RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 2676, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2676) to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Thompson/Sessions amendment No. 2356, to strike the exemptions from criminal conflict laws for board member from employee organization.

AMENDMENT NO. 2356

The PRESIDING OFFICER. Under the previous order, the time until 10 a.m. shall be equally divided on the Thompson-Sessions amendment No. 2356.

The Senator from Tennessee.

Mr. THOMPSON. Mr. President, we brought this amendment up yesterday and had a brief discussion. My understanding is we have 30 minutes equally divided; is that correct?

The PRESIDING OFFICER. There are 12 minutes on each side and the time is equally divided until 10 a.m.

Mr. THOMPSON. Mr. President, as you know, part of the IRS reform bill has to do with the creation of an IRS Oversight Board. One of the new members of the IRS Oversight Board is delineated as a representative of an IRS employees union. However, because of the inherent conflict of interest in this new member's position, the union representative was exempted from four essential ethics laws in the criminal code. That is what our amendment addresses, because the ethics experts in the Office of Government Ethics say these provisions are unprecedented and inadvisable and antithetical to sound Government ethics policy; thus, to sound Government.

In an era in which we seem to receive an awful lot of very general and hazy messages from the bureaucracy, we are getting a quite definitive, clear-cut opinion out of the Office of Government Ethics with regard to this exemption, and that is that these provisions are unprecedented and, therefore, inadvisable.

I think it makes common sense. I must say that my primary interest in this as chairman of the Governmental Affairs Committee has to do with the rules under which our Federal employees operate. We do have an Office of Government Ethics. We do have ethics provisions. They are for good reason. We could talk about these provisions in some detail, but, generally speaking, one of the main things they try to address is to keep people from being compensated by outside entities and outside groups while they are on the Federal Government's payroll. In other words, if an employee is going to be on the Federal Government payroll, they should not be compensated by some outside group when they come and lobby the Federal Government. That is just sound common sense.

I understand that an agreement was reached, or at least it was voted on in the committee, to have this representative on this nine-member board. We could debate back and forth whether or not that is a good idea. But this amendment does not say that a person of this kind cannot be on the board. All it says is that this person is going to be treated like every other member of the board, and that is that they will not be exempt from the ethics laws. The private members who are on this board are certainly going to have to live under the ethics laws.

For example, the day after appointment of the board, the private board member could not meet with representatives of the IRS or Treasury on behalf of a client or the board members' corporate employer with respect to proposed tax regulations. These prohibitions apply across the board to all members. It said that it creates somewhat of a hardship on the union representative. Perhaps in all cases there will not be a conflict.

As I look at some of the provisions that were discussed in committee in terms of the reasons for the creation of the board and the various functions that the board will have, I see where part of the function is to review and approve IRS strategic plans; for example, including the establishment of mission and objectives and long-range plans. I can see an argument being made that this union representative would not have a conflict of interest regarding that particular function of this board. Another function is to review the operational functions of the IRS. Another is to recommend to the President candidates for the Commission.

I can see an argument being made that this would not create a conflict of interest. So it is indeed arguable that there will be certain functions in which this board member could participate. It is not our position to sit and factually delineate every possibility that might come up. Quite frankly, it is going to be primarily on the board member to determine that themselves. I see other functions where, to me, there is a clear conflict of interest, and that is, to review the operation of the IRS to ensure the treatment of taxpayers, to review procedures of IRS relating to financial audits.

I can see where someone representing the IRS employees union —a paid employee of the employees union would have a real problem in sitting on this board and trying to determine what the rules ought to be with regard to those employees concerning the way they conduct their audits. That is just common sense.

Now, there is one thing I think we need to keep in mind. We all know that we have many—certainly the great majority—IRS employees who are loyal, dedicated public servants. But let's not forget the reason why we have this IRS reform bill on the floor to start with; and that is, we saw an absolutely appalling, unprecedented array of rogue activities, which you would not see in a lot of good police states, conducted by some of these IRS agents out in the field. We saw people like Howard Baker and Former Congressman Quillen, who were actually targeted, and they attempted to set up these individuals. These are the kinds of things that are part of the reason that we have the bill and part of the reason that we have this oversight board.

So in order to say that a union member is going to have some problem some time about sitting on this board as they represent those very employees—the ones that are good, bad and indifferent—is no reason to carve them out and exempt them from these ethics provisions.

So I think it is a bad step, Mr. President, if the very first thing we do in starting out and trying to reform IRS is to say that with regard to some of these employees we are going to exempt them from the ethics laws. I might point out also that as I read the bill, it doesn't seem to me like it necessarily has to be a paid employee, a paid union official of the IRS employees union. In other words, I would think that a member could serve on this board who would simply be a union member and could be a representative. If they were not taking payment and compensation from the union, as a professional union representative, then perhaps a lot of these conflicts would be alleviated.

So we are trying to work out something reasonable here on the front end. But make no mistake about it, it would be a terrible mistake in the face of the clear advice of the Office of Government Ethics to say the first thing we are going to do is exempt these people who are, in some cases the source of their problem, from the ethics laws under which everybody else is going to have to live.

I yield the floor.

Mr. KERREY. Mr. President, I would like to ask the Senator from Tennessee if he would answer a question. For the purpose of engaging in this debate, does he support having a union rep on the board, an employee rep on the board? That would be an amendment that will come up, I believe, later on, trying the individual on the board.

Mr. THOMPSON. I do not think it is wise to have such a representative on the board. That is another question. In fact, I think the Office of Government Ethics has the same opinion. They do not think it is wise to have a union

member on the board. My position is that if there is a union member on the board, they should not be exempt from the ethics laws.

Mr. KERREY. I appreciate the Senator's conclusion. However, I have reached the opposite conclusion. That really is the question for the body. Do you think an employee representative needs to be on this board?

Let me tell you why the Restructuring Commission reached the conclusion ''yes,'' and why the Finance Committee reached the conclusion ''yes.'' We heard from private sector individuals, as well as public sector people, who have gone through the sorts of things IRS is likely to go through. Let me be clear what the IRS is going to be going through. This is not about some cosmetic changes.

In this law, we give the Commissioner of the IRS new authorities to restructure the IRS, and we direct the Commissioner to restructure to eliminate the old three-tier system. I don't know how familiar everybody is with the three-tier system. There is a national, regional, and a district office. It is a system that was established in 1952. It means that if taxpayers move or decide they want to move from Salina, KS, to Grand Island, NB, which I think would be a sound thing for anybody to do—but if they decide they want to go from Kansas to Nebraska, they are OK. But if they move from, let's say, Chattanooga, TN, to Salina or Grand Island, they are going to be under a new district and regional office. As a consequence, their taxes are going to be handled by entirely different people.

What the law directs the Commissioner to do and gives him authority to do is organize along functional lines. There is going to be traumatic change for employees—traumatic change. We may have few numbers of people. This kind of restructuring is very difficult to get done. From people both in the public and private sector, individuals who have gone through this, we heard strong advice that an employee representative should be on the Commission.

For members, the board itself sunsets in 10 years. We may decide we don't need a board in 10 years. We might need a different composition for the board. That is the first question. Do you believe that as a consequence of what the Commissioner has been given—the authority to dramatically restructure this agency—there ought to be an employee representative on the board? The authors of this amendment don't; neither does the Office of Government Ethics. They sent a letter indicating some problems which they had with having a representative on. We accommodated those concerns by putting this language in here. Now the language is being attacked. But the question really is not do you support the language, but do you want a rep on there? If you do, you have to have that representative able to participate in the decisionmaking.

To be clear, they are not given blanket ethics waivers. They are still under all the same ethics requirements of every other member of the board; indeed, somewhat higher. The annual disclosure requirements of this individual will be greater than for other members of the board. All board members are appointed by the President and confirmed by the Senate. If for some reason a member of this Chamber thinks that person should not be confirmed, they can put a hold on it and likely make it impossible for that person to be confirmed. And if the President believes, for any reason at all, this individual is not doing a good job, he or she can be removed by the President.

So there are lots of checks against problems this individual might have for any reason, including some ethical problems, as I said. All other ethics statutes still fall against this individual. Indeed, we are requiring this individual to disclose more. We have all kinds of situations. We asked the Office of Government Ethics about acceptance and they have made over 600 of them, including the Commissioner of the IRS. The Commissioner, Mr. Rossotti, has private sector holdings, private sector business experience, and does business with the IRS. So the question for us is, oh, my gosh, is he excluded or precluded from serving? The answer is no. We reached a conclusion that we have an overriding interest to have him serve as Commissioner. And so we draft very carefully an agreement that has him doing a certain number of things in order to be able to comply with our ethics laws.

So I urge colleagues, as they examine this amendment, to understand that no blanket exemption is being granted.

The authors of the amendment do not want a Treasury employee representative on the board. If you want a Treasury employee representative on the board, you have to have language in there that satisfies the ethical concerns about what will happen when an issue comes up that has an impact upon the people he represents.

Mr. President, we are granting the Commissioner the authority to reorganize and restructure and get the IRS to operate in a much more efficient fashion, and that will cause traumatic changes inside of the ranks of the IRS. For those who wonder whether or not an employee rep ought to be on there, imagine if we had an oversight board that was going to be making a decision to restructure the Senate and one of the possibilities was, instead of having 100 Members, we have 80. Would we ask to have Members on the board? Obviously, we would. And it would be right to do, and we would have to draft some sort of language to make certain that we wouldn't violate ethics laws as well.

I hope the Members will reject this amendment.

I see the distinguished Senator from Michigan is on the floor. I am pleased to yield 2 minutes for him to speak against this amendment as well.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I oppose the amendment. I think the effect of this amendment will be to make it impossible for an employee representative to sit on the board. The Commission should have that representation, according to the recommendation of the Commission that is recommending this Commission. If we want an employee representative to sit on this board, as a practical matter there is no way to do it without exempting that person from these laws. There is an inherent conflict which that person will have. And we might as well be very open about it, and face it, and say, ''Yes, providing it is disclosed.'' And it is known that the benefits of having that perspective on the board outweighs any precedent that would be set by this kind of a waiver.

The IRS Oversight Board itself is unprecedented. I don't know of a board quite like this that we have in the Government.

So to suggest that as we are creating a new board like this that we cannot, with our eyes open, make an exemption from our conflict of interest laws in order to permit a very critical person to serve on the board it seems to me is unduly restricting our options and, more importantly, is making this board less useful. This oversight board will be more useful with an employee representative on it. There is a certain perspective, an important experience, which that person can bring to this board.

So we have to weigh the value, the benefit, of that against the precedent we would be setting. It is like a cost-benefit analysis which we recommend that others do. We have to look at the precedent and the value, and we are the policymakers.

I have great respect for the Office of Government Ethics. They enforce and implement the law. But we make policy. When we decide, with an unprecedented new board, that we will permit a representative of the employees to sit there because we want that experience, we want that perspective, we then are making a policy judgment that we want an effective IRS oversight board and that the effectiveness of that board is to rein in the IRS to overcome the abuses which have disgusted us which we have all heard about for so many years which outweighs any precedent we might be setting.

I oppose the amendment and hope we will defeat it.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I want to congratulate the Senator from Nebraska, Senator ROTH, and others for introducing an outstanding bill. I know they have worked hard and dealt with a number of difficult issues. This is, I am sure, a good-faith effort to involve the union in the process. But the truth is, as we have had a chance to look at

the law, it just won't work. Senator FRED THOMPSON has made the point eloquently and clearly. His amendment is the only way we can handle this circumstance. We should not, and must not, agree to allow a clear conflict of interest to be waived, according to the Office of Government Ethics. If the Office of Government Ethics were to decide this issue, a waiver would not be granted. It is because such a fundamental conflict exists that we should not expect it to.

The truth of the matter is that if you sit on the Government Oversight Board and are also a paid union representative, you are being paid by two masters. You can't serve two masters. That is a paid position. It is not a union member serving on the board but a person whose salary is paid by an outside group who is not part of the process.

I know many people would like to involve an employees union representative in the IRS restructuring effort. I support this idea. There are many ways a union representative could be involved in the process. I have had many friends over the years who have been members of the Treasury Union. I think they do a good job and help to contribute positively to our Nation's Government. But this is a powerful board that sets administrative rules and principles throughout the agency.

I would suggest that the waiver is not of some ethics rule, it is a waiver of the Criminal Code of the United States of America. At least four sections are implicated. It is quite possible that if this union member were to participate as a board member, he would be in violation of perhaps four different criminal codes—statutes. To ask us in this legislation to just blithely waive these statutes, would be a mistake and unwise and would undermine the Office of Government Ethics ability to effectively manage and uphold ethics in government.

I was a Federal prosecutor for almost 15 years. I serve on the Senate Ethics Committee. I understand what my colleagues are trying to accomplish. But this waiver is unprecedented, according to the Office of Government Ethics. That means that this has never been done before—that the U.S. Senate, in a legislative act, has never granted exemption to one person from the Criminal Code of the United States. It is something we ought not to do.

I urge my colleagues in this body to vote yes on this amendment.

I yield what time is remaining.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Tennessee controls 40 seconds, and the Senator from Nebraska controls 2 minutes.

Mr. THOMPSON. Mr. President, very briefly, it is not unusual to have an oversight board or an agency or a panel that does not have on it the subjects of that panel's inquiry; in other words, the comparable situation with regard to this oversight board would be U.S. taxpayers. That is whose lives we are really affecting. We don't have any taxpayer members on this particular board.

I would also point out, as the Senator from Alabama did, that these are criminal laws. We are waiving four primary criminal laws of title 18 of the United States Code with regard to one individual who represents some of those who have caused the problem.

I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, briefly, we are doing something that is unprecedented. The distinguished Senator from Alabama says that the Office of Government Ethics is unprecedented. It is the only venture that is unprecedented; never in the history of Government have we created an oversight board with these kinds of powers. And we are doing it in order to be able to restructure the IRS in a relatively short period of time. The implications would be rather traumatic for the employees of the IRS. Every private sector person whom we asked the question of—when you go through restructuring—and every public person we asked the advice of said put the rep on the board.

This board sunsets in 10 years. We may decide we don't want the board and have another composition. We can revisit it, if you don't want a Treasury employee rep on the board. The Office of Ethics said there are problems here. We have corrected those problems, but they don't want a rep on the board under any circumstances. If you want a rep on the board, you have to vote no on this amendment. Otherwise, this individual is not going to be able to do the job. If you don't have the rep on the board, I think this venture is likely to run aground and not be as successful as all of us want it to be.

Mr. President, I yield the remainder of my time. I urge the defeat of this amendment.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Hawaii (Mr. AKAKA) is absent due to a death in the family.

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 122 Leg.]

YEAS—42

Abraham	Faircloth	Mack
Allard	Frist	McCain
Ashcroft	Gorton	McConnell
Bennett	Gramm	Murkowski
Bond	Grams	Nickles
Brownback	Gregg	Roberts
Burns	Helms	Roth
Chafee	Hutchinson	Sessions
Coats	Hutchison	Shelby
Cochran	Inhofe	Smith (NH)
Coverdell	Kempthorne	Smith (OR)
Craig	Kyl	Thomas
DeWine	Lott	Thompson
Enzi	Lugar	Thurmond

NAYS—57

Baucus	Feinstein	Levin
Biden	Ford	Lieberman
Bingaman	Glenn	Mikulski
Boxer	Graham	Moseley-Braun
Breaux	Grassley	Moynihan
Bryan	Hagel	Murray
Bumpers	Harkin	Reed
Byrd	Hatch	Reid
Campbell	Hollings	Robb
Cleland	Inouye	Rockefeller
Collins	Jeffords	Santorum
Conrad	Johnson	Sarbanes
D'Amato	Kennedy	Snowe
Daschle	Kerrey	Specter
Dodd	Kerry	Stevens
Domenici	Kohl	Torricelli
Dorgan	Landrieu	Warner
Durbin	Lautenberg	Wellstone
Feingold	Leahy	Wyden

NOT VOTING—1

Akaka

The amendment (No. 2356) was rejected.

Mr. KERREY. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KERREY. Mr. President, we are down on the Democratic side to just one or two amendments that may require rollcall votes, and those we may be able to work out. We have a longer list on the Republican side.

Mr. President, may we have order in the Chamber?

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order.

Mr. KERREY. Mr. President, I am hopeful that on the Republican side, Members will come down and start talking to us or, if we can't work them out, get them offered. Senator FAIRCLOTH has an amendment which he is going to offer just as soon as I get two accepted that we have worked out with the chairman. I think we can run through this relatively rapidly.

The previous amendment that was just defeated is one of the controversial ones. Senator FAIRCLOTH has one that is controversial. I think Senator MACK does. There are a few others. After that, most of the controversy is out of this bill. I am hopeful we can get Members to come down here so we don't end up, as the majority leader said, staying here longer than is warranted, given the general agreement that is on the legislation.

AMENDMENTS NOS. 2358 AND 2359, EN BLOC

Mr. KERREY. Mr. President, I send two amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER (Mr. HUTCHINSON). Without objection, the clerk will report the amendments en bloc.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. KERREY] proposes amendments numbered 2358 and 2359, en bloc.

Mr. KERREY. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 2358

(Purpose: To require a study on the willful noncompliance with internal revenue laws by taxpayers to be conducted jointly by the Joint Committee on Taxation, Secretary of the Treasury, and Commissioner of Internal Revenue)

On page 394, between lines 15 and 16, insert the following:

SEC. —. WILLFUL NONCOMPLIANCE WITH INTERNAL REVENUE LAWS BY TAXPAYERS.

Not later than 1 year after the date of enactment of this Act, the Joint Committee on Taxation, the Secretary of the Treasury, and the Commissioner of Internal Revenue shall conduct jointly a study of the willful noncompliance with internal revenue laws by taxpayers and report the findings of such study to Congress.

AMENDMENT NO. 2359

(Purpose: To amend the Internal Revenue Code of 1986 to require the Inspector General for Tax Administration to report to Congress on administrative and civil actions taken with respect to fair debt collection provisions)

On page 369, strike line 1 and insert the following:

''(c) ANNUAL REPORT.—The Inspector General for Tax Administration shall report annually to Congress on any administrative or civil actions with respect to violations of the fair debt collection provisions of section 6304 of the Internal Revenue Code of 1986, as added by this section, including—

''(1) a summary of such actions initiated since the date of the last report, and

''(2) a summary of any judgments or awards granted as a result of such actions.

''(d) EFFECTIVE DATE.—The amendments made by this''.

Mr. KERREY. Mr. President, these are two amendments on which I worked very closely with the chairman. They deal with two problems, one of which is a longstanding problem that we have had with the Internal Revenue Service, and that is how to deal with taxpayers who are willfully noncompliant. This requires the Commissioner to do a study of this issue and report back to the Finance Committee. Members need to understand, approximately the average for all taxpayers is nearly $1,600 per taxpayer for noncompliance, with penalty for willful noncompliance.

The second amendment came as a consequence of a witness that we had in the hearings that the chairman held, Mr. Earl Epstein of Philadelphia. He was talking about putting teeth in the provision dealing with violations of fair debt collection practices. And at the chairman's suggestion, what we have asked for in this study is that the new Treasury inspector general for tax administration also look at this and provide Congress with a report, an annual report outlining any violations of the fair debt collection practices that we have included in this bill.

Mr. Epstein notes, this is likely to result in better attention being paid to collection abuses as ''no Commissioner would be happy to report significant abuses, to say nothing of awards for damages [or] for failures to enforce proper authority over collection agents.'' It is an important amendment. I appreciate the source of it was the chairman's hearings, and I appreciate a chance to work with the chairman to get this worked out.

Mr. ROTH. Mr. President, I say that both of these amendments are acceptable to the majority side. We have worked with Senator KERREY on them and we think they are acceptable.

So I urge that they be accepted by voice vote.

Mr. FORD. En bloc.

The PRESIDING OFFICER. Without objection, the amendments are agreed to.

The amendments (Nos. 2358 and 2359) were agreed to en bloc.

Mr. FORD. I move to reconsider the vote.

Mr. KERREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROTH. Mr. President, I want to echo what was just said by Senator KERREY. We do intend to complete this legislation today. So it is critically important that those who have amendments, if they want to have them offered, that they do so promptly because time is slipping by. We will stay here until we complete the legislation.

It is my understanding that Senator FAIRCLOTH wants to go next. We would like to get a time agreement. I mentioned that to Senator KERREY, as well as to Senator FAIRCLOTH. I would like to have 30 minutes divided equally between the two sides.

Mr. FAIRCLOTH. That will be fine. I will not need 15.

Mr. ROTH. Shall we make it 20 minutes?

Mr. FAIRCLOTH. That is fine.

Mr. ROTH. Twenty minutes.

Mr. KERREY. Mr. President, I have not seen the amendment yet. Can we get a copy of the amendment before we agree to a time limitation?

May I ask the Senator, this strikes several lines, inserts several lines. It is not clear to me from the amendment what it does. Can you just——

Mr. FAIRCLOTH. Yes, what the amendment does, I say to Senator KERREY, is it prohibits putting union men on the—

Mr. KERREY. Strikes the union representative from the board?

Mr. FAIRCLOTH. Strikes the union representative from the control panel.

Mr. KERREY. I thank the distinguished Senator from North Carolina, and I do not object to the time agreement.

Mr. ROTH. Mr. President, I ask unanimous consent that for the Faircloth amendment there be a time limit of 20 minutes equally divided between the two sides and no second-degree amendments.

Mr. KERREY. Reserving the right to object, Mr. President, I momentarily suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceed to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY. Mr. President, I ask unanimous consent that the unanimous consent be modified so no second-degree amendments be in order. Is that in the UC?

Mr. ROTH. That is part of the proposal.

Mr. KERREY. I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 2360

(Purpose: To strike the representative of Internal Revenue Service employees from the Internal Revenue Service Oversight Board)

Mr. FAIRCLOTH. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. FAIRCLOTH], for himself and Mr. SMITH of New Hampshire, proposes an amendment numbered 2360.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 174, line 23, strike ''9'' and insert ''8''.

On page 175, strike lines 8 through 13.

On page 176, line 10, strike ''or (D)''.

On page 177, strike lines 7 and 8, and insert the following:

''(A) FINANCIAL DISCLOSURE.—During the entire—

On page 177, line 10, strike ''or (D)''.

Beginning on page 177, strike line 19 and all that follows through page 178, line 5.

On page 178, line 10, strike ''or (D)''.

On page 182, line 1, strike ''or (D)''.

On page 182, line 11, strike ''or (D)''.

On page 190, line 12, strike ''or (D)''.

Mr. KERREY. Mr. President, I wonder if the Senator would yield and the time not be charged to either side.

Mr. FAIRCLOTH. Sure.

Mr. KERREY. I have a question. The distinguished Senator from West Virginia has an annual speech he gives on Mother's Day. And I wonder if the Senator from North Carolina wants a rollcall vote on this amendment. And, second, if you want a rollcall vote, can we

do it after the Senator from West Virginia delivers his remarks?

Mr. FAIRCLOTH. I will want a roll-call vote. And we can certainly do it after the Senator from West Virginia gives his speech.

Mr. KERREY. I thank the Senator.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent that two letters from the Office of Government Ethics, dated March 27 and May 1, 1998, and one letter from the Senior Executives Association, dated April 17, 1998, be printed in the RECORD immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. FAIRCLOTH. Mr. President, the amendment I am offering today corrects a flaw in an otherwise fine bill that was offered by Senator ROTH, and that is to reform the Internal Revenue Service. And no organization ever needed reforming more.

My amendment, which is supported by Chairman ROTH, would remove the union representative for the IRS employees from the oversight board established by this reform bill.

The reason for establishing the oversight board was that the union was out of control. That is very simply the reason we did not put it up there, that it is composed of private citizens—the oversight board—and not to be run by the union and the IRS bureaucracy. That is the problem we have been facing.

If ever there was a case of hiring Willie Sutton to guard the bank, when we put a union representative on the board that is exactly what we have done.

I just want to take a minute—and I will do it quickly—to explain why it would be difficult, if not impossible, for the IRS Oversight Board to accomplish its intended task of reforming the IRS as long as you have a union representative on the board.

Mr. President, it was said in hearings last fall again and again, and last week, where we heard shocking and terrible testimony about abuses of taxpayers at the hands of IRS employees. These have been well documented, and the American people are outraged at what they have seen. I hear it on a daily basis.

The American people are calling and telling the Congress that the IRS is an agency out of control and it must be reined in. Control must be established. And several of my colleagues, I have heard, have come up with the same thing.

An oversight board, if it is truly a private citizen oversight board, could go a long way to rooting out the problems that are plaguing the IRS and will ultimately destroy it if they are not corrected.

But the same employees who have been abusing taxpayers are certainly not going to like changes proposed by the oversight board, because it is going to change the way they have been doing business, and they do not want to change the way they have been doing business. That is the reason we are creating the oversight board, to change the way that the IRS union has been operating.

Can you imagine what would happen if any decision which was opposed by the union IRS employees could be vetoed by the representative of the union? In effect, that is what we will have if a union representative is appointed a member of the board. You are going to negate the effects of the board.

Some have suggested that unless a union representative is a member of the board, there will be no one to persuade the employees to go along with the reforms. All I can say is that anybody who says that has never run a business. I think that is the most foolish argument I have ever heard. I do not think IRS reform should be held hostage to what the union members like.

If employees resist reform, and we have heard time after time in hearings about the abuses of these employees, then those employees should be removed from the IRS. We should not put the new oversight board in the position of begging the IRS employees, through their union, to agree to a change. If that is the way we are going to do it, there will be no change. It will be business as usual.

Furthermore, it is common sense that the union representative should not be in a position to argue the case of the employees who pay his salary. I cannot think of anything more ludicrous than putting in an oversight board and then putting on it the man who works for the people who have created the abuses that the oversight board is intended to correct. It goes round and round. The union representative would be voting on issues which affect his own pocketbook—a clear conflict of interest.

As Senator SESSIONS and Senator THOMPSON have already pointed out, putting the union representative on the oversight board does not just violate common sense, it violates Federal criminal law. Whether those laws are waived or not, we should not go down the road of disregarding criminal laws that are inconvenient for one person. We are waiving criminal laws because one person, a union representative, wants them waived.

Let me share with my colleagues what the Office of Government Ethics had to say on the matter of including the IRS employee union representative on the oversight board. In a letter to the Senate Finance Committee, Chairman ROTH and the ranking member, Senator MOYNIHAN, dated March 27, the Office of Government Ethics said the following: ''We recommended that the IRS reform bill not include an individual who is a representative of an organization,'' which represents a substantial number of the IRS employees.

Now, that is a nice way of saying don't put the union boss on the board. If you do, you might as well not create the board.

The Office of Government Ethics, in another letter to the majority leader, dated May 1, 1998, said that putting the union representative on the oversight board is, ''Fundamentally at odds with the concept that government decisions should be made by those who are acting for the public interest and not those acting for a private interest.'' The private interest being referred to is the IRS employees union. So it is clear that the union representative will be in a position of violating criminal laws concerning conflict of interest if he or she serves on the oversight board, unless those criminal statutes are waived, and that is what we just did.

Some of my colleagues who support including the IRS employee union representative on the board have tried to fix it by waiving the criminal laws, but we should not have waived a criminal law for one union representative. Both the Senior Executives Association and the Office of Government Ethics recommended removing the union boss rather than removing the waiver. I agree.

On April 9, 1998, the Senior Executives Association, a nonpartisan, nonprofit organization which represents career executives throughout the Federal Government, wrote to me to express their serious concerns about including an IRS employee union representative on the oversight board. The Senior Executives believe as long as the union representative is on the board, it will be impossible for IRS managers, the Commissioners, and the oversight board, and even the President, to implement the personnel reforms affecting IRS employees. In other words, as long as their ''boss man'' is sitting on the board, he isn't going to do anything to allow any reform. He will, in effect, veto the actions of the board.

To quote the Senior Executives Association: ''The inclusion of the union representative on the IRS Oversight Board threatens the ability of IRS management to manage and control the IRS workforce.''

It would seem to me the last thing that Congress should do is make IRS employees even less accountable for their actions than they currently are. That would be hard to do.

In summary of my amendment, take some good advice of the Office of Government Ethics and the Senior Executives Association and remove the union representative from the oversight board. I urge my colleagues to support the amendment.

EXHIBIT NO. 1

U.S. OFFICE OF GOVERNMENT ETHICS,
Washington, DC, March 27, 1998.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

Hon. DANIEL PATRICK MOYNIHAN,
Ranking Minority Member, Committee on Finance, U.S. Senate, Washington, DC.

DEAR CHAIRMAN ROTH AND SENATOR MOYNIHAN: We understand that your Committee is reviewing the provisions of H.R. 2676 in anticipation of developing a Senate bill, regarding the Internal Revenue Service (IRS). As Commissioner Rossotti indicated in his testimony before your Committee earlier this year, the Administration believes that the conflict of interest and financial disclosure provisions that section 101 of that bill would make applicable to the Members of the newly created IRS Oversight Board are in need of technical revision and, we believe, should be made more consistent with the standard ethics systems applicable within the executive branch. We recognize that this part-time Board is being given far more than advisory duties, and we believe that conduct and compensation restrictions and financial disclosure requirements should be commensurate with those additional duties. Because time is of concern, we have chosen to set forth the type of requirements we believe would be most appropriate and consistent with sound ethics policies. We would be happy to work with your staff and the legislative counsel in developing the exact legislative language.

1. Status of the private sector members. The House bill specifies that the private sector members, other than the individual representing the union, are to be special Government employees ''during the entire period'' each individual holds appointment. We believe this language will cause unnecessary hardships on the Members of the Board and will substantially inhibit the Government in attracting the types of individuals you might wish to serve on the Board. Briefly, this will occur because more onerous criminal conflict of interest restrictions (particularly those applying to private compensation arrangements and matters unrelated to tax or IRS issues or policies) will apply to Members after 60 days of service. Under the House language, those restrictions will apply 60 calendar days after appointment, not after 60 days of actual service as is ordinarily the case for special Government employees.

We recommend that the bill be silent as to the status of the Members as special Government employees. We understand that it is not expected that these individuals will actually serve more than 60 days in a 365-day period, so that the regime for less than 60 days of service would apply. Then the bill can include additional restrictions and requirements that are tailored specifically to service on this Board rather than simply service anywhere in the executive branch as a special Government employee. Recommendations for those restrictions and requirements are in points 2 and 3.

2. Additional conflict restrictions. Given the duties of the Board anticipated by the House bill, we would recommend that Board Members be subject to the following restrictions in addition to the standard criminal conflict of interest provisions applicable to special Government employees.

In addition to the restrictions in 18 U.S.C. §§203 and 205, members of the Board should be prohibited from representing anyone before the IRS or the Department of the Treasury on any matter involving the management or operations of the Internal Revenue Service or the internal revenue laws (or more narrowly, tax matters) or before the Board or the IRS on any particular matter.

In addition to the restrictions in 18 U.S.C. 207(a)(1) and (2), members of the Board should be prohibited from representing anyone before the IRS (or possibly the entire Department of the Treasury as are former IRS Commissioners) for one year following termination of Board service. We would not suggest that there is any need to apply the restrictions of section 207(f) to the members of the Board who do not serve more than 60 days.

In drafting these additional restrictions, we recommend that all of the exemptions and procedural mechanisms presently in sections 203, 205 and 207 apply to these additional restrictions.

3. Financial disclosure requirements. Given the substantial authorities of the board as set forth in the House bill, we recommend that the statute be drafted clearly to reflect that the Members of the Board are required to file new entrant, annual and termination public financial disclosure statements regardless of the number of days in a calendar year that the individual actually serves. If the Senate determines that the Board should be purely advisory, we recommend that the bill be silent so that the standard nomination form which can be made public by the confirming committee and the annual nonpublic financial disclosure forms will be required.

4. Union member. We recommend that the bill not include an individual who is a representative of an organization which represents a substantial number of IRS employees. Given the duties of the Board, this individual cannot serve as a ''representative''—a status recognized in applying conflicts laws to certain individuals carrying out purely advisory duties. We believe that the basic criminal financial conflict of interest statute, 18 U.S.C. §208, will be applicable to this individual and will substantially limit that individual's ability to carry out any meaningful service on the Board. More importantly to the individual, such service will expose him or her to constant scrutiny for even the smallest official acts. While section 208 does contain a waiver provision, it applies only where the financial interest involved is ''not so substantial'' as to be deemed likely to affect an employee's service. We believe that it would be almost impossible for an officer of a union to legitimately meet the test set forth in the statute because of his own and the union's financial interests that would be affected by the matters before the Board. In addition, we believe that such a member will also be substantially inhibited from carrying out his or her duties on behalf of the union by the restrictions of 18 U.S.C. §203. There are no applicable waivers for these restrictions.

As an alternative, we suggest that the Board be directed by statute to consult with, but not seek the approval of, representatives of organizations which represent substantial numbers of IRS employees when the matters before the Board would have a substantial effect upon IRS employees. It is crucial to sound government ethics policy that those who have approval authority be accountable to the public for their actions. Those who only provide the views of interested parties for the decision makers' consideration need not be subject to an array of ethics restrictions.

5. Pay. We recommend that the pay for the members of the Board be rewritten so that it references some standard Government pay schedule. Since many ethics statutes make reference to those schedules for purposes of applying provisions, this would be much simpler under the present system and most probably for any future restrictions or regulations that might be enacted or promulgated. We suggest that the reference be made to the Executive Level Schedule, which is typical for advise and consent appointees. However, we would not recommend a reference to Level I of that Schedule because positions listed at that Level (Cabinet-level positions) have unique post-employment restrictions that would not be appropriate for these members.

We believe that this Board is a very important Government body and that the ethics and conflicts of interest restrictions applicable to the Board should be clear, correct and appropriate. We look forward to working with your staff to address the changes to the language of the House bill that we believe are necessary to clearly meet the obvious intent of the House as well as our recommendations.

Sincerely,

STEPHEN D. POTTS,
Director.

U.S. OFFICE OF GOVERNMENT ETHICS,
Washington, DC, May 1, 1998.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: This Office has reviewed H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1998, as it has been reported by the Finance Committee and, we understand, is soon to be taken up by the Senate. At the request of both the majority and minority, we provided technical assistance to the Finance Committee staff with regard to drafting the language of provisions setting forth the ethical considerations for the Members of the Internal Revenue Service Oversight Board. We believe those provisions are written in a clear and technically correct manner.

However, one provision of the bill, the proposed 26 U.S.C. §7802(b)(3)(D), provides for waivers of applicable conflict of interest laws for one Member of that Board. We believe that this provision is antithetical to sound Government ethics policy and thus to sound Government. Such across-the-board statutory waivers for someone other than a mere advisor is unprecedented and, we believe, inadvisable.

We understand and agree that the employees of the Internal Revenue Service should have an opportunity to be heard in any decisions that may affect them. As we stated in a letter to the Finance Committee, there are standard ways of allowing input from interested parties without allowing the interested party to be the actual decision-maker in a Governmental matter. It is the latter role that is fundamentally at odds with the concept that Government decisions should be made by those who are acting for the public interest and not those acting for a private interest. The one private interest that is being waived in each case for this Board Member is the one most fundamentally in conflict with his or her duties to the public.

On the other hand, we cannot recommend that the waivers be eliminated for the individual appointed to such a position. That elimination would leave this individual extremely vulnerable to charges of criminal conduct for carrying out many Oversight Board actions or for carrying out his or her private duties for the employee organization. The fact this vulnerability exists exposes the pervasiveness of the conflicts for an officer or employee of an employee organization to serve on the Oversight Board.

Rather, we recommend the elimination of the position on the Board that creates such inherent conflicts. The elimination of the position could be coupled with a requirement that the Board consult with employee organizations. While we think a reasonable Board would consult without that requirement, requiring consultation might provide some assurance to the various employee organizations that they will be heard.

The criminal conflict of interest laws should not be viewed as impediments to good Government. They are there for a purpose and should not be waived for mere convenience. Some may point out that certain provisions of these laws are waived by agencies quite frequently. That is true. Some of the laws anticipate circumstances where a restriction could be waived and set forth the standards that must be met to issue waivers. Agencies can and do issue such waivers, but the waivers must meet the tests set forth in the statutes. For those conflicts laws that do provide for waivers (not all do), we believe that it would be extremely difficult for a reasonable person to determine that the interests this individual Board Member will undoubtedly have through his or her affiliation with the organization could meet those waiver tests.

In order to meet our recommendation, we believe the provisions of Subtitle B, sec. 1101(a) should be amended to eliminate proposed sections 7802(b)(1)(D), (b)(3)(A)(ii) and (b)(3)(D). All other references to an individual appointed under section 7802(b)(1)(D) should be removed and wherever a number of members of the Board is indicated (such as a Board composed of nine members or five members for a quorum) that number should be altered to reflect the elimination of this position.

We appreciate the opportunity to express our concerns and our recommendations. These are the views of the Office of Government Ethics and not necessarily those of the Administration. We are available to answer any questions you or any other Member of the Senate may have with regard to this letter or the conflict of interest laws. We are sending identical letters to Senators Daschle, Roth and Moynihan.

Sincerely,

STEPHEN D. POTTS,
Director.

SENIOR EXECUTIVES ASSOCIATION,
Washington, DC, April 17, 1998.

In re: S. 1096, the IRS restructuring and reform bill.

Hon. LAUCH FAIRCLOTH,
U.S. Senate, Attn: David Landers, Legislative Counsel, Hart Senate Office Bldg, Washington, DC.

DEAR SENATOR FAIRCLOTH: The Senior Executives Association (SEA) is a non-partisan, non-profit, professional association representing the interests of career members of the Senior Executive Service and other career executives in equivalent positions in the federal government.

As you know, the Senate Finance Committee reported out S. 1096, the IRS Restructuring and Reform Bill. In the Chairman's mark that was considered by the committee, Chairman Roth had excluded from membership on the IRS Oversight Board both the Secretary of Treasury and the representative of the National Treasury Employees Union, the union that represents many IRS employees.

In response, Senator Robert Kerry (D-Neb) sponsored an amendment to put the union representative and the Secretary of Treasury back on the Oversight Board, and that amendment passed the Committee. Senator Kerry's amendment was proposed in the face of an opinion from the U.S. Office of Government Ethics (copy attached) that having the union representative occupy a position on the IRS Oversight Board would place that individual in a position of potentially violating two criminal statutes which apply to all persons occupying similar positions in the federal government. Senator Kerry dismissed this opinion, stating that the union representative could simply be exempted from coverage of these two criminal provisions in S. 1096. Senator Kerry's amendment was passed by the full committee.

The Senior Executives Association strongly opposes inclusion of both the union representative and the Secretary of Treasury on an IRS Oversight Board for the reasons stated below.

BACKGROUND

The Internal Revenue Service plays a unique and important role in the federal government. It is one of the few federal agencies whose employees interact on a daily basis with tens of thousands of U.S. citizens. It is the law enforcement agency which, in contrast to other law enforcement agencies, must often deal with citizens who are neither criminals nor accused of crimes. However, it is a law enforcement agency forced to deal with negligent or willful refusal by 15%–20% of citizens to comply with Internal Revenue laws. The complaints of some taxpayers, and the alleged actions of some IRS employees, must be viewed against the background of the frustration of dealing, for example, with wrongdoers who have spent the withholding dollars belonging to their employees for their own purposes, rather than paying them into the Social Security Trust Fund or the Treasury Department for their employees' portion of payroll withholding taxes.

This is not to say that there are no examples of abuse by individual IRS employees. In an agency of over 100,000 employees who deal with tens of thousands of citizens on a daily basis, even when they are correct 99.9% of the time, the 1/10th of 1% of mistakes or abuses of authority are enough to ensure headlines. We agree that perpetrators of the small numbers of abuses of authority and power by IRS employees should be seriously dealt with, and the guilty employees disciplined or discharged.

IRS employees are deeply imbued with a few principles from the time they are first hired, during their training, and continuing throughout their employment. These principles include (1) the absolute integrity required of all IRS employees; (2) the fair, nonpolitical, and non-partisan enforcement of the tax laws; (3) the fair treatment of all taxpayers; and (4) the equality of treatment of all similarly situated taxpayers.

In the 1950's, major reorganizations took place within the Internal Revenue Service because the principles stated above were violated. At that time, political appointees were appointed by each Administration as chief collectors in each state. These political appointees, it was found, were sometimes involved in partisan political enforcement of the tax laws and, as a result, corruption of the tax system, as well as personal corruption of some IRS employees, was found to be a major problem throughout the Internal Revenue Service. Hearings were held in Congress, and legislation was enacted reforming the IRS, establishing only two political appointees to provide leadership of the IRS (the IRS Commissioner and the IRS Chief Counsel) and creating of the ''Inspection Service'' within the agency, which performed both internal audit and internal security functions in the agency to ensure the integrity of IRS operations and its employees.

The IRS was also separated in large part from the control of the Department of the Treasury, under the theory that the Department, with its numerous politically appointed officials, should not be involved in the day-to-day administration and enforcement of the tax laws. Of course, Treasury continued as a major player in the establishment of federal tax policy, as well as other areas. But Congress intentionally divorced the Department of the Treasury from interpretation, implementation, and enforcement of the Internal Revenue laws enacted by Congress.

THE SECRETARY OF THE TREASURY ON THE IRS OVERSIGHT BOARD

Against this background and the principles first enumerated (of ensuring the non-partisan administration of the tax laws) must be weighed the advantages and disadvantages of the Secretary of the Treasury being on the IRS Oversight Board. The citizens of this nation must believe that the tax laws are being fairly enforced for everyone, and that similarly situated taxpayers are being treated equally. In large part, our government depends on the voluntary compliance by citizens with the tax laws. If the appearance or the reality of partisan politics ever crept, once again, into the nation's perception of the enforcement of tax laws, it could destroy belief in the integrity and fairness of the tax system that has been developed in the IRS by its largely career workforce over the last forty years. Our concern is that placing the Secretary of the Treasury on the IRS Oversight Board could once again breach the appearance and the reality of the wall of impartiality that has been so carefully constructed.

We recognize that Secretary of the Treasury Rubin (and this Administration) would take great pains to ensure that the perception or reality of political interference in the enforcement of tax laws would not occur. However, federal government policies should not depend on individuals who serve in particular positions, but on the laws enacted by Congress. This is, after all, a nation of laws, not of men.

While Secretary Rubin and even his immediate successors might never abuse their power or authority, it is not to say that some such abuse might not occur in the future. In recent history, the Nixon Administration, in the 1970's, established an enemies list and sought to have the IRS audit particular individuals and organizations for political purposes. The nation became outraged by these allegations, and it was one of the reasons that President Nixon ultimately resigned from office. In the current Administration, the allegation that a number of FBI files on previous Republican appointees were being retained in the White House became an issue of extreme concern. Again, even if this was, indeed, an innocent mistake, the perception created in the public's mind becomes the reality of the public's attitude.

For the above reasons, we believe that it is imperative that the Treasury Department continue its arms-length dealings with the Internal Revenue Service, and that the Secretary not be provided a seat on the IRS Oversight Board. Obviously, the Secretary of the Treasury has line authority over the Commissioner and Chief Counsel of the Internal Revenue Service, who are appointed by the President and the Secretary. If the Secretary believes that these officials are not properly performing their jobs or that improper policy decisions are being made, the Secretary can seek removal of these officials by the President. This kind of Power gives the Secretary of the Treasury sufficient authority to ensure that his opinions or policy positions are seriously considered and, in most cases, followed. The Secretary does not need to be on the IRS Oversight Board to have appropriate influence on the agency. We believe that the possibility of an appearance of partisan political influence that could be engendered by the Treasury Department's deeper penetration into the operations of the IRS clearly outweighs the benefits of having the Secretary of the Treasury on the IRS Oversight Board. Our conversations with, and surveys of, IRS employees reinforce this belief. The consensus

of career officials is that they would much rather have the intrusion of an independent IRS Oversight Board into their management decision making processes than they would have the additional intrusion of the Treasury Department.

INCLUSION OF THE NTEU REPRESENTATIVE ON THE IRS OVERSIGHT BOARD

From the outset of the proposal by the Kerry-Portman Commission (which studied the IRS) to include the IRS union president on the IRS Oversight Board, we have been inundated with objections from managers of the Internal Revenue Service and throughout the federal community.

IRS supervisors, managers and executives must deal with union stewards and unionized employees at the IRS in thousands of different situations each work day. In many instances, these dealings are extremely cooperative. In others, they are not. The labor management provisions of law that were enacted by Congress in 1978 for the federal government struck a careful balance between the union's rights and management responsibilities in the labor-management context (see Chapter 71, Title 5, U.S. Code). The law sets forth the rights of employees to union representation, the subjects of bargaining, and establishes the Federal Labor Relations Authority and the Impasses Panel to decide various disputes between the labor and management positions when negotiations cannot solve the issues. It is a carefully constructed process which has served the federal community well for over 20 years.

However, the placement of the IRS employee union president on the Oversight Board, and the provision in the House and Senate bills which gives the union absolute veto power over any attempt by the Oversight Board, the Commissioner, IRS manager, or even the President, to implement personnel reforms which would affect bargaining unit employees represented by the union stands this law on its head.

First, the placement of the union president on the Oversight Board would alter the balance of power between labor and management. A supervisor or a district director at an IRS district office trying to negotiate with the local union could be totally bypassed, and the union's position conveyed to the IRS Oversight Board by the union president in such a way that distorted the merits of management's position at the district office. This would prevent the entire IRS management structure from being able to negotiate on an equal basis with the union. The House and Senate bills give the Oversight Board the authority to oversee the selection, evaluation, and compensation of IRS career executives. The union's presence on this Board, and its resultant ability to influence the selection, evaluation, and compensation of IRS managers is a direct conflict of interest, one which would eviscerate the IRS executive's ability to deal with the union on any but a subservient basis.

In addition, the union's participation on the Board, which will prepare and present a recommended budget for IRS to Congress puts the union in a position to be able to benefit itself as an organization, as well as the IRS employees which it represents, in violation of current criminal law. As the attached opinion from the Office of Government Ethics explains:

''Given the duties of the Board, this individual [union representative] cannot serve as a 'representative'—a status recognized in applying conflicts laws to certain individuals carrying out purely advisory duties. We believe that the basic criminal financial conflict of interest statute, 18 U.S.C. §208, will be applicable to this individual and will substantially limit that individual's ability to carry out any meaningful service on the Board. . . . In addition, we believe that such a member will also be substantially inhibited from carrying out his or her duties on behalf of the union by the restrictions of 18 U.S.C. §203. There are no applicable waivers for these [two] restrictions.''

Even in the face of the opinion of the Office of Government Ethics (the interpreter of the application and enforcement of ethics laws in the Executive Branch), the Administration and Senator Bob Kerry continued to insist that the IRS union representative be placed on the Oversight Board. Senator Kerry directed the Committee staff (at the time he sponsored his amendment before the Senate Finance Committee) to work with the Office of Government Ethics to provide in S. 1096 for waivers of these two criminal statutes as applied to the union representative on the IRS Oversight Board.

In our view, this would be an outrageous action by the Congress. To exempt a specific individual who is serving as a union representative from the application of two criminal laws for which there are no waivers available in law, is unprecedented, so far as we can determine. At the very least, the waiver of the application of criminal laws should at least have full consideration by the United States Senate, and, we believe, should require hearings by the Senate and House Judiciary Committees before being enacted. We cannot believe that the American people would be willing for Congress to selectively exempt a union representative from the application of criminal laws which apply to other citizens. If anything, these two criminal statutes should be repealed for all, rather than providing immunity from prosecution for one individual.

SUMMARY

For the reasons stated above, we strongly urge that you sponsor an amendment in the Senate to strike the provision from S. 1096 authorizing and/or requiring that the representative of the IRS employees union and the Secretary of the Treasury be placed on the IRS Oversight Board. The placement of the Secretary of the Treasury on the Oversight Board threatens, in our view, to erode the necessary confidence of the American people in the non-partisan administration and enforcement of the tax laws. The inclusion of the union representative on the IRS Oversight Board threatens the ability of IRS management to manage and control the IRS workforce. In addition, the provision granting the union representative immunity from two criminal laws which apply to every other citizen threatens not only the appearance but the actuality of the integrity and non-partisan impartiality of the Internal Revenue Service.

Sincerely,

CAROL A. BONOSARO,
President.

G. JERRY SHAW,
General Counsel.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, on behalf of Mr. KERREY, who is the manager, the ranking manager on this side, I have been asked by him to state that the vote on the Faircloth amendment is a vote, in essence, quite similar to the vote that has already occurred on the amendment by Mr. FRED THOMPSON of Tennessee. Mr. KERREY asked me to state that he would suggest, or even urge, Members to vote against the Faircloth amendment, the case already having been made, and in accordance with the request by Mr. KERREY, I am authorized to yield back the time on this side.

Mr. FAIRCLOTH. If I have time remaining, I yield it back.

Mr. KERREY. I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROTH. I yield back our time.

Mr. FAIRCLOTH. I am ready to call for the yeas and nays, but I understood that Senator BYRD was going to speak.

Mr. KERREY. Earlier we did request that. We have some Members who will leave at 11 o'clock, so I asked Senator BYRD if he would speak after the rollcall vote.

Does the Senator still want a rollcall vote on this amendment?

Mr. FAIRCLOTH. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll. The yeas and nays have been ordered.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Hawaii (Mr. AKAKA) is absent because of a death in the family.

The PRESIDING OFFICER (Mr. GRAMS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 35, nays 64, as follows:

[Rollcall Vote No. 123 Leg.]

YEAS—35

Allard	Gramm	Murkowski
Ashcroft	Grams	Nickles
Bond	Gregg	Roberts
Brownback	Helms	Roth
Chafee	Hutchinson	Sessions
Coats	Inhofe	Shelby
Cochran	Kyl	Smith (NH)
Coverdell	Lott	Smith (OR)
Enzi	Lugar	Thomas
Faircloth	Mack	Thompson
Frist	McCain	Thurmond
Gorton	McConnell	

NAYS—64

Abraham	Durbin	Leahy
Baucus	Feingold	Levin
Bennett	Feinstein	Lieberman
Biden	Ford	Mikulski
Bingaman	Glenn	Moseley-Braun
Boxer	Graham	Moynihan
Breaux	Grassley	Murray
Bryan	Hagel	Reed
Bumpers	Harkin	Reid
Burns	Hatch	Robb
Byrd	Hollings	Rockefeller
Campbell	Hutchison	Santorum
Cleland	Inouye	Sarbanes
Collins	Jeffords	Snowe
Conrad	Johnson	Specter
Craig	Kempthorne	Stevens
D'Amato	Kennedy	Torricelli
Daschle	Kerrey	Warner
DeWine	Kerry	Wellstone
Dodd	Kohl	Wyden
Domenici	Landrieu	
Dorgan	Lautenberg	

NOT VOTING—1

Akaka

The amendment (No. 2360) was rejected.

Mr. KERREY. Mr. President, I move to reconsider the vote.

Mr. ROTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the manager of the bill for the purpose of transacting three amendments, after which I be again recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. I thank my esteemed colleague for his courtesy as it is very helpful in moving this legislation forward. I first yield to Senator KERREY to offer one amendment.

AMENDMENT NO. 2361

(Purpose: To express the policy of Congress that the Internal Revenue Service should work cooperatively with the private sector to increase electronic filing)

Mr. KERREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. KERRY] proposes an amendment numbered 2361.

Mr. KERREY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 256, line 15, strike ''and''.

On page 256, line 18, strike ''2007.'' and insert ''2007, and''.

On page 256, between lines 18 and 19, insert the following:

(3) the Internal Revenue Service should cooperate with the private sector by encouraging competition to increase electronic filing of such returns, consistent with the provisions of the Office of Management and Budget Circular A–76.

Mr. KERREY. Mr. President, this amendment has been agreed to on both sides. It strengthens the electronic filing section, title II of this bill. I appreciate very much the Chairman's support.

Mr. ROTH. As Senator KERREY indicated, this amendment is acceptable to us, and I urge its adoption.

The PRESIDING OFFICER. Is there further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2361) was agreed to.

Mr. ROTH. I now yield to Senator GRASSLEY.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENTS NOS. 2362 AND 2363, EN BLOC

Mr. GRASSLEY. Mr. President, I send two amendments to the desk and ask that they be considered en bloc.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes amendments numbered 2362 and 2363, en bloc.

The amendments are as follows:

AMENDMENT NO. 2362

(Purpose: To add a counsel to the Office of the Taxpayer Advocate who reports directly to the National Taxpayer Advocate)

On page 203, line 5, strike ''and''.

On page 203, line 10, strike the period and insert '', and''.

On page 203, between lines 10 and 11, insert:

''(III) appoint a counsel in the Office of the Taxpayer Advocate to report directly to the National Taxpayer Advocate.''

AMENDMENT NO. 2363

(Purpose: to authorize the Secretary of the Treasury to provide a combined employment tax reporting demonstration project)

At the end of subtitle H of title III, insert the following:

SEC. . COMBINED EMPLOYMENT TAX REPORTING DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of the Treasury shall provide for a demonstration project to assess the feasibility and desirability of expanding combined Federal and State tax reporting.

(b) DESCRIPTION OF DEMONSTRATION PROJECT.—The demonstration project under subsection (a) shall be—

(1) carried out between the Internal Revenue Service and the State of Iowa for a period ending with the date which is 5 years after the date of the enactment of this Act,

(2) limited to the reporting of employment taxes, and

(3) limited to the disclosure of the taxpayer identity (as defined in section 6103(b)(6) of such Code) and the signature of the taxpayer.

(c) CONFORMING AMENDMENT.—Section 6103(d)(5), as amended by section 6009(f), is amended by striking ''project described in section 976 of the Taxpayer Relief Act of 11997.'' and inserting ''projects described in section 976 of the Taxpayer Relief Act of 1997 and section—— of the Internal Revenue Service Restructuring and Reform Act of 1998.''.

Mr. GRASSLEY. Mr. President, the first amendment that I am offering today will simply place a counsel—a lawyer—in the National Taxpayer Advocate's office.

The purpose of doing this is to give the Taxpayer Advocate ready access to legal opinions and legal judgments, Currently, the Taxpayer Advocate must put requests into the Office of Chief Counsel.

In order to make the Taxpayer Advocate more independent, which is what this bill does, it logically follows that the Taxpayer Advocate should have its own legal counsel. This will guarantee it fast, confidential legal advice to help those taxpayers in greatest need. Because it is the taxpayers in greatest need who go to the Taxpayer Advocate.

The second amendment should not be controversial. It applies only to Iowa. It is only a pilot project. We created an identical pilot project in Montana last year. A nationwide project like this was recommended by the IRS Restructuring Commission. My amendment is only a pilot program and it is only for Iowa.

This project would simplify reporting for some Iowa businesses. It would give a try to a program that would allow them to report taxes on one form. This gives businesses more time to conduct business, and spend less time on paperwork.

Mr. President, these amendments have been cleared by the other side, and I ask that they be adopted by consent.

The PRESIDING OFFICER. Is there further debate on the amendments? If not, the question is on agreeing to the amendments.

The amendments (Nos. 2362 and 2363) were agreed to.

Mr. GRASSLEY. I move to reconsider the vote.

Mr. ROTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from West Virginia.

MOTHER'S DAY 1998

Mr. BYRD. Mr. President, I refer to the third chapter of Genesis, verse 20, ''And Adam called his wife's name Eve; because she was the mother of all living.''

This coming Sunday, May 10, is Mother's Day. And, upon awaking that morning, some mothers will be treated to a lovingly prepared culinary surprise, and a glue-streaked—but treasured—handmade card. Others will be invited to brunch or to lunch or to dinner with their children and, perhaps, grandchildren, many of whom may have traveled long miles, some perhaps from one edge of the continent to the other, to help honor their mothers and grandmothers on this very special day, a day that originated in West Virginia, Mother's Day.

In my own case, and that of my wife, we will be visited by our two daughters, Mona Carol and Marjorie Ellen, and their husbands, Mohammad and Jon, respectively. And we will also be visited by our five grandchildren. I will name them in the order of their ages: Erik Byrd Fatemi, and then Mona Byrd Moore, Darius James Fatemi, Mary Anne Moore, Fredric Kurosh Fatemi. They will all come to our house, the Lord willing, this coming Sunday, and they will bring flowers to my wife Erma. And we will sit and talk for awhile, and then we will have those beautiful flowers and those beautiful thoughts and those beautiful memories that will be with us for—in the case of the flowers, all summer; in the case of the thoughts and memories, as long as we live. Others of my colleagues will experience the same visits from their daughters and granddaughters. And this will go on all over the country, with children coming back home, the family circle again coming together.

This weekend will be one of the busiest weekends of the year, one of the busiest for florists who deliver baskets and bouquets of long-distance love. As for telephone lines, they will be busy also, carrying the loving voices of sons and daughters, unable to make the long journey home. Some will be calling from foreign lands, but they will make those calls to mother.

This annual outpouring of affection and appreciation gives me hope that the strength of family feeling in this Nation has really not diminished all that much, but ever how much, is too