  
19 We might well support this legislation at some point. But it  
20 is not, we feel at all related to the basic objectives we  
21 are dealing with today.

22 Frankly, we must oppose any further, any add ons to  
23 this bill. We would like to consider it further, but we  
24 will have to oppose it now.

25 The Chairman. Could I ask Mr. McConaghy, again I

1 understand these numbers may or may not be accurate in the  
2 out years, but at least it gives us some guide. What does  
3 the balance sheet show based on what we have done so far?

4 I know there are other amendments.

5 Mr. McConaghy. Senator Dole, the balance sheet looks  
6 like it would be a little bit over in 1983 and just a shade  
7 under the original bill in 1984, and a little bit over in  
8 -- under in 1985.

9 So it is running very very close.

10 The Chairman. Without this amendment?

11 Mr. McConaghy. Correct.

12 The Chairman. If this amendment were adopted, what  
13 happens?

14 Senator Baucus. Mr. Chairman, I might help out a  
15 little in that. According to my figures in 1984, assuming  
16 33 percent reduction, the total revenue effect in 1984 will  
17 be \$34 million.

18 In '85 it will be zero. Because that will be the  
19 expiration of the third year.

20 There will be a greater revenue loss in the earlier  
21 years, but in 1984, if that is the target date we are looking  
22 at, the revenue loss would be \$34 million.

23 One third of 55 which essentially is what Treasury  
24 agrees with.

25 Mr. McConaghy. Senator Baucus, I think with the \$50,000

1 floor in over the four year period, we have pretty much your  
2 numbers, \$529 million.

3 Without it, it would be somewhere around \$300 and  
4 something million, over that four year period.

5 The Chairman. \$300 and something is how much?

6 Less than \$350 million?

7 Mr. McConaghy. It would be about \$340 million roughly,  
8 I think.

9 Senator Baucus. Mr. Chairman, if I might add a couple  
10 of points here.

11 First we had hearings on this very bill, in this room.  
12 At that time there was no opposition. Treasury did not  
13 oppose the bill at that time.

14 The Chairman. Did Treasury testify?

15 Senator Baucus. They did not. I don't know if we  
16 asked them, but the point is they did not testify, I don't  
17 think, one way or the other.

18 Mr. Chapoton. We did not appear at that time, no.

19 Senator Baucus. I might add that I understand your  
20 desire to include this in another bill. Frankly, I don't  
21 know when this other bill is going to come along. That is,  
22 I don't know if we will have the revenue for another bill  
23 later on this year.

24 I think that we in the Committee and the country talk  
25 about another bill, are at least flirting with a little bit

1 of self-delusion here. I just frankly can't see how we are  
2 going to get the revenue to pay for another bill.

3 This is a measure, a problem that motor carriers have  
4 incurred because of an Act of Congress in 1980.

5 So, I think we can distinguish this case. That is, it  
6 is a problem created by Congress in 1980.

7 Second, it is diminimus. It is not going to amount to  
8 very much here.

9 Third, it is a depreciation matter and will help  
10 truckers that will take this loss, amass new capital in the  
11 fugure by taking advantage of this deduction.

12 Mr. Chapoton. Senator, it does not relate though to  
13 new investment. It is true that they have a loss on paper,  
14 that is the value of the ICC certificate is no longer the  
15 value that it once held.

16 It does not though, as least as I see it now, does  
17 not affect their current earnings for example. It would  
18 simply provide that a loss they had realized on paper could  
19 be realized for tax purposes, and therefore, would entitle  
20 them to either reduce current taxes or to get a refund from  
21 prior years' taxes.

22 So it would not relate to new investment.

23 Senator Baucus. The point is the ability to take the  
24 loss that would free up carriers to make investment.

25 Mr. Chapoton. Unquestionably any reduction in taxes

1 does that.

2 The Chairman. Do you have any idea who will benefit  
3 from this legislation? Who -- surely you have an idea which  
4 companies are going to get most of the money.

5 Are they in distress?

6 Mr. Chapoton. Mr. Chairman, we have not really examined  
7 this thing in the depth we would ordinarily.

8 Those who would be affected the most would be carriers  
9 who had purchased, I assume, purchased an ICC certificate.  
10 recently, and therefore had a large tax loss on their books  
11 for that.

12 The Chairman. Now is this an ordinary loss or a  
13 capital loss?

14 Mr. Chapoton. This would be an ordinary loss.

15 The Chairman. There is no doubt in my mind that the  
16 businesses who had the certificates benefited for a number  
17 of years because of tightly controlled, monopolistic practices.

18 Now, when we decontrol, I am not certain that tax relief  
19 is appropriate. I know it is a close question. I assume  
20 there has been some loss.

21 I know I have had many inquiries from the State of  
22 Kansas. The proposal may have some merit. I would just  
23 hope we don't depress the amendment on this bill, but I am  
24 prepared to vote. They may as well find out.

25 Mr. Chapoton. We would like to consider it further, too.



1           As I state, it is a loss on paper. There are other  
2 taxpayers who face the problem of a serious diminution in  
3 value of assets, not reaching the point where the asset  
4 becomes valueless.

5           It is not an uncommon problem in the tax law. It is  
6 affecting this industry because it came at once, because  
7 deregulation came all at once.

8           The Chairman. Are we going to have the same things for  
9 airlines? Will they be in for tax relief because of de-  
10 regulation?

11           Senator Baucus. Mr. Chairman, on that point, I don't  
12 at all consider this to be a precedent.

13           The House Commerce Committee, in report language, I  
14 do not have it with me, very specifically addressed this  
15 issue saying, the Committee Report language, that the Congress  
16 should address this in the event there are actual losses in  
17 operating rights.

18           I frankly don't know whether airlines through de-  
19 regulation should have --

20           The Chairman. I think it is depressed.

21           Senator Baucus. I just know that in this case a certain  
22 industry was very definitely dealt a significant financial  
23 blow.

24           The Chairman. I think in some cases it is real. I  
25 think we are setting precedent. That is something we want

1 to look at whenever we talk about deregulation whatever it  
2 is going to cost us after we deregulate it.

3 Have you had any inquires from the airlines? You  
4 probably will tomorrow morning if this passes.

5 Mr. Chapoton. No, to my knowledge we have had none.

6 Senator Baucus. I suggest we vote, Mr. Chairman.

7 The Chairman. Is there any way Treasury could spread  
8 out, spread this out over an additional period of time?

9 Mr. Chapoton. Well, it is of course possible to spread  
10 it by legislation over any period of time. It is a loss we  
11 maintain that would not otherwise be allowed. So you could  
12 spread it over any period of time one selected.

13 We would much prefer to address the problem in greater  
14 depth and consider whether we would propose relief or not.

15 We are not at all ready to say on a matter, as a  
16 substantive matter, whether we would support it or not.

17 We certainly would oppose it as a part of this bill.

18 Senator Baucus. Mr. Chairman, there is not going to be  
19 a second bill this year; there just isn't. I doubt there  
20 will be one next year.

21 Why talk about it if there isn't going to be a second  
22 bill?

23 Unless you can make a commitment here that there is  
24 going to be a second tax bill that will go through this  
25 Committee and on to the floor, next year, and that we will

1 have the revenue to pay for this item.

2 If you are willing to make that commitment, that is one  
3 matter. I just think that we know that the chances of a  
4 second bill this year are very, very slim.

5 The Chairman. I think there will be. I don't have any  
6 more information than the Senator from Montana. But I do know  
7 at this time, Treasury is looking at a number of areas that  
8 will provide some revenue. I am not certain they are willing  
9 to indicate just what areas.

10 We have indicated to a number of people who have  
11 amendments, meritorious amendments, that we prefer that they  
12 reserve those for that time.

13 I know the temptation is great to put them on this  
14 vehicle. But I already see signs in the press of the  
15 Christmas tree being developed in this Committee. I don't  
16 think this is accurate, but I think there have been some  
17 accounts we have already loaded up the bill far beyond what  
18 is reasonable.

19 But, in any event, that is, we may as well vote and  
20 see where the votes are.

21 I would just suggest that those of us on this side who  
22 met with the President yesterday. I asked the President, do  
23 I have your permission to indicate you would appreciate no  
24 further amendments. I know that is not binding on anyone,  
25 but if there is some agreement with Treasury, then I think

1 this is a different category.

2 Call the roll.

3 Mr. Lighthizer. Mr. Packwood.

4 (No response.)

5 Mr. Lighthizer. Mr Roth.

6 (No response.)

7 Mr. Lighthizer. Mr. Danforth.

8 Senator Danforth. No.

9 Mr. Lightizer. Mr. Chafee.

10 Senator Chafee. No.

11 Mr. Lighthizer. Mr. Heinz.

12 (No response.)

13 Mr. Lighthizer. Mr. Wallop.

14 The Chairman. No.

15 Mr. Lighthizer. Mr. Durenberger.

16 (No response.)

17 Mr. Lighthizer. Mr. Armstrong.

18 Senator Armstrong. No.

19 Mr. Lighthizer. Mr. Symms.

20 (No response.)

21 Mr. Lighthizer. Mr. Grassley.

22 The Chairman. No.

23 Mr. Lighthizer. Mr. Long.

24 Senator Baucus. Aye, by proxy.

25 Mr. Lighthizer. Mr. Byrd.

1 Senator Byrd. Aye.

2 Mr. Lighthizer. Mr. Bentsen.

3 Senator Bentsen. Aye.

4 Mr. Lighthizer. Mr. Matsunaga.

5 Senator Matsunaga. Aye.

6 Mr. Lighthizer. Mr. Moynihan?

7 Senator Baucus. Aye, by proxy.

8 Mr. Lighthizer. Mr. Baucus.

9 Senator Baucus. Aye.

10 Mr. Lighthizer. Mr. Boren.

11 Senator Boren. Aye.

12 Mr. Lighthizer. Mr. Bradley.

13 Senator Bradley. Aye.

14 Mr. Lighthizer. Mr. Mitchell.

15 Senator Mitchell. Aye.

16 Mr. Lighthizer. Mr. Chairman.

17 The Chairman. No.

18 (Pause.)

19 Senator Baucus. Mr. Chairman, do you have any other  
20 proxies?

21 The Chairman. Senator Packwood votes aye.

22 I am not certain about the other ones.

23 (Laughter.)

24 The Chairman. The vote is 10 yeas and 6 nays.

25 The absentees will be permitted to record their votes.

1 Mr. Chapoton. Senator Baucus, that is without the  
2 \$50,000?

3 The Chairman. That's correct.

4 Senator Baucus. Yes.

5 The Chairman. The Senator from New York.

6 Senator Moynihan. Yes, Mr. Chairman. If it is in  
7 line. I don't know, Mr. Chairman, if I have a proposal, so  
8 much as on the subject of corporate capital gains. We talked  
9 about it the other day and Secretary Chapoton asked if he  
10 could have some time to look into the revenue matters and  
11 come back to us.

12 The point we made at the time was that from 1942, we  
13 have had the personal, individual and corporate capital  
14 gains have been parallel. They have, with the exception of  
15 a few years there been identical.

16 We brought them -- we found them a little bit out of  
17 sync. In 1978, we brought them down from 35 and 30, respect-  
18 ively to 28.

19 It is now my hope, Mr. Chairman, we could do the same.  
20 There are more than one set of revenue estimates around, as  
21 there always are, as Mr. Chapoton is learning to his sorrow,  
22 distress.

23 I wonder if we could hear from you just to make one  
24 other point, we are concerned with capital formation in this  
25 tax bill, and have taken a number of steps in that degree,

1 in particular the stock option incentives yesterday.

2 Capital gains in a corporation are particularly  
3 important to new corporations and technology corporations or  
4 so I am told. I don't want to assert that.

5 I wonder what the Treasury feels at this point.

6 Mr. Chapoton. Senator Moynihan, the problem the other  
7 day was we had a disagreement. Our figures weren't together  
8 with the Joint Committee Staff.

9 I understand now we are in agreement and that I might  
10 give you these figures if corporate capital gains, leaving  
11 on the minimum tax, so where applicable the minimum tax would  
12 still apply.

13 If effective 1-1-81, the cost would be \$ .3 billion in  
14 fiscal '81. And \$ .7 in fiscal '82; \$ .7, in fiscal '83,  
15 and \$ .8, in fiscal '84.

16 If effective 1-1-82, you really move each of those  
17 back a year.

18 We are opposed to this amendment, Senator. The basis  
19 of the revenue principally, I would also point out that  
20 unlike capital gains in individuals which affect a lot of  
21 taxpayers in different ways because of investments they make,  
22 capital gains in the corporate sector are while spread rather  
23 widely over a number of corporations, are concentrated in the  
24 timber and paper industries and to some extent in venture  
25 capital operations.

1 Senator Moynihan. I think that is right.

2 Mr. Chapoton. So, they are different considerations  
3 here. There are similarities as well. It is not entirely  
4 correct to say they have run in tandem.

5 I think as you mentioned, that that is the capital  
6 corporate gain rate and the individual corporate gain rate.

7 Between '71 and '78, the corporate capital gain rate  
8 was considerably below the maximum for the individual rate.

9 Senator Moynihan. Was lower, yes.

10 Mr. Chapoton. But prior to 1941, there was really no  
11 similarity. They ran exactly in tandem from '41 to 1969.

12 Senator Moynihan. Yes.

13 Mr. Chapoton. They have gone back and forth somewhat.  
14 But over most of the years, over the past 20 or 30 years  
15 they have stayed together and of course, they have been  
16 together since 1978.

17 Senator Moynihan. I want to be clear that it is indeed  
18 that in timber and paper there are large gains here, but in  
19 new technology there is also.

20 Mr. Chapoton. That is correct, though the big dollars  
21 of course, are in timber and paper because the -- in those  
22 industries it is quite similar to I guess you would say to  
23 a depletion allowance or some other benefit to provide for  
24 a reduced tax rate on the operations.

25 Senator Moynihan. There is even so a kind of principle



1 in the tax code here. I wondered if the Treasury wouldn't  
2 be willing to try to phase this in.

3 If we were to take it, just start it in fiscal '82,  
4 the effect would be in fiscal '82, \$300 million.

5 What if we said 4 percent, what if we took the change  
6 and took four points in fiscal '82, and two points in the  
7 following years, this being a three year bill, and we could  
8 look to a revenue effect in fiscal '82, if this arithmetic  
9 is right, of \$150 million.

10 That is not a large sum in this.

11 I would like to remind the Treasury that I got your  
12 \$1.3 billion earlier today.

13 (Laughter.)

14 Mr. Chapoton. I think we have already spent that,  
15 Senator.

16 Senator Moynihan. We have already spent that.

17 The point would be we would keep the principal while  
18 deferring some of the tax revenue loss until we are a little  
19 better off.

20 Mr. Chapoton. Senator, we would appreciate that  
21 gesture, let me say, but we would prefer that this is not  
22 -- to take the position that this is not directly related to  
23 the individual tax rate, not directly related to the in-  
24 dividual tax on capital gains, and we should deal with this  
25 more correctly when we are dealing with the corporate tax

1 rate if indeed we deal with that, as we probably will.

2 Senator Moynihan. Yes.

3 Mr. Secretary, I appreciate your position. I think it  
4 is important we have our numbers together. Even so, Mr.  
5 Chairman, not wishing to in any way suggest that you are  
6 wrong, it is just a different view, we have had a view in  
7 this Committee of trying to keep these rates together.

8 It would seem to me, Mr. Chairman, if we begin this  
9 -- I would like to propose an amendment which would begin  
10 -- would reduce the capital by 4 percent, beginning January  
11 1, 1982.

12 That would have a net revenue effect of approximately  
13 \$150 million in that year. Then, another 2 percent in fiscal  
14 '83 and a final 2 percent in fiscal '84.

15 So, three years hence they would be back at 20 percent  
16 and in the interval the principal is intact and the end point  
17 is visible.

18 The Chairman. Would you like a record vote?

19 Senator Moynihan. Yes, Mr. Chairman. I wonder if while  
20 Mr. Chapoton was talking about forests, some of my friends  
21 over on the other side were engaged in other conversation.

22 Did you all hear that about forests, fellows?

23 (Laughter.)

24 The Chairman. Right. We noted that.

25 Well, again, I think if I understand the Administration

1 Mr. Chapoton, I understand your opposition to the amendment.  
2 you are opposed to the amendment.

3 Mr.Chapoton. We are opposed to the amendment. I would  
4 point out, Mr. Chairman, this is very rough. Senator  
5 Moynihan, we calculate on that very roughly, of '84 costs,  
6 I believe is approximately \$ .7 billion.

7 That is the Joint Committee, and we would agree on  
8 that.

9 Senator Moynihan. Fully matured at \$.7, yes.

10 That is three years out.

11 Mr. Chapoton. Right, 1984.

12 Senator Moynihan. Yes.

13 The Chairman. Well, again, I would just say that I  
14 think we have done a great deal for business in this President's  
15 proposal.

16 I understand, of course they would like to have more.  
17 This would be more.

18 I also understand there is no more money available.

19 So, I would just suggest that this may have great  
20 merit, but not at this time.

21 The clerk will call the roll.

22 Mr. Lighthizer. Mr. Packwood.

23 (No response.)

24 Mr. Lighthizer. Mr. Roth.

25 The Chairman. No.

1 Mr. Lighthizer. Mr. Danforth.  
2 Senator Danforth. No.  
3 Mr. Lighthizer. Mr. Chafee.  
4 Senator Chafee. No.  
5 Mr. Lighthizer. Mr. Heinz.  
6 (No response.)  
7 Mr. Lighthizer. Mr. Wallop.  
8 ~~The Chairman. No.~~  
9 Mr. Lighthizer. Mr. Durenberger.  
10 (No response.)  
11 Mr. Lighthizer. Mr. Armstrong.  
12 Senator Armstrong. No.  
13 Mr. Lighthizer. Mr. Symms.  
14 (No response.)  
15 Mr. Lighthizer. Mr. Grassley.  
16 Senator Grassley. No.  
17 Mr. Lighthizer. Mr. Long.  
18 (No response.)  
19 Mr. Lighthizer. Mr. Byrd.  
20 Senator Byrd. No.  
21 Mr. Lighthizer. Mr. Bentsen.  
22 Senator Bentsen. Aye.  
23 Mr. Lighthizer. Mr. Matsunaga.  
24 (No response.)  
25 Mr. Lighthizer. Mr. Moynihan.

1 Senator Moynihan. Aye.

2 Senator Bentsen. Bentsen, aye.

3 Mr. Lighthizer. Mr. Baucus.

4 (No response)

5 Mr. Lighthizer. Mr. Boren.

6 Senator Boren. No.

7 Mr. Lighthizer. Mr. Bradley.

8 Senator Bradley. No.

9 Mr. Lighthizer. Mr. Mitchell.

10 Senator Mitchell. Aye.

11 Mr. Lighthizer. Mr. Chairman.

12 The Chairman. No.

13 (Pause.)

14 The Chairman. I think on this vote the yeas are 4,  
15 the nays are 11.

16 The absentees will be permitted to be recorded; it  
17 wouldn't change the results.

18 Did you have another amendment, Mr. Moynihan, before  
19 I recognize -- did you have tuition tax credits?

20 Senator Moynihan. Mr. Chairman, we do, but Senator  
21 Packwood is on the floor at this moment on matters before  
22 the Senate Commerce Committee. He asked if he could, if this  
23 could wait until he returns which he will do.

24 The Chairman. Will he be in today?

25 Senator Moynihan. Today.

1 The Chairman. He is not out of town then.

2 Senator Moynihan. You just give me the signal and  
3 he will be over here.

4 The Chairman. We are moving very quickly.

5 Senator Symms.

6 Senator Symms. Mr. Chairman, I have two amendments,  
7 one which I think, if my information is correct, that I  
8 discussed with the Secretary yesterday, in the colloquy. He  
9 was unsure about it. I understand on this generation  
10 skipping tax that there has been an understanding agreed  
11 that we could grandfather in the grace period for one more  
12 year so that could be addressed adequately.

13 Is that correct?

14 Mr. Chapoton. No, Senator. I have not had discussions.

15 Senator Symms.. What I would like to do is offer a  
16 motion, Mr. Chairman, to extend the grace period on the  
17 generation skipping tax.

18 The Treasury, I thought, and had tentatively agreed  
19 to this, maybe they have not. Let me just explain what  
20 this would do.

21 As it presently stands, the generation tax, skipping  
22 tax, is absolutely impossible to understand and to adminis-  
23 ter.

24 In addition, it is absolutely unenforceable since  
25 there is no line on an IRS 1040 Form which calls for the

1 reporting of the money received. Many individuals receive  
2 funds from a generation skipping trust, will unwilling  
3 evade taxes simply by not knowing they owe taxes.

4 In addition, the IRS has not yet processed the  
5 necessary forms for the banks to use so they can adequately  
6 report the necessary information.

7 Now this is an issue that needs to be addressed and  
8 the Estate and Gift Tax Subcommittee has received testimony  
9 from individuals attempting to interpret and implement the  
10 tax.

11 They have testified that they have literally spent  
12 hundreds of thousands of dollars in work hours trying to  
13 adequately interpret the law, and that if the law is not  
14 repealed at this time, it is absolutely essential that the  
15 grace period be extended so that some individuals will not  
16 be caught during the period when the grace period expires  
17 and the second tax bill.

18 Now, there will be absolutely no revenue lost to the  
19 Treasury on this.

20 What I am asking the Treasury to accept and the  
21 Committee to accept, is to extend for one more year or two  
22 more years, until December, '81, extend it on to December,  
23 '82, the generation skipping exclusion until that issue can  
24 be addressed.

25 There is no revenue loss and it is just going to

1 create a very complicated problem I think, that is unenforce-  
2 able for the IRS if we leave this untouched.

3 Mr. Chapoton. Senator, if we could, I would like to  
4 talk to my people at the next break and consider this a  
5 little bit further.

6 I want to make sure we are not developing some  
7 problems. As I mentioned the last time we discussed this,  
8 by deferring the effective date on things like this, you are  
9 causing estate planning uncertainty.

10 I want to make sure that we thought that through. I  
11 would like to get back to you within an hour or so.

12 Senator Symms. Well, if you want to make it less  
13 uncertain, we would be happy to accept a repeal of it and  
14 then have it settled.

15 (Laughter.)

16 Mr. Chapoton. We do, as I mentioned before, we do at  
17 some point want to address the generating skipping provisions.  
18 I don't think this is the time to do it.

19 We would like to check, after we discussed it the  
20 other day, I did have some of my people check on some  
21 matters. I have not talked back to them and I would like to  
22 do so before I take a position on this.

23 So, if we could, Mr. Chairman.

24 Senator Symms. I would be happy if we could -- I  
25 don't know how much longer -- the Chairman may call for a



1 record vote on final passage. Maybe those that are not on  
2 the vote will not --

3 The Chairman. I'll give it another 15 or 20  
4 minutes.

5 (Laughter.)

6 Senator Symms. Okay.

7 The Chairman. I am certain we are going to have a  
8 vote here in probably a few minutes. That will give Treasury  
9 some time to discuss it.

10 Senator Symms. Okay. I will withdraw my motion for  
11 now and just set it aside without prejudice would be okay,  
12 if I could do that.

13 The Chairman. Fine.

14 Senator Symms. Mr. Chairman, the other amendment I  
15 have, I have not been able to get complete agreement with  
16 the Treasury on this particular issue. I think it is very  
17 important in this legislation.

18 The reason I am offering this amendment, the Woodlands  
19 -- to amend Section 203(2)(a), as it now applies to timber  
20 lands, is because there really isn't anything in that  
21 estate and gift tax portion of the bill that really address-  
22 es the problem of the small woodland owner.

23 I think the Forest Service, as we know, projects  
24 that the demand for paper and wood products will double by  
25 the year 2030.

1           There are over 5,000 consumer products derived from  
2 the forests. I think a side benefit of growing forests, they  
3 do contribute significantly to the overall ECHO system.

4           Now our own statistics of the Forest Service show  
5 that for every dollar that is invested in timber management,  
6 a total of \$17 is generated on other economic activity.

7           So, what I am drivint at here is to allow for special  
8 use valuation for timber lands as it is in the bill now for  
9 farms.

10           It would be I think bad management not to do that.

11           But the problem we are faced with if this does not  
12 become part of the bill along with the farms, is we have  
13 rapid liquidation of timber, just to meet a tax liability.  
14 It is a bad forestry practice.

15           The estate tax also lowers the productivity and it  
16 discourages any reforestation, because these trees normally  
17 take from 30 to 60, even up to 100 years to be harvestable.

18           So, an effective way to reduce the excessive tax  
19 burden on timberlands, is through special use valuation  
20 found in Section 203(2)(a), and the Code was clearly intended  
21 to provide at least a measure of relief by placing a lower  
22 special value on woodlands, as well as on the other farm-  
23 lands.

24           Unfortunately, special use valuation has been placed  
25 beyond the reach of many private individual timber owners.

1           As the law currently stands, 25 percent of an estate  
2 must be comprised of timber land, real property and 50 percent  
3 timber land or personal property in order to qualify for the  
4 special use valuation.

5           Timber is not -- unlike other farm land, or closely-  
6 held businesses, timber is not the principal source of  
7 livelihood for many of the private owners.

8           The percentage requirement of the special use  
9 valuation becomes unavailable to many growers whose timber  
10 holdings are not the major asset in their states.

11           In addition, even when the timber land is the major  
12 asset of an estate, the IRS has interpreted the statute in  
13 a way as to eliminate, again, the benefit of special use  
14 valuation.

15           When land containing timber is valued, the value of  
16 the timber may not be counted as real property in the 25  
17 percent test, although it is counted in valuing the whole  
18 estate.

19           Timber is often worth many times more than the land  
20 itself, and obviously when the land by itself is worth less  
21 than 25 percent of the whole estate, the timber land estate  
22 will qualify for special use valuation.

23           As a result, only the timber land that will ever  
24 qualify for special use, the land that has been clear cut  
25 or it contains a poorly stocked stand of timber.

1           If the pattern of small ownership of timber lands is  
2 to be continued and encouraged, these percentage requirements  
3 should be eliminated in the case of timberlands.

4           This would correct that problem.

5           So, current section 2032(a) also requires that the  
6 decedent or member of the family to have a material parti-  
7 cipation in the operation of the timber land to qualify for  
8 special use valuation.

9           It has been extremely difficult to meet this require-  
10 ment in the case of timber land, because most privately owned  
11 timber land operations do not require day-to-day management  
12 decisions and material participation of the owner.

13           It is my understanding the Department of the Treasury  
14 will review their current application of the law to provide  
15 for the reality that timber farms do not require day-to-day  
16 management and oversight.

17           As I mentioned previously, Section 2032(a), on its  
18 face, states unequivocally that timber is to be granted a  
19 special use value.

20           The section is designed to preserve the family owned  
21 timber lands and encourage capital investment in reforesta-  
22 tion.

23           However the IRS interpretation of that section, timber,  
24 has made the special use valuation not available or unavail-  
25 able.

1 To remedy the problem we should amend the timber  
2 that qualifies as real property and used for qualified use.

3 This amendment would, in my opinion, be very helpful  
4 environmentally, along with many other factors. It would put  
5 timber lands in the category with farms.

6 The current estate tax interferes with our attainment  
7 of an adequate supply of wood and fiber for the future.

8 I think that the figures on these, Mr. Secretary, do  
9 you have those figures of what the cost will be.

10 Secretary Regan, yesterday, was talking about a much  
11 higher figure than the figures I had. It was \$200 million.

12 Mr. Chapoton. We do have a figure of \$200 million.  
13 I have to agree that looking at this in isolation, I am a  
14 little surprised it is that high, \$200 million, going up to  
15 \$300 million.

16 Let me say, Senator Symms, that special use provisions  
17 2032(a), of course, do apply to timber now.

18 The special problem --

19 Senator Symms. The people can't qualify is the  
20 problem.

21 Mr. Chapoton. Well, one of the two problems that you  
22 mention, one is that 25 percent test seems to affect timber  
23 in an unusual way. I think perhaps it does.

24 We have to keep in mind, though, some percentage test  
25 is certainly needed, because otherwise we would be saying

1 that simply an investment asset would qualify for special  
2 use. That investment asset that was a minor part of an  
3 estate would qualify for a lower valuation, that is not the  
4 purpose of the special use provisions.

5 The purpose of the special use valuation rules under  
6 the estate tax law is to cover cases where an estate would  
7 otherwise have to dispose of a major portion of its ongoing  
8 business activity to pay death taxes and that is thought to  
9 be unusually harsh.

10 So that it would be inconsistent with the purpose of  
11 the 2032(a), not to have any percentage limitation at all.

12 It would also be inconsistent not to require an active  
13 management, not to impose the active management requirement  
14 which is imposed on other property qualifying for special  
15 use valuation; that is, the decedent or member of his family  
16 had to be involved in the active management and operation  
17 or it is hard to say it is a family type business.

18 In the case of timber, not much active management is  
19 required. I think the regulations published under section  
20 2032(a), make it clear that not much is required to be  
21 engaged in the active management of timber.

22 Indeed, as I see the example we have in the regulations  
23 two visits to the tree, the forest a year, will be considered  
24 active management, so long as the owner is making the  
25 decisions, when decisions are required to be made and they

1 are not required to be made very often.

2 So, I think that the example in the regulations is  
3 as generous as under reasonable as it could be in saying  
4 what is active management in the case of a timber operation.

5 Now on the 25 percent test, I think the problem is  
6 that you value the land and exclude the trees and therefore  
7 the value of the entire operation is lower.

8 I think there would be no objection to including the  
9 trees in the valuation to meet the 25 percent test, but you  
10 would have to understand then that a disposition of the trees  
11 would be considered when they are disposed of. It may be  
12 several years after the decedent's death, but it would be  
13 considered a disposition of a portion of a closely-held  
14 asset.

15 In that event, if within the 10 and 15 year period,  
16 causing recapture of a part of the estate tax, in the same  
17 way as any other disposition of a part of the closely-held  
18 business.

19 Senator Symms. Well, I think I could agree with that.

20 Mr. Chapoton. That would be fine. Then we would be  
21 talking about the timber being a part of the real estate for  
22 this purpose, which certainly makes sense.

23 Senator Symms. Mr. Chairman, that would be agreeable  
24 to me.

25 The Chairman. All right. Would you restate that, Mr.

1 Chapoton.

2 Mr. Chapoton. The special valuation rules in the  
3 existing law would continue to apply as they do now, to  
4 timber operations.

5 But the rule now, that the trees are not considered  
6 a part of the real estate, not considered a part of the  
7 property, for meeting the 25 percent test would be changed  
8 so that the trees would be considered part of the overall  
9 value.

10 They are of course, a part of the estate, value of  
11 the estate, and they would be considered a part of the value  
12 in meeting the 25 percent test.

13 That would carry with it though, the requirement that  
14 when the trees are disposed of, there would be a recapture  
15 under the normal rules, under Section 2032(a) of the reduced  
16 estate tax liability.

17 The Chairman. Is that satisfactory?

18 Senator Symms. It is the best we can accomplish today,  
19 so I am willing to accept it, Mr. Chairman.

20 The Chairman. Without objection, that will be agreed  
21 to.

22 Senator Symms. Thanks very much.

23 The Chairman. The other matter, as I understand there  
24 will be a vote in a few minutes, we can discuss that at that  
25 time.



1 I think Senator Bentsen has a technical amendment  
2 and then Senator Moynihan to offer the credit, and Senator  
3 Bradley.

4 Senator Bentsen. Thank you very much, Mr. Chairman.

5 This is one that would have no cost, as I understand  
6 it, and it is the treatment by lessors of automobiles and  
7 trucks as depreciable property, not be disturbed without  
8 legislative action, I am encouraging.

9 What you have for 30 years, you had leases treated  
10 for the lessor, had a situation where if the lessee at the  
11 end of the term of the lease, if the sales price of the car  
12 by the lessor was below a certain price that had been  
13 negotiated before hand, that then the lessee would pay a  
14 penalty.

15 If the price went above that, the lessee would be  
16 credited with that. The reason for that, of course, was to  
17 put the incentive on the lessee not to abuse the automobile,  
18 not to abuse the truck.

19 It would be in his self-interest to take care of the  
20 maintenance and all of that.

21 Now for 30 years it was treated that way, and then,  
22 as I understand it, without any prior notice or hearing,  
23 last year, you had a technical opinion released that changed  
24 the way the IRS had been handling those kinds of leases.

25 That is also in spite of the fact that a tax case in

1 April of this year, once again, stated that the IRS had been  
2 right in its original position, and was wrong in reversing  
3 its 30 years of practice on those kinds of cases.

4 So what I am asking for is codification of it and that  
5 we reinforce the court's position and what the IRS had been  
6 doing for 30 years.

7 Mr. Chapoton. Senator, I am informed that except  
8 in automobiles and trucks used for personal purposes that  
9 the leasing proposal under ACRS would take care of this  
10 problem.

11 I have not personally restudied the problem in the  
12 last day or so, though we heard about it several months ago.  
13 So I can tell you I am advised that our proposal would take  
14 care of it as not directly aimed at it, but would cover the  
15 problem, but it would not do it with respect to automobiles  
16 leased for personal purposes.

17 So, I am not sure that goes as far as what you are  
18 proposing would go.

19 If it is used for business purposes, the problem that  
20 you address would be taken care of.

21 Senator Bentsen. I am curious why you would not do it  
22 for personal purposes then?

23 Mr. Chapoton. Senator, I cannot answer that. Well,  
24 our leasing proposal would not apply if the equipment were  
25 used for personal purposes. So it would necessarily not

1 cover that situation.

2 Senator Bentsen. Oh, wait a minute. I see what you  
3 are saying. Yes. I would see why it would.

4 Mr. Chapoton. Yes.

5 Senator Bentsen. Fine. Thank you very much, Mr.  
6 Chairman.

7 The Chairman. Without objection, that modification  
8 will be made.

9 Senator Moynihan.

10 Senator Moynihan. Thank you, Mr. Chairman.

11 What I would like to do on behalf of Senator Packwood  
12 and myself, who -- Senator Packwood is on the floor at this  
13 point and cannot leave. He will be with us eventually, is  
14 simply propose a matter that I don't think needs a large  
15 discussion.

16 It is legislation that has passed this Committee in  
17 the past, and I hope we will pass it again this afternoon.  
18 This is the tuition tax relief act, S. 550, in this formulation  
19 but with a major change and that is, Mr. Chairman, we have  
20 learned from the higher education community that there is a  
21 genuine division of judgment on this matter, given the fact  
22 that other forms of tuition payments are available, and  
23 given the impact on the budget, we would like to offer our  
24 proposal in a truncated form which applies only to elementary  
25 and secondary schools.

1           When fully in effect, it would be -- it would provide  
2 a tax credit for up to 50 percent of tuition payments, up to  
3 \$500 for persons, taxpayers with dependents in elementary and  
4 secondary schools.

5           The estimated costs, we may be at some variance, I  
6 think not, the Congressional Budget Office, this would take  
7 effect, the full effect would be in August, '83. We estimate  
8 the revenue loss for fiscal '82 at \$40 million, not a small  
9 sum.

10           The next year, a large sum, \$1.1 billion, in '84;  
11 \$2 billion, and it stays about that level. It doesn't go  
12 up much after that.

13           The Chairman. It sort of stays at that level?

14           Senator Moynihan. Yes.

15           (Laughter.)

16           Senator Bentsen. The Senator's voice dropped a bit.  
17 I didn't get that.

18           Senator Moynihan. \$2 billion, \$2.2 billion, \$2.3  
19 billion in '86.

20           The Chairman. Well, I think that is another amendment  
21 that has great merit, but I would assume not on this proposal.  
22 It seems to me that there are a number of supports on this  
23 Committee, as the Senator knows, who have a deep interest in  
24 that amendment, including Senator Packwood, of course, and  
25 others, including the speaker.

1 But, I would like to get the official position of  
2 Treasury and then we will have a quick vote.

3 Mr. Chapoton. Mr. Chairman, we have supported the  
4 concept of tuition tax credits, but we would certainly  
5 think it is not appropriate on this bill and it would not be  
6 within the revenue constraints.

7 We would have to propose it at this time.

8 The Chairman. Care for a roll call?

9 Senator Moynihan. Yes, sir, if I may.

10 The Chairman. The clerk will call the roll.

11 Mr. Lighthizer. Mr. Packwood.

12 (No response.)

13 Mr. Lighthizer. Mr. Roth.

14 (No response.)

15 Mr. Lighthizer. Mr. Danforth.

16 Senator Danforth. No.

17 Mr. Lighthizer. Mr. Chafee.

18 Senator Chafee. No.

19 Mr. Lighthizer. Mr. Heinz.

20 (No response.)

21 Mr. Lighthizer. Mr. Wallop.

22 The Chairman. No.

23 Mr. Lighthizer. Mr. Durenberger.

24 (No response.)

25 Mr. Lighthizer. Mr. Armstrong.

1 Senator Armstrong. No.  
2 Mr. Lighthizer. Mr. Symms.  
3 Senator Symms. No.  
4 Mr. Lighthizer. Mr. Grassley.  
5 Senator Grassley. No.  
6 Mr. Lighthizer. Mr. Long.  
7 (No response.)  
8 Mr. Lighthizer. Mr. Byrd.  
9 (No response.)  
10 Mr. Lighthizer. Mr. Bentsen.  
11 Senator Bentsen. No.  
12 Mr. Lighthizer. Mr. Matsunaga.  
13 Senator Matsunaga. Present.  
14 Mr. Lighthizer. Mr. Moynihan.  
15 Senator Moynihan. Aye.  
16 Mr. Lighthizer. Mr. Baucus.  
17 (No response.)  
18 Mr. Lighthizer. Mr. Boren.  
19 Senator Boren. No.  
20 Mr. Lighthizer. Mr. Bradley.  
21 Senator Bradley. Aye.  
22 Mr. Lighthizer. Mr. Mitchell.  
23 Senator Mitchell. No.  
24 Mr. Lighthizer. Mr. Chairman.  
25 The Chairman. I think I should vote Mr. Packwood aye

1 for that.

2 Senator Moynihan. I should think he would wish to do  
3 that.

4 The Chairman. I will vote Senator Packwood aye and  
5 myself, no.

6 (Pause.)

7 The Chairman. Mr. Symms. No.

8 (Pause.)

9 The Chairman. On this vote the ayes are 3, the nays  
10 are 10. I would say its success is in doubt.

11 The absentees could -- no, you would lose on a tie.

12 So the amendment is not agreed to.

13 Senator Moynihan. I am sorry, Mr. Chairman. What was  
14 the vote?

15 The Chairman. Oh, 3 yeas and 10 nays, and 7 not yet  
16 recorded.

17 The amendment is not agreed to.

18 Senator Mitchell. Mr. Chairman.

19 The Chairman. Senator Mitchell.

20 Senator Mitchell. I have a series of small business  
21 amendments I would like to offer if this is the appropriate  
22 time.

23 The Chairman. Yes, this is the appropriate time. I  
24 recognized Senator Bradley and Senator Boren. You fellows  
25 work it out.

1 Senator Mitchell.

2 Senator Mitchell. I have several. Senator Boren only  
3 has one amendment, Mr. Chairman. I will yield to him and then  
4 come back afterwards.

5 Senator Boren. Mr. Chairman, this is another non-  
6 controversial amendment.

7 This amendment would reduce the tax on new oil, newly  
8 discovered oil as defined by the so-called Windfall Profits  
9 Tax and it would phase down that tax from beginning with the  
10 present rate of 30 percent, to 25 percent and then 20  
11 percent the next year, 15 percent the next, 10 the next,  
12 5 the next and then finally phase it out.

13 This amendment is offered, Mr. Chairman, on behalf  
14 of myself and Senator Bentsen who has also helped in the  
15 preparation of this amendment.

16 The revenue losses are very modest, Mr. Chairman.  
17 The first year, 1982, we are talking about only \$100 million.  
18 And \$400 million in 1983. We would phase down to the total  
19 exemption in the sixth year.

20 Mr. Chairman, I would point out that according to our  
21 own official estimates, CBO estimates and the model, economic  
22 models used, this particular amendment would have the greatest  
23 production response of all of them.

24 It is estimated that the exemption of newly-discovered  
25 oil would cause a production response of 1.1 billion barrels



1 per day by 1990.

2 I certainly think that the tax on newly-discovered  
3 oil, and this was very much an opinion in this Committee at  
4 the time of the passage of the tax. It was an opinion which  
5 really crossed the political spectrum, that it was really  
6 inappropriate to tax newly-discovered oil, because you  
7 couldn't have an inventory profit associated with something  
8 that had not yet been discovered.

9 It would certainly, I think, give a great added  
10 incentive to development of additional oil production in the  
11 United States.

12 Mr. Chairman, I would point out, I used to carry  
13 around a letter, in fact I still have it here. I have kept  
14 a copy. This is not the original, but it was a letter from  
15 then President -- or candidate Carter, October 19, 1976.  
16 It contains a promise that I relied upon in regard to the  
17 deregulation of natural gas, one which was not maintained.

18 A great deal was made of that during the 1980 elections.  
19 I feel quite certain, I have another promise that was given  
20 during the 1980 elections. I hold it up. It has an elephant  
21 on the front of the cover page. It says, "Republican  
22 Platform, July 14, 1980, Detroit, Michigan, Resolutions  
23 adopted by the Republican National Convention."

24 I would want to read from that, Mr. Chairman.

25 It says, "We believe that the so-called Windfall

1 Profits Tax, (which is unrelated to profit), should be  
2 repealed as it applies to small volume royalty owners."

3 I would comment the President for including that  
4 provision in this package. I know it is one that I certainly  
5 appreciate, "new oil," that comes as a comma, right  
6 after "small royalty owners, "new oil, stripper wells,  
7 tertiary recovery, heavy crude oil and the phase out of  
8 the tax on old oil should be accelerated."

9 Now, Mr. Chairman, I am just proposing here what  
10 I think is a very modest effort toward the keeping of that  
11 pledge. It does not even immediately do away with the tax  
12 on new oil. It merely phases out the tax on newly-discover-  
13 ed oil.

14 I do hope that we will be able to take at least this  
15 modest action. It will have a great production response.  
16 I think that is something that people of all philosophical  
17 persuasions agree with.

18 From an economic policy point of view it makes great  
19 sense. I realize we may have to come back and reconcile  
20 our figures by the time it is all over with, but I hope we  
21 would not allow mathematics of the bill right now to stand  
22 in the way of doing something about the tax on newly-dis-  
23 covered oil.

24 The Chairman. Senator Bentsen.

25 Senator Bentsen. Mr. Chairman, I strongly endorse

1 what Senator Boren has proposed here.

2 With our having paid some \$80 billion for foreign  
3 oil last year, it is imperative we do all we can to further  
4 accelerate drilling for oil and gas in this country.

5 Unquestionably, you would have a major production  
6 response by way of exploration if Senator Boren's amendment  
7 was voted into law.

8 It is a phase in, over a period of time, in recog-  
9 nition of some of the budgetary restraints we are having  
10 at the present time.

11 We have over 4,000 rigs now in operation in this  
12 country. We need to double or triple that. It is going  
13 to be also important we have the incentives to drill the  
14 ever deeper wells we are talking about.

15 The cost of drilling in this country over the last  
16 decade has increased by 350 percent. Finally the price of  
17 oil has leveled off and has lowered some.

18 But the cost of drilling and finding it continues to  
19 increase. So if you are going after those marginal strikes  
20 or the very expensive discoveries, you have to try to take  
21 away the disincentive in finding new oil.

22 So, I support the amendment.

23 The Chairman. Senator Armstrong.

24 Senator Armstrong. Thank you, Mr. Chairman.

25 I want to compliment the Senator from Oklahoma on

1 the amendment.

2 I think one of the most important things he has  
3 brought to our attention relates not only to the economic  
4 effect of this amendment, to its fundamental justice and to  
5 its probable supply side response, but I found even more  
6 significant, in his discussion of this issue, the question  
7 of political accountability.

8 He has stated with greater precision and elegance  
9 than I am able, a concern which I have long-felt and which  
10 I expressed on the first day of this mark-up, about the  
11 Windfall Profits Tax and promises which many of us made to  
12 work for its repeal.

13 I was not one of those that voted for the tax. I  
14 continue to think it is one of the most wrong-headed and  
15 counter-productive measures imposed upon this country. I  
16 have promised to diligently work to alleviate the worst  
17 effect of that tax.

18 It seems to me that if there is meaning and purpose  
19 in this political system of ours, it is for those of us who  
20 serve in public office, to make promises to our constituents  
21 and then to promptly keep them when the opportunity arises.

22 So, I am going to vote for this amendment not only  
23 because of its economic and tax effect on our oil supply,  
24 but because I think it is in part, as he has correctly  
25 pointed out, keeping of promises that have been made by

1 many of us on both sides of the aisle.

2 I especially congratulate him, Mr. Chairman, on  
3 formulating an amendment which will have a large impact on  
4 energy production at a very small cost to the Treasury  
5 because of the Treasury and the precision with which he has  
6 drafted the amendment.

7 Senator Boren. Mr. Chairman, I appreciate very much  
8 Senator Armstrong's comments. I am sincere in what I said.  
9 I haven't quoted the Republican Platform merely to make this  
10 a partisan issue, because I think as every member of this  
11 Committee knows, as a Democrat, during the past Adminis-  
12 tration, I made no secret of my displeasure with the fact  
13 that the Administration of my own party did not, in my  
14 opinion keep its word.

15 I had gone through my state holding the letter up  
16 and during the campaign for that candidate of my party, and  
17 gave my word along with it, and I must say that I was  
18 certainly let down personally, that the commitment was not  
19 kept, and in this last election there was a very substantial  
20 issue made of it, again in my state.

21 The current occupant of the White House received an  
22 overwhelming majority in my state, and I think that is one  
23 of the reasons. I think there was a feeling the last  
24 Administration had not kept its commitment on this issue,  
25 and I think there was a real trust and belief that this

1 Administration would. I just cannot believe that if we  
2 do something modest, and I think this is something modest,  
3 very modest, that the President would act to try to take  
4 this out of the bill if this Committee were to put it in.

5 Mr. Chapoton. Mr. Chairman, let me say, I think all  
6 of you know that this Administration has a great deal of  
7 sympathy with the purposes behind this amendment.

8 We have problems with the crude oil windfall profit  
9 tax in general, and I think the point is made about its  
10 imposition on new oil are well taken.

11 We propose this economic recovery tax package as a  
12 part of the President's economic recovery program. We did  
13 not propose anything with respect to the windfall profit  
14 tax.

15 We did not propose originally treatment of the  
16 royalty owners, but in making modifications to the original  
17 proposal, it was decided to add something specifically  
18 dealing with the royalty owners' problem.

19 We do not feel, however, that this is the time to  
20 deal with the windfall profit tax in general, as much as  
21 that may need to be done and may need to be done before too  
22 long.

23 We must oppose this amendment at this time. We do  
24 not feel it is appropriate on this bill.

25 I might say, and I think we all know, the oil

1 business is doing quite well now. There undoubtedly would  
2 be a response if you took the -- phased down the tax on new  
3 oil. But in the oil patch, the activity is moving along at  
4 a very brisk pace.

5 So, I think that aspect of it, while desirable is not  
6 as critically important as it might be if that were not the  
7 case.

8 Senator Boren. I think we all know the issue. I  
9 don't have anything further.

10 The Chairman. Who has the cost estimates on this?  
11 Does the Joint Committee have?

12 Mr. McConaghy. Yes. In fiscal 1982, it would be  
13 \$100 million; in 1983, \$400 million; in 1984, \$900 million;  
14 in 1985, \$1.5 billion and in 1986, \$2.2 billion.

15 Those are fiscal estimates.

16 The Chairman. I would just say that this is one of  
17 the areas that I discussed with the Secretary when we were  
18 talking about the tax credit for royalty owners, to see if  
19 we couldn't provide some incentive, because this is, you  
20 will get a production response. I don't think there is  
21 any question about that.

22 At that time, I was told, I assume for the same  
23 reasons we were told today, it is not that the Administration  
24 likes the windfall profits tax, but unless we can offset it  
25 with some other reduction somewhere, they wouldn't accept

1 it.

2 So, I support what the Senator wishes to do, but I  
3 assume the Treasury's indication -- you are not objecting  
4 to the principle, but you are objecting to the timing?

5 Mr. Chapoton. No, that's correct. We do not feel  
6 it is appropriate on this bill. The revenue, while it  
7 builds considerably, and as Mr. McConaghy pointed out, it  
8 is almost \$1 billion in 1984.

9 The Chairman. Is there a billion dollars left in  
10 1984?

11 Mr. McConaghy. Just about a billion dollars.

12 Senator Chafee. Mr. Chairman.

13 The Chairman. Senator Chafee.

14 Senator Chafee. Mr. Chairman, when we did the  
15 windfall profits tax a couple of years ago, I was against a  
16 tax on new oil, having it applied to new oil. But we have  
17 it. We are using the revenue.

18 There is no question but what every incentive is out  
19 there now for increased production has been shown. We have  
20 made moves here today that doesn't affect all new oil, but  
21 it affects royalty owners that we have already incorporated  
22 in this bill.

23 Mr. Chairman, I just think we have to draw the line  
24 somewhere if we are going to keep this bill from truly  
25 being a magnificent Christmas tree.



1           So, Mr. Chairman, I plan to vote against the amendment  
2 and hope we could get on with approving the bill in its  
3 total and hold up on the amendments.

4           Senator Boren. I think we might as well vote.

5           The Chairman. The clerk will call the roll.

6           Mr. Lighthizer. Mr. Packwood.

7           (No response.)

8           Mr. Lighthizer. Mr. Roth.

9           (No response.)

10          Mr. Lighthizer. Mr. Danforth.

11          Senator Danforth. No.

12          Mr. Lighthizer. Mr. Chafee.

13          Senator Chafee. No.

14          Mr. Lighthizer. Mr. Heinz.

15          (No response.)

16          Mr. Lighthizer. Mr. Wallop.

17          (No response.)

18          Mr. Lighthizer. Mr. Durenberger.

19          The Chairman. No.

20          Mr. Lighthizer. Mr. Armstrong.

21          Senator Armstrong. Aye.

22          Mr. Lighthizer. Mr. Symms..

23          Senator Symms. Aye.

24          Mr. Lighthizer. Mr. Grassley.

25          Senator Grassley. Aye.

1 Mr. Lighthizer. Mr. Long.

2 Senator Boren. Aye, by proxy.

3 Mr. Lighthizer. Mr. Byrd.

4 (No response.)

5 Mr. Lighthizer. Mr. Bentsen.

6 Senator Bentsen. Aye.

7 Mr. Lighthizer. Mr. Matsunaga.

8 Senator Matsunaga. Aye.

9 Mr. Lighthizer. Mr. Moynihan.

10 (No response.)

11 Mr. Lighthizer. Mr. Baucus.

12 Senator Boren. Aye, by proxy.

13 Mr. Lighthizer. Mr. Boren.

14 Senator Boren. Aye.

15 Mr. Lighthizer. Mr. Bradley.

16 (No response.)

17 Mr. Lighthizer. Mr. Mitchell.

18 (No response.)

19 Mr. Lighthizer. Mr. Chairman.

20 The Chairman. No.

21 Senator Moynihan. Mr. Chairman, no.

22 (Pause.)

23 The Chairman. On this vote the ayes are 8, and the  
24 nays are 6. Those who are not recorded will be recorded.

25 There is still enough the amendment is in doubt.

1 Are there other amendments?

2 Senator Matsunaga. Mr. Chairman.

3 The Chairman. Senator Matsunaga.

4 Senator Matsunaga. Mr. Chairman, for matters of  
5 clarification, on the at risk provision, the third party  
6 lenders. I understand a study is being made to clarify the  
7 matter.

8 The Chairman. Not a study. What we have done is  
9 directed Treasury, the Joint Committee and the staff to  
10 see if they can't work out some satisfactory language.

11 If so, we have authorized them to include that in  
12 the proposal.

13 Senator Matsunaga. I thank you.

14 As to the sequencing options, I note by the press  
15 release which was issued by you, Mr. Chairman, that the  
16 Committee did have an understanding that a later issued  
17 option may be exercised before a previously-issued option.

18 I understand Secretary Chapoton has had a change of  
19 mind since the matter was clarified.

20 I indicated earlier today that I would offer an  
21 amendment, but it seems that since the Committee did agree  
22 to the non-sequential exercise of options yesterday, that  
23 unless the Committee decides to change it, that it should  
24 remain as is.

25 Senator Bentsen. I would like to support the comments

1 of the Senator from Hawaii.

2 We have another problem that you run into. If you  
3 are dealing with a venture capital company, and a small  
4 company, you often have a great deal of volatility in the  
5 price of the stock.

6 So, if you require a sequential exercise of the  
7 option, it might be that an initial option was given when  
8 the price was at a major high.

9 Then, as the company goes along, some of the  
10 expectations are not fulfilled and the price goes down.  
11 They give a new stock option. Then there is no way that  
12 second stock option has any effect if the first option  
13 given was at one of those highs.

14 Now, if you are dealing with a stock option with  
15 AT&T, you don't have that kind of volatility. You don't  
16 have those kinds of swings.

17 So, I think if we are trying to help retain people  
18 and to get the people into these new starting venture  
19 capital companies to make it sequential, not make it  
20 sequential would be helpful and would make the options  
21 much more effective in trying to retain that kind of  
22 personnel.

23 Actually, I don't see where it costs the Treasury  
24 in the exercise of the option.

25 So, I would support the Senator's comments. As I

1 understand it, we voted on this. It would take an  
2 affirmative vote on our part now to overturn it.

3 Mr. Chapoton. Senator, I think I was part of the  
4 problem on that when the matter was raised yesterday,  
5 right before lunch I said initially I saw no problem with  
6 removing the sequential requirement of preexisting law.

7 On reflection though, as I mentioned yesterday  
8 afternoon, the -- we see a great deal of problem with it.  
9 The qualified stock option rules are a tremendous benefit  
10 to the affected employee. They can and do receive a very  
11 significant amount of compensation with no taxable income  
12 whatsoever.

13 It taxes capital gains when and if the stock is  
14 sold. Of course, if they hold the stock until death so  
15 the value is stepped up, there may never be a tax. There  
16 may never be a tax on what is compensatory income.

17 It is considered a valuable tool because it does  
18 attract good management, and it does tie management to the  
19 fortunes of the company.

20 If the non-sequential rule, the sequential rule is  
21 deleted, however, you are then in the position of advising  
22 an executive that you will be giving an option at this  
23 time, and if the stock goes down, he doesn't really have  
24 to worry about it, we will give him a later option at a  
25 later time.

1           The company may want to do that because they may  
2 want to compensate him, but they do not tie him to the  
3 value of the fortunes of the company at the original date  
4 of issue.

5           So, if we have a sequential rule, the employee takes  
6 a risk of a long-term option of more value, in which event  
7 the stock declines in value. It may not be beneficial for  
8 him to exercise it, or a short term option, in that event  
9 it goes down he can simply let that option expire and  
10 another option can be issued to him.

11           But it certainly takes away the tying of the option  
12 to the fortunes of the company. If at any time later a  
13 new option can be issued in place of an old option.

14           It simply is compensation in a form that is not  
15 tied directly to the fortunes of the company.

16           Senator Matsunaga. Mr. Chairman, the point I am  
17 trying to make is that unless the Committee acts otherwise,  
18 it is my understanding that the non-sequential provision  
19 remains as an action taken by the Committee.

20           Senator Bentsen. I would like, Mr. Chairman, if I  
21 might, state Senator Packwood's support of this, the fact  
22 he was co-author of the amendment, the Packwood-Bentsen  
23 amendment, yesterday, and supports it as it was passed.

24           The Chairman. Right.

25           As I recall, that was adopted on a voice vote. So

1 I assume we could, as with any other thing, move to re-  
2 consider and have a vote on the sequential matter.

3 Would the Administration state very briefly --

4 Mr. Chapoton. We would simply like, if the option  
5 provisions are to be reinstated, that the sequential rule  
6 of prior law, be reinstated along with the other provisions.  
7 That is, as long as an option is outstanding and is not  
8 expired or has been exercised, no option issued or granted  
9 subsequent to that date may be exercised.

10 You have to exercise them in order of which they were  
11 granted.

12 Senator Chafee. Mr. Chairman, I apologize. I was  
13 tied up. What is briefly the reason for that?

14 Mr. Chapoton. If there is no sequential rule, then  
15 any number of options may be issued so that you can pretty  
16 well assure if the stock swings at all, of granting compen-  
17 sation that will be taxed, if at all, at capital gain rates,  
18 to high income employees, because any swing of the stock  
19 from a low point will entitle that employee to an exercise  
20 an option granted at the lowest point at which any option is  
21 granted.

22 Senator Chafee. Has the law in the past always had  
23 the sequential --

24 Mr. Chapoton. I believe --

25 Mr. Hawkins. I believe in 1964, Senator Chafee.

1 Senator Chafee. It always had that?

2 Mr. Hawkins. The requirement of the sequential came  
3 in in 1964. The Revenue Act of 1964.

4 Senator Chafee. That made it sequential?

5 Mr. Hawkins. Yes.

6 Senator Chafee. Prior to that, you hadn't had it?

7 Mr. Hawkins. That is correct.

8 That is when they shifted or switched from restricted  
9 stock to qualified stock option.

10 Senator Danforth. Mr. Chairman.

11 The Chairman. Yes, the Senator from Missouri.

12 Senator Danforth. Mr. Chairman, I move we reconsider  
13 the vote.

14 The Chairman. I assume we will have to dispose of it  
15 by roll call, if we can't --

16 Mr. Chapoton, if you will state for us all who are  
17 here, one more time.

18 Mr. Chapoton. The provision would simply reinstate  
19 the 1976 provision that an option to be a qualified option  
20 or incentive option under this amendment, the plan would  
21 have to provide that no option could be exercised unless  
22 all prior options that were still outstanding were exercised  
23 first.

24 The Chairman. Right. I don't think there are any  
25 objections to reconsidering on it. We will just vote on



1 that proposal and find out.

2 The clerk will call the roll.

3 Senator Danforth. What is the vote? What is an aye  
4 vote?

5 Senator Matsunaga. This is on a motion to reconsider.

6 Senator Danforth. No, we did reconsider.

7 The Chairman. I don't think we need a vote on that,  
8 do we?

9 Senator Matsunaga. Well, we may defeat the motion to  
10 reconsider.

11 The Chairman. Okay. We will vote on the motion to  
12 reconsider.

13 Mr. Lighthizer. Mr. Packwood.

14 The Chairman. Aye.

15 Mr. Lighthizer. Mr. Roth.

16 Senator Roth. Aye.

17 Mr. Lighthizer. Mr. Danforth.

18 Senator Danforth. Aye.

19 Mr. Lighthizer. Mr. Chafee.

20 Senator Chafee. Aye.

21 Mr. Lighthizer. Mr. Heinz.

22 (No response.)

23 Mr. Lighthizer. Mr. Wallop.

24 The Chairman. Wallop votes aye.

25 Mr. Lighthizer. Mr. Durenberger.

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

1 Mr. Lighthizer. Mr. Mitchell.

2 Senator Mitchell. No.

3 Mr. Lighthizer. Mr. Chairman.

4 The Chairman. Aye.

5 (Pause.)

6 The Chairman. Mr. Armstrong, aye.

7 Senator Grassley. Mr. Chairman, aye.

8 The Chairman. It is 7 yeas, and 4 nays. The motion  
9 to reconsider is agreed to.

10 The question now arises on the original proposal.

11 We will have Mr. Chapoton state it again.

12 Mr. Chapoton. The proposal would require that to be  
13 a qualified option, the plan would have to state that  
14 existing options that are outstanding must be, first in time  
15 must be exercised. You cannot exercise an option while an  
16 earlier granted option was outstanding unexercised.

17 Mr. Lighthizer. Mr. Packwood.

18 The Chairman. No.

19 Mr. Lighthizer. Mr. Roth.

20 Senator Roth. Aye.

21 Mr. Lighthizer. Mr. Danforth.

22 Senator Danforth. Aye.

23 Mr. Lighthizer. Mr. Chafee.

24 Senator Chafee. Aye.

25 Mr. Lighthizer. Mr. Heinz.

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

1 Mr. Lighthizer. Mr. Bradley.

2 (No response.)

3 Mr. Lighthizer. Mr. Mitchell.

4 Senator Mitchell. No.

5 Mr. Lighthizer. Mr. Chairman.

6 The Chairman. Aye.

7 (Pause.)

8 The Chairman. The ayes are 7, and the nays are 5.  
9 The absentees will be recorded. So, it is still an open  
10 question.

11 Senator Mitchell.

12 Senator Mitchell. Thank you, Mr. Chairman.

13 Mr. Chairman, I yield to the Senator from Hawaii.

14 Senator Matsunaga. Mr. Chairman, realizing the mood  
15 of the Committee and it appears that marching orders have  
16 come down from the White House, "No more amendments," so  
17 that I would request of the Chairman, one, and this question  
18 was asked earlier. Perhaps the Chairman has had time to  
19 think a bit. Will we have a second tax bill?

20 The Chairman. I am still convinced that there will be  
21 a second tax bill. I can just state from my personal stand-  
22 point, I have a number of matters I have an interest in we  
23 withheld from this bill.

24 The answer would be yes.

25 Senator Matsunaga. The answer is yes.

1 Well, I appreciate that very much.

2 So, considering the mood of the Committee, as I  
3 said earlier, I was intending to offer the horse amendment  
4 here, but I would request between now and the time that the  
5 second tax bill is brought up, or an appropriate tax  
6 measure to which an amendment could be offered, request  
7 Treasury to make a study of this issue and answer the  
8 question: Why.

9 Now, I have no interest in race horses or in breeding  
10 or work horses, because I don't even own a ranch. I don't  
11 even own a horse. I don't know whether to ride a horse on  
12 the left side or the right side. The only thing I used to  
13 ride when I was a kid was a jackass. Maybe that is why I  
14 am a Democrat.

15 (Laughter.)

16 Senator Matsunaga. As long as nobody rides me and  
17 thinks that I am the one to be ridden on. But I would want  
18 the Treasury to answer the question. Look into it seriously,  
19 why. This is why I got involved on the question of pure  
20 equity, that other animals get the investment tax credit,  
21 but not horses.

22 So, I would ask sincerely that the Treasury would  
23 look into this matter and give me a satisfactory answer as  
24 to why horses are discriminated against.

25 Mr. Chapoton. Senator, we would be happy to do that.

1           Senator Matsunaga. Right. I would appreciate that.  
2 Now you see, you are giving everybody else a tax break and  
3 then you are discriminating against horses by lengthening  
4 the period. Again, it is a small matter. I am told in the  
5 case of race horses your extending the depreciation period  
6 from four years to five years and for breeding horses from  
7 three years to five years, which means they can take less  
8 depreciation.

9           That is a small matter, but here again, you have  
10 discriminated against the horses.

11           We provide investment tax credit for gambling instru-  
12 ments, pin ball machines and every other gambling instrument,  
13 but sure, horses, race horses are used for gambling purposes.  
14 But then we have breeding horses and work horses and we give  
15 investment tax credit to cows and pigs and every other  
16 animal, but not horses.

17           So, between now and the next tax bill, I would  
18 request the Treasury come up with some satisfactory answer.

19           Mr. Chapoton: Senator, we will do that. There are  
20 different types of horses. Race horses are treated differ-  
21 ently than breeding horses; work horses are treated differ-  
22 ently. We will supply you a full report on that.

23           Senator Matsunaga. I don't wish to embarrass the  
24 members of the Committee, because we have commitments, we  
25 have the votes. But I don't want to embarrass the members

1 of the Committee, because of the marching order having come  
2 down from the White House, particularly members --

3 The Chairman. Well, the President is probably very  
4 sympathetic, he has a horse.

5 (Laughter.)

6 The Chairman. But I can't reach him today. He is  
7 out.

8 Senator Matsunaga. Fine.

9 Just for a matter of clarification again, on the  
10 foreign tax matter, as I understand it, Treasury is going  
11 to make a further study of that. The Treasury proposal  
12 dealt rather unfavorably with business equipment use abroad.

13 I understand you are making a study of that?

14 Mr. Chapoton. Well, if -- we have followed the ADR  
15 midpoint life of equipment used abroad. I understand that  
16 in certain cases they now claim facts and circumstance life,  
17 they are not required to stay on the ADR system.

18 Senator Matsunaga. Oh, they are not.

19 Mr. Chapoton. So, they may claim facts and circum-  
20 stances and we have just recently heard some taxpayers claim  
21 facts and circumstances short of an ADR midpoint, in which  
22 event, under ACRS, they would be moved back to the midpoint.

23 Now I don't know of any way we could handle that  
24 problem, because we want to get away entirely from facts  
25 and circumstances, particularly with respect to assets used



1 abroad.

2 Senator Matsunaga. My concern, especially in the  
3 field of high technology, where we have the lead, we may  
4 place our own industry in jeopardy in competition with the  
5 industries from other nations which give favorable tax  
6 write-offs.

7 So, I would definitely appreciate your looking into  
8 this. Perhaps it could be handled without any legislation.

9 Mr. Chapoton. All right.

10 Senator Matsunaga. Then on the mandatory pension  
11 plans, here again, if I proposed to limit it to the private  
12 sector, what sort of impact would it have? Can you give  
13 me that?

14 I do not intend to offer the amendment here, but I  
15 will, Mr. Chairman, reserve the right to offer it on the  
16 floor, if I find that that merits support in my case.

17 Mr. Chapoton. Senator, I believe fiscal year impact  
18 allow mandatory contributions to be deductible, limited to  
19 the private sector.

20 It would be \$1.6 billion, in 1982.

21 \$1.7 billion, in 1983.

22 \$1.9 billion, in 1984.

23 \$2 billion, in 1985.

24 Senator Matsunaga. Thank you very much.

25 There is one last provision, and that is relative to

1 holding the Guam and Virgin Islands harmless. We have done  
2 this in the past, as the Chairman well knows. I think  
3 something ought to be done for that.

4 If it is necessary for me to offer an amendment, I  
5 would. If not, I would just leave it to the Treasury to  
6 come up with a proposal.

7 You may make a study of that between now -- we will  
8 have another meeting, Mr. Chairman.

9 The Chairman. It now appears there may be another  
10 meeting, yes.

11 Mr. Chapoton. I think they have the Mirror Code, as  
12 you know.

13 Senator Matsunaga. That is right.

14 Mr. Chapoton. They mirror our code, so a cut in  
15 our taxes will automatically be a cut in their taxes.

16 Senator Matsunaga. Right.

17 Mr. Chapoton. Unless we -- unless some action is  
18 taken by Congress, perhaps in a spending legislation.

19 Senator Matsunaga. Then it would require legislative  
20 action.

21 Mr. Chapoton. It would require legislative action.

22 Senator Matsunaga. I would be prepared to make that.

23 There is no objection; is there?

24 Mr. Chapoton. Senator, I am not certain on that

25 point. I am afraid there would be some revenue involved.

1 I am just not prepared to state that.

2 Senator Matsunaga. It was done practically auto-  
3 matically in the past.

4 The Chairman. That may be a matter we could look at.  
5 Mr. Chapoton. That has been done in the past.

6 Senator Matsunaga. Yes. They have, as you know, the  
7 Mirror Tax System. Whatever we do here to reduce the taxes  
8 they lose that much. The Federal Government is a mere  
9 collector, a conduit for their governments. It would be  
10 totally unfair unless we do what we have done in the past,  
11 merely to make up for that loss, they would suffer on  
12 account of the action we take here.

13 Mr. Chapoton. I understand the problem. I cannot  
14 remember -- we did address this early on. I frankly,  
15 cannot remember the conclusion we reached at that point.  
16 I will have to get back to the Committee on that.

17 Senator Matsunaga. Perhaps Mr. McConaghy has the  
18 data.

19 Mr. McConaghy. Senator Matsunaga, I think in 1975,  
20 with that legislation that was passed, we did authorize  
21 an appropriation that would really be a spending program.

22 Senator Matsunaga. Right.

23 Mr. McConaghy. In 1976, or 1977, it was authorized.  
24 I think that was vetoed. In 1978, it was not done.

25 So, in 1975 it was done, authorization and that was

1 signed.

2 In 1977, Congress did authorize it. The President  
3 vetoed it.

4 In 1978, they did not authorize it.

5 I don't know exactly what the revenue effect would  
6 be, but it would be an authorization.

7 Senator Matsunaga. Mr. Chairman, I request that a  
8 study be made of this and full consideration be given it  
9 by the Treasury.

10 The Chairman. That will be done then.

11 Senator Matsunaga. I thank Senator Mitchell for  
12 yielding. I appreciate it.

13 The Chairman. Senator Mitchell has a series of  
14 amendments; is that correct?

15 Senator Mitchell. Yes, I do, Mr. Chairman. But,  
16 since several of them were --

17 The Chairman. Could I announce, first of all, the  
18 vote this morning with Senator Heinz to permit banking of  
19 depreciation, the vote was 10 yeas and 10 nays. The amend-  
20 ment was not agreed to.

21 Senator Mitchell. Mr. Chairman, since the first series  
22 of amendments were approved by the Committee last year, and  
23 were obviously the subject of discussion, and I will not  
24 discuss them in any detail. I will take them one at a time.

25 My first amendment would deal with subchapter S

1 corporations and would increase the maximum number of share-  
2 holders permitted for a corporation to qualify for and  
3 maintain sub-chapter S. status from 15 to 25.

4 This is a very minor small business matter.

5 The Committee last year estimated that they would  
6 reduce budget receipts by less than \$5 million.

7 I am prepared for an immediate vote on that.

8 Senator Bentsen. Mr. Chairman, if I may ask.

9 The Chairman. Yes.

10 Senator Bentsen. Isn't that what we did last year  
11 in the Finance Committee?

12 Senator Mitchell. Precisely.

13 Senator Bentsen. I also had a bill on that. I would  
14 like to be a co-sponsor with the Senator on it.

15 Senator Mitchell. Let me just say in preface to this  
16 and a series of amendments, I will make one statement that  
17 applies to all of them. It is generally repetitious of what  
18 I said the other day. There is very little in this bill  
19 that is targeted specifically to small business.

20 This Committee acted last year, after careful  
21 consideration and deliberations, approved a series of  
22 amendments which provided assistance to small businesses.

23 I think some of those provisions ought to be included  
24 in this bill. We have done a great deal for major corpor-  
25 ations. We have done a great deal for wealthy Americans.

1 I think we ought to try to do -- we haven't done very  
2 much on an individual basis for persons who are not of great  
3 wealth. We ought to at least try to do something for really  
4 small business.

5 This is a very, very minor amendment. I have a series  
6 of others that get a little more major as we go along.

7 I would hope that the Administration is not rigid,  
8 at least as far as this and a few other amendments are  
9 concerned.

10 Mr. Chapoton. Senator, this would be an increase to  
11 what number of shareholders?

12 Senator Mitchell. From 15 to 25. It is precisely  
13 what this Committee approved last year.

14 Mr. Chapoton. The sub chapter S area, I think we all  
15 agree, needs further work. We do need to study it further.

16 In principle, we certainly would not object to an  
17 increase in number of shareholders for sub chapter S  
18 corporations.

19 We would express the preference that this be dealt  
20 with when we take up sub chapter S. We certainly are going  
21 to be required to take up sub chapter S.

22 Senator Mitchell. I just want to say, Mr. Chapoton,  
23 I think that is really indifferent to small business,  
24 demonstrated with remarkable clarity on something of this  
25 minor nature.

1 Mr. Chapoton. Senator, let me state again, we don't  
2 agree that small business doesn't participate in this bill.

3 Indeed, as we said, when you have capital cost  
4 recovery, generous capital cost recovery and you have  
5 significant rate reduction, both of those items affect all  
6 businesses, including small businesses.

7 Then, when you add to it the estate tax which has  
8 been number one or two on the program of small business,  
9 we felt that a good deal was done for small business in  
10 this package.

11 So, we would not agree that there is nothing that  
12 is not done here. It is not targeted. We have attempted to  
13 stay away from targeting as much as possible.

14 Senator Chafee. Mr. Chairman.

15 The Chairman. Senator Chafee.

16 Senator Chafee. Thank you, Mr. Chairman.

17 As Senator Mitchell pointed out, last year we did  
18 have a significant series of measures dealing with small  
19 business. We didn't have the estate tax, but we did have  
20 the reduction in the corporate -- before the corporate  
21 surtax took effect.

22 As you recall, we went from \$100,000 to \$200,000 and  
23 then to \$250,000. We had this particular measure.

24 Now, I suspect the next measures he is going to  
25 propose are going to be more expensive. I think we ought

1 to accept this one, Mr. Chairman. This is a minor thing.  
2 It helps small business raise a little capital, to attract  
3 more investors. It is a pittance as far as the Treasury goes.

4 I would join Senator Mitchell in urging the Treasury  
5 Department to accept this.

6 The others may be more difficult. Raising the amount  
7 exempt from the corporate surtax may be more difficult, but  
8 this I think we ought to take.

9 Mr. Chapoton. Well, Senator, let me just state again,  
10 we would support in principle, this change. We are working  
11 with the staff of this Committee on other sub chapter S  
12 changes.

13 We have attempted not to keep the amendments down to  
14 this bill. So we are not going to support this change at  
15 this time. But we recognize the Committee may work its  
16 will on this one.

17 The Chairman. Right.

18 Without objection, the amendment is agreed to.

19 Senator Mitchell. Thank you, Mr. Chairman.

20 My second amendment is similar. It was approved by  
21 the Committee last year --

22 The Chairman. May I ask the Senator from Maine, maybe  
23 it will speed up the process. That amendment is in a bill  
24 we are going to be reporting out. I don't see any objection  
25 to that one.



1           If you can give us a little bird's eye view of the  
2 whole series, we might be able to move more quickly.

3           Senator Mitchell. Certainly, Mr. Chairman.

4           The next one would be an increase of the minimum  
5 accumulated earnings credit from \$150,000 to \$200,000.

6           The third one would be a reduction in the corporate  
7 tax rate below the maximum rate.

8           The fourth one would be expensing of the first \$25,000  
9 investment.

10          Those four were all approved by the Committee last  
11 year.

12          The fifth one was not approved by the Committee, which  
13 I would like to address in a little more detail and that is  
14 inventory accounting reform, which I think is crucial and  
15 necessary for small business.

16          Finally, one unrelated to small business which I would  
17 like to discuss briefly, is to permit an increase in tax  
18 deductions for donations of equipment at the universities.

19          That is the whole sequence.

20          The Chairman. Right.

21          Now with reference to the inventory and accounting,  
22 we have discussed that. As I understand, you were not  
23 going to press that. You wanted some assurance there would  
24 be hearings on that proposal, and plus, of course, you  
25 would reserve your right to offer that amendment on the

1 floor.

2 I am prepared to give the Senator that assurance  
3 now. We will have hearings. That does not prejudice your  
4 right to offer the amendment at a later time, if that is  
5 satisfactory.

6 Senator Mitchell. That is, Mr. Chairman. I would  
7 just like the opportunity to spend about two minutes giving  
8 the reasons.

9 The Chairman. Certainly.

10 Senator Mitchell. Yes.

11 The Chairman. We might be able to cover that right  
12 now then.

13 Senator Mitchell. All right. I will be glad to do that  
14 now.

15 The very first day we began hearings, the Secretary  
16 of Treasury came before this Committee and made a persuasive  
17 argument for accelerated capital recovery.

18 The two principal points he made were the complexity  
19 of the present situation and rate of inflation caused over-  
20 statement of income and therefore, overpayment of taxes,  
21 because of inadequate depreciation procedures.

22 Those are valid arguments.

23 They apply with even greater force to inadequate  
24 inventory procedures.

25 The fact of the matter is the amount of income that

1 is overstated due to inadequate inventory accounting is  
2 three times the amount that is overstated due to inadequate  
3 depreciation procedures.

4 Now this is as a result of the fact that the over-  
5 whelming majority of American businesses do not use the  
6 last in, first out accounting method, even though it is  
7 available.

8 They do not use it because the LIFO rules are too  
9 complex for most small business to adopt. Of all corpor-  
10 ations, in 1976, last year for which I have figures, only  
11 3.7 percent of manufacturers, 2.5 of wholesalers, and 1.3  
12 percent of retailers use the last in, first out method of  
13 inventory accounting.

14 So, I think, Mr. Chairman, that if we are talking  
15 about the need to offset the effects of an adequate  
16 depreciation, I think we should address ourselves to the  
17 more critical need to offset the effect of inadequate  
18 inventory accounting.

19 My proposal would entail several steps. It would  
20 reduce the tax penalty for the election to use LIFO.

21 It would simplify the LIFO pooling regulation.

22 It would permit greater use of Government price  
23 indexes.

24 It would permit the use of internal indexes.

25 It would provide a number of other measures.

1 I think if we really mean it when we say we want to  
2 do something for small business, and that is now I think  
3 about third in American political usage, in things that  
4 people say want to do.

5 If we are serious about it, this is something that  
6 we ought to consider.

7 So, Mr. Chairman, I accept your assurance of hearings.  
8 I reserve the right to attempt to obtain action on the floor.

9 One final point I should mention is the need to permit  
10 cash accounting for very small businesses.

11 Mr. Chapoton. Senator Mitchell, if I might just  
12 interrupt. We are concerned about the complexity the small  
13 business faces in using LIFO inventory.

14 We have proposed regulations, proposed earlier this  
15 year, trying to simplify LIFO inventory, and indeed, there  
16 is a regulation hearing on that next week.

17 So we would like to work with you on that.

18 Senator Mitchell. Thank you, Mr. Chapoton. I look  
19 forward to that.

20 In the interest of time, Mr. Chairman, if we could  
21 proceed to vote on my other amendments. I don't require  
22 any extensive discussion unless other members want to  
23 discuss it.

24 The next amendment would, as I said, increase the  
25 minimum accumulated earnings credit from \$150,000 to \$250,000

1 a year.

2 The Chairman. I am wondering, there are a series of  
3 three amendments there, that and the next one would be the  
4 corporate rates, and the next one would be -- the third one  
5 would be expensing.

6 Is that correct?

7 Senator Mitchell. Yes, sir.

8 The Chairman. I have discussed this, not the series,  
9 but the last amendment, knowing of your interest and the  
10 interest of the members on this side, with the Treasury.

11 Of course, we get back to the same bottom line, that  
12 is the cost involved.

13 I have asked that the Joint Tax Committee, if there  
14 was some what the cost would be. This might be too minimal  
15 to be satisfactory to the Senator from Maine.

16 If you started in 1982, at 4,000 and went to 6,000 in  
17 '83, and 8,000 in '84 and 10,000, in '85. I am advised that  
18 even at a 5,000 rate, it affects some 50 percent of business  
19 es, and a 10,000 rate, it affects 74.4 percnet of all firms.

20 I don't have any -- does the Joint Committee have  
21 any numbers on those, that kind of a phase in, if in fact  
22 we could reach some accommodation?

23 Mr. McConaghy. Well, working on variations of that  
24 phase in, Senator Dole, if you had an optional 5,000, start-  
25 ing in 1981, that would be \$1 billion in 1981. If it stayed

1 there it would be \$800 million, in 1982. If it went from  
2 5 to 10, in 1982, it would go up to \$1.6 billion.

3 But we are trying to get the phase in you are talking  
4 about right now.

5 So, if you add optional 5,000, you get in 1981, the  
6 figures from '81 through 84, would be, \$1 billion, in '81;  
7 \$800 million, in '82; \$300 million, '83 and \$100 million, in  
8 1984.

9 But we are working on the various phase ins to get  
10 up to 10, starting at either 4 or 5 and going up.

11 The Chairman. I wonder if we might hear from Treasury.  
12 It is more expensive than I thought.

13 Mr. McConaghy. I am sorry. I gave you calendar years,  
14 Senator Dole.

15 It would be \$300 million, '81, and fiscal year,  
16 \$1.1 billion, in '82 and \$600 million, in 1983, for 5,000  
17 optional.

18 Mr. Chapoton. Senator.

19 The Chairman. Yes.

20 Mr. Chapoton. We -- Mr. Chairman, we are going to  
21 oppose this. We do think the ACRS system brings considerably  
22 simplicity, because of the fact that assets are just placed  
23 in an account and depreciated or cost recovered from an  
24 account over a set number of years.

25 Now there is no question that it is somewhat more

1 simple to simply expense a portion of the assets in the  
2 year placed in service.

3 But, we feel that the revenue restraints prevent that  
4 in this package.

5 Senator Mitchell. Mr. Chairman, could I just make a  
6 comment on that?

7 The Chairman. Yes.

8 Senator Mitchell. The first day that we voted on a  
9 total figure there was very extensive discussion. And, as  
10 I understood what was said, that we were going to have these  
11 overall figures, \$38 billion, \$93 billion, \$149 billion.  
12 We are going to discuss each and every proposal on its  
13 merits and then when we conclude to see what we have, take  
14 a look at how that will fit in the overall figure.

15 That was the substance of the discussion that led to  
16 that vote.

17 Now, of course, almost from the moment that discussion  
18 concluded, we have done precisely the opposite. There was a  
19 list that was prepared. That added up to a total that  
20 represented \$38 billion.

21 Resistance has not been registered by the Treasury  
22 to every proposal that would change that. So that the  
23 premise underlying the vote that we passed that first day  
24 in which we arrived at those figures has just been complete-  
25 ly discarded and undermined in all of the ensuing discussion

1 and with respect to every amendment, including this one.

2 Mr. Chapoton says repeatedly, we want to do something  
3 for small business, this is a good idea, but we can't afford  
4 it.

5 That wasn't my understanding of what we voted the  
6 first day. We were going to discuss each proposal on the  
7 merits. See what we came up with. And then try to fit that  
8 in the \$38 billion.

9 Senator Danforth. Mr. Chairman.

10 The Chairman. Senator Danforth.

11 Senator Danforth. There was a precedent which the  
12 Senator from Maine might think about and that was with the  
13 All Savers Bill, in which we had a trade-off. That is, we  
14 swapped one revenue loss for another revenue loss.

15 So maybe there is something in the bill that you  
16 would like to have reduced or eliminated. You can substitute  
17 this.

18 Senator Mitchell. Well, because I was operating on  
19 the premise that I have just described. I understood what  
20 we were about in this process.

21 I haven't search the bill to find an offset. If the  
22 Senator could suggest one, I would be very happy to.

23 Senator Danforth. I am waiting for you.

24 Senator Mitchell. I have a good one, the dividend  
25 exclusion that we kept in when we eliminated the interest



1 exclusion. It seems to me to make a lot of sense. But we  
2 already voted on that. I don't want to burden the Committee  
3 with second votes on matters.

4 Senator Bradley. Mr. Chairman.

5 The Chairman. Senator Bradley.

6 Senator Bradley. Mr. Chairman, I would like to echo  
7 the sentiment of Senator Mitchell. I thought that the Long  
8 Amendment to the discussion about a \$38 billion cap, gave  
9 us the flexibility that the Committee has always had to  
10 consider any number of amendments and that the ultimate bill  
11 would be no more than \$38 billion, as it was reported out of  
12 the Senate.

13 Now, you can take to the floor a \$38 billion bill  
14 or you can take to the floor a much higher bill with the  
15 understanding that you are not going to have any more than  
16 a \$38 billion bill out of the Senate.

17 If we in the Committee say that a \$38 billion bill  
18 out of Committee, there will be all these amendments that  
19 will be proposed on the floor anyway, and you won't have  
20 the same kind of discipline as if there was a genuine  
21 Committee agreement that it was \$38 billion out of the  
22 Senate.

23 I know that day we didn't have a specific amendment  
24 in writing, but as I understood what Senator Long had said,  
25 it was that we should have a degree of flexibility to accept

1 meritorious proposals without the restraint of \$38 billion,  
2 and after we have accepted or rejected proposals on their  
3 merits, we would then decide which proposals would be in  
4 a final package.

5 Was that your understanding?

6 The Chairman. Right. I think that is a fair  
7 statement.

8 I think Senator Long was indicating as long as we  
9 left the conference within the numbers we adopted, we left  
10 it flexible on that point.

11 I think, on the other hand, it is a little different  
12 than last year. I mean, I voted for all the amendments  
13 last year. We had a President who didn't want a tax cut  
14 last year. It was an election year. The way we had almost  
15 total support last time is by giving everybody the amend-  
16 ments they wanted.

17 This year, we are not in a position to do that.  
18 We have a President that indicated we should at least on  
19 this proposal, restrain ourselves, and he started off  
20 proposing, I think, with rather broad bi-partisan support,  
21 a rather generous overall tax package.

22 So it is a little bit different than comparing it to  
23 last year. Some of us would like to support every amend-  
24 ment that has been offered. But on the other hand, we have  
25 some obligation to support our President, in his efforts to

1 turn the economy around.

2 So, I don't -- I would hope we have been able to  
3 accommodate some of the concerns of every member on this  
4 Committee. I think we have.

5 But when it comes to whether it is loading up, I have  
6 already indicated I noticed some indication the bill may be  
7 getting out of hand. I don't share that view, but it is a  
8 real concern that the Treasury and the Administration have.

9 Senator Danforth.

10 Senator Danforth. Mr. Chairman, I do have a suggestion  
11 to help Senator Mitchell and that is if we were to tax state  
12 royalty receipts on oil, we could provide the revenues  
13 necessary to accommodate Senator Mitchell.

14 Senator Bradley. Would you offer that amendment,  
15 Senator Danforth?

16 Senator Danforth. I am just suggesting it to Senator  
17 Mitchell.

18 Senator Mitchell. I think we should proceed to vote,  
19 Mr. Chairman. I think it is obvious what is going to happen  
20 but I just feel, I will say it for the last time, that small  
21 business has been left out in the cold here. There is not  
22 much doubt in my mind about that.

23 I understand you disagree, Mr. Chapoton. But let's  
24 vote rather than prolong it any further.

25 The Chairman. You want to vote separately on --

1 Senator Mitchell. Yes, Mr. Chairman.

2 Senator Chafee. Are we taking the three separately?

3 Senator Mitchell. That's right.

4 Senator Chafee. Which is the first, the expensing?

5 Senator Mitchell. The first one is the increase the  
6 minimum accumulated earnings credit; \$150,000 to \$200,000,  
7 so there will be no misunderstanding I will just state what  
8 this says about the revenue impact in last year's report  
9 of this Committee, so we know we are not braking the bank  
10 with this amendment.

11 \$11 million, last year, it said, in fiscal '81; \$31  
12 million, in '82; \$35 million in '83; \$37 million in '84 and  
13 \$42 million, in '85.

14 Now I don't know how those figures would be adjusted,  
15 whether they would be just moved forward one year and be  
16 slightly different, but that gives some sign, some indication  
17 of the size of what we are talking about here to try to do  
18 something for small business.

19 Senator Armstrong. Mr. Chairman.

20 The Chairman. The Senator from Colorado.

21 Senator Armstrong. Do I understand that what we are  
22 going to do, having discussed them en block, we are going to  
23 vote on them separately?

24 The Chairman. Well, I think we discussed them en block  
25 to save time. I am willing to vote on them en block, but I

1 think the Senator from Maine would like separate votes.

2 Senator Armstrong. Well, I want to make just one  
3 observation about it. I know how I am going to vote on it.  
4 But I want to say I think the Senator has touched a nerve.  
5 In my judgment the area we particularly want to encourage for  
6 tax policy is small business, because that is where the  
7 vitality is in our system.

8 I think other members of the Committee feel the same  
9 way.

10 For the reasons the Chairman has stated, I am not  
11 going to vote for the motion as it is presently propounded,  
12 but in the event it should fail, if the Senator were disposed  
13 to come back with the \$25,000 expensing idea perhaps phased  
14 in some way so that the revenue implications of it were  
15 really negligible, in the early years, I would like to  
16 support that because I think it is a principle that is so  
17 important.

18 For example, if it were phased in -- well, I don't  
19 have a proposal. That would be up to the Senator. Perhaps  
20 there isn't enough interest in it to justify that, but in  
21 my own opinion, that would be a reasonable approach to  
22 minimize the revenue consequences and establish a worthy  
23 principle.

24 Senator Mitchell. I certainly would be amenable to  
25 that. I am a firm believer that something is better than

1 nothing.

2 Senator Bradley. Mr. Chairman, it seems to me that  
3 what we are really saying on these votes, if one votes no  
4 on the amendments, it is that every other thing that is in  
5 the tax package, every other thing, is more important than  
6 these amendments that are directed at small business.

7 You would have to make the argument that the rate  
8 reductions or that the depreciation or that the exclusion  
9 for foreign income, all of these things are more important  
10 than these small business amendments.

11 The reason is that you put this arbitrary cap and you  
12 then have forced yourself to reject what Senator Armstrong  
13 has said so clearly, are meritorious amendments.

14 And, because you put that cap, you have no option but  
15 to make judgments. If you vote no on this, you are saying  
16 no to small business.

17 And you are saying that the other components of this  
18 package are more important than these suggestions to  
19 specifically aid small business.

20 Senator Armstrong. Mr. Chairman, I reject the argument  
21 of the Senator, because I think we have before us the  
22 alternative of carving something else out of the bill. I  
23 don't have any hesitation in saying that there are some  
24 things in here that are of a lower priority to me.

25 I do think it is up to the mover of the amendment to

1 decide where he wants to make that adjustment and perhaps if  
2 he were to move to the direction I suggested the actual  
3 dollar impact of phasing it in, would be so small that  
4 perhaps such an adjustment wouldn't even be necessary.

5 But, I don't buy the notion that absent a specific  
6 proposal, that this is measured against every other proposal  
7 in the bill.

8 Senator Chafee. Mr. Chairman.

9 The Chairman. Senator Chafee.

10 Senator Chafee. Mr. Chairman, I think that what we  
11 are down to talking about here seems to me is very small  
12 dollars. I just can't believe that on this particular  
13 measure we are going to bust the bank; are we.

14 The Chairman. It has already been done. So, it  
15 wouldn't have any impact.

16 I would just say we are still getting estimates,  
17 Senator Mitchell, so don't vote too quickly on the expensing  
18 provision.

19 Senator Mitchell. I am prepared to offer as an  
20 alternative, to accommodate Senator Armstrong's suggestion.  
21 I will defer to you, Mr. Chairman, on the figures.

22 The immediate amendment is the accumulated -- minimum  
23 accumulated earnings credit. So those are the figures I  
24 believe Senator Chafee was referring to, that I read off.

25 Senator Chafee. Aren't we just talking just a few

1 paltry millions here, aren't we?

2 Senator Armstrong. \$250 million --

3 Senator Mitchell. \$250,000.

4 Senator Armstrong. So it is the amount in the provision  
5 in the Senate Finance Committee Bill last year.

6 Senator Mitchell. That's correct.

7 The Chairman. Let's have the cost of that again in  
8 '82 and '83 and '84, Joint Committee.

9 Mr. McConaghy. It would be approximately \$11 million,  
10 in '82. Maybe a million or two higher adjusting for '82.  
11 \$31 million, in '83. \$35 million, in '84. \$37 million in  
12 '85.

13 The Chairman. What about the second amendment? What  
14 would be the cost of that amendment?

15 Mr. McConaghy. The second amendment, if you are talking  
16 about the LIFO --

17 Senator Mitchell. No.

18 Mr. McConaghy. The charitable contribution?

19 The Chairman. Rate.

20 Mr. McConaghy. Rates, if we did what was done in the  
21 Finance Committee Bill last year are between \$300 million  
22 and \$400 million, in 1982.

23 \$1.1 billion to \$1.2 billion, in 1983.

24 \$1.8 billion to \$1.9 billion, in 1984.

25 \$2.1 billion to \$2.2 billion in 1985.



1 The Chairman. They are not just small items.

2 Then if we take -- let's just say if we have a level  
3 of through '84, of expensing at a level of \$5,000. Even  
4 that is expensive. What does that run? About \$400 million?

5 Mr. McConaghy. If you had a level of \$5,000.

6 The Chairman. That would take care of, according to  
7 my figures, about 55 percent of all firms, even at that  
8 level.

9 Mr. McConaghy. That is correct, Senator Dole.

10 On a fiscal year basis if it were effective in 1981  
11 or 1982, it makes a difference.

12 For effective in 1982, it would be \$500 million.

13 \$1 billion, in 1983.

14 \$600 million in 1984.

15 \$200 million in 1985.

16 The Chairman. How does it jump up, because under the  
17 figures I have, if you in '82, at \$5,000, it would be  
18 \$400 million. If you raised it to \$7,500, it would only  
19 be \$1 billion, fiscal '83.

20 Is that correct?

21 He is getting the same figure for \$5,000, one billion  
22 in '83.

23 Is that what you get, \$1 billion, in '83, for \$5,000?

24 Mr. McConaghy. If you made it effective in 1982. If  
25 you made it effective beginning in 1981, that figure would

1 be \$600 million, in 1983.

2 If you had \$5,000 optional expensing beginning in  
3 1981, the fiscal figures for that would be for fiscal 1981,  
4 it would be \$300 million.

5 In 1982, \$1.1 billion.

6 In 1983, \$600 million.

7 In 1984, \$200 million.

8 If you instead started the \$5,000 optional expensing  
9 in 1982, there would be no revenue loss in 1981, fiscal year.

10 In 1982, it would be \$500 million.

11 In fiscal 1983, it would be \$1 billion.

12 In fiscal 1984, it would be \$600 million.

13 Senator Chafee. Do we have any trouble with the  
14 accumulated capital one, Mr. Chairman?

15 It is \$11 million; \$31 million; \$35 million and \$37  
16 million?

17 The Chairman. I would like to hear from Treasury on  
18 that. I don't have any trouble with it.

19 Mr. Chapoton. Well, in principle we would have no  
20 problem with that.

21 The Chairman. All right. Let's take that one.

22 Senator Mitchell. Thank you, Mr. Chairman.

23 Senator Heinz. Mr. Chairman, since the revenue losses  
24 are very modest on that one, what great good does it do?

25 Senator Mitchell. Well, I will be glad to read to the

1 Senator the report of this Committee of last year which I  
2 understand you voted for.

3 Senator Heinz. No, I just wanted to know. There were  
4 a lot of things in that bill. What good or merit does it  
5 do?

6 Senator Mitchell. Well, on page 77, of the Committee  
7 Report --

8 Mr. Chapoton. Senator, if I might interject. It does  
9 permit small businesses to accumulate funds without concern  
10 of a penalty tax for failure to distribute as dividends  
11 the accumulated funds.

12 It is a matter of concern to small business, because  
13 there is a penalty tax on an unreasonable accumulation of  
14 funds.

15 So, it is a matter of constant irritation to small  
16 firms.

17 Senator Heinz. How many firms would be affected by  
18 it?

19 Mr. Chapoton. We have no idea of that, off hand,  
20 Senator.

21 Senator Chafee. It has been my understanding that they  
22 don't enforce the penalty anyway.

23 Mr. Chapoton. No, that's not correct, Senator. The  
24 penalty is raised on the audit of many small firms and is  
25 imposed many times or is at least, by agreement, funds are

1 distributed rather than in lieu of the tax being imposed.

2 Senator Heinz. Mr. Chairman, I am not necessarily  
3 opposed to what Senator Mitchell is doing, but I would like  
4 to know what the practical, real world consequences of it  
5 are going to be.

6 Mr. McConaghy. I think, Senator Heinz, it is difficult  
7 to tell. Today, you can accumulate in the corporation,  
8 \$150,000 without having a reason for accumulating it. To  
9 accumulate more than that, you have to show that the funds  
10 are being accumulated for the reasonable needs of the  
11 business.

12 Some have stated that some small businesses do not  
13 have specific plans for expansion and they would like to  
14 accumulate more. It perhaps would be difficult to show  
15 without specific plans they haven't accumulated for the  
16 reasonable needs of the business and they get into con-  
17 troversy with the IRS.

18 Senator Heinz. That I understand. I am trying to get  
19 an idea of whether this is something that will affect a  
20 couple of dozen firms or several thousand or tens of  
21 thousands or hundreds of thousands. Just magnitudes of  
22 differences here.

23 (Pause.)

24 Senator Bradley. I understand there are 6,000 firms in  
25 Pennsylvania.

1 (Laughter.)

2 The Chairman. They get \$1.00, each.

3 We did accept the first amendment. We did accept the  
4 second amendment, subject to Senator Heinz.

5 Senator Danforth. Maybe we can find that information  
6 out.

7 Senator Heinz. Why don't we come back without  
8 prejudice, Senator Mitchell.

9 The Chairman. Then we can move to the third one on  
10 the rate reduction. On that one I think we will need a  
11 roll call.

12 Senator Mitchell. I suggest, Mr. Chairman, since I  
13 don't believe further debate is going to change any minds,  
14 we proceed to vote on it.

15 The Chairman. Fine.

16 That one is very expensive, I would only say to those  
17 who came in late.

18 The clerk will call the roll.

19 Senator Chafee. Is this the expensing one, Mr.  
20 Chairman?

21 The Chairman. No, this is the expensive one, the  
22 rate reduction.

23 Senator Chafee. Oh.

24 The Clerk. Mr. Packwood.

25 (No response.)

1 The Clerk. Mr. Roth.  
2 The Chairman. No.  
3 The Clerk. Mr. Danforth.  
4 Senator Danforth. No.  
5 The Clerk. Mr. Chafee.  
6 Senator Chafee. No.  
7 The Clerk. Mr. Heinz.  
8 Senator Heinz. No.  
9 The Clerk. Mr. Wallop.  
10 (No response.)  
11 The Clerk. Mr. Durenberger.  
12 (No response.)  
13 The Clerk. Mr. Armstrong.  
14 Senator Armstrong. No.  
15 The Clerk. Mr. Symms.  
16 Senator Symms. No.  
17 The Clerk, Mr. Grassley.  
18 The Chairman. No.  
19 The Clerk. Mr. Long.  
20 (No response.)  
21 The Clerk. Mr. Byrd.  
22 Senator Byrd. No.  
23 The Clerk. Mr. Bentsen.  
24 Senator Moynihan. Aye.  
25 The Clerk. Mr. Matsunaga.

1 Senator Matsunaga. Aye.  
2 The Clerk. Mr. Moynihan.  
3 Senator Moynihan. Aye.  
4 The Clerk. Mr. Baucus.  
5 Senator Boren. Aye.  
6 The Clerk. Mr. Boren.  
7 Senator Boren. Aye.  
8 The Clerk. Mr. Bradley.  
9 Senator Bradley. Aye.  
10 The Clerk. Mr. Mitchell.  
11 Senator Mitchell. Aye.  
12 The Clerk. Mr. Chairman.  
13 The Chairman. No.  
14 (Pause.)  
15 The Chairman. Mr. Wallop, no.  
16 Mr. Durenberger, no.  
17 (Pause.)  
18 Senator Baucus. I vote aye.  
19 (Pause.)  
20 The Chairman. The ayes are 7, the nays are 11.  
21 The amendment is not agreed to.  
22 The absentees will be permitted to record their vote.  
23 Senator Mitchell. Mr. Chairman, my next amendment  
24 dealt with expensing. I have a modified proposal, responding  
25 to Senator Armstrong's suggestion.

1 This was provided to me by the Joint Committee. It  
2 would be effective January 1, 1982, to provide expensing  
3 of up to \$5,000, and it would gradually be scaled upward  
4 to \$7,500, in 1983; and \$10,000, in 1985.

5 It would start at \$5,000, in 1982 to \$7,500 in  
6 1983, and \$10,000, in 1985.

7 The Chairman. What happened to 1984?

8 Senator Mitchell. Let's make a more gradual phase in.

9 The Chairman. I see.

10 Senator Mitchell. You have a two-year gap. It would  
11 still be at \$7,500, during '84.

12 The Chairman. As I understand the cost of this  
13 proposal would be on a fiscal year basis, \$400 million, in  
14 1982; \$1 billion, in '83; \$1 billion, in '84, and \$800  
15 million, in 1985 and \$700 million in 1986.

16 Mr. Chapoton. Mr. Chairman, we would object. I would  
17 restate the point we do not -- that small business, this is  
18 an attempt at simplification for small business. We think  
19 it is obviously targeted at capital investment for small  
20 business.

21 ACRS gives small business which makes capital invest-  
22 ment faster, much faster write off than today. It is an  
23 effort toward simplification.

24 So, this has increase revenue cost because the Govern-  
25 ment operates on a cash method as well, and without increasing



1 the present value benefit of the tax benefit on the invest-  
2 ment.

3 So that in present value terms, it would give the  
4 business nothing. It would grant them a degree of simpli-  
5 fication, but the cost as we can see, would be quite high.

6 We would oppose the amendment.

7 The Chairman. Would the cost of this be offset with  
8 any other portion of the Administration's proposal?

9 Mr. Chapoton. These figures would take into account  
10 the ACRS proposal.

11 The Chairman. These are net figures.

12 Mr. Chapoton. Yes, sir.

13 The Chairman. If I could ask the Joint Tax Committee  
14 again, the cost of this amendment if it remained steady at  
15 \$5,000 through '84 before it increases.

16 Mr. McConaghy. It remains steady at \$5,000, starting  
17 in 1981 or in 1982, Senator Dole.

18 The Chairman. Which ever costs the least.

19 Mr. McConaghy. Starting in 1982, the fiscal figures  
20 would be zero in 1981; \$500 million, in 1982; \$1 billion, in  
21 1983; \$600 million, in 1984; \$200 million in 1985.

22 Senator Armstrong. Mr. Chairman.

23 The Chairman. Senator Armstrong.

24 Senator Armstrong. Are we going to finish this bill  
25 tonight? Before you answer, let me explain the reason I

1 raise that question at this particular moment.

2 I am, if I may confer with my colleague across the  
3 floor, I am fearful for the prospects of this amendment at  
4 the moment. I am personally very strongly attracted to it.  
5 I would like to vote for it in some form or another.

6 I have reason to think that something along this line  
7 is one of the highest priorities of small business in the  
8 country. I just like it.

9 Yet, the reason I ask whether or not we are really  
10 going to finish tonight, if we are, then we would all have  
11 to just take the best guess we can as to whether or not this  
12 is something we can support.

13 But, if there is a chance we are going to still be  
14 looking at this bill in the morning, I would encourage  
15 perhaps this may lay over and see if we can find a way to  
16 come up with numbers or offsets or something that would permit  
17 us to support it.

18 That is my question. That is the reason for my question.

19 The Chairman. I would say in response to the question,  
20 I am not certain how many other amendments are pending. If  
21 I had some idea of how many. I know Senator Bradley has  
22 amendments. Senator Baucus has two amendments. Senator Boren  
23 has an amendment. Senator Bradley has another, two amend-  
24 ments. Senator Moynihan has two amendments. Senator Heinz  
25 has amendments.

1           If we wait until morning, those same will have two  
2 more amendments. I would like to finish all the amendments  
3 maybe with the exception of this one, if it is all right  
4 with Senator Mitchell, to see if we can work out something  
5 overnight.

6           Is that satisfactory?

7           Senator Mitchell. It is, Mr. Chairman; I have no  
8 objection.

9           The Chairman. I would say in all sincerity, we have  
10 been trying to do that. I appreciate your cooperation. We  
11 hope we have been of some help on sub chapter S and the  
12 other amendments.

13          Senator Mitchell. You have, Mr. Chairman. Thank you.

14          The Chairman. So, the answer to your question would be  
15 it is doubtful. But I would like to complete. I think  
16 Senator Bradley has been asking to be recognize next.

17          If we can complete as many amendments as we can tonight,  
18 so when we come back tomorrow morning, at 9:30, there will be  
19 the Mitchell amendment and the amendment of the Senator from  
20 Colorado.

21          Now, it may not happen that way. I understand that.  
22 As long as we are in session, people have a right to offer  
23 amendments.

24          Senator Boren. Mr. Chairman, let me just ask, because  
25 after the last vote on the newly-discovered oil, there was

1 some confusion with two members as to what I meant by that  
2 term.

3 It also impacted the votes of two or three other  
4 members of the Committee who had yet to record themselves.

5 I wonder if we might lay that question over until the  
6 morning also, for some discussion, and possible modification  
7 of that.

8 The Chairman. What is the vote on that amendment?

9 Is it 8 to 8?

10 Mr. Lighthizer. Mr. Chairman, it is now 7 to 9.

11 Senator Boren. There were two members who voted for  
12 it, Mr. Chairman, who felt I had offered it to mean from this  
13 calendar year, from this particular point in time forward.

14 When I offered it, it was meant to be as defined by  
15 the Windfall Profits Tax which would have been January 1,  
16 1979, or something like that.

17 I would intend to reoffer it, Mr. Chairman, subject  
18 to some consultations with several members of the Committee,  
19 to make it clear to change to the negative who had been  
20 positive, the others who had not recorded themselves.

21 I would intend to perhaps offer that as a modification  
22 and clarification.

23 We could do that this afternoon or wait until tomorrow  
24 if you think that would be advisable and give us all some  
25 time to think about it.

1 The Chairman. That is satisfactory to me.

2 In other words, the vote is 9 nays and 7 yeas, at the  
3 present?

4 Mr. Lighthizer. It is 7 yeas and 9 nays; yes, sir.

5 The Chairman. Having discussed this with Senator Boren,  
6 I would be happy to do that.

7 Senator Mitchell. Mr. Chairman, I had one more amend-  
8 ment we had not gotten to on my list.

9 The Chairman. Fine.

10 Senator Mitchell. This is not a specifically small  
11 business amendment. This deals with permitting increased  
12 tax deductions for donations of equipment to schools,  
13 primarily universities.

14 The United States is experiencing an alarming shortage  
15 of engineers, particularly in relation to the number of  
16 engineers being graduated in Japan and Germany and other  
17 competing nations.

18 One way in which we can help to alleviate that  
19 shortage is to assist educational institutions develop and  
20 expand technical programs.

21 The Chairman. Order in the hearing room.

22 Senator Mitchell. We can do so by providing increased  
23 tax incentives for donation of capital equipment.

24 Simply stated, Mr. Chairman, if a corporation now  
25 donates equipment to a university for use by that

1 university. the deduction is limited to the cost of the  
2 item.

3 My amendment which is embodied in legislation co-  
4 sponsored by Senator Durenberger and myself, would permit a  
5 deduction up to the market value of the equipment.

6 The university would have to provide assurance in  
7 writing that it would be used by the university, not resold,  
8 used in research and experimentation, so it would not permit  
9 the dumping of obsolete equipment and other safeguards would  
10 be included to make certain no profit was involved to the  
11 donating company.

12 It is my understanding that the Joint Tax Committee  
13 has estimated the revenue loss would be less than \$10 million  
14 a year.

15 I move the adoption of the amendment.

16 Mr. Chapoton. Senator Mitchell, could I ask, that would  
17 not be comparable to the rule for the drug companies, would  
18 not be limited to 200 percent of basis, it would just be the  
19 full.

20 I am concerned that in some cases the rule I believe  
21 prior to 1969 was that a contribution of inventory would be  
22 granted a full charitable deduction, whereas a sale of the  
23 inventory, would of course, generate ordinary income.

24 In some cases, a contributing company could actually  
25 make money on the contribution.

1           Senator Mitchell. I understand that.

2           Would that make a difference in your position, Mr.  
3   Chapoton?

4           Mr. Chapoton. Well, if the Committee does something  
5   of this nature -- Senator Mitchell, understand, we are, it  
6   is our request that this bill be limited to matters involving  
7   the economic recovery program.

8           There are any number of meritorious amendments of which  
9   I think this would be one, if limited correctly.

10          So that we would not support it.

11          But I would suggest that if action is taken on it,  
12   that it should be so limited.

13          We think there are this and as I said, other meritor-  
14   ious amendments this Committee should consider and should  
15   consider soon. We would like to participate in that consid-  
16   eration.

17          But, we are trying to keep this bill of a limited  
18   nature.

19          Senator Mitchell. Well, I have no intention of making  
20   this a vehicle for someone to make an improper profit. If  
21   that is a concern, I certainly have no objection to limiting  
22   it in the nature you suggested, if that is needed to meet  
23   the problem.

24          The Chairman. What about revenue impact?

25          Mr. McConaghy. If it is research equipment only,

1 Senator Dole, the amendment would be somewhat in the  
2 neighborhood of \$10 million, annually.

3 Senator Danforth. Mr. Chairman, I question that. It  
4 was my understanding that the original amendment proposed by  
5 Senator Mitchell was not research equipment only.

6 Senator Mitchell. Research and experimentation equip-  
7 ments.

8 Senator Danforth. I see.

9 But that was under your original proposal?

10 Senator Mitchell. Right.

11 Senator Danforth. Where the deduction would be the full  
12 market value.

13 However, as suggested by Mr. Chapoton, it would seem  
14 there would be substantially less. It would probably be half  
15 that amount, wouldn't it?

16 Mr. McConaghy. I think the original bill went to all  
17 education, contribution to the art department and so forth.

18 Senator Danforth. That was the \$10 million.

19 Mr. McConaghy. No. Senator Danforth, I don't believe  
20 that when it went to all university departments in effect and  
21 not just limited to research the revenue was less than \$10  
22 million. It was more than that.

23 Senator Danforth. You think it is \$10 million for  
24 research equipment. However, if the full market value is  
25 deductible?



1           Mr. McConaghy. We are assuming that if it is just  
2 limited to research equipment and the rules are put in that  
3 say you get a deduction equal to basis, plus one half of the  
4 depreciation, but not to exceed twice the basis which is the  
5 rule presently in the tax code, that it would be less than  
6 \$10 million annually.

7           Senator Danforth. Considerably less than \$10 million,  
8 wouldn't it?

9           Mr. McConaghy. We will have to check on that.

10          Senator Danforth. The original proposal was \$10  
11 million. This would be substantially less than \$10 million.

12          (Pause.)

13          Senator Mitchell. Mr. McConaghy, I understood the  
14 original revenue estimate was \$10 million.

15          Mr. McConaghy. Yes. I am sorry, Senator Mitchell.  
16 Our revenue estimator says that limited this way it would be  
17 about \$5 million, annually.

18          Senator Mitchell. Now when you say limited this way,  
19 there are two limitations that are being discussed here. One  
20 is the 200 percent of cost.

21          The second is limited only to research.

22          Mr. McConaghy. Correct.

23          We would say it would be \$5 million annually.

24          Senator Mitchell. Can you tell me what the figure  
25 would be if you imposed only the 200 percent limit? And

1 permitted the deduction for qualified research or education  
2 contribution?

3 Obviously, it would have to be somewhere between \$5  
4 and \$10 million, since the initial figure was \$10 million,  
5 and with the two limitations at \$5 million.

6 Mr. McConaghy. I am told, Senator Mitchell, that the  
7 \$10 million was for research equipment but not with that  
8 limitation. We never did estimate across the board, all  
9 equipment, meaning other than research equipment.

10 That is what I am told.

11 Senator Mitchell. I either misunderstood when the  
12 figure was given to me or was given to me improperly.

13 I understand. I would be prepared to limit it to  
14 research equipment and with the 200 percent limitation  
15 which I understand would then reduce the revenue loss to  
16 \$5 million a year.

17 Mr. McConaghy. That's correct.

18 The Chairman. Could I just ask very quickly so we  
19 could move on, have you checked this with the Secretary?

20 Mr. Chapoton. Mr. Chairman, I talked generally with  
21 the Secretary at noon. We discussed the fact again we would  
22 be -- would not like it. Would be very disappointed if this  
23 bill did attach to it a number of amendments that are not  
24 related to the President's program.

25 I am afraid this would be one of those amendments.

1 So, we would oppose.

2 The Chairman. Let me again suggest, not to delay the  
3 Senator from Maine, but if you don't mind letting me check  
4 on it overnight; would that be all right with the Senator.

5 Senator Mitchell. No objection, Senator.

6 The Chairman. The Senator from New Jersey.

7 Senator Bradley. Thank you, Mr. Chairman.

8 If you recall when the Committee voted initially on the  
9 rate cuts, 5-10-10, I expressed two concerns about those cuts.  
10 One was that they were not targeted sufficiently to middle  
11 and lower income individuals.

12 The second consideration was that the macroeconomic  
13 effects of voting for three years of cuts would be detri-  
14 mental.

15 Yesterday, I proposed a targeting amendment. Today  
16 what I am doing is proposing an amendment which would make  
17 the third year of the tax cut contingent upon certain economic  
18 conditions existing in the economy.

19 Specifically that the inflation rate be at a rate in  
20 1982, of 8.5 percent, that is the GNP deflator rate. And that  
21 the budget deficit in 1982 not exceed \$45 billion, and that  
22 the projection for 1983 be an inflation rate of 7 percent,  
23 and a GNP deflator at 7 percent and a budget deficit of  
24 \$25 billion.

25 Mr. Chairman, what this amendment does is simply to say

1 we are embarking on a course of action that has not happen-  
2 ed in every Congress and that is three consecutive years  
3 of income tax cuts.

4 There is a sufficient body of economic opinion that  
5 would argue that this is somewhat experimental. That there  
6 is at least a division in the economic community about what  
7 its effects will be on inflation.

8 And since inflation is the prime determinant of  
9 individuals' decision to save or to invest, or to consume  
10 tangible assets, or indeed that the level of interest rates  
11 in this country, it seems to me that to link the third  
12 year tax cut to the success of the first two years, is a  
13 prudent way to go, to link it with the deficit is with that  
14 same consideration in mind.

15 So, I would move, Mr. Chairman, that unless 1982 is  
16 proven to be a year in which the budget deficit is \$45  
17 billion, which is what the President's budget says it will  
18 be, unless the year 1982 has seen a GNP deflator inflation  
19 rate of 8.5 percent. The President's budget says it will  
20 be 8.3 percent.

21 And, unless, by January 15, 1983, the President can  
22 project that the budget deficit for 1983 will be \$25 billion  
23 and the GNP deflator 7 percent, that the third year of the  
24 tax cut not go into effect.

25 The Chairman. That is with all the other provisions

1 we have adopted?

2 Senator Bradley. It would include only the ten percent  
3 individual tax cut.

4 The Chairman. Why not include everything?

5 Senator Bradley. Because the biggest revenue effect  
6 comes from the 10 percent individual tax cut. My concern is  
7 the inflationary implications of that tax cut down the  
8 road.

9 I think also that one might argue that where interest  
10 rates are now, that a tax cut in 1982 might provide relief.  
11 That a three year tax cut that had no contingency in it at  
12 all, might have the opposite effect which is eliciting  
13 inflationary expectations instead of dampening them, and  
14 indeed, providing individuals with the revenue necessary to  
15 stimulate a consumption oriented inflationary spiral.

16 So this is what you call a safety valve amendment that  
17 recognizes the nature, the experimental nature of the three  
18 year link tax rate reduction.

19 The Chairman. Well, I appreciate the Senator offering  
20 the amendment. I would indicate I feel certain the President,  
21 I could not reach him right now by phone, would not be in  
22 favor of this amendment.

23 I know the Administration's position on the three year  
24 proposal.

25 I hope we have made that clear in the past three days.

1 But I would ask the Treasury to comment briefly and  
2 then do you want a record vote?

3 Senator Bradley. Yes, I would, Mr. Chairman.

4 The Chairman. Fine.

5 Mr. Chapoton. Mr. Chairman, I would just comment that  
6 we are of course opposed to this. We think this goes in  
7 exactly the opposite direction, the wrong direction.

8 We are trying to provide certainty with rate cuts,  
9 marginal rate cuts in place, in advance, so a taxpayer can  
10 rely on that.

11 Taxpayers save and invest in advance. Individuals like  
12 businesses do. We need certainty. We need long range policies  
13 We do not need to maximize uncertainty by telling taxpayers  
14 they may or may not have a tax cut in the future year, and  
15 indeed, cannot calculate what the tax return on a particular  
16 investment would be.

17 I would also point out that if this type of amendment  
18 were adopted, indeed, the effects on the economy that we  
19 expect might not be obtained because of the uncertainty that  
20 would result.

21 The Chairman. Any other discussion?

22 (No response.)

23 The Chairman. If not, the clerk will call the roll.

24 The Clerk. Mr. Packwood.

25 Senator Bradley. Just a second.

1 The Chairman. Hold it.

2 Senator Bradley. Mr. Chairman, I would argue that the  
3 greatest uncertainty is not the fact that a third year tax  
4 cut that will be passed into law is contingent upon the  
5 economy meeting its levels of inflation or the deficit, but  
6 I would argue the greatest uncertainty is the inflation that  
7 the country will experience.

8 I don't think anyone can predict that. I don't think  
9 the President or his economic advisors can. I know they  
10 can because of a certain doctrinaire belief, but I don't  
11 believe they can in all honesty say that they can predict  
12 what the inflation rate is going to be.

13 Because of that, what this amendment simply says is  
14 let's provide a safety value.

15 No one wants to see the economy with 14, 15 percent  
16 inflation, in 1983, with a big tax cut coming down the road  
17 that will simply exacerbate that problem.

18 Now if it works the other way, if it works the other  
19 way, well, there is no need for the safety valve, and there  
20 is no need for the worry about eliciting this kind of in-  
21 flationary binge.

22 The Chairman. The clerk will call the roll.

23 The Clerk. Mr. Packwood.

24 (No response.)

25 The Clerk. Mr. Roth.

1 The Chairman. No.  
2 The Clerk. Mr. Danforth.  
3 Senator Danforth. No.  
4 The Clerk. Mr. Chafee.  
5 Senator Chafee. No.  
6 The Clerk. Mr. Heinz.  
7 ~~(No response.)~~  
8 The Clerk. Mr. Wallop.  
9 The Chairman. No.  
10 The Clerk. Mr. Durenberger.  
11 The Chairman. No.  
12 The Clerk. Mr. Armstrong.  
13 Senator Armstrong. No.  
14 The Clerk. Mr. Symms.  
15 (No response.)  
16 The Clerk. Mr. Grassley.  
17 The Chairman. No.  
18 The Clerk. Mr. Long.  
19 Senator Long. No.  
20 The Clerk. Mr. Byrd.  
21 Senator Byrd. No.  
22 The Clerk, Mr. Bentsen.  
23 (No response.)  
24 The Clerk, Mr. Matsunaga.  
25 (No response.)



1 The Clerk. Mr. Moynihan.

2 Senator Moynihan. Yes.

3 The Clerk. Mr. Baucus.

4 Senator Baucus. Aye.

5 The Clerk. Mr. Boren.

6 Senator Boren. No.

7 The Clerk. Mr. Bradley.

8 Senator Bradley. Aye.

9 The Clerk. Mr. Mitchell.

10 Senator Bradley. Aye, by proxy.

11 The Clerk. Mr. Chairman.

12 The Chairman. No.

13 (Pause.)

14 The Chairman. On this vote the yeas are 4, the nays  
15 are 11. The amendment is not agreed to. The absentees will  
16 be recorded.

17 Could I call on Senator Byrd for just a moment,  
18 Senator?

19 Senator Byrd. Thank you.

20 May I ask Treasury a question with regard to sub chapter  
21 S. As I understand it, the Committee has approved changing  
22 the number from 15 to 25.

23 Mr. Chapoton. Yes, sir.

24 Senator Byrd. If I understand the present law  
25 correctly, if one of those stockholders in a sub chapter S

1 corporation is a trustee, then the use of the sub chapter  
2 S vehicle is not permitted?

3 Mr. Chapoton. That is correct, Senator, except in a  
4 grant or a trust I believe is the only exception to that.

5 Senator Byrd. Would Treasury have any problems if  
6 the Committee were to approve it, to provide that a stock-  
7 holder, trustee stockholder would not automatically dis-  
8 qualify the corporation from using the sub chapter S,  
9 provided the total number of individuals involved in both  
10 the trust and those not in the trust, did not exceed that  
11 figure of 25?

12 Mr. Chapoton. Senator, I would like to have a little  
13 time to think about that. The rule has been in the law  
14 since the inception of sub S, sub chapter S, that neither  
15 -- only individuals may be qualified shareholders.

16 In some cases, those rules do not necessarily make any  
17 sense.

18 Off hand, I can't think of the policy behind that,  
19 though, so if we could, we would just have to get back to  
20 you on that.

21 Senator Byrd. Could we do this. Could I ask the  
22 Committee to approve that proposal with the proviso that  
23 Treasury accept the proposal. If Treasury comes back and  
24 feels it is a problem they cannot accept, then I would  
25 withdraw the amendment.

1 Mr. Chapoton. As I mentioned earlier, to Senator  
2 Mitchell, there is a sub chapter S project in the works  
3 right now. The Committee staff is working on it. We had  
4 a lot of input to it. The Joint Committee staff has.

5 These type of questions, and the study is quite far  
6 along. These type of questions are dealt with.

7 I am advised that one of the concerns that the staff  
8 has had in this area is where you have a complex trust,  
9 that is, a trust which may accumulate or distribute income,  
10 there are certain concerns if trusts are beneficiaries,  
11 excuse me, if stockholders of sub chapter S corporations.

12 Senator Byrd. Then the further proviso, assuming that  
13 the dividends are distributed as -- to all stockholders.

14 Mr. Chapoton. I would like the opportunity to review  
15 that and get back.

16 Senator Byrd. That would be fine. If Treasury would  
17 review that and if you could approve it, if you could let  
18 us know tomorrow, that would be fine.

19 Mr. Chapoton. Yes.

20 The Chairman. Is that satisfactory?

21 Senator Byrd. Fine.

22 The Chairman. Senator Moynihan.

23 Senator Moynihan. Mr. Chairman, as I said, I have two  
24 amendments. One is small. The other is one in which I join  
25 with Senator Packwood. If we are in a recess he may come

1 over.

2 I will move this, I think I will move both. I think  
3 we want to move along.

4 Mr. Chairman, the first has to do with a matter that  
5 Mr. Chapoton testified to us on March 30. The question of  
6 an involuntary conversion situation where the Federal  
7 Communications Commission has directed a newspaper or a  
8 television station to divest itself of one of its properties.

9 Some years ago, in 1943, the Congress provided that  
10 when -- if the divestiture is of a radio station, a  
11 television station could be purchased, and since it is an  
12 involuntary matter, there would be no tax paid at that  
13 point.

14 A situation has arisen in which a newspaper in New  
15 York State, in this case, has been ordered to divest itself  
16 of a television station.

17 It wishes, since its principal practice is newspaper-  
18 ing, to buy another newspaper. It would not be able to do  
19 so under the present arrangements.

20 But, Mr. Secretary, as you have testified, that you  
21 feel that the law should be neutral in this matter. If  
22 you are told to divest something, you should be free to  
23 -- you are told to divest a television station, because  
24 you have a newspaer, you would be free to buy a newspaper  
25 or a radio station and have it just be neutral, since the

1 Government is putting this decision on you.

2 The Joint Committee estimates the bill would cost the  
3 Government less than \$10 million, a year. In every case  
4 this would be a situation, eventually, taxes are paid. In  
5 every case this would be a situation in which the Government  
6 has ordered a divestiture.

7 Mr. Chapoton. Senator, we would, as I think I said in  
8 that testimony also, that -- well, two aspects.

9 One, we would be concerned about any retroactive  
10 legislation. I know the order has already occurred. Now  
11 whether the divestiture has already occurred or not, I am  
12 not certain.

13 We do have concerns about retroactive tax legislation,  
14 in any case, for obvious reasons.

15 I think I also said in that testimony we thought that  
16 should await a second tax bill.

17 Senator Moynihan. We don't know. This question of  
18 equity, Mr. Chairman, and we feel very strongly that the  
19 press is being interfered here, not by the IRS, but by the  
20 Federal Communications Commission, and that they ought to  
21 be allowed to stay in the newspaper business, because that  
22 is the business they are in.

23 There is very, very small revenue effect, and ultimately  
24 no revenue effect, I don't suppose. Eventually these taxes  
25 are paid. I don't want to see the matter lost, but there is

1 a question of justice in this case. I feel very strongly.

2 Mr. Chapoton. Senator, do you know if the divestiture  
3 has occurred yet? I was not clear on the facts.

4 Senator Moynihan. The order has taken place. The  
5 divestiture has not in fact taken place.

6 Am I correct in that?

7 The actual divestiture has not taken place.

8 Mr Chapoton. I think the retroactive feature would not  
9 be a problem.

10 Senator Moynihan. It would not be retroactive.

11 Mr.Chapoton. Right.

12 I would just again say as we stated in our testimony  
13 before the subcommittee, it does seem an appropriate relief  
14 measure that -- and again, the Committee will work its will.

15 We would prefer this bill be contained only dealing  
16 with the President's program.

17 Senator Moynihan. You would grant this is not exactly  
18 the state we find ourselves at 5:45 in the evening.

19 Mr. Chairman. I would say that if we don't act on this  
20 now, then a situation will have occurred which will there-  
21 after be retroactive and where the Government has required  
22 this newspaper to do this.

23 Senator Long. Let me make this point. Why can't we  
24 get an understanding with the Treasury that we could act  
25 on this matter in the future and we could recognize and

1 understand the issue was presented at a time when it was  
2 not retroactive. If it must be retroactive in the future,  
3 it would only be because Treasury insisted on delaying the  
4 matter.

5 Mr. Chapoton. That would be perfectly agreeable,  
6 Senator. I could see the problem arising.

7 We must state once again that the attempt in this  
8 President's tax package was to act very speedily and indeed,  
9 this Committee has followed the President's wishes. We have  
10 -- you have acted very rapidly. There is some hope still  
11 that the Congress will act rapidly, pass a tax bill prior  
12 to the August recess. In a new Administration, that would  
13 indeed be record-setting.

14 We hope and think that may well happen.

15 This amendment, such as others that are -- we would  
16 support, we would like to come back and deal with these in  
17 the near future.

18 In this case, I think we could unqualifiedly state we  
19 would not have any objection if the disposition occurred  
20 between now and that time so that we would support the  
21 amendment as we did in our testimony.

22 Senator Moynihan. Fine. Mr. Chairman, I thank the  
23 ranking member. That is entirely reasonable and understand-  
24 able position.

25 I would withdraw the proposal.

1 The Chairman. Do you have a second proposal?

2 Senator Moynihan. Yes, sir. I think we may as well  
3 go through it, because we don't know if we will ever see  
4 our colleague Packwood again. He is over there on a  
5 reconciliation bill.

6 Senator Long. He is in a conference over there.

7 Senator Moynihan. Mr. Chairman, this is the charitable  
8 contribution bill which we have been dealing with for many  
9 years now.

10 It is a measure that has the widest, it has 32 co-  
11 sponsors. Six of them are members of the Finance Committee.  
12 We held extensive hearings on it.

13 At the last Congress it had 42 co-sponsors and it was  
14 approved in a phased in version by this Committee.

15 We recognize the problem of the cost at this time. But,  
16 Mr. Chairman, and my fellow members here, no one could  
17 mistake the degree to which this Congress under the prodding  
18 of this Administration is cutting back sharply the role of  
19 Government in the provision of social services of the kind  
20 which the charitable non-profit institutions of this country  
21 do provide, have always provided and are indeed, adjured by  
22 the Administration to go on providing and indeed, provide  
23 more.

24 One of the responses and not the least bit attractive  
25 to the President's budget cuts has been the number of people



1 who say, "Well, there are things that can be done privately  
2 by non-profit groups and should be done."

3 Now the problem is our tax code has been making this  
4 ever more difficult. We have raised the zero bracket as  
5 we now call it, the minimum deduction as it was then called,  
6 as a form of tax relief we have been raising that zero  
7 bracket to the point where it has genuinely, genuinely  
8 impaired charitable giving in this country.

9 That is why 42 Senators co-sponsored this legislation  
10 last year.

11 If we are going to sustain, I would say to my friends  
12 on the other side, if we are going to sustain the effort to  
13 cut back the role of Government, you ought not at the same  
14 time, and I don't think you want to, inhibit the role of  
15 the independent sector, the non-profit sector in doing these  
16 things.

17 Senator Packwood and I have particularly carried this  
18 legislation, but as I say, many members of this Committee  
19 are sponsors.

20 We have a proposal, Mr. Chairman, which in effect says  
21 we will phase this in very slowly. We would ask that non-  
22 itemizers, they can now subtract a portion of contributions  
23 above the line. Ten percent is what they give in calendar  
24 '82; 10 percent in '83; 25 percent in '84, which is what we  
25 talked about starting with last year.

1 And 50 percent, in '85; 75, in '86 and 100 percent in  
2 1987.

3 Now, this is not to suggest that there aren't large  
4 sums here eventually, and almost nothing involved next year,  
5 but it would eventually a large sum. These sums provide  
6 services which otherwise Government has demanded the  
7 Government provide.

8 I think you have an opportunity to take an action here  
9 that is highly consistent with the Administration's proposals  
10 and in no way significantly adverse to his fiscal program.

11 The revenue loss in calendar '82, would be \$61 million.

12 Fiscal '82, I guess you might say it would be \$45  
13 million.

14 The Chairman. How about '83 and '84?

15 Senator Moynihan. In '83, it would be \$461 million.  
16 At that point, the calendar year is the fiscal year, \$461.  
17 In 1984, \$653, and only with 1985 do you get to the large  
18 sums.

19 Senator Chafee. How much is that?

20 Senator Moynihan. \$1.9 billion, in '85; \$3.6 in '86,  
21 and then that would be permanent. It would go up.

22 The Chairman. Do you have some offsetting provision  
23 to pay for it?

24 Senator Moynihan. No, sir, I don't. I think if we  
25 don't want to get into anything -- this has been a very

1 amicable hearing. But if we don't have enough money to  
2 provide for foster homes of the kind we have done in the  
3 last 50 years in this Committee, why we have to get back to  
4 it being done by the Salvation Army and the Presbyterian  
5 Church and those very fine ladies from the Junior League  
6 who testified before us.

7 The Chairman. Again, I would indicate the choice is the  
8 Committee's. We are nearing the end of this hearing. I  
9 hope the end of this mark-up. But I don't think we should  
10 do it by seeing how many high priced amendments we can adopt.

11 The President supports this in principle. I think  
12 everyone on this Committee supports this in principle. But  
13 there seems to be a tendency in the last couple of hours to  
14 see how many spending amendments we can adopt.

15 The reason I ask if there were some way to pay for it,  
16 but even there, I am not -- I don't know of any reason this  
17 must be on this particular package.

18 We are going to have a second bill. Maybe we ought to  
19 start approving a bill for the second package and there  
20 would be some certainty we would have one.

21 If we could act on this today for the second package,  
22 but I haven't heard from Treasury.

23 Again, I would remind my colleagues on this side of the  
24 aisle, that we did meet with the President, yesterday,  
25 apparently without much success, that we would not take

1 additional amendments.

2 Does the Administration --

3 Mr. Chapoton. Well, Mr. Chairman, we would echo that.  
4 There is a great deal of support for this, above the line  
5 charitable deduction in the Congress and in the Administra-  
6 tion.

7 It is a matter that does need attention, but we feel  
8 very strongly it is not appropriate on this bill. It is  
9 quite apart from the purposes of this bill and the revenue  
10 obviously is out of line with the constraints we are oper-  
11 ating under.

12 Senator Moynihan. Well, Mr. Chairman, do I hear the  
13 suggestion that the Treasury would be willing to suggest  
14 that we might tentatively approve a measure such as -- we  
15 have approved this before.

16 If I may say, Mr. President -- Mr. Chairman, we have  
17 not brought the Committee matters that haven't been here  
18 before. We didn't pass a tax bill in the last Congress.  
19 These are measures we have adopted in this Committee.

20 The Chairman. They didn't get any further than the  
21 Committee. This bill is going to pass. Don't load it up  
22 too much in the last few minutes.

23 Senator Moynihan. I hope we don't make a distinction  
24 between the things we vote for knowing they won't pass and  
25 things we vote for that will.

1 Is there a disposition to suggest we might take a  
2 vote that would indicate that we mean we would have the  
3 support of the Treasury in adopting this in a second bill?

4 Mr. Chapoton. Senator, --

5 Senator Moynihan. Or is that too much to ask you, sir.

6 Mr. Chapoton. I did not mean to say that. I meant to  
7 say that it is something we want to consider thoroughly. As  
8 you know, the President has spoken out on this. We do need  
9 to see the full ramifications of it.

10 One thing you have to take into account is when you  
11 have a rate cut such as we are proposing you have definite  
12 effect on charitable giving. You need to see what charities  
13 are affected. A provision like this needs very thorough  
14 study.

15 There are a lot of considerations we would want to take  
16 into account.

17 Senator Moynihan. I would not expect you to be able to  
18 make that decision on the spot. You have to consult with  
19 your colleagues.

20 In that case, Mr. Chairman, I would like to ask for a  
21 vote. I think we can't.

22 Senator Long. Mr. Chairman, I want to make it clear  
23 that while I am committed to vote for this amendment and I  
24 will, that I would be perfectly willing to vote for something  
25 to offset the cost of it.

1           Just one thing that occurs to me. it will affect  
2 everybody, so we will all make an equal sacrifice, to  
3 eliminate the dividend exclusion. How much money is  
4 involved in that?

5           That which remains in the bill?

6           About \$900 million a year, isn't it?

7           Mr. Chapoton. Senator Long, I am not sure I have that  
8 figure. It is \$100 and \$200. I am advised approximately  
9 \$700 to \$800 a year, excuse me, \$700 million.

10          Senator Long. So, if we put that in there that would  
11 completely offset this, would it not?

12          Mr. Chapoton. It might offset it until '83 or '84.

13          Senator Long. And '84 is the big year you are looking  
14 at. You want to balance the budget in '84. I assume you  
15 could take another look after that and see where we go.

16          Mr. Chapoton. Yes, sir.

17          I would comment, Senator Long, that this is quite a  
18 different matter than the other matters we have been  
19 considering in this bill relating to productivity and  
20 investment and individual rate cuts.

21          It is the dividend exclusion, of course, is in the  
22 law now. It was not proposed to be changed and has been  
23 in the law for a number of years.

24          Senator Long. Well, please understand my position,  
25 Mr. Chapoton. I want to cooperate with you, but at the same

1 time the President has his problem having his credibility  
2 problem having told the people he was going to advocate this  
3 10-10 and 10 and the 10-5-3, and I have my problem having  
4 told a lot of good preachers and priests and charitable  
5 organizations and things like that, that I was going to vote  
6 for this amendment.

7 So that I have about the same problem the President  
8 has, except in a different context. I made a commitment  
9 just like he did.

10 Senator Moynihan. I wonder if the senior member, ranking  
11 member join me in a proposition we put in this phased  
12 amendment and we eliminate the deduction on dividends and  
13 that will gain money in the first two critical years and  
14 balance out completely in '84 and only thereafter.

15 Would Senator Long be interested in that kind of a  
16 proposition?

17 Senator Long. Senator, I am going to vote for the  
18 amendment. I am saying I am perfectly content to say I  
19 would be willing to vote for something to offset it, such  
20 as this. Something that is broadly applicable where every-  
21 body is affected.

22 We all have, everyone one of us have constituents who  
23 are stockholders in companies.

24 Senator Moynihan. Mr. Chairman, in that case, I don't  
25 want to in any way inhibit your suggestion, but I propose we

1 adopt the amendment as modified by Senators Packwood and I,  
2 that you have this very yearly phasing in, but it is going  
3 to get there by 1986, and we offset it by eliminating the  
4 dividend.

5 People who have dividends can make charitable contri-  
6 butions anyway and they will get -- the same money will come  
7 back.

8 This is a supply side proposal.

9 (Laughter.)

10 Senator Moynihan. If you lower the tax on giving, you  
11 get more gifts.

12 Senator Long. If they want to get the dividend, they  
13 get exactly the same type consideration.

14 Senator Moynihan. They get exact same tax consideration.  
15 I can just see the Red Cross seriously going around saying  
16 "Here is an opportunity to help the Red Cross and help your  
17 community and at no cost to yourself.

18 The number of people who will not become angry at the  
19 Administration for what it is doing to the social programs  
20 this is an opportunity, Mr. Chairman, which I would seize  
21 for the President if I were you.

22 (Laughter.)

23 Mr. Chapoton. Senator Moynihan, I would point out that  
24 in the out years, this of course, runs up to --

25 Senator Moynihan. Yes, sir, but in the out years we are



1 going to be so prosperous.

2 (Laughter.)

3 Mr. Chapoton. While the dividend exclusion stays  
4 rather flat.

5 Senator Moynihan. Yes. We recognize this, but we feel  
6 it has to be done if we are going to keep an independent  
7 sector going.

8 The Chairman. Let me say first of all, I don't think  
9 this is a solution. If we really want to see how much we  
10 can add to the bill, this is a solution.

11 If we want to see whether or not we are going to  
12 support the President, it is not a solution.

13 I would just like to vote on it, with or without the  
14 amendment. Because in the out years, I think you get beyond  
15 about '83 --

16 Mr. Chapoton. Beyond '85, we are talking about \$6  
17 billion.

18 The Chairman. \$6 billion?

19 Mr. Chapoton. Yes, sir.

20 The Chairman. And here we have concern about a third  
21 year cut because of the economy in the third year. Now we  
22 are willing to blow the whole thing in the out years.

23 Again, I would suggest the President supports, at  
24 least my understanding, has indicated his interest in this  
25 proposal.

1 Mr. Chapoton. That is correct.

2 The Chairman. I would just hope we wouldn't put it on  
3 this particular package.

4 Mr. Chapoton. We feel like it is not at all consistent  
5 with the purpose of this package and would strongly urge  
6 that it be not added to this package.

7 As I stated on numerous occasions this afternoon, there  
8 are many provisions and amendments to the Internal Revenue  
9 Code that we do need to examine and this Committee needs to  
10 examine.

11 We are trying not to have a bill provisions here that  
12 are unrelated to economic recovery program, to increasing  
13 the productivity of the country.

14 I am afraid we are becoming dangerously close to  
15 adding a lot of amendments to this bill that are not related  
16 to that objective.

17 The Chairman. Why don't we vote and find out.

18 Senator Moynihan. I would note, Mr. Chairman, that  
19 this will increase the savings in '81 and '83.

20 I would be happy to vote, Mr. Chairman.

21 I vote with the Long Amendment as was described. I  
22 can't say Senator Packwood would accept it, but I think he  
23 might.

24 Senator Long. Why don't we vote first on the Packwood-  
25 Moynihan amendment, and then if it is agreed to, I would be

1 glad to join with you in offering something to help pay for  
2 it.

3 Senator Moynihan. Fine.

4 Senator Packwood not being here, I think I could not  
5 amend it.

6 Senator Moynihan. If I may, Mr. Chairman, I would like  
7 to have two votes. A vote on Senator Moynihan-Packwood  
8 bill, then the Moynihan-Long bill, if that is agreeable.

9 The Chairman. I don't think you have agreed on how to  
10 pay for it yet, have you?

11 Senator Moynihan. No, the first measure has no offset.

12 Senator Long. I just thought -- I would think we would  
13 have some indication, if it would make any difference in the  
14 vote, if there is anybody who would vote for it if we paid  
15 for it by taxing someone else. Okay. Let us know. Other-  
16 wise, there is no point in offering the amendment to pay for  
17 it.

18 As a matter of fiscal responsibility, I suggested that  
19 and Senator Moynihan is willing to go along with that. I  
20 think even Senator Packwood would go along with it, if that  
21 is what it took to get a member to agree to it.

22 There is no indication from anyone that type fiscal  
23 responsibility would pick up any votes. Then there is no  
24 point in making the sacrifice.

25 The Chairman. It really doesn't do much beyond '85. If

1 we find something that is going to pay for it all the way  
2 out, then we would be in business.

3 Senator Chafee. Mr. Chairman, I would just like to say  
4 I am a co-sponsor of this amendment with Senator Moynihan  
5 and others. I am supportive of it, but I won't vote for it  
6 in connection with this.

7 I thought when we started out, this was an industrial  
8 recovery bill to encourage savings incentives and everything  
9 like that.

10 We stood here and had a whole series of enticing  
11 amendments presented. I praise the imagination of those  
12 on the other side and if given 12 more hours, I agree with  
13 you, it is a fertile field and we will be here until late  
14 Saturday night.

15 But, I --

16 The Chairman. We will finish it this week.

17 Senator Chafee. Well, that includes Sunday, I presume.

18 So, even so I am for this amendment, in some -- when  
19 we get to it in a package that deals with that type of  
20 matter, I would vote for it.

21 But I am voting against it here, even though I favor  
22 it.

23 The Chairman. The clerk will call the roll.

24 The Clerk. Mr. Packwood.

25 The Chairman. Aye.

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

1 (No response.)

2 The Clerk. Mr. Moynihan.

3 Senator Moynihan. Aye.

4 The Clerk. Mr. Baucus.

5 Senator Baucus. Aye.

6 The Clerk. Mr. Boren.

7 Senator Boren. No.

8 The Clerk. Mr. Bradley.

9 Senator Bradley. Aye.

10 The Clerk. Mr. Mitchell.

11 Senator Mitchell. Aye.

12 The Clerk. Mr. Chairman.

13 The Chairman. No.

14 (Pause.)

15 The Chairman. This vote the yeas are 7, the nays are  
16 9. The amendment is still in doubt. The absetntees, Mr.  
17 Roth, Mr. Heinz, just barely in doubt.

18 Senator Moynihan. Mr. Chairman, in that case, and not  
19 wishing to prolong, I would like to offer the proposal that  
20 is linked with dropping of the deduction for dividends, the  
21 \$100 and \$100 dividend and ask if we can have a vote with  
22 the offsetting provision understood.

23 The Clerk. Mr. Packwood.

24 The Chairman. I think on this one, I don't have Mr.  
25 Packwood's proxy. We are repealing something he may have an

1 interest in.

2 Senator Moynihan. I don't have it either.

3 The Clerk. Mr. Roth.

4 The Chairman. No.

5 The Clerk. Mr. Danforth.

6 Senator Danforth. No.

7 The Clerk. Mr. Chafee.

8 Senator Chafee. No.

9 The Clerk. Mr. Heinz.

10 (No response.)

11 The Clerk. Mr. Wallop.

12 The Chairman. No.

13 The Clerk. Mr. Durenberger.

14 The Chairman. No.

15 The Clerk. Mr. Armstrong.

16 Senator Armstrong. No.

17 The Clerk. Mr. Symms.

18 Senator Symms. No.

19 The Clerk. Mr. Grassley.

20 The Chairman. No.

21 The Clerk. Mr. Long.

22 Senator Long. Aye.

23 The Clerk. Mr. Byrd.

24 Senator Byrd. No.

25 The Clerk. Mr. Bentsen.

1 Senator Moynihan. Aye by proxy.

2 The Clerk. Mr. Matsunaga.

3 (No response.)

4 The Clerk. Mr. Moynihan.

5 Senator Moynihan. Aye.

6 The Clerk. Mr. Baucus.

7 Senator Baucus. Aye.

8 The Clerk. Mr. Boren.

9 Senator Boren. Aye.

10 The Clerk. Mr. Bradley.

11 Senator Bradley. Aye.

12 The Clerk. Mr. Mitchell.

13 Senator Mitchell. Aye.

14 The Clerk. Mr. Chairman.

15 The Chairman. No.

16 (Pause.)

17 The Chairman. On this vote I think I will pass for  
18 Mr. Durenberger. The vote would be 9 nays and 8 yeas. The  
19 amendment is not agreed to. There are two that have not  
20 voted on this side and one on that side.

21 Are there other amendments, Senator Bradley?

22 Senator Bradley. Mr. Chairman, this is a question that  
23 maybe Mr. Chapoton can clarify and that is the difference  
24 in treatment for equipment and machinery for a regulated  
25 public utility versus a non-regulated industry in the same



1 business.

2 As it is now, the public utility has depreciation of  
3 ten years for the same equipment and the unregulated industry  
4 has a depreciation of five years for machinery and equipment.

5 I was curious. Is there any rationale for that, because  
6 you find in many areas the regulated public utility is in  
7 direct competition with an unregulated industry. If the  
8 unregulated industry has a depreciable life of assets that  
9 is roughly half, it is a very serious competitive dis-  
10 advantage.

11 I was curious, as with the other inquiry about oil  
12 storage, is this really consistent with the general purposes  
13 of the bill?

14 Mr. Chapoton. Senator Bradley, the public utility  
15 property that is in the 10 year class is public utility  
16 property that is over 18 year ADR midpoint, ADR life.

17 There was one concern about the possibility of compet-  
18 ition there that we dealt with in the telecommunications  
19 area. That property was covered in a report by the Office  
20 of Industrial Economics.

21 We had some concern about that report. The report  
22 came in about the same time this proposal was being develop-  
23 ed.

24 If the report is adopted, this telecommunication property  
25 would be dropped from an ADR life of in the 20's to

1 approximately below 18.

2 So, that telecommunications equipment would be dropped  
3 into the five year class.

4 It is central switching equipment for telecommunications.

5 So that would take care of that. We have agreed that  
6 if ACRS is adopted, the report will be accepted and that  
7 equipment will be in the lower class.

8 Now other than that, we do not know of any competition  
9 problem within the public utilities with unregulated in-  
10 dustries..

11 Senator Bradley. The competition problem that I was  
12 referring to is the telecommunication problem. You are  
13 saying the bill as originally drafted had this discrepancy  
14 in the bill.

15 Mr. Chapoton. The bill still has the discrepancy,  
16 because we had some problems with this report. But our  
17 problems with the report would drop the equipment, it is  
18 central office switching equipment, even if our problems  
19 were well founded, it would drop it to 18 years, thereby  
20 dropping the telecommunications central office switching  
21 equipment below 18 years and into the 5 year ACRS class.

22 So that problem would go away.

23 So we are not willing, we are not satisfied with the  
24 report, but we are satisfied with the results insofar as it  
25 affects central office switching equipment.

1 Understand, it would not change the statute. It would  
2 simply change the present classification of that equipment  
3 so that it would fall into the five year class.

4 Senator Bradley. But the effect you say is the same.

5 Mr. Chapoton. The effect so far as the central office  
6 switching equipment.

7 Senator Bradley. The effect is to provide basic equity  
8 between the regulated public utilities and the non-regulated  
9 competitors.

10 Mr. Chapoton. Yes, as far as the central office switch-  
11 ing equipment which is their concern, it would be the same,  
12 drop them into the 5 year class.

13 Senator Bradley. I thank you for that clarification.

14 The Chairman. Does that clarify it?

15 Senator Bradley. Yes, it clarifies it. There is no  
16 need for the amendment.

17 The Chairman. Another victory for Bradley.

18 Senator Bradley. Well, we take pleasure in small things.

19 The Chairman. No, I appreciate your efforts. They have  
20 been very helpful.

21 I think Senator Baucus had an amendment.

22 Senator Baucus. Mr. Chairman, I have only one amendment.  
23 That is the amendment to provide for dividend reinvestment  
24 be taxed as ordinary distribution of dividends, not as cash  
25 dividends are now taxed.

1           This is an amendment which I know every member of  
2 the Committee is aware of. The whole point here is to help  
3 those firms, those companies which have some difficulty in  
4 increasing their capital investment internally, to do so  
5 externally.

6           We all know that under the present law, whenever a  
7 shareholder receives a cash dividend and tries to covert that  
8 to a share of stock, that shareholder is taxed according to  
9 ordinary income provisions, and it is a disincentive for a  
10 shareholder to reinvest in common stock, particularly new  
11 issue common stock of the same company.

12           This amendment very simply would allow shareholders up  
13 to \$1,500 a year to reinvest in new issue of common stock  
14 with the same company.

15           Obviously, it will help those companies develop  
16 externally, new capital investment.

17           The bill we are passing here is essentially designed  
18 to help the internal capital investment of firms, that is  
19 with accelerated costs recovery and accelerated depreciation,  
20 firms are able to improve their capital position, reinvest  
21 internally, but not externally.

22           I doubt very seriously whether the position of the  
23 Treasury and sentiment of the President and how things are  
24 flowing that this will pass, Mr. Chairman. But I strongly  
25 suggest that we don't include it in this bill, we sometime

1 down the road we have to find some way to help those firms  
2 which are trying to amass capital externally, to have some  
3 kind of a dividend for reinvestment plan.

4 Senator Bentsen is very much in favor of this amendment.  
5 I am not going to press it for a vote because it is just not  
6 going to pass.

7 I might strongly suggest it is an area we can move in  
8 quickly.

9 The revenue estimated losses are estimated to be  
10 roughly \$1 billion.

11 The Chairman. Is this the same bill that Congressman  
12 Pickel has been working on?

13 Senator Baucus. Yes, it is; the same bill.

14 The Chairman. I think the Joint Committee has taken  
15 a look at this. There is a great deal of interest as you  
16 have indicated in the proposal.

17 Mr. McConaghy. Senator Baucus, is your proposal to  
18 apply dividend reinvestment to all companies or to limit  
19 it?

20 Senator Baucus. It is to companies; all companies, the  
21 qualified reinvestment plan, new stock issued and would be  
22 limited to \$1,500 for every individual person.

23 Mr. McConaghy. For a single person and \$3,000 for a  
24 joint return?

25 Senator Baucus. Correct.

1 Mr. McConaghy. All industries would be eligible for it.  
2 Senator Baucus. Correct.

3 Maybe the Joint Committee could inform me, what is the  
4 status of Congressman Pickel's bill is. Has that been  
5 adopted yet in the committee over there? Where are they on  
6 that?

7 Mr. McConaghy. No.

8 Mr. Chapoton. Not yet. It might come up today or  
9 tomorrow.

10 I might just comment, if I might, Mr. Chairman, that  
11 we have serious problems with this approach. It is an  
12 attempt to reduce the cost on capital, capital formation.

13 But we have serious concerns about that type of  
14 approach. It does limit the choice of the individual. It  
15 does lock him in to this investment and it does have the  
16 effect of converting what would otherwise be ordinary  
17 income into capital gains quite easily.

18 Senator Baucus. That's correct. I understand the  
19 Treasury opposition. But I honestly think that many share-  
20 holders would take advantage of this provision if it were to  
21 become law and reinvest in new issues in the same company.

22 After all, it is new issues which helped companies  
23 in developing the capital necessary to increase our pro-  
24 ductivity.

25 Mr. Chapoton. It might also adversely affect new issues

1 of newly formed companies. It would obviously be very much  
2 to the advantage of shareholders to reinvest in the company  
3 of which they already hold stock.

4 But it would have repercussions elsewhere in the  
5 market place.

6 Senator Baucus. Perhaps, I don't know.

7 The Chairman. As I understand you are not -- you do  
8 not want to offer the amendment.

9 Do you have another amendment?

10 Senator Baucus. No.

11 The Chairman. Are there further amendments?

12 Senator Boren.

13 Senator Boren. This may have been covered yesterday  
14 when I was out of the room. I heard a report that on the  
15 Keogh Plans there had been some consideration made to  
16 changing, requiring that the \$15,000 which can be set aside  
17 would have to come from the first \$100,000 of earnings as  
18 opposed to the first \$200,000.

19 Was that covered in a question yesterday?

20 Mr. Chapoton. No, sir, that did not come up yesterday.  
21 Our proposal is the \$100,000 limit is retained without  
22 change.

23 Senator Boren. What is present law?

24 Mr. Chapoton. Present law is \$100,000. The first  
25 \$100,000 only may be considered. So you are raising \$7,500

1 to \$15,000, the limit an individual may set aside, the self-  
2 employed person may set aside for his own benefit.

3 But in considering the percentage --

4 Senator Boren. You are raising it from \$7,500 to  
5 \$15,000?

6 Mr. Chapoton. Yes.

7 Senator Boren. But keeping the \$100,000.

8 Mr. Chapoton. Yes.

9 Senator Boren. What is the rationale behind that? I  
10 would think that you might want to raise the limit, but  
11 keep the percentage the same.

12 Mr. Chapoton. Well, it will have the effect, and  
13 frankly, we have considered this. I must say, it probably  
14 is a question that deserves further consideration. But the  
15 rationale would be that if you -- that you would be required  
16 to cover the non-owner employees.

17 You would be required, if the owner employee takes his  
18 own compensation higher, he would be required to increase  
19 the deferred compensation on behalf of his common law  
20 employees.

21 The constraint always in the private sector pension  
22 area is what benefit is provided for the lower paid employee,  
23 the rank and file, so-called, employees.

24 We are concerned that if you raise the limit you might  
25 have the effect say for an owner employee who did not increase



1 his compensation, his own, the amount set aside for his own  
2 benefit, but kept it at \$7,500, he would then have the right  
3 to reduce the amount set aside for common law employees.

4 He would be some 3.5 percent of \$200,000, if you went  
5 to \$200,000.

6 I must say, it is a question that has been presented  
7 lately. We would -- we are studying that further. We do  
8 not at this time, though, want to make a change in our  
9 proposal.

10 Senator Boren. Might that be something in force of  
11 consideration of the bill, after it leaves the Committee,  
12 after you looked at it -- I don't know the answer to it  
13 myself. I just raised the question.

14 It would appear to me when you raise that to 15 percent  
15 really --

16 Mr. Chapoton. I think the question will come up again,  
17 yes sir.

18 Senator Boren. It could create a problem and a dis-  
19 incentive to increase to that magnitude.

20 Mr. Chapoton. There will be an additional cost for  
21 an owner-employee who has any significant number of common  
22 law employees if he wants to take his own benefit up higher,  
23 yes.

24 Senator Boren. Would you perhaps calculate out for me  
25 the trade offs in terms of costs in terms of those two

1 proposals, not for action in the Committee.

2 Mr Chapoton. Yes, sir. We would be happy to.

3 The Chairman. Do you have any further amendments?

4 I will recognize the Senator from Idaho. As far as  
5 the Chairman knows, there are no further amendments except  
6 the consideration of the Boren Amendment in the morning.

7 And consideration of Senator Mitchell's outstanding  
8 matters. There could be other amendments. I am not trying  
9 to shut anyone off.

10 Senator Bradley. I am trying to decide on one amend-  
11 ment. I prefer to have the right to do that.

12 The Chairman. Yes. We will not foreclose any amend-  
13 ments. You just go out the back door though, as you leave.  
14 You might pick up a few amendments.

15 Senator Bradley. No, this is one I have had for about  
16 two years.

17 The Chairman. You may want to keep it for a while.

18 (Laughter.)

19 The Chairman. If you have had it that long it is  
20 probably spoiled anyway.

21 (Laughter.)

22 The Chairman. There are a number of -- I think the one  
23 thing we have not done is to adopt, and I think the Senator  
24 from Idaho is going to move, we adopt the --

25 Senator Symms.. Mr. Chairman, I would just like to move

1 that we adopt the accelerated cost recovery title of the  
2 bill. We haven't done that yet.

3 The Chairman. We will do that as we have the others,  
4 subject to modification, amendment, whatever.

5 Senator Symms. I would also like to say, Mr. Chairman,  
6 I wish I had spoken up a little quicker, but I would be  
7 very happy to go ahead and vote this thing out this afternoon  
8 and have it over with, if we had this accelerated cost  
9 recovery in it.

10 The Chairman. Well, we have a couple of matters that I  
11 promised Senators we would not do that. Senator Mitchell is  
12 one. Senator Boren is one. And, Senator Roth, being a  
13 third.

14 I think we are pretty much in agreement. We can finish  
15 this very quickly in the morning. We will come prepared. In  
16 fact, there are also a number of votes that haven't been  
17 finally determined.

18 So we can't tell those members to record it.

19 Are we ready to announce final votes on any other  
20 amendments?

21 The charitable deduction, the Moynihan-Long amendment,  
22 is that now 8 to 8?

23 Mr. Lighthizer. Yes, sir; 8 to 8.

24 The Chairman. Close.

25 Is there anything else Treasury would like to add at

1 this point or the Joint Committee? Any clean up work we  
2 need to do before we recess?

3 Mark?

4 Mr. McConaghy. Well, I think we would certainly like  
5 -- depending on ACRS, to have a list together with Finance  
6 Committee staff and Treasury and our staff of technical  
7 kinds of things, clean up things.

8 The Chairman. I don't think there is any objection.

9 Without objection, authority will be given to make  
10 technical corrections. If someone has a specific interest,  
11 of course, they will be wanting to see what changes are  
12 made.

13 If there are no further --

14 Senator Symms. Don't I have an amendment on the floor?  
15 or did we adopt that without objection?

16 The Chairman. I adopted it without objection.

17 Senator Symms. Thank you very much.

18 The Chairman. That was the ACRS.

19 Senator Symms. Good.

20 Senator Chafee. Mr. Chairman, just back to the savings  
21 provisions once again. The Administration is prepared to  
22 go along with the \$1,000 LIRA, with a voluntary. We worked  
23 it out so that that payment could be made into the pension  
24 plan of the Company; is that correct?

25 Mr. Chapoton. That is correct.

1           Senator Chafee. Now let me suggest this that I think  
2 will help some savings. As you know, I wanted to go to the  
3 \$2,000, but the Administration felt that would be too ex-  
4 pensive.

5           I have this to suggest which I think will help on the  
6 savings. I am convinced it will help on the savings sub-  
7 stantially.

8           That is to permit an additional \$1,000, non-deductible  
9 to the LIRA or an additional \$2,000 non-deductible to the  
10 IRA. The incentive being that the interest accumulation  
11 would be tax free while it remained within those funds.

12           It is my understanding that the revenue effects on this  
13 are extremely modest and I think the potentiality for some  
14 savings incentives there are rather substantial.

15           Mr. Chapoton. Senator, I have not seen the revenue  
16 impact. As you know, by and large, that is allowed under  
17 certain restrictions for employers --

18           Senator Chafee. It is my understanding it is allowed  
19 under the Keogh now.

20           Mr. Chapoton. Yes, under -- correct, for a self-employed  
21 person, an additional \$7,500 may be contributed, non-tax  
22 deductible, but earnings would be tax free.

23           I don't have the revenue figures though on IRA's and  
24 LIRA's if that were added. I would like to look at those.

25           Senator Chafee. What I am scrambling for, of course, is

1 some way of increasing savings.

2 Mr. Chapoton. Yes, sir.

3 Senator Chafee. Here is a way that does it for the IRA's  
4 and LIRA's which makes it comparable to what we are doing  
5 on the Keogh.

6 In the Keogh, did we raise that to -- can you now do  
7 \$15,000 to the Keogh, an additional?

8 Mr. Chapoton. Senator, I am not positive of that  
9 without looking at the legislative draft. I assume we  
10 would. I would think the rule would follow through that  
11 an equal amount could be contributed on a non-tax deductible  
12 basis.

13 Senator Chafee. Yes.

14 Mr. Chapoton. I am relatively sure of that.

15 If we do it on IRA's and LIRA's, I guess the main  
16 constraint would be the revenue cost. I think we need to  
17 check that carefully.

18 Neither the Joint Committee staff nor we have that.  
19 So we can get that tonight.

20 Senator Chafee. Where are we now? Just about to report  
21 this bill out?

22 The Chairman. Tomorrow morning.

23 Senator Chafee. I see.

24 I wonder then if you could look at those?

25 Mr. Chapoton. Fine.

1           Senator Chafee. Maybe we could just take up that  
2 matter in the morning.

3           Mr. Chapoton. You would propose just a like amount?

4           Senator Chafee. A like amount. \$2,000 to the IRA;  
5 a \$1,000 to the LIRA, both non-deductible.

6           Mr. Chapoton. Okay.

7           The Chairman. I wanted to indicate for the record, I  
8 think Senator Heinz may want to discuss some other position  
9 on flexibility.

10          Senator Heinz. Mr. Chairman, we are really trying to  
11 accomplish the same basic objective which is to get the  
12 economic recovery program to work and get supply side  
13 economics to increase supply.

14          We are trying to get the accelerated depreciation  
15 proposals to work as effectively as possible.

16          Now, we had a 10 to 10 vote which is fairly close for  
17 most go arounds here on the earlier proposal I made.

18          At that time, Treasury suggested that taxpayers, corpor-  
19 ate taxpayers be allowed to elect a longer form of  
20 depreciation schedule using straight line.

21          Now the problem with that is that that would have locked  
22 people in for a very long time period, in what amounted to  
23 a single, irrevocable election.

24          Therefore, I didn't feel that that by itself did much  
25 good.

1           The Treasury objected rather strongly to my amendment.  
2 It seemed to have some effect when some of the people voted,  
3 and as I understood, their principal objection, it was that  
4 their -- we would set a dangerous precedent by allowing  
5 people to take deductions in any amount, at any time they  
6 wanted.

7           So, what I have tried to is take advantage of their  
8 constructive criticism, and start with their original  
9 proposal and hopefully end up with something, while it is  
10 not everything I want and may not be totally everything the  
11 Treasury wants, may nonetheless be acceptable enough.

12           What my proposal would do is to start with the  
13 Treasury proposal which is too complicated. I won't outline  
14 it now. But I think we know what we are talking about and  
15 then having permitted that election of the Treasury suggested  
16 to also permit, for somebody who has elected a long life or  
17 straight line for any vintage, permit in a later year for  
18 the remaining basis, a shift back to a shorter life and the  
19 accelerated method.

20           In other words, a second or follow up election.

21           Similarly, once a shorter life and accelerated method  
22 had been elected, we would permit in later years still for  
23 the remaining basis only, a return to the length and life  
24 and decelerated method.

25           I make this proposal because we do have precedent for



1 it in the tax law. There is an election now permissible to  
2 start with double declining balance. You may then elect to  
3 shift to some of your digits, and after that, you may shift  
4 to the straight line method.

5 So, in this respect, I don't believe this amendment  
6 plows the kind of new ground that Mr. Chapoton was worried  
7 about plowing earlier today.

8 So, I would hope, Mr. President, this proposal would be  
9 much more broadly acceptable.

10 We all know it doesn't cost any money. Indeed, it  
11 saves money. How much we don't know, but it does not cost  
12 more money. Because the only thing it permits is for people  
13 who would be taking advantage of the ACRS accelerated  
14 depreciation proposals, to slow those deductions down.

15 Mr. Chapoton. Senator, let me understand the proposal.  
16 You would allow for a taxpayer who had selected straight  
17 line and longer life, could then go back and elect a shorter  
18 life at a one time election?

19 Senator Heinz. Yes. I have not limited the election  
20 specifically in the proposal.

21 Mr. Chapoton. Senator, the one obvious problem with  
22 that is you are getting right back in to elections from one  
23 year to the next. Under present law, you can elect downward.  
24 That is, you can start out at say 150 percent declining  
25 balance or 200 percent declining balance for equipment, and

1 switch some of your digits and then switch to straight line.

2 All of those are elections to become to take slower  
3 depreciation.

4 Senator Heinz. That is advantageous to the Treasury.

5 Mr Chapoton. Well, we I think would have to assume that  
6 taxpayers are not volunteering to pay more tax than they are  
7 required to, so they are doing it knowingly and are indeed  
8 reducing their taxes.

9 But, we are attempting to get away from elections,  
10 options and complexity in our depreciation system. That was  
11 one of the basis of our objection to the banking provision.  
12 I am afraid you would retain a great deal of those and a  
13 great number of those problems with this proposal.

14 Senator Heinz. Why would we retain complexity under  
15 this proposal?

16 It seems to me that to the extent that complexity is  
17 going to be retained, it is going to be at the election of  
18 the taxpayer.

19 Mr. Chapoton. That is often true, but what you are  
20 telling a taxpayer then, if he does certain things that he  
21 may reduce his tax. Every taxpayer has to go through that  
22 computation. If he has an election to start out one way  
23 and to go back to a greater deduction, he needs to pay some-  
24 one to find out if it is more advantageous for him to do  
25 that.

1           You cannot sit idly by in an uneducated way and pay  
2 more tax than you might be required to do.

3           So, when we give such flexibility, we have to recognize  
4 that even the small taxpayer, the large taxpayer, has got to  
5 compute it both ways.

6           In addition, the Internal Revenue Service has to go  
7 through the exercise of seeing it was done correctly, and  
8 seeing that the elections were timely made and that type of  
9 a requirement.

10          Senator Heinz. Well, how about this. Why don't we  
11 limit this to one election beyond the one you propose? So  
12 if you start out in the three year category of ACRS, you  
13 can make your election and go into the next category which  
14 is the five category, and then make one additional election  
15 and come back if you want to.

16          Mr. Chapoton. Senator, you understand that this election  
17 would apply -- when we started out with the proposal it was  
18 one only. That is, you had to take the rate, the depreciation,  
19 the cost recovery provided in the statute.

20          We decided that more flexibility was needed. So we  
21 went to two additional recovery methods, two additional  
22 recovery periods, but no change once you elected those.

23          We went today to a third or a fourth recovery method.

24          We have now an additional option in each of those four.  
25 I am afraid we would be adding significantly to the complexity

1 of the provision. It would be less objectionable, I think,  
2 than a straight banking. But it would be something I think  
3 we would not want to do.

4 In addition, once you provide a great deal of flexibil-  
5 ity, that is going to a very long life, we talked about the  
6 five year class being able to go to a 25 year straight line  
7 period, then I assume under the one-time election, they could  
8 come back to five years accelerated.

9 I think you could -- the possibility, you would have to  
10 practically put it in a computer to see, but you would come  
11 very close to banking, you would have very low in one year,  
12 very high in the other, depending upon the assets you place  
13 in service.

14 Senator Heinz. Except that you could only do it once.

15 Mr. Chapoton. You could only do it once for each year's  
16 vintage. You could do it for the next year's vintage.

17 Senator Heinz. Yes, although that wouldn't make as a  
18 practical matter, a lot of sense, I don't think.

19 Mr. Chapoton. Well, we could run some numbers on that.

20 Senator Heinz. Maybe that wouldn't be a bad idea if  
21 you could do that overnight and see if it is as big a problem  
22 as you seem to think it is.

23 We do permit certain other kinds of elections in the  
24 Tax Code regarding inventory evaluation.

25 Mr. Chapoton. We permit a great number of elections in

1 the Tax Code.

2 Senator Heinz. Yes.

3 Mr. Chapoton. It is a constant complaint about the  
4 Tax Code.

5 Senator Heinz. Freedom of choice is a constant  
6 complaint.

7 Mr. Chapoton. Freedom of choice is a constant complaint  
8 about the Tax Code. It is a constant complaint about the  
9 Tax Code.

10 Senator Heinz. Freedom of choice is a constant  
11 complaint.

12 Mr. Chapoton. Freedom of choice is a constant complaint.

13 Senator Heinz. Well, here is, Mr. Chairman, my final  
14 observation.

15 Obviously, I don't wish to unduely complicate the Tax  
16 Code, but this does not require anybody to elect complexity.  
17 It is there for those who want to do it, and it is there on  
18 a limited basis.

19 These, it strikes me, are business judgments that we  
20 should encourage business to make. By failing to make this  
21 kind of an election, it seems to me that we are making  
22 decisions for business that we could just as easily leave to  
23 business and maybe we would get a little bit more performance  
24 out of the President's economic program if we did.

25 Mr. Chapoton. Senator, I would not be clear on who would

1 want this. It seems to me we provide business with the  
2 greatest certainty on their tax situation is the best thing  
3 we could do for business.

4 It seems to me this cuts against that desirable goal.  
5 Senator Heinz. Why don't you take a look at your  
6 numbers?

7 Mr. Chapoton. All right.

8 Senator Heinz. Thank you, Mr. Chapoton.

9 The Chairman. Well, if you will do that and we can  
10 visit about that ahead of the meeting tomorrow with Senator  
11 Heinz or his staff.

12 Are there any other -- there are no other members, there  
13 can't be any more amendments.

14 (Laughter.)

15 The Chairman. We will stand in recess until 9:30 a.m.,  
16 tomorrow morning, on the theory that if you call a meeting  
17 for 9:30 a.m., -- Senator Roth votes no on both charitable  
18 deduction amendments. That would lay to rest the one --  
19 well, in any event we will meet at 9:30 a.m., and hopefully  
20 start promptly at 9:30 a.m.

21 We should be able to complete consideration within the  
22 hour.

23 Thank you very much.

24 (Whereupon, at 6:40 p.m., the Executive Session  
25 recessed, to reconvene at 9:30 a.m., the next day.)

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