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1 MARKUP OF COLLECTION OF THE EXCISE TAX ON DIESEL FUEL  
2 AND EXTENSION OF THE IRS REFUND OFFSET PROGRAM UNDER  
3 WHICH THE IRS COLLECTS DEBTS OWED TO FEDERAL AGENCIES

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5 MONDAY, MARCH 21, 1988

6 United States Senate,  
7 Committee on Finance  
8 Washington, D.C.

9 The committee met, pursuant to notice, at 10:17 a.m., in  
10 Room SD-215, Dirksen Senate Office Building, Hon. Lloyd  
11 Bentsen, chairman of the committee, presiding.

12 Present. Senators Bentsen, Moynihan, Boren, Bradley,  
13 Mitchell, Pryor, Rockefeller, Daschle, Packwood, Roth,  
14 Danforth, Chafee, Wallop, and Armstrong.

15 The Chairman. This meeting will come to order.

16 When we ended our meeting on Friday, we had just started  
17 consideration of the diesel tax collection issue, and the  
18 proposal that I had made on Friday was that all off-road  
19 users would be allowed to purchase diesel fuel tax free at  
20 the wholesale level. Now, that would include farmers, mining  
21 companies, well drillers, timber companies; and everyone  
22 else, the whole gamut, for those users who purchase at retail  
23 and not wholesale, the original proposal reflected in the  
24 markup documents would continue to apply. And for those  
users, we would do this for the refund procedure. It would

1 be accelerated, and the IRS would be required to pay interest  
2 on the refunds. In other words, the Government would not be  
3 taking advantage of the float. Also, in lieu of filing for  
4 refunds, users would be able to reduce their quarterly  
5 estimated taxes, if they prefer.

6 Now, these are major changes in the procedures. The  
7 main test that we have left for us today is to review the  
8 revenue raisers that were distributed by the staff on Friday.  
9 Amongst those were the doubling of the gas guzzler tax, the  
10 tightening of the wine flavors credit. We would also have to  
11 discuss the effective date for the diesel tax change. It  
12 makes quite a bit of difference.

13 The last item is there were a number of amendments that  
14 members would like to offer, and we will be giving considera-  
15 tion to those. But I would hope that we could keep those  
16 amendments to the procedures. I think it is important that  
17 we understand where we are on revenue raisers, both for the  
18 Taxpayer's Bill of Rights and for the diesel tax. After that,  
19 I would like for the staff to go ahead and discuss the two  
20 revenue raisers.

21 It would be my hope that we could come to a decision on  
22 the revenue raisers before we get into members' amendments;  
23 because unless we approve the revenue raisers, we will be  
24 adjourning this meeting, I would assume, because we have to  
25 keep this thing revenue neutral.

1 The other problem, I know that a number of members have  
2 some very major, substantive amendments that are outside the  
3 procedure of collecting the tax that one might like to bring  
4 up, some of them off the technical corrections bill and  
5 others that have developed since we were considering that  
6 particular piece of legislation.

7 But if we do that, if we start a field, I do not know  
8 where this meeting will finally end. I have also been  
9 advised that if we get a bunch of extraneous amendments, we  
10 will have a very difficult time meeting with the House  
11 insofar as a conference. So I would strongly urge that the  
12 members not offer such amendments that move substantially  
13 away from the procedure of collecting the tax.

14 The chairman of the committee has some he would like to  
15 offer if we start down that road. But if we will resist that  
16 kind of a temptation, I think we will be able to finish this  
17 in relatively short order.

18 Now, with that in mind, Mr. Gould, would you proceed?

19 Mr. Gould. Mr. Chairman, we have a chart that might be  
20 helpful to members showing where we are on revenues. Randy  
21 Weiss had a chart we can pass out.

22 The Chairman. This one here that has just been passed  
23 out to you. What you are seeing is a very tight fit as far  
24 as the estimates of cost and revenues.

25 Mr. Gould, would you proceed?

1 Mr. Gould. Yes, sir. Mr. Chairman, as you can see, if  
2 you look at the bottom line on total, it gives a summary of  
3 where we would be if the revenue raisers are approved. Those  
4 are the wine credit, the gas guzzler doubling, the IRS refund  
5 offset program, referred to on the chart as the debt collec-  
6 tion proposal. If those are approved to offset the revenue  
7 loss from the Taxpayer Bill of Rights as approved Friday, and  
8 with the diesel proposals that you have made, the bottom line  
9 is that we are about \$65 million ahead over five years.

10 As you can see in the first year, we have most of the  
11 revenue loss because of a slow-down, essentially, in collec-  
12 tions resulting both from the Taxpayer Bill of Rights and the  
13 diesel fuel proposals. In that year, the IRS refund offset  
14 program, the debt collection proposals, makes up most of  
15 that; and then the wine credit and the gas guzzler tax make  
16 up the remaining amount in that first year.

17 The Chairman. If there are no questions on that, let us  
18 proceed with the explanation of the revenue raisers.

19 Senator Bradley. Mr. Chairman?

20 The Chairman. Yes.

21 Senator Bradley. Is this the section on the exemption  
22 to farmers?

23 The Chairman. No. It is exemption for all off-road  
24 users.

25 Senator Bradley. I mean non-road users?

1 The Chairman. Yes. At the moment, we are discussing  
2 the revenue raisers to pay for it.

3 Senator Bradley. I see.

4 Senator Wallop. Mr. Chairman, our silence at this  
5 moment does not necessarily indicate approval of each of  
6 these revenue raisers.

7 The Chairman. Oh, no, no. That is what we are now  
8 proceeding on at this point.

9 Mr. Gould. Mr. Chairman, Ron Pearlman, I think, is  
10 going to explain these revenue raisers.

11 The Chairman. And I must say I understand that there is  
12 much greater temptation to approve the correction of the  
13 diesel tax than there is to approve revenue raisers. But  
14 these things have to fit together.

15 Mr. Pearlman. Mr. Chairman, on the gas guzzler tax, the  
16 proposal there is to increase the rate on cars that do not  
17 currently meet the economy exemption amount. Let me just  
18 note, in the narrative you have in front of you, it indicates  
19 that it is for automobiles sold after the date of enactment;  
20 and the revenue estimate has been done on the assumption that  
21 it is effective October 1, 1988.

22 As a matter of information for the committee, the  
23 increase roughly parallels the increases, the two-year  
24 increases that were mandated by Congress during the period  
25 1980 to 1986. During that period of time, the tax was

1 increased annually by statutory directive. Then those  
 2 increases stopped in 1986, so there has been no increase  
 3 since 1986.

4 If one were to analyze the increases that did occur from  
 5 the period 1980 to 1986, they are very close to being doubled  
 6 in each of those years; early years 220 percent, 230 percent;  
 7 later years 170 and 180 percent. So this proposal essentially  
 8 follows the pattern of increasing the tax around 200 percent  
 9 over a two-year period.

10 Senator Chafee. Mr. Pearlman, could you just explain a  
 11 little bit more about how this tax works?

12 Mr. Pearlman. Yes. The gas guzzler tax, Senator, was  
 13 enacted in 1978, and it has as its variables--and its purpose  
 14 was to try to reflect in terms of an energy conservation  
 15 policy the additional fuel utilization by low mileage cars,  
 16 cars whose fuel economy is below certain thresholds. And  
 17 there was an escalating tax amount, dollar amount based on  
 18 the level of fuel consumption.

19 Senator Chafee. It is a tax on the vehicle?

20 Mr. Pearlman. It is a tax that is paid at the time of  
 21 the purchase of the vehicle. That is correct. It is a one-  
 22 time tax that is paid at the time the vehicle is sold.

23 Senator Chafee. The purchaser pays it to the dealer?

24 Mr. Pearlman. That is right.

Senator Chafee. When he buys a big, heavy car with low

1 mileage?

2 Mr. Pearlman. That is right. I have to correct myself.

3 It is paid at the manufacturer level and then just added,  
4 reflected in the price.

5 The Chairman. If I might, if you are finished?

6 Senator Chafee. How much does it raise absent this  
7 amount? Is it a significant money raiser?

8 Mr. Pearlman. Okay. You can essentially look at the  
9 revenue table, Senator, and these numbers reflect a doubling  
10 of the current rate. So I think it is accurate to say that  
11 the current tax would raise in the years projected unequal  
12 amounts. So currently, we would project over the five-year  
13 1989 through 1993 period that the tax would raise \$375  
14 million, and this amount has been doubled.

15 The Chairman. Let me say, gentlemen, what we are  
16 running into is a situation where, once again, you are seeing  
17 automobile manufacturers starting to advertise big engines,  
18 how fast they can go from a standing start up to 60 miles an  
19 hour, how many seconds it takes. And that seems to be the  
20 drift and the move.

21 At the same time, we have an increasing dependence on  
22 foreign oil coming into this country. We are trying to talk  
23 about continuing conservation in this country of ours. To  
24 show you some of the automobiles that would be affected, you  
have got the Aston-Martin; it is 11 miles per gallon. The

1 price is \$167,000. The current tax is \$3,850. Now, you  
2 double that tax.

3 You have got the Ferrari. It sells for \$79,000--no,  
4 here is another model, \$121,000.

5 I am really not that concerned about that fellow paying  
6 another \$1,500.

7 You have got the Jaguar selling here for \$58,000. They  
8 have to pay a \$1,500 tax.

9 The Porsche selling for \$65,000; Lamborghini, \$138,000.  
10 That must be quite a machine. \$3,850 and you are going to  
11 double that tax.

12 Senator Wallop. Mr. Chairman, I have no quarrel at all  
13 with what you are saying. I have a quarrel with the fact  
14 that American cars with similar poor performance are not  
15 touched. If Japan were to levy a tax of this dimension--

16 The Chairman. Oh, now, no. We do put it on on the same  
17 performance unless they are four-wheel drive vehicles.

18 Senator Wallop. It was my understanding that U.S.  
19 automobiles are not affected by this.

20 The Chairman. Well, I thought we were.

21 Mr. Pearlman. I do not think that is correct, Senator.

22 The Chairman. That is just not correct.

23 Mr. Pearlman. The only exceptions that I am aware of,

24 as the chairman mentions, are off-the-road vehicles, and

25 there is an explanation for that; and for 1984 and 1985 there



1 was a specific two-year exemption for certain station wagons.  
2 But under current law, it would impact any vehicle, to my  
3 understanding, if it does not meet the mileage standards.

4 The Chairman. That is my understanding.

5 Senator Wallop. It is any vehicle, then? It would as  
6 well affect American cars?

7 The Chairman. Yes.

8 Mr. Pearlman. Yes.

9 The Chairman. All right. Unless there are further  
10 questions, would you proceed?

11 Mr. Pearlman. The wine credit proposal, Mr. Chairman,  
12 is a fairly narrow proposal, and it relates to a modification  
13 of a credit that was included in the distilled spirits tax  
14 back in the early 1970's to allow people that were making  
15 wine, making alcohol from low quality wine that was being  
16 used in cordials a credit so that they were not paying the  
17 distilled spirits tax.

18 Apparently, within the last couple of years, this credit  
19 has been discovered, and there are certain distillers who are  
20 not using the wine for cordials, but instead have discovered  
21 by sending neutral spirits to a winery and then putting some  
22 wine in it; and then ultimately diluting it down with some  
23 water and then ultimately removing all of that and bringing  
24 it back to neutral spirits that they could get the benefit of  
the wine credit. This was brought to our attention by the

1 Bureau of Alcohol, Tobacco and Firearms.

2 So the purpose of this amendment is to return the credit  
3 to its original objective. It is not being repealed, but it  
4 is being ratcheted down so that the threshold that you see  
5 described in the proposal as a credit limited to no more than  
6 2.5 percent of the alcohol content, will again bring it back  
7 to what is needed for those people for whom the credit was  
8 originally enacted.

9 The consequence will be that those people who have  
10 discovered they can use this credit for the purpose not  
11 intended would no longer be able to do so.

12 Senator Daschle. Mr. Chairman, I had a couple of  
13 questions.

14 The Chairman. Yes, Senator Daschle.

15 Senator Daschle. Was this the same legislation that was  
16 repealed in 1980?

17 Mr. Pearlman. I do not think we know the answer,  
18 Senator.

19 Senator Daschle. I think it is, but I am not sure.

20 What I am wondering is whether or not this deals with  
21 all of those who blend wine with--we are dealing with the  
22 cordial market, as I understand it.

23 Mr. Pearlman. That is correct.

24 Senator Daschle. And what we are going after in this  
legislation, or this proposal, is to go after those who abuse

1 the process of the addition of wine into distilled spirits.

2 Do we deal with it in a blanket fashion; that is, anyone  
3 who puts wine in a cordial now would be paying the distilled  
4 spirit level, which is \$12 a gallon, right?

5 Mr. Pearlman. \$12.50, yes.

6 Senator Daschle. As opposed to the 17-cent-a-gallon  
7 wine tax?

8 Mr. Pearlman. Well, I think the answer to your question  
9 is we do deal with them at an equal level, but I do not think  
10 the conclusion is that everyone who uses wine in cordials  
11 will be subject to the tax, because there is an exemption.  
12 The credit will remain to the extent that no more than 2.5  
13 percent of the alcohol content is included.

14 So we think that at least the traditional cordial  
15 manufacturers who were using lower quality wine will still  
16 get the benefit of the credit. That is our understanding.

17 Senator Daschle. So a vintner who sells wine to a  
18 distiller and maintains that at high quality, and buys an  
19 assurance that it is wine and it does not exceed 2.5 percent  
20 of volume, would still be taxed at the 17-cent level rather  
21 than the \$12 level?

22 Mr. Pearlman. That is correct, Senator.

23 Senator Chafee. Mr. Chairman, this is an esoteric area  
24 in which I claim no knowledge. But somebody has told me that  
25 there are a couple of firms that are legitimate operators

1 who, through some quirk in the wording of this--one of them,  
2 I believe, is Florida Distillers--are going to be put out of  
3 business. As I understand the thrust of this, it is to catch  
4 those who have been going through some Machiavellian process  
5 in order to escape the tax. The ones I have heard about are  
6 not doing this, but somehow are going to be captured and  
7 severely hurt.

8 Does that ring a bell with you at all, Mr. Pearlman?

9 Mr. Pearlman. Senator, we have been told by BATF that  
10 there is literally just a handful, I think five distillers,  
11 who they believe are skirting the credit. I am not familiar  
12 with a Florida distiller. I am just not aware of that.

13 Again, the intention here is to take it back to its  
14 original objective. So if the distiller or distillers you  
15 are talking about are ones who are able to use the credit in  
16 sort of its original form, then they should be all right. If  
17 not, I guess we need to hear from them or talk with them and  
18 make sure of it.

19 The objective is not to disturb what back in the early  
20 1970's was the practice of the cordial manufacturers.

21 Senator Chafee. Well, we can take a look at we go  
22 along, Mr. Chairman.

23 The Chairman. Thank you, Mr. Pearlman.

24 Are there further questions concerning the tax?

[No response.]

1 The Chairman. May I hear a motion that we approve the  
2 tax?

3 Senator Packwood. So moved, Mr. Chairman.

4 The Chairman. Is there a second? All in favor of the  
5 motion stated, make it known by saying aye?

6 [A chorus of ayes.]

7 The Chairman. Opposed by a similar sign?

8 [No response.]

9 The Chairman. I assume that means the gas guzzler tax  
10 and the wine tax.

11 Senator Bradley, you are seeking recognition.

12 Senator Bradley. Mr. Chairman, I wondered if we could  
13 take a look on the diesel fuel. The provision as it now  
14 stands allow non-road users to purchase diesel fuel tax free.  
15 There are some other exempt users under current law. Private  
16 bus companies are an example. They do not pay the tax now,  
17 but they have to file for the refund and then they have the  
18 same effect.

19 I wondered if we could simply piggyback them on to the  
20 non-road users since they are already exempt under the law  
21 now.

22 The Chairman. I am not sure how far we go on that and  
23 what more it means that we open it up to. I have some of the  
24 same problems in my own State. These people are people who  
have been exempt from the tax and have been operating under

1 the present procedure, as I understand it, for some time.

2 But let us hear some comments on that.

3 Mr. Gould. Mr. Chairman, Randy Weiss has got a revenue  
4 estimate on this proposal.

5 Mr. Weiss. If I understand it, the proposal would be to  
6 allow the bus companies to buy tax free or at the reduced  
7 rate, whichever is applicable, at the wholesale level like  
8 the other users that are affected by this. The revenue  
9 estimate over the five-year period is \$7 million; \$3 million  
10 in the first year and then about \$1 million a year thereafter.

11 The Chairman. Well, I want to know how far we go down  
12 this road. What have we got, a \$5 million cushion as I  
13 looked at these estimates?

14 Mr. Gould. Over five years, Mr. Chairman, we have a \$65  
15 million cushion.

16 The Chairman. I want to know about the years to which  
17 we would be subject to a point of order. Is that over two  
18 years or what period of time?

19 Mr. Gould. In fiscal year 1989, which is the problem  
20 from the point of view of the floor, we have a \$32 million  
21 surplus currently.

22 Senator Wallop. Mr. Chairman, could I ask a question  
23 about that?

24 The Chairman. Yes.

Senator Wallop. Do not buses now pay and get refunded?

1 The Chairman. That is my understanding.

2 Senator Wallop. This would be a new set of circum-  
3 stances. This is not a thing that presently is causing them  
4 problems. This is hitchhiking a ride on a problem that we  
5 have created in other segments, I think.

6 Mr. Gould. That is correct. This is not a proposal to  
7 change something that was done last year or in the 1986 Tax  
8 Reform Act.

9 The Chairman. This has been the law and the practice  
10 for some time, has it, for the private bus companies?

11 Mr. Gould. That is right. The proposal is to put the  
12 private bus companies on the same plane as other exempt  
13 users, essentially. They have a differential when they buy  
14 diesel fuel currently. I think in most cases it is a three-  
15 cent differential, three-cent lower rate. And the proposal  
16 would be that they can go ahead and buy at that lower rate  
17 instead of having to buy at the full 15.2-cent rate and file  
18 for a refund.

19 Senator Armstrong. Mr. Chairman, could I just ask a  
20 question about the procedure?

21 The Chairman. Senator Armstrong.

22 Senator Armstrong. How do these exempt users qualify?  
23 Do they just declare that they are exempt and buy at that  
24 rate? How is that done? Is it case by case, or do you apply  
25 for a certificate? I just do not understand that process.

1 Mr. Pearlman. I think under the current procedure,  
2 Senator, there is a registration process with Treasury. They  
3 have the ability to waive that procedure. But if they do not,  
4 then the user registers with Treasury, and if it is eligible  
5 for the category of exemption, then it is notified of the  
6 exemption. And when it then purchases the fuel, it evidences  
7 the exemption to the seller.

8 Senator Armstrong. They just show a certificate or a  
9 card or something?

10 Mr. Pearlman. Senator, I do not know whether there is a  
11 card. They have some evidence of the exemption, and I do not  
12 know what it is.

13 Senator Armstrong. Mr. Chairman, the only other thing I  
14 wanted to be sure I understood, we have, prior to the dis-  
15 position of the Bradley amendment, taken care of the school  
16 districts and the counties and that category of exempt users.  
17 Is that not true?

18 The Chairman. As long as they purchase from wholesalers,  
19 we have taken care of them. As long as they purchase from  
20 wholesalers; isn't that correct?

21 Mr. Gould. That is right. Under the diesel tax, if  
22 they purchase from the wholesaler.

23 Senator Armstrong. If a county or a school district  
24 does not purchase from a wholesaler but purchases just from a  
25 regular retailer, then where are they?



1 Mr. Gould. That is the same problem, another exempt  
2 user, that Senator Danforth has referred to. The proposal  
3 that you are working on does not apply to purchases from the  
4 retail stage. In other words, the proposal does not allow a  
5 wholesaler to sell to a retailer without paying tax; rather,  
6 only if the wholesaler sells directly to the exempt user  
7 would here be the exemption.

8 We understand that, in general, allowing the wholesaler  
9 to sell to the retailer tax free, then the retailer reselling,  
10 would cost significant additional revenue and raise compliance  
11 problems.

12 The Chairman. If you keep going down the road and do  
13 not use the wholesaler level, you in effect repeal entirely  
14 what was done last time. And then we have got some real  
15 problems as far as getting this piece of legislation through.

16 Senator Danforth. Mr. Chairman, I am not sure where we  
17 stand procedurally. I do have an amendment.

18 The Chairman. I have not dealt yet with Senator  
19 Bradley's, and I would like to give his consideration. I  
20 just want to see where it was leading us. That is what I was  
21 probing for to better understand the depth of it and how far  
22 it might go.

23 Senator Bradley. Over five years it is what, \$7 million  
24 in revenue? I think that is what he said.

The Chairman. Senator Bradley, if that is all it is and

1 that is where it stops, I do not think there is a problem. I  
2 am just trying to see--you were the first step and I under-  
3 stand your move. You want to get to your part of this before  
4 we get to these others. I understand that.

5 Mr. Gould. Mr. Chairman?

6 The Chairman. Yes?

7 Mr. Gould. This is about Senator Bradley's amendment.

8 The Chairman. Okay.

9 Mr. Gould. We are not aware of other exempt users who  
10 would not be permitted under your proposal to purchase at the  
11 wholesale level without their special rate, their lower rate.

12 In other words, it does appear that only the buses have  
13 the problem from that angle. The other problem is the retail  
14 purchases.

15 The Chairman. So you do not see that that leads us into  
16 any expansion of that area?

17 Mr. Gould. Based on the information we have, no, it  
18 does not. And it does not cost significant revenue.

19 The Chairman. All right. Is there objection, then, to  
20 Senator Bradley's proposal?

21 [No response.]

22 The Chairman. If not, we will do it.

23 Senator Bradley. Thank you, Mr. Chairman.

24 The Chairman. Now, Senator Danforth, you had one.

25 Senator Danforth. Mr. Chairman, I have an amendment

1 which I would offer on behalf of Senators Chafee, Mitchell,  
2 Durenberger, Roth, Riegle, and Heinz and myself to exclude  
3 marine use from the tax. The definition of "producer" would  
4 be amended to provide for sellers selling fuel at waterside  
5 terminals for marine use. This would allow such persons to  
6 purchase fuel without paying the fuel tax.

7 The second part of the amendment would provide that  
8 sales at waterside terminals to marine users and subsequent  
9 sales by sellers selling fuel; for example, midstreamer  
10 marine users would only be exempt from the tax if the  
11 purchaser had been granted an up-front exemption by the IRS.  
12 These exemptions would be made available only to commercial  
13 vessels engaged in coastwise trade, offshore supply vessels  
14 or fishery vessels. The IRS would be authorized to grant  
15 such persons an exemption only upon fulfilling the same  
16 conditions now applicable to diesel powered trains and  
17 commercial aviation.

18 Mr. Chairman, there are a couple of points I would like  
19 to make. First of all, obviously, marine use does not have  
20 anything to do with the Highway Trust Fund. Secondly, while  
21 this amendment is broadly drafted for marine use, I want to  
22 make a special point with respect to the inland waterway  
23 industry.

24 Ever since I first came to the Senate, we have been  
25 fighting the battle about whether or not to charge user fees

1 for the inland waterway system. I fought the battle; I lost.  
2 And we are charging user fees for the inland waterway system.  
3 It was a knock-down, drag-out battle. Finally, when David  
4 Stockman was the director of OMB, we reached something of a  
5 compromise. I did not think it was very much of compromise,  
6 as far as I was concerned, but it was a compromise in which  
7 we set out exactly what these barge people were supposed to  
8 be paying.

9 This is a beleaguered industry. It is an industry that  
10 is beset with bankruptcies right now. What we are doing  
11 under the current law is to extract yet more money from them  
12 that is not owing, financing a part of the Federal budget by  
13 charging them a float, and I think welshing on the deal that  
14 we made with them when we finally agreed on what the user fee  
15 was to be.

16 Therefore, I think as a matter of fundamental fairness  
17 it really is wrong to do this.

18 The Chairman. Senator Danforth, I am certainly sym-  
19 pathetic to what you are saying, and I suppose my State has  
20 as much in the way of barge canals as any State in the Union  
21 and as much in the way of people employed in that industry.

22 Let us hear staff on that one, unless somebody else--  
23 Senator Mitchell. Mr. Chairman, may I be heard?

24 The Chairman. On the same subject?

Senator Mitchell. Yes.

1 The Chairman. Yes, please. Fine.

2 Senator Mitchell. I support Senator Danforth's amend-  
3 ment. I would like to make the case from a different  
4 perspective; that is, the standpoint of fisherman.

5 First, of course, as Senator Danforth has correctly  
6 noted, fishing boats do not use the highways if we are  
7 talking about a fund to pay for the highways.

8 Secondly, the provision before us provides that the  
9 decision on exemption be based on whether or not the purchase  
10 is made wholesale or retail. Ninety-five percent of the  
11 fisherman in my State are sufficiently small of size that  
12 they purchase retail. So the provision is of no benefit to  
13 them.

14 Third, I think fishing operations, at least in the  
15 Northeast--I cannot speak for other parts of the country--are  
16 unique, and this would impose an impossible administrative  
17 burden on them. The fishing boat owner contracts with  
18 independent crew members on virtually a daily basis, and they  
19 share the proceeds on what is called a "share of the catch"  
20 basis. When the fish are caught and sold, the owner gets  
21 half; the crew gets the other half after deduction of all  
22 expenses. If this provision became law, the owner would have  
23 to file for the refund, and then would have an administrative  
24 nightmare trying to figure out the refund portion going to  
25 each crew member on an individual, daily basis.

1 That is why fishing crew members are all treated, for  
2 tax purposes, as independent contractors under all other  
3 provisions of Federal tax law. So I think if we do not  
4 exempt them that they will be faced with a triple whammy:  
5 first, having to pay tax to maintain the highways when, of  
6 course, they do not use them; secondly, the provision does  
7 them no good because they purchase at retail; and, thirdly,  
8 it imposes an unique administrative problem on them that does  
9 not exist in many other areas.

10 So I support the amendment, and I would like, Mr.  
11 Chairman, if I could, to make a comment on a separate matter  
12 previously discussed. That was the wine flavor modification.  
13 I understood from Senator Chafee's comments that Mr. Pearlman  
14 will meet with these groups to determine whether or not there  
15 are persons who are, in fact, complying with the law who  
16 would inadvertently be adversely affected by it and determine  
17 if that is the case.

18 Mr. Pearlman. We would be happy to meet with them,  
19 Senator.

20 The Chairman. I have no objection to that.

21 Senator Mitchell. Thank you, Mr. Chairman.

22 The Chairman. That is understood. I really do not see,  
23 in all candor--and I have got a lot of fisherman--the  
24 complications insofar as breaking it down to individual  
25 members of a crew. When you charge it and ask for a refund,

1 you blanket it on your expenses for that particular trip, it  
2 seems to me.

3 Senator Mitchell. Then, Mr. Chairman, the captain would  
4 then have to go find each crew member, many of whom move from  
5 boat to boat and port to port, to return his portion to them.  
6 I think it would create a serious burden for them.

7 The Chairman. Well, all right.

8 Senator Rockefeller. Mr. Chairman, on the same subject,  
9 then, in support of Senator Danforth's amendment, it could be  
10 also pointed out that barges are in direct competition with  
11 railroads. Railroads already have that exemption. It would  
12 seem to be another equity argument in favor of his amendment.

13 Senator Chafee. Mr. Chairman, I know you want to move  
14 ahead. I just want to support what Senator Mitchell said and  
15 add one point, or reinforce one point about the system we  
16 work in, anyway, in my State in the Northeast. I do not know  
17 what takes place elsewhere in the country. They do truly  
18 work on the share basis for each barge. So everything  
19 Senator Mitchell said, I agree with about the difficulties of  
20 tracking down the people when you have the refunds.

21 Finally, I would like to say that diesel fuel constitutes  
22 the single largest expense for a trip, which is surprising to  
23 me. It is not the salt, it is not the food or the ice. It  
24 is the diesel fuel, the single largest expenditure for each  
trip. So we are talking a significant item here, Mr.

1 Chairman.

2 I would ask that my prepared statement be included in  
3 the record.

1 4 [The prepared statement of Senator Chafee follows:]



1 The Chairman. Well, I hope we can do it, but I want to  
2 see what we are talking about on revenue.

3 Mr. Chapoton. Mr. Chairman, could I make a comment on  
4 that from our perspective?

5 The Chairman. Yes.

6 Mr. Chapoton. We are very sympathetic with these  
7 notions that there is some administrative difficulty.  
8 However, we must be mindful that the whole purpose of the  
9 1986 and then 1987 changes was to move the collection point  
10 from the retail to the wholesale level simply because the  
11 retail collection point imposed such compliance problems.

12 The taxpayers we are talking about here, I believe every  
13 one of them, if they collected at the wholesale level, would  
14 under this proposal be entitled to purchase the diesel fuel  
15 tax free. The problem is many of these purchase customarily  
16 at the retail level. We are conscious of that, and they have  
17 to apply for a refund. But to correct that would be reversing  
18 the step made to take it from the retail level to the  
19 wholesale level, and the compliance gap that we are talking  
20 about even with these figures that would show considerable  
21 compliance even at the wholesale level, it would be some--I  
22 do not have the figures, and maybe Ron does. But you would  
23 be opening this door again to taking it back to the retail  
24 level and increasing these compliance problems.

The Chairman. Well, let us talk about how much revenue

1 we have involved. I would like to do exactly what Senator  
2 Danforth, Senator Mitchell and Senator Rockefeller are  
3 talking about. I have a very deep involvement in my own  
4 State in that regard, and certainly they do not use it for  
5 anything that involves the Highway Trust Fund. It is a  
6 question of evasion that Treasury had talked about earlier  
7 and sold this point of view before it to the committee.

8 Mr. Pearlman, what do we have in the way of revenue?

9 Mr. Pearlman. Mr. Chairman, in 1989, we have an \$11  
10 million revenue loss, and then \$2 million in each of the  
11 subsequent four years, for a total of \$19 million over the  
12 five-year period. For 1989, it is minus 11.

13 Senator Chafee. Just by these changes.

14 Mr. Pearlman. By the exemption of all the marine users,  
15 yes, sir.

16 Senator Chafee. We haven't lost everything in it  
17 because the purpose of doing the change last year was  
18 primarily to get trucks and the big consumers, weren't we?

19 Could you explain is it not correct that would be two  
20 million compliance in each year? What's the additional nine  
21 million the first year? Is that speed-up?

22 Mr. Pearlman. Just a speed-up.

23 Senator Mitchell. So the actual compliance cost is two  
24 million a year. The 11 million is not a compliance cost?

Mr. Pearlman. That's correct.

1 Senator Mitchell. Two million a year for each of the  
2 five years?

3 Mr. Pearlman. But the loss for 1989 is 11 just as long  
4 as the members know that.

5 Senator Danforth. But it's float loss, right?

6 Mr. Pearlman. Well, I think that's true with all exempt  
7 users, Senator. That's correct.

8 Senator Danforth. Yes. But the nine million is purely  
9 float collected from somebody who doesn't know the tax?

10 Mr. Pearlman. Well, I think that's an accurate statement  
11 with respect to all exempt users, and results from the  
12 decision to move to the wholesale level of collection. I  
13 think that's correct. That's right.

14 The Chairman. All right. We're talking about, over the  
15 five years, 19 million, and in the first year 11.

16 Where does that leave us insofar as being subject to  
17 point of order? I want to be sure I stay within that.

18 Mr. Gould. We were at 32 in 1989, so it's 11 down,  
19 which leaves us at--

20 The Chairman. So we still have a cushion?

21 Mr. Gould. So we still have a cushion in 1989, yes, sir.

22 Mr. Pearlman. Mr. Chairman, let me just make sure that  
23 I make it clear that this revenue estimate I'm advised was  
24 based on the assumption that we're only dealing with sellers  
who deal only with marine purchasers. So there is some limit

1 on the number of sellers we're involved with here.

2 The Chairman. As we hear from the proposers, it's  
3 understood.

4 Senator Danforth. Let me be very frank on this.

5 That would take care of the people in the waterways.

6 This is a big--because they buy exclusively, their source is  
7 exclusive marine.

8 Mr. Pearlman. And that is the way the estimate was made.

9 Senator Danforth. There are, I think, other Senators  
10 who would like a broader exemption. And the way that the  
11 amendment has been offered is to include not only sources  
12 which are exclusive to marine use but sources which are  
13 nautical.

14 The Chairman. The majority. But your estimates have  
15 been exclusive to marine use. Otherwise, you're going to  
16 have a substantial expense in this loss of revenue.

17 Mr. Pearlman. That's correct, and I'm told that the  
18 compliance estimate could go up as much as \$10 million a year.

19 Now, we'll have to do an estimate on that, if you want  
20 it.

21 The Chairman. All right. But as it's proposed, as I  
22 understand it, it's exclusive for marine use at this point.

23 Senator Packwood. I thought I understood him the other  
24 way.

25 Senator Danforth. That's correct.

1 Senator Packwood. It is not exclusive? It is exclusive  
2 for marine use?

3 Senator Danforth. Is not.

4 Mr. Pearlman. Then the estimate I gave you is not an  
5 accurate estimate of the proposal.

6 The Chairman. Then it's something substantially more.  
7 So you have not proposed it exclusive for marine use, is that  
8 what you're saying, Senator Danforth?

9 Senator Danforth. Here is the point.

10 For people, all of this is exclusive, right. The end  
11 use for what we have in mind are people who are operating  
12 just a barge, they're not operating on the highways.

13 The question is what is the source of their fuel? Is  
14 there a possibility of fraud? Is there a possibility of a  
15 truck coming up to a supply of fuel, siphoning off some of  
16 the fuel, and using tax-exempt fuel on the highway? That is  
17 the difference.

18 With respect to the inland waterways, those that oppose  
19 are fueled midstream and, therefore, there is no possibility  
20 to speak of fraud. You're not going to get fraud from this.  
21 You fill up midstream, the source of the fuel.

22 But I'm told that it is possible at some parts of the  
23 country that that can happen. In other words--and therefore  
24 the way that the amendment has been offered is that marine  
25 use is exempt, whether or not fraud could occur at the source

1 of the supply, that marine use is exempt. That is the form  
2 that this one would take.

3 Mr. Pearlman. Then I owe an apology because we thought--  
4 --we just made a mistake in understanding what was--

5 Senator Danforth. What would be the difference between  
6 the two then?

7 Mr. Pearlman. Our sort of best estimate is that it will  
8 increase the compliance loss at a level of approximately \$10  
9 million a year. And it is for the reason you just mentioned,  
10 Senator, that at some--at ports, unlike the inland waterway  
11 use, at ports seller-retailers sell not only to marine users  
12 but to trucks and others as well. And so the compliance  
13 problem gets much more serious.

14 Senator Danforth. Let me ask you this, Ron.

15 Is it not true that even at the ocean--I'm not talking  
16 about the river, I'm talking about the ocean, there is  
17 separate types, there is separate gauges, there is separate  
18 pumps that are used for the ship use as opposed to possible  
19 truck use?

20 Mr. Pearlman. Yes, I think that part, that is correct.  
21 But apparently it comes out of the same storage tank. And  
22 the problem is that the seller then says a percentage of his  
23 storage tank is for exempt use, and it just creates a  
24 compliance problem that is not there is the retailer is  
25 dealing only with marine users.

1 That is what I understand the compliance problem to be.  
2 Senator Danforth. Is there a way to address that? It  
3 seemed to me to be a pretty easy question to solve.

4 Mr. Chapoton. Senator Danforth, I think the problem  
5 we're facing is that whether the sales to that retailer must  
6 be subject to tax. And if they're partially subject to tax,  
7 they're not partially subject to tax, then we have the  
8 problem of how we determine what that percentage is.

9 Senator Danforth. It's right on the gauge.

10 Mr. Chapoton. I'm sorry, sir?

11 Senator Danforth. It's on a gauge. You can read a  
12 gauge and tell.

13 Mr. Chapoton. But that would be after the fact.

14 I mean it's the original sale the diesel fuel to that  
15 retailer. If he sells to nothing but marine, and you're  
16 going to exempt marine sales, then you could comfortably  
17 exempt the sale from the wholesaler to that retailer.

18 If he sells both, you wouldn't know right then how to  
19 impose the tax.

20 Senator Danforth. Mr. Chairman, I would be willing to  
21 limit this to exclusive sales for marine use. But I can't  
22 speak for any of the other members.

23 The Chairman. Senator, I think you're going to win your  
24 amendment if you limit it to that. If you go beyond it, and  
25 from what Treasury is talking about in the way of compliance

1 problems, we've got ourselves a problem.

2 Senator Mitchell. Mr. Chairman, it's my understanding  
3 that that would be acceptable, that the overwhelming majority  
4 of purchases by small fishing operators from retailers who  
5 sell exclusively for marine purposes. That is, I understand  
6 the basis on which the estimate was made.

7 Senator Chafee. Under the proposal, the retailer would  
8 have to sell exclusively to marine users?

9 Mr. Pearlman. Well, that is the basis on which we made  
10 the estimate, Senator Chafee.

11 Senator Chafee. I can see a situation where a sale to  
12 the particular tank could only be exclusively for marine  
13 uses, whether you've got a--I just don't--George, do you  
14 think that--

15 Senator Mitchell. That's what I'm advised.

16 Senator Packwood. My experience on fishing boats, that  
17 would be adequate because most of them fill up on the dock.  
18 It would be an unusual place to run your truck down to fill  
19 up.

20 The Chairman. Well, there are some that provide for  
21 both, but you run into compliance problems. I think you've  
22 got this situation where you can win your amendment if we  
23 have the more limited definition of it. And I know that  
24 doesn't take care of everyone.

I've got some of my own folks in my own State.



1 Senator Packwood. But I sense the sponsors are willing  
2 to limit it to that. And I think we ought to make it.

3 The Chairman. Is that fair enough? Are you ready to  
4 limit your amendment?

5 Senator Danforth. This sponsor is willing.

6 The Chairman. All right. Are there others? All right.  
7 The motion is now made with the more limited definition.  
8 All in favor of that motion, make it known by saying aye.  
9 [Chorus of ayes.]

10 The Chairman. Opposed?

11 [No response.]

12 The Chairman. Motion carried.

13 Senator Boren. Mr. Chairman.

14 The Chairman. Yes, Senator Boren.

15 Senator Boren. This is a slightly different subject but  
16 it still relates to process. I don't want to bring it up  
17 until we're finished with diesel, if there are any other  
18 diesel amendments.

19 The Chairman. Are there any other diesel amendments?

20 Senator Pryor. Mr. Chairman.

21 The Chairman. Senator Pryor.

22 Senator Pryor. I do not have an amendment. I do feel  
23 that in our proposal that we're crafting right now that there  
24 is at least implied a mandate to the IRS to come up with a  
25 new reporting system with reporting requirements. This would

1 apply, I assume, to farmers, marine operators, et cetera.

2 All I'm saying, Mr. Chairman, is just a word of--I don't  
3 want to say warning but of caution to the IRS in coming up  
4 with this system, please, let's don't have another W-4, let's  
5 don't have another automobile recordkeeping system that we  
6 wake up this morning and this baby is on our doorstep, and we  
7 have to come back in here and deny we ever had anything to do  
8 with this.

9 But, just as a word of caution and warning, I would hope  
10 that we might be able to see some of those forms in the  
11 system before it is put out there to the public.

12 Mr. Chapoton. Well, Mr. Chairman, I'm advised that work  
13 is already in process on that. The Form 720, which is the  
14 method by which this will be verified, is being studied and  
15 certainly can be discussed with this committee if you would  
16 like. And, furthermore, it attempts to follow a procedure  
17 that many States already use, which we hope will be accep-  
18 table.

19 Mr. Pearlman. Senator, we too have been in touch with  
20 the Service, and it appears that it will be a workable  
21 procedure.

22 Senator Pryor. I think, if I'm not mistaken, Senator  
23 Daschle will associate himself with my concern about this. I  
24 did not mean to preempt Senator Daschle if he wanted to speak  
25 to it.

1 Senator Daschle. I was going to wait until after all  
2 the amendments were offered, and express much the same  
3 concern.

4 I don't know if it would be possible for those of us who  
5 do have a concern in this regard to meet the Treasury prior to  
6 the time comes to the floor in order to ensure that we would  
7 have an option of offering an amendment in this regard if it  
8 were necessary.

9 I don't think it would be. But I would think that we  
10 would want to reflect the concerns expressed by Senator Pryor  
11 in our report language at least, that we're not asking here  
12 for a full series of additional log books and other kinds of  
13 regulatory processes that could cause even more of a headache  
14 for a lot of these people than the law itself.

15 And I think that if we could reflect that in the report  
16 language, that's all that's necessary. But, prior to the  
17 time that we go to the floor, some kind of an explanation in  
18 this regard would be very helpful.

19 Mr. Chapoton. Senator Daschle, we would be happy to  
20 discuss this with you. And I think we are far along with it,  
21 and could do so in a relatively short time period.

22 The Chairman. I see no objection or problem in putting  
23 that report language in. Unless there is, we'll do just that.

24 Now, Senator Boren, you have the floor.

25 Senator Boren. Mr. Chairman, I want to bring up the

1 problem of gasoline taxes.

2 When we had the hearing in our subcommittee last  
3 Wednesday, it was emphasized that we have a comprehensive  
4 problem here, and one that I hope we can deal with in a  
5 comprehensive way today rather than piecemeal.

6 We certainly have the diesel problem with which we are  
7 dealing right now. But we also have the same problem with  
8 gasoline, particularly as cities and towns, local units of  
9 government, school boards and others must purchase gasoline.  
10 They're going through the same kind of problem in terms of  
11 the enormous amount of paperwork. We're talking about  
12 hundreds of thousands of rebates and refund forms being  
13 filed. We're talking about bringing in 82,000 additional  
14 units of Government that are not now brought in, or weren't  
15 brought in until this was acted upon late last year. So  
16 we're creating enormous problems.

17 We are also creating enormous problems for gasohol  
18 blenders because they will also be caught in the same  
19 regulations. It's going to be very, very difficult for them  
20 to operate. And we're going to have a serious negative  
21 impact on the whole gasohol industry, which also hurts  
22 agriculture as well.

23 So I have proposed an amendment, which staff has had and  
24 Treasury has had, that we'll allow State and local governments  
25 to buy tax free from wholesale distributors with the very

1 same system that we're setting up here for diesel dis-  
2 tributors. We would do the same thing with gasohol blenders,  
3 it would be able to register as wholesale distributors  
4 themselves. And, of course, we would have the full bonding  
5 requirements under both so that there would be a clear audit  
6 trail for the IRS.

7 I don't think it would increase the incidence of excise  
8 gas evasion. I just make the point that, with this amendment,  
9 we would still be reducing the number of gasoline excise  
10 taxpayers in terms of what they were in 1987 from about 9,000  
11 down to 4,000 or 5,000, we'd be cutting them in half.

12 In addition, we would be adopting the same kind of  
13 system that has been agreed to here for diesel. It's a  
14 little difficult for me to understand how it can be argued  
15 that the diesel program that we're undertaking with the  
16 wholesalers making the sales, with the bonding requirements  
17 as workable, that it's not also workable in the case of  
18 gasoline.

19 We are distorting the market substantially here because,  
20 between independent producers and distributors and the large  
21 company refiners, because we're allowing the refiners who  
22 sell to the wholesalers to make these tax free sales directly  
23 as refiners but, on the other hand, the wholesale customers  
24 to which they sell to bulk dealers simply can't make the same  
25 sales.

1 So, in line with the Administration's thinking that we  
2 should not be distorting markets here or distorting competi-  
3 tive effects, I think that it's essential that we make this  
4 change because, for example, we had testimony from one  
5 wholesaler in Dennison, Texas, who said that this is going to  
6 cost him \$70,000 a month in terms of his own sales, but that  
7 his own supplier is going to be able to sell tax exempt to  
8 these very same people. They are going to go right straight  
9 to the refiner, the supplier, the large company, and they're  
10 going to bypass him now because of the way this current law  
11 would operate.

12 I know that Treasury in the past has originally recom-  
13 mended this bonding requirement, said it was very workable.  
14 I'm a little disturbed, and I will say they've been very  
15 upfront with me about this, which I appreciate. They've  
16 said, well, we are going to have to change our revenue  
17 estimate. When we had this amendment over in the House in  
18 1987, the Pickle amendment, I believe, IRS attached a revenue  
19 loss estimate of \$10 million in the first year, \$15 million  
20 thereafter. I think that's a little high myself because, as  
21 I say, we're adopting the very same proposal, the bonding  
22 requirements which they themselves have advocated, the same  
23 kind of a distribution point at the wholesale level that we  
24 have here for diesel. And we're still greatly reducing the  
25 number in 1987 since we're not going to the retail level.

1 But now I understand they've talked about raising this  
2 as high as \$60 million a year, and I have to say, Mr.  
3 Chairman, I hope they've changed their mind by the time we  
4 hear from them today, but I think that's completely off the  
5 reservation in terms of what a reasonable estimate would be.

6 And I hope we'll find a way to adopt this amendment  
7 because we're all affected by this as taxpayers to local  
8 units of government. It's greatly going to increase the cost  
9 to the Government. And it costs \$4 or \$5 million a year  
10 here, I think, for the paperwork.

11 On this proposal, I believe we had testimony that it  
12 costs over \$4 per refund claimed to process these things.  
13 And as I say, we're bringing in 82,000 units of Government  
14 that weren't there previously.

15 So I would just urge that we deal with this problem  
16 comprehensively now. We're dealing very well with the diesel  
17 side of it. Let's not leave the gasohol problem out there  
18 and the State and local government problem out, and we have  
19 to look at gasoline to do that. And I think it would be very  
20 much better to have a uniform parallel system here, and not  
21 have one system for gasoline tax collections and one for  
22 diesel.

23 So I would hope that the amendment would be agreed to.

24 The Chairman. Let me just state that I am just really  
25 very pleased at the attendance we have this morning, at 10

1 o'clock, Monday morning. We're talking about really a five-  
2 day week, and it's working. And the kind of response shows  
3 the attention and concern of the members of this committee in  
4 the issues before us.

5 Mr. Secretary, why don't you comment, and then I know  
6 there are other members that want to.

7 Mr. Chapoton. Mr. Chairman, we have addressed this  
8 issue. Senator Boren said quite a lot dealing with gasoline,  
9 the gasoline excise tax.

10 Prior to 1986, as I think most of the members of this  
11 committee know, the tax was imposed at the wholesale level,  
12 but there were various exceptions which were applicable if  
13 wholesalers were integrated with wholesalers. So, in many  
14 cases, the tax went down to the retail level.

15 At that time, there was considerable evasion and  
16 avoidance of the tax. In fact, the criminal element was very  
17 heavily involved. There was a great deal of evidence  
18 introduced before Mr. Pickle's committee in Ways and Means,  
19 at the subcommittee in the Ways and Means, indicating that  
20 criminal evasion of the tax had been rampant.

21 Senator Boren's proposal would reduce the number. It  
22 would not bring us back all the way to the pre-1986 law, but  
23 it would greatly increase the number of taxpayers involved  
24 here, 4,000 to 5,000 I think currently imposing the tax  
25 before the sale to the wholesaler, there are only 600 or 700



1 taxpayers. And the tax burden, it is a little difficult to  
2 compare diesel fuel with gasoline tax because there is simply  
3 so much more gasoline being sold, and so many more ultimate  
4 taxpayers potentially.

5 And it has been our conclusion that if every time the  
6 taxes reduced a level downstream, that evasion is much easier  
7 to accomplish. And we do recognize the points that he has  
8 made, but we simply think there is no way, this bonding  
9 requirement simply would not make up for the revenue loss.

10 We had a possibility of a bonding requirement. We  
11 considered that at length prior to the 1986 Act, and we  
12 simply didn't think it would be successful to avoid the  
13 substantial compliance loss.

14 The Chairman. How much money are you talking about?

15 Mr. Chapoton. Senator Boren said 60 million and I  
16 believe--

17 Mr. Pearlman. Senator, Mr. Chairman, the revenue loss  
18 is estimated at 57 million in 1989, and then 60 in each of  
19 the outyears.

20 The Chairman. Sixty in each year?

21 Mr. Pearlman. Sixty in each year. Total revenue loss--

22 -

23 The Chairman. Are you saying 60 or 16?

24 Mr. Pearlman. 60, sixty. The total loss for the five-  
year period is \$297 million, and the loss for 1989 is a minus

1 57.

2 Senator Boren. Mr. Chairman, I want to again really  
3 contest these figures. I don't know how we operate around  
4 here. I've found very often if you can't a proposal with a  
5 rational argument, you beat a proposal with revenue estimates.  
6 And on this one, I really fail to understand how if a system  
7 is in essence workable with diesel--and we're here talking  
8 about--we're not talking about private citizens being able to  
9 come in, we're not even talking about people that can claim  
10 to come in and be agricultural operators or anything else.

11 We're talking about units of Government. We're talking  
12 about explicit exemptions for units of Government, and we're  
13 talking about people who are industrial makers of gasohol.  
14 That is not a huge number of people. And we're talking about  
15 making them post a bond. And I understand that the figure  
16 was given of \$10 million on the Pickle amendment, and then 15  
17 million. We've added the bonding proposal to it, and I have  
18 to wonder why mysteriously the revenue estimate has gone up  
19 by a factor of six over this period of time. And we've  
20 actually followed the proposals that, in the earlier period  
21 of time, the Treasury themselves were arguing for us.

22 Certainly I don't want to get into a situation where we have  
23 problems with organized crime. I don't think Congressman  
24 Pickle did either. He heard the testimony, and he himself  
25 offered this proposal, very similar to the proposal that I'm

1 offering today in the Ways and Means Committee as a way to  
2 combat that problem of criminal activity.

3 But I don't understand why there has been such a  
4 tremendous disparity in the revenue estimates and why cities  
5 and towns, units of Government, schools boards which are very  
6 easily identifiable with appropriate officials, it's very  
7 easy to determine who the president of the school board is,  
8 who makes the authorization, or the Mayor or whoever it  
9 happens to me, why this would be open to this kind of abuse.

10 Senator Packwood. Could I ask a question, Mr. Chairman.

11 The Chairman. Yes.

12 Senator Packwood. I want to make sure I understand what  
13 we've done.

14 On the diesel, we have eliminated the maritime, if it's  
15 solely maritime. It doesn't matter if it's retail or  
16 wholesale so long as they're selling only maritime. That was  
17 the Danforth-Mitchell amendment.

18 Then we have eliminated--what else have we eliminated on  
19 the diesel, wholesalers?

20 Mr. Chapoton. Well, Senator, I think we're talking  
21 about an entirely different point of the diesel. We're  
22 talking about tax people who don't owe the tax, they're not  
23 full users.

24 Senator Packwood. I understand that.

But it seems to me that Senator Boren is making an

1 argument for exempting the schools in the school districts  
2 even if they purchase retail.

3 Senator Boren. No, no. I'm sorry, I'm not.

4 Senator Packwood. Well, I thought you were.

5 Senator Boren. No, sir. No. I'm just providing that.  
6 We would apply the same proposal here that we have to diesel.  
7 In other words, they couldn't purchase at the retail level,  
8 only at the wholesale level. There would have to be a  
9 bonding posted, there would be a full audit trail established.

10 And that's the reason I'm saying it doesn't make sense  
11 to me that if we can say it work with diesel, in fact, we can  
12 let people come in who say that they're farm operators, and  
13 I'm all for that, I don't want to put this burden on the  
14 farmers.

15 But here we're dealing with very easily identifiable  
16 units of Government, officially units of Government, and a  
17 very small number of gasohol blenders who are commercially in  
18 the business. And I don't see why in the world, with an  
19 adequate audit trail, we would have that kind of loss of  
20 revenue since we say the other systems work.

21 The Chairman. Senator Armstrong has been seeking  
22 recognition.

23 Senator Armstrong. Mr. Chairman, I endorse the proposal  
24 that Senator Boren has offered, and I agree with his argu-  
25 ments. I have two questions.

1 First, I'm unclear on what we should think this \$57  
2 million is. Should we understand that this is tax that would  
3 otherwise not be refunded, that the refund procedure has  
4 enough leakage in it that, in effect, \$57 million would  
5 somehow not get refunded to the State and local jurisdictions  
6 involved? That's my first question.

7 My second question, which is really directed to Senator  
8 Boren, has to do with splash blending. In some iteration of  
9 your amendment, Senator, I have seen a provision in there  
10 which I thought incorporated an amendment I was going to  
11 offer separately.

12 Senator Boren. Yes, on gasohol blenders?

13 Senator Armstrong. Yes.

14 Senator Boren. Yes, it does.

15 Senator Armstrong. And just for the record, the essence  
16 of that is that if you add the ethanol at a different  
17 terminal, you nonetheless can still qualify for the lower tax  
18 rate?

19 Senator Boren. Yes.

20 Senator Armstrong. And as I understand it, that  
21 provision is going to expire by regulation July 1st. And you  
22 have incorporated that in your amendment?

23 Senator Boren. That's correct. That is included  
24 because, otherwise, we would start to discriminate against  
those who are independent gasohol blenders, so to speak.

1 Senator Armstrong. I believe that that is really a  
2 technical issue, but it's a very important one out our way  
3 because we're trying to encourage the use of oxygenated fuel.  
4 And the only way you can put that stuff together, at least in  
5 Colorado, is by splash blending where they fill the truck  
6 with gas in one place, and then they drive it to another  
7 terminal to add the blending.

8 Senator Daschle. Would you yield on that point?

9 Senator Armstrong. Yes, sure.

10 Senator Daschle. Only to make the point that regardless  
11 of splash blending, this is something already going on. We  
12 aren't asking for anything new here. The authority to allow  
13 the IRS simply the discretion to continue this provision will  
14 end on July 1st. So it allows the continuity which is very  
15 crucial to the ethanol industry.

16 Senator Boren. It creates no new rights beyond what  
17 they've had in the past. But it is crucial to the industry  
18 and--

19 Senator Armstrong. I just wanted to be sure it was  
20 included, and I appreciate your doing so.

21 Senator Boren. Yes, it would be included.

22 The Chairman. You know, I'm very sympathetic what  
23 Senator Boren is trying to do, and I understand the concern  
24 and share it.

But we've got a problem of revenue here. And Senator

1 Boren is concerned over the estimates.

2 I would like to know whose estimates are we using? And  
3 then I want the other, I want the question of Joint Tax  
4 Committee and Treasury, how far apart are your estimates?

5 Mr. Pearlman. Mr. Chairman, the estimate that I gave  
6 you was the Joint Committee's estimate.

7 Let me make a couple of points because I think they're  
8 important.

9 Senator, what we've been requested to estimate, and the  
10 Pickle bill is not a bill limited to State and local govern-  
11 ments. It is a bill to permit wholesalers to remit the  
12 gasoline.

13 Now, if you're making a proposal that's different than  
14 that, that is not what we were asked to estimate, and it is  
15 not the Pickle bill. So we need some clarification.

16 Secondly, I can assure you that the estimate was not  
17 done on the basis to defeat an amendment. The estimate was  
18 done on the basis that the service has told us that a bonding  
19 procedure will not work, and that is the reason, as I  
20 indicated to you personally, during our personal conversation,  
21 that our estimate went up.

22 If there is a compliance procedure which the service  
23 feels comfortable with, then that obviously would be taken  
24 into consideration.

The Chairman. Well, I'd like to get my question fully

1 answered.

2 I have your estimate then. The estimate that was given  
3 was the Joint Tax Committee estimate of \$57 million loss in  
4 1989, 60 million in each ensuing year thereafter, for a total  
5 of 297 million.

6 Now, Mr. Chapoton, Secretary Chapoton, will you give me  
7 the Treasury's estimate?

8 Mr. Chapoton. Yes. Mr. Chairman, our estimate agrees  
9 with that. It's simply \$60 million a year, but I think it's  
10 important to emphasize that is the Pickle amendment which  
11 would change the collection point to the wholesale level on  
12 all purchasers, not just State and local governments.

13 Senator Boren. What was the estimate the Pickle bill  
14 given at the time the Pickle bill was estimated?

15 Am I incorrect that it was \$10 million in the first year  
16 and 15 in the second?

17 Mr. Pearlman. It was about \$40 million over the five-  
18 year period. Your numbers are correct.

19 Senator Boren. And now it's 200 and something?

20 Mr. Pearlman. And it was done on the assumption. But I  
21 think it's important, Senator, it was done on the assumption  
22 that the bonding procedure that you have described would  
23 work. And we have now been told that it won't work, that the  
24 service does not believe it's feasible. And as I explained  
25 previously, that is the basis for the change in the revenue



1 estimate.

2 Senator Boren. Why has the service changed its mind?

3 Mr. Chapoton. Senator, one reason is that--and we did  
4 not give an earlier revenue estimate, but we have had  
5 difficulty all along, the service has, with the bonding  
6 requirement. And even at the current collection point of  
7 this tax at the terminal operator, we imposed the bonding  
8 requirement that has met considerable opposition, so much so  
9 that we've virtually given up on the bonding requirement,  
10 even at the terminal operator.

11 There's a lot of objection to the way to the bonding  
12 works. I'm not familiar with the details of it, but I know  
13 that it's been sufficient that we are trying not impose a  
14 bond requirement even at that level.

15 Senator Armstrong. Mr. Chairman, could we pin down--

16 The Chairman. Let me recognize in order here.

17 Senator Roth has been asking to be recognized.

18 Senator Roth. Mr. Chairman, what concerns me is we're  
19 on a pretty tight time frame as far as diesel oil and the  
20 farmers. I think it goes into effect the end of this month.

21 I'm concerned that would be again loading it down with a  
22 number of other propositions not matter how desirable, that  
23 it's going to be very difficult to act expeditiously. So  
24 that I would hope we could keep the legislation fairly clean.

The Chairman. I would say the problem I've got, or we

1 have, is that we have to deal with these revenue estimates as  
2 they are. They're the recognized institutions to do that,  
3 whether we might question them or not. And that's what we  
4 face when we go to the floor.

5 And it means that we would have to raise a substantial  
6 amount of additional revenue.

7 I would also say that this gas collection point was in  
8 the 1986 Tax Reform Act. And we either raise the additional  
9 revenue or we try to tack this to the Technical Corrections  
10 Bill because I think Senator Boren raises a very legitimate  
11 point. And at some point here, we have to address it.

12 Senator Rockefeller. Mr. Chairman.

13 The Chairman. Yes.

14 Senator Rockefeller. This is maybe a little off the  
15 wall but in that I think there is broad agreement with what  
16 Senator Boren is trying to do, what would happen if we were  
17 to adjust slightly upward the gas guzzling(?) tax?

18 The Chairman. You've got to adjust it a bunch. We have  
19 doubled it. We've already doubled it. So you'd have to--  
20 well, you'd have to go, let's see, you would have to at least  
21 quadruple it.

22 Mr. Pearlman. You would have to triple it, I think.

23 The Chairman. What?

24 Mr. Pearlman. You would have to increase it by an  
25 additional multiple, that's right.

1 Senator Boren. Mr. Chairman, let me ask this.

2 Maybe, and as I understood the amendment, the way it is  
3 drawn, and I had taken the Pickle amendment originally  
4 because we did have those favorable revenue estimates on it.

5 Our real intent is to deal with the units of government,  
6 in other words, local units of government, State, local and  
7 so on, and with gasohol blenders. I think that's the real  
8 problem.

9 I wonder if there is some way we could bring the revenue  
10 estimate back down if we were to limit the right of the  
11 wholesalers under this to sell only to those because we're  
12 just dealing--we know there are 82,000 units of Government,  
13 we know what those are, we have those identified, they're on  
14 computer. And we know where the gasohol blenders are. There  
15 are a relatively very small number of those.

16 I wonder if there is some other way that Treasury could  
17 suggest to us that we could constrain the operation? Because  
18 that's really the clear intent. That's what I'm trying to  
19 get to are these 82,000 local units of Government and the  
20 gasohol people, and it seems to me we're dealing with people  
21 who have to file all sorts of reports, that maybe there's a  
22 way of doing that.

23 Mr. Pearlman. Senator, one suggestion that has been  
24 made is the possibility of letting the wholesaler obtain the  
25 exemption from the State and local Government and then let

1 the wholesaler file the claim for refund with the IRS, rather  
2 than having the State and local Government do it.

3 Now, that is not the Pickle amendment, but that is  
4 certainly a procedure that could be utilized. There is a  
5 compliance question there, but presumably, we could insist  
6 that the wholesaler obtain from the retailer an exemption  
7 first, and then go through the mechanism for remitting. We  
8 have not tried to estimate that.

9 Senator Boren. We do not want to put it in a situation  
10 where the refiner would be in the driver's seat. I think we  
11 have to be very careful about that. Because what is happening  
12 is the refiners are now obtaining a share of the market  
13 because of a competitive disadvantage which is unfair. In  
14 other words, they go down and let us say you have a wholesaler  
15 who buys from this same major company that is the refiner.  
16 Now, we have got to make sure that we would do it in a way  
17 where the refiner would not refuse to cooperate with the  
18 wholesaler who wanted to obtain the exemption for, let us  
19 say, school district number such-and-such or local municipal-  
20 ity so that they could continue to get all the business at  
21 the manufacturer or refinery level instead of at the whole-  
22 saler level.

23 But something like you are suggesting might be workable.  
24 We would still want to take care of the gasohol problem that  
has been talked about by Senator Armstrong and Senator

1 Daschle to make sure that we extend that gasohol-to-terminal  
2 provision, the splash blending. But if that would work,  
3 maybe we could bring the cost down.

4 Mr. Pearlman. Well, Senator, it may work. It is  
5 certainly an option. I do not know whether Treasury has  
6 looked at it. We have not tried to estimate it, I can tell  
7 you that.

8 Mr. Chapoton. I am not sure I am really on board at  
9 just what you are suggesting, but we have examined a number  
10 of possibilities and, quite frankly, run into dead-end  
11 streets as to something that would be helpful.

12 The Chairman. Let me say this, gentlemen: We are  
13 getting into trouble, obviously, on our piece of legislation  
14 here. I would be willing to entertain this as a floor  
15 amendment if it can be worked out, and take some time to do  
16 it with Treasury, Senator Boren, and otherwise to give it a  
17 full chance of discussion on the technical corrections bill  
18 which addresses the 1986 bill, where this originated. But if  
19 we overload revenue-wise the legislation before us, we can  
20 forget it. We can just put it aside.

21 Senator Moynihan has been seeking recognition.

22 Senator Moynihan. Mr. Chairman, just to record what may  
23 be a parochial view, but I think not: In New York State, we  
24 were facing a real problem of crime in this area. Roderick  
25 Chew, who is our tax commissioner, has made this an issue

1 with fellow commissioners--I see one of the Treasury people  
2 nodding--across the country. This has been on the front page  
3 of the Wall Street Journal in terms of the FBI putting this  
4 up on the watch list. I am sure that the splash blending, as  
5 Mr. Armstrong and Mr. Daschle mentioned, can be held. That  
6 would just continue current law. If it is going to be closed  
7 out, I think we should keep it open obviously.

8 That has no revenue effect of any kind, I assume. Is  
9 that right, Mr. Pearlman?

10 Mr. Chapoton. Well, let me comment on that. We would  
11 be happy to discuss that. It is not my understanding that  
12 that is current law, that splash blending at a different  
13 terminal is permissible under current law. Quite the  
14 contrary, I think because of the difficulties that we have  
15 encountered in determining how the law would work, it is now  
16 permitted temporarily to have splash blending at different  
17 terminals.

18 Senator Moynihan. I just wanted to say, Mr. Chairman,  
19 that there is an issue, at least from the point of New York,  
20 of law enforcement, of organized crime, of massive evasion,  
21 and I thought we had responded in 1986 to just that.

22 The Chairman. Let me say, gentlemen, if we could  
23 proceed and consider this as a possible floor amendment,  
24 subject to being able to stay within our revenue limitations  
25 after discussing it with Mr. Chapoton and Mr. Pearlman, and

1 see if we can work out something like what you are talking  
2 about. Otherwise, I will commit to you to fully address it  
3 on the technical corrections amendment and see what can be  
4 done there, where it originated.

5 Senator Boren. Mr. Chairman, I certainly appreciate the  
6 comment you have just made. As you know, I feel very  
7 strongly about the diesel matter and the problem it is  
8 creating for agriculture and others. I would be the last one  
9 to want to delay us being able to move on this bill today and  
10 to get this out to the floor.

11 What would be the situation, what kind of a revenue  
12 estimate would we have to come up with keep ourselves from  
13 having--and let us also see if we can separate out this  
14 question of gasohol splash blending, because there seems to  
15 be some misunderstanding about that. We could take care of  
16 that problem today--that would be very helpful--and then go  
17 into the problem of seeing if we can work out a revenue  
18 estimate. I am just wondering how much room we still have  
19 left if we limited something strictly to--take care of  
20 gasohol today and limit the other strictly to see what we can  
21 do on coming up with something strictly limited to local  
22 units of Government, these 82,000 units of Government.

23 Where are we on the revenue now in terms of the years,  
24 for points of order to potentially be raised?

Mr. Pearlman. Well, depending on what you come up with

1 for State and local Governments--and I just have no idea what  
2 that number is.

3 Senator Boren. Where are we now, before we do either  
4 one of these?

5 Mr. Pearlman. We are currently having a positive  
6 revenue pickup of \$18 million in 1989.

7 Senator Boren. So, in other words, we have to come up  
8 with a proposal that stays within that 18 million.

9 Mr. Pearlman. Now, I might note the splash blending  
10 proposal loses some rather significant money in its first  
11 year. The estimate we did was based on an April 1, 1988,  
12 effective date, but it is rather significant. It is \$27  
13 million in the first year.

14 Senator Boren. I do not understand that either.

15 Senator Armstrong. Mr. Chairman, could we have an  
16 explanation of how that occurs? The blenders are entitled to  
17 the lower tax rate. So the only way I can conceive that  
18 there would be a revenue loss is if some blender was not  
19 getting the tax break to which they are entitled.

20 Also, rightly or wrongly, it is the current practice  
21 under regulation until July 1st to permit blenders to pick up  
22 the gasoline at one terminal, put in the gas, and take it  
23 some place else and put in the alcohol. As a practical  
24 matter, that is the only way you can blend this stuff because  
they will not, as I understand it, send gasohol through



1 pipelines.

2 Now, we have got a national policy which the Senate has  
3 thought about and voted on many times to encourage this kind  
4 of activity. In the case of Colorado, our interest is an air  
5 pollution interest. This oxygenated fuel is much more  
6 desirable from an air pollution standpoint. That is one of  
7 the reasons why we give a six-cent-a-gallon tax break to this  
8 fuel.

9 So we really need some explanation, and one way or  
10 another we are on a tight deadline because on July 1st, as I  
11 understand it, this exemption, this permission to blend the  
12 fuel at two locations will end. It really seems to me  
13 technical, but the deadline is fairly tight, Mr. Chairman.

14 Mr. Pearlman. Do you want an explanation?

15 The Chairman. Yes. Go ahead.

16 Senator Armstrong. Sure.

17 Mr. Pearlman. Senator, as I understand it, under  
18 current law, in order to get the reduced rate, the gasohol  
19 and the gasoline must be purchased at the same terminal or  
20 the same facility. The reason that that is required is that  
21 assures the seller that the person is really, in fact,  
22 blending it with gasohol. By splitting up the two purchase  
23 points, it raises the compliance question for the seller of  
24 the gasoline because there is no way for the seller of the  
25 gasoline to know whether, in fact, it is going to be blended

1 with gasohol. That is the reason that the IRS tells us that  
2 they will have the compliance question.

3 Senator Armstrong. Well, Mr. Chairman, we need to pin  
4 the facts down. Mr. Pearlman has stated the issue correctly  
5 but has come to what I believe is the wrong conclusion. I  
6 direct his attention to IRS Notice 8834 under which gasohol  
7 blenders are permitted, until July 1st, to qualify for the  
8 lower tax rate, notwithstanding the fact that the blending  
9 occurs at two terminals. But I think he has spelled out the  
10 issue correctly.

11 Mr. Chapoton. That is correct though, Senator. There  
12 was simply difficulty, the IRS encountered difficulty on how  
13 to implement the current law which does not permit blending  
14 at separate terminals, and gave that relief until the law  
15 could be implemented in a fashion that would be reasonable.  
16 But the law does require, and will come into effect on July  
17 1st, that it has to be at the same terminal.

18 The Chairman. Gentlemen, let me say I am determined to  
19 get this piece of tax fuel procedure changed. I understand  
20 and I sympathize very strongly with what you are talking  
21 about, Senator Boren, and I understand the frustration over  
22 numbers and estimates. I have shared that many times in this  
23 committee.

24 What I have stated to you is if we can stay within the  
limitations of the numbers, and finally these fellows we have

1 to depend on insofar as their estimates. If you can convince  
2 them otherwise, great. But I commit to you that if you can  
3 stay within those and we can find a better procedure to take  
4 care of this, I would like to do that with a floor amendment.

5 Otherwise, if we cannot get it done by that time, we  
6 will take a look at the technical corrections bill. This  
7 question arose from the 1986 bill, and the technical correc-  
8 tions bill will be addressing that. Mr. Rostenkowski is  
9 committed to send such a bill over, and we certainly are  
10 committed to developing one on this side.

11 I really would like to proceed on this, subject to my  
12 commitment to do those things.

13 Senator Armstrong. Mr. Chairman, before we leave the  
14 subject, I really think that we ought to ask for an explana-  
15 tion of how this revenue loss arises. My question is this:  
16 Is it the view of the Treasury that this \$27 million, or  
17 whatever the number is--and I am not quibbling over the  
18 amount--is a tax that would be paid by persons who would  
19 otherwise be entitled to the exemption if they could figure  
20 out a way to blend this stuff at the same location? Is it a  
21 criminal issue or--

22 Mr. Chapoton. It is both compliance and timing. I  
23 think the ongoing figure is \$6 or \$7 million a year in  
24 compliance, and probably the balance--

25 Senator Armstrong. Having noted that, then, Mr.

1 Chairman, we could solve this problem by changing the  
2 effective date because that would bring us, then, under the  
3 cap.

4 Senator Boren. Mr. Chairman, that is exactly the point  
5 I wanted to make, and I think this may be the point on the  
6 gasoline as well. We have had the compliance problem  
7 highlighted, and if you were listening to that last answer,  
8 \$27 million was said to be the cost. And of that, \$21  
9 million is the float that the Government is getting.

10 In other words, it is not essentially a matter of  
11 compliance that we are seeing these costs. It is a matter of  
12 the float, which we have said all the time: it is a matter  
13 of the Government using the money.

14 The revenue estimates, it seems to me, are mainly based  
15 upon the loss of the float. I am very disturbed about that  
16 because under the guise of problems of enforcement we are  
17 really talking about loss of the float to the Government. I  
18 do not think that is really quite a fair thing to do. I  
19 wonder if we simply could not change the effective date in  
20 some ways, maybe on both of these things, in order to--

21 Senator Armstrong. Why don't you do that? And that  
22 gets the chairman off of the spot, which we all sympathize  
23 with. He is not going to take an amendment that will put him  
24 over the available revenue. But if you change the effective  
date, you would solve that problem and enable us to all vote

1 for something that we want to.

2 Mr. Gould. Mr. Chairman, you can solve the problem for  
3 fiscal year 1988 or 1989, but then you would wind up with an  
4 overall revenue loss, small revenue loss over the five-year  
5 period of around on the order of \$10, \$15 million, \$20  
6 million over the five years.

7 Senator Armstrong. For the total proposal?

8 Mr. Gould. No, for the whole package.

9 Senator Armstrong. How about for the gasohol?

10 Mr. Chapoton. You mean the gasoline and the gasohol?

11 Mr. Pearlman. The five-year estimate, whatever, you are  
12 right. Part of it is the speedup or what you describe as the  
13 float.

14 Senator Boren. A big part, apparently.

15 Mr. Pearlman. But the fact is that that is what the law  
16 is, and the five-year number is \$60 million. Now, you can  
17 move those numbers around. You are correct that the com-  
18 pliance piece of that is lower. It is about \$6 million. But  
19 in some year, you are going to effect that speedup. So it is  
20 going to hit some year in that five-year period.

21 Mr. Chapoton. But also, Senator Boren, I think on the  
22 gasoline matter, as distinguished from the splash blending of  
23 gasohol, I think the gasoline is primarily a compliance  
24 figure. Is that not right? That is not so much--it is \$60  
25 million a year, in other words, for moving the point to the

1 wholesaler from the terminal.

2 Senator Boren. I wonder if we could at least take care  
3 of the gasohol problem today and continue to work on this  
4 units of Government on the gasoline before we come to the  
5 floor.

6 Mr. Pearlman. The gasoline number, I am told, Senator  
7 Boren, is all compliance.

8 Senator Boren. Not float.

9 Mr. Pearlman. That is correct.

10 Senator Boren. So we do not have that problem. So if  
11 we could change the date on the gasohol problem or some way  
12 to deal with the float problem, maybe we could take care of  
13 that today. Because we are only subject, point of order, the  
14 first year; is that correct? Or first two years?

15 The Chairman. Well, I do not want to get into a game of  
16 bookkeeping either. I have opposed that, did in what we did  
17 in our summit meeting. I want to be sure that we--

18 Senator Moynihan. Mr. Chairman, can I ask just one  
19 thing to be said again when Mr. Pearlman has a moment?

20 The Chairman. Yes.

21 Senator Moynihan. Mr. Pearlman?

22 Mr. Pearlman. Sorry.

23 Senator Moynihan. No. You are trying to straighten  
24 this out. You are trying to do these things as we throw them  
25 at you, and it is brilliant the way you do it. But did I

1 hear you say that the cost estimates, the revenue loss with  
2 respect to the gasoline aspect here is all compliance?

3 Mr. Pearlman. That is correct, Senator.

4 Senator Moynihan. So it is a steal.

5 Mr. Chapoton. That is correct. But let me clarify that  
6 Senator Boren's point was city, State and local Governments  
7 is not that \$60 million. That is all taxpayers moving into  
8 the wholesale level.

9 Senator Boren, if we are only working with State and  
10 local Governments, we might well be able to fashion a  
11 proposal that would cost a great deal less than the \$60  
12 million.

13 Senator Boren. Right. And that is really our aim,  
14 State and local Governments only, and then dealing with this  
15 gasohol problem. So we might be able to, if we change--

16 Senator Packwood. Mr. Chairman?

17 The Chairman. Yes?

18 Senator Packwood. I have the same worry you do. You  
19 are going to lose your quorum before long, and I would like  
20 to get this out with the diesel corrections in it. You have  
21 made an offer to do it on the floor if we can do it. I think  
22 we ought to accept the offer and get the diesel bill out.

23 The Chairman. Are there further comments?

24 Senator Armstrong. What have we decided, Mr. Chairman?

25 This is a life-or-death issue to an important little industry

1 out in the Midwest. I do not think we are going to have a  
2 technical corrections bill by July 1st. Maybe we will.

3 The Chairman. What I have said to you, Senator, and I  
4 will say it for the third time, is that I am quite prepared  
5 to support on the floor a committee amendment that will stay  
6 within the limitations of the point of order.

7 Senator Packwood. On this bill.

8 The Chairman. On this bill.

9 Senator Boren. And it would be considered as a committee  
10 amendment if we were able to work that out.

11 The Chairman. That is correct. If we were able to work  
12 it out and you have the time to work it out.

13 Senator Boren. Mr. Chairman, in light of that, I would  
14 suggest we do that. I will withdraw this amendment as of  
15 this moment with the idea that we will try to get it together.  
16 I assume it would be the first amendment considered so other  
17 revenue loses potentially would not come--if we work this out  
18 so they will not get our \$18 million.

19 The Chairman. I will concede that. The first amendment.

20 Senator Armstrong?

21 Senator Armstrong. Mr. Chairman, on the amendment we  
22 have just disposed of, I am grateful to you for helping us do  
23 that. It is important.

24 Senator Durenberger is unable to be here this morning  
and has asked me to propound an amendment, if I may, which I



1 do for him and for myself as well. It involves very, very  
2 small dollars, and the issue is exempting from the occupa-  
3 tional tax the ethanol producers. There is a \$500 per  
4 producer tax, and under the Durenberger/Armstrong amendment,  
5 anybody who produces less than 10,000 gallons a year of  
6 distilled spirits used for the production of gasohol would be  
7 exempted from this tax.

8 The justice of it and the numbers is this: That almost  
9 all of the actual inspection--this is a user fee concept--has  
10 to do with those who manufacture beer or hard liquor. But  
11 the incidence of this little occupational tax falls dispro-  
12 portionately on the small gasohol, alcohol distillers. So  
13 our amendment simply says if you do not produce more than  
14 10,000 gallons a year, you do not have to pay this tax.

15 The cost, I am told, is \$1 million.

16 Mr. Pearlman. That is correct. We estimate the cost at  
17 less than a million in each year.

18 The Chairman. Is there a problem?

19 Senator Armstrong. One more word. It is interesting  
20 that there are about 50 times as many man-hours devoted to  
21 inspecting beer and distilleries than there are of this kind  
22 of plant. It really is not fair, and it is a small amount  
23 but involves as fair number of little companies.

24 The Chairman. Any problems?

Mr. Gould. Mr. Chairman, the committee might want to be

1 aware that there would be a very small revenue loss. Last  
2 year's Bureau of Alcohol, Tobacco and Firearms fees applied  
3 not only to distilleries but also to retail establishments  
4 selling liquor and to taverns as well. Some of the members  
5 have started to hear from some of those establishments,  
6 making essentially the same arguments that the ethanol  
7 producers make, which is that the BATF spends very little  
8 time, if any, auditing or examining any of these liquor  
9 stores or 7-Elevens that sell beer, for example; and that if  
10 we exempt the ethanol distilleries on the grounds that the  
11 BATF does not spend much time, that you may hear from the  
12 retail establishments as well.

13 The Chairman. Mr. Chapoton.

14 Mr. Chapoton. Mr. Chapoton, we do not have any strong  
15 feelings about this. It is a user fee, and the concept is  
16 that, to the extent that time is spent investigating and  
17 imposing a control that the user fee makes sense, I think  
18 that exempting commercial operations totally seems very  
19 generous in this regard. I know some of these people  
20 affected by the tax are actually colleges and universities  
21 that are processing alcohol for laboratory studies.

22 Senator Armstrong. In many cases, just a matter of  
23 quarts, even. It came to my attention, Mr. Chairman, when  
24 the high school in Karval, Colorado, let me know that they  
were going to have to drop a particular course that they

1 offer because, in the conduct of this course, they do produce  
2 a few quarts a year of ethanol. Under the law, they would  
3 have to pay \$500 to get a license, and it just does not make  
4 sense.

5 Mr. Chapoton. We are very sympathetic to that, Senator.  
6 Senator Armstrong. No, no. I understand that. But let  
7 me speak directly to the point that Secretary Chapoton has  
8 made.

9 According to the Bureau of Alcohol and Tobacco taxation,  
10 they spend 37,000 man hours regulating the 291 plants that  
11 produce distilled spirits, wine and beer. By contrast, they  
12 spent 700 hours regulating the 5,000 ethanol plants. So it  
13 really is a completely--really, the justice of it is they  
14 ought to be exempted. The figures are 291 plants, 37,000  
15 hours; 5,000 plants, 730 hours.

16 The Chairman. Gentlemen, I am losing my quorum here.  
17 Let me have the feeling of the committee on this one.

18 Senator Chafee. Well, Mr. Chairman, it seems to me,  
19 first of all, that it is easy to exempt universities and  
20 schools totally. It seems to me the others, it is a user fee  
21 that is sometimes spent--instead of having it \$500, could it  
22 not be \$50 or something that you collect for the service<sup>s</sup>  
23 provided?

24 Now, the statistics are 700 hours total for...

25 Senator Armstrong. Five thousand plants.

1 Senator Chafee. Five thousand, well, that is certainly  
2 de minimis. But it sound extraordinary they can click off an  
3 inspection of 5,000 units with 700 hours. The Government is  
4 moving at lightning speed in that instance.

5 Senator Armstrong. They do not inspect them. That is  
6 the point.

7 Again, there are 291 brewers and distillers, and that is  
8 37,000 hours of time. There are 5,000 of these little  
9 ethanol producers, and that is 730 hours of time. They  
10 really just do not do it.

11 Senator Chafee. Well, presumably, they do not do  
12 anything, then.

13 Senator Armstrong. Right.

14 Senator Chafee. How do they rack up 700 hours?

15 The Chairman. Senator, do you have an amendment you are  
16 proposing?

17 Senator Armstrong. Yes, sir, I do. I have the text of  
18 the amendment, but it does just what I have said. It exempts  
19 anybody under 10,000 gallons.

20 The Chairman. Is there further comment? If not, all in  
21 favor of the amendment make it known by saying aye?

22 [A chorus of ayes.]

23 The Chairman. Opposed?

24 [No response.]

25 The Chairman. The amendment carries.

1 Senator Danforth. Mr. Chairman, I know you are going to  
2 lose your quorum, but I want to ask one question. I note on  
3 this descriptive sheet that the repeal of the diesel fuel  
4 provision would take effect on October 1, 1988. A farmer has  
5 asked me, well, what is going to happen after April 1st when  
6 I take it they are supposed to start paying the tax.

7 Is there this interim period of six months in which they  
8 are going to be stuck with this tax?

9 Mr. Gould. Under the proposals made by the Chairman and  
10 estimated by the Joint Tax Committee, you are correct; the  
11 effective date would be October 1st. That is an issue that  
12 we anticipated discussing. There are two strong reasons,  
13 probably, for the October 1st date. One is in order for the  
14 IRS to implement the new reporting procedures or new safe-  
15 guards that would take the place of the payment of the tax up  
16 front with the refund procedure, they will need a period of  
17 months. So, in any event, it would probably be impossible  
18 without significant additional revenue costs to make the  
19 proposal effective April 1st.

20 Secondly, the October 1st date has the advantage of not  
21 resulting in a revenue loss in this fiscal year, which would  
22 be difficult or impossible to make up with any other revenue  
23 raiser.

24 Senator Danforth. What would be the loss of making this  
effective as of April 1st? It just seems kind of ridiculous,

1 if we think it is a bad idea, to make people fuss around with  
2 the withholding and then the period of a refund.

3 Mr. Pearlman. Senator, we do not have that number, but  
4 I do have a number for a limited exemption effective April 1.  
5 And it was estimated at 62 million in 1988, but it did not  
6 cover everyone. So I am not real sure. I cannot give you a  
7 precise number.

8 Senator Boren. You mean the farmers are going to have  
9 to go through all this for six months? I thought that is  
10 what we were avoiding by passing the bill, that they would  
11 never have to start.

12 The Chairman. Senator, I understand that, and I  
13 appreciate what he is talking about. But it is a revenue  
14 problem, pure and simple. I do not know how else we are  
15 going to do this.

16 Mr. Gould. The proposal would also be to pay interest  
17 on the refunds. It would be a one-time quick refund proce-  
18 dure.

19 Senator Boren. Then you have to go to set up all this  
20 system of all these refunds and all this paperwork, and then  
21 undo it again. It seems outrageous. I just cannot vote for  
22 that. I think that is ridiculous and outrageous.

23 Mr. Chapoton. Well, Senator, as a practical matter,  
24 April 1st is so close to us that it is--the procedure is  
25 already set up, and we simply do not know any way to--

1 Senator Danforth. If we could pass this bill and say to  
2 the farmers, look, you do not have to bother. That is what  
3 we are talking about. I mean, from their standpoint, they  
4 are going to have to go through this rigmarole for something  
5 that will be in place for exactly six months. It really  
6 seems that to have a six-month program, which is burdensome  
7 to all these people, is kind of an amazing situation, unless  
8 there is no other way to take care of the revenue problem.

9 I would rather solve this than Senator Boren's problem,  
10 frankly. I think this is the issue of the can, and what it  
11 amounts to--

12 [Laughter.]

13 Senator Boren. I could agree with that myself. I mean,  
14 I had no idea we were going to put the farmers through all  
15 this for six months.

16 Senator Danforth. What it amounts to is a six-month  
17 program.

18 Senator Boren. With all the bookkeeping that is going to  
19 be required and all these refunds of \$4.50 per refund.

20 Senator Wallop. It is hard to believe that instituting  
21 and de-instituting a program like this has much of a revenue  
22 effect, especially if you are going to pay interest on it.

23 Senator Boren. If people question our sanity, they are  
24 going to have a sound basis if we go through this rigmarole.

Mr. Gould. Mr. Chairman, based on some earlier numbers

1 the Joint Tax Committee had, we understand that the five-year  
2 number does not change, or changes only very slightly.

3 The Chairman. I am sure that it would be minimal.

4 Mr. Gould. We are talking about speedup money.

5 The Chairman. If we can handle the revenue problem, I  
6 sure want to do it.

7 Mr. Gould. It is just for fiscal year 1988. In other  
8 words, the committee chose to do it to provide for an earlier  
9 effective date. To give the Treasury enough time to set up  
10 the system, whatever the minimum they would need would be,  
11 you could report out a bill that would lose revenue in 1988.  
12 That creates some potential problems.

13 The Chairman. Yes. But what you are saying, really,  
14 and the point made over here is just tell farmers do not pay  
15 any attention to it; we are not going to put you through that  
16 process. Now, can we not do that if we can take care of the  
17 revenue?

18 Mr. Weiss. The problem is that present law requires the  
19 wholesalers to pay the tax. So it is not a matter of the  
20 farmers. It is a question of what price the farmers will  
21 have to pay to the wholesalers because the wholesalers will  
22 be required by law, effective April 1st, to pay the tax.

23 Unless the law is enacted by April 1st, then the  
24 wholesaler is going to be required to pay the tax to the  
25 Treasury.



1 The Chairman. Well, we have been through some of these  
2 things before where we had tariffs that were not collected  
3 with the understanding we were going to correct that. We let  
4 that go on for a year, year-and-a-half. I will give you  
5 cantaloupes on the Mexican border as an example. How is that?

6 Mr. Chapoton. Well, the difficulty is, though, you see,  
7 we are talking about the new law coming into effect on April  
8 1. We would change the new law to this procedure that would  
9 become effective on October 1. But what would we do as of  
10 April 1? Would we go back to old law.

11 The Chairman. Yes. Old law.

12 Mr. Chapoton. If the law is enacted in time, we could,  
13 of course, do that. But it is a revenue cost. That is the  
14 problem. We are sitting here discussing if there is any way  
15 we could solve that revenue cost problem, and we have not  
16 come up with it yet.

17 Senator Pryor. Could we have that revenue number one  
18 more time? What is that revenue number if we made it  
19 effective April 1st versus October 1st?

20 Mr. Pearlman. Well, we are not sure because we have not  
21 estimated it, but my guess is it will be...we think that the  
22 1988 effect will be somewhere \$100, \$150 million. What the  
23 five-year number is, I do not know. We just do not have that  
24 in front of us. That obviously means the 1989 number will go  
25 down. It is obviously a movement of money from one year to

1 the other.

2 Whether it has a compliance effect beyond that is what  
3 concerns me, and I do not know. When you say go back to the  
4 prior law, returning to prior law for a six-month period  
5 might have an--with no mechanism in place to police it--

6 Senator Boren. We have not left the prior law yet.

7 Mr. Pearlman. We made a revenue assumption that the law  
8 is going to go into effect April 1, Senator, and if you do  
9 not let the law go into effect, without a mechanism in place  
10 to assure that the people that purchase the fuel are really  
11 exempt, the revenue effect could be significantly different.  
12 I just do not know that.

13 Mr. Chapoton. Well, we are right back to the larger  
14 revenue impact of the compliance problem we had under old  
15 law, which is the whole reason we went from the retail to the  
16 wholesale level.

17 Senator Boren. Mr. Chairman, we had talked about moving  
18 this along today because we were up against a time deadline;  
19 we did not want to delay taking care of this diesel problem.  
20 We are up against April 1st. Now, we are told, which  
21 certainly was news to me, and I suspect to about 90 percent  
22 of the people around the table, that this is not going to  
23 take care of the April 1st problem, anyway. And if we cause  
24 all these market dislocations, make everyone go to the  
refiner, knock out the wholesaler, and then say in six months

1 we come back and make them file for refunds and all this  
2 paperwork, why, if we are going to wait six months to help  
3 them anyway, well, there is no use to try to rush out today.  
4 I thought our whole point was to try to get something done  
5 and stop this nonsense before April 1st.

6 I would just suggest that we try to convene a quorum off  
7 the floor after the first vote or something and get this  
8 solved, because I just do not want to go back home and  
9 explain to my farmers why we have set up a ridiculous  
10 bureaucratic nightmare with a cost here to the Government and  
11 a cost to them and all of this paperwork so we can put them  
12 through it for six months and then undo it.

13 The Chairman. Senator, I have tried those quorums off  
14 the floor before, and it just does not work.

15 Senator Danforth. What is the cost, again, Ron, of  
16 moving it back?

17 Mr. Pearlman. This is the unfortunate thing about  
18 revenue estimating. I have just been handed a number that  
19 says that if the April 1, 1988, effective date was delayed  
20 until October 1, that the revenue loss in 1988--the entire  
21 effective date of the 1987 Act provision, okay. The revenue  
22 loss in 1988 would be a minus \$341 million. The revenue  
23 pickup in 1989 would be a plus \$241 million, so it would net  
24 a loss of \$100 million in that two-year period. That is just  
25 an across-the-board delay of the 1987 Act.

1 Mr. Chapoton. Ron, I presume that the \$100 million, the  
2 net figure, is the compliance loss?

3 Mr. Pearlman. Well, I am sorry. I just do not know  
4 that. It has got to be, to some extent, sure.

5 Senator Danforth. Mr. Chairman, I would hope that  
6 somehow we could vote the bill out even if it means seeking a  
7 budget waiver in this case, because it is just such an absurd  
8 result. Then if we can figure out a way to pick up the  
9 revenue between now and when it comes to the floor, do it.

10 I think obviously we do not want a six-month program.

11 The Chairman. No. If we can avoid a six-month program,  
12 I want to do that. But I also look at the agenda of this  
13 particular committee and what we are facing, and I am telling  
14 you it is a very full one. And I do not want to put this at  
15 risk. I want to accomplish this if we possibly can.

16 I think that is imperative.

17 Senator Wallop. Mr. Chairman, as absurd as the six-  
18 month program is, I would rather have a six-month program  
19 with an end than no bill at all, ultimately. I agree with  
20 everybody here. We ought to try to find some way out of it  
21 and pass it without it, and seek the waiver, perhaps. But  
22 rather than give up altogether and just say because it is  
23 going to be six months long and absurd, we just as well  
24 accept it for the rest of our lives I think is wrong, too.

Senator Boren. Mr. Chairman, I would move we report the

1 bill as it is now, subject to the potential--we will have two  
2 committee amendments, one on the one we discussed earlier on  
3 the gasoline, and one with this April 1st provision, if we  
4 can find a way to do it.

5 The Chairman. I have no objections to that. And with  
6 the creativity of the minds around here, innovative as they  
7 are, perhaps we can come up with a solution, and I would  
8 certainly favor that.

9 Now, we have had a motion made. Is there a second?

10 Senator Packwood. Second.

11 The Chairman. All in favor of the motion stated, make  
12 it known by saying aye.

13 [A chorus of ayes.]

14 The Chairman. The motion is carried.

15 Senator Pryor. Mr. Chairman, now, are we combining all  
16 of this into one package?

17 The Chairman. That is correct.

18 Senator Pryor. And that includes the Taxpayer's Bill of  
19 Rights? Is this correct?

20 The Chairman. Yes, it does.

21 Senator Pryor. I just want to make certain.

22 The Chairman. Is that fully understood by everyone?

23 All right. The amendment is so proposed.

24 [Whereupon, at 12:09 p.m., the committee adjourned

25 subject to the call of the Chair.]

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STATEMENT BY  
SENATOR JOHN H. CHAFEE  
IN SENATE FINANCE COMMITTEE  
ON THE COLLECTION OF DIESEL EXCISE TAX  
FROM FISHERMEN  
MARCH 21, 1988

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO DISCUSS AN AMENDMENT WHICH, IF ACCEPTED WILL CORRECT A PROBLEM CREATED BY A PROVISION IN THE RECENTLY ENACTED BUDGET RECONCILIATION LAW.

CURRENTLY, FISHERMEN ARE EXEMPT FROM PAYING THE 15-CENT-PER GALLON EXCISE TAX ON DIESEL FUEL, BECAUSE THIS TAX IS COLLECTED FOR THE HIGHWAY TRUST FUND FOR USE ON HIGHWAYS. HOWEVER, AS A RESULT OF THE RECENT CHANGE IN LAW, FISHERMEN WILL NOW BE FORCED TO PAY THIS TAX AT THE TIME OF PURCHASE, AND THEN APPLY TO THE INTERNAL REVENUE SERVICE FOR A REFUND OF A TAX FROM WHICH THEY ARE EXEMPTED BY LAW.

THIS IS GOVERNMENT INTRUSION AT ITS WORST. IT IS AS IF THE GOVERNMENT WAS PURPOSELY TRYING TO MAKE LIFE MORE DIFFICULT FOR FISHERMEN BY COLLECTING A TAX FROM THEM WHICH THEY DON'T EVEN OWE, AND WITHHOLDING IT FOR A YEAR. FOR FISHERMEN THIS CREATES A PARTICULARLY ONEROUS BURDEN, BECAUSE FISHING CREWS NORMALLY DIVIDE

UP THE PROFITS FROM A FISHING TRIP. IF A PORTION OF THESE PROFITS WERE WITHHELD FOR A YEAR, IT WOULD BE DIFFICULT, IF NOT IMPOSSIBLE, TO ENSURE THAT EACH FISHERMAN RECEIVES HIS FAIR SHARE WHEN THE REFUND CHECK COMES IN.

I WANT TO MAKE IT CLEAR THAT I AGREE WITH THE INTENT OF THE BUDGET RECONCILIATION ACT, WHICH IS TO COLLECT MORE EFFICIENTLY THE DIESEL EXCISE TAX FROM HIGHWAY USERS. SINCE FISHERMEN CLEARLY DO NOT FALL INTO THIS CATEGORY, IT IS UNFAIR TO BURDEN THEM WITH THE EXCESSIVE RECORD KEEPING NECESSARY TO COMPLY WITH THIS ACT.

A FISHERMEN'S COOPERATIVE IN RHODE ISLAND INFORMED ME THAT IT WOULD COST OVER \$320,000 A YEAR FOR THIS RELATIVELY SMALL CLUB TO PAY THE DIESEL TAX AT THE PUMP.

FOR MANY FISHING VESSELS, FUEL COST IS THE MOST SIGNIFICANT COST ASSOCIATED WITH FISHING. WE SHOULD NOT BE ADDING TO THIS COST AT A TIME WHEN OUR FISHERMEN ARE STRUGGLING TO COPE WITH DWINDLING FISH STOCKS AND TOUGH FOREIGN COMPETITION.

I URGE MY COLLEAGUES TO JOIN WITH ME IN SUPPORTING THIS AMENDMENT TO EXEMPT FISHERMEN FROM PAYING AN UNFAIR AND ONEROUS TAX.