But I am looking out for the state, the region, and the nation, as well by voting against uneconomic water projects which spur inflation, needlessly increase taxes, provide relatively few jobs for Denverites or anyone else, and result in marginal increases in agricultural productivity. Apparently the Post thinks I should vote for a $10.1 billion obligation of the taxpayers' money just to get $1.7 million for three water projects in Colorado. Now that's parochial!

Second, I have always supported a sound federal water policy. But the Public Works bill takes that policy another step backwards. The bill shreds any attempt to develop a consistent and cost-conscious water policy in the name of re-electing incumbent members of Congress. Its passage will produce more votes than water!

Third, only one-third of the bill is for water projects. Everything from experimental nuclear submarines to the controversial Clinch River Breeder Reactor have been wrapped in this election-year package to make up the other two-thirds.

Of the 479 water projects included in the bill, 120 are brand new and have no final cost estimates. The price tag is officially put at $1.25 billion but will probably end up closer to $4 billion. And, even loaded down with all the new projects, the dollar amount of the bill was cut! How could that happen? It happened by fully funding only 3 percent of the projects and barely funding the rest of them. This commits future Congresses to yearly infusions of tax dollars in greater and greater amounts or the alternative of abandoning projects in mid-stream.

And that's only part of the damage. The bill also reduces the share of water project costs paid by state and local government users and increases the federal share. It loosens the rules for cost/benefit studies by which projects are economically justified and even waives negative cost/benefit ratios in some cases. Finally, the bill calls for the hiring of 2,300 new bureaucrats to oversee the construction of the additional projects.

There were 27 Colorado water projects in the bill and I support 24 of them. Let's talk about the three I do not—Fruitland Mesa, Savery-Pothook, and the Narrows. The estimated cost of the three projects is $331 million and the bill earmarks $1.7 million for these projects in 1979—less than ½ of 1 percent of the total estimated final cost. Dribbling the money into projects at that rate, it will take nearly 200 years to complete them!

And, even if the cost estimates hold and aren't doubled by inflation, the taxpayers are going to end up with projects whose costs outweigh their benefits by as much as 3:1. In fact, as far as the cost/benefit ratios of all the projects on Carter's "hit-list" go, Fruitland Mesa has the dubious honor of bringing up the rear of the pack, and Savery-Pothook isn't far ahead.

Fruitland Mesa and Savery-Pothook will benefit 69 landowners in one case and 106 in another to the tune of up to $1.2 million each Imagine a bill that benefited every landowner in Denver to the strains of $1.2 million each! In addition, these same projects will irrigate lands at elevations between 6,000 and 8,000 feet where the growing season will be short and agricultural productivity low. As for the Narrows, some estimates of the difference between crops lost in the dam take area and crops gained in the project service area are as low as $2.1 million—and a project that will cost at least $160 million! I doubt if most taxpayers, urban or rural, in Denver, Fort Morgan, or on the Western Slope, would consider these to be good investments.

Moreover, the Pot asserts that reclamation projects repay 84 percent of their cost. The assertion is void for vagueness—who gets repaid and how? Also, the 84 percent figure is an average of all reclamation projects in general. We are not discussing averages or reclamation projects in general. We are discussing three specific projects in Colorado—three projects which are pork-barrel giveaways in the truest sense of the word.

Perhaps if times were flusher, if we were more innocent of inflation, if the budget ran in the black, if the cost/benefit ratios of the three Colorado projects weren't so meager, if these projects had more to do with water and less to do with pork, if the citizens of Denver weren't asked to pay for their own water projects and then taxed to pay for everyone else's, if Denverites weren't made to ration water while other parts of the state are beating the drums for massive water projects which are heavily subsidized and encouraged inefficient water use, or if sacred cows were on my protected species list, I might have voted differently.

But things being as they are, we have to do away with wasteful spending wherever we find it if we truly want less inflation and lower taxes. Often the hardest place to begin is in our own backyards. But unless we do, all budget-cutting efforts will become a charade.

PATRICIA SCHROEDER
Member of Congress, 1st District, Denver.●

SENATE—*Monday, October 9, 1978*

(Legislative day of Thursday, September 28, 1978)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Grant, O Lord, that this new day which Thou hast given us may be returned unto Thee in faithful service. As Thou hast guarded us in hours of rest so wilt Thou guide us through the shifting scenes and changing concerns of this working day. May no burden be heavier than we can bear, no problem beyond our solution. In nothing may we displease Thee and in no way injure one another. Be with everyone in the work of this Government, in places conspicuous or obscure, that we may be a servant people setting forward Thy kingdom of peace and justice, making this land a beacon of hope and freedom to all mankind.

In the name of the Master we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 9, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. ROBERT C. BYRD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The PRESIDING OFFICER (Mr. PROXMIRE). The Senator from Alaska.

THE JOURNAL

Mr. STEVENS. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

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

The Senator from West Virginia.

PRAYER FOR THE WEEK

Mr. ROBERT C. BYRD. Mr. President, I am hoping that a time agreement can be achieved on the Humphrey-Hawkins bill, and hopefully also on hospital cost containment. If such agreements could be reached, this would perhaps free the tax bill from many nongermane amendments, and hopefully allow cloture to be voted on the tax bill.

If that can be done, I think that the Saturday of this week adjournment is very much achievable. But unless there is a time agreement on Humphrey-Hawkins and hospital cost containment, I am afraid that cloture is going to be difficult to get on the tax bill, thus dragging out the time in which nongermane amendments can hold up the action of the Senate on this vitally important tax bill.

So I simply start the week off and the day off with the expression of this hope, because I believe if these time agreements can be obtained, we can get cloture on the tax bill and it can be sent to conference fairly quickly, and the Senate and the House could, I think, achieve the October 14 hoped-for adjournment date.

Mr. STEVENS. Mr. President, I would call that the majority leader's prayer for the week. I hope that Senators are listening.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

I would like to reserve our time on the minority side in case the Senator from Vermont needs it.

(Mr. RIEGLE assumed the chair.)

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Wisconsin if he needs some time.

Mr. PROXMIRE. I thank the majority leader.

CLOTURE

Mr. PROXMIRE. Mr. President, later today, unless things are changed, which of course they may be, we probably will have an opportunity to vote on cloture on several things: First on the tax bill, then on the sunset amendment, and then on the Humphrey-Hawkins amendment. I want very much to have an opportunity to vote both on sunset and Humphrey-Hawkins. Neither would be germane, as I understand it, if cloture is invoked on the tax bill. I have given my word to the leader that I am going to vote for cloture on everything from now on because I think we ought to be able to proceed in an orderly way. However, I find myself in the position where I favor both the sunset provision and the Humphrey-Hawkins bill.

Therefore, I will have to ask to be relieved of that commitment because I do not see any way that we could vote for Humphrey-Hawkins this year, in any practical likelihood this year, if we invoke cloture.

I would like to have the majority leader relieve me of that commitment so that I am free to vote against cloture on the tax bill.

Mr. ROBERT C. BYRD. I thank the Senator. Of course, I understand his position. He is very considerate in mentioning the commitment, and he will not be held to it. The vote on cloture on Humphrey-Hawkins, however, will not occur until tomorrow.

Mr. PROXMIRE. I understand that. I misstated it. However, the principle would still be true, that if we invoke cloture on the tax bill, that knocks out the Humphrey-Hawkins.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. STEVENS. Will the Senator yield on that?

Mr. PROXMIRE. Yes.

Mr. STEVENS. I am glad the Senator mentioned it because I had stated that I would vote against cloture on the tax bill due to my feelings about cloture generally, and not wanting to vote on cloture the first time on any cloture motion. In view of the Senators shifting of gears, I think I should state that that statement of mine is modified so that I can help my good friend from Wisconsin and not change the tally.

Mr. PROXMIRE. Well, that does not help the Senator's good friend from Wisconsin very much. I wish the Senator would vote against cloture so we could pass Humphrey-Hawkins.

MORALITY AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the need for the Senate to ratify the Genocide Convention is not based solely on its importance as a legal document. This treaty is also a profoundly affirmative moral statement.

The moral dimension of our foreign policy has long been recognized and traditionally confirmed by our practices. In the United Nations, for example, we have led the crusade for human rights. We were instrumental in drafting the United Nations Universal Declaration of Human Rights and many of the specific human rights treaties that followed.

In recent years, President Carter, by attempting to give human rights the priority it deserves in our foreign policy, has strengthened this moral dimension. He has spoken out clearly against specific violations of human rights in many different parts of the world.

We thus find in our past and present practices implicit affirmation of human rights.

Mr. President, is it not high time we made this explicit to the world?

Peace and freedom are the fundamental objectives of this country's policies. Human rights and peace are intimately related. When the human rights of people are threatened peace itself is threatened.

Mr. President, let us never forget that the free world depends on us, not only as an arsenal and as a supplier of food, but as a society committed to the promotion of the dignity of man. This country was built on a foundation of moral and ethical values. We betray our heritage if we fail to stand for moral uprightness.

Mr. President, have we betrayed our heritage?

Have we been hypocrites in the eyes of the world?

Mr. President, until we ratify the Genocide Convention, we can legitimately be questioned on this matter.

Mr. President, I yield the floor.

SPECIAL ORDER

The PRESIDING OFFICER. Under the previous order the Senator from Vermont (Mr. STAFFORD) is recognized for not to exceed 15 minutes.

Mr. PROXMIRE. Mr. President, with the time that was yielded to me by the majority leader, I will not need the time that was allotted to me under the special order.

The PRESIDING OFFICER. The special order for the recognition of the Senator from Wisconsin is vitiated.

The Senator from Vermont may proceed.

INTERPARLIAMENTARY UNION

Mr. STAFFORD. Mr. President, this is the third and last speech in a discussion of the Interparliamentary Union by the Senator from Vermont. I have also discussed in approximate figures the cost to the United States in maintaining membership in the International Parliamentary Union. I have made these three speeches over the last 2 weeks because I realize that not many Members of the Senate, the House, or the American public know what the International Parliamentary Union is.

While it is impossible to describe the functions in detail. either as to the mechanics of the operation of the organization or as to what it does, or why we have been a member, I have tried in three 15-minute speeches to outline generally what it does, how much it costs, who belongs, how long it has existed, and whether or not it is worthwhile to the United States to continue to send delegations to the International Parliamentary Union and to pay the annual assessment against the United States for membership in IPU.

I have done this so that any Member of the Congress or any member of the public who is sufficiently interested can gain some basic concepts of what this organization is. It is treated as a very important organization by most of the nations of the world. Indeed, most of the nations of the world, about 80 of them, belong, including all of our Western allies and the Communist bloc nations, which treat the International Parliamentary Union as a very important organization to which they send leading members of their governments and their parliaments.

As I said earlier, IPU is an international organization based in Geneva, Switzerland. It is made up of parliamentarians from approximately 80 nations. It meets in Conference twice a year—spring and fall. The spring meeting usually coincides with the Easter recess in the American Congress, and the fall meeting usually occurs in September. Meetings are hosted by member nations at their national capitals. Invitations from prospective national hosts for future meetings are generally extended about 3 years in advance of a proposed meeting.

The most recent meeting of IPU was hosted at Bonn, West Germany, September 4 to 14, 1978. In an earlier special order I discussed the resolution the Conference adopted on disarmament. Today, I shall comment briefly on the other resolutions the Conference considered and adopted.

Since the fall of 1973 and the Yom Kippur war between certain Arab nations and Israel, the Mideast has been a particular danger point for all the world. Consequently, the Conference after extended debate, adopted a resolution on the "Middle-East Question."

Indeed, I must say parenthetically that the Conference has adopted a Mideast resolution of some kind each year since 1973.

Congressman WILLIAM LEHMAN, the vice chairman of our delegation, represented the interests of the United States on the drafting subcommittee which handled this matter. Since the Camp David meetings were in progress it was a very difficult and delicate assignment. Although Mr. LEHMAN acted with diligence and skill, it proved to be very difficult to develop a resolution that could be supported by the Arab States, Israel, and the Western nations as well as Communist and Third World countries. A last minute agreement on resolution language was subsequently torpedoed by a surprising Egyptian tactic which caused the U.S. delegation to cast 5 votes against the resolution and 15 abstentions. The Western nations generally abstained.

Mr. President, I ask unanimous consent that the resolution on the Mideast question be printed in the RECORD at this point.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE MIDDLE EAST QUESTION

Draft resolution adopted by the Committee on Political Questions, International Security and Disarmament, by 36 votes to 1, with 15 abstentions.

Rapporteur: Mr. A. Chandernagor (France).

The 65th Inter-Parliamentary Conference,

Recalling the previous resolutions of the Inter-Parliamentary Union, particularly those of the 64th Inter-Parliamentary Conference in Sofia and the 122nd session of the Inter-Parliamentary Council in Lisbon, which refer to the appropriate resolutions of the United Nations on the Middle East.

Considering that the establishment of peace in the Middle East is essential for all the peoples of that area, for the security of the Mediterranean basin and the maintenance of world peace,

Believing that all efforts to achieve that objective through negotiations should be encouraged, and that any action to impede it and likely to increase tension in the Middle East should be avoided,

1. Expresses the wish that any endeavour to create the conditions for a comprehensive settlement and for an early convening of the Geneva Conference will be successful, thus helping to establish a just and lasting peace in the Middle East;

2. Reaffirms that the effective implementation of the United Nations resolution 242 in its entirety remains the fundamental condition for the settlement of the conflict in the Middle East and that all acts contravening the spirit and letter of that resolution must therefore be reproved;

3. Declares itself in favour of a peaceful solution of the conflict in the Middle East realizing the complete withdrawal of Israeli forces from the occupied Arab territories and guaranteeing the security and territorial integrity of all States in the area within secure, stable and recognized boundaries free from threats or acts of force, and enabling the establishment of normal relations between those States, and which, while safeguarding human rights against all forms of persecution, respects the inalienable rights of all peoples of the area, including the right to self-determination of the Palestine people;

Profoundly moved by the thousands of victims among the Lebanese civilian population and by the wide-scale destruction of property,

Urgently calls the attention of all member countries to the tragic situation in Lebanon;

Recalling the provisions of UN Security Council resolution 425 and the need for its full application in all its parts,

Reaffirms the urgent need for measures capable of putting an end to the present situation by fully re-establishing the authority of the Lebanese State against all external interference and guaranteeing its sovereignty, independence, territorial integrity and the unity of its people with respect for the rights of all communities, whatever the political choice or religion of their members.

Mr. STAFFORD. Mr. ANTONIO WON PAT represented our delegation on the drafting subcommittee of the Committee on Non-Self Governing Territories and Ethnic Questions which prepared the resolution adopted 772 yes; zero no; 30 abstentions on the subject, "The continuation of most strenuous efforts toward the complete elimination of colonialism in the world." Mr. WON PAT, as the delegate from Guam to Congress, was particularly qualified to handle this assignment which he carried out with distinction.

The votes of the U.S. delegation were cast for the resolution although Mr. WON PAT, for our delegation, made a most effective explanation of the U.S. reservation on the resolution in a brief speech at the final plenary session.

Mr. President, I ask unanimous consent that the resolution on colonialism be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE CONTINUATION OF MOST STRENUOUS EFFORTS TOWARD THE COMPLETE ELIMINATION OF COLONIALISM IN THE WORLD

Draft resolution adopted unanimously by the Committee on Non-Self-Governing Territories and Ethnic Questions.

Rapporteur: Mr. J. Page (United Kingdom).

The 65th Inter-Parliamentary Conference.

Recalling UN resolution 1514 (XV) of December 14, 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, UN resolution 2621 (XXV) of October 12, 1970, containing the Programme of Action for the full implementation of the Declaration, as well as other relevant resolutions and decisions of the UN Security Council and General Assembly.

Recalling also resolutions 2072 of December 16, 1965, 2229 (XXI) of December 20, 1966, 2354 (XXII) of December 19, 1967, 2428 (XXIII) of December 18, 1968, 2591 (XXIV) of December 16, 1969, 2711 (XXV) of December 14, 1970, 3162 (XXVIII) of December 14, 1973, 3292 (XXIX) of December 13, 1974, 3458 (A and B) (XXX) of December 10, 1975, and 32/22 of November 28, 1977, on the question of Western Sahara.

Reaffirming its commitment to the principle of self-determination of peoples in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples.

Taking into account that the present international situation, characterized by the further deepening of the process of détente and the successes of the national liberation struggle, creates favourable conditions for the final elimination of all vestiges of colonialism, racism and apartheid.

Reaffirming that any racialist and colonialist policy, and particularly those in southern Africa, is contrary to the purposes and principles of the UN Charter, threaten international peace and security and constitute a crime against humanity.

Recognizing that the growing militarization of South Africa and its plans for the development of nuclear weapons aggravate the threat to international peace and security.

Reaffirming the legitimate right of the colonially and racially oppressed peoples of South Africa, Namibia and Zimbabwe to struggle by all means at their disposal, including armed forces, for the exercise of their inalienable rights to self-determination and to independence, as well as the right to choose a path of development according to their interests.

Taking into consideration the decisions of the Ninth Special Session of the United Nations General Assembly devoted to Namibia;

Reaffirming the inalienable rights of all peoples to self-determination and to independence as embodied in the UN Charter, and stressing the importance of free and fair elections.

Stressing the necessity for the full implementation of UN Security Council resolution 418 (1977) and for the enforcement of further measures in the political, economic and military spheres in order to isolate the South African apartheid régime more effectively,

Condemning those States which, in violation of the UN decisions and resolutions, continue to collaborate with the racist régimes in southern Africa,

Stressing also the urgent need for the implementation of all relevant UN resolutions affecting all other parts of the world,

Recalling all resolutions of the Inter-Parliamentary Union concerning the achievement of independence by the colonial peoples still oppressed:

1. Stresses the responsibility of the international community for the final elimination of all vestiges of colonialism, racism and apartheid, and calls upon all States and international organizations to intensify their support and assistance to the oppressed peoples in southern Africa and to render moral, material and diplomatic assistance to the struggle of the national liberation organizations;

2. Welcomes the proclamation of International Anti-Apartheid Year contained in UN General Assembly resolution 32/105 B and calls upon all Governments and Parliaments to intensify their efforts to contribute effectively to the elimination of apartheid and to promote the implementation of the right of the people of South Africa to self-determination.

3. Calls upon all national liberation organizations to strengthen their unity in order to achieve a speedy victory in their just struggle, and requests all States to refrain from any action which could promote the weakening of the national liberation organizations struggling for their rights;

4. Calls on all States to ensure full and speedy implementation of UN resolutions and decisions concerning economic and other relations with the present régime in Rhodesia (Zimbabwe);

I

Urges all Governments, Parliaments and financial institutions to withhold, in pursuance of UN resolutions, any assistance from the racist régimes in southern Africa, and to enact legislation or implement other policies in the commercial field which will help bring about rapid progress towards self-determination and independence;

II

1. Notes with deep concern the use of force, violence, kidnapping of civilians, taking of hostages and torture, and, in particular, the increasing and expanding interference by foreign military forces on the African continent;

2. Calls on all Governments and Parliaments to ensure strict observance of the principle of non-violation of State borders, settlement of disputes by peaceful means and cessation of the use of military and any other kind of force against the territorial integrity of States;

III

Calls upon all Governments and Parliaments:

A. Concerning South Africa:

(a) To condemn the South African apartheid régime for its policies and practices of racial discrimination, its denial of elementary human rights and the brutal oppression of the South African people;

(b) To take measures for the termination of all forms of collaboration in the nuclear, military and security fields with the South African apartheid régime, and not to allow it access to nuclear weapons and to technology leading to the acquisition of such weapons;

Recalling the previous resolutions of the Inter-Parliamentary Union on the establishment of a new international economic order.

Deeply attached to the achievement of objectives, assigned to the Integrated Programme for Commodities by resolution 93

(IV) of the United Nations Conference on Trade and Development (UNCTAD).

Very concerned at the inadequate progress achieved in more than one year at the UNCTAD negotiations on individual commodity agreements and on a common fund within the framework of the Integrated Programme for Commodities and on official development assistance.

Noting furthermore with regret that the Negotiating Conference on the Common Fund held last November in Geneva was suspended without an understanding as to the resumption of the negotiations and that no real progress has been attained since then.

Gravely concerned that the multilateral trade negotiations currently underway in Geneva may result in the developing countries emerging with an adverse balance.

Convinced of the relevance, for the 53 countries of Africa, the Caribbean and the Pacific, of the STABEX system of stabilization of export earnings applied within the framework of the Rome Convention.

Stressing the role of Parliaments and parliamentarians and the importance of the public opinion of all countries, and particularly that of the developed countries, for the achievement of the objectives of a new international economic order.

Convinced of the importance, for the development of the economies of the developing countries, of the creation of a common fund which would be capable not only of governing commodity buffer stocks but also, within the limits to be set by the parties concerned, of taking and financing measures for market promotion research and diversification and improvement in general regarding certain commodities.

Concerned at the disproportionate burden which the external debt servicing of the developing countries, particularly of the poorest among them, currently places on their economies.

Aware of the need to increase and to diversify the amount of official development assistance and to relax its terms.

IV

On a different level, concerning Western Sahara:

(a) On a different level, supports as a whole the resolution on the question of Western Sahara adopted at the OAU Summit and, with a view to ending the tension in the region, expresses the profound hope that the adhoc Committee established by the OAU Summit in Khartoum will find a just and peaceful solution to the question of Western Sahara, consistent with the principles of the Charter of the United Nations, the recommendations of the Non-Aligned Movement, as well as with the Charter and resolutions of the Organization of African Unity;

(b) Calls on the States in the region to observe strictly the principle of non-violation of borders and to cease all forms of use of military force to interfere with the territorial integrity of the States in the region.

Mr. STAFFORD. The resolution adopted by the Economic and Social Committee was prepared by a drafting subcommittee on which the U.S. delegation was represented by Congressman DEL CLAWSON. It was a particularly difficult assignment which Congressman CLAWSON, one of the hardest working of our delegation, carried out with tenacity and determination. The resolution contained some paragraphs that were not acceptable to our delegation, but it was adopted by voice vote in any event.

I ask unanimous consent that the resolution of the Economic and Social Committee be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE FIXING OF FAIR PRICES FOR PRIMARY COMMODITIES SUPPLIED MAINLY BY DEVELOPING NATIONS, THE MAINTENANCE OF THE PURCHASING POWER PROVIDED BY THEIR EXPORTS, AND THE ALLEVIATION OF THEIR EXTERNAL DEBTS

Draft resolution adopted by the Economic and Social Committee by 41 votes to 0, with 1 abstention.

The 65th Inter-Parliamentary Conference.

Concerned at the adverse evolution of the economic situation of the developing countries.

Noting that the trade and monetary system currently governing international economic relations contributes to increasing the inequalities between developed and developing countries, thus constituting a serious threat to world peace and security.

Recalling that the prices of the products imported by developing countries have risen considerably while their income from the export of primary commodities have dropped, resulting in an excessive increase in the foreign debt of developing countries, which, together with the rate of the interest, which is often very high, represents a very costly, crushing economic burden for each of these nations, and introduces dangerous elements of instability and crisis into the international credit and financial system.

Deeply disturbed at the increasing recourse to protectionism policies which adversely affect the healthy growth of international trade in general and the prospects of developing countries in particular.

Considering that the economies of the developing countries are themselves very diverse, and aware of the fact that developing countries have been making significant efforts to diversify their economic activities and their traditional trading patterns.

(c) To consider immediatly the effectiveness of terminating all loans to South Africa, all investment in that country and all trade promotion, and of applying a total embargo on oil, petroleum products and other strategic facilities;

(d) To manifest their effective support for the just struggle waged by the people of South Africa by contributing to the successful implementation of International Anti-Apartheid Year by all measures within their power;

(e) To apply the embargo on the sale and delivery of arms to South Africa, in accordance with Security Council resolution 418/1977;

B. *Concerning Namibia:*

(a) To contribute actively to the immediate implementation of the rights of the Namibian people to self-determination and independence, bearing in mind the decisions of the 9th Special Session of the UN General Assembly devoted to Namibia, the relevant resolutions of the UN Security Council recommending the independence of Namibia, and of the "Proposal for a settlement of the Namibian situation" (UN doc. S/12636) transmitted by the Governments of Canada, Federal Republic of Germany, France, United Kingdom and United States of America;

(b) To recognize SWAPO, bearing in mind the decisions of the United Nations and of the Organization of African Unity as well as the Five Power Plan, as legitimate and authentic representatives of the Namibian people;

(c) To support all appropriate measures agreed in the United Nations and other diplomatic fora for the rapid removal of South African military and paramilitary forces from the whole of the Namibian territory, including the port of Walvis Bay;

(d) To condemn the South African apartheid régime for its illegal occupation of Namibia which constitutes an act of aggression against the Namibian people and the United Nations;

C. *Concerning Rhodesia:*

(a) To promote the achievement of majority rule in Rhodesia;

(b) To condemn the continued war of repression against the people of Zimbabwe and to encourage all the parties to negotiate with the objective of securing a cease-fire and a settlement which is acceptable to the people of Zimbabwe as a whole;

(c) To comply strictly with the mandatory sanctions of the United Nations against Rhodesia and to promote their expansion, including all measures envisaged under Article 41 of the UN Charter;

Convinced that the objectives of equitable prices for commodities supplied essentially by the developing countries, maintenance of the purchasing power derived from their exports and reduction of their external debt are closely linked to the reform of the international monetary system.

Convinced of the importance, for the developing countries, of a preferential and non-reciprocal treatment to correct the inequalities between the developed and developing countries in international trade, which are the cause of the profound disparities between their respective levels of development:

1. Reaffirms forcefully the need for the rapid conclusion of international commodity agreements, an increase in official development assistance and more advantageous terms for the granting of such assistance, in order to provide adequate reliable and regular resources for the economies of the developing countries;

2. Notes the commitments undertaken within the framework of the Conference on International Economic Co-operation held at Paris in June 1977 and of the Ministerial Session of the UNCTAD Trade and Development Board at Geneva in March 1978, with regard both to the establishment of a common fund—the key instrument for the achievement of the objectives of the Integrated Programme for Commodities—and certain aspects of official development assistance, and, particular, official external debt relief of developing countries;

3. Notes further the points of agreement stated by the Chairman of the Negotiating Conference on a Common Fund at Geneva in November 1977;

4. Urges Parliaments to put pressure on their Governments to resume the negotiations as early as possible and no later than the end of this year, in accordance with the decisions taken by the July meeting of the UNCTAD ad hoc Committee on the Integrated Programme for Commodities;

5. Emphasizes the need to promote forward-looking policies in order to permit the finished and self-finished manufactures to have freer access to markets;

6. Calls on the members of the National Groups to take action in their respective Parliaments in order to encourage their Governments:

(a) To participate in the largest possible number of negotiations concerning agreements on the commodities covered by the UNCTAD Integrated Programme;

(b) To promote, within the framework of the UNCTAD negotiations, the establishment, as soon as possible, of a common fund capable of acting with the maximum effectiveness without however prejudicing the legitimate interests of the consumer nations;

(c) To take measures for establishing an equitable relationship between the prices of commodities on the international market and those of products imported by developing countries;

(d) To promote within the framework of GATT negotiations, the tariff and non-tariff measures leading to the legal and standing non-reciprocal and preferential treatment of the products of the developing countries;

(e) To decrease and eliminate protectionist measures, which affect in the first place the exports of developing countries;

(f) To adopt measures to reduce the bur-

den of the external debt of the developing countries and, in particular, of the poorest developing countries to achieve cancellation by the industrialized countries of the debt of the world's least developed of the developing countries, to increase and to diversify the actual amount of official development assistance and to relax its terms, in conformity with the decisions of the Ministerial Session of the UNCTAD Trade and Development Board held in March 1978;

(g) To make all necessary efforts for an equitable reform of the international monetary system favouring the development of the developing countries;

(h) To encourage, within the framework of bilateral or multilateral aid projects, the industrial processing of commodities in the commodity-producing countries;

7. Recommends that parliamentaries inform public opinion in their countries of the urgent need for effective solidarity, in particular in the financial and technological spheres, between the industrialized and the developing countries, and that co-operation, not confrontation, is required to achieve the agreements and establish the mechanism for a fair and orderly marketing of commodities aiming at a full, complete and rapid integration of the developing countries in the world economy.

Mr. STAFFORD. The Committee on Parliamentary, Juridical and Human Rights Questions proposed a resolution prepared by a drafting subcommittee upon which we were represented by Congressmen CHARLES WIGGINS and GUY VANDER JAGT. The resolution was supported by the U.S. delegation.

Mr. President, I ask unanimous consent that this resolution be printed in the RECORD at this point.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE ROLE OF PARLIAMENTS IN THE STUDY AND ELABORATION OF MEANS TO COMBAT INTERNATIONAL TERRORISM

Draft resolution unanimously adopted by the Committee on Parliamentary, Juridicial and Human Rights Questions.

THE 65TH INTER-PARLIAMENTARY CONFERENCE

Disturbed by the growing number of international terrorist acts and their effects upon innocent victims around the world.

Emphasizing that the commitment of the entire international community, including the establishment of co-operation among States in this field, is necessary to combat terrorism.

Recalling the resolutions adopted on this subject by the UN General Assembly and Security Council and by the Inter-Parliamentary Union.

Noting the entry into force of international legally binding instruments to combat certain forms of terrorism and the adoption of relevant regional conventions.

Concerned at the inadequacy of the measures that have been taken so far and at the lack of progress in the elaboration by the United Nations of a comprehensive convention relating to international terrorism.

Asserting that acts of international terrorism involving hijacking of various means of transport or other threats to such carriers or to the safety of travellers, and the taking of hostages, are directed at innocent victims and violate established norms of international behaviour.

Confirming the inalienable right to self-determination and independence of all peoples under colonial and racist regimes or other forms of alien domination, as well as the inalienable right of every people to combat aggression and foreign occupation, a right which must always be exercised in accordance with the principles of the Charter of the United Nations and the relevant resolutions of the latter's organs, and in conformity also with the rules of international law, particularly with regard to respect for human rights in armed conflicts:

1. Affirms its indignation at and condemnation of all forms of international terrorism wherever they occur, whether they originate from States or individuals;

2. Emphasizes the importance of international co-operation, through treaties and other measures, including regional and bilateral conventions, in the effective prevention of such terrorism;

3. Calls on the National Groups to take action so that their respective Parliaments:

(a) Undertake examination of the root causes of terrorism and contribute to the study and elaboration of legal standards appropriate to the prevention and punishment of acts of terrorism;

(b) Continue their efforts to seek and adopt, in accordance with international law, just and peaceful solutions, for the purpose of eliminating the roots and causes that provoke acts of international terrorism;

(c) Make every effort to ensure the adoption of adequate laws punishing such acts, and, with a common accord, outlaw terrorism;

4. Urges all Parliaments and Governments to use their influence to bring about prompt accession to or ratification of the Tokyo (1963), The Hague (1970) and Montreal (1971) Conventions on the safety of international aviation, and the New York (1973) Convention relating to internationally protected persons;

5. Calls on all Governments of the world not to permit the existence and activity on their territories of terrorist organizations and groups directed against other States, to refuse the right of asylum to perpetrators of and those proven to be responsible for acts of terrorism, and either to prosecute or extradite such persons;

6. Calls upon all Parliaments and Governments of the world:

(a) To condemn all acts of violence by any regime;

(b) To condemn the continuation of repressive and terrorist acts by authoritarian colonial, racist and alien occupying regimes in denying peoples their legitimate right to self-determination and independence and individuals their human rights and fundamental freedoms;

(c) To observe strictly their obligations to abstain from directly or indirectly supporting terrorist activities or subversive or other similar actions directed against other States;

(d) To uphold the legitimacy of the struggle of national liberation movements, which must always be expressed in conformity with the purposes and principles of the Charter of the United Nations and the relevant resolutions of the latter's organs, as well as in accordance with the rules of international law;

(e) To refrain from supporting directly or indirectly the taking of hostages for political or other purposes;

7. *Supports* the efforts of the entire international community to acquire effective juridical means of preventing and punishing terrorist acts;

8. *Urges* all Governments and Parliaments to introduce and adopt all measures within their power and enact necessary legislation to prohibit and severely punish financing of all terrorist acts and actions tending to subvert legally established Governments, from whatever sources such financing may emanate.

Mr. STAFFORD. Mr. President, the resolution proposed by the Committee on Educational, Scientific, Cultural and Environmental Matters was on the subject, "The role of Parliaments in combating illiteracy nationally and internationally." We were represented on the drafting subcommittee which prepared the resolution by GUY VANDER JAGT with assistance from ROBERT DUNCAN who did excellent work. The resolution was adopted by the conference on voice vote.

Mr. President, I ask unanimous consent that the resolution from the Committee on Educational, Scientific, Cultural and Environmental matter may appear at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE ROLE OF PARLIAMENTS IN COMBATING ILLITERACY NATIONALLY AND INTERNATIONALLY

Draft resolution unanimously adopted by the Educational, Scientific, Cultural and Environmental Committee.

The 65th Inter-Parliamentary Conference.

Convinced that illiteracy jeopardizes and considerably retards economic and social development, constituting an infringement on human dignity.

Emphasizing that more than 800 million people in the world—essentially women and rural dwellers—are illiterate, most of them in Asia, Africa and Latin America, a fact which creates gross inequalities and tensions in the world.

Confirming that the developing countries are faced with tremendous difficulties in eliminating the causes as well as the phenomenon of illiteracy because they lack the means and resources needed to organize massive educational programmes to reduce illiteracy.

Reaffirming that education is a basic human right and a factor in the social and cultural fulfilment of man, and that it can contribute to the reduction of inequalities between individuals and countries.

Convinced that the eradication of illiteracy requires intensive governmental involvement, national planning and international support and that it is the responsibility of Parliaments to formulate the appropriate policy and promote its efficient implementation.

Noting that the scourge of illiteracy may become worse in the coming years and that, consequently, there is an urgent need to intensify forthwith the national and international efforts to combat it.

Recognizing that the eradication of illiteracy is primarily the responsibility of the developing countries and that this task can be facilitated by assistance from developed countries.

Aware that the problems of illiteracy are not confined to the developing countries alone and that industrialized countries have to solve the problems of illiteracy caused by rejection of schooling, the speed of technological progress in industry and changing social attitudes.

Convinced that the spreading of literacy requires at the world level extensive mobilization of energies, financial and human resources and freedom of access to education.

Recognizing that the United Nations and UNESCO in particular make an effective contribution to the reduction of illiteracy at the world level, despite the inadequacy of means.

1. Calls upon Parliaments:

(a) To bring about within their own countries an awareness of:

(i) The importance of literacy as a basic requirement for the elimination of poverty, hunger and human misery, particularly in the developing countries;

(ii) The need to mobilize the human, material and technical resources available to all countries;

(b) To exercise maximum pressure upon Governments to give highest priority to this sector of education in their countries, to en-

sure legislatively and in practice the right of citizens to education and to include specific programmes to eradicate illiteracy in national education systems, especially in the developing countries;

(c) To formulate and implement programmes for eradicating illiteracy not only through enrollment in the formal educational system but also through non-formal programmes of adult literacy and vocational and job-oriented training;

(d) To provide for the training of teachers especially for this purpose and to draw volunteers from all parts of society to serve as tutors and assistants;

(e) To give greater importance to education and the role of women in society, taking into account that women constitute a decisive factor in child literacy and represent a vast potential in combating under-development;

(f) To reaffirm that the firm determination of the developing countries to recover the control of their human and natural resources in order to provide their peoples with the means necessary to join in the scientific-technical world constitutes one way to alleviate the scourge of illiteracy, and to establish a new world cultural and economic order;

(g) To mark in their respective countries International Literacy Day on September 8 by organizing appropriate ceremonies and activities to call public attention to the worldwide problem of illiteracy and to promote understanding of and support for national and international literacy programmes;

(h) To provide, in national programmes to combat illiteracy, for appropriate actions in connection with the proclamation of the International Year of the Child in 1979;

2. Call upon the United Nations to include literacy as an integral element of the Third Development Decade, particularly through the preparation of plans for combating illiteracy and for the development of teaching programmes, under the direction of States and with the aid of UNESCO;

3. Calls upon the member States to increase the rate of their participation in the UNESCO budget, with a view to achieving the abovementioned objectives;

4. Calls upon UNESCO to continue and intensify its efforts to promote international solidarity in combating illiteracy and to obtain increasingly more substantial support from the international funding bodies, as well as to promote bilateral aid from member States and private agencies;

5. Invites the Governments of the industrialized countries to intensify their efforts to attain the scheduled volume of official assistance to the developing countries so that the budgetary resources allocated to the combating of illiteracy in those countries can be increased;

6. Recommends that the Inter-Parliamentary Union continue close liaison with UNESCO in combating illiteracy;

7. Reaffirms that the most profitable investment which States can make is to devote themselves to the struggle against illiteracy and to the education of the peoples;

8. Leaves it to the 20th Session of the General Conference of UNESCO to decide on the advisability of establishing an international fund to combat illiteracy in the least developed countries.

Mr. STAFFORD. Finally, without dissent, the conference adopted a second resolution from the Economic and Social Committee on "The International Year of the Child."

Mr. President, I ask unanimous consent that that resolution may appear at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

INTERNATIONAL YEAR OF THE CHILD

Draft resolution adopted unanimously by the Economic and Social Committee.

The 65th Inter-Parliamentary Conference.

Bearing in mind that the General Assembly of the United Nations proclaimed 1979 the International Year of the Child (Resolution 31/169).

Deeply concerned that in spite of all efforts, millions of children in developing countries are undernourished, are without access to adequate health services, are missing the basic educational prepartion for their future and are deprived of the elementary amenities of life.

Aware of the fact that in developed countries certain categories of children require additional protection and care, in particular those who are physically and mentally handicapped, or socially disadvantaged;

1. *Calls upon* Parliaments of all countries to seize the opportunity of the Year to take measures to meet the manifold needs and rights of the child and to draw public attention to them;

2. *Appeals* to national Parliaments to support the expansion of basic services for children in developing countries, as part of development plans, which will take place during the Year and therafter;

3. *Urges* the national Groups to promote support by their Parliaments for the work of the national committees for UNICEF and of the national commissions for the Year, where these have been set up in their respective countries.

Mr. STAFFORD. Now, Mr. President, I shall, with a few final observations, bring these discussions of IPU to an end. Within available time I have attempted to describe IPU, the role of U.S. delegations to meetings of IPU and the approximate annual cost of our memberships in IPU.

Necessarily, the reader may find information sketchy and questions unanswered. I shall be pleased, Mr. President, on inquiry of any of my colleagues in either body of Congress, to supply further details to anyone sufficiently interested. In one of my earlier discussions of IPU, I pointed out to my colleagues that IPU came ino existence in 1889, thus far predating both the League of Nations and the United Nations. The United States, on three occasions, has served as the host country for the Interparliamentary Union: once back before the turn of the century, once about 1904, and the last time in 1953. So 25 years have passed since this country has extended an invitation to the International Parliamentary Union to come to the United States and hold a conference in Washington, D.C. I noted, in an earlier discussion, that it has become, over the last 2 or 3 years, a matter of some embarrassment to U.S. delegates to meetings of the International Parliamentary Union that so long a period of time has run since this country has hosted an IPU conference. We are now being urged, particularly by our closest friends among the Western nations, to extend an invitation to the International Parliamentary Union to come to Washington for one of its meetings.

The Senator from Vermont has undertaken to deliver these speeches to provide information on a subject which is little known in the United States despite the fact it is well known and IPU is considered important in the rest of the world, particularly by friendly nations of NATO and the industrialized Western World.

Possibly some of the resolutions are more important for what they did not say than for their content. I am referring here to the resolutions now in the RECORD which were adopted in the Bonn, West Germany, meeting this fall. For example, the "Mid-East" resolution did not condemn "Camp David"; the "Disarmament" resolution did not single out the United States for condemnation while the U.S.S.R. deployed a major new weapon (the SS–20) as might have occurred if the U.S. delegation had not been present.

U.S. leadership in the area of "Human Rights" was emphasized before a world audience.

Work of the staff members—Arthur Kuhl, Executive Secretary of the U.S. Group; Norvill Jones, Chief of Staff, Senate Foreign Relations Committee; Vance Hyndman, House International Relations Committee; Mrs. Mary McLaughlin, Senate Foreign Relations Committee; and John Ward, Department of State adviser, was outstanding throughout the Conference.

Over the years the Senator from Vermont has been a member of the U.S. delegation, there have no doubt been some unnecessary stops en route to and from conferences. There probably have been some unnecessary expenses incurred in attendance at conferences. It is fashionable in consequence to refer to IPU as a "junket," especially by those who do not bother to learn anything about the organization or our role in it.

Attendance at meetings of IPU is not a "junket."

U.S. delegates face a week to 10 days of difficult meetings at each conference. The cost, while appreciable, about $300,000 a year, is miniscule compared to the cost of United Nations and its satellite organizations to the United States, about $529,480,000, and even small compared to the total spent on other international organizations, about $6,241,000.

I consider IPU an important international organization of parliamentarians from nearly 80 nations.

The experience of attending an IPU Conference has been broadening for U.S. delegates. Following is an excerpt from a letter to me from the Honorable ANTONIO B. WON PAT, delegate to the House of Representatives from the Territory of Guam:

> I also believe that other members of the American delegation like I, benefited from the broadening experience of attending the conference. This is an important aspect often overlooked by those who would criticize officials for attending such meetings. I are sure that each of us who attended came back with a better perspective of our role and influence in the conference.

Following is an excerpt of a statement by the Honorable JOE SKUBITZ, Member of the House of Representatives, from Kansas, in the CONGRESSIONAL RECORD of May 18, 1978:

> As many of my colleagues know, I have not been enthusiastic about attending international meetings. In fact, during more than 16 years in Congress, I never attended any until this month. Several weeks ago, some

colleagues whom I respect highly persuaded me to represent the U.S. Congress at the Interparliamentary Union meeting in Vienna.

This one experience has taught me that we must be willing to make some reasonable sacrifices to attend these IPU meetings. I learned that congressional representation is both necessary and beneficial for U.S. interests. To a large degree, the willingness of the United States to perform a responsible role in international affairs is measured by the attendance and full participation of Members of this body at such sessions as the one in Vienna . . .

Whether we in the United States like it or not, we continue to be the free world's leading nation.

We cannot say, "Stop the World, I want to get off."

The free world continues to look to us for leadership amongst the representatives of the world's parliaments.

Should we depart IPU, our abdication of a free world leadership position would leave an enormous vacuum and Western nation disarray. In my judgment the U.S.S.R. could then dominate future conferences and procure the adoption of resolutions highly embarrassing to this country and our allies.

I hope we will not permit that to happen.

Mr. President, I yield the floor.

REVENUE ACT OF 1978

The PRESIDING OFFICER. The Senate will now resume consideration of H.R. 13511, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 13511) to amend the Internal Revenue Code to reduce income taxes, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PROXMIRE. What is the pending business before the Senate on the bill? Is there a pending amendment? If so, what is it?

The PRESIDING OFFICER. The Chair advises that there are three pending amendments, but they have all been set aside until after the cloture vote today.

Mr. PROXMIRE. Does that mean that another amendment would be in order at this point?

The PRESIDING OFFICER. The time is controlled by Senators LONG and HANSEN. As the Chair understands it, if they were to yield time to someone for that purpose, then an amendment would be in order.

Mr. PROXMIRE. But the time has to be yielded by Senator HANSEN, Senator MUSKIE, or Senator LONG?

The PRESIDING OFICER. That is correct.

Mr. GLENN. Will the Senator yield for a question?

Mr. ROBERT C. BYRD. Senator HANSEN has only 30 minutes, I believe.

The PRESIDING OFFICER. That is right. Senator HANSEN has 30 minutes under a unanimous-consent agreement.

Mr. GLENN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GLENN. Mr. President, what are the three amendments that are pending that the Chair referred to?

The PRESIDING OFFICER. The three amendments pending, the Chair would advise, are the amendments of the Senator from Maine (Mr. MUSKIE), the Senator from Ohio (Mr. GLENN), and the Senator from Wisconsin (Mr. NELSON).

Mr. GLENN. I thank the Chair.

Mr. HART addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator LONG——

Mr. PROXMIRE. Mr. President, will the Senator yield before he yields time?

Mr. ROBERT C. BYRD. I am going to put in a quorum call.

Mr. HATCH. Mr. President, a parliamentary inquiry.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator for the purpose of his making a parliamentary inquiry.

Mr. HATCH. Mr. President, it is my understanding the Nelson amendment has been found to be to the original bill itself and not to the committee substitute.

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. That is all I have.

Mr. ROBERT C. BYRD. I yield to the Senator from Wisconsin before I put in a quorum.

Mr. PROXMIRE. May I ask the distinguished majority leader, my concern is that some amendments may come up and we may feel it necessary to talk at some length on those amendments.

We do not want to stand in the way of Senators who would like to debate these three very important amendments pending before the Senate at the present time.

So it is kind of a dilemma. But I want to serve notice, for instance, on the Senator from Utah's amendment, which he very graciously let me look over to examine carefully, I think it is a bad amendment and I want to discuss it at considerable length.

For that reason, we stand in the way of a discussion by Senator MUSKIE, or Senator GLENN, or other Senators, who want to discuss their amendments that are pending.

Mr. ROBERT C. BYRD. The purpose of setting aside their amendments was so other amendments could be called up, hopefully.

Mr. STEVENS. Will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. The agreement was that debate on Senator NELSON's amendment would not start until after the cloture votes today.

Mr. PROXMIRE. I understand. But if time is yielded to Senator HATCH to call up his amendment, that does not mean there would be a time limitation at the end of which time there would have to be a vote.

Mr. STEVENS. There is no time agreement on the Hatch amendment.

Mr. PROXMIRE. All right.

I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

Mr. GLENN. Will the Senator yield, before that?

Mr. ROBERT C. BYRD. I yield to the Senator.

Mr. GLENN. I wish to note——

Mr. ROBERT C. BYRD. I ask that the time thus far be equally charged against both sides.

Mr. STEVENS. I have not used the leader's time. I suppose I should dispose of that.

Mr. ROBERT C. BYRD. Well, the measure has been put down so that the time of the leader——

Mr. STEVENS. I yield back the leader's time.

Mr. GLENN. I thank the distinguished majority leader.

I would like to note that when cloture comes up this time, in all likelihood I will vote against it, for the first time since I have been in the U.S. Senate.

I will vote against cloture because I look at the delaying tactics that have gone on on the other side of this discussion regarding my amendment.

I tried my level best to get a time agreement on this amendment and to vote on it.

The chairman of the Finance Committee refused to work out that type of agreement and indicated at one point there would be extended discussion of this amendment if I persisted with it.

I did persist with it.

So when I look at my vote this time as being my first vote against cloture, I do not look at is in the light that it might appear to someone who would not know the background of this debate over the last few days.

Now, the second point to be made is that last week a great issue was made of the fact that because of that parliamentary situation, the only way we could get this on the floor and discuss it, have a debate on this issue we have tried to get to the floor for the last 2 years, was to hold the floor, control the debate, and Senator MUSKIE and I on Saturday had a very good debate going back and forth.

But objection was raised on the other side that insufficient time was granted to the other side and that we were being grossly unfair in our control of time.

I would note, Mr. President, that it is now 10:15 a.m. and we had time reserved for the opposition to make their points. We have been here since 9:45 this morning to debate this subject.

So I think the complaints of the other side that we were not giving them sufficient time, and the fact that we do have time set for votes this afternoon, and they are not making use of their time, indicates that perhaps that was rather hollow rhetoric here on last Saturday.

We are here, and Senator MUSKIE is here, willing to have this debate. If we are to go on this, we are ready to go.

So, to those who say there was not sufficient time given them to debate, I say, let us get on with it.

I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

Mr. STEVENS. Will the Senator withhold that?

Mr. ROBERT C. BYRD. Yes.

I believe the Senator from Utah would be prepared to call up his amendment.

Mr. STEVENS. I understand, if he does, Senator PROXMIRE will talk at great length.

I was wondering if we could get other amendments up which we could dispose of.

Mr. LONG. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. LONG. Were we not supposed to go, in the first order of business, to the amendment offered on behalf of Senator DOMENICI that was being offered by the Senator from Pennsylvania? Did we not have an agreement that would be the first amendment we would go to this morning?

Mr. STEVENS. That comes up under the 20-minute agreement does it not, and vote on it at 3 o'clock?

Mr. ROBERT C. BYRD. That begins at 3 o'clock.

Mr. LONG. Three o'clock?

Mr. ROBERT C. BYRD. Yes.

Mr. LONG. The Senator from California (Mr. CRANSTON), has an amendment he wants to offer. Perhaps we can consider that one.

Mr. MUSKIE. Will the Senator yield?

Several Senators addressed the Chair.

Mr. HATCH. I have five amendments, I would be happy to bring up one not as controversial——

Mr. ROBERT C. BYRD. Will the Senator——

Mr. HATCH. I would suggest I bring that up right now.

Mr. ROBERT C. BYRD. Of course, the Senator has the right to call up any amendment he wishes to call up when he gets recognition. I just express the hope, and I do so again, that the Senate could utilize most of this day, up until the hour of 2 o'clock, in disposing of other amendments to the tax bill so as to make as much progress as possible.

I yield the floor to the manager of the bill.

Mr. LONG. Let me just say to those Senators who have amendments——

Mr. MUSKIE. Will the Senator yield?

Mr. LONG (continuing). That are not germane, keep in mind that the germaneness rule is a very strict rule, far stricter than most people realize, unless they are familiar with it from Senate practice.

Those who have amendments which are not germane ought to be bringing them to us before we vote on cloture.

But I would hope they would not bring up amendments that will result in an extended debate because that would foreclose any other Senator from having his amendment considered.

Mr. HATCH. Will the Senator yield to me for one moment?

Mr. LONG. Yes.

Mr. HATCH. Is it the intention of the distinguished Senator from Wisconsin to have extended debate on my amendment?

Mr. PROXMIRE. I do not intend to filibuster. I want a certain notice that I intend to explain why. That might take 45 minutes, an hour, an hour and a half.

In view of the fact that we do have limited time, three major amendments Senators want to discuss, as the manager of the bill has pointed out, every nongermane amendment has only a chance now, perhaps, we do not know, maybe it will later, but, if we invoke cloture, they are dead.

Mr. HATCH. I believe this amendment is germane.

Mr. PROXMIRE. Then the Senator ought to lay it aside until we have a cloture vote.

Mr. HATCH. The reason——

Mr. LONG. If the Senator's amendment is germane——

Mr. HATCH. It is.

Mr. LONG (continuing). And if it is one of those things that might result in extended debate, it is to the Senator's advantage to wait, and after cloture is voted to bring it up, because then there will be a limitation, only 1 hour for every Senator.

Mr. HATCH. I do not believe it will result in extended debate. But it is a complex amendment and difficult to understand.

If cloture is invoked, I may not have the time that I need to explain the amendment.

Mr. LONG. Every Senator has an hour. Obviously, they cannot yield their hour, but the Senator can give somebody something in writing and they can look at it and see what it is all about. Most Senators do not stay and listen to a whole hour of conversation about someone's amendment anyhow. If the Senator hopes to get the Senators to stay here while he talks for an hour, he is doing pretty well.

Mr. HATCH. I will do this. I have a number of other, I think, less controversial amendments. I will be happy to call those up. That will take less time, and I will cooperate with the distinguished manager of the bill.

I call up an amendment at this time.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. LONG. Mr. President, I hope that the present occupant of the Chair will try to pass the matter around and give Senators a chance to get to their amendments before the Senate prior to the nongermane amendments, before we vote on cloture; because those who have the nongermane amendments really should have their amendments before us before we vote on cloture.

The PRESIDING OFFICER. The time this morning is under the control of the Senator from Louisiana and the Senator from Maine; the Senator from Wyoming (Mr. HANSEN) has 30 minutes. No one can bring up anything unless time is yielded by one of the three Senators named.

Mr. HATCH. Mr. President, will the Senator from Wyoming yield to me?

The PRESIDING OFFICER. Does the Senator from Louisiana yield to the Senator from Maine at this point?

Mr. LONG. I will yield the floor at this time.

Mr. MUSKIE. I do not need to use the Senator's time. I would like a couple of minutes of my own time.

The PRESIDING OFFICER. The Senator from Maine is recognized on his own time.

Mr. MUSKIE. Mr. President, I should like to make the point that the first cloture vote will determine whether or not issues such as sunset, the Humphrey-Hawkins bill, and other nongermane amendments—I do not know what others there are—can be considered and voted on later. So this morning this time should be used to the extent that the proponents and opponents of those amendments desire to use it, to fully expose that issue.

If cloture is voted on the first cloture motion, those nongermane amendments are out. The Glenn amendment is out. The sunset amendment is out. The Humphrey-Hawkins bill is out.

It seems to me that we have a right to make our case this morning, to the extent we need the time to do so; and I certainly have no desire to use a great deal of time, but I think that should be the first order of business this morning.

If we do not wish to debate those nongermane amendments, then I, for one, would be willing to yield to sponsors of other amendments, for their consideration. But I think it is understood that we gave up time on Saturday afternoon and evening so that germane amendments could be called up and disposed of, and we now should consider these nongermane amendments.

The opponents of sunset complained all morning Saturday that they were not given time to debate sunset. The Senator from Wyoming was given a special order of 30 minutes to debate it. I would like to see that debate go forward. I do not know how much of that 30 minutes he plans to use, but he certainly is entitled to use all of it, and probably more than that, to discuss his view of the Glenn amendment or the sunset amendment. I have no objection to that. I came here this morning to listen. That is what he wanted me to do on Saturday, so I am here to listen.

I assume that then there will be some response to the arguments he makes, and there should be. But the issue to decide with respect to the first cloture motion is whether or not these nongermane amendments should be driven off the floor, in effect, so that we can discuss the tax bill and the germane amendments. That is a legitimate issue.

I am not going to use any more time now. I just wanted to make that clear. That is why I am here this morning. If those interested in these amendments wish to use time I control for germane amendments, I will be happy to consider those, especially if they do not take too much time. That is my view of what we should be doing this morning.

I reserve the remainder of my time.

Mr. NELSON addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Maine has 96 minutes remaining. The Senator from Louisiana has 89 minutes remaining. The Senator from Wyoming has 30 minutes remaining.

Mr. LONG. Mr. President, I think it would be appropriate that the Senator from Louisiana should make an opening statement, and it need not be lengthy, to explain my view. I would want to say

it again when there are more Senators in the Chamber, but I at least could make my position clear for the record. Then, when we come near the conclusion and have Senators here, I would like the same thing again, perhaps in some different words.

Senator "Bert" Wheeler used to say that any Senator had to expect to make the same speech twice if he wanted most Senators to hear it, and that was when they had better attendance than today.

I will be glad to state my position briefly about this matter.

Mr. NELSON. Mr President, I should like to propound a question to the distinguished Senator from Louisiana.

I would like to propound a unanimous-consent request that I be given 2 minutes, not out of the time of either side, to dispose of a matter that passed the House, involving two wilderness areas in Wisconsin, which I withheld talking up on Friday night because there were germane amendments by a dozen Senators who wanted to take them up.

This matter is unobjected to by either side. Senator HANSEN is here, and we could dispose of it in 2 minutes if I could have the time.

Mr. MUSKIE. Mr. President, I yield 2 minutes to the Senator, if Senator LONG is willing to yield the floor.

Mr. LONG. I will speak for a few minutes, and then I will yield the floor.

Mr. President, it does not help in passing any bill and to add more controversy to a bill that already has a lot of controversy. There is a tremendous amount of controversy in the bill we have right now.

We are confronted with the possibility of a Presidential veto. We know that is being discussed. It has been discussed on television, on the talk shows, with the Vice President. Cabinet officers are talking about it.

We know that we have issues that could result in a deadlock between the Senate and the House of Representatives, but we are optimistic that we can get a bill as far as the President's desk. However, whether we can get a bill there that he will sign is an entirely different matter.

In addition, amendments are being proposed that would have some strenuous opposition. There are people so strongly opposed to some of them that even though they would vote for the bill the way it is now, if you add those controversial amendments, they will vote against it.

If you are going to pass a bill that has a lot of controversy already, you should leave out matters that are not germane to the bill, which bring in still more controversy.

With all the controversy that is in this bill, one could say, "Here is our chance to pass the sunset bill, so let's pass the sunset bill." From the Muskie standpoint, I think a majority of Senators would vote for it, but some may be strongly opposed. So that would lose some votes.

Also, I doubt whether the Glenn amendment could get a majority of votes. If we learn more about it and have a chance to study this matter, and when the business community gets to understand it better, and when the people in the charitable organizations and the State and local governments understand what the Glenn amendment means a lot better than they understand it now, there will be much more opposition to the Glenn amendment.

So, frankly, if that amendment were to be added to the bill, that would reduce further the possibility that this bill could be passed.

Then, let us take the Humphrey-Hawkins bill. That has a lot of appeal in labor circles and in liberal circles. In conservative circles, it is anathema. They are violently opposed to the Humphrey-Hawkins bill. Many of us are generally for the concept but have not had an opportunity to study the details, so we will not be ready to vote on it for awhile.

If Humphrey-Hawkins is added, I assume it could get a majority vote by people who are in favor of the idea, but some people are violently opposed to it, and they would be against the bill. They would vote against the whole bill if Humphrey-Hawkins is added to it.

Then comes the textile quota matter. I suppose the only reason we do not have the textile quota hanging here as an amendment is that it is already blocked out by sunset and Humphrey-Hawkins.

One is added as an amendment to the committee bill; the other, an amendment to the House bill. So they are blocked out on both sides. That being the case, the textile quota cannot be added right now.

So, as in the case of the threat of the Presidential veto, this is a threat in its own right by very dedicated opposition of people who pursue the free trade concept.

All right. Then add the hospital cost containment bill. Once again that has some strong support, and it has some strong opposition, depending upon whether you take the administration approach, the Kennedy approach, or the Talmadge approach. But in any event, whichever approach you take, there will be opposition to that. So if you add that on top of it, it is just like hitting a ship, that is already fully loaded, with four torpedoes.

We had that type situation happen to the Export-Import Bank. It got hit in the bow, you might say, by the textile amendment. Then it got hit in the stern by another torpedo which was the waterway amendment. It was set up ready to be hit amidship by the Glenn amendment, but unfortunately it went to the bottom before the Glenn amendment could reach the target. The Glenn amendment was turned around and now it is being offered on the tax bill.

Mr. President, if all the Senators want to do is just torpedo this bill, that is easy enough to do. All they have to do is just insist that everything around here that someone wishes to pass between now and the time Congress adjourns should be added.

I have a nominee myself, Mr. President, if we are going to add all these irrelevant bills, knowing the bill will not go anywhere, but knowing we can tell the people back home that we did our damndest to do something. I want my Sugar Act on here. It has been reported out of the Finance Committee. And we are outraged that the administration does not understand the plight of the sugar farmer.

I want someone to go get that Sugar Act right now and make it available to me, so if it is going to be torpedoed with everything else we will torpedo it with the Sugar Act, which we will let go when all the other acts hit the target.

Mr. GLENN. Mr. President, will the Senator yield for a comment on all the torpedoes that are coming around this morning?

Mr. LONG. The Senator may comment on his torpedo, the Glenn amendment.

Mr. GLENN. I am glad to.

With regard to the torpedo that I am alleged to have fired into this particular tax bill, I will say that I would have been happy to have fought this battle on another sea or another ocean and at another time.

I remind the distinguished chairman of the Finance Committee that we had this pending amendment before his committee since March 1977, but have been unable to get any action on it. So, I indicate that we would have been glad to have had this as a little skirmish in a harbor someplace rather than in the full range naval battle terms in which the distinguished Senator frames the discussion this morning.

Mr. LONG. I would have been delighted to have had unanimous consent that the Glenn amendment be the third torpedo on the Export-Import Bank bill, had I known we could have settled for that, that the Senator would be willing to fire his torpedo into that ship and let the ship go down to the bottom of the ocean with it and get on to other matters. Unfortunately, it looked at that point that although his torepdo might hit the ship, the ship might continue to sail to some harbor, and that being the case, we could not afford to take that chance.

If we are going to pass this bill, Mr. President, we are going to have to have a rule of germaneness both to reduce the number of amendments that can be offered and to limit the scope of the bill and to reduce the amount of time Senators can spend speaking on these matters. If we cannot get cloture invoked today, we will have to come back and try again because we cannot permit this tax bill to be held hostage for everything that has a possibility of mustering a majority vote here in the Senate, everything that someone has left that he wants to get done before Congress goes home.

Furthermore, Mr. President, there is one other possibility that we have not covered as to why we should invoke cloture, and that is an approach that used to be used by my own father when he was a Member of this body back in 1932 and 1933. A single Senator can have an amendment that cannot even command a majority vote and that Senator could stand up here and filibuster, and take the view that he is not going to let the bill be passed and let that bill go by unless the Senate puts on there something he thinks important to a lot of people in the country.

Mr. HART. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. LONG. I yield.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Mr. President, is the Senator from Colorado correct that vote will occur at 2 p.m. on cloture?

The PRESIDING OFFICER. The Chair will advise the Senator is not correct, that the vote on cloture will occur at 3 p.m. and what will occur at 2 p.m. is an hour of debate on the conference report that will commence at that time.

Mr. STEVENS. That is not correct.

The PRESIDING OFFICER. The Chair has been readvised and, therefore, must change what he said a moment ago. The vote on cloture will occur at 4 p.m. and not before that and prior to that there are votes scheduled at 3:20 p.m. on the Heinz amendment.

Mr. HART. A further parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. The Senator from Colorado has a major amendment upon which he has worked for a considerable number of months that is germane to the tax bill. The inquiry is that if cloture is invoked at 4 p.m., will it be the case that the germane amendment offerred by the Senator from Colorado will be limited to 1 hour of debate?

The PRESIDING OFFICER. The Chair is advised that if the cloture vote should succeed, if cloture should be invoked, all Senators from that point on will have 1 hour of time for all amendments that they might offer, or use on one amendment, or any other remarks they wish to make after that 1 hour.

Mr. HART. Therefore, if cloture is invoked at 4 p.m., any Senator having a germane amendment or a series of germane amendments, or who wishes to debate on any elements of the pending legislation; namely the tax bill, the total time for any of those purposes will be limited to 1 hour; is that correct?

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. HART. I thank the Chair.

Mr. STEVENS. Mr. President, will the Senator yield to me on one question about this bill?

Mr. LONG. I yield.

Mr. STEVENS. My understanding is that we now face the problem of nongermane amendments. We have the Muskie sunset bill, of which I am a cosponsor, incidentally. We have the Humphrey-Hawkins bill coming from the Senator from Wisconsin. We have the Glenn version of the tax expenditure sunset coming along. Just how can those survive a tax conference? What is the expertise and the ways and means in those areas? Why should we not find some way to limit this bill so it is not going to be a Christmas tree on the broad spectrum of any legislation at this time? Why should this bill be held hostage? This, I understood, was the key bill toward our adjournment on October 14. These other issues can stand or fall on their own.

I support the bill of the Senator from Maine. But it could be offered to another bill. There are other bills that are going to pass here, I might say, that are not so controversial and do not in and of themselves have to have cloture.

I wish to know: Is there anything the Senator knows we can do to get this tax bill to the point where we might be able to vote on tax issues and bring the American people the tax relief that we think they need?

Mr. LONG. What you have to do when you have a lot of major controversial bills left at the end of a Congress, what you have to do, is pass one and then pass the other one, and then pass the other one instead of having controversy on top of controversy on top of controversy.

I neglected to mention one of the other items. I thought we had finally worked out this thing about user charges on the waterways. I thought we had so far as Mr. DOMENICI was concerned, and I thought we had as far as I was concerned. But an additional problem arose that has to do with environmental matters in the courts, how long the judge might take and decide the environmental aspect of it. That has caused the Senator from Missouri to want to take another look at it and to review all that.

The point about all this is, the Senator will recall how long we took debating the waterway legislation, the tolls on the waterways, and locks and Dam 26. Well, now that should be resolved. But I do not think we would try to resolve it on this bill. We ought to put that on some other bill, and we will. But the idea of piling it all on top of this one bill makes one suspect that those who are doing it are not really interested in passing the tax cut bill at all because if you really wanted to pass it, it seems to me, you ought to keep the tax cut bill directed toward the controversies involved in taxes.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. LONG. Yes.

Mr. NELSON. Two of the nongermane amendments on the bill the Senator from Wisconsin did offer, one of them on Saturday and another one the day before, I believe.

I agree with the distinguished Senator from Louisiana and the distinguished Senator from Alaska. The only reason I offered these two nongermane amendments was that there is no other way to get them considered. The Humphrey-Hawkins bill had been reported from the Human Resources Committee months ago. Hospital cost containments have been having hearings, consideration, for a year and a half. I would be prepared to vote cloture with an understanding that there be a bill on the floor or two bills on which we can offer Humphrey-Hawkins, another one hospital cost containments, agree to a time limitation, take them off this bill and get a vote on it. I would be very happy to do that.

But if we are foreclosed from getting them before the Senate under any other circumstances, there is no alternative, and I regret that very much. But I want it understood that this Senator stands ready to pull down these two amendments and agree to a time limitation on any two other bills that anybody can bring up.

There are some bills from the Finance Committee, small ones, and I want the Senator to know that I am prepared to do it any minute and, in fact, if there cannot be a time limitation on Humphrey-Hawkins, I would still be prepared to pull it down to give us a chance to debate and vote on the question of cloture.

Mr. STEVENS. Mr. President, will the Senator yield to me for just 1 more second?

Mr. LONG. Yes.

Mr. STEVENS. Let me again say—it is asking my good friend from Wisconsin a question through the Senator from Louisiana. Why should not some of us who have some legislation we would like to get off the books start doing it? I would like to get that Gun Control Act off the books. It has been an impediment to the people in my State for a long time. If you want to take up this Senate for a long time, we will start doing it. There is no place to do it. The people of the United States deserve this tax cut, and you are going to get us in position where all of the people who are opposed to some of the things the Senator is suggesting are going to join together and defeat this tax bill. That should not happen.

I ask the Senator is it not true that there are other bills coming through here that have equal priority? There is no reason why Humphrey-Hawkins, and sunset, and all the rest of them, have to be on this bill. There are other bills going to be called up this week that have equal priority and are going to be debated, and they are not subject to any germaneness rule either until there is a time agreement.

I think to say that only the tax bill can take nongermane riders and nothing else at this stage of the Senate is wrong. Does not the Senator agree with that? There are bills coming after this one. We could get this one to the President in clean shape, as I understand it. There will be a tough time getting it signed just as it is.

Mr. LONG. Well, Mr. President, I would hope I can vote for the Humphrey-Hawkins bill. I must confess there is a lot in the bill I just do not understand. I have not had a chance to study it and do justice to it. I do not know whether I can vote for it right now. Maybe I will have to vote for some amendments first.

But as I understand, I know I am for the purpose of the Humphrey-Hawkins bill. All right. I would like to vote for something to advance that purpose. So knowing all the details I would like to vote for something like that.

But on the principle of whether we are going to take the view that we are going to hold this bill hostage for the Humphrey-Hawkins bill or for the textile quota bill or for the waterway user bill, which I am strongly for, or for the Sugar Act or a dozen other worthwhile legislative proposals that have merit in varying degrees, whether you are going to hold this bill up for all these things is a decision the Senate wants to make.

If that is what you want to do, the leadership ought to just come to the committee chairman and ask that he lay this bill aside. And we will just lay it aside and then we will just go and consider these other measures, and then I will come back to the tax bill.

Mr. MUSKIE. Will the Senator yield?

Mr. LONG. I yield.

Mr. MUSKIE. Mr. President, I understand the Senator's argument fully. I do not think there is a Senator on this floor who would push for this orderly procedure harder than I. I have spoken in large measure for the budget process. I tried to protect its orderly procedure. I tried to push it for sunset, and sunset is designed to bring this orderly procedure about.

I tried the nice-guy route, may I say to the Senator. I waited for 3 years to get a vote on sunset, 3 years, and in bringing sunset to the floor on this bill this is the first time I have gotten close to getting Senate consideration of sunset during that entire period.

Now, that is orderly procedure. I do not like to be offering it to the tax bill. I tried earlier, within the last 2 weeks, to get it on the Export-Import Bank bill. I tried to get a time agreement, to vote on it. But nobody would agree, so we sank the bill.

I am all for the Senator and his argument for orderly procedure. But the suggestion that nongermane items are more controversial than germane items to the tax bill is a thesis that I thoroughly reject. This tax bill came out out of the committee with roughly $1.4 billion of room left in it for the energy tax bill, another high tax bill. There have been over 14 amendments adopted that have completely used up that $1.4 billion; germane amendments that have completely used up that $1.4 billion.

These amendments have been put into the bill with minimal first year costs, but when you look at future year costs there is a great deal of controversy with the germane items that have been added to this bill. And, the Senator knows this.

When the Senator from Alaska suggests that it is only nongermane amendments that make tax bills Christmas trees, I cannot believe he has been around here for the last 10 years. Tax bills have been Christmas trees because of germane amendments, not because of nongermane amendments.

To suggest that some of these germane amendments we have adopted, that have chewed up that $1.4 billion of room, are more important than sunset or Humphrey-Hawkins is a laughable argument. It is not that everybody will support Humphrey-Hawkins or sunset. I have a list of the other amendments here. There is none that is as important as these two nongermane items.

I understand the Senator from Louisiana's frustration, and I sympathize with him fully, and he knows that. As a matter of fact, we have sort of a strange partnership going on with respect to this tax bill; we are going to try to keep it fiscally responsible. I enjoy working in harness with him on it. But the real issue on the first cloture amendment—and the Senator has stated it—is whether or not the Senate wants to consider these nongermane amendments. The Senator from Louisiana, the chairman of the Finance Committee, has made the only argument which, as floor manager of this bill, he ought to make, because he is protecting his legislative vehicle.

But, on the other hand, while we will not persuade the Senator from Louisiana those of us who believe strongly in some of these other issues are going to make another argument to the Senate as a whole; let us have a chance to vote on these other important matters, because really there is not any practical other route available to us.

I have searched for another route on sunset for 3 years, and never have been able to find one, being a nice guy, and now I am going to try to make this one an effective route. The Senator understands that is my purpose, and that we are in disagreement about it, but that is the issue on the first cloture vote.

I hope that Senators are sufficiently interested in the high priority nature of sunset so that they will say, "Let us at least vote on it one way or the other."

If we vote on it and the Senate adopts it, I have such confidence in the conference capability of the Senator from Louisiana that if the Senate supports sunset strongly enough, he will defend the Senate's position; urge the House, perhaps to take the issue to the House floor for a vote up or down, but we will get rid of it, either adopt it or get rid of it. That is all I ask, that kind of assurance.

Mr. GLENN. Mr. President, will the Senator yield further?

Mr. LONG. Mr. President, I ask that the Senator's statement be charged against his time.

Mr. MUSKIE. Yes, take it out of my time.

Mr. NELSON. Mr. President, the Senate is not in order. I cannot hear the Senator from Louisiana.

The PRESIDING OFFICER. The Senate will be in order.

Mr. GLENN. Will the Senator yield?

Mr. MUSKIE. I yield to the Senator from Ohio.

Mr. GLENN. Yes, just a couple of minutes.

I think all this concern about time this morning, and how pressed we are, is very touching. It touches my heart, because the Senator will recall that almost 2 days ago I sat with him and offered, on my amendment, to have only 15 minutes of discussion, and vote, and let the Senate work its will on the matter, and he refused to do that.

So, to make our point, we held the floor and discussed it, and the opposition received time this morning to do the same, but I would say the delay has not been of my making. I tried to get the distinguished chairman to agree to a time limit and a vote, and I offered at one time to agree to 15 minutes, and we would have been done with it.

We have gone on for a day and a half now on this, and as I say, the delay touches me deeply. But I cannot be too sympathetic, because we could have had this matter debated, voted on, and completed a long time ago.

Mr. LONG. Yes, but the Senator should have had more introduction. Let me ask the Senator from Ohio a question, because it is not fully clear to me. Let me ask the Senator a question that I hope will clarify a point about his amendment.

Mr. GLENN. On your time, now. I was on Senator MUSKIE's time.

Mr. LONG. All right, on my time. Let me ask the Senator this question: Let us assume we are just talking about the charitable contribution. As I understand, it was——

Mr. GLENN. Senator, my amendment does not address the charitable contribution. My amendment sets up a procedure by which these tax incentives and credits will be reviewed, and nothing more.

Mr. LONG. But I have this book here—I know, this Senator understands that, but let me get this straight. This book is entitled "Tax Expenditures," and charitable contributions are referred to as a tax expenditure.

If we pass this bill, and we go through all the procedures the Senator is talking about, at some time we hope to pass some bill.

Now, suppose we pass a bill and it says that the—as I understand it, a procedure was clearly contemplated, as I read it, that the congressional budget office and the Finance Committee and the Senate ought to review this as falling, in fact, within the definition of a tax expenditure. So at some point, we pass a resolution——

Mr. GLENN. Those groups would set up a list of things that fall into those categories, tax incentives and tax expenditures, and that would be subject to recommendation by the Finance Committee.

Mr. LONG. I would take it that charitable contributions would be either on the resolution or not on the resolution.

Mr. GLENN. It would be listed as either a tax expenditure or a tax incentive.

Mr. LONG. All right. May we assume it would be listed as a tax expenditure?

Mr. GLENN. Under the totality of that, yes.

Mr. LONG. All right. If it is listed as a tax expenditure, and it goes on down to the White House, and the President signs the bill——

Mr. GLENN. Wait; there are a couple of steps in between there, if the Senator does not mind.

The Finance Committee, when the list is submitted, can choose particularly good tax incentives that they know people would agree on, and put them in an exempted list, that would not even come under the procedure. Home mortgage interest, the veterans benefits Senator TALMADGE mentioned, and things like that could go on an exempted list, that we would just agree to continue as they are. The rest of them could go through the scrutiny in a neutral process, to see whether they should be raised, left the way they are, or "sunsetted." The Senate would pass on it, it would go to the House, and if they passed on it, after that, the reauthorization then would go to the President.

I just wanted to get these interim steps before we got this thing clear down Pennsylvania Avenue.

Mr. LONG. All right. Just so I will understand it better, then, the Senate has a right to instruct the Finance Committee?

Mr. GLENN. The Senate would have the right to approve or disapprove the position the Finance Committee took, as on all other legislation—as on this tax bill we have before us right now, for example.

Mr. LONG. All right. So the Senator is not talking about the right of the Fi-

nance Committee to put something on or take it off; you are talking about the Senate.

Mr. GLENN. I do not think the Senate would ever give carte blanche to the chairman of the Finance Committee. I do not think anybody would agree to that.

Mr. LONG. Well, some may and some may not. If some Senators bought that——

Mr. GLENN. Would the Senator repeat that, please? I am not sure I heard him correctly.

Mr. LONG. Assuming there might be somebody in this country who might have more confidence in the Finance Committee than in the Senate as a whole, assuming that might be the case. I think we should keep in mind that it is the Senate that makes the decision, not the committee. A committee can recommend something to the Senate, but the Senate makes the decision, is that not correct?

Mr. GLENN. Certainly.

Mr. LONG. And that would be true on the Senator's amendment?

Mr. GLENN. Certainly. I thought the Senator said something else a minute ago. Go ahead.

Mr. LONG. All right. Now, just let us assume that this matter of charitable contributions, then, is on the list of tax expenditures as it goes down to the President, and the President signs the bill. Then I would take it that this, then, would be one of the items that would expire after 10 years unless reenacted; would that be correct?

Mr. GLENN. I would say if something is not included for reauthorization after the Senate Finance Committee has scrutinized it and made their recommendation to the Senate, the Senate has worked its will on it, and said whether it will or will not be reauthorized; if the committee brought one out that the Senate decides is a tax loophole, or not accomplishing what it is supposed to, or it is draining off tax dollars, and everyone else is paying higher taxes because of that, if they in their wisdom decide not to go along with it, and to terminate that exemption, it would be terminated.

That is just like any other law, appropriation. authorization, or whatever.

Mr. LONG. Yes. I think I understand. So now those items that would be on the list, assuming it would go to the President—I can assume that, is that correct?

Mr. GLENN. After having run through all this other process I outlined, yes.

Mr. LONG. Like any other law.

Mr. GLENN. Pardon?

Mr. LONG. Like any other law; they all go down to the President to be signed.

Mr. GLENN. Yes.

Mr. LONG. Then after the President signed it, assuming that would be the charitable contribution, it would then be terminated every 10 years, is that the——

Mr. GLENN. It would run through the same process of review and reauthorization every 10 years, and I might add that charitable contributions, instead of being deductible, might well not be reauthorized by the Senate and the House of Representatives, or they could be raised to an even higher deduction than they are now, because the review process is neutral. The amendment says that every 10 years tax incentives and credits will be reviewed to see whether they are accomplishing the purpose for which they were originally intended.

Mr. LONG. What I am getting at is, if that is one of the items of tax expenditures and incentives, it goes down to the President and is signed into law, then it has to go through this review process every 10 years?

Mr. GLENN. It has to go through and either be retained or terminated, that is correct.

Mr. LONG. All right. Let us assume for the sake of argument that this is an item that the majority of the Senate does not see fit to list as a tax expenditure; what happens to it then?

Mr. GLENN. You mean on the original list made up by the Congressional Budget Office, the Senate Finance Committee, and their counterparts in the House, if it is not on the list of tax incentives and tax credits now? You mean if it is not included on that?

Mr. LONG. Let us just assume that Congress believes that an item is not a good tax incentive, but the President, there might be one of those he regards as a good tax incentive, and therefore, if this occurred, it would have been left off the list, and therefore it would——

Mr. GLENN. And it went to the President for signature?

Mr. LONG. And, therefore, that this so-called good tax expenditure would be left off by the Senate, left off by the House, and, therefore, would never go to the White House to be signed.

Mr. GLENN. I would say if the bill arrived on the President's desk without that included, I would have to logically assume, and I am certain the Senator would agree with me, it would have first had to be turned down by the Senate Finance Committee, or if they approved it would have had to be turned down by a vote in the Senate, with the same procedure in the House. If it had been turned down by the Senate, only then would it go to the President once it had worked out with the House, of course, for the President's signature. I cannot envision that the particular tax incentive or credit the Senator mentions would go through without being included. In the original instance where we considered those things the Finance Committee could even recommend the Senate's setting that off to one side so it is not even considered on the subsequent year review periods. There are all sorts of protections in here for the good tax incentives and good tax credits that I am sure the Senator and I both would agree should be continued.

Mr. LONG. Assuming that the charitable contribution, then, was not in the bill that went down to the President, that it was left out, and that it was taken out because the Senate thought the charitable contribution should continue and should not be made subject to the 10-year process, if they thought that to be the case and they left it out over here, and if the House left it out on the House side, so that the bill the President signed did not include that in the bill, what would then be the case?

Mr. GLENN. What the Senator is saying is that the Congress, both Houses, will have jointly decided and had a record rollcall vote on it, probably, in both Houses, that that particular tax incentive or tax credit was not in the best interests of the people of this country and the whole Congress had turned it down. Then it would not be on the list going to the President, that is correct. I would say if the Congress debates that particular issue and decides it should not go to the President, I cannot see how it would not have been adequately considered at that point. This would not have been left off anybody's list. It would have been duly considered at that point and decided positively it would not go on the list. But it would be a positive action one way or the other on that particular issue by the Congress. That would be the only way it would not go on the list. If the Finance Committee had originally set it aside or had made other recommendations to the Senate, it would be a congressional action going to the President.

Mr. LONG. It seems to me it is only confusing the matter to talk about what the Ways and Means Committee does in a case like that. We are talking about what the House does and what the Senate does. If the House and Senate send a resolution without charitable contributions in it, I am asking the Senator if that would then mean that for the purposes of the Senator's bill the charitable contribution would remain the same as it is now, that it is in the law and that it proceeds to remain a part of the law, quite apart from the automatic termination or automatic renewal features of the bill?

Mr. GLENN. The only way that would not be included would be if the Finance Committee considered this and made their recommendation here that charitable contributions be cut out completely, and if the Senate concurred in that and if the House concurred in that, or if the Finance Committee said we should keep them in and the Senate and House overrode that and said, "No, they are doing such a lousy job, we will not keep them in."

It will take a positive act of Congress before that would not be in the bill going to the President.

Mr. LONG. Suppose the resolution got bogged down in so much controversy, somewhat like the bill we have here now, that it did not pass at all. What would happen then?

Mr. GLENN. I would say that the first thing that could happen when this was considered, if we had one that is as good as the one the Senator is using as an example this morning, is that it would probably be exempted and put on the exempt list in the first place. So it probably would not come up for this 10-year review.

But if in 10 years, if sometime during that cycle, this is not reauthorized, only then would it terminate. It seems to me that if our duties here are to be taken so frivolously that we do not pass this and do not make any continuing resolution if we got into a time bind, and we do not take the action required as Congress has required itself to do in many other tax areas—all we are doing is ex-

panding what is already done in many instances in the Finance Committee and the Senate by previous law anyway—only in that instance would any of these terminate if not on the exempt list and if we fail to take action. I have faith enough in the Senate and this Government to think we will take action on those as we do every year on authorizing and appropriating bills.

Mr. LONG. Mr. President, the Senator's answer is so lengthy that I do not understand it.

Let me try to get it down to something where we can have a categorical answer. Let us assume that when we talk about charitable contributions, somebody says, "Well, if a person is going to make the contribution to his own private foundation, that part of it should not be continued." That would be a lower priority, I would take it, than where someone gives to the church and fully separates himself from the money forever.

Then suppose with regard to the capital gains, they would say, "But not capital gains on timber."

And suppose because of controversial items like that which did not have as much support as some of the others in the tax expenditure area it got the Senate so completely bogged down in controversy that the resolution never did get down to the President, the Senate just could not agree on it. Some were willing to vote for one thing and some willing to vote for another, but by the time they got through the resolution never did get to the President and never was signed. Would that mean that the tax expenditures would terminate or not terminate?

Mr. GLENN. The Senator's question is longer than the answer I gave previously that he criticized me for.

Mr. LONG. Previously, the Senator's answer was so long I could not understand it. This time the answer can be shorter.

Mr. GLENN. The only way this would terminate would be if it had failed in running the gauntlet at any one of those steps I outlined a few moments ago. If it failed in the Finance Committee and the Senate backed up the Finance Committee, if the Senate on its own perhaps disregarded the Finance Committee recommendation and voted to terminate something like this, or just chose to take no action on it at all, then the Senator is right, it would terminate. But I would submit—the Senator wants my answer. Does he want it or not?

Mr. LONG. The Senator has answered.

Mr. GLENN. We do the same thing on appropriations every year and we act responsibly in this area. What do we do with defense? We come down to the wire on defense.

Mr. LONG. You finally answered it. That is what I am trying to get.

Mr. GLENN. The Senator is trying to lead this whole discussion as he has in the last couple of days, into areas which do not deal with this amendment he brings up, if we do not do things. I would say what if we do not appropriate money for defense next year? We are responsible enough that we do appropriate funds. This Government and this Congress are responsible enough to take action on this, too.

(Mrs. HUMPHREY assumed the chair.)

Mr. LONG. Madam President, if the Senator wants to say other things, I suggest he say them on the time for the Glenn amendment and not on the time against it.

Mr. GLENN. I will charge that 2 minutes against Senator MUSKIE's amendment.

Mr. LONG. It seems to me that the Senator has spent all of his time talking about the part of the bait that conceals the hook. We have heard no conversation about the hook that is inside the bait. That is what the fish are interested in, the hook, not the bait. He has spent all the time talking about the bait. If all he was looking at was the bait on the hook, he would not touch the bait. He would stay away from the bait because of the hook inside of it.

There is the hook. The Senator finally got around to telling us about the hook hidden inside the bait. The hook is that with regard to any one of these controversial items in the area of tax expenditures, unless we pass a bill by a majority vote through the Senate and the House and the President signs it into law, they all expire. That is the point. So if one wants to prevent—that is, if one wants the charitable contribution, the whole thing, to expire, all he wants to do is prevent us from sending a bill down to be signed by the President that would permit it to continue. Even if it does get down there and the President vetoes it, at that point, it would not take anything more than one-third of either House, plus one Senator or plus one House Member, and that would be the end of that particular deduction or credit until it is renewed by law.

The Senator ought to be able to answer that one categorically, yes or no.

Is that right or not?

Mr. GLENN. Will the Senator repeat his question?

Mr. LONG. It is very simple: Assuming that we were not able to pass a bill that said anything about a charitable contribution, that said anything about capital gains or these other controversial items, assuming that we were not able to pass it and that we were not able to enact it, would they all expire?

Mr. GLENN. If we fail to pass it, of course, they would expire. And if we fail to pass a defense appropriations bill, we do not have a Defense Department. If we fail to pass an appropriations bill for the civil service employees in Government, they fail also. But this Senate and this Congress and this Government are not going to be that irresponsible.

Mr. LONG. Well, Madam President, the Senator has answered the question. The point is that the people of this country are not worried about the procedure, they are worried about the tax. I do not know why we have had all this talk about the procedure when the fact is after we get through all this, if we do not pass an act of Congress, to be signed by the President, then the charitable contribution expires, the capital gains expires, a tax then goes on the interest on State and local bonds and all these other so-called tax expenditures. That is the hook that is hidden inside the bait. That is why, when people understand the hook is there, they are not going to touch the bait.

The bait sounds good, yes, until you find out about the hook. The hook is that——

Mr. GLENN. Will the Senator yield for a question?

Mr. LONG. Not at this point. The hook in all this is that if the Glenn amendment becomes law with regard to any controversial item or, for that matter, any good item that is in the tax expenditure area, they all expire. $140 billion worth of taxes goes on the American people unless we can pass a bill through Congress, signed by the President, that would permit these tax expenditures to continue. Now, that is why it should not be passed, that is why it ought to be studied at great length.

I yield the floor.

Mr. GLENN. Will the Senator yield for a question?

Mr. LONG. I am glad to yield the floor, but I yield time.

Mr. MUSKIE. I yield such time as the Senator requires.

Mr. GLENN. Is it not true that if the present tax bill we have on the floor does not pass, the investment tax credit goes back to 7 percent instead of its current temporary 10 percent?

Mr. LONG. After 1980.

Mr. GLENN. But it would revert, it would go back.

Mr. LONG. After 1980.

Mr. GLENN. If we do not do anything on this bill.

Mr. LONG. The 7 percent would not expire.

Mr. GLENN. Is it not also true that tax rates on individuals in this country would not be the same if we do not pass this tax bill? They would change?

Mr. LONG. There was a temporary extension that would require, yes.

Mr. GLENN. All right, then. The Senate is going to be responsible enough one way or the other to get this through and the Senate is going to be responsible enough to see that a review process on which taxes in this country would be changed will be passed. Right now, they are not reviewed. We lost, in 1971, $52 billion in Federal revenue to tax incentives and tax credits. I would probably support most of those tax incentives and tax credits, but right now, there is no process for reviewing them. They have gone up until, this year, we lose $124 billion. The figures from the Congressional Budget Office are that by 1983, 5 years from now, it will be $187 billion.

All this bill does, the only thing it does, is say we set up an orderly review process under the sunset bill to review these things, things that now are just not reviewed on any systematic, orderly basis.

Over on the expenditure side, on the appropriations side, we reviewed these, most items, on an annual two-track system, the authorization system of the committees and the appropriations system that we have here. So they are reviewed yearly. Yet we somehow enact a tax incentive and a tax credit and the

argument of the Senator is that it just goes on in perpetuity, forever, should never be disturbed, should never be reconsidered on any systematic basis. That just defies rationality.

All of these things that were brought up in the last couple of days about what this will do to veterans, what this will do to poor old women and things like that. I would not vote to do away with those tax credits but I think they certainly should fall under some review process. Perhaps in that review process, they would be increased instead of decreased because they are doing such a good job. Right now, there is no review process in existence. That is all this amendment does, try to set up a review process on a systematic basis. That is all it does.

Mr. LONG. When the Senator says that is all it does, he is talking about the bait that conceals the hook. Let us talk about something else it does that he did not mention when he said that.

In the event he is not able to pass a bill and have it signed by the President to say that any one of these so-called tax expenditures, be it the consideration that exists for disabled veterans, the consideration for the aged people, the consideration of a couple with regard to the interest on their home—any one of those things—they all expire. They all come to an end. You trigger about a $150 billion tax increase that has never existed before. That is a point he has not talked about. That is the hook inside the bait.

Mr. GLENN. Since we are on my time——

Mr. LONG. The Senator has spent less time talking about the hook inside the bait than talking about the bait, for some reason.

Mr. GLENN. Since the Senator is on my time——

Mr. LONG. Senator, I am not going to yield.

Mr. GLENN. We are on my time, Madam President.

Mr. LONG. Who has the floor, Madam President?

The PRESIDING OFFICER. The Senator from Maine has yielded to the Senator from Ohio.

Mr. LONG. I am sorry, I did not think I was talking on his time.

Mr. GLENN. I thought my reply was on his time a moment ago. That is why I want to find out what the time is now.

The PRESIDING OFFICER. The Senator from Maine has 86 minutes. The Senator from Louisiana has 57 minutes, and the Senator from Wyoming has 30.

Who yields time?

Mr. BAYH. Will the Senator from Louisiana yield me 1 minute to ask a question about procedure?

Mr. MELCHER. Will the Senator yield to me 2 minutes after that?

Mr. LONG. My side is short on time.

Mr. BAYH. I want to ask the chairman a question, as well as the Senator from Ohio and the Senator from Maine. I understand the time structure as far as the vote on the bigger issue before us is that it is likely that some of us who have amendments which are not nearly so consequential as those being debated here might have the opportunity, in a matter of 5 or 6 minutes, to present one of those issues for consideration of the Senate. I do not want to interfere if that is going to be contrary to the desires of those who are pursuing the more significant amendments.

Mr. MUSKIE. If I may reply to the Senator for myself, I do not plan to take very much time except later on, because some things have been said that I ought to respond to. The Senator from Ohio needs a couple of minutes right now.

As I understand the opposition to the Senate amendments, the Senator from Wyoming has 30 minutes and he argued very strongly for it on Saturday so he could make his case against the sunset amendments. When that is concluded, it would seem to me there is ample time to discuss some other amendments. But I think we will have to wait.

Mr. LONG. I should think we ought to yield some of our time to consider other amendments. I think that is proper.

Mr. MUSKIE. I would agree with that. I just want to be sure the Senator from Wyoming uses his time, because he argued so vigorously he felt we cut him off on Saturday that I told him I would be here to listen to him. He was given 30 minutes to do that. I hope also that, when he is finished, we would have not too much time, but a reasonable amount of time to respond to the arguments he makes. Aside from that, I think there ought to be some time for other amendments, germane amendments, if something comes up.

Mr. HANSEN. Madam President, if I may be permitted to speak, let me yield myself 1 minute to say that I have listened to the arguments by the Senator from Maine and the Senator from Ohio for some time.

I have 30 minutes that has been yielded to me and, if the Senator from Maine anticipates the compelling logic of my arguments to be sufficiently persuasive as to warrant his responding to them, he better save a little time on his own.

Mr. MUSKIE. That is all I am saying. I have always found the Senator's arguments so persuasive that we have not always agreed.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Madam President, I have been yielded 2 minutes to respond to the last comments by the Senator from Louisiana. He was making the point that we were taking the chance of decreasing veterans' benefits, homeowners' benefits, benefits for the elderly, on this.

While I do not agree with the likelihood of those things happening, our present means of operation, our present method of operation in the U.S. Senate and in the Congress, by not reviewing these things, that veterans and the elderly and the homeowners also run the more likelihood of their benefits not being increased, also because they rarely, if ever, get reviewed.

I would submit that a regular review process designed as a review, if we find those particular benefits are good and working well and doing the job for which they were intended, they, in fact, should be increased, and I would probably support that. Where they were at the proper level, they should probably remain there. Where they are not doing the job, they are terminated, sunsetted, in that respect they get back whatever that reduction in overall revenue was from that particular item that benefited a small group of people in this country for a particular purpose.

As a result of returning that to the Treasury, we wind up with all the people of this country having to pay less taxes than they do right now.

So this is not a tax increase bill, it is a tax decrease bill by making our tax system more efficient.

I yield back to the Senator from Maine.

Mr. MUSKIE. Madam President, I think, if the Senator from Wyoming is going to take his time——

Mr. HANSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. HANSEN. Madam President, I would like to yield 5 minlutes to the distinguished junior Senator from Utah.

UP AMENDMENT NO. 2031

(Purpose: To reinstate the tax treatment with respect to annuity contracts with reserves based on a segregated account as they existed prior to the issuance of Revenue Ruling 77–85. To reaffirm existing law as upheld by U.S. District Court against illegal IRS ruling 77–85, an IRS ruling which unilaterally overturned 70 consistent IRS rulings over a decade and remade tax law without the consent of Congress and in the fact of opposition of the Congress)

Mr. HATCH. Madam President, I have waited, I have yielded to other colleagues, and I have granted the floor. Frankly, my amendment is not all that profound. It is just very important because it rights a tremendous injustice.

So, with the 5 minutes of the distinguished Senator from Wyoming which was yielded to me, I call up my unprinted amendment which is at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH), for himself, Mr. SCHWEIKER, and Mr. TOWER, proposes an unprinted amendment numbered 2031.

The amendment is as follows:

At the end of the bill add the following new section:

SEC. .That in the case of annuity contracts which have related amounts based on a segregated asset account, the tax treatment of such contracts under section 61 of the Internal Revenue Code of 1954 (defining gross income) and section 801(g)(1)(B) of such Code (relating to contracts with reserves based on a segregated asset account) shall be determined—

(1) without regard to Revenue Ruling 77–85 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue ruling); and

(2) with full regard to the rules in effect before Revenue Ruling 77–85.

Mr. HATCH. Madam President, I do not intend to fully debate this amendment at this time. I am just calling it up.

I ask for the yeas and nays on my amendment at this time.

Mr. LONG. On whose time does that come?

Mr. HATCH. Senator HANSEN's time.

Mr. HANSEN addressed the Chair.

The PRESIDING OFFICER. The vote cannot come unless time is yielded for it.

Mr. HANSEN. Well, I am happy for the Senator to be able to bring up his amendment, Madam President. I do not know how many demands there may be upon me for time, for those who may share my convictions, but I wanted to yield 5 minutes to the Senator from Utah and then, after another 15 minutes for a rollcall, that is two-thirds of it, and I do not want to do that right now.

Mr. HATCH. Let me withdraw my request for the yeas and nays at this point, but let me say that——

Mr. NELSON. Would the Senator from Utah allow me to make a request?

Last Friday, now, and then about an hour ago, I asked if I could have 2 minutes on a nongermane matter, cleared on both sides. Senator MUSKIE said he would give me 2 minutes. I wonder if the Senator from Utah would permit me to make a unanimous-consent request respecting two areas in the national forest in my State that has been cleared by Senator HANSEN and both sides?

Mr. HATCH. If Senator HANSEN has no objection.

Mr. HANSEN. On whose time?

Mr. NELSON. Senator MUSKIE—I ask unanimous consent that 2 minutes not be taken out of anybody's time.

Mr. HANSEN. Fine.

The PRESIDING OFFICER. The time has to come——

Mr. HANSEN. I yield 1, if Senator MUSKIE yields 1.

Mr. MUSKIE. All right.

Mr. NELSON. I thank the Senator from Utah.

WILDERNESS LANDS, WISCONSIN

Mr. NELSON. Madam President, I ask unanimous consent that the Energy and Natural Resources Committee be discharged from further consideration of H.R. 12264, a bill to designate Blackjack Springs and Whisker Lake, two areas of the Nicolet National Forest as wilderness, and that the bill be placed before the Senate.

Let me say, the committee, Senator HANSEN and Senator JACKSON, approved. It has passed the House of Representatives.

Mr. METZENBAUM. Madam President, reserving th right to object, and I do not intend to object, if the Senator from Wisconsin will allow me, is there anything else in that bill, by amendment or otherwise, other than a matter of designating the two areas in Wisconsin?

Mr. NELSON. That is all. Two areas that have been heard on both sides, and by the House, embody just that national forest.

Mr. METZENBAUM. No amendments.

Mr. HANSEN. With the understanding that there is no amendment to it, it has been cleared on this side. I have no objection.

I reserve the remainder of my time.

Mr. NELSON. The Parliamentarian advises me he does not have a copy of the bill at hand. I guess I will just withhold until they get it.

Mr. HANSEN. Let it be noted it has been cleared on both sides.

Mr. NELSON. But we would still have to act on it and the Parliamentarian does not have a copy of the bill at hand. That is my fault.

Could I just yield back and get 15 seconds later on?

Mr. HANSEN. Yes.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATCH. Has my amendment been read?

The PRESIDING OFFICER. The amendment has been reported.

Mr. HATCH. It has been reported.

Madam President, this amendment would stop the IRS from what I consider to be officious conduct.

After giving 70 rulings in the investment annuity area and having whole industries rely upon what has been done, they turn right around admitting they do not understand the implications of all they are doing and disrupt the whole industry.

This amendment stops them from doing that without the consent of Congress.

I think, from that standpoint, it is a very important amendment.

I will not ask for the yeas and nays at this time; I do not intend to ask for the yeas and nays. But I want this amendment up, to have it on the record if cloture is not invoked, then I want to be able to debate it, which probably is not germane, before the next cloture vote occurs.

HATCH AMENDMENT TO FINANCE COMMITTEE TAX BILL (INVESTMENT ANNUITY)

Madam President, I wish to present a specific matter that is important to the authority and integrity of the United States Senate and to the laws of this country. It is a matter of tax law, but, more importantly, also a matter of who makes the law. The Internal Revenue Service has in a specific instance usurped that authority in the face of opposition of the United States Senate, a United States District Court decision and the expressed will of the House Committee on Ways and Means.

Last year the United States Senate clearly indicated by a vote of 57–26 that it did not intend for the IRS to change tax policy in this specific matter without consultation with the Congress. The IRS has demonstrated its contempt for the Senate by proceeding to remake tax laws without consulting with us and in the face of our opposition. They have called our bluff and are betting that Senators are too preoccupied with numerous narrow constituency interests to defend the authority and integrity of the Senate itself.

The specific matter at hand is one that pertains to the issuance of revenue ruling 77–85 by the IRS on March 9, 1977. This ruling reversed over 70 consistent public and private rulings that cover a timespan of more than a decade. These rulings pertain to an innovative form of variable annuity called the investment annuity.

On April 29, 1977, the United States Senate expressed its will that "this ruling be delayed for a period of 1 year to give Congress—which should make the change if a change is to be made—an opportunity to check into this matter and see what's involved."

When the expression of the Senate's will proved insufficient to deter the IRS' immediate effectuation of Revenue Ruling 77–85, the Treasury and IRS were sued for arbitrary, capricious, and illegal acts. On November 9, 1977, the United States District Court, District of Columbia, declared the IRS action in issuing Revenue Ruling 77–85 to be illegal, unreasonable, ignorant of the law, and that the IRS had usurped the powers of Congress.

When this very strong expression of the court's will also proved insufficient to deter the IRS and Treasury from continuing their illegal acts, the House Committee on Ways and Means expressed its will on April 17, 1978, that the tax treatment of the investment annuity must be reinstated to that which had existed prior to the IRS issuance of its illegal Revenue Ruling 77–85.

All these expressions of the will of Congress and the court have been, and continue to be, ignored by the Treasury and the IRS simply because Congress generally, and the Senate specifically, are so lax in insisting that it is Congress that writes the laws and not an unelected and unaccountable bureaucracy.

I will retrace some of the factual steps of this sordid affair—an affair that shows the arrogance with which bureaucrats remade the law. I retrace these steps because they reveal the way Congress laws are twisted, broken, and remade by bureaucrats who are apparently accountable to no one.

Such acts in this case have not only strangled an innovative industry to the detriment of our Nation's citizens' well-being. They also constitute a documentable case showing the impunity with which bureaucrats thumb their noses at Congress and the courts, and provide misleading, unfair, and incomplete information to the Congress. We have here a case in which the Treasury either attempted to deliberately mislead the Congress or acted in ignorance of the law—neither of which can be acceptable nor tolerable to the Senate.

Congress must certainly insist upon competence, completeness, and fairness in the dealings of the IRS and the Treasury before Congress, as well as in their administering the laws of our land on behalf of our citizens.

In 1962 Congress revised the Internal Revenue Code to provide for the "segregated accounts" of life insurers in the underwriting of variable annuities. The law is clear, it has not been changed in any relevant way to this very date.

In 1963 following several years of extensive study, a new life insurer was formed to underwrite variable annuities

that delegated (within prescribed limits set by the insurer) the investment management of its segregated accounts to each policyowner. This was an appropriate, legal, and reasonable step to provide a better annuity for the American public. For brand and corporate identification purposes this innovative variable annuity later became known as the investment annuity and is often referred to in trade jargon as the "wrap-around annuity."

In 1963 appropriate tax rulings for the policyowner and the taxpayer were requested of the National Office of the Internal Revenue Service. The Internal Revenue Service recognized from the start that this innovative variable annuity involved the delegation of broadly limited investment management to the policyholder.

In 1965, after 2 years of intensive study by all relevant departments of the IRS, including the Chief Counsel's office, the IRS insisted that the variable annuity was fully in conformity with the law and issued clear rulings to that effect. From that point forward until 1976, over a full decade, the IRS consistently reaffirmed its original, basic decision over 70 times in both public and private rulings that covered a wide variety of applications of this variable annuity in different markets and for different groups and individuals.

In 1976 the IRS stopped issuing favorable rulings and the following events ensued:

1976: Naturally, being concerned by the stoppage of favorable rulings to individuals and other insurers who were attracted to this mode of annuity underwriting, the industry started making inquiries of the IRS in the late spring of 1976. The IRS responded that they were reviewing their position but would not state why or how; nor would they meet with members of the industry to discuss their considerations. Finally, due to external pressure, including inquiries from Members of Congress, the IRS called for a meeting of interested parties in late September of 1976 in order that these invitees might listen to the IRS articulate its position as it was then being formulated over the past several months.

At a standing-room-only meeting at the IRS offices the IRS spokesman proceeded to describe their views. After only perhaps 3 to 5 minutes, the assembled industry professionals thought they might be in the wrong room because the spokesman made no sense at all. Finally, an industry representative interrupted the spokesman and pointed out that, after all, the so-called investment annuity was only a variable annuity and that the IRS had insisted upon this fact in 1965 after 2 years of very thorough study and had issued over 70 rulings to that effect since 1965. The IRS spokesman's response was: "What's a variable annuity? I'm not familiar with variable annuities!" The assembled industry professionals almost fell off their chairs from such a shocking display of IRS unconscionable ignorance of the subject matter.

The IRS senior officials recovered their composure and asked the industry attorneys to prepare a "statement of the facts" albeit the IRS had had full facts on the so-called investment annuity from 1963, and had issued over 70 public and private rulings thereafter. During that 13-year period (1963–1976) neither the facts nor the relevant law had changed one iota.

The "statement of facts" was prepared in a few days and delivered to the IRS. Such facts were summarily ignored as reflected by the following events:

In late October 1976 (just a relatively few days after the 1976 Revenue Act had been completed), the IRS issued a news release stating that they were reconsidering their position on investment annuities and requested interested parties to supply responses to three questions that the IRS considered to be significantly relevant to their reconsideration.

All insurers then offering the investment annuity combined forces to furnish one complete and thorough brief to save the Government and the industry both time and money. Every question posed by the IRS was fully answered and clearly showed the legal, actuarial and industry practice correctness and appropriateness of the IRS historic position established in 1965 and reaffirmed over 70 times by subsequent IRS public and private rulings. Even the former Chief Actuary of the Internal Revenue Service certified to the correctness of relevant portions of the industry brief.

The IRS never permitted any discussions with the industry as to its position on the substance and correctness of the industry brief.

The industry was informed in early March 1977 that the IRS was prepared to issue a revenue ruling that reversed their consistent position since 1965.

At about this time the chairman of one of the insurers involved received in the mail from an anonymous source a copy of an internal Treasury Department memorandum addressed to the Secretary of the Treasury stating that the Treasury was drafting a ruling reversal on the investment annuity. This memorandum was subsequently established as being authentic.

Included in the memorandum that was seeking the Secretary's approval was a brief description of the investment annuity upon which the Secretary must rely. This description was grossly at variance with the facts and omitted well-known, key elements.

The Treasury memorandum also stated that the description of the investment annuity (as included in the said memorandum), had been confirmed by the insurer of which this individual was the chairman. This individual has stated that such confirmation is a complete lie. The insurer immediately disclosed to the Treasury that it had received this memorandum and protested its gross distortion of relevant information in the most forceful manner. The insurer's very legitimate complaint was shrugged off by the Treasury. I ask unanimous consent to include these relevant documents in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HATCH. Mr. President, concurrently with these bizarre events many Congressmen were informed by concerned insurers, agents, and policyholders of the irrational and highly questionable acts of the Internal Revenue Service.

As a result of this broad-based protest many Congressmen contacted the IRS and Treasury and asked for an explanation because after over a decade and over 70 IRS rulings, the investment annuity had become imbued with the force of law. Members of Congress expressed the view that Congress should be consulted before the IRS unilaterally changed tax law.

Two of these letters were introduced into the CONGRESSIONAL RECORD last year when the Senate voted to overturn the IRS ruling by a vote of 57 to 26. Shortly before the IRS issuance of revenue ruling 77–85, Senators CURTIS and TOWER wrote a strong letter to Secretary Blumenthal "registering" their "strong opposition" to the possible reversal of the IRS' long-standing ruling based upon their "further strong position that when such rulings are reaffirmed over such a lengthy period of time as in excess of a decade they become imbued with the force of law and must not be changed except for the expressed direction of Congress pursuant to the legislative process." This strong and wise counsel was ignored by the Treasury.

Again, shortly after Revenue Ruling 77–85 was issued but before it was published, Chairman LONG of the Senate Finance Committee together with Senators RIBICOFF, CURTIS, HANSEN, and BENTSEN of that committee expressed their "urgent request" of the Treasury, that the "IRS defer publication and application of Revenue Ruling 77–85 for 90 days or until Congress could consider a proposal to postpone application of such ruling pending the IRS's completion of its studies of annuities and Congress has had the opportunity to consider this area." This strong letter also points out that "sound tax administration should avoid the result of causing irreparable harm to the investment annuity industry, unless the law is clear and then certainly not prior to the time that the Revenue Service has a firm position on the law governing alternative areas that offer the affected taxpayers some chance of surviving this administrative change of longstanding IRS rulings." This strong, wise, and prophetic letter was ignored by the Treasury.

As another clear indication of Senators' recognition of the IRS's gross abuse of its unfettered, big government power against helpless citizens, Senators GRAVEL, THURMOND, and MATSUNAGA introduced S. 1939 on July 27, 1977, that was designed to remedy a problem in the administration of our tax laws which has vexed taxpayers for many years—the periodic revision of longstanding interpretations of the tax law that can produce drastic consequences.

The CONGRESSIONAL RECORD statement accompanying that bill includes a description of the investment annuity matter as the classic "chamber of horrors"

example of IRS acts. The statement properly points out also that * * * "rulings of longstanding are relied on by taxpayers and the Service alike, and by virtue of their age take on the color of law."

These Senators clearly and properly stated that what was needed was "a much needed correction in the balance between the power of the Government and the protection of the people" and that "such correction would well help reconfirm that there is justice in America."

When informed in early March 1977 that the Treasury had approved the IRS' reversal of tax policy, one insurer, the one that had developed this form of annuity, was able to get an agreement that the IRS meet with them to discuss other forms of the variable annuity to which they could convert.

At the subsequent meeting with the IRS the insurer was shocked to learn that not only was the so-called investment annuity form of variable annuity under attack, but the IRS was also considering similar action against most other forms of variable annuities—accounting in total for upward of 70 percent of all variable annuities being sold in the United States.

Pursuant to the full disclosure requirements to its shareholders, the insurer prepared a news release reflecting these incredulous events. The news release was first shown to the IRS to be certain that the facts stated therein were accurate. While the IRS was not pleased with such a pronouncement, it did find the news release to be an accurate reflection of its statements.

When the news release was subsequently presented to the Treasury for its clearance of the facts, the Treasury violently objected by stating that the IRS views on these variable annuities were confidential and that a public disclosure of this information would result in the denial to the insurer of the good offices of the Treasury in this matter. A revised news release acceptable to the Treasury and acceptable to the insurer was then issued.

It is appropriate to observe that virtually every other variable annuity being offered to the public by any other insurer has been offered without any IRS rulings whatsoever in view of the fact that the law was so clear. The investment annuity is the only one that had IRS rulings—and over 70 of them stretched out over more than a decade—and it was the so-called investment annuity that was being killed, and no disclosure was permitted concerning the IRS' views on the others.

During the meetings with the IRS that led to the insurer's news release, the insurer inquired of the IRS specialists dealing with this specific annuity matter as to just how the annuity benefits would be taxed to the policyowner—after benefits commenced—under the ruling reversal procedures the IRS was imposing. The IRS' presumed expert, after some hestitation and profound silence, responded with a counter question—"tell me again, how do these things work?" Here we would seem to have a case of the IRS destroying a product and an industry on the basis of subject-matter ignorance plus nothing but some vague notions about "tax reform."

The next subject on the IRS agenda at those meetings was the so-called "grandfathering" of existing policyowners. The IRS was insisting that "grandfathering" would not be permitted. Here, in this instance, tens of thousands of policyholders had purchased investment annuities based upon the cumulative power of over 70 consistent IRS public and private rulings, and the IRS wanted to deny these policyowners their rights under the contracts they had purchased. This would have been a legal nightmare that was totally inappropriate.

The IRS kept insisting that the insurer force existing policyholders to convert their investment annuities to some other form of variable annuity that was "acceptable" to them. And, when it was pointed out to the IRS by the insurer that the IRS could not assure the insurer as to what other form of viable variable annuities would be acceptable to them—the IRS told the insurer that that was their problem, not the IRS'. What arrogance! Obviously, the IRS thinks that it is unaccountable to anyone. We seem to have here the case of another rogue agency out of control.

Finally, in desperation for the rights of the policyholders, the insurer wound up in a table-thumping Saturday morning session in the Treasury with IRS representatives present, where it was finally agreed by the Assistant Secretary for Tax Policy that the "grandfathering" of existing policyholders would be permitted. To this day the Treasury and the IRS keep telling people that they did the insurer and the industry a great favor by their magnanimous act in "grandfathering." But the IRS has not been deterred by the U.S. Senate or, according to the U.S. District Court, by tax law itself from illegally wiping out an innovative industry created in the public's interest.

Soon after the Saturday morning session with the Treasury, the insurer's attorneys had another meeting with the Treasury to pursue another relevant position relating to a recently issued Supreme Court decision that should persuade the Treasury to hold off on issuing a ruling reversal. This proper request was equally unsuccessful, but the Treasury indicated that the investment annuity was but the first of the variable annuities slated to be wiped out, with others following in a year or so. Obviously, all of this arrogant action was expected to take place via bureaucratic fiat and salami-slicing tactics without consulting Congress.

On March 9, 1977, the Internal Revenue Service issued revenue rule 77-85 that wiped out the investment annuity industry.

Shortly after the issuance of revenue ruling 77-85, the 1977 Tax Reduction and Simplification Act was debated by the Senate. The late Senator Jim Allen of Alabama, a member of the Judiciary Committee, upon becoming aware of this grave injustice perpetrated by the IRS and the Treasury, introduced an amendment to the tax bill that would defer the effective date of the revenue ruling for 1 year in order to give Congress the opportunity to consider the matter. An entirely reasonable proposition. Many Senators supported Mr. Allen on the floor of the Senate and some of the letters by Senators to the Treasury protesting its actions, such as those cited above from Senators LONG, CURTIS, and others were inserted into the CONGRESSIONAL RECORD.

The Senate vote was a very strong vote of 57 to 26 against the IRS on the investment annuity matter. Naturally, the matter was then included in the items for consideration by the conference committee. There, as the result of Treasury lobbying and misstatements of fact—such as claiming that the Service had reversed its ruling on the prior October 20, 1976, and that the insurers had continued selling without notifying purchasers, and that the Senate's entirely fair "one-year deferral" was a "fire sale arrangement"—the investment annuity amendment was "traded away." In actuality, the only "fire sale" was the disastrous effect on investment annuity employees, agents, policyowners, and shareholders.

After being traded away in conference committee, one insurer thereupon sued the Treasury and the Internal Revenue Service for arbitrary, capricious, and illegal acts. The resulting U.S. District Court, District of Columbia, decision issued on November 9, 1977, after many months of thorough court deliberation, is as set forth below. The court did not just rule against the IRS, it denounced the IRS.

The U.S. District Court, District of Columbia, declared in its memorandum opinion on this matter as follows:

> Revenue ruling 77-85 is an erroneous and unreasonable interpretation of the Internal Revenue Code, and, in view of this fact that substantial deference to the Agency's expertise is not warranted by the facts of the case, the court will declare the ruling to be unlawful and beyond the Service's statutory authority.
>
> Revenue ruling 77-85 is unlawful and beyond the service's statutory authority in that its determination that the policyowner, rather than the issuing life insurance company, is the owner of the investment annuity custodial account assets is erroneous and unreasonable.
>
> The service's decision in revenue ruling 77-85 was not contemporaneous with the enactment of section 801(g)(1)(B), does not reflect a long-standing agency position, and is inconsistent with earlier pronouncements and even one subsequent announcement, of the agency. Accordingly, substantial deference to the service's expertise is unwarranted in the instant case.
>
> Substantial deference to the service's expertise is also unwarranted because the service was improperly motivated by considerations of tax reform when it issued revenue ruling 77-85.

These court declarations are remarkable indeed. In plain language, the court's strong decision not only declared the Treasury and the IRS' acts as being illegal, unreasonable, and beyond their statutory authority; it has also declared that such actions were improperly motivated by considerations of tax reform which is Congress business, and that substantial deference to the Service's expertise is unwarranted. In plain lan-

guage, the court declared that the IRS and the Treasury circumvented the tax law deliberately and that their claimed perspective of the tax law is absurd. The court is referring to the actions of the regulatory authorities charged with the responsibility of administering the tax laws of Congress.

Permit me now to comment upon certain relevant and revealing events that took place during the court proceedings.

Every conceivable and inconceivable argument was presented to the court by the IRS and Treasury to defend its position. These arguments ranged from trying to cite "alleged abuses" of the law by the insurer by citing newspaper advertisements that stressed the investment annuities' tax deferral aspects—which is true of all annuities and cash value life insurance, and theories of "grantor trusts" that they claimed supported the IRS position, but which the judge actually found to support the insurer's position. The judge even inquired of the defendants to tell him more about alleged abuses because he was interested, and the defendants backed off.

In the middle of the arguments on the merits of the IRS' position the insurer discovered that the IRS had just issued a ruling to a competing insurer that permitted said competitor to enter the very same investment annuity business that the IRS had shut all other insurers out of. Upon being informed of this incredulous IRS action, the judge sent a U.S. Marshal to the Commissioner of Internal Revenue to immediately present his demand for a full explanation. The explanation provided was that the IRS had made a "procedural error" and of course, the judge did not buy that.

On two different occasions the judge requested two different Justice Department attorneys arguing this case for their IRS and Treasury client to "take off their hats" as advocates for their client and to stand before the judge as an officer of the court and to state their views as to the merits of their clients' positions. Both attorneys could not respond. The judge repeatedly stated to the defendants' lawyers that as an administrative body the IRS and Treasury had the duty to be fair, to be fair, to be fair. Fairness to the law-abiding victim in this matter was never in evidence.

With the issuance of the court's clear and unequivocal decision, the court also stated that it was its "confident assumption that the defendants will proceed appropriately, in good faith, and in a manner fully consistent with the declaratory relief granted herein without the coercion of a court order." The IRS and Treasury flatly rejected such a "confident assumption" and stated that they would "appeal", and if they should win their appeal they would tax retroactively any interim investment annuity purchaser. This "appeal" killed any possibility of renewing sales in spite of the strong court victory.

As a direct result of this bureaucratic "dragging out" process that enjoys no bounds upon time and money since both come from the public trough, the English majority owners of the suing insurer ran up the white flag, accepted a liquidation value bid for the insurance company "shell" and headed back to England shaking their heads at the way the IRS and Treasury run roughshod over the American people, the courts, and the U.S. Senate itself.

As a result of this gross travesty of justice, over 4,500 agents and employees of just one insurer lost their ability to make a living from the company and had to start over elsewhere. The insurer's shareholders took a staggering loss of over $20 million directly attributed to these court-adjudged ignorant, illegal, and unreasonable actions of the IRS and Treasury. Other insurers, of course, suffered comparable tragedies.

It can be stated in all fairness that following the court's decision the Justice Department utilized its good offices to set up meetings with the IRS to see if any accommodation could be worked out with the IRS to permit the insurer who won the suit to weather the appeal hiatus. These meetings failed because the IRS and Treasury would have none of it. They knew full well that the insurer would be forced to its knees and liquidated if no accommodation was reached. And they thus achieved their goal by the brutal exercise of power unconstrained by law.

With that concluding travesty of regulatory fairness, the insurance company was sold. And the shareholders thereof suffered over a $20 million loss directly attributable to the illegal, unreasonable, unfair acts of the IRS and Treasury. But these irregularities of the IRS and Treasury do not stop there. Permit me to continue.

In its acts to protect the interests of their policyholders, the innovative insurer arranged that the bulk of its $380,900,000 of variable annuity reserves would be reinsured with another insurer. Again, an irriational, unaccountable act of the IRS transpired that cost the insurer $2 million.

This arose because the reinsurance treaty that was consummated between the insurer and another company was subject to a separate IRS ruling on that specific matter. There was nothing unusual about the structure of the reinsurance arrangement. It was similar to many others on many occasions by many other insurers over many years. However, in this instance the IRS refused to provide the relevant favorable ruling, because it stated that it was reconsidering its historic position. Thus, the expiration date between the insurers for the required IRS clearance passed without the favorable ruling at a cost to the insurer of $2 million. The IRS has not yet made its decision on these matters, and apparently this delay is the result of internal disagreements over its new position within both the IRS and Treasury. And yet, this bureaucratic refusal to honor old rules while they rethink possible new positions has cost this victimized insurer $2 million.

Following the strong court victory in late 1977 that was frustrated by IRS and Treasury intrasigence, the matter was taken to the House of Representatives where the Ways and Means Committee was considering the administration's proposals in regards to the 1978 tax bill. Included in the Treasury proposals was a section entitled "tax shelter annuities" that, in short, proposed to Congress that the laws should be revised to treat all annuities sold to the general public in the same way that the IRS had ruled on the investment annuity. In other words, change the law such that it would support the IRS' illegal position.

Competent authorities from throughout the annuity industry testified before the Ways and Means Committee that the Treasury proposal was irrational, uninformed, and that the Treasury's descriptions were misleading. Some of the Treasury's errors, half-truths, or misrepresentations are as follows:

In no way can any annuity fit the defined term of "tax shelter" and the term was used by the treasury solely for obvious pejorative purposes.

The treasury's proposals make it seem like huge revenues are lost to the Government via annuities when, in fact, the Treasury's own revenue estimates show that only a $12 million revenue gain from their proposed taxation would accrue to the Government from the entire annuity industry in 1979, gradually increasing to $80 million in 1983. The investment annuity segment of that total can be but a small fraction thereof. It can be stated also that even the $12 million entire annuity industry figure is obviously specious, because taxes are merely deferred under annuities and are recaptured with interest when benefits are ultimately paid out. Common sense tells us that counting as a loss today that which will be repaid is hardly a reasonable measurement of the loss to the Government, particularly when the repayment includes an interest element.

In regards to the Treasury's use of the pejorative term "tax shelter" and the relative cost to the Government of tax deferral under annuities, including the investment annuity, the respected accounting firm of Coopers & Lybrand was requested to provide their professional analysis of the subject. In that regard the accounting firm was supplied with a relevant segment of Professor Stanley Surrey's book entitled, Pathways To Tax Reform, wherein he stipulates that an appropriate way to compensate the Government for tax deferral would be to charge interest thereon. I ask unanimous consent to include in the record a report from the respected accounting firm of Coopers & Lybrand that deals with this particular question.

In the Cooper & Lybrand report appropriate tables clearly show that annuity taxes when deferred are recaptured by the Government with interest. This report refers to Professor Stanley Surrey. Harvard law professor and former Assistant Secretary for Tax Policy during the Kennedy and Johnson administrations. Much of the so-called "tax expenditures" theories now practiced by our Government reflect his personal thinking. Mr. Surrey's book entitled "Pathways to Tax Reform" included a chapter on how the Government could be appropriately paid for granting tax deferral. The reference in the Coopers & Lybrand report are to Mr. Surrey's recommendations along that line. I cite the brief conclusions of the Coopers & Lybrand report.

"In conclusion it is evident that:

"1. Deferred annuities (including the investment annuity) lack a 'prime ingredient of tax shelters' namely, 'an interest-free loan from the Government in the amount of tax deferred.'

"2. The existing mode of interest annuity taxation results in an interest element being charged to that taxpayer as proposed by Mr. Surrey;

"3. In fact, under most circumstances the existing mode of annuity taxation provides more tax dollars for the Government than Mr. Surrey's proposals;

"4. The existing mode of deferred annuity taxation is similar to the Governments own 'seres E' bond (unless an election is made to be taxed currently);

"5. Because of the foregoing it is quite inappropriate to lump deferred annuities (including the investment annuity) in with so-called 'tax shelters.' "

Since Professor Stanley's "corrective measure" has always existed under all annuities, including the investment annuity, how can it possibly be claimed that an annuity is a tax shelter in the first place? It certainly cannot.

The Treasury's presentations also attempted to convince the Congress that an annuity is little more than a fund that the policyholder has free access to. Competent authorities have always repected that notion, as has Congress, over the entire history of the Internal Revenue Code. Many court cases have universally shot down the erroneous "access to fund theory" including the very suit cited on page 137 of the Treasury's report. This was a case that the Treasury lost on this very point. It is truly incredible that the Treasury report would have Congress believe that the "access to fund theory" is part of the present law when (A) the Treasury must know full well that it is not and (B) the courts have stated vigorously and repeatedly that this theory is foreign to law. Such a failure to communicate accurately and fully to Congress appears as a very serious disregard of responsibility and fairness. It shows utter contempt for the U.S. Congress on the part of bureaucrats who have no outside check imposed on their power.

The Treasury's stated "reasons for change" of annuity taxation are bottomed on totally erroneous perceptions plus an illogical and erroneous attack on the value of annuities. For example:

It is factually incorrect for the Treasury to state that "traditionally, most annuity contracts purchased were immediate annuities" (i.e. those starting benefits immediately as contrasted with those annuities that defer benefits until some future date). Clear facts easily gleaned from the life insurance fact book show this to be erroneous. The Treasury's statements are obviously meant to infer that deferred annuities are a new phenomenon hardly contemplated under the law. Such a perspective is totally at variance with the facts.

They also stated that annuities were O.K. when interest rates were low and insurance company expense charges high, but now when interest rates are high and insurers have lowered their expense charges, the annuity demon is to be exorcised. Such convoluted, myopic reasoning, leaves much to be desired and appears contrary to the public interest.

The Treasury's report is filled with excerpts from advertising and literature that the Treasury claims prove deferred annuities are "tax shelters" marketed by "promoters." First, "advertising puffery" does not make the law. Second, their frequent use of perjorative terms make the Treasury itself the "promoter" of its unsound, half-baked proposals. Clearly, the Treasury should spend more time learning and understanding existing law rather than clipping advertisements and literature. What the Treasury's academics do not comprehend in their ivory tower is that in selling a product in a competitive market, the marketing thrust is to emphasize differences and advantages. General Motors does not waste a lot of money advertising that its cars provide transportation. Nor do insurance companies and their agencies waste their time and money advertising what the prospect already knows, namely, that annuities provide benefits in life's later years. You advertise and market legitimate features that the prospect would want to know about, and you attempt to show him why he needs your product now. What's wrong with that? Obviously, too, you create advertising to support and mortivate the salesman and make the product attractive to the buyer. After all, annuity sales must not only compete among insurance companies, but against other forms of savings, and even more importantly, against other ways the prospect could use his money.

It is particularly revealing of the Treasury's lack of candor and fairness with Congress to note that the portion of the Treasury's report to Congress dealing with the investment annuity contains no mention that the court, after thorough consideration, declared the Treasury and the IRS actions in issuing revenue ruling 77-85 unreasonable, beyond their statutory authority and that deference to the Treasury's and IRS's expertise on this matter is unwarranted. The Treasury's sole reference to the court decision stated that, if sustained, it would permit taxpayers active control over their investment portfolios as though the annuity never had been purchased. This incredulous statement is exactly what the court had just stated was not the case, what clear law shows is not the case, and what the IRS had insisted over 70 times during an 11-year period was not the case. Clearly, such deliberate misrepresentation to Congress of the documentable facts is absolutely intolerabe.

Nor did the Treaury's report provide any mention that the IRS had consistently reaffirmed their previous position on the investment annuity as being merely a variable annuity for well over a decade and over 70 rulings. Clearly, the Treasury report wanted the Congress to perceive the investment annuity as some "device promoted for use by high income taxpayers." The investment annuity is but a more useful, flexible annuity to the advantage of the entire American public, and its tax treatment is no better nor worse than any other annuity. The total omission in the report of the prior, substantive, affirmative history of the investment annuity is clearly designed to withhold relevant facts from Congress and again reflects the lack of completeness and fairness in the Treasury's report and a contempt for Congress. The crux of the Treasury's report seems to be not the law but the "tax reform" argument that "deferred annuities" should be taxed because "they are now virtually the only remaining, widely availabe investment vehice that enables investors to defer taxes on regular recurring investment income." The report also argues that since no changes have been made in the way investment income is taxed under annuities for years, it's therefore deemed to be outmoded law and in need of change. In other words, anything sound and workable has to be changed.

Following the Treasury's presentation of its proposals to Congress and in contemplation of Ways and Means Committee consideration of the Treasury's proposals on "annuities," the ranking Republican on the Ways and Means Committee and the ranking Democrat on that committee after the chairman, together with others, cosponsored H.R. 12173 to correct the IRS' grave abuse of justice. H.R. 12173 merely reinstated the IRS rulings on these variable annuities as said rulings existed prior to the IRS' issuance of the illegal revenue ruling 77-85. The CONGRESSIONAL RECORD remarks relating to H.R. 12173 stated that this matter has "resulted in severe inequities and injustice, and the Government should not deal with its citizens in such a high-handed manner."

When the Ways and Means Committee proceeded with its "markup" on the annuity proposals of the Treasury, the Treasury's proposals were completely rejected by that committee. Additionally, the committee voted, by the strong vote of 22 to 14, to restore the investment annuity to its proper place under the law as it existed prior to the issuance of the IRS illegal revenue ruling 77-85. I ask unanimous consent that a copy of H.R. 12173 be included in the RECORD, as it is this amendment that I am proposing the Senate adopt.

I believe the Senate should also know that during the debate on annuities within the House Ways and Means Committee "markup", the Treasury representatives again displayed gross ignorance of the subject matter by making the following factual errors:

The Treasury stated that annuities can be compared with certificates of deposit because annuities have no mortality risk. This statement is absolutely incorrect. Annuities involve very serious mortality risks that exist from the moment the annuity is purchased. And, the younger the purchaser, the greater can be the risk. Anyone, who knows anything about annuities, knows that this is so. The Treasury's statement is not only wrong it is totally misleading, because it incorrectly compares apples and oranges (annuities and certificates)—they are not the same. To claim that they are the same misleads Congressmen who are not experts on this subject.

The Treasury stated that the investment annuity is more like a "grantor trust." Such a "grantor trust" likeness is totally incorrect, and its use by the Treasury in the markup session is grossly misleading. The IRS attempted to proceed on that erroneous theory early in the convoluted reconsideration of investment annuity taxation. As a matter of fact, in reaching its conclusions, the court was guided by the seminal case of Helvering against Clifford and concluded that "in contrast to the respondent in Clifford, investment annuity policyholders have manifestly effected a 'substantial change' in their economic positions." Thus, the court concluded that the very "grantor trust" theory put forth by the Treasury and the IRS does in fact support the conclusion that the investment annuity is not a grantor trust, and is in fact a variable annuity just as the IRS had insisted upon for over a decade and for over 70 rulings prior to its unreasonable, illegal act in issuing revenue ruling 77-85. Clearly, such obvious stupidity of the IRS is unconsicionable, but when the Treasury tries to force on Congress as fact that which the court has so clearly just shot down in a suit over that very matter, the Treasury's actions become intolerable and an insult to the integrity of the U.S. Congress.

Due to procedural constraints that arose within the Ways and Means Committee in its resolution of the impasse over proposed capital gains taxation, and which was unrelated to the investment annuity matter, the investment annuity amendment was not included in H.R. 13511 as reported out of the committee to the House of Representatives.

Although Senate Finance Committee members strongly supported the investment annuity in last year's Senate action, this time representatives of the investment annuity industry were denied opportunity to present oral testimony

because of the crush of other items. Thus, written testimony has been filed by the Investment Annuities Institute, with copies supplied to all other Senate Finance Committee members.

During the Senate Finance Committee markup the investment annuity subject was brought up for consideration, but it was felt that since the originating insurer had been sold and its parent liquidated—as a direct result of illegal, unreasonable, and ignorant IRS acts—the IRS had already triumphed over the law and the Senate. Due to the administration's opposition to its bill, the committee apparently felt that it should avoid an issue that the administration would try and demagog as "narrow."

The U.S. District Court decision and the Coopers & Lybrand report show that the IRS ruling on the investment annuity is illegal, unreasonable, ignorant, and beyond their statutory authority.

The whole challenge to the investment annuity shows what happens when a small group of "reformers" gets hold of a major Government agency and believes that they have the moral right to overturn tax law and to remake it in the image of their personal views.

What is at stake here is not just a matter of tax law. What is at stake is the authority and integrity of the Finance Committee and the U.S. Senate. If we allow the IRS bureaucrats to ride roughshod over us and over the American people just because we are too busy with constituency interests to stand up for general principles, we will continue to allow the power of the people as represented in the Congress to be usurped by unelected, arrogant bureaucrats. Whoever comes along who believes he has a divine right to remake the Nation to reflect his personal view of a reformed society will have a free hand. This is regulatory anarchy.

As stated by the Ways and Means Committee sponsors of the amendment I propose to the Senate, such precipitous action by the IRS in this matter has resulted in severe inequities and injustice, and the Government should not deal with its citizens in such a high-handed manner. I urge each Senator to vote favorably on this amendment.

I also request and urge that the Senate condemn these documented acts perpetrated by the Treasury and IRS and to provide for an appropriate oversight investigation, with subpena powers to all parties concerned, to assess the means by which such acts are tolerated and pursued. Such acts are not just inconsistent with certainty in the law. They are also inconsistent with a free society.

Before concluding my comments permit me to state emphatically that this matter is certainly not a "narrow" one in any sense of that word. The authority and integrity of the Senate is at stake—a most important matter that commands our immediate and resolute action.

Further, the true victims of these arrogant, unreasonable, and ignorant IRS and Treasury actions are our Nation's citizens who are being illegally denied one of the most innovative and useful annuities ever devised in the public interest—and certainly, that is no narrow matter.

It is tragically true that the company that had the foresightedness, ability, and guts to pioneer from scratch, and to dare create a better free enterprise means for our citizens to save and invest for financial independence in life's later years, has been strangled to death before our own eyes by outrageous bureaucratic lawlessness.

Its annuity did not die, however, because other life insurers can offer it; and many want to, and will, upon the restoration of the investment annuity to its rightful place under the law.

EXHIBIT 1

LEE, TOOMEY & KENT,
Washington, D.C., February 8, 1977.

Dr. LAURENCE N. WOODWORTH,
Assistant Secretary for Tax Policy,
Treasury Department,
Main Treasury,
Washington, D.C.

DEAR DR. WOODWORTH: My clients and I appreciate your invitation to confer with you on the status of the review of the investment annuity being conducted by your Office.

A purported memorandum from Charles M. Walker to Secretary Simon on the investment annuity ruling recently came into the hands of one of my clients through an anonymous source. Because of the nature of the document, I thought it important that you know before the meeting that it was in our possession. Therefore, I have enclosed a copy. You should also be aware that we are greatly disturbed by the manner in which this very important issue has been presented and the erroneous implications thereof. While there are a great number of points which require comment, there are three points of paramount concern which should be brought to your attention before the meeting.

(1) The description of the investment annuity in the memorandum on which the proposed decision is based does not accurately state the situation and is inadequate. Moreover. First Investment Annuity Company (FIAC) did not agree to those facts. The investment annuity contains all the elements of an annuity contract and an annuity is, in fact, purchased either in a deferred form or an immediate form at the time the contract is entered into. The memorandum conceded that FIAC, in 1965, decided to restructure its policy to accommodate to the position then taken by the Internal Revenue Service that the contract constitutes the purchase of an annuity and that the assets are those of the insurance comany. FIAC further modified its contract in 1968, at the insistence of the Internal Revenue Service in order to conform the contract to the requirements of a deferred annuity contract. This led to the issuance of Rev. Rul. 68-488 in which the Internal Revenue Service definitely concluded that an annuity was purchased at the time the contract was issued. This ruling was not even mentioned in the Walker memorandum. The Insurance Commissioner of Pennsylvania has confirmed that the Pennsylvania insurance laws under which the investment annuities are authorized are the same as those for variable annuities and that their status is consistent with the present Federal tax treatment of investment annuities. Investment annuities have been approved for sale in over 38 states under the applicable laws of those states.

(2) The FIAC investment annuities are simply not structured to hold such assets generally referred to as "tax shelters". The memorandum asserts that the investment annuity could develop into a substantial tax shelter industry and that the promoters are "already exploring ways to shelter the income from oil ventures through the use of an investment annuity". This assertion apparently is a ground for the policy decision to recommend reversal of the IRS rulings. If the reference to "promoters" is intended to identify FIAC, I want to emphasize that FIAC has not and does not contemplate the inclusion of oil ventures and other such tax shelters within the custodian account as acceptable investments.

The investment annuity is merely a form of variable annuity and, as such, shares the same tax treatment as other annuities. It does not involve any of the write-offs, leverage, or speculative investment devices which result in a real cost to the government of permanently lost taxes as those involved with devices attacked by the Tax Reform Act.

(3) No meaningful dialogue has yet been established between the IRS and industry representatives despite repeated requests for such dialogue. The reference in the memorandum to the meeting on September 30, 1976 leaves an impression that the fundamental issues of the investment annuity have been discussed with the industry. Before the meeting, we were told that its purpose was to allow the Internal Revenue Service to describe its proposed position and give industry representatives an opportunity to ask questions. This did not happen. The Internal Revenue Service merely informed us that the prior rulings were under reconsideration, and that no final decision had been made. Because it was apparent that the reconsideration had been initiated with very little knowledge of the facts, it was suggested by the Service that a meeting be held to ascertain the facts. Discussion on the facts was subsequently held but the objections of the Internal Revenue Service to the investment annuity were never detailed. In spite of the length of time that this matter has been under review, and the detailed memorandum which we filed at the Service's request, we have never been informed of any specific objections to the investment annuity contract which require either modification of existing contracts or a reversal of the rulings issued by the Internal Revenue Service over the last eleven years.

I hope that the meeting on February 9 will lead to a better understanding of our respective positions and that an agreement can be reached for resolving the issues as expeditiously as possible in a manner satisfactory to the Treasury, the Internal Revenue Service, the insurance companies involved, and the tens of thousands of individuals who hold investment annuity contracts.

Respectfully,

JOHN A. CARDON.

INVESTMENT ANNUITY RULING

We are in the process of drafting a revenue ruling which we propose to publish, reversing the prior favorable revenue rulings on the investment annuity arrangements developed by the First Investment Annuity Company of America (FIAC) and other insurance companies.

Over the past several months, both Treasury and the IRS have been reviewing the tax status of investment annuities. On September 30, 1976, we met with industry representatives in order to obtain a better understanding of the investment annuity product. On October 20, 1976, we solicited public comment on the three technical problems under consideration, and, as a result, we received several submissions, including a lengthy brief submitted on behalf of FIAC and nine other insurance companies. Based upon our analysis of the investment

annuity product and applicable law, we have concluded that the position previously taken by the Service in certain private letter rulings is incorrect as a matter of law.

THE INVESTMENT ANNUITY DESCRIBED

Basically, the purchaser of an investment annuity will deposit cash or securities with a custodian. An annuity is not purchased at the time these deposits are made; instead, the purchase is deferred until the depositor reaches retirement age, at which time one-year term annuity contracts are acquired with the funds held by the custodian. In the interim, the assets held by the custodian are invested at the direction of the depositor, even after he reaches retirement age, as though, in effect, these assets were held in his own personal brokerage account or trust.

PROPOSED RULINGS POSITION

Given these facts (which have been confirmed by FIAC), we have concluded that these brokerage, or custodial, accounts do not represent assets of the insurance company which will ultimately provide the annuity. Unlike the traditional variable annuity, where the insurance company invests the assets but the policyholder bears the investment risk (as in a mutual fund), the holder of an investment annuity retains full investment control.

Under the proposed ruling, dividends and interest earned on assets held in a custodial account will be taxed directly to the policyholder, unlike the result under current law, where these earnings have been accumulating on a tax-free basis as life insurance company assets. Capital gains will also be taxed to the policyholder, although here, the change will not be as significant, because, under existing law, capital gains are currently subject to tax at insurance company rates.

IMPLICATIONS OF THE RULING

Apart from our legal analysis of the problems raised by investment annuities, there are important policy considerations. In our view, investment annuities, while presently in their infant stage, could develop into a substantial tax shelter industry if the present rulings posture remains unchanged. Although all of the various uses of these products are not yet known, we have been advised informally that promoters are already exploring ways to shelter the income from oil ventures through the use of an investment annuity.

In reversing the outstanding rulings position, both Treasury and IRS recognize the problems faced by those companies which have entered into the investment annuity market in reliance upon the rulings which have been issued to private taxpayers over the past 10 years. The problem is particularly accute for FIAC. In 1963, it sought a ruling which would have reached the result which we are now proposing, but the Rulings Division of the Service concluded that the insurance company should be regarded as the owner of assets in a custodial account, for reasons that are no entirely clear. After lengthy negotiations, FIAC, in 1965, decided to restructure its policy to accommodate the Service's view. FIAC is understandably concerned about the possibility that the rules are about to be changed on it again. Thomas Kelly, the Chairman of the Board of FIAC, has made his concerns known to a number of Congressmen and to a number of people here at Treasury. Questions about the continuing financial viability of FIAC have also been raised by a British company. Save & Prosper, which loaned approximately $7 million to FIAC between 1973 and 1975 when it was on the verge of bankruptcy. The British Embassy in Washington has inquired about the matter, although they have taken no position on behalf of FIAC.

While we recognize FIAC's problems, we understand that many conservative attorneys have been advising their clients not to purchase investment annuities, because of the concern about the validity of the Service's old rulings positions—a position which we think is invalid and should be changed, as the Service proposes to do. We also understand that, within the life insurance industry itself, there has been a growing concern that unless the tax treatment of investment annuities is changed soon, they will become such a widespread tax shelter that Congress will end up reevaluating the favorable tax treatment given to all annuities and life insurance. We have already been contacted by the Joint Committee staff, which apparently favors a reversal of the present rulings position.

To allow sufficient time for FIAC and similarly situated insurance companies to adapt to the proposed new rules and develop annuity contracts in accordance with them, and to allow Congress time to consider whether or not to change the new rules legislatively, we propose to make them effective only after January 1, 1978. In that case the new rules would apply to all investment annuity contracts entered into before or after that date, but we would propose to allow policyholders to convert tax-free from such contracts to annuity contracts under which the assets held in a separate account are clearly insurance company assets.

We understand, however, that the Service's tentative conclusion is not to allow the old tax treatment to apply to "new" contracts, i.e., those entered into after October 20, 1976, the date of the News Release announcing the Service's reconsideration of the old rules. The Service would allow the old rules to continue to apply to "old" contracts (those entered into before October 20, 1976) until January 1, 1978. This will allow policyholders of the "old" contracts time to convert tax-free to contracts that will meet the new rules. But the Service is apparently opposed to extending the favorable tax treatment of the old rules to any new policyholders for any period of time.

We propose to allow the old rules to continue to apply to "new", as well as "old", contracts until January 1, 1978, because this will afford some time for FIAC and the other insurance companies to adjust, after having built up their business in reliance on the old Service rulings policy. We do not think the potential loss of revenue from new policies for just one year will be significant enough to warrant the potential harm to these insurance companies, particularly when we consider the fact that it was the Service who insisted on imposing the old rules on these companies in the first place.

Recommendation: We recommend publication of the proposed ruling containing the new rules described above, with an effective date of January 1, 1978 for "new" as well as "old" contracts, after advising industry representatives of the positions set forth herein.

ATTENDANCE LIST OF CONFERENCE ON THE INVESTMENT ANNUITY

First Investment Annuity Company: Anthony H. Doggart, President, W. Thomas Kelly, Chairman of the Board, H. William Brown, Sr. Vice President, Arthur P. Hartel, Secretary.

E. Wayne Thevenot.

Lee, Toomey & Kent: John A. Cardon, John M. Skilling, Jr., David A. Hildebrandt.

COOPERS & LYBRAND,
Philadelphia, Pa., June 2, 1978.

Mr. W. THOMAS KELLY,
Malvern, Pa.

DEAR MR. KELLY: As you requested, we comment, hereinafter, upon whether the existing federal income taxation of deferred annuities allows the annuitant benefits similar to those contained in "tax shelters" or whether annuity taxation meets certain criteria set forth by Stanley S. Surrey in his book "Pathways to Tax Reform".

In Chapter VII of the book entitled "Corrective Reform Measures to Moderate Tax Expenditures Abuses" Mr. Surrey proposes that one corrective measure would be a payment for the deferral ingredient as follows:

"A prime ingredient of tax shelters is the deferral of tax on current income, achieved through the acceleration of deductions provided by the shelter. This deferral, as described earlier, is an interest-free loan from the government in the amount of the tax deferred. Here, also, the ingredient suggests an appropriate restraint—eliminate the interest-free character of the deferral loan by charging interest on the deferred tax."

We have prepared and attach as Exhibit I a simple illustration of Mr. Surrey's corrective measure using as a model the accelerated depreciation deferral. Here a taxpayer obtains an interest free loan from the Government equal to the difference between accelerated and straight line depreciation tax-effected at 50 percent. The loan increases each year that the accelerated depreciation exceeds the hypothetical straight-line depreciation and then decreases when the hypothetical straight-line depreciation exceeds that claimed whether it be accelerated or straight-line. The taxpayer would pay interest to the Government each year on the deferral loan and be entitled to a deduction for the interest paid as it would for interest on any other loan. The net result would be a payment of $232 to the Government on the deferral loan.

Extending Surrey's theory to a deferred annuity we have prepared Exhibit II which compares the taxation of a certificate of deposit with the taxation of a deferred annuity to arrive at the deferral loan. Since no interest is paid currently on the deferral loan, we have added the unpaid interest to the deferral loan. The interest rate used is an after tax rate of four percent assuming the market rate of interest is eight percent and the annuitant is in the 50 percent tax bracket.

The conclusion one can draw from Exhibit II is that when the annuitant withdraws his funds the payment made to the Government ($5,794) contains an element of interest on the deferral loan since the actual taxes paid on the certificate of deposit total $4,804 and the compound interest on the deferral loan is $891 or a total of $5,695. The additional $99 paid by the annuitant results from the fact that an amount derived from compounding at eight percent and then halved is more than the amount derived from compounding at four percent.

If a period different than 10 years was used, the spread between the annuitant's payment and the deferral loan would be greater if the period was longer and less if the period was shorter, but the annuitant would always pay more to the Government than he would under Mr. Surrey's proposal. If the tax bracket of the taxpayer was greater than 50 percent the spread would also be greater since the interest rate compounding on the deferral loan is a function of the tax bracket and would decrease in proportion to the rise in tax bracket while the interest rate on the deferred annuity would remain constant. Conversely, if the tax bracket of the taxpayer was less than 50 percent, the spread would narrow and eventually the amount paid as the withdrawal of the deferred annuity would be less than that on the deferral loan.

In conclusion, it is evident that:

1. Deferred annuities (including the investment annuity) lack of "prime ingredient of tax shelters" namely, "an interest-free loan from the Government in the amount of the tax deferred;"

2. The existing mode of deferred annuity taxation results in an interest element being charged to the taxpayer as proposed by Mr. Surrey;

3. In fact, under most circumstances the existing mode of annuity taxation provides more tax dollars for the Government than Mr. Surrey's proposals;

4. The existing mode of deferred annuity taxation is similar to the Government's own "Series E" bond (unless an election is made to be taxed currently); and

5. Because of the foregoing it is quite inappropriate to lump deferred annuities (including the investment annuity) in with so-called "tax shelters."

Very truly yours,

COOPERS & LYBRAND.

W. THOMAS KELLY

EXHIBIT I.—COMPUTATION OF INTEREST ON THE "DEFERRAL LOAN": ACCELERATED DEPRECIATION

[Cost of asset, $10,000]

Year	Depreciation [1] DDB/SL (1)	Depreciation [1] SL (2)	Excess (1) minus (2) (3)	Tax deferral (3) times 0.50 (4)	Deferral loan	Interest on deferred loan at 4 percent
1	$2,000	$1,000	$1,000	$500	$500	
2	1,600	1,000	600	300	800	$20
3	1,280	1,000	280	140	940	32
4	1,024	1,000	24	12	952	38
5	819	1,000	(181)	(90)	862	38
6	655	1,000	(345)	(173)	689	34
7	655	1,000	(345)	(172)	517	28
8	655	1,000	(345)	(173)	344	21
9	656	1,000	(344)	(172)	172	14
10	656	1,000	(344)	(172)		7
Total	10,000	10,000				232

[1] A useful life of 10 yr and no salvage value was used in computing depreciation.

[2] Interest rate of 8 percent tax-effected at 50 percent.

EXHIBIT II.—COMPUTATION OF INTEREST ON THE "DEFERRAL LOAN" OF A DEFERRED ANNUITY

Year	Certificate of deposit, at 8 percent	Payment to Government	Deferred annuity, at 8 percent	Deferral loan
1 Principal invested	$10,000		$10,000	
Interest	800		800	
Tax [1]	−400	$400		$400
2 Balance	10,400		10,800	400
Interest	832		864	[2] 16
Tax	−416	416		416
3 Balance	10,816		11,664	832
Interest	865		933	33
Tax	−433	433		433
4 Balance	11,248		12,597	1,298
Interest	900		1,008	52
Tax	−450	450		450
5 Balance	11,698		13,605	1,800
Interest	936		1,088	72
Tax	−468	468		468
6 Balance	12,166		14,693	2,340
Interest	973		1,175	94
Tax	−487	487		487
7 Balance	$12,652		$15,868	$2,921
Interest	1,012		1,269	117
Tax	−506	$506		506
8 Balance	13,159		17,137	3,544
Interest	1,053		1,371	142
Tax	−527	527		527
9 Balance	13,685		18,508	4,213
Interest	1,095		1,481	168
Tax	−548	548		548
10 Balance	14,232		19,989	4,929
Interest	1,139		1,599	197
Tax	−569	569		569
Total	$14,802	4,804	21,588	5,695
Tax ($21,588 minus $10,000 times 0.50)			[3] 5,794	

[1] All tax computations at 50 percent.

[2] Hypothetical interest to Government computed at after-tax rate as per exhibit 1.

[3] Assumes complete withdrawal of funds at end of 10th year.

H.R. 11182

A bill to reinstate the tax treatment with respect to annuity contracts with reserves based on a segregated asset account as they existed prior to issuance of Revenue Ruling 77-85

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the case of annuity contracts which have related amounts based on a segregated asset account, the tax treatment of such contracts under section 61 of the Internal Revenue Code of 1954 (defining gross income) and section 801(g)(1)(B) of such Code (relating to contracts with reserves based on a segregated asset account) shall be determined—

(1) without regard to Revenue Ruling 77-85 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue Ruling); and

(2) with full regard to the rules in effect before Revenue Ruling 77-85.

Mr. HATCH. This amendment was brought up last year and received 57 votes on the floor of the Senate. Frankly, I think a majority of Senators would support this amendment at this time. That is the reason I have brought it up.

I intend to ask for the yeas and nays at the appropriate time.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Indiana has no time.

Mr. LONG. Madam President, I yield 2 minutes to the Senator from New York.

Mr. MOYNIHAN. I thank the Senator from Louisiana.

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

The PRESIDING OFFICER. As long as the amendment of the Senator from Utah is pending, further amendments are not in order.

Mr. HATCH. Madam President, I would be happy to allow a unanimous-consent request to set my amendment aside, so long as it comes back in order after the cloture vote today.

The PRESIDING OFFICER. It would not come back, under the cloture rule, after the cloture vote, in any case. The amendments that will come back after the cloture vote are the Muskie, Glenn, and Nelson amendments.

Mr. HATCH. After those amendments.

The PRESIDING OFFICER. The amendment of the Senator from Utah will not come up until those amendments have been disposed of.

Mr. HATCH. I ask unanimous consent that my amendment come up after that.

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

Mr. PROXMIRE. Madam President, reserving the right to object, will the Senator from Maine yield me 2 minutes?

Mr. MUSKIE. I yield 2 minutes.

Mr. PROXMIRE. I make a parliamentary inquiry on the pending amendment.

The PRESIDING OFFICER. The Senator will state it.

Mr. PROXMIRE. I ask if the pending amendment is in order on the bill, in view of the fact that it would reach the ceiling under the Budget Act. It would cost $12 million in 1979, $80 million by the year 1983.

I understand that, under the present circumstances, the bill is now at a stage where any additional revenue loss would breach the Budget Act. I ask for a ruling of the Chair as to whether this amendment is in order, under those circumstances.

Mr. HATCH. Madam President, a further parliamentary inquiry.

The PRESIDING OFFICER. A point of order has been made, and the Chair will entertain debate on it.

Who yields time?

Mr. HATCH. Madam President, will the Senator from Wyoming yield me 1 minute?

Mr. MUSKIE. I yield 1 minute.

Mr. HATCH. I thank the distinguished Senator from Maine.

Actually, I point out that this does not change present law. The IRS is attempting to change present law. Therefore, this adds nothing that would violate the present Budgetary Act. Therefore, the point of order should not lie.

Mr. PROXMIRE. In response, let me say that, as I understand it, the IRS is not letting them do this at the present time. It is clear that if the Hatch amendment prevails, they would have to change their procedures, and the loss to the Treasury would be $12 million.

Mr. HATCH. Madam President, will the Senator yield me 30 seconds?

Mr. MUSKIE. I yield.

(Mr. HODGES assumed the chair.)

Mr. HATCH. A district court has held the IRS to be in violation. The IRS is appealing that ruling. So, presently, the law is still in existence. So I do not believe the point of order should lie.

Mr. PROXMIRE. I press for a ruling by the Chair on my parliamentary inquiry.

The PRESIDING OFFICER. The Chair is studying the amendment.

Who yields time?

Mr. PROXMIRE. Mr. President, if the Chair is studying the amendment, I hope the Senator from Utah will agree with me that we should set this aside so that the Parliamentarian can study the amendment and come to a conclusion, and meanwhile let the Senator from New York continue.

Mr. HATCH. I would be willing to do that, so long as it is stipulated that if the point of order is ruled out of order and is not sustained, my amendment will take its place behind the other amendments, in regular order.

Mr. PROXMIRE. I have no objection to that.

The PRESIDING OFFICER. Is the Senator propounding that as a unanimous-consent request?

Mr. HATCH. Yes.

Mr. METZENBAUM. What is the unanimous-consent request—that the amendment of the Senator from Utah come up after?

Mr. HATCH. Come up in the regular order, after the amendments preceding it, following the cloture vote.

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

The Senator from New York.

UP AMENDMENT NO. 2032

(Purpose: To provide for a program of adoption assistance, to make needed changes in the AFDC foster care program and child welfare services, and for other purposes)

Mr. MOYNIHAN. Mr. President, has the amendment been read?

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN), for himself and others, proposes an unprinted amendment numbered 2032.

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

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendment is as follows:

On page 408, immediately below line 19, insert the following new section:

ADOPTION AND FOSTER CARE, AND CHILD WELFARE SERVICES

SEC. 610. Title IV of the Social Security Act is amended as follows:

(a) (1) Add at the end thereof the following new part:

"PART E—FEDERAL PAYMENTS FOR ADOPTION ASSISTANCE AND FOSTER CARE

"STATE PLAN FOR ADOPTION ASSISTANCE AND FOSTER CARE

"SEC. 470. (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which provides—

"(1) that the State agency responsible for administering the program authorized by part B of this title shall administer the program authorized by this part;

"(2) that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

"(3) that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this title, under title XX of this Act, or under any other appropriate provision of Federal law;

"(4) that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

"(5) that the State agency referred to in paragraph (1) (hereinafter in this part referred to as the 'State agency') will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

"(6) that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

"(7) safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, C, or D of this title or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or a legislative body (other than the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and any agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosure to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

"(8) that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this title is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;

"(9) that the standards referred to in section 2003(d)(1)(F) shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this title;

"(10) for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance payments to assure their continuing appropriateness;

"(11) that any individual who is denied a request for benefits available pursuant to this part or part B of this title (or whose request for benefits is not acted upon within a reasonable time) will be informed of the reasons for the denial or delay and, if he so requests, will be offered an opportunity to meet with a representative of the agency administering the plan to discuss the reasons for the denial or delay; and

"(12) that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this title, which shall be conducted no less frequently than once every three years.

"(b) The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section. However, in any case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a State plan which has been approved by the Secretary no longer complies with the provisions of subsection (a), or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the State that further payments will not be made to the State under this part, or that such payments will be made to the State but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so

satisfied he shall make no further payments to the State, or shall reduce such payments by the amount specified in his notification to the State.

"FOSTER CARE MAINTENANCE PAYMENTS PROGRAM

"SEC. 471. (a) Each State with a plan approved under this part may make foster care maintenance payments (as defined in section 475(4)) under this part only with respect to a child who would meet the requirements of section 406(a) or of section 407 of this Act but for his removal from the home of a relative (specified in section 406(a)) if—

"(1) the removal from the home was (A) the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child;

"(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 470, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 470 has made an agreement which is still in effect;

"(3) such child has been placed in a foster family home or child-care institution as a result of such determination;

"(4) such child—

"(A) received aid under the State plan approved under section 402 in or for the month in which court proceedings leading to the removal of such child from the home was initiated, or

"(B) (i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 406(a) within six months prior to the month in which such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made; and

"(5) there is a case plan (as defined in section 475(1) of this part) for such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution).

"(b) Foster care maintenance payments may be made under this part only in behalf of a child described in subsection (a) of this section—

"(1) in the foster family home of any individual, whether the payments therefor are made to such individual or to a public or nonprofit private child-placement or child-care agency, or

"(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or nonprofit private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term 'foster care maintenance payment' (as defined in section 475(4)).

"(c) For the purposes of this part and part B of this title, (1) the term 'foster family home' means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term 'child-care institution' means a nonprofit private child-care institution, or (subject to the succeeding sentence) a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing; but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent. A public institution which on the effective date of this part accommodates children and which, except for the provisions of this sentence would be a child-care institution (as defined in the preceding sentence), shall not, for purposes of this part, be considered to be a child-care institution (as so defined) with respect to any child who was in such institution on the date of enactment of this part.

"(d) For purposes of title XIX of this Act, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of this title.

"ADOPTION ASSISTANCE PROGRAM

"SEC. 472. (a)(1) Each State with a plan approved under this part may, directly or through another public or nonprofit private agency, make adoption assistance payments pursuant to an adoption assistance agreement in amounts determined under paragraph (3) of this subsection to parents who are eligible for such payments pursuant to paragraph (2) of this subsection and who, after the effective date of this section, adopt a child who—

"(A) would meet the requirements of section 406(a) or section 407 of this Act except for his removal from the home of a relative (specified in section 406(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child,

"(B)(i) received aid under the State plan approved under section 402 in or for the month in which court proceedings leading to the removal of such child from the home were initiated, or

"(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 406(a) within six months prior to the month in which such proceedings were initated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, and

"(C) the State has determined, pursuant to subsection (c) of this section, is a child with special needs.

"(2) Parents may be eligible for adoption assistance payments under this part only if their income at the time of the adoption does not exceed 115 per centum of the median income of a family of four in the State, adjusted in accordance with regulations of the Secretary to take into account the size of the family after adoption. Notwithstanding the preceding sentence, parents whose income is above the limit specified therein may be eligible for assistance payments under this part if the State or local agency administering the program under this section determines that there are special circumstances (as defined in regulations of the Secretary) in the family which warrant adoption assistance payments.

"(3) The amount of the adoption assistance payments shall be determined through agreement between the adoptive parent (or parents) and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

"(4) Notwithstanding the preceding two paragraphs, (A) no payment may be made to parents pursuant to this section with respect to any month in a calendar year following a calendar year in which the income of such parents exceeds the limits specific in paragraph (2), unless the State or local agency administering the program under this section has determined, pursuant to paragraph (2), that there are special circumstances in the family which warrant adoption assistance payments, (B) no payment may be made to parents with respect to any child who has attained the age of eighteen, and (C) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

"(5) For the purposes of this part, individuals with whom a child (who the State determines, pursuant to subsection (c), is a child with special needs) is placed for adoption, pursuant to an interlocutory decree, shall be eligible for adoption assistance payments under this subsection, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

"(b) Any child—

"(1) who the State determines meets the requirements of subsection (a); and

"(2) who is placed for adoption or adopted following such determination shall, with respect to any medical condition which was in existence at the time the child was adopted, retain eligibility under title XIX until the age of eighteen under such plan. However, a State may provide to such a child full eligibility for medical assistance under the State's plan approved under title XIX.

"(c) For purposes of this section, a child shall not be considered a child with special needs unless—

"(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

"(2) the State has first determined (A) that there exists with respect to the child a specific factor or condition because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance, and (B) that, except, where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoptive assistance under this section.

"(d) Notwithstanding any other provision of this part, no adoption assistance payment under a State plan approved under this part shall be made pursuant to any adoption assistance agreement entered into after September 30, 1983.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 473. For the purpose of carrying out this part, other than section 476, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1978) such sums as may be necessary.

"PAYMENTS TO STATES; ALLOTMENTS TO STATES

"SEC. 474. (a) For each quarter beginning after September 30, 1978, each State which has a plan approved under this part (subject to the limitations imposed by subsection

(b)) shall be entitled to a payment equal to the sum of—

"(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as foster care maintenance payments under section 471 for children in foster family homes or childcare institutions; plus

"(2) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as adoption assistance payments under section 472 pursuant to adoption assistance agreements entered into prior to October 1, 1983; plus

"(3) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan—

"(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision, and

"(B) one-half of the remainder of such expenditures.

"(b)(1) Notwithstanding the provisions of subsection (a)(1) and (a)(3), with respect to expenditures relating to foster care, the aggregate of the sums payable to any State thereunder, with respect to expenditures relating to foster care, for the calendar quarters in any fiscal year shall not exceed the State's allotment for such year.

"(2) For purposes of this subsection, a State's allotment for the fiscal year ending September 30, 1978, shall be equal to the amount of the Federal funds payable to such State under section 403 on account of expenditures for aid with respect to which Federal financial participation is authorized pursuant to section 408 (including administrative expenditures attributable to the provision of such aid). In the event that there is a dispute between any State and the Secretary as to the amount of such expenditures for such fiscal year, then, until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved, the amount of the States' allotment for such fiscal year shall be deemed to be the amount of Federal funds which would have been payable under such section 403 if the amount of such expenditures were equal to the amount thereof claimed by the State.

"(3)(A) For the fiscal year 1979, the allotment of each State shall be equal to 120 per centum of its allotment for the preceding year or (if greater) the amount provided under subparagraph (B). For the fiscal years 1980, 1981, 1982, and 1983 the allotment of each State shall be equal to 110 per centum of the amount of its allotment for the preceding fiscal year, or (if greater) the amount provided under subparagraph (B). For the fiscal year 1984 and each fiscal year thereafter, the allotment of each State shall be equal to its allotment for the fiscal year 1983, or (if greater) the amount provided under subparagraph (B).

"(B) The amount of any State's allotment, for any fiscal year referred to in subparagraph (A), shall be the amount determined under such paragraph or (if greater) an amount which bears the same ratio to $100,000,000 as the under age twenty-one population of such State bears to the under age twenty-one population of the fifty States and the District of Columbia. The Secretary shall promulgate the amount of each State's allotment, for the fiscal year 1979, not later than thirty days after the date of enactment of this part, and for any succeeding fiscal year, prior to the first day of the third month of the preceding fiscal year, on the basis of the most recent satisfactory data available from the Department of Commerce.

"(C) For the fiscal year 1979, and each fiscal year thereafter, sums available to a State from its allotment under subsection (b) for carrying out this part, which the State does not claim as reimbursement for expenditures in such year pursuant to subsection (a) of this section, may be claimed by the State as reimbursement for expenditures in such year pursuant to part B of this title, in addition to such sums available pursuant to section 420 for carrying out that part.

"DEFINITIONS

"SEC. 475. As used in this part or part B of this title:

"(1) The term 'case plan' means a written document which includes at least the following information: a description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the judicial determination made with respect to the child in accordance with section 471(a)(1); a plan of services that will be provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

"(2) The term 'parents' means biological or adoptive parents or legal guardians, as determined by applicable State law.

"(3) The term 'adoption assistance agreement' means a written and consensual agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adopting parents of a minor which specifies, at a minimum, the amounts of the adoption assistance payments and any additional services and assistance which are to be provided as part of such agreement.

"(4) The term 'foster care maintenance payments' means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

"TECHNICAL ASSISTANCE; DATA COLLECTION AND EVALUATION

"SEC. 476. (a) The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this title and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

"(b) Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.".

(2)(A) Effective with respect to expenditures made after September 30, 1978, section 408 of the Social Security Act is, subject to subparagraph (B), repealed.

(2)(B) The repeal made by subparagraph (A) shall not be applicable in the case of any State for any quarter prior to the first quarter, which begins after September 30, 1978, in which such State has in effect a State plan approved under part E of the Social Security Act, or (if earlier), such repeal shall be effective with respect to expenditures made after September 30, 1979. During any period with respect to which the repeal made by paragraph (1) is not applicable in the case of a State, the aggregate of the sums payable to the State, under the State's plan approved under part A of title IV of the Social Security Act, with respect to expenditures (including administrative expenditures) authorized or incurred by reason of the provisions of section 408 of such Act shall not exceed the amount of the allotment which such State would have had for such period under section 474(b) if such State had had an approved plan under part E of such title IV.

(3) For the first fiscal year with respect to which there is appropriated under section 420 of the Social Security Act a sum which is subject to the restriction authorized under section 428(a) of such Act, any administrative expenses incurred by a State, under its State plan approved under part E of such Act, for any of the purposes described in section 428(b)(1) of such Act shall be subject to Federal financial participation under such part E without regard to whether the inclusion of such expenditures could cause the total of such State's expenditures under such plan (insofar as it relates to foster care) to exceed the amount of the State's allotment, imposed by section 474(b) of such Act, for such fiscal year.

(4) Unless otherwise specified, the amendments made by this section shall be effective on and after October 1, 1978.

(b)(1) Section 423 (including the caption thereto) is amended to read as follows:

"FEDERAL SHARE

"SEC. 423. The 'Federal share' for any State shall, effective on and after October 1, 1978, be 75 per centum.".

(2) Section 425 is amended by adding at the end thereof the following new sentence: "Expenditures made by a State for any calendar quarter which begins after September 30, 1978, for foster care services which do not constitute child welfare services shall be treated, for purposes of making Federal payments under this part with respect to expenditures for child welfare services, as if such foster care services did constitute child welfare services; except that, the amount payable to the State with respect to expenditures made for child welfare services and for foster care services during any such quarter shall not exceed 100 per centum of the amount of the expenditures made for child welfare services as determined without regard to this sentence.".

(3) Part B is further amended by adding at the end thereof the following new section:

"LIMITATION ON PAYMENTS WITH RESPECT TO FOSTER CARE

"SEC. 427. Notwithstanding any other provision of this part, if for any fiscal year which begins after September 30, 1978, there is appropriated under section 420 an amount in excess of the amount appropriated for the fiscal year ending on September 30, 1978, the amount payable to any State for expenditures made to provide child welfare services in the form of foster care maintenance payments in foster family homes or other foster care facilities, shall not exceed the amount of its allotment (before application of the provisions of section 424) under this part for the fiscal year ending September 30, 1978. Funds made available to any State pursuant to section 474(c) shall be subject to the limitation imposed by the preceding sentence.".

(4) Section 425 of such Act is amended by inserting "(a)" immediately after "SEC. 425."

and by adding at the end thereof the following new subsection:

"(b) Funds expended by a State for any calendar quarter to comply with the statistical report required by section 476(b), and funds expended with respect to nonrecurring costs of adoption proceedings in the case of children placed for adoption with respect to whom assistance is provided under a State plan for adoption assistance approved under part E of this title, shall be deemed to have been expended for child welfare services.".

CASE REVIEW AND OTHER SERVICES FOR CHILDREN IN FOSTER CARE

(c) Part B is amended by adding after section 427 (as added by subsection (b)(3) of this section) the following new sections:

"PORTIONS OF INCREASED ALLOTMENTS TO BE USED FOR CERTAIN SERVICES

"SEC. 428. (a)(1) If, for any fiscal year after 1978 there is appropriated under section 420 a sum in excess of the sum appropriated thereunder for the fiscal year 1978, the appropriation Act by which such sum is appropriated may set aside the amount of such excess necessary for the carrying out of the activities and programs described in subsections (b) and (c).

"(2) Whenever a specified amount of the sum appropriated under section 420 for any fiscal year is set aside pursuant to paragraph (1), the allotment of each State for such fiscal year shall be adjusted accordingly so as to restrict the availability of funds to the carrying out of the activities and programs described in subsections (b) and (c).

"(b) For the first year that any amount of a State's allotment is restricted under subsection (a)(2), the amount so restricted may, except as provided in subsection (c), be expended only for the following purposes (and amounts so expended shall be conclusively presumed to be expended for child welfare services):

"(1) for the purpose of conducting an inventory of all children who have been in foster care under the responsibility of the State for a period of six months preceding the inventory; for the purpose of determining the appropriateness of, and necessity for, the current foster placement, whether the child can be or should be returned to his parents or should be freed for adoption, and the services necessary to facilitate either the return of the child or the placement of the child for adoption or legal guardianship;

"(2) for the purpose of designing and developing to the satisfaction of the Secretary—

"(A) a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care or who has been in such care within the preceding twelve months can readily be determined;

"(B) a case review system for each child receiving foster care under the supervision of the State; and

"(C) a service program designed to help children remain with their families and, where appropriate, help children return to families from which they have been removed or be placed for adoption or legal guardianship.

"(c) For any fiscal year (after the first fiscal year) that any amount of a State's allotment is restricted under subsection (a)(2), the amount so restricted may be expended only for the implementation and operation of the systems and programs described in subsection (b)(2) (and amounts for such purposes shall be conclusively presumed to be expended for child welfare services). In the case of any State which has completed an inventory of the type specified in subsection (b)(1) and the design and development of the program and systems referred to in subsection (b)(2) prior to the first fiscal year referred to in subsection (b), or at any time prior to the end of such fiscal year, the amount of such State's allotment which is restricted under subsection (a)(2) may thereafter be used for the purposes specified in the first sentence of this subsection.

"(d)(1) As used in subsection (b)(2)(B), the term 'case review system' means a procedure for assuring that—

"(A) each child has a case plan designed to achieve placement in the least restrictive (most family-like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child,

"(B) the status of each child is reviewed periodically but no less frequently than once every twelve months by either a court or by administrative review (as defined in paragraph (2)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship, and

"(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed by the court, no later than twenty-four months after the original placement, which hearing shall determine the future status of the child; and procedural safeguards shall also be applied with respect to parental rights, to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.

"(2) As used in paragraph (1)(B), the term 'administrative review' means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

"PAYMENTS TO INDIAN TRIBAL ORGANIZATIONS

"SEC. 429. (a) The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this part directly to an Indian tribal organization within any State which has a plan for child-welfare services approved under this part. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

"(b) Amounts paid under subsection (a) shall be deemed to be a part of the allotment (as determined under section 421) for the State in which such Indian tribal organization is located.

"(c) For purposes of this section—

"(1) the term 'tribal organization' means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body; and

"(2) the term 'Indian tribe' means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92-203; 85 Stat. 688)) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.".

EARNED INCOME DISREGARD

(d)(1) Section 402(a)(7) of the Social Security Act is amended by striking out "any expenses" and inserting in lieu thereof "any child care expenses".

(2) Section 402(a)(8)(A)(ii) of the Social Security Act is amended to read as follows:

"(i) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, (I) the first $60 of earned income for individuals who are employed at least forty hours per week, or at least thirty-five hours per week and are earning at least $92 per week, and (II) the first $30 of earned income for individuals not meeting the criteria of subclause (I), plus (III) in each case, one-third of up to $300 of additional earnings, and one-fifth of such additional earnings in excess of $300, except that in each case an amount equal to the reasonable child care expenses incurred (subject to such limitations as the Secretary may prescribe in regulations) shall first be deducted before computing such individual's earned income (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 432(b)(2) and (3)); and".

On page 130, insert "Sec. 610. Adoption and Foster Care, and Child Welfare Services." immediately below "Sec. 609. Northern Mariana Islands."

(3)(A) The amendments made by this subsection shall become effective on January 1, 1979.

(B) A State plan for aid and services to needy families with children shall not be regarded as failing to comply with the requirements imposed with respect to approved State plans under part A of title IV of the Social Security Act, and the amount payable to any State under such part shall not be decreased, solely because such State plan fails to comply with the requirements of paragraph (7) or (8) of section 402(a) of the Social Security Act as in effect after the date of enactment of this Act and prior to January 1, 1979, if such State plan complies with the requirements of such paragraphs as amended by this section.

Mr. MOYNIHAN. Mr. President, I submit this amendment on behalf of myself and Senators CRANSTON, RIEGLE, WILLIAMS, PELL, ANDERSON, BROOKE, DURKIN, and INOUYE, although it may be that not each of those Senators will wish to support every item in the amendment. In particular, Senator CRANSTON and I did not have an adequate opportunity over the weekend to consult all of our colleagues about the portion of the amendment dealing with the earned income disregard; hence cosponsorship of the entire amendment does not necessarily imply agreement with that particular provision.

Mr. President, this amendment would take the essential adoption assistance and child welfare provisions of title I of H.R. 7200, as reported by the Finance Committee a year ago, and put them in this tax bill.

We would also put in this tax bill changes in the income disregard provisions of the AFDC program. This provision has the support of both sides of the aisle.

I recall it having been reported unanimously from the Committee on Finance. It is of particular importance to the senior Senator from California, who, for

a decade, has sought this one central change. I can describe it in 30 seconds.

At this time, the U.S. Government provides payments to families who provide foster homes for children. By contrast, no payments are provided by the Federal Government for families which adopt children. This means that a fairly considerable range of families, for financial reasons, is precluded from receiving the benefits of the act. I think it is generally agreed that it is much more desirable that children be adopted than that they be boarded in foster homes. Many foster homes are wonderful institutions; but not all are.

In any event, foster homes can never be a substitute for becoming part of a family, which occurs through adoption.

There is an income limit of 115 percent of the median income which is a cutoff point for all title XX services.

This is a humane measure, and it is a measure which is overdue. It is something we will be pleased to have done. Because of the condition of our calendar. It cannot be done under H.R. 7200.

The provisions of the earned income disregard seem to me to be reasonable. The committee has approved that. They will balance the cost of the child adoption arrangements such that we can anticipate no net cost from this measure, and possibly even some marginal savings.

I regret the necessary absence of Senator CURTIS on this occasion. He has shown great interest in and support for these matters. Senator CURTIS has been singularly concerned with child adoption and child welfare, and were he not necessarily away from the Senate, I know that he would speak with great knowledge and passion with respect to this matter.

I have no further remarks, Mr. President, and I move the adoption of the amendment.

Mr. MUSKIE. Mr. President, will the Senator yield on my time?

Mr. MOYNIHAN. I yield.

Mr. MUSKIE. We are trying to determine whatever revenue implications there are. I do not have the answer at this point. I wonder whether the Senator from Louisiana has an answer to that question.

Mr. CRANSTON. There is a reduction in the cost.

Mr. MOYNIHAN. There is, in any event, no revenue reduction.

Mr. MUSKIE. That is what I understood.

Mr. LONG. In the long run, there would be a net saving of about $50 million a year.

Mr. MUSKIE. I use this occasion to remind Senators that we have no money left in the bank for any further revenue reductions, and that is why these questions are arising on the Hatch amendment on this one.

I hope Senators will understand that it takes a little time to run this down.

Mr. MOYNIHAN. And the law requires that the Senator from Maine make inquiries.

Mr. MUSKIE. I thank the Senator.

Mr. MOYNIHAN. But I remind the Senator that he wrote the law. [Laughter.]

Mr. MUSKIE. I have no objection to it.

Mr. METZENBAUM. Mr. President, will the Senator from New York yield for a question?

Mr. MOYNIHAN. I yield.

Mr. METZENBAUM. I have difficulty in reading the entire amendment, but in the heading, it talks about "to amend the Internal Revenue Code of 1954, to reduce taxes, and for other purposes."

Is there a reduction of income taxes? The Senator mentioned something about the earned income credit in this measure that I have not been able to pick up. In simply skimming it, is there any reduction of income taxes?

Mr. MOYNIHAN. No.

Mr. METZENBAUM. No.

Mr. MOYNIHAN. Of income taxes, no.

Mr. METZENBAUM. Yes. the title is——

Mr. MOYNIHAN. That has to do with the nature of the amendment.

Mr. METZENBAUM. With the present bill. All right.

This only has to do with the adoption issue and the aid to dependent children payments that the Senator is talking about.

Mr. MOYNIHAN. And the earned income disregard is moved around in the way the Senate did last year. These provisions are unchanged. The one change we made is 1977 to 1978. Otherwise, there is no change.

Mr. METZENBAUM. All right.

Mr. CRANSTON. Mr. President, the adoption and foster care provisions contained in our amendment constitute significant and important steps forward in an area which is vital to the interests of hundreds of thousands of unfortunate children in this country. As my colleagues know, I have been working for the past 7 years toward enactment of adoption reform measures. On April 24 of this year, President Carter signed into law the first part of this endeavor—Public Law 95-266—which establishes the first national adoption provisions to facilitate the permanent placement of adoptable children with special needs.

But, Mr. President, Public Law 95-266 provides merely the mechanism to facilitate this process. The really vital provisions for assisting families who want to adopt children with special needs are contained in this amendment in the provisions of title I of H.R. 7200.

Mr. President, I share with my colleagues some background on the development of these provisions. Last year—on July 26, 1977—I introduced in the Senate, on behalf of the administration, the proposed "Child Welfare Amendments of 1977," S. 1928. This bill incorporated many of the provisions of my original proposed "Opportunities for Adoption Act of 1977." In addition to the adoption reform provisions, S. 1928 provided a major new initiative into the troubled area of federally funded foster care and child welfare programs. S. 1928 was referred to the Senate Finance Committee, which incorporated virtually all of the adoption assistance provisions of S. 1928 into H.R. 7200. After many months of discussions with Finance Committee members and their staffs, a number of the foster care and child welfare provisions of S. 1928 were also incorporated into H.R. 7200.

Although H.R. 7200 as finally reported by the Finance Committee did not address each of the foster care and child welfare issues contained in the administration's proposal, it did contain many significant and important steps forward in this area.

Mr. President, I would like to briefly outline the basic child welfare, foster care, and adoption provisions from H.R. 7200, as reported, which are also embodied in the amendment.

ADOPTION ASSISTANCE PROVISIONS

Mr. President, I would like first to describe the adoption assistance provisions in the amendment, and to express to the committee chairman (Mr. LONG) and members of the committee my very deep gratitude to them for their action on H.R. 7200 in not only retaining nearly intact the adoption assistance provisions contained in S. 1928, but also for going one step further by correcting certain problem areas from S. 1928 relating to adoption which I had identified in my introductory remarks on that legislation. Those problems were: First, provisions which would have put a financial ceiling on the new title IV-E funds available for adoption assistance payments, and second, provisions which did not take account of significant emotional ties which a child might develop with the foster family with whom the child has resided.

As I indicated at the time I introduced S. 1928 on behalf of the administration, I had a very serious reservation regarding the appropriateness of a ceiling on the proposed new title IV-E program with respect to adoption.

Under the IV-E program proposed by the administration, foster-care maintenance payments and adopiton assistance payments would have been funded out of the same entitlement and subjected to the same ceiling. While legitimate policy arguments could be made to support a ceiling on foster-care maintenance as a means to discourage unnecessary foster-care placements, no such policy argument supports placing a ceiling on adoption assistance payments.

Unlike foster-care placements, there is no policy reason to discourage adoption placements. Similarly, unlike foster-care placements, there is no expectation or desire for the child to be moved out of the placement, thereby freeing up funds for new children. Adoption placements are permanent and are intended to be so. Moreover, unless the circumstances of the family change, these payments would normally continue until the age of majority.

Mr. President, at the time of introduction of S. 1928, I expressed my belief that placing a ceiling on adoption assistance payments under the proposed new part E was not productive and not in the best interests of the children involved.

Mr. President, I was most pleased that the Finance Committee seriously considered this problem and in its reported bill placed no restrictive ceiling on payments for adoption assistance. I applaud this action.

The committee dealt with the second problem, Mr. President—the need to recognize and support the special relationships developed between long-term foster parents and their prospective adopted child—by acting in an equally responsible and compassionate manner. The committee added new language in new section 472(c)(2)(B) to exempt cases where there are significant emotional ties between foster children newly eligible for adoption and their parents, from the requirement that reasonable efforts be made to locate adoptive placements for special needs children where it is not necessary to provide an adoption assistance payment.

RELATIONSHIP TO PUBLIC LAW 95-266

Mr. President, I would like to discuss the adoption assistance provisions of this amendment and H.R. 7200 as reported in the context of my work in the area of adoption reform and enactment of Public Law 95-266. These adoption provisions build on and provide financing for legislative concepts which I have been working to develop over the past few years and which I introduced in this Congress as S. 961, the proposed "Opportunities for Adoption Act of 1977."

I introduced S. 961 on March 9, 1977. It represented the culmination of more than 5 years of research, drafting, counseling with experts in the adoption field, redrafting, and introduction into the legislative process—first, in the 93d Congress, and again in the 94th. The first hearing on the measure were held during the summer of 1975 by the former chairman of the Senate Subcommittee on Children and Youth, now Vice President MONDALE, who was so pivotal in convincing the administration to move in the direction embodied in S. 1928, the adoption provisions of which are generally a part of the amendment we are proposing today. When we were unsuccessful because of time pressures last Congress in securing Senate passage of the Opportunities for Adoption Act. I reintroduced the new version—S. 961—in the 95th Congress.

I called hearings on S. 961 as one of my first actions as chairman of the newly designated Subcommittee on Child and Human Development of the Human Resources Committee. The hearings dramatically demonstrated the disincentives to adoption inherent in our present foster-care system, and demonstrated as well that there are many compassionate adults who are eager to shower love and affection on children with special needs, if only they could be freed from the limbo of foster care. The hearings increased my own enthusiasm about the prospect of providing more meaningful and stable lives for many of these youngsters who in the present system have no hope of ever returning to their homes of birth, and for making a real difference in the otherwise uncertain, too often hopeless, lives of thousands of children.

On April 12, the provisions of S. 961 were passed by the Senate, and were signed into law by President Carter as Public Law 95-266.

The purpose of Public Law 95-266 is to facilitate the removal of barriers to interstate adoptions, to facilitate the placement of children with special needs in permanent adoptive homes, and to pave the way for financial assistance for the medical care and other necessities required for these children. Although Public Law 95-266 provides for overall reform in the adoption process, the amendment before us would today provide the necessary funding mechanism for the financial assistance which is so crucial to children with special needs—both by granting them medicaid eligibility, under title XIX of the Social Security Act, and providing maintenance assistance through the use of the Social Security Act's title IV-A—proposed to become IV-E—entitlement provisions.

DEFINITION OF "SPECIAL NEEDS CHILDREN"

Mr. President, it is important at the outset of our discussion of the adoption assistance provisions to state exactly which children this amendment is attempting to assist. We are not talking about the adoption of healthy infants. We are talking about assisting parents who want to adopt "special needs children" who would be unable to be placed in adoption without the benefit of assistance.

They are the children like those we heard about during our work on Public Law 95-266—Jenny, who was adopted at age 3 after having been mistakenly diagnosed as mentally retarded, who was legally blind and had deformed hands—she is now a top student in her third grade class; Barbara, adopted at age 6 after having lived her life in a convalescent home for crippled children because of a variety of birth defects; John and William, teenage brothers emotionally scarred by years in and out of foster care.

Mr. President, as I indicated earlier, H.R. 7200 as reported from the Finance Committee provided the necessary funding mechanism for the financial assistance which is so crucial to these children with special needs.

The financing of adoption assistance through title IV and XIX of the Social Security Act is truly a giant step forward for children who would benefit by adoption.

I want to point out, too, Mr. President, that such financing not only will be of enormous benefit to children with special needs, but should even save taxpayers money in the long run, since the high proportion of the adopted children who these provisions will benefit in many instances will require less assistance in adoptive placements than they would had they been relegated to spend the rest of their childhood in foster care.

ADOPTION ASSISTANCE PAYMENT

Mr. President, this amendment and H.R. 7200 reported would provide for Federal participation in adoption assistance payments through the proposed new Part E of title IV of the Social Security Act. It would authorize federally supported maintenance payments for adoption assistance, when a child with special needs who had been eligible for foster care is adopted by parents whose income at the time of the adoption does not exceed 115 percent of the State median income for a family of four—adjusted for family size, including the size of the family after adoption—in accordance with regulations of the Secretary which take into account special circumstances. Although philosophically I have difficulty with the notion of including a means test in any adoption reform policy, I feel that the overall merits of this proposal far outweigh the demerits of including a means test for adoption assistance.

It has always been my view that adoption assistance should be tied to the needs of the child, and not to the income level of the adoptive parents. Studies have shown that 80 percent of the families who adopt children with special needs have biological children of their own, and often opt to have children in need of adoption join their families rather than to bring more children into the world.

The hearings on S. 961 dramatically demonstrated that there are many families willing to adopt so-called hard-to-place children and who do so at great sacrifices. In determining how much of themselves and their families they can contribute to an adopted special-needs child, they must consider their commitments to other members of their family. I do not believe that these extraordinary people should be required to lower the standard of living for their other children in order to take on the burden, albeit a living one, of adopting a special-needs child.

SPECIAL CIRCUMSTANCES

I do feel, however, that the committee's inclusion—provided in the amendment as well—of the all important "special circumstances" provision would provide for sufficient flexibility for dealing with this issue. For purposes of legislative history, I would like to provide examples of the kinds of circumstances which I feel can be taken into consideration under this provision. They include the following:

A child with special needs who has been living with and has developed emotional ties to a foster family whose income is above the means test level, and which family would have to lower its own standard of living to continue having that child live with them in an adoptive situation. Such special circumstances might also include the need for extraordinary dental assistance that might not otherwise be covered by medicaid; it might include special costs associated with an incontinent child whose family needed to buy new mattresses every few months; it might include special costs for new glasses for a child who constantly breaks the glasses provided for him. It should include too the factors of seasonal employment and fluctuating incomes. These are the kinds of special problems that are related to adopting children with special needs that might not readily come to mind for those of us who have not experienced such problems.

I would like to also add, Mr. President that although the income limitation in the reported bill and the amendment provides that prospective adoptive par-

ents not have an income exceeding 115 percent of the median income, in my view, States certainly should not institute any lower standard than that set forth in the Federal legislation.

Mr. President, another aspect to be considered when discussing the means test is this—we must keep in mind that the higher the income of the adopting family, the less likely it is that the family will require an adoption assistance payment to help care for their special-needs child. Conversely, the lower the income of the adopting family, the more likely it is that they will need greater assistance. So not only will it be more costly to follow a policy of placing a special-needs child with the lower income family, but such a policy will also create an incentive to place the children most in need with the families that have the least resources of time and income to care for them. I certainly do not believe the Federal Government wants to pursue or encourage that kind of a course.

TERMS OF ADOPTION ASSISTANCE

Mr. President, the amendment and the reported bill would also provide that the amount of the adoption assistance may not exceed the foster-care maintenance payment which would have been paid during the period if the child had been in a foster family home. I believe that this provision is most reasonable. It demonstrates, too, the cost effectiveness of the adoption assistance concept, in that the financial costs will never be greater than those associated with retaining a child in the least expensive setting in the foster-care system.

New section 475 of the new part E sets forth the definition of adoption assistance agreements as meaning a binding, written, and consensual agreement between the State agency and other relevant agencies and with the prospective adoptive parents of a child with special needs, which specifies the amounts of the adoption assistance and any social or other services and assistance which will be provided for the child pursuant to the adoption assistance agreement—such as assistance with certain legal costs and referrals and linkages to necessary social services and the agencies responsible for providing them. New section 472(a)(5) of the new part E would make it clear that the assistance may be provided before an adoption becomes final while the child is residing in the home of the prospective adoptive parents.

These provisions are derived from section 103 of S. 961 which sets forth conditions for adoption assistance agreements to be negotiated by the prospective adoptive parents. Under the amendment now being offered, the adoptive parents should have the right to reopen negotiations regarding the amount of the adoption assistance agreements when changes in circumstances, or an emergency, or an increase in the cost of care, necessitates a change.

The adoptive assistance agreement provided for under the amendment and the reported bill would be entered into by the adoptive parents, the State agency involved in the adoption placement and other relevant agencies dealing with the needs of the child and the adoptive family. The agreement would spell out not only the terms, conditions, duration, and cost-of-living considerations surrounding the adoption assistance payment, but would also include a description of the services and assistance to be provided by the various agencies interested in the child's welfare. These other services might include services provided under title IV-B or other Federal or local programs.

These provisions in the amendment and the reported bill are derived from the provisions of section 103(b)(2) of S. 961 as reported, which provided that adoption assistance agreements should involve, to the maximum extent feasible, all parties and agencies which may be or have been providing assistance or services to the child. This provision was designed to provide the maximum coordination, continuity, and unification in the provision of the necessary services and assistance by various agencies. Section 103(a)(3)(B) of S. 961 as reported specifically provided that funds may be utilized both to assist parents in locating, and where alternative supports is not reasonably available, defraying the cost of, postplacement and postadoption special services for children as a result of conditions which existed prior to their placement or adoption. Under the provisions of the amendment and the reported bill, these services, if not available under other programs, could—and, I believe, should—be provided through child welfare services funds under title IV-B.

SPECIFICATION OF INTERSTATE RIGHTS UNDER ADOPTION ASSISTANCE AGREEMENTS

An additional—and sometimes very important—factor which should be spelled out in any adoption assistance agreement is the obligations of the parties if the adopting family moves from one State to another. Testimony in the hearings on S. 761 indicate that this is sometimes a crucial problem. In some cases, families which have moved from one State to another unexpectedly found that their adoption assistance had been terminated because of their move.

Although the amendment and the reported bill do not provide that the adoption assistance payments must follow a family moving from one State to another, this is obviously a highly desirable requirement to insure stability and continuity. In any event, the adoption assistance agreement should certainly indicate under what conditions such assistance might be terminated and specifically whether it would continue if the family moved out of the State. Clearly, however, if the child was eligible for medical assistance under the medicaid provisions of this proposal, such assistance would not be in any way affected by the family moving into another State. Even if the receiving State had opted to limit medicaid coverage whereas the originating State had not, it would be the obligation of that State and the Federal Government to make good the promise of full medicaid eligibility for that child in a situation where the adopting family moves.

Mr. President, let me give an example of why I view this matter of interstate obligations as being so important. During our hearings on S. 961, the parents of little Jenny, about whom I spoke earlier in my remarks, testified to their first-hand experience of what happens when the obligations of two States involved in an interstate placement are not established at the outset. Jenny's mother testified as follows:

> Let me give you a vivid example of a roadblock we had that scared both Allen and myself tremendously.
>
> Jenny came down here from New York to Virginia; one of her hands was deformed badly, and we had been told that she needed a series of operations, starting right away. This was about 2 months after we had Jenny.
>
> So we found a doctor, a very capable doctor. He said that he was willing to perform the operations. We told him about our financial situation. He said that did not really matter, that he would go ahead with it anyway.
>
> We wrote to New York State, saying is there any money you could give us to help with Jenny's handicaps, and they wrote back saying no, that we were unfortunately ineligible, because she was no longer a ward of New York State.
>
> So then, I started in at Richmond, saying, "Now we are going to live here in Richmond. Could you help us out?" And they said no, that she was the responsibility of New York.
>
> It came down to the morning of Jenny's operation, and the nurse came up to Allen and myself and said, "Would you like to sign the papers?" for the release of Jenny's operation, and we said, "No. She is not ours."
>
> Now, when a child is placed in your home, that is exactly what it is; she is placed. She is not ours. We could not adopt Jenny for a good year after we got her. It took 1 year by the time we adopted her. So we had no legal right to sign any papers for an operation.
>
> But yet, New York State was not going to help us, and Virginia claimed that it was not their responsibility. So we signed the papers, knowing full well that if anything happened to Jenny in that operation, we could be in a lot of trouble.

CONTINUATION OF ADOPTION ASSISTANCE

The committee reported bill and our amendment would also provide for continuation of the assistance payments through the age—18—at which an unemancipated handicapped child would be eligible in his own right for other Federal assistance, such as SSI, or eligible in his own right for medicaid as a disabled recipient of SSI.

Mr. President, I believe this continuity-of-support aspect is most important, especially regarding handicapped children. During hearings on the proposed Opportunities for Adoption Act in 1975, we received strong testimony which cogently demonstrated the case for not arbitrarily cutting off assistance for children with the most severe needs. Here is what we were told by Mark and Patricia Kravik:

> * * * the term children with special needs * * * is satisfactory when we are discussing 99 percent of the children for whom adoption subsidies were designed: the older child, sibling groups, or children with mild or correctible handicapping conditions. All these needs can be met by a short-term subsidy or one time payment to meet a specific need. For a very minute number of children, however, the nature of their handi-

capping condition is so severe that they will always remain in a state of financial, legal, and physical dependency. As one foster parent of a Down's syndrome child candidly stated: "It won't mean a damn thing when Lisa turns 18." Similarly, a chronological age of 18 years is of no consequence to the child with cystic fibrosis, spina bifida, or cerebral palsy. These conditions do not terminate on a child's 18th birthday as this legislation implies. To tell a prospective adoptive parent that any assistance for this child's special need will totally disappear at age 18 is definitely a deterrent for adoption. In the case of the child with cystic fibrosis or spina bifida the parents will still be confronted annually by thousands of dollars of medical and hospital bills—bills for which no insurance company will accept coverage since these are preexisting conditions.

As adoptive parents in this same position we have personally contacted over 50 insurance companies both locally and nationally in an attempt to obtain medical-hospitalization insurance coverage for our little boy who is brain damaged. The response was consistently negative. For any chronic, noncorrectable, major medical or handicapping conditioning of a preexisting nature they could not provide coverage either prior to or after age 18. Our little boy has already undergone massive seizures requiring medication, two operations involving major brain surgery, 3 months of hospitalization, and extensive physical and speech therapy. Doctors have informed us that it is not only possible but quite likely that he will undergo future seizures requiring further brain surgery and hospitalization. This can as easily occur after his 18th birthday as before. If it happens after 18, however, we will be faced with insurmountable medical costs. This is a real fear, a real deterrent to adoption for the parent of a child with a severe handicapping condition or permanent medical problem. Our child has an IQ in the range of 35–40, he will always require the care and shelter of our home and family. We fully understand what this challenge of parenting on a permanent basis involves. What we cannot accept are the insurmountable costs that medical treatment, hospitalization, therapy programs, or rehabilitative services will require for the moderately to severely handicapped child such as ours after age 18.

In a recent survey conducted by the Montgomery County Association for Retarded Citizens in Maryland the greatest problem articulated by biological families of handicapped children was the ultimate concern, not for the immediate needs of the handicapped child, but for his or her future as a handicapped adult. The greatest obstacle to biological families is likewise the greatest obstacle to adoptive families. The "foreverness" of a burden is something no one can accept. As adoptive parents we are willing to accept part of that burden—the aspect of parenting for a lifetime. What we cannot carry, in these times of diminishing resources and economic inflation, is the insurmountable financial burden of extensive medical and therapeutic services that our child will continue to require after 18 years.

We personally know a number of foster families who would be ready tomorrow to adopt if they had these reassurances for extended support services after age 18: Kathy, a 2-year-old spina bifida child in Virginia; Timmy, a deaf and retarded baby in Virginia; Larry, an autistic 4-year-old with severe behavioral problems in Virginia; Lisa, a 3-year-old with Down's Syndrome in Maryland; Brian, a blind and retarded 4-year-old in Washington, D.C., and Laurie, a developmentally disabled 2-year-old permanently paralyzed from the waist down in Washington, D.C.

These are precisely the children that this legislation should be facilitating the adoption of. In the past because of their double burden of homelessness combined with a severe handicapping or medical condition they were for the most part shunted into State institutions, warehouses for human beings. Instead, we have today foster families coming forth saying they want to adopt these children right now if they are given the necessary extended support services. Not to give them the long term services that would make this legislation truly effective in terms of facilitating adoption is condemning these children to lifetime foster care and/or institutionalization instead of the permanent adoptive families which they deserve.

VOLUNTARY REPORTING

Mr. President, in conjunction with the means test, included in new section 472 (a) (2) of new part E, for adoption assistance agreements, provisions are included in section 472(a) (4) which would require voluntary reporting by the adoptive parents to keep the State or local agency administering the adoption assistance program informed of circumstances which would make them ineligible for such assistance—for instance, if their income was substantially increased. Mr. President, in S. 961 we included a provision that parents make periodic declarations of the need for continuing adoption assistance, and the Human Resources Committee report called for protecting the privacy of the parents with respect to any investigations into these declarations.

It was my understanding in introducing S. 1928 that those protections were applicable to the voluntary reporting provisions of that bill as well, and are also applicable to this amendment. There should be the least possible intervention in the life of the adoptive family by the State or the local agency—it is certainly not our intention that adoptive parents have monitors come into their homes to carry out this provision.

Another concern arising out of this section might be that it might lead to an automatic disqualification of prospective adoptive families whose incomes are just below, or have the potential to be raised just above, the income cutoff for adoption assistance eligibility. This in turn could provide a disincentive to adoption—exactly the situation we are trying to correct by this legislation—unless the family understands that the assistance payment can continue, even if reduced on a sliding phase-out scale, until such time as the family's income reaches generally about 125 percent of the adjusted median income.

I would expect that such an arrangement could be considered one of the "special circumstances" to be taken into account when establishing a family's eligibility, in accordance with the second sentence of new section 472(a) (2) of the new part E. Otherwise, when foster parents find themselves just at the cutoff level, they might be forced to choose whether to adopt a child in their care and forego a promotion or new job that would benefit their other children, or keep the child in a foster-care arrangement so they can be assured of the continuation of the foster-care maintenance assistance. Again, I think this is an intolerable alternative with which to confront these families.

On the other hand, Mr. President, where an adoptive parent's income is significantly higher, the amount of the actual assistance payment necessarily should become sufficiently small so that the impact of the eventual complete cutoff of the adoption assistance payment will be minimal in comparison to the expected income gain from a promotion, new job, or renewed seasonal work, and should not act as a disincentive to those parents to working for their own and their family's advancement.

SINGLE-PARENT ADOPTIONS

Mr. President, the Finance Committee bill and this amendment also would include single parents as eligible for assistance under this legislation on behalf of their adopted child. This is an important addition to the adoption provisions of the reported bill, since it gives Federal recognition and approval to the practice of allowing individuals, as well as couples, to adopt children.

In my remarks today, in describing just who are the children this legislation seeks to assist, I gave the example of the 6-year-old child who had lived all her life in a convalescent home for crippled children because of a variety of birth defects. I think it is fitting to point out, Mr. President, that this child was adopted by a single parent who is a pediatric nurse practitioner. I would hope that the inclusion of this provision in the new part E will serve as a model to those jurisdictions in our country which now overlook the possibilities of single-parent adoptions. I applaud and am grateful to the Finance Committee for its foresight and sensitivity in agreeing to this addition which I proposed last year.

MEDICAID ELIGIBILITY FOR SPECIAL NEEDS CHILDREN: A LANDMARK PROVISION

MEDICAL ELIGIBILITY

Mr. President, one of the major benefits affecting adoption reform included in H.R. 7200 as reported and in this amendment is to vest medicaid coverage in a child who was eligible for foster care and is later adopted, for medical conditions existing prior to adoption—or all medical conditions at the option of a State. I cannot overemphasize the importance of this provision. Right now, children in foster care receive Federal

medicaid insurance to pay for serious medical and emotional problems. If these children are adopted, however, they automatically lose this medicaid assistance, and adopting parents often find that their own insurance carriers will not cover these prexisting costs for an adopted child. This certainly is a "catch-22" situation.

Our amendment and H.R. 7200, as reported, would amend the law to permit medicaid benefits to follow the child into an adoption placement—limited, if the State so elects, to care for those medical conditions existing prior to adoption. Such a change will eliminate one of the worst disincentives to adoption, which one of the witnesses at our hearing on the proposed Opportunities for Adoption Act characterized as "a situation too bizarre to be believed." I want to point out, too, Mr. President how important it is that there is no means test associated with these medicaid eligibility provisions and that the medicaid assistance would extend to the age—18—at which a disabled child can be eligible for medicaid and maintenance support through SSI eligibility. Mr. President, the Finance Committee last week ordered reported—in H.R. 9434—provisions in the proposed child health assessment program (CHAP) which also deals with medicaid coverage of adopted children with special needs. I see no inconsistency in affirmative action on both of these two measures. The CHAP provisions cover non-AFDC children, as well as the AFDC children covered by this amendment.

COVERAGE OF NONRECURRING EXPENSES

Another important feature of the amendment and H.R. 7200 is the provision authorizing States to cover the costs of nonrecurring expenses associated with the adoption proceeding for a special needs child, such as legal and other expenses. Again, it is significant that there is no means test connected to this provision. This provision derives from section 13(a)(1) of S. 961 as reported.

FUNDING OF IMPLEMENTATION OF PUBLIC LAW 95-266

Mr. President, Senate action on these provisions—delayed for over a year now since their approval by the Finance Committee—is most timely in terms of action we have taken last September 27 to add $5 million to the Labor-HEW appropriations bill, H.R. 12929, to fund the implementation of the adoption reform provisions of Public Law 95-266. Today's action and approval by the other body in conference will mark the final chapter in this 7-year congressional process.

FOSTER CARE REFORMS

Mr. President, in addition to the significant and important provisions in this amendment dealing with adoption, I am encouraged and delighted by the progress we have made in working with the Finance Committee and the Administration to focus on the needs of children caught in the tangle of the foster care system. This has been a problem on which great leadership has been provided by my friend and colleague from California in the other body, GEORGE MILLER, and he deserves much credit for the early work he has done in this much-neglected area.

Mr. President, this tragic problem was created unwillingly. Perhaps placing it in its historical perspective will shed more light on where we have been and how far we have come today, and why the legislation before us is so very significant.

HISTORICAL PERSPECTIVE ON FOSTER CARE

Robert H. Mnookin, professor of law at the University of California/Berkeley, provided an excellent historial perspective of the Federal role in foster care in his testimony of September 8, 1976, during joint hearings called by the House Education and Labor Committee and the former Senate Committee on Labor and Public Welfare to explore the problems and issues of foster care. The following is an excerpt from Professor Mnookin's testimony:

The limits of the current federal role—to provide funds for foster care but not to make or influence policy—can be partially explained by the history of federally supported foster care within the AFDC program of the Social Security Act of 1935. Before passage of the Social Security Act, care of poor, neglected and dependent children was a state, local and private responsibility. Although the federal Children's Bureau was concerned with children separated from parents and relatives, the federal government provided meager financial support for children who were orphaned, abandoned or removed from their families because of neglect or abuse.

The federal AFDC program did not initially include foster care. In fact, the program emphasized the importance of supporting poor children within their own homes or in the homes of relatives, and not resorting to out-of-home placement. Giving federal aid to children not living with their families was seen as undermining the Social Security Act's central policy of encouraging family unity and responsibility. During the 1940's and 50's, state AFDC plans included provisions for discontinuing support payments if a home were found to be "unsuitable." However, at the same time, the prohibitive costs of caring for a child outside his or her home discouraged states from using juvenile courts to remove children from parental custody, unless a relative or other person offered to care for or support the child. Consequently, a welfare department was likely to find a home "unsuitable", and discontinue AFDC payments but leave a child to live in that "unsuitable" home.

The 1962 amendments to the Social Security Act changed the situation significantly. Children who had been receiving AFDC payments within their own homes became eligible for an even higher federal reimbursement if they were removed from their homes as "a result of a judicial determination to the effect the continuation therein would be contrary to the welfare of such child" [42 U.S.C. § 608(a)(1)]. The requirement of a court decision was a compromise. It provided a means for the federal government to share in state and local foster care, but only in those cases where a court of law as an independent decisionmaker had found that the interests of the child and the duty of the state to protect its children outweighted the interests of family privacy and necessitated removal from parental custody for the child's welfare.

The availability of federal funds for out-of-home care did not significantly affect the states' behavior, since states were not obligated to include foster care as a regular part of their AFDC program. Most states did not immediately apply for federal funds because the Act required certain changes in the administration of foster care for states to be eligible. Moreover, only a fraction of the children in foster care at that time would have become eligible anyway since many were not removed by courts, and those who had come before the court were not always AFDC recipients at the time they were removed. By June 1965, only 23 states had accepted the AFDC foster care program and were using it to care for 5,779 children.

In 1967, after continuing controversy between HEW and several states over their foster care programs, the AFDC foster care program was made mandatory for all states to begin in 1969. Eligibility for federal reimbursement was extended to children who were not actually AFDC recipients but who would have been if application had been made when the court removed them from parental custody [(42 U.S.C. § 608(a)(4)]. These amendments expanded the AFDC foster care program dramatically.

Today, the federal government pays a portion of the maintenance costs of foster children from families eligible for AFDC who are removed from their homes after a judicial determination that removal is necessary for the child's welfare. In other words, the federal government does not contribute to the maintenance costs of children who are placed in foster homes after a juvenile court has found them to be delinquents or children who are voluntarily placed by their parents without any judicial involvement. In addition, the federal government provides money for foster care services as part of the $2.5 billion national appropriation for services of the Social Security Act. For the year 1975, federal financial involvement in AFDC foster care under Title IV-A amounted to $137,822,000. In May of 1976 the federal government contributed to the support of approximately 116,000 children in foster care.

LACK OF RESOURCES DESIGNED TO PREVENT FOSTER CARE PLACEMENTS

Mr. President, there has been virtually unanimous agreement between the public officials who administer the foster care system and child welfare advocates that there has been too little emphasis in the past placed upon preventing children from entering the foster care system, or, in attempting to return them to their natural families at the earliest possible time. S. 1928 attempted to shift the Federal priorities away from merely maintaining children in foster care situations, and to move those priorities toward the development of preventive and rehabilitative techniques designed to keep children with their families and out of the foster care system. Although the bill reported by the Finance Committee—and this amendment—does not incorporate all of the provisions of S. 1928 in this area, it does encompass several important—and necessary—provisions.

NEW CHILD WELFARE PROGRAMS

The major foster care reforms arising out of H.R. 7200 are in the area of child welfare programs authorized under title IV-B of the Social Security Act. The amendment and the reported bill incorporate much of the programmatic components of S. 1928 in this area. These provisions include provision for the following:

First. An inventory of all children who have been in foster care under the responsibility of the State for a period of 6 months preceding the inventory, including a determination of the appropriateness of, and necessity for, the current foster placement, whether the child can be or should be returned to his parents

or should be freed for adoption, and the services necessary to facilitate either the return of the child or the placement of the child for adoption or legal guardianship.

Second. The design and development to the satisfaction of the Secretary of a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care or who has been in such care within the preceding 12 months can readily be determined, a case review system for each child receiving foster care under the supervision of the State, and a service program designed to help children remain with their families and, where appropriate, help children return to families from which they have been removed or be placed for adoption or legal guardianship.

Mr. President, if a State wishes to accept new IV-B funds to carry out new section 428 (b) and (c), it must provide all of the services outlined above. These services—taken from S. 1928—will provide important, needed emphasis on programs designed to locate children in foster care and assess their needs and attempt to reunite them with their families, as well as prevent their initial removal.

CASE REVIEW SYSTEM

Mr. President, I would like to comment further on the definition of a case review system contained in new section 428(d)(1) of new part E. The case review system means a procedure for assuring that each child has first, a case plan designed to achieve placement in the least restrictive—most family-like—setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, second, periodic review no less frequently than once every 12 months by either a court or administrative review in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care as well as a projection of a likely date by which the child may be returned to the home or placed for adoption or legal guardianship, and finally, third, the application of procedural safeguards with respect to each child to insure that a dispositional hearing is held no later than 24 months after the original placement to determine the future status of the child.

This dispositional hearing to determine the future status of the child should provide for such determinations as whether the child should be returned to the parent, requires continued placement for a specified period of time; should be freed and placed for adoption; or requires a permanent long-term foster care placement because of the child's special needs or circumstances. This dispositional hearing should, of course, provide for subsequent reviews to insure that the disposition rendered has been carried out. The procedural safeguards are also applicable with respect to such issues as removal of a child from his home, visitation rights and other such matters which may arise.

These provisions are particularly important in assuring that each child in foster care is provided with appropriate placement and systematic reviews to ascertain the appropriateness of his or her continuing foster placement.

DIRECT GRANTS TO INDIAN ORGANIZATIONS

Mr. President, I would like to comment briefly on one specific provision of the amendment and the reported bill which I believe to be of special significance. New section 429(a) provides that the Secretary may make payments under title IV-B directly to an Indian tribal organization where appropriate. A similar provision was contained in S. 961 as reported in terms of the adoption program, and I believe that this provision with respect to child welfare services is both necessary and appropriate to authorize Indian tribal organizations to develop and operate their own child welfare programs.

Recognition of Indian sovereignty is also contained in new section 428(d)(1)(D), which would recognize the decrees of Indian tribal courts in dispositional hearings. These two provisions, taken together, represent an important recognition of the unique role of Indian tribal organizations in child welfare matters. I had urged the Finance Committee to add these provisions to H.R. 7200, and I was very pleased that they were incorporated into the reported bill.

There is also pending in the House at the present time an Indian child welfare bill, S. 1214, which was passed by the Senate last year. That legislation, sponsored by the chairman of the Special Committee on Indian Affairs, the Senator from South Dakota (Mr. ABOUREZK), provides much more extensive programs dealing with the special needs of Indian children and the complex jurisdictional problems relating to these children. I am hopeful that action on this measure will also be completed this Congress.

FISCAL DISINCENTIVES FOR FOSTER CARE PLACEMENTS

Mr. President, the bill as reported and the amendment are also designed to create fiscal disincentives concerning the long-term or unnecessary placement of children in foster care situations. H.R. 7200 as reported would thus place a ceiling on a State's reimbursement for foster care maintenance costs under title IV-A of the Social Security Act. Under existing law, there are no fiscal limitations upon the amount of Federal reimbursent a State may receive for making IV-A foster care maintenance payments. The reported bill provide in section 474 (b) of the new part E for a ceiling on foster care maintenance payments, based upon a 20-percent increase over a State's fiscal 1977 payments, and a 10-percent increase thereafter until 1983. Our amendment would advance those effective dates 1 year, to reflect the passage of time since H.R. 7200 was reported by the Finance Committee last year.

The reported bill and the amendment also would provide for an alternative payment to States based upon a State's share of $100 million based upon its population under the age of 18. A State is entitled to elect which method of payment it wishes to receive.

Mr. President, although I appreciate the concern expressed by many that a ceiling on foster care payments poses some risks, I also recognize that the present funding system may actually encourage unnecessary use of foster care because of its totally unrestricted, open-ended nature. The original proposal considered by the Finance Committee would have limited the States to payments of 10 percent over the previous fiscal year payments for a 5-year period.

I felt that this ceiling was too restrictive and worked with the Finance Committee to develop an alternative and higher increase—20 percent—for the first year. This, of course, provides a higher base against which the subsequent 10-percent increases are thereafter measured. I believe that this approach—while perhaps not ideal—does move in the direction of discouraging foster care placements for children. Hopefully, these provisions, combined with an increase in funding for child welfare services programs under title IV-B, will provide the necessary incentives to keep children out of the foster care system and in their own families wherever possible.

Mr. President, our amendment and the bill as reported also would provide that any moneys a State receives for its foster care maintenance program which it does not need for foster care, can be utilized for the child welfare services under title IV-B. I believe that this is an important provision to provide an added incentive for States not to leave children in foster care unnecessarily merely to keep the size of their program at a certain level to insure future levels of support.

Mr. President, I think that it is incumbent upon Congress to watch carefully the effects and results of this ceiling. If in the future it appears to be unrealistically too low to accommodate rising costs or unforeseen elements in caseloads, then we would obviously want to develop necessary adjustments to the law.

COST IMPACTS

Mr. President, I want to clarify one issue that has appeared to cause some confusion. Although the Finance Committee's report includes—on page 116 of report No. 95-573—an estimated cost impact under the title IV-B program, this estimate—as the footnote in the report indicates on page 119—is in anticipation of increased appropriations under the existing authorization. The amendment, as did the reported bill, makes no changes in the current authorizations of appropriations of $266 million annually. The Finance Committee's report anticipates—and I concur—that the changes we are making in the programs and services authorized under title IV-B will make it more likely that the administration will seek increased funding for title IV-B, which will be favorably considered by Congress.

Mr. President, let me also point out that the Congressional Budget Office cost-estimate—set forth on page 125 of the committee report—projects that the adoption assistance program established

by this amendment will actually result in savings since moving these children out of foster care into permanent adoptive homes is far less costly than continuing them in foster care.

MODIFICATIONS OF THE FINANCE COMMITTEE REPORTED BILL

Mr. President, in the interest of seeing this legislation enacted before the end of the 95th Congress, I am offering it as an amendment to the pending bill basically in the form approved by the Senate Finance Committee in H.R. 7200. I personally had hoped to see enacted a more extensive measure deriving from the accommodations between this region and the House version of H.R. 7200 which would have very likely resulted in conference. This is no longer possible given the legislative situation.

But I continue to feel strongly that the measures contained in the bill as reported—particularly as they related to adoption assistance for children with special needs—represent important and necessary steps forward in our treatment of needy children.

Because of the conference situation, I have made two adjustments in the text of H.R. 7200 reported provisions. The first is to advance the effective dates of each of the provisions 1 year to reflect the time that has passed since H.R. 7200 was reported last year. The second change would eliminate the restriction on the amount of funds the Appropriations Committee may appropriate for the new child welfare services provided for in new section 428 (b) and (c) of the new part E. The bill as reported restricted the amount of funds that the Appropriations Committee could designate for carrying out the new programs. This provision—unwisely I think—would constitute a ceiling—not merely a permissible earmark—on funds appropriated for new programs under title IV-B. The administration has indicated its support for increased funding for the protective services spelled out in the legislation, but not for continuing to pour funds into the IV-B program which might be expended upon services unrelated to the prevention of unnecessary foster care. The adjustment in the amendment would merely permit the Congress the flexibility to appropriate whatever amount is necessary to carry out the activities and programs provided for in subsections (b) and (c) of section 428 of the new part E.

NONCHILD WELFARE AMENDMENT FROM H.R. 7200

Mr. President, in order to secure agreement from the ranking minority member of the Finance Committee (Mr. CURTIS), we have included in this amendment another provision from H.R. 7200—section 524—which relates to earned income disregards for AFDC recipients. Although many—including the administration—believe that some revisions are necessary to the existing law on earned income disregards for working welfare recipients, many also believe the provisions of H.R. 7200 are far too restrictive and may actually result in discouraging welfare recipients from working. The peculiar floor situation we are now facing, however, necessitates our accepting this provision in order to obtain consideration of the important adoption and child welfare provisions of this amendment.

CONCLUSION

Mr. President, as chairman of the Subcommittee on Child and Human Development of the Human Resources Committee, I believe that the adoption assistance and child welfare provisions of the amendment I am offering today—derived from the Finance Committee's reported bill—represent important steps forward in our necessary efforts to meet the needs of the hundreds of thousands of children who are now locked into a dismal and depressing system. I believe that these provisions begin to make the type of changes that will give these children a real future—an opportunity to grow and develop into productive and healthy citizens.

Mr. President, I want to express my appreciation for the cooperation of the chairman and floor manager (Mr. LONG) and the chairman of the Public Assistance Subcommittee (Mr. MOYNIHAN). I am also very indebted to Michael Stern and Joe Humphreys of the Finance Committee staff for their very able assistance and contributions to our efforts on behalf of this legislation for the past 18 months. Without their wise counsel then and today, we would never have been able to reach the point of successful action on these very important provisions.

I thank the Senator from New York for his very effective assistance on this matter today. It is a pleasure to work with him. I applaud the move we are about to make.

Mr. MOYNIHAN. I thank the Senator.

● Mr. RIEGLE. Mr. President, I wish to express my support for the amendment offered by the Senator from New York (Mr. MOYNIHAN) embodying the provisions of title I of H.R. 7200 as reported from the Finance Committeee. As a member of the Human Resources Committee's Subcommittee on Child and Human Development, I am pleased that this essential reform of Federal adoption policy will finally be acted upon by the full Senate.

As many of my colleagues are aware, the adoption subsidy provisions of this title have been included in legislation introduced by Vice President MONDALE, when he was chairman of the Subcommittee on Children and Youth, and by Senator CRANSTON in this Congress. These provisions will encourage the adoption of handicapped children and others with special needs by preventing the arbitrary cutoff of Federal assistance to these children when they are placed with a family of their own. Too many children with special needs have been cut off from the possibility of adoption, because parents who wanted to adopt them could not afford the additional costs that would have resulted from the arbitrary cutoff of Government assistance.

I would like to point out, however, that the amendment we are considering today includes a provision stating that expenditures under the foster care assistance program will remain constant after 1982. This provision seems to me to be premature at this time, as well as a questionable judgment in view of our uncertainty about what the needs of such children will be in the future. Since this provision has not received adequate consideration by the full Senate, I would hope that the Senate conferees on this bill will be receptive to the arguments that may be offered by the House conferees concerning the inappropriateness of such a provision.

Having cosponsored two bills containing adoption subsidy provisions (S. 961 and S. 1928) and having participated in hearings on this subject, I can urge my colleagues to support the amendment of the Senator from New York, as I believe it can provide an extremely cost-effective means of encouraging the adoption of children with special needs, so that they will have a fair chance at growing up in a loving family of their own.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. NELSON addressed the Chair.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Utah.

The point of order is not well taken.

Mr. HANSEN. What?

The PRESIDING OFFICER. The point of order is not well taken.

Mr. HANSEN. May I suggest the absence of a quorum on my time until the Senator from Utah arrives?

Mr. NELSON. I wonder if the Senator will withhold that so that I may make a unanimous-consent request?

Mr. HANSEN. No. I want to protect the Senator from Utah who is not in the Chamber.

Mr. NELSON. I will do that.

I ask unanimous consent that his amendment be temporarily laid aside.

Mr. HANSEN. With the understanding that the unanimous-consent agreement reserves the right to object, I yield to the Senator from Wisconsin in order that he may make the point I think he has in mind.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, I ask unanimous consent that the amendment of the Senator from Utah be temporarily laid aside solely for the purpose of finishing action on my unanimous-consent request of about 30 minutes ago, on action on the bill involving the two wilderness areas in the State of Wisconsin.

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

WILDERNESS LANDS, WISCONSIN

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 12264) to designate certain

lands in the State of Wisconsin as wilderness.

The Senate continued the consideration of H.R. 12264.

Mr. NELSON. Mr. President, this bill has been approved by the minority and the majority, Senator HANSEN and Senator JACKSON, and it was passed by the House of Representatives.

I move the adoption of the bill.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill (H.R. 12264) was read the third time and passed.

Mr. HANSEN. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. NELSON. I thank the Senator from Wyoming.

REVENUE ACT OF 1978

The Senate continued with the consideration of H.R. 13511.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, will the Senator from Wyoming yield 30 seconds to me?

Mr. HANSEN. I yield 1 minute to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 1 minute.

UP AMENDMDENT NO. 2033

(Purpose: To prohibit the issuance of fringe benefit regulations)

Mr. HATCH. Mr. President, I call up my unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the Senator's previous amendment is set aside per the previous agreement.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) for himself and Mr. STEVENS, Mr. CURTIS, Mr. EASTLAND, Mr. TOWER, Mr. YOUNG, Mr. DOMENICI, Mr. SCHMITT, Mr. HELMS, Mr. GARN, Mr. GOLDWATER, and Mr. HAYAKAWA, proposes unprinted amendment numbered 2033.

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

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

The amendment is as follows:

At the end of the bill add the following section:

SEC. . FRINGE BENEFIT REGULATIONS.

No regulation shall be issued in final form providing for the inclusion of any fringe benefit as part of gross income by reason of Section 61 of the Internal Revenue Code of 1954.

Mr. HATCH. Mr. President, this amendment prohibits the Treasury Department from issuing final regulations that would include employee fringe benefits as part of gross income. It is designed to remedy a very serious problem, a problem that would not have arisen were it not for the overzealous reinterpretation of the Tax Code by the Internal Revenue Service.

Present law forbids the IRS from instituting any new taxes on fringe benefits until 1980. I believe this ban on IRS regulations should be made permanent. It is the responsibility of Congress to determine tax policy, not the IRS.

It has been the traditional role of the Internal Revenue Service to exclude fringe benefits from taxation unless expressly instructed otherwise by the House and Senate. Only in recent years has the bureaucracy taken such a keen interest in these benefits. This issue digs deeply into the pocketbocks of the American public. According to the Bureau of Economic Analysis, if fringe benefits were taxed today, it would mean an increase of $240 to the average tax payer.

IRS Commissioner Jerome Kurtz and his agency have exhibited an unusual persistence in trying to include fringe benefits as part of taxable income. In an interview last year with U.S. News & World Report, the Commissioner was asked: "Why do you not assume that if Congress wanted to tax employee fringe benefits, it would have told you? The Commissioner responded and I quote:

We really don't have the option simply to stand still for practices that have been followed in the past. Our revenue agents in the field are bright and inventive.

The Commissioner adds that he is looking at employee fringe benefits "with considerable intensity." He says he takes "a very broad approach." He adds, "I believe they're basically taxable."

Mr. President, my fellow Senators, I did not know that the tax laws of this Nation were decided by "bright and inventive revenue agents." I did not know that the IRS Commissioner could pass judgment on the tax practices established by the Congress. And I do not believe this Congress will tolerate that kind of action.

What kind of benefits will be taxed by these regulations? The IRS has already indicated, if allowed, it will include the following as taxable income: Discounts for store clerks; free parking spaces; free trips for airline, bus, and railroad employees; company picnics; company Christmas parties; education in the form of free on-the-job training; free tuition for children of university faculty; meals provided to an employee at a discount rate; and a score of other items now considered to be tax-free. The imaginative powers of the IRS seem to be unlimited with regard to this matter. When will it stop? If a parking space becomes taxable income, because it is a benefit, will the IRS eventually conclude that the benefits of a housewife are also taxable income?

And who will be hurt most by these regulations? Not high salaried executives who can more easily absorb an increase in taxes. The people most affected will be the low- and middle-income wage earners, the men and women who already have trouble making ends meet. A tax on fringe benefits will require a much higher percentage of their wages, without any additional take-home-pay to offset an additional tax. Mr. President, I do not believe that the budget of the average taxpayer has any slack in it. The average taxpayer does not have the spare cash on hand to pay taxes on the discounts that his employer gives him or to pay taxes for his use of company-owned recreational facilities.

The taxpaying public is clamoring for a reduction in taxes, not an increase. And rightly so. According to the economic unit of U.S. News & World Report, the combined taxes levied by Federal, State, and local governments amounted to $521 billion in 1977, an increase of 62 percent since 1972, a period of only 5 years. And now the IRS wants more. Can the Senate justify such actions at a time when America's savings and investment rates are already among the lowest in the industrialized world? At a time when the Senate has promised the American people a substantial tax cut?

Mr. President, the law that now restricts the IRS from taking immediate action will expire in less than 15 months. During that period, many long-term labor contracts will be negotiated by companies and labor unions. As a member of the Human Resources Committee, I am concerned about the failure of the Congress to provide a clear indication as to what portion of fringe benefits will someday be taxable. How can business and labor negotiate with any certainty when the Government cannot agree on a definition of gross income? If IRS regulations are reinstated at some future date, any gains achieved by labor unions during contract negotiations may suddenly be wiped out. Woe to the labor leader who must explain such an unfortunate situation to the rank-and-file. But greater tragedy will befall the workers and their families. Business and industry leaders are also facing a dilemma. Long-term planning is seriously curtailed by the unpredictability of future wage and benefit commitments. Is not contract bargaining tough enough without adding this variable of uncertainty?

Mr. President, this amendment may be the only one introduced to the tax bill that will have no impact on the current budget or any projected budget. By adding this measure to the bill, the Senate will not cut taxes. It will simply give Congress more control over future taxation.

To date, we in the Congress have not been willing to face this issue headon. On August 2 of this year, the Senate passed H.R. 12841, a bill which restricts the IRS from issuing regulations on fringe benefits until 1980. This bill extended an earlier bill, H.R. 9251, which prohibited the issuance of regulations until July 1 of this year. Instead of providing the IRS with proper instructions to leave tax legislation to the Congress, we have twice put off considering the matter until "a review of these issues" can be undertaken. The manner in which this problem has been handled has only increased the uncertainty about the future taxation of these benefits. The

House Ways and Means Committee should be credited, however, for its action to create a task force that has already begun hearings. I look forward with great interest to learn the details of their findings. But in general, what will the task force tell us? They will tell us what fringe benefits, if any, should be taxed. When we receive that information, we should act, and act decisively. The decision to impose a new tax on any fringe benefits should be made here in Congress. Unless the law is changed, that will not occur. It is senseless to allow the IRS the prerogative to act first, which then forces Congress to repeal its regulations. It is time to put an end to this game of "cat and mouse." Let the task force make its suggestions and let Congress impose the tax.

Commissioner Kurtz has taken his stand on this issue. His persistence in raising additional revenues appears unrelenting. Edward E. Scharff, writing in this month's issue of Money magazine made the following observation about the most recent viewpoint espoused by the Commissioner:

> The issue has become so volatile that Kurtz and other administration officials now refuse to be interviewed on fringe benefits. But Kurtz' aides make it plain that if Congress fails to act decisively, Kurtz will be ready to take tough measures in 1980. Moreover, they note, the present Congressional ban merely precludes IRS officials from issuing new guidelines on the subject. It does not prevent IRS agents from taking matters into their own hands. Most agents are well aware of their boss' sentiments regarding fringe benefits. It is unlikely they will wait for Kurtz to announce a formal policy before taking action.

The time has come to put an end to these unsolicited efforts by the Internal Revenue Service to heap a heavier tax burden on the shoulders of millions of American taxpayers. Congress must act now to prevent future abuse by the IRS. I do not believe the American people will tolerate an additional and burdensome tax that is harshly imposed by our unelected bureaucracy.

Mr. President, I intend to ask for the yeas and nays on this amendment.

And I ask unanimous consent that this be placed in the order following other amendments preceding it.

Mr. PROXMIRE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Wisconsin reserves the right to object.

Mr. PROXMIRE. What was that request?

Mr. HATCH. That this amendment be also placed in the order behind the other preceding amendments.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. There is objection.

The PRESIDING OFFICER. The Senator from Ohio objects.

Mr. METZENBAUM. I have no objection with respect of bringing up one of the Senator's amendments, but I think there is a question of whether we should stack them all up. There are other Members who have amendments to bring up. I object.

The PRESIDING OFFICER. Objection is noted.

Mr. HATCH. All right.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. HANSEN. Mr. President, I yield 2 minutes to the Senator from Montana.

Mr. MELCHER. I thank the Senator from Wyoming.

UP AMENDMENT NO. 2034

(Purpose: To provide that both the dependent's and spouse's services are given adequate consideration in determining estate tax basis for jointly owned farm or business interests)

Mr. MELCHER. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. As long as the amendment of the Senator from Utah is pending, no further amendments are in order.

Mr. MELCHER. I ask unanimous consent that the Senator's amendment be set aside and my amendment be called up.

Mr. HATCH. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. I am happy to have unanimous consent to set my amendment aside and put in order, and I will even allow this Senator's amendment to go ahead of mine, otherwise we are going to hear mine.

Mr. MELCHER. Mr. President, I reserve the remainder of my 2 minutes.

Mr. ROBERT C. BYRD. Mr. President, I hope that we will not have objections to setting amendments aside so that the Senate can make some progress.

I hope the Senator from Utah could have his amendment up, and I understood he had one amendment up and one set aside for a second one. I hope that Senators would not object, because in due time the Senate will work its will on the first amendment in any event.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. HATCH. Mr. President, I asked that my amendment be set aside in the regular order and then called up. I asked for the yeas and nays at that time. It was objected to. If they want to object to that, I will allow my amendment to be pending.

Mr. ROBERT C. BYRD. I understand that. I am trying to defend the Senator.

Mr. HATCH. I understand that, and I appreciate it.

Mr. ROBERT C. BYRD. I hope objection will not be made to his calling up another amendment and there will not be objection to the Senator from Montana, so the Senate can be getting some work done. Otherwise, it is just wrangling and getting nothing done and eventually we are still going to have to dispose of both of those amendments one way or another.

So, Mr. President, I ask unanimous consent that the Senator have one amendment pending.

Mr. HATCH. I have one set aside, and this is my present amendment which is the pending amendment. I ask unanimous consent that it be set aside and placed in the order behind the other amendments that presently exist following the cloture vote.

Mr. ROBERT C. BYRD. And then let the Senator from Montana be permitted to go ahead.

Mr. HATCH. Fine.

Mr. ROBERT C. BYRD. I hope that will not be objected to.

Mr. METZENBAUM. Mr. President, reserving my right to object, will the agreement to accept the amendment at that point preclude the raising of a parliamentary inquiry as to whether or not it is a germane amendment at that point?

Mr. ROBERT C. BYRD. No; it will not.

Mr. HATCH. I will not ask that.

Mr. ROBERT C. BYRD. We waive no points of order in getting the unanimous consent.

Mr. METZENBAUM. I have no objection.

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

The Senator from Montana.

Mr. MELCHER. I thank the Senator.

And I ask that my amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Montana (Mr. MELCHER) proposes unprinted amendment numbered 2034.

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

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

The amendment is as follows:

> On page 374, line 18, strike out "spouse of the decedent" and insert in lieu thereof "decedent and the spouse of the decedent".
>
> On page 374, lines 22 and 23, strike out "acquisition indebtedness" and insert in lieu thereof "value"
>
> On page 375, lines 7 and 8, strike out "acquisition indebtedness" and insert in lieu thereof "value"
>
> On page 376, strike out lines 8 through 15 and insert in lieu thereof the following new subparagraphs:
>
> "(C) Inherited property.—For purposes of applying this subsection and subsection (a) in the case of any property which had been acquired as separate property either by the decedent or surviving spouse by gift, bequest, devise, or inheritance, the value of such property (at the time acquired by the decedent or surviving spouse) shall be taken into account under this subsection as additional consideration furnished by the decedent or spouse who acquired such property by gift, bequest, devise, or
>
> "(D) COORDINATION WITH SUBSECTION (a).—If elected by the executor, the amount of consideration furnished shall be determined solely under this subsection for purposes of applying subsection (a). The election shall be made in such manner as prescribed by the Secretary."

Mr. MELCHER. Mr. President, this amendment is easy to understand. It corrects the situation where the wife,

when her husband dies, for purposes of inheritance tax, cannot count the appreciated value of the property that they have worked on on their farms and ranches across all of America. This is totally unfair, but yet that is the way our tax law now exists.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. MELCHER. I yield.

Mr. MUSKIE. Does the Senator have a copy of his amendment so we can evaluate its budgetary implications?

Mr. MELCHER. Yes.

The widow survives the husband. There was a debt on the farm or ranch at the time that she became the wife. Even though it was 30 or 40 years ago, the value of the farm or ranch that was inherited at the time of marriage, when it comes to the time of figuring out how much of that inheritance or the surviving widow will be counted as contributing to the value she is entitled to have she has to go clear back to the time of acquirement.

It is totally unfair. The woman on the farm or ranch contributes just as much to the success of that operation as does the husband, and to not allow the woman, when she becomes a widow, to have the value of the appreciation of the land is totally unfair.

While part of the bill before us corrects some of this, this merely adds to it and makes it totally fair. If we believe in ERA, if we believe that women have an equal right to property, then by all means the Senate should accept this unanimously.

Mr. METZENBAUM. Mr. President, will the Senator yield for a question?

Mr. MELCHER. Yes.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. METZENBAUM. It is controlled time.

Mr. HANSEN. Maybe the Senator from Maine would yield to the Senator from Ohio.

Mr. MUSKIE. Yes, I yield a minute. I might say again we are undertaking to get the budgetary implications, and there is a possibility that it has budgetary implications.

I yield to the Senator from Ohio.

Mr. METZENBAUM. I appreciate the Senator from Maine yielding.

Will the Senator from Montana indicate why there should be this discrimination? Will the Senator indicate why women who live on farms, on ranches, as against city dwellers who also pay tax, and where the women are oftentimes involved in a little family-owned business, where they pay a tax on a business similar to a ranch, I wonder why we are standing here suggesting a special kind of preferential treatment for those women who live on farms and ranches in contradistinction to those who live in the cities?

Mr. MELCHER. I am happy to tell my friend from Ohio that we do not make any distinction at all. If it is a small business the same applies. If it is a large business the same applies. It is just between the surviving spouse, and it will not apply just to land, but that is the point I am particularly addressing myself to.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. PROXMIRE. Mr. President, will the Senator yield me 1 minute?

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, will the Senator from Maine (Mr. MUSKIE) yield me 1 minute?

Mr. MUSKIE. Yes, I yield 1 minute.

Mr. PROXMIRE. Mr. President, may I ask the distinguished Senator from Montana under the present law, as I understand it, you pass an estate from a husband to a wife tax-free at $106,000. This amendment can only help estates above that amount; is that correct?

Mr. MELCHER. It would help an estate of $500,000, $300,000, $200,000.

Mr. PROXMIRE. Under the present law, it is up to $106,000, so unless you have an estate higher than that it would not have an effect.

Mr. MELCHER. That is not our understanding at all, that it is exempted up to that amount. The exemption is much smaller.

Mr. PROXMIRE. Our information is that it is exempt up to that point where it is passing from husband to wife only.

What is the revenue effect of the Senator's amendment? How much is involved?

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. MELCHER. I ask for an additional 1 minute from somebody to respond.

Mr. MUSKIE. I yield 1 minute.

Mr. MELCHER. Under existing Federal estate tax law the exemption is $134,000 plus $250,000, so we are not talking about a passage from husband to wife. We are talking about a case of a widow on inheritance. In answer to the question on how much it would cost, we are advised by the Joint Committee on Taxation that the cost is negligible over and above what is already in the bill.

Mr. MUSKIE. May I say on that, I still do not know what the first full year's cost of this amendment would be. There would be no cost in fiscal 1979 for a very simple reason. It would not be effective until after December 31 of this year and there is a period of 9 months, I believe, to file for a benefit. So the revenue implications for fiscal year 1979 will, indeed, be zero as far as we can estimate. But we also conclude that there will be a full year's cost thereafter, and we do not know what that will be.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. PROXMIRE. As I understand this amendment will come up later and we can discuss it then. There is no time limit.

Mr. STONE. Mr. President, I ask for 3 minutes.

The PRESIDING OFFICER (Mr. FORD). Who yields time?

Mr. STONE. I ask the Senator from New York whether he will yield to me for a colloquy.

Mr. MOYNIHAN. The Senator is happy to yield 3 minutes.

Mr. STONE. Mr. President, I intend to offer as an amendment to the tax bill a bill I introduced, S. 3464, which is printed amendment No. 3853, which would provide for a nonrefundable tax credit against Federal income tax liability of up to $200 for the amount of the upcoming increases for the social security required contributions for employees, employers, and self-employed.

While the social security tax rate was increased by only 1.55 percent in the last 3 years, the taxable wage base was increased by a tremendous 227 percent in the same period.

In effect, what this bill and this amendment would do would be for the next 3 years to prevent the social security contributors from suffering these tremendous increases all at once.

I wonder whether the Senator from New York, acting as floor manager of the bill, could respond to the tremendous necessity that this Senator sees with regard to protecting our middle-income taxpayers against the impact of such a social security hike coming in the next several years?

Mr. MOYNIHAN. Mr. President, may I first say that the Senator from Florida addresses himself to a very fundamental issue of this tax bill, and he does so with authority and informed concern that one can only admire and congratulate him for.

I would have to say that the Senate Finance Committee has designed this tax reduction bill to meet precisely the concerns of the Senator from Florida, which is to say that the tax reduction will more than cover the scheduled social security tax increases which concern him.

He is absolutely right to raise the question. But what I would hope is that he might judge that the committee has responded to his concern and, in the circumstances, I would hope he might agree that it is not necessary at this time to offer his amendment.

Mr. STONE. I thank the distinguished floor manager of the bill, the Senator from New York.

I think it is vitally important that the middle- and lower-income taxpayer who is about to pay increased contributions to social security, recognizes the fact that this Senate, acting on the recommendation of the Senate Finance Committee, is indeed, making offset protection available, lessening the burden on those social security taxpayers by at least as much.

Mr. MOYNIHAN. Mr. President, can we have order? The Senator from Florida is making an important point which the Senators will wish to hear.

Mr. STONE. I thank the Senator from New York.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. MOYNIHAN. I yield 1 more minute.

Mr. STONE. I think it is vitally important that the message arrive in the minds of the social security taxpaying contributors in the next several years that this Senate, responding to the Senate Finance Committee's bill, is making offset protection.

My bill and my amendment were going to directly do that. What the committee

has done and what the Senate presumably will do is to do in a variety of provisions what the Senator from Florida would like to have done, and which would take care of this increased burden.

Mr. MOYNIHAN. The Senator is correct. May I say it was the Senator's concern which in no small measure animated and guided the committee's action during the drafting process.

Mr. STONE. I thank the Senator.

In light of this response I will not call up my amendment 3853. I thank the Senator.

Mr. MOYNIHAN. May I say it is for us to thank him for having been so active in the matter in the first instance. I appreciate his courtesy of withdrawing the amendment.

Mr. STONE. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. HODGES. Mr. President, will the Senator yield 1 minute?

Mr. MOYNIHAN. I would be happy to yield 1 minute.

UP AMENDMENT NO. 2035

Mr. HODGES. Mr. President, Friday night, October 6, an amendment was agreed to of the Senator from Arkansas (Mr. BUMPERS), and which was accepted by the Senator from Louisiana.

Unfortunately, that amendment was drawn to amend the bill itself, when in fact it needed to be drawn to amend the committee amendment.

So at this time I ask unanimous consent that the committee amendment be deemed to be amended in just the same way as the bill was amended by amendment No. 3589 on October 6, 1978. There are no Treasury problems or other difficulties, and I ask unanimous consent that that be done.

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

Mr. HODGES. I thank the Senator from Oklahoma, and I thank the Chair.

Mr. HANSEN. Mr. President, I yield 1 minute——

The PRESIDING OFFICER. Will the Senator withhold just a moment, please?

Will the Senator from Arkansas send his correction to the desk?

Mr. HODGES. Would I send the unanimous-consent request?

The PRESIDING OFFICER. The amendment with the correction.

Mr. HODGES. Yes. Is the amendment in order?

The PRESIDING OFFICER. The amendment is in order.

The amendment, as modified, is as follows:

At the appropriate place in the bill add the following new section:

"SEC. . AMENDMENT OF GOVERNING INSTRUMENTS TO MEET REQUIREMENTS FOR GIFTS OF SPLIT INTEREST TO CHARITY

(a) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF ESTATE TAX.—The first sentence of paragraph (3) of section 2055(e) is amended to read as follows: "In the case of a will executed before December 31, 1977, or a trust created before such date, if a deduction is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a), to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1978, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1978 (which are required to amend or conform the governing instrument), become final, so that interest is in a trust which meets the requirements of such subparagraph (a) or (B) (as the case may be), a deduction shall nevertheless be allowed."

(b) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF INCOME AND GIFT TAXES.—Under regulations prescribed by the Secretary of the Treasury or his delegate, in the case of trusts created before December 31, 1977, provisions comparable to section 2055(e)(3) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall be deemed to be included in sections 170 and 2522 of the Internal Revenue Code of 1954.

UP AMENDMENT NO. 2034

The PRESIDING OFFICER. The question recurs on agreeing to the amendment of the Senator from Montana. Who yields time?

Mr. HATCH. Mr. President, will the distinguished Senator from Wyoming yield me 1 minute?

Mr. HANSEN. I yield 1 minute to the Senator from Utah.

Mr. HATCH. I call up an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair is advised that until the amendment of the Senator from Montana is disposed of, no other amendment can be considered.

The question now recurs on agreeing to the amendment of the Senator from Montana. Who yields time?

Mr. METZENBAUM. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I——

The PRESIDING OFFICER. Who yields time to the Senator from Ohio?

Mr. PROXMIRE. Mr. President, will the Senator from New York yield me 1 minute on the amendment?

Mr. MOYNIHAN. I would be happy to.

Mr. PROXMIRE. Mr. President, we are in an impossible situation here. I do not think anyone intended to have a limitation of debate on these amendments; but if we cannot debate them we are going to have to vote without an opportunity to hear what they are. The Senator from Montana probably has a good amendment, but we have had no opportunity to debate it or consult the Treasury about it. I do not think there was any limitation intended, so I hope the Chair will find a way whereby we will not be in a position that we cannot have a chance to consider amendments before we have to vote on them.

Mr. ROBERT C. BYRD. Mr. President, the Chair cannot control this. The Senator will have to obtain time from someone that has control of time. The Chair cannot yield it.

The PRESIDING OFFICER. The question recurs——

Mr. MOYNIHAN. Mr. President——

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. MOYNIHAN. I yield myself 1 minute.

I am advised that the Treasury Department, while generally supportive of the amendment of the Senator from Montana, would wish that a modification be made in it, and I wonder if it would be possible for his amendment to be set aside for a moment while the Senator confers with representatives of the Treasury Department, so that he might bring us back an amendment we would all happily support, as I think it is our disposition to do.

I yield 30 seconds to the Senator from Montana to respond.

The PRESIDING OFFICER. The Senator from Montana has 30 seconds.

Mr. MELCHER. Mr. President, I would be happy to do that, and would be delighted to agree with the request, if we can have a vote, if it is necessary, at 1:30.

Mr. MOYNIHAN. That would be agreeable to me.

Mr. METZENBAUM. Mr. President, I may want to make a motion to lay it on the table, and I do not wish to have my rights precluded on that subject.

Mr. MOYNIHAN. That is a vote.

Mr. HANSEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HANSEN. If a motion is made to table, and the yeas and nays are called for, out of whose time does that come?

The PRESIDING OFFICER. It would be divided equally between the three Senators controlling the time.

Mr. METZENBAUM. Mr. President——

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Will the Senator from New York yield me 3 minutes?

Mr. MOYNIHAN. The Senator from New York will yield 2 minutes.

The PRESIDING OFFICER. The Senator from Ohio has 2 minutes.

Mr. METZENBAUM. I thank the Senator.

Mr. President, I am not sure whether I am for or against this amendment, and frankly, without having adequate time to debate an amendment of this nature on the floor, to learn exactly what it does, I think it is impossible for the Members of the Senate to proceed with any diligence in the exercise of their responsibilities.

I think this amendment overlooks a matter that is of great significance at the moment, relative to the value of stocks of a corporation owned by a decedent, and the question of whether or not that value is related to the time that the decedent passes away or goes back to the original value of the stock when the decedent acquired it.

That is a major issue that is pending at the moment. Congress acted on that subject, and then has delayed implementation of it.

I would like to know what this amendment is all about. I think there is a lot of money involved in it; but frankly, without adequate time for debate, I frankly want to make it clear that I will object to any other amendments being brought up—or any special orders with respect to them; I cannot object to amendments being brought up—at least until such time as I am assured there

will be adequate time to debate in full such amendments.

Mr. MOYNIHAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. METZENBAUM. May I have 10 more seconds, before the Senator does that?

Mr. MOYNIHAN. I withdraw the quorum call request, and yield 10 seconds to the Senator from Ohio.

Mr. METZENBAUM. I have just been advised that the Melcher amendment would cost between $40 million and $80 million, starting in 1980. If that be the case——

Mr. MOYNIHAN. It would not be the case in fiscal 1979.

Mr. METZENBAUM. That is correct, starting in 1980; $40 million to $80 million, according to the Joint Committee on Internal Revenue Taxation.

Mr. President, that is not an insignificant amount.

The PRESIDING OFFICER. Who yields time?

Mr. HANSEN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 15 minutes.

Mr. HANSEN. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator may proceed.

SUNSET AMENDMENT

Mr. HANSEN. Mr. President, I hope the distinguished Senator from Ohio (Mr. GLENN) is here. He has been waiting most patiently to hear me, and I know he will be tremendously interested in what I have to say.

Mr. President, I rise to oppose the amendment of the distinguished Senator from Ohio which has the purpose of adding so-called "tax expenditures" to the sunset bill.

Mr. President, I am not a philosopher but I disagree with the underlying rationale of tax expenditures. Implicit in any argument on tax expenditures is the underlying assumption that the Government has a prior right to all of the taxpayer's income and it is only through a combination of Government generosity and tax expenditures that we the taxpayers are allowed to keep anything.

Now, my view of taxes is that they are the obligation of the citizens to pay for the ordinary and necessary functions of Government. No more. The Government is not entitled to one dime more than it needs to carry out those functions.

Now, I have told you I am no philosopher and I do not think there are too many philosophers in my State, but I will tell you this: The people in Wyoming have no trouble understanding the idea that the Government has a right to all the wealth in the country; they just think it is crazy.

Mr. President, we have seen some very pretty charts prepared by the Senator from Massachusetts on these tax expenditures. They seem to show hundreds of billions of dollars being lost to the Government through insidious, offensive, special interest "loopholes." Let us take a look at some of these loopholes:

Exclusion of sick pay—that is when an employee gets sick and the employer continues his wages—there is a very limited exclusion of income.

Exclusion of unemployment benefits.

Exclusion of workmen's compensation benefits.

Exclusion of special benefits for disabled coal miners.

Exclusion of capital gain on the sale of their home for those over age 65—this is so a retired couple who sells their home and moves to an apartment (probably on a fixed income) do not get hit with a huge capital gain. But do not worry, Mr. Kennedy, under present law we still get them under the minimum tax provisions.

Here are some more "tax expenditure loopholes":

The additional exemption for those over age 65.

The retirement income credit for the elderly.

Exclusion of veterans disability compensation.

Exclusion of veterans pensions.

Exclusion of benefits from the GI bill.

And how about this loophole:

The additional exemption for the blind.

One of the largest and in fact fastest growing item of the so-called tax expenditure is the personal deduction for State and local income and sales taxes. In other words, the provision that prevents double taxation is listed here as a tax expenditure.

And every time a State raises its taxes, the deduction gets larger and Mr. Kennedy gets to put another one-half inch on his red and blue columns of tax expenditures.

Let me turn now to the estimates of these tax expenditures. Much has been made of the fact that the Joint Committee on Taxation and the Treasury compiled this list of tax expenditures. This somehow attests to their authenticity. What has not been pointed out is that the Joint Committee was very careful to warn us about the indiscriminate use of these figures.

First, each of these figures for each tax expenditure is based on the assumption that only the tax provision in question is deleted and all other features of the tax system, including the structure of rates, remain unchanged.

Second, each tax expenditure is measured in isolation. That is, it is assumed that economic considerations remain unchanged in response to the deletion of each item. In other words, if the capital gains exclusion were repealed, these estimates assume no change in investment pattern, consumption or any other aspect of economic activity.

This is what the Joint Committee on Taxation said about its estimates:

> A tax expenditure is, however, only the revenue gain directly associated with a hypothetical repeal of the provision in question and does not reflect any revenue loss due to a decline in economic activity which might result from repeal of that tax provision.

The third assumption is that taxpayer behavior remains unchanged in response to the hypothetical repeal of a tax expenditure provision. The Joint Committee says of this "In many cases this assumption is unrealistic." Finally, we have heard numbers exceeding $100 billion in tax expenditures. How is this arrived at? Senator KENNEDY has simply added up all the individual numbers and tells us we are "losing" $100 billion in tax expenditures. This is what the Joint Committee says about that:

> Tax expenditure estimates cannot be simply added together to form totals for * * * a grand total.

Repeal of multiple provisions is simply not the total of the individual estimates.

Let me summarize my position:

First. I disagree with the concept of the government claiming a right to all wealth.

Second. Tax expenditures of the kind listed by the Budget Committee are falacious and misleading.

Third. The definition of tax expenditures by the Budget Committee goes to gross income only, yet the amendment by Senator Glenn includes estate taxes, gift taxes, and excise taxes. These items have never been considered by the Joint Committee or the Congressional Budget Office.

Fourth. The estimates of the so-called tax expenditures are totally invalid when considered in toto and even individually since it is based on a static economy which simply is not true.

Fifth. The Glenn amendment is not simply a review process. It runs the very real danger of having tax laws that are beneficial to the citizen of every class expire through inaction or error of the Congress: two possibilities that I would not bet against.

The PRESIDING OFFICER. Will the Senator suspend?

The Senator is entitled to be heard. Will Senators who wish to have discussions please retire to the cloakrooms?

Mr. HANSEN. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. STONE. Mr. President, I ask for 3 minutes to bring up an amendment, which I will then ask to have set aside.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. How much time have I remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 29 minutes.

Mr. LONG. Mr. President, I yield 2 minutes to the Senator.

Mr. STONE. Mr. President, I call up amendment No. 3882.

The PRESIDING OFFICER. The amendment of the Senator from Montana is pending.

Mr. STONE. Mr. President, I ask unanimous consent that it be in order to call up amendment No. 3882 for a period of 2 minutes, following which it will be set aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 3882

(Purpose: Relating to charging of excess earnings under social security program)

Mr. STONE. Mr. President, I call up my amendment No. 3882 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Florida (Mr. STONE) for himself and Mr. CHILES, proposes amendment No. 3882.

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

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

The amendment is as follows:

At the end of title VI of the bill, add the following new section:

CHARGING OF EXCESS EARNINGS UNDER SOCIAL SECURITY PROGRAM

SEC. . (a) Section 203(f)(1) of the Social Security Act is amended—

(1) in clause (E) of the last sentence thereof—

(A) by inserting "(with respect to which an election made under the succeeding sentence is effective)" immediately after "the taxable year", and

(B) by striking out "the first month" and inserting in lieu thereof "the first month after December 1977", and

(2) by adding at the end thereof the following new sentence: "The provisions of clause (E) of the preceding sentence shall be applicable to the excess earnings of an individual for the one (and only one) taxable year of such individual with respect to which such individual has elected (in such form and manner and within such period as the Secretary shall by regulations prescribe) to have such provisions apply to such excess earnings.".

(b) The amendments made by this section shall apply with respect to monthly benefits payable for months after December 1977, as though such amendments had been a part of the amendment made by section 303(a) of the Social Security Amendments of 1977.

Mr. STONE. Mr. President, I ask unanimous consent that the Senator from Idaho (Mr. CHURCH), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Michigan (Mr. RIEGLE) be added as cosponsors to this amendment.

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

Mr. STONE. Mr. President, my distinguished colleague from Florida (Mr. CHILES) and I offer this amendment to the Revenue Act of 1978.

Our amendment would alleviate the financial hardships caused by the retrospective application of recent changes in the social security earnings test.

Mr. President, as you know, the Social Security Act Amendments of 1977 eliminated the monthly earnings test in favor of an annual test for the purpose of determining eligibility. An exception was provided to allow retirees to use the monthly test in the first year of retirement in order to prevent any loss in benefits for those who worked part of a year before retiring. The effective date of this change was January 1, 1978.

Unfortunately, the Social Security Administration's interpretation will prevent many persons, particularly retired teachers, from taking advantage of the "first year of retirement" exception contained in the legislation. Under the interpretation, the first year in which a nonservice month is used constitutes the first year of retirement, even though the nonservice month used was in a year prior to 1978, when the new law went into effect.

Mr. President, there were three groups of people who were adversely affected by our change in the earnings test: retired insurance agents, retirees engaged in agricultural businesses, and retired teachers. The Senate has already passed legislation, H.R. 12380, which would alleviate the problem encountered by the retired insurance agents. This legislation is now in conference. Those retirees engaged in farming were given relief through an administrative ruling of the Social Security Administration. This leaves the retired teachers as the only group which has not been afforded the relief they deserve. It is the intent of this amendment to provide such relief to this worthy group of individuals who have been unfairly penalized.

Mr. President, an active teacher who was eligible for social security benefits in July and August of 1977 but did not retire until June 1978, would receive no benefits until January 1979. Such a person would be denied the "first year of retirement" exception in 1978 because of the retrospective application of the new test, a provision which would have not been foreseen in the summer of 1977.

I do not believe that Congress intended its legislation to be retroactively applied on those unsuspecting senior citizens who planned their retirement under the old laws. Mr. President, our amendment would clarify our intent and eliminate the retrospective effect of the SSA ruling. It would allow all social security beneficiaries to use the monthly earnings test in any 1-year period after 1977.

The number of persons adversely affected by the retrospective application of the law is estimated by the SSA to be 250,000. Mr. President, I feel that it is incumbent upon the Congress to adopt this measure in fairness to those recent retirees.

Mr. President, another problem our amendment addresses is that some people, who have reached the age of 65 but still plan to continue working, apply for social security solely to qualify for medicare. These beneficiaries would not be covered because they would incur nonservice months in more than 1 year after 1977. Our amendment includes the proper technical changes to allow a qualified individual to receive medicare protection without jeopardizing his/her retirement status for the determination of social security benefits.

Mr. President, I strongly urge the adoption of our amendment so that Congress will have dealt fairly with the problems encountered by our senior citizens due to the misinterpretation of legislation passed by us in 1977.

Mr. President, I ask unanimous consent that the article, "A Booby Trap for Social Security Retirees," which appeared in the September 18 issue of U.S. News and World Report be printed in the RECORD. I feel that this article outlines in great detail the problems which have been encountered by retirees as they try to grapple with the new retirement tests.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A BOOBY TRAP FOR SOCIAL SECURITY RETIREES

An obscure change in the retirement test for Social Security benefits, it turns out, is going to have a shattering impact on millions of unsuspecting people, many of them already retired. Some examples—

Thousands of retired business and professional people who are drawing benefits in 1978 suddenly have been disqualified for those benefits and, sooner or later, are going to be required to pay back most or all of the checks received in 1978 or later.

Many who retire will learn, perhaps too late, that they will not be entitled to any benefits in their retirement year. As a result, they may be in for some lean months.

Thousands who are working just enough hours to pick up $50 in wages in each calendar quarter in order to qualify for a future Social Security benefit are really not earning or getting any pension credits for this work and for the payroll taxes taken out of their small stipends.

For countless others, the change in ground rules makes careful planning a matter of crucial importance as retirement time approaches.

To help you avoid the traps laid down by the rule change that Congress wrote into law last December, here, in question-and-answer form, is a look at the old and new rules.

Just what is the change in the retirement test?

Basically, it is a shift from a monthly to an annual basis for determining if an individual is retired and, thus, eligible for benefits.

Under the old law, a person was counted as retired in any month in which he or she did not earn more in wages than one twelfth of the annual maximum amount allowed and did not perform any "substantial services in self-employment."

Under that rule, many retired people—as well as their spouses, widows or widowers and even surviving children—have made it a practice to work part of each year. If they worked for, say, four months and earned $10,000, or any substantial amount, they lost benefits for only those four months. They drew their regular benefit check for the other eight months.

Now, as a general rule, that monthly test is eliminated. Any wages or self-employment income in excess of the maximum amounts allowed, shown in the table, will cause a loss of benefits, no matter when the money is earned during a year. For each $2 above the limit, the individual will lose $1 in benefits.

How, then, can a person draw any benefits in the year of retirement?

Obviously, someone retiring at mid-year after earning, as an example, $12,000, could get few, if any, benefit checks for six months under the new rule. His earnings in the months prior to retirement would eliminate benefit checks for the rest of the year. So Congress provided an exception. In the year of retirement, and only in that year, the retiree still can make use of the monthly test. If a worker retires at midyear, and in each of the last six months of the year neither earns more than a twelfth of the maximum annual amount nor works very much in self-employment, he or she will be eligible for benefits in those six months.

This makes it extremely important to select the retirement year with care. What is the definition of the retirement year?

The retirement year is the one in which the individual first satisfies this test: He or she applies for benefits, is old enough and otherwise eligible, and has at least one month in which he or she neither earns more than the exempted wage amount nor performs substantial self-employment services.

To illustrate, suppose you will reach age 65 in November and you plan to retire and start drawing benefits at that time. If you do, you will make 1978 your retirement year. But this means that you will be able to

make use of the monthly retirement test for only two months, November and December. It might be wise to wait until January, 1979, to apply and establish your entitlement to benefits. Then, in 1979, you could earn unlimited amounts and lose benefits only for months in which you work.

How, with that exception, can people lose first-year benefits?

By unknowingly setting their retirement year prematurely and, thus, wasting their one-year privilege of applying the monthly retirement test. Example: A schoolteacher who reached age 65 last spring applied for benefits immediately, though she planned to continue teaching through June, 1979. Under the monthly retirement test, she was able to draw full benefits for the school-vacation months of July and August.

Now it turns out that the teacher's move last spring to qualify for benefits made 1978 her retirement year. So, if she retires next summer, she will get few or no Social Security benefits for six months. Under the annual retirement test, her salary for the first half of next year, before she actually retires, will bar most or all of the benefit checks she anticipates for the last half of 1979.

What if one applies at age 65 just to qualify for medical benefits?

That can still be done, but care is needed. Let's suppose, as an illustration, that you—a self-employed person—did just that in June, 1977. Then you spent the month of December lolling on the beach in the Bahamas. Or let's say that, after applying for benefits, you quit one job and found another and, thus, earned very little in wages in December.

In either case, you applied and qualified for benefits and had one nonworking month. That, unfortunately, made 1977 your retirement year. Now, when you actually retire, you will not be able to make use of the monthly retirement test. Therefore, if your total earnings in your year of actual retirement exceed the maximum allowance, no matter when you earn the money during the year, you will lose at least some, perhaps all, of your benefits that year.

Note this fact: It makes no difference that you did not draw any retirement benefit for December. You were, in all respects, entitled to draw and did not work. It is the mere existence of entitlement for one month that counts in determining your retirement year under the new annual-earnings rule.

What should an individual do to avoid trouble with the new rule?

Plan carefully. For people in various situations, here are some moves to be considered—

An individual who has not yet established a month of entitlement: If you apply simply to qualify for hospitalization insurance, be careful to avoid any nonworking months until you are ready to retire. Or wait to apply for hospital protection until you need it—that's soon enough. Note that you can apply strictly for supplemental medical insurance, and start paying premiums, without becoming entitled to retirement benefits and wasting your one year's use of the monthly rule.

Someone who, without intending to, has already established a month of entitlement and, so, has already lost out on the monthly rule: You should be careful to plan your retirement starting early in a year. Otherwise, you are likely to lose some or all of your benefits for that year, even if you do not do any work for money after you actually retiree.

An individual who, despite these warnings, retires in, say, September, only to find that no benefits can be paid for September through December. Inquire at your Social Security office about special arrangements to draw some of your 1979 benefits in advance, with the amounts to be deducted from 1979 checks. This arrangement can save you from a sudden loss of income. In 1980, your Social Security payment will go back up to the normal level.

Note: For self-employed individuals whose accounting or fiscal periods are not calendar years, the regulations are more complex and require even more careful planning. Check with the nearest Social Security Administration office to find out what you should do.

Can this new rule hurt people who already have retired?

Yes, indeed. They must meet the annual retirement test if they expect to go on drawing benefits. And many will find it impossible or impractical to do that.

Example: For many thousands of retired people with high earning capacity, the funds they have been taking home by working just a small part of each year will be too great to warrant cutting their earnings back to the maximum annual amount allowed in retirement. These individuals will do better to give up some or all of their benefits instead.

Retired people who were self-employed in business, the professions or farming are likely to be hit hardest. Until 1978, they could draw benefits for any month in which they did not work more than 50 hours or, for a key person in an organization, perhaps 25 hours. They may have been, and still may be, earning many thousands of dollars while drawing most or all of their Social Security benefits. However, they will not be permitted to do that anymore.

For some classes of formerly self-employed people, little can be done to avoid losing benefits entirely. An example: a partner in a law firm who became partly retired and entitled to benefits in 1976. His self-employment income since then—that is, his share of the partnership earnings—is $30,000 a year. Nevertheless, he is drawing full Social Security benefits, because he does not "perform substantial services" for the firm in any month. In time, he will learn that under the new rule he has not been eligible for any benefits since last December.

And that goes for such self-employed people as life-insurance salesmen who continue to draw commissions and farmers who sell carry-over wheat. Regardless of their continuing self-employment income in retirement, they could be paid full benefits under the old monthly test. Now, even if they do no work, they lost some or all of their Social Security checks.

Here is why: For Social Security, self-employment income is counted in the year in which it is received, no matter when it was earned. Now, without the old rule to protect benefits in nonworking months, it is simply an individual's annual earnings that are the deciding factor.

For many, some or all of the benefits they are drawing or have drawn in 1978 will have to be paid back. If neither the individual nor the government learns of their nonqualified retirement checks until, say, next year, that could be painful.

Will an executive's deferred compensation received i . retirement knock out Social Security benefits?

Each such case is on its own. In general, deferred compensation is counted when earned. If you earned it in 1976 and are drawing it in 1978, it probably will not be counted as 1978 earnings under the retirement test, although paradoxically, you may have to pay Social Security taxes on it.

Are there no other exceptions to the new annual retirement test?

There is one. If an individual loses his benefit entitlement for one month or more and then becomes entitled to a different type of Social Security benefit, he or she will get a second year in which to use the monthly retirement test.

Example: A widow under age 62 loses her "mother's" benefit when her youngest child reaches age 18. At age 62, she will become eligible for a widow's, rather than a mother's benefit. In the year she decides to start drawing a widow's benefit, she can use the monthly retirement test.

What about people working to qualify for the minimum benefit?

They come under another new rule. In switching to the anual retirement test, Congress also shifted employers from a quarterly to an annual reporting system. In the process, Congress scrapped the provision under which workers have gotten one quarter of credit for each calendar quarter in which they earned and paid tax on $50 or more.

Under the new rule, effective this year, only the total annual earnings count. Earn $250 in wages of self-employment income anytime in a year and you get one quarter of credit. You get two quarters for earning $500 in a calendar year, three for $750 and four for $1,000.

The word of that new rule is going to come as a shock to many people who have been, and are, working just enough to earn $50 each quarter.

Mr. STONE. Mr. President, I yield 30 seconds to the Senator from Florida.

Mr. CHILES. Mr. President, I just want to associate myself with the remarks of the distinguished Senator from Florida. I think the situation without the amendment to make a correction really would be totally unfair. I think that is what we are seeking—equity.

Here is a group of people who have certainly labored long and hard in the vineyards. To not give them this benefit would be totally unfair.

I wholeheartedly support the remarks of the Senator and the thrust of the amendment, which I am delighted to cosponsor.

Mr. STONE. I thank my distinguished colleague.

Mr. President, I ask unanimous consent that the amendment be temporarily set aside.

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

Mr. STONE. Mr. President, I thank the distinguished Senator from Louisiana for yielding.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, I yield 5 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I would like to reply to the remarks of the senior Senator from Wyoming (Mr. HANSEN). I do not know where he comes up with this definition of tax expenditures but it certainly is not out of this amendment.

If there is some great wild economic theory abroad in the land that in our system of free enterprise somehow the Government automatically owns all of the output of this country and that we only deign to give back to the people of this country what we out of our Federal largess decide they are likely to need, then that is some wild economic theory well beyond me and not incorporated in this amendment. Yet it keeps coming up and up and up repeatedly, as though I had subscribed to some great Communist or socialist theory of some kind,

which is certainly not in this amendment.

That would be No. 1.

I do not know where these definitions come from but they are not part of this amendment and no one can show me any part of this amendment that so defines tax expenditures. Our definition of it comes directly from the Congressional Budget Act.

So when the Senator talks about his people in Wyoming thinking this series is crazy, I join with his people in Wyoming. I highly admire the people in Wyoming and their discerning that anything like this would be complete nonsense. I support their judgment in this case.

I suppose that by not including anything for review once it has been enacted here, we would take all those items that the distinguished Senator from Wyoming listed and also say we are not going to consider increasing those. I would say, go to the sick and say, "You have what you have now, but do not ever expect the Federal Government to raise that, do not ever expect us to help you out more, because we are not going to commit to ever reviewing this, up or down or termination."

I would say go to the unemployed and say, "What you have right now, you are going to live with, Mister. If you are unemployed, do not ever expect the Government to raise that, because we are not going to consider it."

The same thing with workmen's compensation. To those coal miners in West Virginia and Wyoming, we say those benefits will never be increased because we are never going to get around to any review process that permits those things to be increased, or go up or down or be sunsetted or whatever to see if they are correct.

On capital gains for those over 65 that the Senator mentioned are moving from their homes or apartments, to give them a break on this, we say, "Never expect any more, do not expect us to increase that, because we are never going to get around to taking it up. We are not even going to consider it here, it will be this way 100 years from now, because we have no systematic procedure for ever looking at it again."

That is the only thing this bill provides to those who retire, veterans that are disabled, to veterans benefits payments, to the GI bill that we mentioned. Those things will not be considered on any regular basis. This amendment would provide a rational procedure for doing that.

Next, the Senator said in his remarks that this is not a review process. I believe that is a direct quote, "Not a review process." If this does not establish a review process, then I submit to the Senator from Wyoming that we have completely missed the mark, because that is all this amendment does. All it does is establish a systematic review process. All the rest of this talk about some wild economic theory that we have subscribed to, some Socialist or Communist doctrine that I am now supposed to be subscribing to is false. The fact that we do not take on all these different categories to the sick, unemployed, workmen's compensation, special benefits for coal miners, capital gains, retirement benefits, veterans' disability, veterans' payments, GI bill—means all of these items will not be terminated under this bill because the Senate Finance Committee refuses to review them, refuses the recommendation of the Senate, the Senate refuses to consider them, the House refuses to consider them.

I cannot, in my wildest imagination, think that we would refuse to consider those things. I am for a process that will permit those things even to be increased after due consideration. Yet we do not have that procedure now. We do not have a system for that now. That is what this amendment would establish, a very straightforward, simple review process.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. GLENN. I thank the distinguished Senator from Maine for yielding me 5 minutes.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, will the Senator from Maine yield me 3 or 4 minutes to see if it is possible to get an amendment considered and accepted?

Mr. MUSKIE. I yield the Senator 4 minutes.

Mr. BAYH. I appreciate the courtesy of the Senator from Maine.

AMENDMENT 3992

(Purpose: Relating to industrial development bonds for facilities involving urban development action grants)

Mr. BAYH. I want to call the Senates attention to an amendment I offered on Friday No. 3992 which deals with the combination of funding available under the UDAG program with industrial development bonds. The law now has a $1 and $5 million limitation. The $5 million is not applicable if the total investment goes over $5 million. In the wisdom of the committee, this funding level was raised from $1 and $5 million to $2 and $12 million. In other words, you can invest at least $2 million in industrial development bonds and up to $12 million as long as the investment is not more than $12 million. The Senator from Indiana would not increase the size of the industrial development bonds that were permitted; it would be maintained at $12 million, but would permit the total size of the investment to be up to $20 million.

What this would mean is that we would get more private investment capital into the UDAG program. I do not know what my colleagues' experience has been, but I have found UDAG, in my judgment, has been very successful, because we have provided seed money. Some has been as high as $1 to $30—$1 of seed money from UDAG, $30 of private outside capital. I think the average is about 1 to 5, not to misrepresent the program. It is directed at redeveloping our urban areas and that is a very important need.

I wonder if the Senator from Louisiana and the Senator from Wisconsin might consider this.

Mr. PROXMIRE. If the Senator will yield, I am very concerned about this. As the Senator knows, the Committee on Banking, Housing, and Urban Development has jurisdiction in this area.

I appreciate the Senator's proposal, but it is my strong feeling that too much of this money has been going downtown. It is another extension of the urban renewal program. Not enough has been going to the neighborhoods, the inner city, the places where poor people live. It seems this might add to that.

What concerns me is a technical but very important technical difference. As I understand that amendment, because it would open it up to projects which, as the Senator says, go up to $20 million, would provide $12 million eligibility for UDAG programs, it would cost something—not much, but something. The revenue effect in the first year would be what, $1 million?

Mr. BAYH. $1 million minus 3 months' worth of expenditure which, in a full calendar year, would be $1 million. But since we are not going to have this take effect until the first of January, it will only be for three quarters of the year, so it will be about $750,000.

Mr. PROXMIRE. Will the chairman permit a parliamentary inquiry? Would the Senator from Maine yield me 1 minute?

Mr. BAYH. Anybody can make a parliamentary inquiry.

Mr. PROXMIRE. Mr. President, I ask if the amendment of the Senator from Indiana would be in order?

Mr. GLENN. Mr. President, I am controlling the time for the Senator from Maine. I yield him 2 minutes.

Mr. PROXMIRE. Under the Budget Act, in view of the fact that the bill is now at the limit in revenue loss and this additional revenue loss, small as it is, nevertheless is specific and definite, I ask if this would be a violation of the Budget Act?

The PRESIDING OFFICER. Until the amendment is sent up and the Chair has an opportunity to see it, it cannot answer the parliamentary inquiry.

Mr. BAYH. I ask unanimous consent that it be appropriate to consider this, that the amendment of the Senator from Montana be temporarily set aside. I send my amendment to the desk. It has not been submitted but has been printed.

The PRESIDING OFFICER. Did the Chair understand the Senator from Indiana to ask unanimous consent that the amendment by the Senator from Montana be set aside and his amendment be considered?

Mr. BAYH. The way I understand it, that is the only way it can be done.

The PRESIDING OFFICER. The Senator is correct. Is there objection?

Without objection, it is so ordered.

The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Indiana (Mr. BAYH) proposes an amendment numbered 3992.

Mr. BAYH. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

On page 300, between lines 21 and 22, insert the following new section:

SEC. 339. INCREASE IN CAPITAL EXPENDITURE ALLOWANCE WITH RESPECT TO WHICH $12,000,000 SHALL ISSUE RULE APPLIES IN CASE OF URBAN DEVELOPMENT ACTION GRANT FACILITIES.

(a) INCREASE IN AMOUNT OF CAPITAL EXPENDITURES.—Paragraph (6) of section 103 (c) (relating to exemption for certain small issues) is amended by adding at the end thereof the following new subparagraph:

"(I) URBAN DEVELOPMENT ACTION GRANTS.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (D), and except as provided in clause (ii), in the case of any issue—

"(I) the aggregate face amount of which (as determined under subparagraph (D) (ii)) is in excess of $12,000,000 and not greater than $20,000,000, and

"(II) substantially all of the proceeds of which are to be used to provide facilities with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974,

the issuer may elect to have the provisions of subparagraph (D) apply.

"(ii) LIMITATION.—The provisions of clause (i) shall not apply if the amount described in subparagraph (B) which is taken into account in determining the aggregate face amount of the issue under subparagraph (D) (ii) exceeds $12,000,000.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after December 31, 1978, in taxable years ending after such date.

The PRESIDING OFFICER. Who yields time?

The Senator from Wisconsin has 1 minute remaining.

Mr. PROXMIRE. I make my parliamentary inquiry whether this amendment will violate section 11 of the Budget Act, in view of the fact that it will result in a roughly $1 million budget loss in 1979?

The PRESIDING OFFICER. The Chair will ask the Senator's indulgence. We do not have a calculator at the roster to determine whether we are up or under or over.

Mr. BAYH. If the Chair will allow a Member of the body to think out loud for the Parliamentarian, my staff was advised when we started out this morning that we had about $2 million leeway.

Now, we have not spent any money, but presumably rounded off some corners, and this point is being raised by the Senator from Wisconsin and he is perfectly within his right. But it seems to me with all the money we have been dealing with here, then quibbling about $750,000 denied in this very important development program, I think is sort of picking at things that are not as important as some things we have not picked at.

The PRESIDING OFFICER. The Chair is ready to rule on this, the Chair has been advised that this hits the ceiling of the budget resolution, this has monetary effect, therefore, the amendment would be subject to a point of order.

Mr. BAYH. I will revise my amendment and change the effective date to October 1, 1979.

The PRESIDING OFFICER. The amendment is so modified.

Mr. GLENN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Who yields time?

Mr. GLENN. A parliamentary inquiry, allotted 2 minutes to the Senator from Wisconsin, has that been exceeded?

Mr. LONG. I yield myself 1 minute.

Mr. President, I would suggest to the Senator he have his amendment at the desk drafted both ways because at some point we may vote for an amendment that would gain us some revenues. At that point, his amendment would be in order.

So I suggest he have it both ways, to go into effect for this fiscal year and next.

I know that is an amendment I will support. If agreed to, it would pick up some revenue, and if that is the case it would be relevant to this fiscal year and then be in order.

Mr. BAYH. Would it be appropriate for us to adopt the amendment with the date as it is now?

Mr. LONG. The Senator cannot do it right now. He has to wait until we agree to some amendment to pick up some revenue and then the amendment would be no longer in violation of the budget process.

Mr. BAYH. As revised, I say to the distinguished chairman, who has a lot of things on his mind, but as revised, there would be no revenue loss in this, but make it effective next fiscal year, would that change the problem any?

Mr. LONG. The point is that it may be that the Senate picks up some revenue. If that is the case——

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. LONG. I yield another 30 seconds.

When this will be voted on after cloture, if we get cloture, it is no longer subject to the budgetary objection, and I think it is germane.

The PRESIDING OFFICER. Who yields time?

Mr. HANSEN. I yield 2 minutes to the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I call up an amendment I have at the desk dealing with the closure of certain Internal Revenue offices and I ask unanimous consent we might consider this amendment now.

The PRESIDING OFFICER. The Chair would advise all Senators that no amendment is in order as long as there is a pending amendment at the desk.

We have the Senator from Montana and the Senator from Indiana, and only by unanimous consent can an amendment be considered. We have two pending at the desk.

Mr. BAYH. Mr. President, I ask unanimous consent mine be put aside.

Mr. PROXMIRE. Reserving the right to object, Mr. President, I ask if the Senator from Ohio will yield me 1 minute.

Mr. GLENN. One minute.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. May I ask the Senator from Rhode Island if this is the New England Patriots football team amendment?

Mr. CHAFEE. It is not.

Mr. PROXMIRE. I thank the Senator.

Mr. CHAFEE. I ask unanimous consent I might bring up this amendment. If I can explain it briefly, it just postpones the closure of certain IRS offices in a series of small States until July 1, 1979. Meanwhile, the GAO is to produce a study to ascertain whether, indeed, the closure of these offices would save money and provide the services.

Mr. METZENBAUM. I ask the Senator from Ohio to yield me 1 minute.

The PRESIDING OFFICER. Will the Senator withhold for just a moment?

The question before the Senate now is the unanimous-consent agreement by the Senator from Indiana to set aside his amendment temporarily.

Is there objection? Without objection, it is so ordered.

Mr. CHAFEE. I make a request that I might bring up this amendment, even though the Melcher amendment is pending.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, and I may object——

The PRESIDING OFFICER. On whose time?

Mr. METZENBAUM. Will the Senator from Ohio give me 1 minute?

Mr. GLENN. Yes.

The PRESIDING OFFICER. The Senator may proceed.

Mr. METZENBAUM. I want to make it clear, I will object to any amendments coming up, I will suggest the absence of a quorum, and until such time as it is made possible for those of us who have a concern with respect to pending amendments to obtain time, adequate time, in order to provide debate on the measures.

Therefore, I serve notice I expect to be able to stand on the floor and read an amendment and debate it, and argue against it, but not to go on bended knee to try to get 2 or 3 minutes from somebody.

Therefore, I will object to the Senator from Rhode Island having unanimous consent, unless somebody can provide a procedure that the Senator from Wisconsin and the Senator from Ohio can at least have 30 minutes of the remaining time available for the purpose of adequate debate.

The PRESIDING OFFICER. Objection is heard.

The Senator has some time left.

Who yields time?

Mr. HANSEN. Mr. President, I yield 1 minute to the Senator from Rhode Island—I withdraw that.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, would the Senator repeat his offer? I may be able to accommodate him, if I understand his request.

Mr. METZENBAUM. I am requesting that the Senator from Wisconsin and the Senator from Ohio, who have indicated a concern about some of the amendments, be accorded 30 minutes of time on

our own so that we not go on bended knee regularly to try to get 2 or 3 minutes.

If the Senator from Maine can allot 30 minutes of his time to us, or the Senator from Louisiana can, then I have no objection to proceeding forward. But I do think the procedure is an incongruous one at this time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine has the floor.

Mr. MUSKIE I yield——

Mr. PROXMIRE. I do not think it is necessary for the Senator to yield time, if we can have an understanding these amendments can be called up, as they have been all morning, and discussed, but not voted on. That is what concerns us, having a vote without an opportunity to cross-examine and discuss and debate, as we should, so we understand what we will vote on on these amendments. That is what we are really concerned about.

So, if the Senator from Maine yields to the Senators to discuss them, that is fine, as long as we do not have a vote and are not precluded from discussing in the future before there is a vote on the amendment.

Mr. MUSKIE. I yield to the Senator from Idaho.

Mr. CHURCH. I would like to concur in what the distinguished Senator from Wisconsin has said.

I have an amendment relating to the present tax deferral on foreign-earned profits. I would like an opportunity to lay down the case for that amendment, even though I am quite willing to vote on it later today. But I think the procedure should accommodate all Senators who would like to take this opportunity to make their arguments for or against amendments to be voted on later.

Mr. MUSKIE. May I say to the Senator that, however, so far as the nongermane amendments, which are the principal subject of the discussion this morning, are concerned, I have no further need for time at the moment. I may have, however, as the parliamentary situation unfolds.

I want the Senators to understand that I would like to have the floor, but I would be willing—how much time do I have left, Mr. President?

The PRESIDING OFFICER. The Senator from Maine has 62 minutes.

Mr. MUSKIE. I would be willing to make half of that time available for the purposes that we have all been discussing here, provided it is understood just amongst us, as Senators, in the spirit of comity, that if I needed to get access to the floor, or as the parliamentary situation unfolds, that I may be able to make that attempt.

Mr. LONG. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from Louisiana has 24 minutes left.

Mr. LONG. Some of that time—say, 8 of the 24 minutes—I will make available for that purpose, too.

The parliamentary situation that exists at this moment is that any Senator can prevent any amendment that is offered from coming to a vote. All he has to do is to insist on his rights. He can suggest the absence of a quorum, if he wishes, or he can make the point that he is not willing for the Senate to vote on it, and it will not come to a vote. So no amendment can be agreed to, under the existing parliamentary situation, if any Senator does not want us to vote on it.

In a sense, we are acting by unanimous consent, to the extent that any Senator here has it completely within his power to say that there will not be a vote on any amendment that comes up. But it would be well if we could dispose of some of the nongermane amendments during this period; because once cloture is voted, they will not be in order, unless by unanimous consent.

Mr. METZENBAUM. The Senator from Louisiana and the Senator from Maine indicate that there will be adequate time for debate, and they are indicating in connection with the Melcher amendment that it should go to a vote. I was thinking about moving to lay it on the table, which I had no desire to do. I did not want to suggest the absence of a quorum. In view of the statements by the Senator from Maine and the Senator from Louisiana, if the Senator from Rhode Island cares to offer his amendment now, I will not object.

Mr. HANSEN. I yield 1 minute to the Senator from Rhode Island.

UP AMENDMENT NO. 2036

(Purpose: To prohibit the implementation of a reorganization of 12 small IRS district offices until a study can be conducted by the General Accounting Office with respect to the effect of such reorganization on taxpayer services)

Mr. CHAFEE. Mr. President, I call up my amendment which is at the desk, which deals with certain IRS offices, and I ask unanimous consent that it may be considered and disposed of even though the Melcher amendment is pending.

The PRESIDING OFFICER. Is there objection?

Mr. PROXMIRE. Mr. President, reserving the right to object, I do not want to say "disposed of." We can debate it. We have heard a brief explanation, but I think we should know more about it.

Mr. LONG. Only that it be considered.

Mr. CHAFEE. Considered.

The PRESIDING OFFICER. Senators will please give the Chair an opportunity to do what it is supposed to do.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE) proposes an unprinted amendment numbered 2036.

Mr. CHAFEE. 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:

At the appropriate place in the committee substitute bill, add the following new section:

SEC. . INTERNAL REVENUE SERVICE REORGANIZATION.

(a) IN GENERAL.—The Secretary of the Treasury shall not implement the proposed reorganization of selected Internal Revenue Service district offices in Delaware, Idaho, Maine, Montana, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, and Wyoming through the elimination of levels of management and the transfer of administrative and support services recommended by the Internal Revenue Service organizational review study group.

(b) GENERAL ACCOUNTING OFFICE STUDY.—The Comptroller General shall conduct a study and evaluation of the proposed Internal Revenue Service reorganization plan described in subsection (a) and report to the Congress not later than July 1, 1979, as to how the implementation of the proposed reorganization plan would affect taxpayer services and whether implementation of the plan would reduce Federal outlays for the administration of the Internal Revenue Code of 1954.

The PRESIDING OFFICER. The Chair asks the Senator from Rhode Island, is this an amendment to the committee substitute or to the bill?

Mr. CHAFEE. I guess it is to the bill.

The PRESIDING OFFICER. To the House bill?

Mr. CHAFEE. The committee substitute.

The PRESIDING OFFICER. The Senator may proceed.

Mr. CHAFEE. Mr. President, on behalf of myself, Mr. GARN, Mr. HANSEN, Mr. PAUL G. HATFIELD, Mr. BIDEN, Mr. DOMENICI, Mr. ABOUREZK, Mr. DURKIN, Mr. PELL, Mr. SCHMITT, Mr. STAFFORD, Mr. YOUNG, Mr. MELCHER, Mr. MCINTYRE, and Mr. MCGOVERN, I offer this amendment. I ask unanimous consent that the name of Mr. WALLOP be added as a cosponsor.

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

Mr. CHAFEE. Mr. President, the IRS has plans to close certain offices in small States, and they are going to consolidate them. They are not going to close the complete offices but close some important functions and consolidate them in some major cities. This amendment would require that those plans not be proceeded with until July 1, 1979.

Meanwhile, the GAO would conduct a study and report to Congress on whether the closure of those offices would save any money and whether the services could be maintained.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. CHAFEE. I hope the committee will accept this amendment.

Mr. LONG. I yield myself 1 minute.

Mr. President, the Senate Finance committee discussed the matter; and, on motion of the Senator from Delaware (Mr. ROTH), we recommended a committee resolution expressing the sense of the Senate that these offices should not be closed until the matter has been studied further.

The Senator's amendment, I think, prohibits the closing of the offices for a certain period of time—until June 30 of next year. In that respect, he goes further than the Finance Committee resolution. Of course, the Treasury would be opposed to this, because in their view, these offices should be closed.

So far as this Senator is concerned, it would be all right with him to abide by the wishes of the Senate, and I have no objection to it personally.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. LONG. I am willing to leave it up to the Senate, if that be the will of the Senate, but someone may object; and if so, it will have to go over.

Mr. PROXMIRE. Mr. President, will the Senator yield me 1 minute?

Mr. LONG. I yield.

Mr. PROXMIRE. Mr. President, we have some serious problem with respect to HUD. Whenever an agency tries to close an office anywhere, the Senator in the State where the offices are to be closed, for obvious and understandable reasons, tends to object. But it makes it extremely difficult for the executive branch to operate in an efficient way.

It seems to me that this kind of amendment may be meritorious. But for us to act on it with a very brief debate, without having an understanding of what the plan is, without knowing what the IRS argument is, without having it laid out before us, would be premature.

As to the arguments on the HUD matter, I am convinced that HUD was right. Other Senators are convinced that they were wrong.

We had an extensive debate and long discussion in the committee, and we will have to thrash it out in conference.

I am concerned that if this amendment came in, a great deal of opportunity to deliberate and debate, to determine whether or not we can have a more efficient IRS, would be abbreviated, and we would be deciding on a political basis, rather on the basis of how we can have the most efficient Internal Revenue Service.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. CHAFEE. Mr. President, will the Senator from Wyoming yield me 1 minute?

Mr. HANSEN. I yield.

Mr. CHAFEE. Obviously, there is objection. I wonder whether we could go back to the committee report on this bill, following the resolution of the committee, urging them not to close the offices on the States mentioned until they have better substantiation than they currently have.

Mr. PROXMIRE. I have no objection to that. That sounds fine.

Mr. LONG. The sense of the Senate resolution.

Mr. CHAFEE. That is satisfactory.

The PRESIDING OFFICER. Does the Senator withdraw his amendment?

Mr. CHAFEE. I do.

The PRESIDING OFFICER. The amendment is withdrawn.

UP AMENDMENT NO. 2037

(Purpose: To express the sense of the Senate relating to the future revenue loss under the bill)

Mr. LONG. Mr. President, I send to the desk an amendment and ask unanimous consent that it be in order to consider it at this time.

The PRESIDING OFFICER. Without objection, it is so ordered. The other amendments are set aside, and this amendment can be considered.

How much time does the Senator yield?

Mr. LONG. I yield myself 2 minutes.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment numbered 2037:

At the end of the committee amendment, add the following new section:

SEC. . It is the sense of the Senate that the conferees on the part of the Senate shall limit the revenue loss from this bill for the fiscal years following 1979 to an extent that is practical and responsible.

Mr. LONG. Mr. President, I should like to refer to a specific figure of revenue loss in the years after 1979, but it is not possible to do that at this point. The bill already has revenue losses in years after 1979 that, in my judgment, are irresponsible and that must be pared down. This would be true of fiscal years 1980, 1981, 1982, 1983, 1984, 1985, and so forth.

So there are many things in the bill already that will have to be pared down, if this bill is going to be fiscally responsible.

This amendment would be an instruction to the conferees that they should understand that this bill will have to be pared down in conference, because that will be necessary.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. MUSKIE. Mr. President, this is similar to an amendment which the Senator offered and which was adopted by the Senate last year. I regard is as a commitment by the Senator, which I think he has anyway, independent of this amendment, to bring this bill within the constraints of the budget resolution, and I applaud that.

I urge him, also, to look at the costs, because we have no control over those. We are dependent upon him to handle that. I am perfectly willing to do that. This is the way, perhaps to get other Senators committed to the same objective, and for that reason I think the amendment is appropriate.

Mr. LONG. I thank the Senator.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HANSEN. Mr. President, I yield 1 minute to my colleague from Wyoming.

Mr. LONG. Could we vote on the amendment?

The PRESIDING OFFICER. The Senator's amendment is pending.

Without objection, the amendment is agreed to.

The Senator from Wyoming has 1 minute.

AMENDMENT NO. 3990

(Purpose: To provide for the exclusion, from gross income, of certain cost-sharing payments)

Mr. WALLOP. Mr. President, I ask unanimous consent that the Melcher amendment be temporarily laid aside and that it be in order to call up amendment No. 3990.

The PRESIDING OFFICER. Without objection, all amendments are set aside, and the clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Wyoming (Mr. WALLOP) proposes an amendment numbered 3990.

Mr. WALLOP. 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:

At the appropriate place in the bill, insert the following new section:

SEC. . CERTAIN PAYMENTS NOT INCLUDED IN GROSS INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income), as amended by section 134 of this Act, is amended by redesignating section 125 as 126 and by inserting immediately after section 124 the following new section:

"SEC. 125. CERTAIN COST-SHARING PAYMENTS.

"(a) GENERAL RULE.—Gross income does not include payments received under—

"(1) the Rural Clean Water Program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288 (j)), or

"(2) the Rural Abandoned Mine Program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).

"(b) APPLICATION WITH OTHER SECTIONS.—No deduction or credit allowable under any other provision of this chapter shall be allowed with respect to any expenditure made with the use of payments described in subsection (a) or with respect to any property acquired with any payment described in subsection (a) (to the extent that the basis is allocable to the use of such payments). Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made for expenditures chargeable to capital account with respect to property acbuired through the use of such payments, to the extent that such adjustment would reflect the amount of such payment.".

(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 125. Certain cost-sharing payments.

"Sec. 126. Cross references to other Acts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after the date of enactment of this Act.

Mr. WALLOP. Mr. President, I am offering an amendment that will clarify the tax treatment of cost-share payments in two important environmental programs. The amendment was originally introduced in the Senate as S. 3388. This amendment will change the tax treatment of cost-share payments given to landowners under the Clean Water Act of 1977 and the rural abandoned mines program. The Internal Revenue Service has notified the Soil Conservation Service that cost-share payments will be treated as taxable income. Participation in the voluntary programs will be severely restricted if the tax treatment intended for these payments is not clarified by Congress. This bill will exclude from gross income, payments made under the rural clean water program of the Federal Water Pollution Control Act and payments received under the rural abandoned mines program, which was authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977.

Mr. President, to demonstrate the need for this amendment, it would be useful to explain the intent of Congress in authorizing the cost-share pro-

gram for the Rural Clean Water Act and the rural abandoned mines program.

The Senate Committee on Environment and Public Works recently passed the Clean Water Act of 1977, Public Law 95-217. This bill paid attention not only to water pollution in our urban areas, but also to the growing problem of water pollution in rural and agricultural regions of the country. In an effort to reduce water pollution in rural areas, Congress approved a program to assist farmers and ranchers in implementing long-term soil conservation practices that will reduce nonpoint source pollution. Voluntary participation in this water pollution control program is encouraged by the Soil Conservation Service, which would provide cost-share payments to farmers and ranchers. The SCS will provide payments of up to 50 percent of the cost of installing water control mechanisms, but only to farmers in areas with approved water management plans.

Clearly, the cost-share arrangements were intended to ease the financial burden of farm operators and owners in implementing soil conservation practices, specifically designed to improve water quality.

Revenue Service has indicated that cost-share payments under the Clean Water Act of 1977 will be treated as taxable income. This tax treatment will push participating farmers and ranchers into higher income brackets, increase their tax liability, and create a penalty for participation.

The successful implementation of the rural abandoned mines program is threatened by the same tax problem concerning cost-share payments. The rural abandoned mines program (RAMP) came into being as a part of the Public Law 95-87, the Surface Mine Control and Reclamation Act of 1977.

The RAMP program is a long overdue effort to reclaim 1.1 million acres of abandoned coal mined lands in 29 States. Under the RAMP program, landowners are encouraged to reclaim abandoned surface mined lands through cost-share payments provided by the Soil Conservation Service. Cost-share payments are provided to participating owners of land and water rights for reclamation of up to 320 acres of surface mined lands. The Secretary of Agriculture determines what percentage of the total cost of reclaiming these lands will be covered. If the Secretary determines that the main benefits derived under the program are related to improving offsite water quality, esthetic values, or other offsite benefits, then the Soil Conservation Service can cover a larger proportion of the reclamation cost.

If the matching share requirement would burden the landowner financially to such an extent that participation would be withdrawn, the Secretary of Agriculture can authorize larger cost-share payments. Under these administrative guidelines, RAMP reclamation projects receiving cost-share payments are scrutinized as to the extent of the public benefit from the reclamation efforts.

I have discussed the tax problem facing the rural abandoned mines program with the distinguished chairman of the Senate Energy Committee, under whose leadership this program came into being. Senator JACKSON has endorsed this amendment as it pertains to the taxation of cost shares in the RAMP program. I would like to take a moment to quote from Senator JACKSON's letter relating to the taxation of cost-share payments in the rural abandoned mines program.

When we developed this program in committee in 1973, it was our intention that the full amount of Federal funding would be spent on rehabilitation of the land. Requiring a portion of the Federal funds to simply be returned to the Treasury would be totally inconsistent with achievement of the objectives of the program.

The amendment has the support of a broad-based coalition of environmental, agricultural, and mining organizations. Some of the environmental organizations supporting the amendment are the Sierra Club, the Environmental Policy Center, the Clean Water Action Group, the National Wildlife Federation, the Illinois south project, and the Appalachian Coalition. The amendment is also supported by the American Mining Congress, reflecting their hopes that it will help the Soil Conservation Service meet its rural land reclamation objectives. Organizations interested in water law, such as the National Water Resources Association and the Metropolitan Water District of Southern California also support this amendment as a means to assist the implementation of the Rural Clean Water Act.

Mr. President, I ask unanimous consent that a statement by Mr. DOMENICI, in connection with this amendment, be printed in the RECORD.

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

STATEMENT BY MR. DOMENICI

I am pleased to be a co-sponsor of the Wallop amendment and I would like to take a moment to explain why this amendment should be enacted into law.

As indicated by the distinguished list of co-sponsors on this amendment, and the diverse range of organizations that endorse its passage, the measure has achieved recognition as an important initiative in the tax treatment of environmental programs. By excluding the cost share payments in these two programs from taxation, the Senate will allow the Rural Clean Water Program and the Rural Abandoned Mines Program to operate as the Congress originally intended . . . positive environmental initiatives based on incentive and cooperation between the government and private land holders.

There seems to be two approaches Congress has taken to cleaning up the environment. One is the carrot and the other is the stick. It seems like all too often Congress or E.P.A. is willing to take the latter approach, imposing restrictions or regulations to improve the environment. But our people are getting tired of the barrage of laws and regulations coming from Washington. On the other hand, today we are considering two environmental programs that are based on incentives and cooperation between individuals and a government agency. It seems to me that these are the kind of programs that should be encouraged, instead of taxed. If Congress established programs with the intent that they be based on incentive, it makes no sense to see that incentive taxed away by the arbitrary interpretation of the I.R.S. The present tax treatment afforded cost shares would virtually destroy a positive environmental initiative like the Rural Clean Water program. I had the opportunity of working with Senator Wallop on the Clean Water Act of 1978, in the Committee on Environment and Public Works. The Committee, under exemplary leadership of Senator Randolph, put together a bill which reflects great interest in the problems of water pollution in rural areas. The programs in that bill will help farmers, ranches and other rural land owners to implement long-term soil conservation practices that will reduce nonpoint water pollution. Under the cost share program in the bill, the Soil Conservation Service would provide payments of up to 50 percent of the cost of installing water control mechanisms to farmers in areas with approved water management plans. The maximum cost share payment under the program is $50,000. These cost share arrangements were intended to ease the financial burden of farm operators and owners in implementing modern soil conservation practices to reduce water pollution in the rural areas of our nation.

The Wallop amendment will allow the Rural Clean Water Cost Share Program to operate effectively in New Mexico and across the country. I support the Wallop amendment and encourage the Senate to pass this measure so that two useful and innovative environmental programs can operate in a manner desired by Congress.

Mr. WALLOP. I ask unanimous consent that these studies and letters discussing the RAM program and the merits of this amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FINAL IMPACT STATEMENT RURAL ABANDONED MINE PROGRAM

1. Title: Development of rules and regulations to implement a Rural Abandoned Mine Program (RAMP) as authorized by Section 406 of Public Law 95-87.

2. *Actions and Groups Impacted.*

Program objectives: To protect people and the environment from the adverse effects of past coal-mining practices and to promote resource development on unreclaimed coal-mine lands.

Program operations: Under 5- to 10-year contracts, provides technical and financial assistance on a voluntary basis, and through the Soil Conservation Service (SCS) existing delivery system, to develop and apply reclamation plans for the restoration, conservation, and development of eligible abandoned or inadequately reclaimed coal-mine lands and water up to 320 acres per owner.

Lands users make application for assistance through the SCS field office. SCS district conservationists verify information on the applications and assign a tentative priority. The local conservation district or the local reclamation committee recommend the final priority asignment. According to the priority assigned, SCS would assist the participant in assessing, analyzing, and evaluating acceptable reclamation alternatives and the environmental impacts. The land user then selects the feasible and practical land use and treatment alternatives that best meet his reclamation objectives for inclusion in the reclamation plan. The reclamation plan approved by SCS would serve as the basis for the program contract. Reclamation, land use, and conservation treatment would then be applied according to the contract. SCS makes an annual status review to assure compliance with the contract.

Federal cost-share rates: Rates may range from 0 to 100 percent depending upon the

number of acres reclaimed, the potential for income production from the land after reclamation, and whether or not the main benefits are offset or accrue to the land user. The basic rate shall be up to 80 percent of the cost of carrying out land use and conservation treatment specified in the contract. The basic rate may be reduced to offset the increased potential for income production or increased as high as 100 percent if there is land user financial burden *and* the main benefits of reclamation are offsite (accrue to the public). If more than 120 acres up to 320 acres are reclaimed, the rate is to be reduced by up to 0.5 percent per acre. The SCS Administrator will establish and issue specific cost-share rates within this criteria.

Main benefits are defined as the principal values or benefits that can be identified and/or quantified as a result of reclamation. Main offsite benefits are those values that accrue to the public as a result of the reclamation. Main onsite benefits are those that accrue to the participant. Examples of principal values or benefits include human lives or property protected, reduction of erosion or sediment damage, elimination of public safety or health hazards, improvement of water quality or improved visual quality of rural communities, etc.

Financial burden applies if the main benefits of reclamation accrue to the public and the land user's cost of reclamation cannot be expected to be recovered within the contract period and would probably prevent participation in the program.

The order of priorities for funding reclamation work are: (1) Protection of public health, safety, general welfare, and property from extreme danger of adverse effects of past coal-mining practices; (2) protection of public health, safety, and general welfare from adverse effects of coal mining; and (3) restoration of the environment and land and water resources where previously degraded by the adverse effects of past coal-mining practices. Subpriorities for funding reclamation work within each priority will give first preference to individual persons who did not consent to the mining and owned the land prior to May 2, 1977. Last preference is given to corporations and absentee owners who will not actively use the area for agricultural or silvacultural purposes.

Groups impacted: (a) The program will impact directly on:

(1) Land users that are eligible for and choose to participate in the program. Eligible land users include landowners, owners of water rights, residents, tenants or their agents operating as individuals, partnerships, corporations, associations, or estates controlling lands or water mined for coal or affected by coal-mining processes and abandoned or inadequately reclaimed before August 3, 1977.

(2) Owners and residents of adjacent or neighboring lands through reduced sediment damages, improved water quality, improved visual quality of the landscape, and reduced health and safety hazards.

(b) The program will indirectly impact on:

(1) Consumers and producers of agricultural, forestry, and recreational outputs through improved beneficial use of the land or increased productive capacity.

(2) Citizens and visitors to the United States will be positively affected by the improvement in environmental quality and reduction of health or safety hazards.

3. Purpose and Need for Action.

According to the 1977 SCS inventory of abandoned mine lands, approximately 1.1 million acres of coal-mine lands need reclamation. Of this total, 753,000 acres are in the East (Appalachia), 316,000 acres are in the Midwest, and 24,000 acres are in the West. This inventory does not identify problems but does identify areas eligible for program participation. An estimated 70 percent of these lands are owned by large corporations. This program proposes to treat as much as 8 to 10 percent of this total. Other reclamation programs authorized by Public Law 95–87 and administered by the Office of Surface Mining would treat a portion of the balance.

Generally, the following adverse problems are associated with abandoned coal-mine lands: landslides, fire, subsidence, flooding, acid drainage, erosion, sediment, dust, insects, and vermin. Also, the useful function and visual quality of this land is greatly impaired.

Three other State and Federal programs authorized by Public Law 95–87 are designed to reclaim abandoned coal-mine lands in conjunction with this program.

4. Options Considered.

(a) Operate program in specific coal regions and cost share for reclaiming all eligible land uses in accordance with program priorities:

	East	Midwest	West
Cost per acre to reclaim dollars	7,600	5,600	2,700
Reclaimed annually (minimum) (acres)	5,200	7,200	14,800
Net income annually[1] (dollars)	66,000	213,200	119,000
Erosion reduction annually (tons)	480,000	540,000	900,000
Runoff reduction annually (percent)	40	44	46
Capitalized value of net income (dollars per acre)	130–260	300–600	80–160

[1] Exclusive of reclamation costs.

RAMP INVENTORY DATA[1]

Rank and State	Coal lands needing reclamation (acres)	Counties: Total	More than 5,000	1,000–4,999	100–999	Less than 100
1. Pennsylvania	240,000	35	15	12	8	0
2. Ohio	196,709	27	13	10	2	2
3. Illinois	118,711	31	5	8	11	7
4. Kentucky	101,637	44	8	11	21	4
5. West Virginia	84,868	28	4	13	8	3
6. Alabama	72,292	17	4	5	6	2
7. Missouri	70,688	30	6	6	5	13
8. Kansas	41,256	9	2	3	2	2
9. Oklahoma	36,118	15	2	7	6	0
10. Tennessee	29,583	15	1	7	7	0
11. Indiana	25,882	14	2	5	4	3
12. Virginia	23,724	7	1	5	0	1
13. Iowa	13,997	13	1	2	7	3
14. Wyoming	9,657	13	1	0	4	8
15. Colorado	7,089	14	0	2	4	8
16. Arkansas	5,623	9	0	3	3	3
17. Texas	3,310	8	0	1	4	3
18. Maryland	2,804	2	0	1	1	0
19. Alaska	2,700	2	0	2	0	0
20. Montana	1,955	18	0	0	5	13
21. Georgia	1,680	2	0	1	1	0
22. North Dakota	1,050	3	0	0	3	0
23. South Dakota	890	3	0	0	3	0
24. Utah	635	7	0	0	3	4
25. Arizona	400	1	0	0	1	0
26. Michigan	142	4	0	0	1	3
27. Washington	42	3	0	0	0	3
28. New Mexico	22	2	0	0	0	2
29. California	10	1	0	0	0	1
Total	1,093,520	377	65	104	121	88

[1] SCS 1977 Inventory. Status of land disturbed by surface mining in the United States.

EXAMPLE OF INCOME TAX PAYMENTS IN OHIO RESULTING FROM PARTICIPATION IN THE RURAL ABANDONED MINE PROGRAM

(Authorized by Section 406 of PL 95–87)

Ohio has approximately 196,700 acres of abandoned lands disturbed by coal mining. The hypothetical tax impacts expressed herein are based on our limited knowledge of the existing tax structure.

Average acres to be reclaimed per contract, 40.

Estimated cost per acre, $7,600.

Cost-share rate: Maximum 100 percent—If main benefits are offsite (accure to the public) and financial burden is declared. Cost sharing would be less if over 120 acres, main benefits are onsite or no financial burden is declared.

40 acres × $7,600 per acre = $304,000.

Amount of cost-share payment at 100 percent = $304,000.

Amount taxable as income before deductions = $304,000.

Amount of deductions in this case (100 percent cost share) = $0.

Tax situation:

Tax rate (based on cost-share payment alone), 70 percent.

Total tax, $212,800.

Tax cost per acre, $5,320.

This could be spread over 1–7 years depending on type and length of contract.

Estimated land value before reclamation, $150 per acre.

Estimated land value after reclamation, $300 per acre.

Increase in land value, $150 per acre.

Average increase in net income per year, $13 per acre.

SEPTEMBER 19, 1978.

HON. MALCOLM WALLOP,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This letter is in regard to S. 3388—A Bill to Exclude From Gross Income Payments Made Under the Rural Abandoned Mines Program, introduced by you on August 9.

The American Mining Congress supports this legislation. We are pleased that you have expeditiously acted to remedy an unforeseen problem that clearly was not intended by the authors of the Abandoned Mine Reclamation Program contained in Title IV of the Surface Mining Control and Reclamation Act of 1977.

On April 11, 1978, the Soil Conservation Service proposed regulations implementing the Rural Abandoned Mine Program authorized by Section 406 of the Surface Mining Act. As of this date the SCS regulations have not been promulgated, largely because of the question of how cost sharing payments to participating land owners will be treated for income tax purposes.

By letter of June 5, 1978, the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations commented on the proposed

regulations, and a copy of that letter is enclosed for your information. Your attention is respectfully directed to the comments on page two of the letter which expresses the Joint Committee's concern that cost-share payments may be taxed as ordinary income by the Internal Revenue Service. The Joint Committee stated that:

". . . such an interpretation would seriously affect the viability of the entire RAMP program and should be vigorously opposed".

When you introduced S. 3388, you stated:

". . . IRS has determined that cost sharing under the Rural Abandoned Mines Program will be treated as taxable income. The result of this action is an increase in the tax burden of participating land owners, and inevitably it will deter participation in the voluntary RAMP program."

Clearly, the Internal Revenue Service's determination thwarts the intent of the authors of Section 406 of the Surface Mining Act. The coal industry fully supports the Act's rural land reclamation objectives, and we are hopeful that your bill, if enacted, will be of great assistance to the Soil Conservation Service in administering this important program.

With warmest regards, I am

Sincerely,

J. ALLEN OVERTON, Jr.,
President.

WATER RESOURCES ASSOCIATION,
Washington, D.C., October 2, 1978.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WALLOP: We have studied your bill, S. 3388, and are pleased to report that we not only endorse its provisions, we urge its enactment.

Further we commend you for identifying this legislative need, and thank you for the initiative to correct a deficiency that undoubtedly would make the program inoperative.

The positive effect that this legislation will have to encourage participation in programs under the Clean Water Act cannot be understated, and we strongly support your efforts in this important area to enhance our most precious natural resource.

Sincerely yours,

J. W. O'MEARA,
Executive Vice President.

UP AMENDMENT NO. 2038

(Purpose: To broaden the class of programs for which payments are excluded and to provide for the recapture of excluded amounts in the case of early dispositions)

Mr. CULVER. Mr. President, I call up my substitute amendment No. 1 at the desk, as a substitute for the pending amendment of the Senator from Wyoming.

Mr. HANSEN. Can the Senator get time on that side?

Mr. CULVER. Will the Senator yield?

Mr. MUSKIE. I yield 2 minutes.

The PRESIDING OFFICER. The Senator from Iowa has 2 minutes.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) proposes an amendment numbered UP 2038, as a substitute to amendment No. 3990.

Mr. CULVER. 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:

In lieu of the matter proposed to be inserted as a new section 125 insert the following:

"SEC. 125. CERTAIN COST-SHARING PAYMENTS.

"(a) General Rule.—Gross income does not include the excludible portion of payments received under—

"(1) the Rural Clean Water Program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)),

"(2) the Rural Abandoned Mine Program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236),

"(3) the Water Bank Program authorized by the Water Bank Act (16 U.S.C. 1301 et seq.),

"(4) the Emergency Conservation Measures program authorized by title IV of the Agricultural Credit Act of 1978,

"(5) the Agricultural Conservation Program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a),

"(5) the Great Plains Conservation Program authorized by section 16 of the Soil Conservation and Domestic Policy Act (16 U.S.C. 590p(b)),

"(7) the Resource Conservation and Development Program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a et seq.),

"(8) the Forestry Incentives Program authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103),

"(9) the Small Watershed Program, authorized by Public Law 89-566,

"(10) any State program under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

"(b) Excludible Portion.—For purposes of this section, the term 'excludible portion' means that portion (or all) of a payment made to any person under any program described in subsection (a) which is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the envionment, improving forests, or providing a habitat for wildlife, and which is determined by the Secretary of the Treasury as not increasing substantially the annual income of such person.

"(c) Application with Other Sections.—No deduction or credit allowable under any other provision of this chapter shall be allowed with respect to any expenditure made with the use of payments described in subsection (a) or with respect to any property acquired with any payment described in subsection (a) (to the extent that the basis is allocable to the use of such payments). Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made with respect to property acquired through the use of such payments, to the extent that such adjustment would reflect the amount of such payment.".

(b) Clerical Amendment.—The table of sections for such part is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 125. Certain cost-sharing payments.

"Sec. 126. Cross references to other Acts.".

(c) Recapture of Gain From Disposition of Property.—

(1) Part IV of subchapter P of chapter 1 (relating to special rules for determining capital gains and losses) is amended by adding at the end thereof the following:

"SEC. 1255. GAIN FROM DISPOSITION OF SECTION 125 PROPERTY.

"(a) General Rule.—

"(1) Ordinary income.—Except as otherwise provided in this section, if section 125 property is disposed of, the lower of—

"(A) the applicable percentage of the aggregate payments, with respect to such property, excluded from gross income under section 125, or

"(B) the excess of—

"(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such section 125 property (in the case of any other disposition), over

"(ii) the adjusted basis of such property, shall be treated as ordinary income.

"(2) Section 125 property.—For purposes of this section, 'section 125 property' means any property acquired, improved, or otherwise modified by the application of payments excluded from gross income under section 125.

"(3) Applicable percentage.—For purposes of this section, if section 125 property is disposed of less than 10 years after the date of receipt of payments excluded from gross income under section 125, the applicable percentage is 100 percent. If section 125 property is disposed of more than 10 years after such date, the applicable percentage is 100 percent reduced (but not below zero) by 10 percent for each year or part thereof in excess of 10 years such property was held after the date of receipt of the payments.

"(b) Special Rules.—Under regulations prescribed by the Secretary rules similar to the rules applicable under section 1245 shall be applied for purposes of this section.".

(2) The table of sections for such part is amended by adding at the end thereof the following new item:

"Sec. 1255. Gain from disposition of section 125 property.".

(d) Effective Date.—The amendments made by this section shall apply with respect to grants made under the programs after September 30, 1979.

Mr. CULVER. Mr. President, my amendment includes all the provisions of the pending Wallop amendment but would add to the amendment a number of other cost-sharing programs administered by the Department of Agriculture and State cost-sharing programs for soil conservation and environmental protection purposes. A few weeks ago both the Senator from Wyoming and I introduced legislation which would exclude from gross income cost-sharing payments under these conservation programs. I believe the language I am now offering, which includes the provisions of both our bills, is consistent with the Senator's objectives.

The purpose of both our amendments is to remove a serious disincentive to farmers and other rural landowners to make the best use of our cost-sharing programs for soil conservation and environmental protection. Under current law, certain cost-sharing payments result in an increased tax liability for the farmer while others do not. The different tax treatment is not based on the purpose or cost-effectiveness of the conservation measures on which the money is spent, but on the type of material used, for instance, in building a conservation structure. The pending amendments would remove this potential disincentive to use these public cost-sharing funds in the most effective manner.

The U.S. Department of Agriculture currently administers a variety of pro-

grams under which it pays part of the cost of implementing measures to enhance natural resource and wildlife protection. Several States, including my own State of Iowa, provide funds for similar purposes. The basis of public support for these programs is that they yield broad societal benefits beyond those which accrue to individual landowners.

It is clearly in our economic and environmental interest that cropland be adequately protected from soil erosion. This soil is the foundation of our food production capacity. Without it, food costs would soar and our very ability to provide food for ourselves would be jeopardized. In addition, soil erosion contributes to severe water pollution. Yet, soil conserving measures are often too expensive for the individual landowners, and the return on investment is usually delayed for many years. In the highly competitive world of food production, farmers rarely can make these investments in conservation with any hope of recovering their costs through the prices received for their products. Our cost-sharing programs are designed to overcome these financial barriers to good conservation and environmental protection by having the public pay directly part of the cost.

Under current tax law, however, Federal and State cost-sharing payments for these purposes are considered as gross income to the farmer and subsequently, for tax purposes, are treated as earnings. On the expense side of the ledger, the Internal Revenue Service (IRS) defines expenditures on certain conservation measures as "deductible expenditures." Others are classified as expenditures on "depreciable assets."

In the case of "deductible expenditures," the increase in gross income a farmer experiences from having cost-sharing payments included in his gross income is offset by an equivalent deduction in the same tax year with no increase in his tax liability. In the case of payments which are spent on "depreciable assets," however, only a portion of the increased gross income may be deducted in that tax year. The farmer receiving assistance from the Government for building these structures must include in his gross income for that year the total amount of money received but can deduct only the depreciable portion of the payment. If he can recover, in the first year, through annual allowances for depreciation, only 10 percent of that public assistance, he will have to pay taxes on the other 90 percent and wait until future years to recover those taxes.

Mr. President, this is a clear case of diametrically opposed public policies. We attempt, on the one hand, to encourage farmers to voluntarily allow public funds to be used on their lands to protect our soil and the environment for future generations. On the other hand, we discourage them from using these funds to carry out conservation measures that may be the most appropriate means of achieving the desired erosion control or environmental protection by placing a tax liability of these expenditures.

These cost-sharing payments are not income supplements. Though the farmer will likely benefit from the public's investment in his conservation practices, the public will benefit from the funds which the farmer spends out of his own pocket on the project. The relative shares paid by the farmer and by the Government are based largely on the distribution of benefits from the work performed. This cannot be determined with total precision, of course, but reasonable estimates can be negotiated by local program representatives and the farmers themselves as is provided under these programs.

In selecting conservation measures, farmers are understandably influenced by financial consideration. Naturally, they should select the most cost-effective methods of using their resources to achieve good conservation. The possibility of having to pay income taxes on the Government's share of the cost of certain conservation measures destroys the kind of balanced consideration of alternatives that is necessary if we are to get the most for our money.

The amendment by the distinguished Senator from Wyoming would exclude from gross payments made under the Rural Clean Water Program and the Rural Abandoned Mine Program. My amendment, which was first introduced as S. 3419, includes these two programs and extends the same income exclusion to several other U.S. Department of Agriculture programs which make payments for soil conservation and environmental enhancement efforts. These include the Agricultural Conservation Program (ACP), the Resource Conservation and Development Program (RC&D), the Water Bank Program, the Emergency Conservation Measures Program, the Great Plains Conservation Program, the Small Watershed Program and the Forestry Incentives Program. In addition, my amendment would exclude from gross income payments made under State funded cost-sharing programs.

In light of the fact that all of these programs are aimed at achieving essentially the same objectives often through the use of the same measures I am offering my amendment to the amendment of the Senator from Wyoming to add these seven other Federal cost-sharing programs and such State programs as qualify. In order to assure that this exclusion applies to only those payments made for sound conservation and environmenal measures, my amendment also requires the Secretary of Agriculture to determine which projects funded under these programs are primarily for conservation or environmental protection purposes. The exclusion from taxation then would apply only to those measures identified by the Secretary.

The payments made under these programs represent a national investment to secure a better future for the entire Nation, farmers, and consumers alike. This amendment will take us one step closer to even more effective soil conservation and environmental protection. At a time when we are losing over 2 billion tons of valuable topsoil to soil erosion, we should not have a tax policy which discourages sound conservation practices.

I believe it is time to resolve this contradiction in policies by eliminating a tax which is both inequitable and self-defeating. I hope the Senator from Wyoming will endorse my amendment, and I hope the distinguished floor manager will accept these amendments.

There would be no revenue loss in this program in fiscal year 1979.

Mr. WALLOP. Mr. President, if the Senator will yield to me for a comment, I will say that the Treasury now supports this, and it is our understanding that the managers of the bill will find it an acceptable amendment.

Mr. PROXMIRE. Mr. President, will the Senator yield me 1 minute?

Mr. MUSKIE. I yield.

The PRESIDING OFFICER. The Senator is yielded 1 minute.

Mr. PROXMIRE. May I ask the Senator from Iowa if he could give us an estimate of what the revenue loss is in the out years after 1979?

Mr. CULVER. I am told it is minimal.

Mr. PROXMIRE. Minimal?

Mr. CULVER. Yes.

Mr. PROXMIRE. Did the Senator say that the Treasury supports this amendment?

Mr. CULVER. I am not aware of any objection by the Treasury, and they support it.

Mr. PROXMIRE. Were there hearings on the amendment?

Mr. CULVER. It is my understanding that there were not formal hearings on the amendment, but this has been discussed and negotiated with Treasury over a protracted period of time.

As the Senator from Wisconsin knows, when we have a soil conservation program, for example, in Wisconsin, or under the clean water act, at the present time an individual landowner makes application for some form of cost-sharing project to stem soil erosion. Under current tax law certain forms of erosion control which are classified as capital investments must be depreciated rather than expensed out in 1 year.

In those situations there would not be any immediate expenses sufficient to offset the initial capital investment and the landowner is forced then to pay income tax on the undepreciated portion of that asset in that year. This serves as a disincentive for the most cost effective forms of using these cost sharing programs.

On the one hand, we are saying let us have the programs——

The PRESIDING OFFICER. The time has expired.

Mr. PROXMIRE. Mr. President, will the Senator from Maine yield an additional minute?

Mr. MUSKIE. I yield 1 additional minute.

The PRESIDING OFFICER. The Senator has an additional minute from the Senator from Maine.

Mr. CULVER. On the one hand we are saying to the farmers of Iowa and Wisconsin, "Let us do something to stop soil erosion and runoff which at the present time is depleting our soil with enormous consequences every year." At the same time we are saying, "Once you participate in these programs we are going to also impose a disincentive in the form of a tax obligation in the same year."

Mr. PROXMIRE. I say to the Senator from Iowa that this amendment seems to have a great deal of appeal, so that we will not have to have a vote on it.

Mr. CULVER. The Treasury supports it.

Mr. PROXMIRE. Let us not vote on it until after we act this afternoon on the cloture motions, and so forth, so that we have some opportunity to study it. It is a complicated amendment. There is $48 million loss. As I say, I think I can support the amendment, but I would appreciate it if the Senator would not press final action on the amendment until a little later.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator's 1 minute has expired.

Mr. CULVER. I wonder if we could inquire of the managers of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. WALLOP. We inquire of the managers of the bill: Inasmuch as the Treasury does support this, is the amendment acceptable?

The PRESIDING OFFICER. Who yields time?

Mr. WALLOP. I am simply asking inasmuch as the Treasury finds it acceptable and has so stated, if the managers will accept the amendment?

Mr. PROXMIRE. May I say is this a nongermane amendment?

Mr. CULVER. Yes, it could be so ruled.

Mr. PROXMIRE. In that event, I will withdraw any objection.

Mr. CULVER. I thank the Senator.

Mr. PROXMIRE. We must do it right now, or you could not get it. That is the problem with this amendment.

Mr. CULVER. I thank the Senator from Wisconsin.

Mr. President, I ask for a vote.

Mr. HANSEN. I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

Mr. HANSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended, of the Senator from Wyoming.

The amendment, as amended, was agreed to.

Mr. HANSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, I yield 3 minutes to the Senator from Iowa.

Mr. CULVER. I thank the distinguished Senator from Maine for yielding.

UP AMENDMENT NO. 2039

(Purpose: To allow an additional carryback of 7 years for excessive net operating losses attributable to product liability losses)

Mr. CULVER. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) for himself and Mr. EAGLETON, Mr. NELSON, Mr. PEARSON, Mr. ROTH, Mr. GRIFFIN, Mr. HELMS, and Mr. HEINZ proposes an unprinted amendment numbered 2039.

The amendment is as follows:

On page 341, between lines 17 and 18, insert the following new section:

SEC. 380. NET OPERATING LOSSES ATTRIBUTABLE TO PRODUCT LIABILITY LOSSES.

(a) IN GENERAL.—Section 172 of the Internal Revenue Code of 1954 (relating to net operating losses) is amended—

(1) by striking out "and (G)" in clause (i) of section (b)(1)(A) and inserting in lieu thereof "(G), (H), and (I),",

(2) by inserting at the end of subsection (b)(1) the following new subparagraphs:

"(H) In the case of a taxpayer who incurs a product liability loss (as defined in subsection (i)) for any taxable year beginning after December 31, 1977, the smaller of—

"(i) the excess of the net operating loss for such year (determined without regard to any portion thereof attributable to a foreign expropriation loss) over the sum of the taxable income (as determined under paragraph (2)) for each of the 3 prior taxable years to which such loss may be carried under subparagraph (A)(i), or

"(ii) the product liability loss for such taxable year,

shall be a net operating loss carryback to each of the 7 taxable years preceding the earliest of such 3 prior taxable years.

"(I) In the case of a taxpayer who incurs a net operating loss for a taxable year beginning after September 30, 1979 (referred to in this subparagraph as the 'loss year') and who had both a net operating loss and a product liability loss (as defined in subsection (i)) for a prior taxable year beginning after that date (referred to in this subparagraph as the 'prior year'), if the amount of the net operating loss for the loss year which may be carried over under this subsection would be reduced by doing so, then the smaller of—

"(i) the net operating loss (determined without regard to any portion thereof attributable to a foreign expropriation loss) for the prior year, or

"(ii) the product liability loss for the prior year,

shall be considered to be a separate net operating loss for the prior year and shall be a net operating loss carryback to each of the 10 taxable years preceding the prior year.",

(3) by adding at he end of paragraph (2) of subsection (b) the following new sentence: "In the case of a taxable year to which paragraph (1)(H) applies, this paragraph shall be applied by treating the entire net operating loss as a net operating loss carryback to each of the 3 taxable years preceding the loss year and by treating that portion of the loss described in paragraph (1)(H) as a separate net operating loss carryback to each of the 7 taxable years preceding the earliest of such 3 taxable years.", and

(44) by redesignating subsection (i) as (j), and by inserting after subsection (h) the following new subsection:

"(i) PRODUCT LIABILITY LOSS DEFINED; SPECIAL RULE.—For purposes of subsection (b)—

"(1) PRODUCT LIABILITY LOSS.—The term 'product liability loss' means, for any taxable year, the amount of the deductions under sections 162 and 165 attributable to product liability (as defined in paragraph (2)) and to expenses incurred in the investigation, settlement, and opposition to claims against the taxpayer on account of product liability.

"(2) PRODUCT LIABILITY.—The term 'product liability' means liability for damages on account of physical injury or emotional harm to individuals, or damage to or loss of use of property, on account of the manufacture, importation, distribution, lease, or sale by the taxpayer of any product if such liability arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

"(3) SPECIAL RULE.—For purposes of applying sections 6501 and 6511 to a net operating loss to which subsection (b)(1)(I) applies, the net operating loss for the prior year (as defined in such subsection) shall be considered to be a net operating loss for the loss year (as defined in such subsection).".

(b) ACCUMULATED EARNINGS TAX.—Section 537 (b) of the Internal Revenue Code of 1954 (relating to the accumulated earnings tax) is amended by redesignating paragraph (4) as (5) and by inserting after paragraph (3) the following new paragraph:

"(4) PRODUCT LIABILITY LOSS RESERVES OR INSURANCE.—According to regulations prescribed by the Secretary of the Treasury, reasonable amounts accumulated by a taxpayer for the payment of product liability losses shall be treated as amounts accumulated for the reasonably anticipated needs of the business of the taxpayer.

On page 128, after the item relating to Sec. 379 in the bill, add a new item relating to Sec. 380 as follows:

"Sec. 380. Net operating losses attributable to product liability losses."

The PRESIDING OFFICER. Without objection, all pending amendments are set aside and the Senate will proceed to the consideration of this amendment.

Mr. CULVER. Mr. President, this amendment was drawn by the Department of the Treasury and recommended to the President as the best short-term approach to problems faced by businesses and consumers as a result of the rising costs and declining availability of product liability. The administration supports its inclusion in this tax bill.

The amendment would allow businesses to "carry back" product liability losses and apply them against taxable income for the 10 preceding years. This is an extension specifically for product liability losses 7 years beyond the 3-year period permitted for most business losses. By allowing businesses to use previous taxable income as at least a partial reserve against major product liability losses, the amendment would help assure that a business which suffered a major product liability loss would have the funds both to stay in business and provide reasonable compensation to injured consumers. The cost of this amendment is estimated to be approximately $10

million annually beginning in fiscal year 1980.

Second, this amendment makes clear that prudent businesses which set aside funds after taxes have been paid on them to serve as a reserve against product liability losses shall not have those funds subject to the accumulated earnings tax. Under current law, this approach, which is in the interest both of consumers and of businesses, is actually discouraged by the fact that there is a disincentive to create such a reserve. Regulations to protect such a reserve would be prescribed by the Secretary of the Treasury to prevent abuses and to provide for reasonable controls. The Treasury has told me that it has no objection to such a provision.

Mr. President, I ask unanimous consent that a letter from the Department of the Treasury to that effect be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
Washington, D.C., September 15, 1978.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to the question that Senator Nelson intended to pose to Secretary Blumenthal at the hearing on August 17, 1978, concerning product liability as set forth in his letter to you dated August 24, 1978. The Administration proposal to which Senator Nelson refers is to allow a special 10-year carryback for net operating losses attributable to product liability. We believe the proposal is the appropriate relief for the problem referred to by Senator Nelson.

The Administration would have no objection to the inclusion of its proposal in the tax bill presently before the Senate Finance Committee.

Please let me know if there is any further information I can furnish to you.

Sincerely,

DONALD C. LUBICK,
Assistant Secretary (Tax Policy).

Mr. CULVER. Finally, Mr. President, we have had extensive hearings by the Small Business Committee on this subject, and at the suggestion of Senator NELSON hearings were held by a subcommittee of the Finance Committee on this matter.

The PRESIDING OFFICER. Who yields time?

Mr. LONG and Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I have a letter. As I understand it the Treasury favors the amendment, and I see no reason why anyone should object to it. It will be all right with me, Mr. President, to accept the amendment and take it to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

Mr. PROXMIRE. Mr. President, did the Senator say it was approved by the Treasury and there was no revenue loss?

Mr. CULVER. It was approved by the Treasury. There is no revenue loss in fiscal year 1979. There is an estimated revenue loss in 1980 of $10 million. The Department of the Treasury has submitted correspondence to us in which they state in their September letter following the extensive hearings by the Small Business Committee:

We believe the proposal is the appropriate relief for the problem referred to by Senator Nelson.

The administration would have no objection to the inclusion of its proposal in the tax bill presently before the Senate Finance Committee.

And that is signed by the Assistant Secretary on Tax Policy, Mr. Lubick.

Mr. PROXMIRE. Did the Small Business Committee vote on the amendment?

Mr. CULVER. Not on this particular amendment, no, because this was drafted subsequent to our hearings. It was not the same kind of amendment we had pending before our hearings.

We had extensive hearings on this general subject.

There has also been a Presidential interagency task force for more than a year on this subject. We consulted with Treasury as recently as 2 hours ago, and they once again reaffirmed their desire that this measure be included in this tax bill as the most appropriate relief for product liability problems.

Frankly, in my judgment, I would say to the Senator from Wisconsin, it does not go nearly far enough. It is not viewed as adequate relief——

The PRESIDING OFFICER. The time has expired.

Mr. CULVER. In the judgment of many. But in the absence of anything else it is a minimum we can do.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, will the Senator inform the Senate when the effective date of the amendment would be?

Mr. CULVER. Fiscal year 1980.

Mr. PROXMIRE. 1980.

I agree with the Senator. I think it is an excellent amendment, and I agree it does not go far enough. The Treasury supports it. There is no revenue loss this year, and a revenue loss in 1980 of $10 million or after 1980.

Mr. CULVER. Ten million dollars after 1980.

Mr. President, I move the amendment. I ask for a vote on this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

Mr. CULVER. I thank the Chair.

Mr. CHURCH. Mr. President, I ask the Senator from Maine if he would yield 15 minutes.

Mr. MUSKIE. I yield 15 minutes to the distinguished Senator from Idaho.

AMENDMENT NO. 3901

(Purpose: To provide for the taxation of the earnings and profits of controlled foreign corporations)

Mr. CHURCH. Mr. President, I call up for consideration at this time amendment No. 3901.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report the amendment of the Senator from Idaho.

Mr. CHURCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with, and I will explain it.

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

The amendment is as follows:

On page 341, between lines 17 and 18, insert the following:

SEC. 378. TAXATION OF EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS.

(a) GENERAL.—Part III of subchapter N of chapter 1 (relating to income from sources without the United States) is amended by inserting after subpart II thereof the following:

"Subpart I—Controlled Foreign Corporations

"Sec. 983. Amounts included in gross income of United States shareholders.
"Sec. 984. Definitions.
"Sec. 985. Rules for determining stock ownership.
"Sec. 986. Exclusion from gross income of previously taxed earnings and profits.
"Sec. 987. Adjustments to basis of stock in controlled foreign corporations and of other property.
"Sec. 988. Records and accounts of United States shareholders.
"Sec. 989. Election by individuals to be subject to tax at corporate rates.
"Sec. 990. Records and accounts of United States shareholders.
"Sec. 990A. Transition rules for period before subpart I is completely phased in.

"SEC. 983. AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS.

"(a) AMOUNT INCLUDED.—

"(1) IN GENERAL.—If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year, every United States shareholder of such corporation which owns (within the meaning of section 985(a)) stock in such corporation on the last day in such year on which such corporation is a controlled foreign corporation shall include in its gross income, for its taxable year in which or with which such taxable year of the corporation ends, a percentage (determined under paragraph (3)) of its pro rata share of the corporation's earnings and profits for such year.

"(2) PRO RATA SHARE OF EARNINGS AND PROFITS.—A United States shareholder's pro rata share referred to in paragraph (1) is the amount—

"(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 985(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its earnings and profits for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

"(B) an amount (i) which bears the same ratio to the earnings and profits of such corporation for the taxable year, as (ii) the part of such year described in subparagraph (A)(ii) during which such shareholder did not own (within the meaning of section 985(a)) such stock bears to the entire year.

"(3) DETERMINATION OF PERCENTAGE.—The

percentage referred to in paragraph (1) shall be determined in accordance with the following table:

"For taxable years of foreign corporations beginning in calendar year—	The percentage is—
1979	50
1980	60
1981	78
1982	80
1983	90
1984 or later	100

"(b) EARNINGS AND PROFITS.—For purposes of this subpart, under regulations prescribed by the Secretary, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year—

"(1) except as provided in section 312(m)(3), shall be determined according to rules appropriate to carry out the rules of this subpart,

"(2) shall be reduced by the amount, if any, by which the sum of the deficits in earnings and profits of such corporation for any prior taxable years beginning after December 31, 1978, exceed the sum of the earnings and profits of such corporation of such prior taxable years,

"(3) shall not include any item of income which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States, and

"(4) shall not include any amount of earnings and profits which could not have been distributed by such corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country but any such amounts shall be included in earnings and profits for the first taxable year in which such restrictions or limitations are terminated or modified to permit distribution of such amounts.

"(c) COORDINATION WITH ELECTION OF A FOREIGN INVESTMENT COMPANY TO DISTRIBUTE INCOME.—A United States shareholder who, for his taxable year, is a qualified shareholder (within the meaning of section 1247(c)) of a foreign investment company with respect to which an election under section 1247 is in effect shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.

"(d) COORDINATION WITH FOREIGN PERSONAL HOLDING COMPANY PROVISIONS.—In the case of a United States shareholder who, for his taxable year, is subject to tax under section 551(d) (relating to foreign personal holding company income included in gross income of United States shareholders) on income of a controlled foreign corporation, the amount required to be included in gross income by such shareholder under subsection (a) with respect to such company shall be reduced by the amount included in gross income by such shareholder under section 551(b).

"(e) CONSOLIDATION OF EARNINGS AND PROFITS FROM MULTIPLE FOREIGN CORPORATIONS.—(1) Subsection (a) shall be applied to a United States shareholder who owns stock in more than one controlled foreign corporation, or who owns stock in other foreign corporations (whether controlled foreign corporations or not) through stock owned by a controlled foreign corporation, by taking into account the aggregate earnings and profits of all such foreign corporations.

"(2) The Secretary shall prescribe Regulations to carry out the purposes of subparagraph (1).

"SEC. 984. DEFINITIONS.

"(a) UNITED STATES SHAREHOLDER DEFINED.—For purposes of this subpart, the term 'United States shareholder' means, with respect to any foreign corporation, a United States person (as defined in section 957(d)) who owns (within the meaning of section 985(a)), or is considered as owning by applying the rules of ownership of section 985(b), 1 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

"(b) CONTROLLED FOREIGN CORPORATION DEFINED.—For purposes of this subpart, the term 'controlled foreign corporation' means any foreign corporation—

"(1) of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 985(a)), or is considered as owned by applying the rules of ownership of section 985(b), by United States shareholders on any day during the taxable year of such foreign corporation, or

"(2) over which United States shareholders exercise actual control, as determined by the Secretary, from all facts and circumstances in the case.

"(c) LIMITATION ON ACTUAL CONTROL DETERMINATION.—In the case of a foreign corporation of which not more than 25 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 985(a)), or is considered as owned by applying the rules of ownership of section 985(b), by one or more United States shareholders on any day during the taxable year of such foreign corporation, the burden of proof in respect of the issue, for purposes of subsection (b)(2), as to whether such United States shareholders exercise actual control shall be upon the Secretary.

"SEC. 985. RULES FOR DETERMINING STOCK OWNERSHIP.

"(a) DIRECT AND INDIRECT OWNERSHIP.—

"(1) GENERAL RULE.—For purposes of this subpart, stock owned means—

"(A) stock owned directly, and

"(B) stock owned with the application of paragraph (2).

"(2) STOCK OWNERSHIP THROUGH FOREIGN ENTITIES.—For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly, by or for a foreign corporation of foreign estate (within the meaning of section 7701(a)(31)) or by or for a partnership or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(b) CONSTRUCTIVE OWNERSHIP.—For purposes of section 984, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any domestic corporation as a United States shareholder within the meaning of section 984(a), or to treat a foreign corporation as a controlled foreign corporation under section 984(b), except that—

"(1) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all of the stock entitled to vote.

"(2) In applying subparagraph (C) of section 318(a)(2), the phrase '10 percent' shall be substituted for the phrase '50 percent' used in subparagraph (C).

"SEC. 986. EXCLUSION FROM GROSS INCOME OF PREVIOUSLY TAXED EARNINGS AND PROFITS

"(a) EXCLUSION FROM GROSS INCOME.—For purposes of this chapter, the earnings and profits for a taxable year of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 983(a) shall not, when such amounts are distributed directly, or indirectly through a chain of ownership described under section 985(a), to—

"(1) such shareholder (or any person which acquires from any other person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe), or

"(2) a trust (other than a foreign trust) of which such shareholder is a beneficiary, be again included in the gross income of such United States shareholder (or of such domestic corporation or of such trust).

"(b) EXCLUSION FROM EARNINGS AND PROFITS OF CERTAIN FOREIGN SUBSIDIARIES.— For purposes of section 983(a), the earnings and profits for a taxable year of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 983(a), shall not, when distributed through a chain of ownership described under section 985(a), be also included in the earnings and profits of another controlled foreign corporation in such chain for purposes of the application of section 983(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

"(c) ALLOCATION OF DISTRIBUTIONS.—For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

"(1) first, to earnings and profits attributable to amounts included in gross income under section 983(a), and

"(2) then to other earnings and profits.

"(d) DISTRIBUTIONS EXCLUDED FROM GROSS INCOME NOT TO BE TREATED AS DIVIDENDS.—Any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend.

"SEC. 987. ADJUSTMENTS TO BASIS OF STOCK IN CONTROLLED FOREIGN CORPORATIONS AND OF OTHER PROPERTY.

"(a) INCREASE IN BASIS.—Under regulations prescribed by the Secretary, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which it is considered under section 985(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in its gross income under section 983(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder.

"(b) REDUCTION IN BASIS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the adjusted basis of stock or other property with respect to

which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 986(a) shall be reduced by the amount so excluded.

"(2) AMOUNT IN EXCESS OF BASIS.—To the extent that an amount excluded from gross income under section 986(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

"SEC. 988. SPECIAL RULES FOR FOREIGN TAX CREDIT.

(a) TAXES PAID BY FOREIGN CORPORATION.—

"(1) FIRST TIER FOREIGN SUBSIDIARY.—For purposes of subpart A of this part, if there is included, under section 983(a), in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation at least 1 percent of the voting stock of which is owned by such domestic corporation then, under regulations prescribed by the Secretary, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the taxable year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in the gross income of the domestic corporation bears to the entire amount of the earnings and profits of such foreign corporation for such taxable year.

"(2) SECOND TIER FOREIGN SUBSIDIARY.—If the foreign corporation described in paragraph (1) (hereinafter in this subsection referred to as the 'first foreign corporation') in the gross income of which there would be included (under section 983(a) applied as if the first foreign corporation were a domestic corporation) any amount attributable to the earnings and profits of a second foreign corporation in which it owns 10 percent or more of the voting stock the first foreign corporation shall be deemed to have paid the same proportion of any income war profits, or excess profits taxes paid or deemed to be paid by the second foreign corporation to any foreign country or to any possession of the United States for the taxable year on or with respect to the earnings and profits of the second foreign corporation as the amount of earnings and profits of the second foreign corporation included (under rules similar to the rules prescribed under paragraph (1)) in the gross income of the first foreign corporation bears to the entire amount of the earnings and profits of the second foreign corporation for such taxable year.

"(3) THIRD TIER FOREIGN SUBSIDIARY.—If the first foreign corporation owns 10 percent or more of the voting stock of a second foreign corporation in the gross income of which there would be included (under section 983(a) applied as if the second foreign corporation were a domestic corporation) any amount attributable to the earnings and profits of a third foreign corporation in which it owns 10 percent or more of the voting stock, the second foreign corporation shall be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid by such third foreign corporation to any foreign country or to any possession of the United States for the taxable year on or with respect to the earnings and profits of the third foreign corporation as the amount of earnings and profits of the third foreign corporation included (under rules similar to the rules prescribed under paragraph (2)) in the gross income of the second foreign corporation bears to the entire amount of the earnings and profits of the third foreign corporation for the taxable year.

"(b) TAXES DEEMED PAID.—

"(1) TAXES PREVIOUSLY DEEMED PAID BY DOMESTIC CORPORATION.—If a domestic corporation receives a distribution from a foreign corporation, any portion of which is excluded from gross income under section 986, the income, war profits, and excess profits taxes paid or deemed paid by such foreign corporation to any foreign country or to any possession of the United States in connection with the earnings and profits of such foreign corporation from which such a distribution is made shall not be taken into account for purposes of section 902, to the extent such taxes were deemed paid by a domestic corporation under subsection (a) for any prior taxable year.

"(2) TAXES PAID BY FOREIGN CORPORATION AND NOT PREVIOUSLY DEEMED PAID BY DOMESTIC CORPORATION.—Any portion of a distribution from a foreign corporation received by a domestic corporation which is excluded from gross income under section 986(a) shall be treated by the domestic corporation as a dividend solely for the purposes of taking into account under section 902 any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States, on or with respect to the accumulated profits of such foreign corporation from which such distribution is made, which were not deemed paid by the domestic corporation under subsection (a) for any prior taxable year.

"(c) SPECIAL RULES FOR FOREIGN TAX CREDIT IN YEAR OF RECEIPT OF PREVIOUSLY TAXED EARNINGS AND PROFITS.—

"(1) INCREASE IN SECTION 904 LIMITATION.—In the case of any taxpayer who—

"(A) either (i) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 983 (a) to include in his gross income an amount in respect of a controlled foreign corporation, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits to any foreign country or to any possession of the United States, and

"(B) chooses to have the benefits of subpart A of this part for the taxable year in which he receives a distribtuion or amount which is excluded from gross income under section 986(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A), and

"(C) for the taxable year in which such distribution or amount is received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distribution or amount,

the applicable limitation under section 904 for the taxable year in which such distribution or amount is received shall be increased as provided in paragraph (2), but such increase shall not exceed the amount of such taxes paid, or deemed paid, or accrued with respect to such distribution or amount.

"(2) AMOUNT OF INCREASE.—The amount of increase of the applicable limitation under section 904(a) for the taxable year in which the distribution or amount referred to in paragraph (1)(B) is received shall be an amount equal to—

"(A) the amount by which the applicable limitation under section 904(a) for the taxable year referred to in paragraph (1)(A) was increased by reason of the inclusion in gross income section 983(a) of the amount in respect of the controlled foreign corporation, reduced by

"(B) the amount of income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for the taxable year referred to in paragraph (1)(A) and which would not have been allowable but for the inclusion in gross income of the amount described in subparagraph (A).

"(3) CASES OF WHICH TAXES NOT TO BE ALLOWED AS DEDUCTION.—In the case of any taxpayer who—

"(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 983(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

"(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 986(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

"(4) INSUFFICIENT TAXABLE INCOME.—If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

"SEC. 989. ELECTION BY INDIVIDUALS TO BE SUBJECT TO TAX AT CORPORATE RATES.

"(a) GENERAL RULE.—Under regulations prescribed by the Secretary or his delegate, in the case of a United States shareholder who is an individual and who elects to have the provisions of this section apply for the taxable year—

"(1) the tax imposed under this chapter on amounts which are included in the gross income under section 983(a) shall (in lieu of the tax determined under section 1) be an amount equal to the tax which would be imposed under section 11 if such amounts were received by a domestic corporation, and

"(2) for purposes of applying the provisions of section 988 (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

"(b) ELECTION.—An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary or his delegate shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary or his delegate.

"(c) SURTAX EXEMPTION.—For purposes of applying subsection (a)(1), the surtax exemption provided by section 11(c) shall not exceed, in the case of any United States shareholder, an amount which bears the same ratio to the surtax exemption as the amounts included in his gross income under section 983(a) for the taxable year bears to his pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such United States shareholder includes any amount in gross income under section 983(a).

"(d) SPECIAL RULE FOR ACTUAL DISTRIBUTIONS.—The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 983(a) and with respect to which an election under this section applied shall, when such earnings and

profits are distributed, notwithstanding the provisions of section 986(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied.

"SEC. 990. RECORDS AND ACCOUNTS OF UNITED STATES SHAREHOLDERS.

"(a) RECORDS AND ACCOUNTS TO BE MAINTAINED.—The Secretary may by regulations require each person who is, or has been, a United States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart.

"(b) TWO OR MORE PERSONS REQUIRED TO MAINTAIN OR FURNISH THE SAME RECORDS AND ACCOUNTS WITH RESPECT TO THE SAME FOREIGN CORPORATION.—Where, but for this subsection, two or more persons would be required to maintain or furnish the same records and accounts as may by regulations be required under subsection (a) with respect to the same controlled foreign corporation for the same period, the Secretary may by regulations provide that the maintainance or furnishing of such records and accounts by only one person shall satisfy the requirements of subsection (a) for such other persons.

"SEC. 990A. TRANSITION RULES FOR PERIOD BEFORE SUBPART I IS COMPLETELY PHASED IN.

"In the case of a United States shareholder whose taxable year ends within or with the taxable year of a foreign corporation which begins after December 31, 1978, and before January 1, 1984, the amount which such shareholder shall include in his gross income under this part (to the extent such inclusion is determined under this subpart) shall, notwithstanding any other provision of this subpart or subpart F, be an amount equal to the greater of—

"(1) the amount such shareholder would be required to include in his gross income for the taxable year under subpart F (as such subpart was in effect on the day after the date of enactment of the Revenue Act of 1978), or

"(2) the amount such shareholder would be required to include in his gross income under this subpart (determined without regard to this section).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 864(c)(4)(D) is amended to read as follows:

"(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it consists of dividends, interest, or royalties paid by a foreign corporation in which the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958 (b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote.".

(2) Section 951 is amended by adding at the end thereof the following:

"(c) TAXABLE YEARS BEGINNING ON ENACTMENT OF THIS ACT.—No amount shall be required to be included in the gross income of a United States shareholder under subsection (a) (other than paragraph (1) of such subsection) with respect to a taxable year of a controlled foreign corporation beginning after December 31, 1978, to the extent that such amount is required to be included in the gross income of a United States shareholder under section 983(a).".

(3) Section 1016(a)(19) is amended by striking out "section 961" and inserting in lieu thereof "sections 961 and 987".

(4) Section 1246(a)(2)(B) is amended by inserting "or 983" after "section 951" and by inserting "or 986" after "section 959".

(5) Section 1248 is amended by amending subsection (d)(1) to read as follows:

"(1) AMOUNTS INCLUDED IN GROSS INCOME UNDER SECTION 951 OR 953.—Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 951 or 983, with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount from gross income under section 959 or 986."

(6) Section 78 (relating to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit) is amended by striking out "or under section 960(a)(1) (relating to taxes paid by foreign corporation)" and inserting in lieu thereof the following: ", under section 960 (a)(1) (relating to taxes paid by foreign corporation), or under section 988(b) (relating to taxes deemed paid by corporations)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years of foreign corporations beginning after December 31, 1978, and to taxable years of United States shareholders which end within or with such taxable years of such foreign corporations.

Mr. CHURCH. Mr. President, I am happy to cosponsor this amendment. The tax deferral provision, which encourages corporations to invest in foreign countries instead of in the United States, has cost America jobs, tax revenues, and has increased the size of the already swollen U.S. trade deficit.

Currently, the earnings of foreign subsidiaries of U.S. based corporations are taxed by the United States only when they are brought home. Until those earning are repatriated, "deferral" acts like an "interest-free cash loan" from the U.S. Government. If a corporation never repatriates these earnings, deferral becomes tantamount to an exemption from U.S. taxation. Generally, less than half of the earnings from the foreign operations of American multinationals are repatriated—and deferral allows those earnings to be brought back whenever the corporation deems it most favorable for its overall tax situation. Solely domestic corporations do not have the luxury of deferring U.S. taxes until that year when tax payments will be most advantageous to the cooperation.

The cost to the American taxpayer in revenue foregone because of deferral is estimated at between $300 million and $1 billion per year. This revenue loss to the United States would be serious enough were that the only cost of the deferral provision; but far more serious is the fact that by encouraging the exportation of capital and the formation of plants and equipment abroad, deferral causes a loss of jobs for American workers. In a study done for the Subcommittee on Multinational Corporations of the Senate Foreign Relations Committee by a distinguished economists, Professor Peggy Musgrave, it was revealed that "foreign investment as it were, establishes an alliance between U.S. capital and foreign labor, both of whom stand to gain, while it is not surprising that U.S. labor and foreign capital should be less than enthusiastic."

Several years ago the State Department hired two economists to study the effects of deferral, confident that they would once again bolster the position that large foreign investments benefit the U.S. economy. However, Messrs. Freeman and Frank found that from 1969 to 1973, 1 million U.S. jobs were lost because of investment abroad instead of at home. Approximately 150,000 jobs are being exported annually.

Finally, it is somewhat ironic that at a time when the U.S. Congress is most concerned with the historically large $30 billion U.S. trade deficit, there should be any question of retaining a provision in the law which in effect subsidizes the operations of foreign subsidiaries of U.S. based corporations, bestowing upon them an extra edge, when they in turn compete with our own domestic companies. The "interest free loan" that the U.S. Government is, in effect, providing through the deferral provision is coming home to roost when U.S. exporters are unable to compete with their foreign counterparts.

Last week, this Congress sent to the President a bill which would require the U.S. Government to attain and maintain a balanced budget beginning in 1981, yet is the Senate at the same time willing to retain deferral—a provision which is estimated to result in a tax revenue loss of between $300 million and $1 billion per year?

I concur totally with economist Professor Musgrave's conclusion that " deferral clearly introduces a non-neutral incentive to invest abroad that is difficult to defend on both equity and efficiency grounds." Deferral offers tremendous advantages to U.S. corporations which invest abroad, nothing to those which invest at home, and costs the U.S. economy in terms of jobs and lost revenues and a larger trade deficit. Therefore, I strongly support this amendment and hope the Senate will vote in favor of an expeditious repeal of deferral.

Mr. President, it should be emphasized that this amendment will not cost the U.S. taxpayer anything. In fact, it will save money. That statement cannot be made about most amendments offered during the past few days.

Mr. KENNEDY. Would the Senator like to ask for the yeas and nays while we have the Members here?

Mr. LONG. I cannot yield for that because I do not have the time. I do not think anybody has.

Mr. CHURCH. I have 15 minutes, and I would hope we can get a vote on this amendment. It is nongermane, and now is the time to vote on it if we can.

Mr. KENNEDY. Can we ask that it be in order to ask for the yeas and nays?

Mr. LONG. Somebody will have to yield the time for the yeas and nays.

Mr. CHURCH. Mr. President, will the Senator yield for that time?

Mr. MUSKIE. I have yielded 15 minutes, and we have only about 45 minutes left.

Mr. CHURCH. I assure the Senator that I can take less time to argue the case.

Mr. KENNEDY. Can we ask for 7 minutes?

Mr. CHURCH. Very well.

I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. CHURCH. This amendment, it is estimated, will save the U.S. Treasury anywhere from $300 million to $1 billion. It is a big saver. This amendment has been considered by Congress in previous years. It relates to American corporations doing business abroad, and the way that their earnings abroad are treated for tax purposes. Today these earnings are subject to U.S. income tax, but the tax need not be paid as long as the profits are left abroad.

This amendment has nothing to do with the right of American corporations to credit foreign taxes against any tax they might otherwise owe the United States on profits earned abroad. All that this amendment does is to treat American-owned foreign subsidiaries, doing business in other lands, in the same manner that solely based U.S. corporations currently are treated; namely, that they pay income tax in the year that the earnings are realized.

Under current law it is possible to defer the tax payable on foreign earnings, that would otherwise be owed to the United States, if and until such time that the profits are repatriated. This means, in effect, that an advantage is given to those American-owned businesses that operate overseas as compared to businesses operating at home. The Foreign-based businesses can defer the payment of income taxes on their profits until such time as they decide to bring those profits home. That may be 1 year, 10 years, 20 years, or never. As long as they leave the profits abroad, they need not pay any U.S. income tax on those earnings.

This amounts, in effect, to an interest-free loan from the U.S. Government for the period that corporations choose not to repatriate profits. However, we do not give interest-free loans to businesses operating here at home, least of all for tax purposes.

If the corporation chooses to leave those profits abroad indefinitely, then it can indefinitely avoid any payments of income tax on those profits.

For these reasons, I think it would be strongly in the interest of U.S. taxpayers for the Senate to enact this amendment. I am joined by the distinguished Senator from Massachusetts as a cosponsor of the amendment.

I yield the balance of my time to him.

Mr. KENNEDY. Mr. President, I believe there are 2 minutes left on the Church amendment.

Mr. President, this issue, as the Senator from Idaho has pointed out, has been debated time and again on the Senate floor. Senators have expressed their will.

Just very briefly three points. In order to take advantage of the tax expenditure, you have to move overseas in order to receive it, and, therefore, there is the distinction between the overseas corporations and the corporations that are here at home.

Second, at a time when this body is going to be considering billions of dollars of additional tax expenditure for new capital formation, the incentive in this particular amendment is to keep the capital from going overseas. That is what the real incentive is without this amendment, to keep the capital overseas, at a time when we are trying to bring capital home, and this keeps capital overseas; at a time when we are trying to bring capital home for job expansion, this keeps capital overseas when we have our unemployment at the rate it is.

The final point I want to make is it is discriminatory between corporations overseas and whether they are subsidiaries or whether they are branches. It points that kind of discrimination to corporations which are overseas, moving jobs overseas, supporting capital that remains overseas and discriminating against these companies that are not overseas, which justifies the acceptance of the amendment.

Mr. HANSEN. The tax "deferral" or "tax when repatriated" provision should remain as is because; first, taxing earnings before repatriation would place subsidiaries of U.S. parents at a competitive disadvantage with foreign subsidiaries owned by foreign parents and all foreign parent corporations; two, no other trading nation taxes domestic corporations on their foreign earnings until these earnings are repatriated; and three, the elimination of the deferral provision is an invitation to foreign countries to increase their tax rates. Ultimately, this could mean fewer dollars being repatriated and a lesser tax take for the United States.

The present law does not cause "U.S. jobs to be exported." In our judgment, the net effect of the present deferral provision results in increasing the number of jobs available in this country.

We point out that the "tax deferral" provision is only operative when the foreign tax does not equal or exceed the U.S. tax. When the foreign tax rate equals the U.S. rate, there is nothing to defer.

Mr. BENTSEN. Mr. President, I believe that the pending amendment would place American-based firms at a serious competitive disadvantage. No other country taxes such income until it is repatriated. Some countries go even further and do not tax earnings of foreign subsidiaries at all.

Under present law, American parent companies do not pay taxes on their share of profits earned by foreign subsidiaries until those profits are received as a dividend. This undistributed income, which is taxed by the host foreign governments as it is earned, is often needed for expansion or debt service abroad and may not be available to the parent company.

Decisions of American firms do not involve a choice between exporting from the United States or manufacturing abroad. Differences in customer product requirements and preferences, trade barriers—both tariff and nontariff—reflecting deep-rooted national policies, and logistics have generally foreclosed the export opportunity.

Overseas investments have been dictated by market opportunity, not by the availability of hourly labor costs lower than those in the United States.

There is no question that if U.S. firms were to turn their backs on market participation through overseas facilities, multinational firms based in other countries would be alert and quick to fill the need.

The tax code has many provisions to prevent abuse of the deferral provisions.

Under the so-called subpart F provisions of the Internal Revenue Code, which were added to the Code over 15 years ago by the Revenue Act of 1962 and strengthened and expanded by the Tax Reduction Act of 1975 and the Tax Reform Act of 1976, certain types of sales, service, investment, insurance, and shipping income earned by foreign corporations controlled by U.S. persons are "constructively" included in the incomes of such U.S. persons whether or not such amounts are actually distributed to such persons. Moreover, the subpart F provisions include in the incomes of the U.S. persons certain other profits of controlled foreign corporations invested in U.S. property in a manner that has the effect of repatriation to or for the benefit of such persons. These provisions, already part of our domestic tax law, effectively eliminate deferral in abusive situations.

In addition to the subpart F provisions the Commissioner of Internal Revenue has a number of statutory and judicial methods with which to attack abusive situations of tax deferral; and all multinational corporations know that the Commissioner is zealous, as he should be, in his use of these weapons where he finds improper deferral.

The opportunities for tax deferral under present tax law are quite limited and exist, for the most part, only where deferral is appropriate such as foreign subsidiaries engaged in manufacturing and other local operations in order to effectively penetrate foreign markets for their goods and services.

Foreign subsidiaries of U.S. corporations located in any foreign country are in competition with other business operating in that particular country. To be able to compete effectively, foreign subsidiaries must be subject to no heavier taxes on their income than are their competitors. This amendment would subject those subsidiaries to a heavier rate of taxation in many cases, severely impairing their ability to compete.

In high tax countries, the current taxation of undistributed earnings, while producing little revenue gain to the United States, could seriously impair the ability of American business to compete. Favorable tax provisions in such countries might be of little or no use to the subsidiary of a U.S. corporation. The U.S. tax would constitute an effective "floor" below which the foreign subsidiary could not benefit from such local tax provisions. Additionally, timing differences—accelerated versus normal depreciation—

could subject the subsidiary to high effective taxes.

The current taxation of undistributed earnings also would affect American business operating in developing countries, which typically, have lower tax rates. These countries have relied on the presence of American business to supply needed goods and services and aid in the development of the local economy. Under the amendment, American business operating in developing countries would be effectively taxed at high U.S. rates while their foreign competitors would be taxed at the lower local rates.

CURRENT LAW INSURES TAX EQUALITY

Mr. CHAFEE. Mr. President, under the present U.S. law, and the laws of almost every country in the world, earnings by foreign subsidiaries of U.S. companies are not subject to U.S. tax until these earnings are remitted to the corporate parent in the United States. In a particular country, the subsidiary pays the same taxes as all other corporations located in the country. Thus, until profits are actually paid to shareholders outside the foreign country, all businesses competing in the same foreign country are taxed the same. This "separate entity" treatment results in equality of tax treatment.

What the Church amendment proposes is that the United States—breaking away from the other major industrial powers—disown this concept of equality of tax treatment. It would do this by saying that it does not matter whether all or any part of the earnings of the foreign subsidiary are actually paid out in dividends to its American owners but that the United States will compute taxes each year as if all such earnings were paid out. This, in effect, is the imposition of an "anticipatory tax" and is a bad idea for the following reasons:

DEFERRAL HELPS U.S. ECONOMY

First, it is a bad idea because it will hurt the U.S. economy and cost many American workers their jobs. Proponents of ending deferral contend that it costs the United States jobs by transferring them overseas. This is not the case.

Business operations abroad are vital to the U.S. economy and our workers. These operations produce jobs here at home, increase exports and promote a positive trade balance. Exports of many manufactured goods are impossible without sales and service organizations abroad. Potential foreign buyers no longer will buy sophisticated equipment if they do not have service and repair facilities close at hand. Even when the final product is assembled abroad, components are purchased elsewhere. If the foreign operation is owned by an American firm that makes the components, who is most likely to get the component export sales business? A 1973 U.S. Tariff Commission study showed that shipments from U.S. corporations owning foreign affiliates accounted for 62 percent of all U.S. exports.

Foreign construction projects, such as a major building project in Saudi Arabia, require large numbers of support people in the home office to plan and design the project, order materials and handle a wide range of administrative tasks not to mention supervisory people on site.

Foreign sales and production frequently involve use of patents, trademarks, and technical services requiring payment of royalties and fees. If the foreign operation is owned by a U.S. firm, U.S. know-how is most likely to be used and royalties subsequently will flow to the United States.

Royalties and fees paid to the U.S. parent foster additional research and development in the United States which results in better, more efficient products. The U.S. consumer is the beneficiary. As the foreign affiliate grows, it also innovates and the parent company can apply these innovations at home. This "reverse" transfer of technology applied in the U.S. creates jobs for Americans. Often raw materials or components produced abroad by the subsidiary of an American parent are vital to the parent company's own production in the United States. It would be discriminatory to force these subsidiaries to sell in a world market where the costs of raw materials or essential components are higher than those paid by its foreign competitors.

As much as 50 percent of all U.S. exports are made to foreign companies controlled by U.S. shareholders, and the jobs of millions of U.S. workers are dependent upon these exports. Such exports greatly enhance our merchandise trade balance at a time when the overall U.S. balance of trade sorely needs such support.

Thus, foreign subsidiaries of U.S. companies actually produce jobs, generate tax revenue, and have other favorable effects on the U.S. economy.

ENDING DEFERRAL PUTS SUBSIDIARIES OF U.S. COMPANIES AT COMPETITIVE DISADVANTAGE

Although foreign subsidiaries of American companies are still strong competitors in many parts of the world, competition abroad is growing more difficult. Common Market countries and Japan have caught up with us, and indeed are passing us, in a growing number of industries, both on their own turf and in other markets. The technological edge of the United States has been dulled in all but a relative handful of products and even these are in jeopardy. As the number of foreign-controlled companies dominating important industries has increased, it is unwise for the U.S. Government to put U.S. subsidiaries abroad at a further competitive disadvantage.

Suppose two parent companies, one in the United States and one in Germany, are considering an operation in a country which taxes profits at 25 percent. Under the proposal to end deferral, the American multinational would pay upward of 48 percent on the profits of the proposed operation, regardless of whether or not, there is a need to reinvest all the profits remaining after the 25 percent tax imposed by the local government. The German parent can reinvest all its profits over 25 percent because the German Government does not impose the additional tax that would be imposed by the United States by this amendment. Who can make the more attractive bid for the concession? Who can charge the lower price for the product, either for sale back home (to be built into an end product by U.S. workers) or in the foreign market?

We hear the argument that ending deferral closes a tax loophole but this is not a good argument. The decision to form a foreign corporation is made for overall business reasons, not for tax avoidance purposes. Changes in U.S. tax laws over the years now largely prevent any taxes from being avoided. And businesses choose subsidiaries over branches (which are taxed currently) largely depending on local foreign investment laws and not for U.S. tax purposes.

Even if the deferral were ended it is highly unlikely that there would be substantial increase in U.S. investment. In fact, we believe the effect will be strongly negative for the following reasons:

U.S. companies do not decide to establish foreign operations because taxes are lower in foreign countries. In fact as much as 75 percent of U.S. investment abroad may be made in countries with tax rates equal to or higher than those in the United States. U.S. businesses invest abroad, as well as at home, because they must to survive and grow. Tariff and nontariff barriers can make it impossible to compete in foreign markets by exporting from the United States. Or the raw materials cannot be found domestically. Or local sales and service operations are vital to exports from here. Or costs here make it impossible to compete with foreign firms for sales in other parts of the world.

The argument that deferral creates "runaway" plants and jobs is a weak one. Very few U.S.-controlled foreign subsidiaries are "runaways"—that is, they rarely displace production in the United States for the home market. The labor cost differential between the United States and the major industrial countries of Western Europe has narrowed markedly. For this reason, a growing number of foreign multinationals are establishing plants in the United States. The available data indicates that something less than 7 percent of the products made abroad by U.S.-controlled companies are exported back to the U.S. market. The Department of Commerce, "Survey of Current Business," reported that only 6.7 percent of the sales of U.S. owned affiliates abroad were to the United States, and this included sales to the United States under the free trade permitted by the United States-Canadian Automobile Pact. When this specific automobile trade was excluded, only 3.5 percent of all sales from U.S.-owned foreign affiliates were made back to the United States. Thus, 96.5 percent of all sales were made abroad.

Suppose, due to the discouragement caused by ending deferral, less U.S. money is invested in countries that presently have lower tax rates than those in the United States. That does not mean that the money will be invested in the United States. If the profit potential is greater elsewhere, that is where the money will go. Thus, investment could be diverted to other high-tax countries instead. A Ways and Means Task Force

on Taxation of Foreign Source Income agrees.

Even with the enactment of the proposed ending of deferral, the reaction of those countries which have lower rates could end up totally negating the intention of the change. For example, in order to maintain advantages designed to attract U.S. investment, such countries might simply raise their own tax rates to match the U.S. rates, making up the difference in the form of subsidies.

ENDING DEFERRAL WOULD HAVE NEGATIVE FOREIGN POLICY IMPLICATIONS

Ending deferral also would have negative foreign policy implications. For many years the United States has recognized the desirability of assisting developing nations. The U.S. subsidiary, in many developing countries, plays an important role in transferring technology to that society. This technology transfer aids development and contributes to a positive foreign investment climate in a country. Many countries actively seek U.S. foreign investment to help spur their economies.

Of the 37 countries with total effective corporate tax rates below the U.S. statutory rate, 27 of these are developing countries which use lower tax rates to stimulate internal economic development. The effect of ending deferral would be to make investment in such countries less profitable to American firms, and would weaken private sector efforts in these countries.

Ending deferral also abandons the principles used around the world in the taxation of international transactions. These principles are either embodied or assumed in all U.S. tax treaties. There is little doubt that ending deferral will be viewed as an act of bad faith by much of the world, since the United States would be violating the spirit of its own treaties.

ENDING DEFERRAL COULD ACTUALLY REDUCE U.S. TAX REVENUES

A 1976 Treasury study done by Hufbauer and Foster conceded that, if all profits earned by U.S.-controlled foreign affiliates were repatriated to the United States (forced repatriation of foreign earned profits is one of the primary purposes of the proposal) the United States could suffer a net loss in tax revenue. The Treasury also conceded, in option papers presented to the White House before the administration's proposal was formulated, that ending deferral could result in a long-term loss in U.S. tax revenues. Because almost all countries, including the United States, impose a tax on dividends sent to other countries, if the United States forced dividends to be repatriated, they would be subject to the withholding tax of the country in which they were earned. Since the sum of the foreign corporate income tax paid and the foreign withholding tax could equal or exceed the U.S. tax rate, if the proposal is aimed only at profits taxed at rates below the U.S. rates, no U.S. tax revenue would result.

Although Treasury states that it cannot predict the reaction of foreign nations affected by the ending of deferral, the net effect of the administration's proposal could well be an increase in taxes paid to foreign nations, not to the United States. Countries interested in revenue to spur development will not sit by idly while the U.S. taxes away this revenue. The country's answer will be additional taxes on the subsidiary.

ENDING DEFERRAL WILL MEAN COMPLEX ENFORCEMENT PROCEDURES

The elimination of deferral will mean complex enforcement procedures and the addition of an enforcement/auditing staff. The proposal will require foreign financial books of U.S.-controlled foreign subsidiaries to be completely restated in terms of U.S. accounting and tax principles. This restatement must be made on an item-for-item basis, requiring adjustments—in each country—in the depreciation rates, credits, deductions and other technical items called for under the laws of such country. This task is made even more difficult by currency fluctuations, blocked currencies, and other problems Treasury has mentionel only in passing. The Treasury has admitted that massive new regulations will be required to govern this worldwide restatement of income.

TAX AVOIDANCE IS NO LONGER A MAJOR ISSUE

Some 15 years ago, when the ending of deferral was first proposed, Congress focused on the opportunity for tax avoidance in foreign transactions, and enacted specific legislation designed to impose a full tax burden on tax haven income. As recently as 1976, in the Tax Reform Act, Congress tightened these provisions, further reducing the possibility of tax avoidance through investments in tax havens. Thus, foreign personal holding companies, foreign base companies, and other foreign operations lending themselves to tax avoidance are strictly regulated.

The current law and regulations in this area are detailed and specific, and leave little room for tax avoidance. In fact, the Treasury makes no "full scale" tax avoidance arguments based on tax havens. Current U.S. law prohibits such manipulation and permits the IRS to adjust profits, prices, and other items where it suspects manipulation.

On September 2, 1977, the Treasury Department, after considering a number of options, recommended to the White House that deferral not be repealed, and no new arguments have been advanced suggesting that Treasury's own analysis was deficient. The State and Commerce Departments also have criticized proposals to end deferral.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho. The yeas and nays have been ordered.

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

The PRESIDING OFFICER. There are 16 minutes remaining.

Mr. LONG. I yield 3 minutes to the Senator from Oregon.

Mr. PACKWOOD. I really only needed 3 minutes, Mr. President, but I asked for 5 minutes.

Mr. President, we have debated this extensively in the past, and if we want to debate this later tonight we will.

Let me talk about the key document to point out in perspective what deferral really means, as to what the professionals who deal with it really understand it to mean.

This is a document leaked to me by the White House. It was the Treasury's recommendations to the President when he was considering this. At the bottom there are three lines for "agree," "disagree," and "want to discuss further." Here is what it says:

Proposal. Treasury does not recommend deferral be eliminated.

1. Few companies invest in less developed countries merely because of tax considerations. There is little evidence to suggest that the net impact of foreign investment on domestic employment is large. Other policy instruments are more effective in stimulating domestic employment.

2. Removing deferral is an incentive to a foreign country to raise its taxes on funds withdrawn from the country to the American level of taxation. This is likely to mean that we will obtain little in revenue from removing tax deferral (even less would be received if the corporate rate is reduced.) In fact, this proposal in the long run may result in a loss in revenue to us, since it will encourage foreign countries to impose higher taxes on income withdrawn from their countries than they would if deferral were retained.

3. The balance of tax incentives now generally favors domestic investment over foreign investment. Although foreign investment benefits from deferral, it is denied the investment tax credit and accelerated depreciation (ADR). In the aggregate, these domestic incentives more than offset the effect of deferral. As a result repealing deferral would represent a step away from taxing domestic and foreign investment at the same effective rates.

4. To deny tax deferral means that income from U.S. investments overseas will be discriminated against relative to other investments in the same foreign countries. The income on these other investments pays only the tax of the foreign country (and usually will not pay any tax to the country from which the investment originated).

DEPARTMENT OF STATE COMMENT

This is still from the Treasury recommendation to the President.

The State Department urges tax deferral be retained. It believes that the elimination of tax deferral would make it more difficult for U.S. corporations to compete internationally.

DEPARTMENT OF COMMERCE COMMENT

Commerce supports the Treasury position to continue deferral of taxes on undistributed earnings of controlled foreign corporations. The present practice of not taxing foreign source income until returned to U.S. shareholders should be continued because: (1) other countries do not tax earnings of their overseas corporate holdings until such income is repatriated, (2) it would tend to discourage U.S. investment in low tax countries (often LDCs), (3) it may induce foreign governments to place a withholding tax on the constructive dividends implicit in ending tax deferral, and (4) A past Treasury study has indicated that under certain conditions the removal of the deferral may actually lose revenue.

TREASURY RECOMMENDATION

The Treasury recommends that deferral be retained.

That is the attitude of Commerce,

Treasury, and State, the three principal departments concerned.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BENTSEN. Mr. President, will the Senator yield another minute on the bill?

Mr. LONG. I yield 1 more minute.

Mr. BENTSEN. Does the Senator know of any other country in the world that taxes profits overseas?

Mr. PACKWOOD. There is not any other country in the world that taxes profits overseas, and a number of major countries do not even tax them when they are brought home. We are the only country that does.

Mr. BENTSEN. Is it not true that in many of these countries you run into local laws on stock ownership, where it is held, and where the domicile must be, which would preclude our companies from operating in those areas?

Mr. PACKWOOD. Yes; and the Department of State estimates that if we wiped out our overseas investments, we would be lucky to serve one-fourth of the markets we now serve by overseas investments.

Mr. KENNEDY. Mr. President, will the manager of the bill yield for a question?

Mr. LONG. Yes.

Mr. KENNEDY. What is the position of the Treasury Department? I understand the administration supports the Church amendment.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. LONG. I personally favor the amendment. The Treasury opposes it; the committee does favor it.

Mr. PACKWOOD. Mr. President, I did not say the current Treasury position was in favor. Of course, the Treasury supports what the President tells them to do. All I am saying is that in making the recommendation, Treasury, Commerce, and State recommended to the President that deferral be retained. But when the President comes out on the other side, those departments having nothing to do but do what the President tells them.

Mr. LONG. Mr. President, the only way we could vote on this amendment, I would think, at this point, would be if a motion to table were made. I would be willing to make a motion to table if the Senator from Idaho will permit the time for the vote to be on a motion to table.

Mr. CHURCH. That would be fine with me. I thank the Senator for his cooperation.

Mr. LONG. Mr. President, with the understanding that the time for the vote will be used for the vote on the motion to lay on the table, I move that the amendment of the Senator from Idaho be laid on the table.

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

The yeas and nays were ordered.

Mr. MUSKIE. Mr. President, against whose time is the rollcall vote? I yielded time for a vote on the amendment. I did not yield time for a motion to lay on the table, Mr. President.

Mr. LONG. Mr. President, the only way we can vote on this amendment at this point would be on a motion to lay on the table, because otherwise the amendment would drag out and take a lot more time. The only way we can get the Senate position on this issue at this time would be to vote on a motion to lay on the table.

Mr. MUSKIE. I understand. No objection.

● Mr. STEVENSON. Mr. President, I oppose the amendment offered by the Senator from Idaho to eliminate foreign tax deferral.

Mr. President, the principal beneficiaries of this amendment will be foreign governments and our foreign competitors—not the U.S. taxpayer or U.S. worker.

U.S. exports in 1977 were $120 billion. From one-fourth to nearly one-half of total U.S. exports are to overseas affiliates of U.S. firms. Accordingly, between $30 to $60 billion of 1977 exports from the United States were shipped to these affiliates. And it is these overseas subsidiaries—the best customers for U.S. goods—who would be economically harmed by subjecting their income to current U.S. taxation. Their profits would be taxed at rates higher than those of their competitors who would be paying on a current basis only the tax of the host country.

In general, no country taxes unremitted earnings from operations of foreign affiliates of their corporations. If the United States decided to do so, we can be certain that, in view of current fierce competition for world markets, no country would follow our lead.

Secretary Vance noted in a recent speech to the Governors that nearly 10 million American jobs depend on U.S. exports. Using the estimates of U.S. exports earlier referred to, there are between 2.5 to 5 million American workers producing exports for the overseas subsidiaries of U.S. firms. If "deferral" were eliminated, many of these jobs would be in jeopardy since the major overseas customers of American exports would be economically damaged.

A first-of-its-kind study recently completed by Arthur Andersen & Co. based on financial data from the overseas subsidiaries of 88 American companies demonstrates that the proposal to eliminate "deferral" under the most likely circumstances would result in additional foreign tax payments of $294 million, a U.S. Treasury revenue loss of $88 million, and an overall net tax increase of $206 million to the 88 companies.

This would result from the interaction between foreign "withholding" taxes and the U.S. foreign tax credit. Overseas subsidiaries would change their distribution policies so as to minimize tax costs. Most companies would increase their profit repatriation patterns from the historic level of about 50 percent to a new level of about 75 percent.

"Deferral" is a universal system. For the United States unilaterally to eliminate it for U.S. firms would damage their overseas subsidiaries with consequent harm to the U.S. economy and U.S. workers.●

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

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Vermont (Mr. LEAHY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. MELCHER), the Senator from Rhode Island (Mr. PELL), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY), the Senator from Minnesota (Mrs. HUMPHREY) and the Senator from Rhode Island (Mr. PELL) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Nebraska (Mr. CURTIS), the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that if present and voting the Senator from New York (Mr. JAVITS) would vote "yea."

The PRESIDING OFFICER. Is there any Senator who has not answered the rollcall?

The result was announced—yeas 61, nays 17, as follows:

[Rollcall Vote No. 463 Leg.]

YEAS—61

Allen	Gravel	Packwood
Baker	Hansen	Pearson
Bartlett	Hatch	Randolph
Bellmon	Hatfield, Mark O.	Ribicoff
Bentsen	Hatfield, Paul G.	Riegle
Brooke	Hayakawa	Roth
Byrd, Harry F., Jr.	Heinz	Sasser
Byrd, Robert C.	Helms	Schmitt
Case	Hollings	Schweiker
Chafee	Huddleston	Scott
Chiles	Inouye	Stafford
Danforth	Laxalt	Stevens
DeConcini	Long	Stevenson
Dole	Lugar	Stone
Durkin	Magnuson	Thurmond
Eagleton	Matsunaga	Wallop
Eastland	McIntyre	Weicker
Ford	Morgan	Williams
Garn	Moynihan	Young
Glenn	Nunn	Zorinsky
Goldwater		

NAYS—17

Bayh	Hart	Nelson
Burdick	Hodges	Proxmire
Church	Jackson	Sarbanes
Clark	Kennedy	Sparkman
Cranston	Metzenbaum	Talmadge
Culver	Muskie	

NOT VOTING—22

Abourezk	Haskell	McGovern
Anderson	Hathaway	Melcher
Biden	Humphrey	Pell
Bumpers	Javits	Percy
Cannon	Johnston	Stennis
Curtis	Leahy	Tower
Domenici	Mathias	
Griffin	McClure	

So the motion to lay on the table amendment No. 3701 was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. CLARK and Mr. MUSKIE addressed the Chair.

Mr. HELMS. Mr. President, will the Senator from Kansas yield to me?

Mr. DOLE. Yes, I yield to the Senator from North Carolina.

Mr. HELMS. Mr. President, I send to the desk three amendments, unprinted. I ask unanimous consent that they be considered stated, and laid aside for future discussion.

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

The clerk will state the amendment.

Who yields time?

Mr. HELMS. I reserve the remainder of my time.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. Just now, I received unanimous consent from the Chair to send forward three unprinted amendments. I asked unanimous consent that they be considered stated and laid aside for discussion at a later time.

Mr. PROXMIRE. Will the Senator use his microphone? I cannot hear what he is requesting.

I thought he was going to abolish Wisconsin as a State.

Mr. HELMS. No.

The PRESIDING OFFICER. Is there objection to having the amendments of the Senator from North Carolina read en bloc and have them lie on the table until they are called up?

Without objection——

Mr. LONG. Mr. President, there is no request that they be considered en bloc.

Mr. HELMS. That is correct. I want them considered separately.

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

UP AMENDMENT 2040

(Purpose: To require that certain procedures be followed with respect to the IRS "Proposed Revenue Procedure on Private Tax-exempt Schools")

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes unprinted amendment numbered 2040.

At the appropriate place in the bill, add the following:

"That the 'proposed Revenue Procedure on Private Tax-Exempt Schools' proposed by the Internal Revenue Service and published on page 37296 of the Federal Register of August 22, 1978, and any other procedure or regulation proposed by the Internal Revenue Service relating to the same subject shall not take effect unless such Service complies with all procedures applicable to significant regulations of the Department of the Treasury (within the meaning of the proposed Directive of such Department relating to the preparation, review, and approval of regulations; published on page 22319 of the Federal Register of May 24, 1978).

UP AMENDMENT 2041

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes unprinted amendment numbered 2041.

At the end of the bill, add the following new section:

"Section . (a) This section may be cited as the "James B. Allen Taxpayer's Attorney Fee Award Act of 1978".

(b) In any action wherein the United States, or the Internal Revenue Service, or any person acting as an agent or employee of either the United States or the Internal Revenue Service or of both, is a party and in which tax liability to the United States on the part of any person is at issue or in which a declaration, refund, payment, or any other matter pertaining to a tax of the United States is in dispute, the court may in its discretion award reasonable attorney's fees and costs or reasonable practitioner's fees and costs to any prevailing party other than the United States, the Internal Revenue Service, or any person acting as agent or employee of either the United States or the Internal Revenue Service or of both.

(c) As used in this section, the term "prevailing party" means any person the court may in its discretion determine to have before that court prevailed substantially on the merits, notwithstanding the pendency of any appeal.

UP AMENDMENT 2042

(Purpose: To prohibit the withdrawal of 501 (c)(3) status from a private elementary or secondary school on the grounds of racial discrimination absent a judicial determination of such discrimination)

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 2042.

At the appropriate place in the bill, insert the following new section:

SEC. . ADMINISTRATION OF SECTION 501(c)(3) IN PRIVATE SCHOOLS

In the administration of section 501(c)(3) of the Internal Revenue Code of 1954, private elementary and secondary schools which, on the date of enactment of this Act, are recognized as tax exempt shall be presumed to have racially nondiscriminatory policies unless found to be discriminatory by a final decision of a Federal or State court of competent jurisdiction.

Mr. MUSKIE. Mr. President, I yield 4 minutes to the distinguished Senator from Iowa.

UP AMENDMENT 2043

Mr. CLARK. Mr. President, I send an amendment to the desk and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. CLARK) proposes an unprinted amendment numbered 2043.

Mr. CLARK. 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:

Title V of the committee substitute to the bill (regarding other tax provisions) is amended by adding the following new section:

SEC. . SUBORDINATION OF SPECIAL LIENS FOR ADDITIONAL ESTATE TAX ATTRIBUTABLE TO FARM, ETC., VALUATION.

(a) Section 6325 (relating to release of lien) is amended by striking subsection (d) and by inserting a new subsection (d) to read as follows:

"(d) SUBORDINATION OF LIEN.—Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of subordination—

"(1) of any lien imposed by this chapter upon any part of the property subject to such lien if—

"(i) there is paid over to the Secretary an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

"(ii) the Secretary believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

"(2) notwithstanding paragraph (1), of any lien imposed by section 6324B upon any part of the property subject to such lien, if the Secretary determines that the United States will be adequately secured after such subordination.".

(b) The amendments made by this section shall be effective with respect to decedents who have died after December 31, 1976.

Mr. CLARK. Mr. President, this amendment expands the authority of the Internal Revenue Service, under section 6325 of the Internal Revenue Code, to subordinate tax liens arising as a result of a special estate tax valuation election under section 2032A, provided that the United States remains adequately secured following the subordination.

Congress, in 1976, recognized the potentially disabling burden imposed by estate taxes on many estates comprised largely of family farms when these farm properties are valued under normal estate tax valuation rules. In adding section 2032A to the Internal Revenue Code, we affirmed our commitment to permitting family members to continue operation of their farms from generation to generation by providing for special use valuation in situations where the family members actually continue operation of the farm.

Section 2032A requires that the family members inheriting specially valued farm property continue the farming use for a period of 15 years following the death of the farmer in order to qualify for the lower special use valuation. Should these heirs cease to use the property as a farm, or dispose of it outside of the family, within that period, an additional estate tax is imposed. Normally, this additional tax is an amount equal to the tax originally saved by the farmer's estate.

The United States is secured during this 15-year period by a first lien on the farm property in an amount equal to the potential additional tax liability. Generally, the farm family has equity in their land far exceeding the amount of additional estate tax potentially due. Further, the farm property subject to this tax lien is often the only asset owned by the family which has a value sufficient to be used as security for their credit needs. However, code section 6324B which imposes the lien, and section 6325 which provides for subordination of all tax liens in certain cases, do not allow release or subordination of this special lien in many cases in which farm families legitimately need credit.

As a result, many farm families are experiencing difficulty obtaining much needed credit where the need is not related to the operation of the farm itself. This is particularly true since the Federal land bank system provides a large majority of the credit extended to farmers, and the land banks are required by the Farm Credit Act of 1971 to make only loans secured by a first lien on interests in real property.

Without mv amendment to section 6325, many farm families will be forced unnecessarily either to forego the relief intended for them by our passage of section 2032A or to be eliminated from the credit market.

Mr. President, the amendment has the support of the Treasury. The Committee on Joint Taxation says there is no revenue effect. I have cleared the amendment with both managers of the bill and others and I ask for its immediate consideration.

I move the adoption of the amendment.

Mr. PROXMIRE. Mr. President, did the Senator say there is no revenue loss at all, or there is no revenue loss in 1979?

Mr. CLARK. There is no revenue loss. The only circumstance under which, according to the joint committee, there would be any loss would be if the joint committee made any misassumption of the subordinate lien.

Mr. PROXMIRE. Is there a specific beneficiary, one firm or a number of firms?

Mr. CLARK. There is not.

Mr. PROXMIRE. One industry?

Mr. CLARK. There is not.

Mr. PROXMIRE. And no revenue loss?

Mr. CLARK. That is correct.

Mr. METZENBAUM. Will the Senator yield for a question?

Mr. CLARK. Yes.

Mr. METZENBAUM. Let us assume there is a mistake that involves $5 million. Do I understand that under this amendment, the Treasury could be put in a subordinate position if the executor wanted to make a loan of $2.5 million?

Mr. CLARK. No, what would happen is that, under the law passed 2 years ago, we said that in order to keep people farming, we would allow those who farmed that land for a period of 15 years to be taxed at the use rate rather than the commercial rate, which would be higher. In order to be sure that the Government would be secure in its position under the law, they would have first lien on that property. The problem with that is that if the farmer wants to go out and borrow money, let us say, from a land bank, the land bank is forbidden from lending them money, because they cannot have the first lien. IRS advised us that as long as they can be certain of their security on the entire difference as to taxes, they are willing to take a subordinate position so that that farmer can make regular commercial loans. In fact, Treasury suggested that we offer the amendment.

I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 3844

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

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

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. CLARK) proposes an amendment numbered 3844.

Mr. CLARK. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 383, between lines 8 and 9, insert the following new section:

SEC. 510. EXTENSION OF OPTIONAL SMALL TAX CASE PROCEDURES AND EXPANSION OF AUTHORITY OF COMMISSIONERS OF THE TAX COURT.

(a) IN GENERAL.—Subsection (a) of section 7463 of the Internal Revenue Code of 1954 (relating to small tax cases) is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) $5,000 for any one taxable year, in the case of the taxes imposed by subtitle A,

"(2) $5,000, in the case of the tax imposed by chapter 11, or

"(3) $5,000 for any one calendar year, in the case of the tax imposed by chapter 12,".

(b) CONFORMING AMENDMENTS.—

(1) The heading of section 7463 of such Code is amended by striking out "$1,500" and inserting in lieu thereof "$5,000".

(2) The table of sections for part II of subchapter C of chapter 76 of such Code is amended by striking out "$1,500" in the item relating to section 7463 and inserting in lieu thereof $5,000".

(c) Section 7463 of the Internal Revenue Code of 1954 (relating to small tax cases) is amended by adding at the end thereof the following new subsection:

"(g) COMMISSIONERS.—The chief judge of the Tax Court may assign proceedings conducted under this section to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to any such proceeding, subject to such conditions and review as the court may by rule provide.".

(d) Subsection (a) of section 7456 of the Internal Revenue Code of 1954 (relating to the administration of oaths and testimony) is amended—

(1) by striking out "any judge of the Tax Court" each place it appears and inserting in lieu thereof "any judge or commissioner of the Tax Court"; and

(2) by striking out "by the judge" and inserting in lieu thereof "by the judge or commissioner".

(e) The amendments made by section 510 (a) of this Act shall take effect on the first day of the first calendar month beginning more than 180 days after the date of the enactment of this Act.

(f) The amendments made by section 510 (c) and (d) of this Act shall take effect on the date of the enactment of this Act.

Mr. CLARK. Mr. President, this amendment would expand the present small tax case procedure of the Tax Court involving income, estate or gift tax deficiencies of less than $1,500. These cases are, at the taxpayers' option, conducted informally and neither the taxpayer nor the IRS may appeal the decision. Typically these small tax cases are tried by Commissioners appointed by the chief judge of the Tax Court, who file written reports of their findings and conclusions of law which serve as the basis of the decision, which is made by the chief judge.

This amendment would extend these optional small tax case procedures to additional taxpayers by increasing the jurisdictional amount from $1,500 to $5,000. It would, in addition, make certain changes relating to the authority of Commissioners, specifically authorizing them to administer oaths, issue subpenas, examine witnesses, prepare reports and make decisions in such cases. Increasing the jurisdictional amount would permit more taxpayers to take advantage of this expeditious and simplified procedure for handling tax disputes. In addition, it would provide a means of relieving the regular judges of part of an extremely heavy workload. Providing specific authority to Commissioners to conduct proceedings in small tax cases and to file reports and make decisions with respect to such proceedings will clarify current law and improve the administration of small tax cases.

The small tax case procedures have worked well, and if expanded, can provide even greater advantages to the litigation of small tax cases.

In addition, it would provide a means for relieving the regular judges of part of an extremely heavy load.

I move the adoption of the amendment.

Mr. PROXMIRE. Did the Senator say the administration favors this?

Mr. CLARK. They do, and the Tax Court does.

Mr. PROXMIRE. There is no loss?

Mr. CLARK. No loss.

I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 3844) was agreed to.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I yield myself 2 minutes.

UP AMENDMENT NO. 2044

(Purpose: To make technical, clarifying, and correcting amendments to the Tax Reform Act of 1976)

Mr. LONG. Mr. President, I am going to send to the desk the same amendment the Senator from Maine (Mr. HATHAWAY) sent to the desk. It is to add the language of the technical corrections to this bill.

Now, the Senator put his amendment, it has already been agreed to as an amendment to the bill. It should be added to the committee substitute.

I ask that this amendment be considered as an amendment to the committee substitute.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment numbered 2044.

The amendment is as follows:

At the appropriate place in the committee amendment add the following new title:

TITLE . TECHNICAL CORRECTIONS OF THE TAX REFORM ACT OF 1976

SEC. . TECHNICAL AMENDMENTS TO INCOME TAX PROVISIONS AND ADMINISTRATIVE PROVISIONS.

(a) AMENDMENTS RELATING TO RETENTION OF PRIOR LAW FOR RETIREMENT INCOME CREDIT UNDER SECTION 37(e).—

(1) CLARIFICATION THAT SPOUSE UNDER AGE 65 MUST HAVE PUBLIC RETIREMENT SYSTEM INCOME.—Paragraph (2) of section 37(e) (relating to election of prior law with respect to public retirement system income) is amended by striking out "who has not attained age 65 before the close of the taxable year" and inserting in lieu thereof "who has not attained age 65 before the close of the taxable year (and whose gross income includes income described in paragraph (4)(B))".

(2) CLARIFICATION THAT QUALIFYING SERVICES MUST HAVE BEEN PERFORMED BY TAXPAYER OR SPOUSE.—Subparagraph (B) of section 37(e)(4) (defining retirement income) is amended by inserting "and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services)" after "before the close of the taxable year".

(3) DISREGARD OF COMMUNITY PROPERTY LAWS.—Subsection (e) of section 37 (relating to election of prior law with respect to public retirement system income) is amended—

(A) by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) COMMUNITY PROPERTY LAWS NOT APPLICABLE.—In the case of a joint return, this subsection shall be applied without regard to community property laws.",

(B) by striking out "paragraph (8)(A)" in paragraph (4)(B) and inserting in lieu thereof "paragraph (9)(A)"; and

(C) by striking out "paragraph (8)(B)" in paragraph (5)(B) and inserting in lieu thereof "paragraph (9)(B)".

(4) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (2) shall apply to taxable years beginning after December 31, 1975.

(B) The amendments made by paragraph (3) shall apply to taxable years beginning after December 31, 1977.

(b) AMENDMENTS RELATING TO THE MINIMUM TAX.—

(1) SPECIAL RULES FOR MINIMUM TAX IN THE CASE OF SUBCHAPTERS CORPORATIONS AND PERSONAL HOLDING COMPANIES.—

(A) Paragraph (1) of section 57(a) (relating to adjusted itemized deductions) is amended by striking out "An amount" and inserting in lieu thereof "In the case of an individual, an amount".

(B) The last sentence of section 57(a) (relating to items of tax preference) is amended by striking out "Paragraphs (1), (3), and" and inserting in lieu thereof "Paragraphs (3) and".

(C) Subsection (i) of section 58 (defining corporation) is amended by striking out "Except as provided in subsection (d)(2), for purposes of this part" and inserting in lieu thereof "For purposes of this part (other than section 57(a)(9))".

(2) DIVISION OF $10,000 AMOUNT AMONG MEMBERS OF CONTROLLED GROUPS.—Subsection (b) of section 58 (relating to members of controlled groups) is amended to read as follows:

"(b) MEMBERS OF CONTROLLED GROUPS.—In the case of a controlled group of corporations (as defined in section 1563(a)), the $10,000 amount specified in section 56 shall be divided among the component members of such group in proportion to their respective regular tax deductions (within the meaning of section 56(c)) for the taxable year."

(3) COMPUTATION OF ADJUSTED ITEMIZED DEDUCTIONS IN THE CASE OF ESTATES AND TRUSTS.—Paragraph (2) of section 57(b) (relating to computation of adjusted itemized deductions in the case of estates and trusts) is amended to read as follows:

"(2) SPECIAL RULES FOR ESTATES AND TRUSTS.—

"(A) IN GENERAL.—In the case of an estate or trust, for purposes of paragraph (1) of subsection (a), the amount of the adjusted itemized deductions for any taxable year is the amount by which the sum of the deductions for the taxable year other than—

"(i) the deductions allowable in arriving at adjusted gross income,

"(ii) the deduction for personal exemption provided by section 642(b),

"(iii) the deduction for casualty losses described in section 165(c)(3),

"(iv) the deductions allowable under section 651(a), 661(a), or 691(c), and

"(v) the deductions allowable to a trust under section 642(c) to the extent that a corresponding amount is included in the gross income of the beneficiary under section 652(a)(1) for the taxable year of the beneficiary with which or within which the taxable year of the trust ends,

exceeds 60 percent (but does not exceed 100 percent) of the adjusted gross income of the estate or trust for the taxable year.

"(B) DETERMINATION OF ADJUSTED GROSS INCOME.—For purposes of this paragraph, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

"(i) the deductions for costs paid or incurred in connection with the administration of the estate or trust, and

"(ii) to the extent provided in subparagraph (C), the deductions under section 642(c),

shall be treated as allowable in arriving at adjusted gross income.

"(C) TREATMENT OF CERTAIN CHARITABLE CONTRIBUTIONS.—For purposes of this paragraph, the following deductions under section 642(c) (relating to deductions for amounts paid or permanently set aside for charitable purposes) shall be treated as deductions allowable in arriving at adjusted gross income:

"(i) deductions allowable to an estate,

"(ii) deductions allowable to a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B),

"(iii) deductions allowable to a trust which is a pooled income fund within the meaning of section 642(c)(5),

"(iv) deductions allowable to a trust which are attributable to transfers to the trust before January 1, 1977, and

"(v) deductions allowable to a trust, all of the income interest of which is devoted solely to one or more of the purposes described in section 170(c)(2)(B), which are attributable to transfers pursuant to a will or pursuant to an inter vivos trust in which the grantor had the power to revoke at the date of his death."

(4) SECTION 691(c) DEDUCTION NOT TAKEN INTO ACCOUNT FOR DETERMINING ADJUSTED ITEMIZED DEDUCTIONS.—Paragraph (1) of section 57(b) is amended by striking out "and" at the end of subparagraph (C), by inserting "and" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) the deduction allowable under section 691(c),".

(5) ALLOCATION OF ITEMS OF TAX PREFERENCE IN THE CASE OF ESTATES AND TRUSTS.—Paragraph (1) of section 58(c) (relating to estates and trusts) is amended by striking out "on the basis of the income of the estate or trust allocable to each" and inserting in lieu thereof "in accordance with regulations prescribed by the Secretary".

(6) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the amendments made by section 301 of the Tax Reform Act of 1976.

(c) SICK PAY.—

(1) IN GENERAL.—Section 105(d) is amended by striking out paragraphs (4) and (6), by redesignating paragraph (5) as paragraph (4) and paragraph (7) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

"(5) SPECIAL RULES FOR MARRIED COUPLES.—

"(A) MARRIED COUPLE MUST FILE JOINT RETURN.—Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the exclusion provided by this subsection shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

"(B) APPLICATION OF PARAGRAPHS (2) AND (3).—In the case of a joint return—

"(i) paragraph (2) shall be applied separately with respect to each spouse, but

"(ii) paragraph (3) shall be applied with respect to their combined adjusted gross income.

"(C) DETERMINATION OF MARITAL STATUS.—For the purposes of this subsection, marital status shall be determined under section 143(a).

"(D) JOINT RETURN DEFINED.—For purposes of this subsection, the term 'joint return' means the joint return of a husband and wife made under section 6013."

(2) CONFORMING AMENDMENTS.—

(A) Subsection (c)(3) of section 505 of the Tax Reform Act of 1976 (relating to disability retirement) is amended by striking out "section 105(d)(5)" and inserting in lieu thereof "section 105(d)(4)".

(B) Subsection (c) and (e)(1) of section 301 of the Tax Reduction and Simplification Act of 1977 (relating to effective date of changes in the exclusion for sick pay) are each amended by striking out "section 105(d)(7)" and inserting in lieu thereof "section 105(d)(6)".

(3) EFFECTIVE DATE.—

(A) The amendments made by paragraphs (1) and (2)(A) shall take effect as if included in section 105(d) of the Internal Revenue Code of 1954 as such section was amended by section 505(a) of the Tax Reform Act of 1976.

(B) The amendments made by paragraph (2)(B) shall take effect as if included in section 301 of the Tax Reduction and Simplification Act of 1977.

(d) NET OPERATING LOSSES.—

(1) AMENDMENT OF SECTION 172(b)(1)(B).—The second sentence of subparagraph (B) of section 172(b)(1) (relating to years to which net operating losses may be carried) is amended by striking out "and (F)" and inserting in lieu thereof "(F), and (G)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to losses incurred in taxable year ending after December 31, 1975.

(e) EFFECTIVE DATE FOR FISCAL YEAR TAXPAYER FOR CONSTRUCTION PERIOD INTEREST AND TAXES.—Paragraph (1) of section 201(c) of the Tax Reform Act of 1976 is amended to read as follows:

"(1) in the case of nonresidential real property if the construction period begins on or after the first day of the first taxable year beginning after December 31, 1975.".

(f) CLARIFICATION OF PROVISIONS PROVIDING TAX INCENTIVES TO ENCOURAGE THE PRESERVATION OF HISTORIC STRUCTURES.—

(1) DEFINITION OF CERTIFIED HISTORIC STRUCTURES.—Subsection (d) of section 191 (relating to amortization of certain rehabilitation expenditures for certified historic structures) is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(1) CERTIFIED HISTORIC STRUCTURE.—The term 'certified historic structure' means a building or structure which is of a character subject to the allowance for depreciation provided in section 167 and which—

"(A) is listed in the National Register, or

"(B) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

"(2) REGISTERED HISTORIC DISTRICT.—The term 'registered historic district' means—

"(A) any district listed in the National Register, and

"(B) any district—

"(i) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

"(ii) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register."

(2) AMENDMENT OF CROSS REFERENCES.—Subsection (g) of section 191 (relating to cross references) is amended to read as follows:

"(g) CROSS REFERENCES.—

"(1) For rules relating to the listing of buildings, structures, and historic districts in the National Register, see the Act entitled 'An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes', approved October 15, 1966 (16 U.S.C. 470 et seq.).

"(2) For special rules with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see sections 1245 and 1250."

(3) SPECIAL RULES FOR RECAPTURE OF AMORTIZATION DEDUCTION.—

(A) Paragraph (2) of section 1245(a) (relating to gain from dispositions of certain depreciable property) is amended—

(i) by striking out "190, or 191" the first place it appears and inserting in lieu thereof "or 190" and

(ii) by striking out "190, or 191" the second and third place it appears and inserting in lieu thereof "190, or (in the case of property described in paragraph (3)(C)) 191".

(B) Subparagraph (D) of section 1245(a)(3) (relating to gain from dispositions of certain depreciable property) is amended by striking out "190, or 191" and inserting in lieu thereof "or 190".

(C) Paragraph (3) of section 1250(b) (relating to depreciation adjustments) is amended by striking out "190 or 191" and inserting in lieu thereof "or 190".

(D) Paragraph (2) of section 57(a) (relating to items of tax preference) is amended by inserting "or 191" after "167(k)".

(E) Paragraph (4) of section 1250(b) (relating to definition of additional depreciation) is amended—

(i) by inserting "or amortization" after "depreciation" the second and third places it appears, and

(ii) by inserting "or 191" after "167(k)" each place it appears.

(4) STRAIGHT LINE METHOD IN CERTAIN CASES.—Subsection (n) of section 167 is amended to read as follows:

"(n) STRAIGHT LINE METHOD IN CERTAIN CASES.—

"(1) IN GENERAL.—In the case of any property in whole or in part constructed, reconstructed, erected, or used on a site which was, on or after June 30, 1976, occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date—

"(A) subsections (b), (j), (k), and (l) shall not apply, and

"(B) the term 'reasonable allowance' as used in subsection (a) means only an allowance computed under the straight line method.

The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation.

"(2) EXCEPTIONS.—The limitations imposed by this subsection shall not apply—

"(A) to personal property, and

"(B) in the case of demolition or substantial alteration of a structure located in a registered historic district, if the Secretary of the Interior certified to the Secretary—

"(i) before the beginning of the demolition or substantial alteration of such structure that such structure—

"(I) is not a certified historic structure, and

"(II) is not of historic significance to the district; or

"(ii) after the beginning of the demolition or substantial alteration of such structure, that—

"(I) such structure was not a certified historic structure,

"(II) such structure was not of historic significance to the district, and

"(III) the taxpayer has certified to the Secretary that, at the time of such demolition or substantial alteration, he in good faith was not aware of any certification requirement under this subparagraph.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'certified historic structure', 'registered historic district', and 'certified rehabilitation' have the respective meanings given such terms by section 191(d)."

(5) DEMOLITION OF CERTAIN HISTORIC STRUCTURES.—Subsection (b) of section 280B (relating to special rule for registered historic districts) is amended to read as follows:

"(b) SPECIAL RULE FOR REGISTERED HISTORIC DISTRICTS.—For purposes of this section, any building or other structure located in a registered historic district (as defined in section 191(d)(2)) shall be treated as a certified historic structure unless the Secretary of the Interior has certified—

"(1) before the beginning of the demolition or substantial alteration of such structure that such structure—

"(A) is not a certified historic structure, and

"(B) is not of historic significance to the district; or

"(2) after the beginning of the demolition or substantial alteration of such structure, that—

"(A) such structure was not a certified historic structure,

"(B) such structure was not of historic significance to the district, and

"(C) the taxpayer has certified to the Secretary that, at the time of such demolition or substantial alteration, he in good faith was not aware of the certification requirement under this subparagraph.".

(6) SUBSTANTIALLY REHABILITATED HISTORIC PROPERTY.—

(A) Paragraph (1) of section 167(o) (relating to substantially rehabilitated historic property) is amended by inserting "(other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191)" after "substantially rehabilitated historic property".

(B) Paragraph (2) of section 167(o) is amended by striking out "section 191(d)(3)" and inserting in lieu thereof "section 191(d)(4)".

(7) AMORTIZATION ALLOWABLE TO PERSONS WITH CERTAIN LEASE INTERESTS.—Section 191(f) (relating to treatment of life tenants and remaindermen) is amended to read as follows:

"(f) SPECIAL RULES FOR CERTAIN INTERESTS.—

"(1) LIFE TENANT AND REMAINDERMAN.—In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

"(2) CERTAIN LESSEES.—

"(A) IN GENERAL.—In the case of a lessee of a certified historic structure who has expended amounts in connection with the certified rehabilitation of such structure which are properly chargeable to capital account, the deduction under this section shall be allowable to such lessee with respect to such amounts.

"(B) AMORTIZABLE BASIS.—For purposes of subsection (a), the amortizable basis of such lessee shall not exceed the sum of the amounts described in subparagraph (A).

"(C) LIMITATION.—Subparagraph (A) shall apply only if on the date of the certified rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) extends—

"(i) beyond the last day of the useful life (determined without regard to this section) of the improvements for which the amounts described in subparagraph (A) were expended, and

"(ii) for not less than 30 years.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the respective provisions of the Internal Revenue Code of 1954 to which such amendments relate, as such provision were added to such Code, or amended, by section 2124 of the Tax Reform Act of 1976.

(g) FOREIGN CONVENTIONS.—

(1) DEDUCTIONS NOT DISALLOWED TO EMPLOYER WHERE EMPLOYEE INCLUDES AMOUNTS IN GROSS INCOME.—Subparagraph (D) of section 274(h)(6) (relating to application of subsection to employer as well as to traveler) is amended to read as follows:

"(D) SUBSECTION TO APPLY TO EMPLOYER AS WELL AS TO TRAVELER.—

"(i) Except as provided in clause (ii), this subsection shall apply to deductions otherwise allowable under section 162 or 212 to any person, whether or not such person is the individual attending the foreign convention. For the purposes of the preceeding sen-

tence such person shall be treated, with respect to each individual, as having selected the same 2 foreign conventions as were selected by such individual.

"(ii) This subsection shall not deny a deduction to any person other than the individual attending the foreign convention with respect to any amount paid by such person to or on behalf of another person if includible in the gross income of such other person. The preceding sentence shall not apply if such amount is required to be included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.".

(2) INDIVIDUALS RESIDING IN FOREIGN COUNTRIES.—Section 274(h)(6) is amended by adding at the end thereof the following new subparagraph:

"(E) Individuals Residing in Foreign Countries.—For purposes of this subsection, in the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary that he was a bona fide resident of a foreign country at the time that he attended a convention in such foreign country, such individual's attendance at such convention shall not be considered as attendance at a foreign convention.".

(3) TECHNICAL AMENDMENT.—The first sentence of section 274(h)(3) is amended by striking out "more than one-half" and inserting in lieu thereof "at least one-half".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to conventions beginning after December 31, 1976.

(h) RENTAL OF FORMER PRINCIPAL RESIDENCE.—

(1) IN GENERAL.—Subsection (d) of section 280A (relating to use of residence for personal purposes) is amended by adding at the end thereof the following new paragraph:

"(3) RENTAL OF PRINCIPAL RESIDENCE.—

"(A) IN GENERAL.—For purposes of applying subsection (c)(5) to deductions allocable to a qualified rental period, a taxpayer shall not be considered to have used a dwelling unit for personal purposes for any day during the taxable year which occurs before or after a qualified rental period described in subparagraph (B)(i), or before a qualified rental period described in subparagraph (B)(ii), if with respect to such day such unit constitutes the principal residence (within the meaning of section 1034) of the taxpayer.

"(B) QUALIFIED RENTAL PERIOD.—For purposes of subparagraph (A), the term 'qualified rental period' means a consecutive period of—

"(i) 12 or more months which begins or ends in such taxable year, or

"(ii) less than 12 months which begins in such taxable year and at the end of which such dwelling unit is sold or exchanged, and for which such unit is rented to a person other than a member of the family (as defined in section 267(c)(4)) of the taxpayer, or is held for rental, at a fair rental."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in section 280A of the Internal Revenue Code of 1954, as such provision was added to such Code by section 601(a) of the Tax Reform Act of 1976.

(i) CLARIFICATION OF LAST SENTENCE OF SECTION 337(c)(2).—

(1) IN GENERAL.—Subsection (c) of section 337 (relating to limitations on application of section 337) is amended by striking out the last sentence of paragraph (2) and by adding at the end of such subsection the following new paragraph:

"(3) SPECIAL RULE FOR AFFILIATED GROUP.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to a sale or exchange by a corporation (hereinafter in this paragraph referred to as the 'selling corporation') if—

"(i) within the 12-month period beginning on the date of the adoption of a plan of complete liquidation by the selling corporation, the selling corporation and each distributee corporation is completely liquidated, and

"(ii) none of the complete liquidations referred to in clause (i) is a liquidation with respect to which section 333 applies.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) The term 'distributee corporation' means a corporation in the chain of includible corporations to which the selling corporation or a corporation above the selling corporation in such chain makes a distribution in complete liquidation within the 12-month period referred to in subparagraph (A)(i).

"(ii) The term 'chain of includible corporations' includes, in the case of any distribution, any corporation which (at the time of such distribution) is in a chain of includible corporations for purposes of section 1504(a) (determined without regard to the exceptions contained in section 1504(b)). Such term includes, where appropriate, the common parent corporation."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales or exchanges made pursuant to a plan of complete liquidation adopted after December 31, 1975.

(j) CERTAIN TRANSACTIONS INVOLVING TWO OR MORE INVESTMENT COMPANIES.—

(1) AMENDMENTS OF SECTION 368(a)(2)(F).—

(A) The first sentence of clause (iii) of section 368(a)(2)(F) is amended—

(i) by striking out "more than 50 percent" and inserting in lieu thereof "50 percent or more"; and

(ii) by striking out "more than 80 percent" and inserting in lieu thereof "80 percent or more."

(B) The first sentence of clause (vi) of section 368(a)(2)(F) is amended by striking out "is not diversified within the meaning" and inserting in lieu thereof "does not meet the requirements".

(C) The second sentence of such clause (vi) is amended to read as follows: "If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (1) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange."

(D) Subparagraph (F) of section 368(a)(2) is amended by adding at the end thereof the following new clauses:

"(vii) For purposes of clauses (ii) and (iii), the term 'securities' includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a-2(36)).

"(viii) In applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a personal holding company in such paragraph (3) shall be treated as including a reference to an investment company and the determination of whether a corporation is an investment company shall be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3):"

(2) EFFECTIVE DATES.—

(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1954 as added by section 2131(a) of the Tax Reform Act of 1976.

(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1954 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1954 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977.

(k) AT RISK PROVISIONS.—

(1) CLERICAL AMENDMENT TO EFFECTIVE DATE.—Subparagraph (A) of section 204(c)(3) of the Tax Reform Act of 1976 is amended by striking out "section 465(c)(1)(B)" and inserting in lieu thereof "section 465(c)(1)(C)".

* * * * *

(2) CLARIFICATION OF SECTION 465(d).—Subsection (d) of section 465 (defining loss for purposes of the at risk provisions) is amended by striking out "(determined without regard to this section)" and inserting in lieu thereof "(determined without regard to the first sentence of subsection (a))".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 4, 1976.

(l) AMENDMENTS RELATING TO USE OF ACCRUAL ACCOUNTING FOR FARMING.—

(1) AUTOMATIC 10-YEAR ADJUSTMENT PERIOD FOR FARMING CORPORATIONS REQUIRED TO USE ACCRUAL ACCOUNTING.—Paragraph (3) of section 447(f) (relating to coordination with section 481) is amended—

(A) by striking out "(except as otherwise provided in such regulations)", and

(B) by inserting "(or the remaining taxable years where there is a stated future life of less than 10 taxable years)" after "10 taxable years".

(2) AUTOMATIC 10-YEAR ADJUSTMENT FOR FARMING SYNDICATES CHANGING TO ACCRUAL ACCOUNTING.—If—

(A) a farming syndicate (within the meaning of section 464(c) of the Internal Revenue Code of 1954) was in existence on December 31, 1975, and

(B) such syndicate elects an accrual method of accounting (including the capitalization of preproductive period expenses described in section 447(b) of such Code) for a taxable year beginning before January 1, 1979, then such election shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change.

(3) EXTENDING FAMILY ATTRIBUTION TO SPOUSE IN THE FARMING SYNDICATE RULES.—

(A) Subparagraph (E) of section 464(c)(2) (defining farming syndicate) is amended by striking out "(within the meaning of section 267(c)(4))" and inserting in lieu thereof "(or a spouse of any such member)".

(B) Paragraph (2) of section 464(c) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (E), the term 'family' has the meaning given to such term by section 267(c)(4)."

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (3) shall take effect as if included in section 447 or 464 (as the case may be) of the Internal Revenue Code of 1954 at the time of the enactment of such sections.

(m) EXTENSION OF CERTAIN PROVISIONS TO FOREIGN PERSONAL HOLDING COMPANIES.—

(1) SECTION 465.—Subsection (a) of section 465 (relating to deductions limited to amount at risk in case of certain activities) is amended—

(A) by striking out "In the case of a taxpayer (other than a corporation which is neither an electing small business corporation (as defined in section 1371(b)) nor a personal holding company (as defined in section 542)) engaged" and inserting in lieu

thereof "In the case of an individual engaged"; and

(B) by adding at the end thereof the following new sentence: "For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual."

(2) SECTION 189.—Subsection (a) of section 189 (relating to amortization of real property construction period interest and taxes) is amended—

(A) by striking out "an electing small business corporation (within the meaning of section 1371(b)), or personal holding company (within the meaning of section 542),"; and

(B) by adding at the end thereof the following new sentence: "For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual."

(3) SECTION 280.—Subsection (a) of section 280 (relating to certain expenditures incurred in production of films, books, records, or similar property) is amended—

(A) by striking out "Except in the case of a corporation (other than an electing small business corporation (as defined in section 1371(b)) or a personal holding company (as defined in section 542)) and except" and inserting in lieu thereof "In the case of an individual, except"; and

(B) by adding at the end thereof the following new sentence: "For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual."

(4) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall take effect as if included in the amendment made by section 204(a) of the Tax Reform Act of 1976.

(B) The amendments made by paragraph (2) shall take effect as if included in the amendment made by section 201(a) of the Tax Reform Act of 1976.

(C) The amendments made by paragraph (3) shall take effect as if included in the the amendment made by section 210(a) of the Tax Reform Act of 1976.

(n) DEFINITION OF CONDOMINIUM MANAGEMENT ASSOCIATION.—

(1) IN GENERAL.—Paragraph (2) of section 528(c) (defining condominium management association) is amended by striking out "as residences" and inserting in lieu thereof "by individuals for residences".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1973.

(o) DEFINITION OF PERSONAL HOLDING COMPANY.—

(1) IN GENERAL.—The last sentence of section 542(a)(2) of the Internal Revenue Code of 1954 (relating to stock ownership requirement) shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(2) EFFECTIVE DATE.—The provisions of paragraph (1) shall apply with respect to taxable years beginning after December 31, 1976.

(p) SPECIAL RULE FOR GAIN ON PROPERTY TRANSFERRED TO TRUST AT LESS THAN FAIR MARKET VALUE.

(1) ADDITIONAL TAX TO APPLY ONLY TO RECOGNIZED GAINS.—

(A) IN GENERAL.—Subsections (a)(1), (a)(2), and (b)(1) of section 644 (relating to special rule for gain on property transferred to trust at less than fair market value) are each amended by striking out "gain realized" each place it appears and inserting in lieu thereof "gain recognized".

(B) SPECIAL RULE FOR SUBSTITUTED BASIS PROPERTY.—Subsection (d) of section 644 (relating to special rule for short sales) is amended to read as follows:

"(d) SPECIAL RULES.—

"(1) SHORT SALES.—If the trust sells the property referred to in subsection (a) in a short sale within the 2-year period referred to in such subsection, and 2-year period shall be extended to the date of the closing of such short sale.

"(2) SUBSTITUTED BASIS PROPERTY.—For purposes of this section, in the case of any property held by the trust which has a basis determined in whole or in part by reference to the basis of any other property which was transferred to the trust—

"(A) the initial transfer of such property in trust by the transferor shall be treated as having occurred on the date of the initial transfer in trust of such other property,

"(B) subsections (a)(1)(B) and (b)(2) shall be applied by taking into account the fair market value and the adjusted basis of such other property, and

"(C) the amount determined under subsection (b)(2) with respect to such other property shall be allocated (under regulations prescribed by the Secretary) among such other property and all properties held by the trust which have a basis determined in whole or in part by reference to the basis of such other property."

(2) TREATMENT OF NET OPERATING LOSSES, CAPITAL LOSSES, ETC., WHICH MAY AFFECT TRANSFEROR'S TAX IN OTHER YEARS.—Section 644(a)(2) (relating to additional tax on gain on property transferred to trust at less than fair market value) is amended by adding at the end thereof the following new sentence: "The determination of tax under clause (i) of subparagraph (A) shall be made by not taking into account any carryback, and by not taking into account any loss or deduction to the extent that such loss or deduction may be carried by the transferor to any other taxable year."

(3) TECHNICAL AMENDMENT.—Paragraph (1) of section 644(f) is amended by striking out "subsection (a)" and inserting in lieu thereof "subsection (a) (other than the 2-year requirement of paragraph (1)(A) thereof)".

(4) CONFORMING AMENDMENT TO REVISION OF SECTION 644.—Section 1402(b)(1) of the Tax Reform Act of 1976 (relating to holding period for long-term capital gains treatment) is amended by striking out subparagraph (K) thereof.

(5) EFFECTIVE DATES.—

(A) Except as provided in subparagraph (B), the amendment made by this subsection shall apply to transfers in trust made after May 21, 1976.

(B) The amendment made by paragraph (4) shall take effect on October 4, 1976.

(q) ALLOWANCE OF FOREIGN TAX CREDIT FOR ACCUMULATION DISTRIBUTIONS.—

(1) SPECIAL RULES FOR FOREIGN TRUST.—

(A) Subsection (d) of section 665 is amended to read as follows:

"(d) TAXES IMPOSED ON THE TRUST.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxes imposed on the trust' means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart or subpart A of part IV of subchapter A) and which, under regulations prescribed by the Secretary, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666 (b) and (c) or 669 (d) and (e) to any beneficiary.

"(2) FOREIGN TRUSTS.—In the case of any foreign trust, the term 'taxes imposed on the trust' includes the amount, reduced as provided in the last sentence of paragraph (1), of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on such foreign trust which, as determined under paragraph (1), are so properly allocable."

(B) Section 667 is amended by adding at the end thereof the following new subsection:

"(d) SPECIAL RULES FOR FOREIGN TRUST.—

"(1) FOREIGN TAX DEEMED PAID BY BENEFICIARY.—

"(A) IN GENERAL.—In determining the increase in tax under subsection (b)(1)(D) for any computation year, the taxes described in section 665 (d) (2) which are deemed distributed under section 666 (b) or (c) and added under subsection (b)(1)(C) to the taxable income of the beneficiary for any computation year shall, except as provided in subparagraphs (B) and (C), be treated as a credit against the increase in tax for such computation year under subsection (b)(1)(D).

"(B) DEDUCTION IN LIEU OF CREDIT.—If the beneficiary did not choose the benefits of subpart A of part III of subchapter N with respect to the computation year, the beneficiary may in lieu of treating the amounts described in subparagraph (A) (without regard to subparagraph (C)) as a credit may treat such amounts as a deduction in computing the beneficiary's taxable income under subsection (b)(1)(C) for the computation year.

"(C) LIMITATION ON CREDIT; RETENTION OF CHARACTER.—

"(i) LIMITATION ON CREDIT.—For purposes of determining under subparagraph (A) the amount treated as a credit for any computation year, the limitations under subpart A of part III of subchapter N shall be applied separately with respect to amounts added under subsection (b)(1)(C) to the taxable income of the beneficiary for such computation year. For purposes of computing the increase in tax under subsection (b)(1)(D) for any computation year for which the beneficiary did not choose the benefits of subpart A of part III of subchapter N, the beneficiary shall be treated as having chosen such benefits for such computation year.

"(ii) RETENTION OF CHARACTER.—The items of income, deduction, and credit of the Trust shall retain their character (subject to the application of section 904(f)(5)) to the extent necessary to apply this paragraph.

"(D) COMPUTATION YEAR.—For purposes of this paragraph, the term 'computation year' means any of the three taxable years remaining after application of subsection (b)(1)(B).".

(C) The last sentence of section 667(b)(1) is amended by inserting "(other than the amount of taxes described in section 665(d)(2))" after "taxes".

(2) RECAPTURE OF OVERALL FOREIGN LOSS.—Section 904(f) is amended by adding at the end thereof the following new paragraph:

"(5) ACCUMULATION DISTRIBUTIONS OF FOREIGN TRUST.—For purposes of this chapter, in the case of amounts of income from sources without the United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer choose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income

from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in current taxable year, against other income of the beneficiary.".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply to distributions made in taxable years beginning after December 31, 1975.

(B) The amendments made by paragraph (2) shall take effect as if included in section 904(f) of the Internal Revenue Code of 1954, as such provision was added to such Code by section 1032(a) of the Tax Reform Act of 1976.

(r) RETENTION OF CHARACTER OF AMOUNTS DISTRIBUTED FROM ACCUMULATION TRUST TO NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.—

(1) IN GENERAL.—Section 667 (relating to treatment of amounts deemed distributed by trust in preceding years) is amended by adding at the end thereof the following new subsection:

"(e) RETENTION OF CHARACTER OF AMOUNTS DISTRIBUTED FROM ACCUMULATION TRUST TO NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.—In the case of a distribution from a trust to a nonresident alien individual or to a foreign corporation, the first sentence of subsection (a) shall be applied as if the reference to the determination of character under section 662(b) applied to all amounts instead of just to tax-exempted interest."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to distributions made in taxable years beginning after December 31, 1975.

(s) LIMITATION ON ALLOWANCE OF PARTNERSHIP IN THE CASE OF NONRECOURSE LOANS.—

(1) IN GENERAL.—Section 704(d) (relating to limitation on allowance of partnership losses) is amended by striking out the last sentence and by adding the following at the end thereof: "The preceding sentence shall not apply with respect to any activity to the extent that section 465 (relating to limiting deductions to amounts at risk in case of certain activities) applies, nor shall it apply to an activity involving the holding of real property (other than mineral property). For purposes of the preceding sentence, the holding of real property shall be treated as a separate activity and personal property and services which are incidental to making real property available as living accommodations shall be treated as part of the activity of holding such real property.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to liabilities incurred after December 31, 1976.

(t) EXEMPT INTEREST DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

(1) TREATMENT OF TAX-EXEMPT INTEREST FOR PURPOSES OF THE 90-PERCENT AND 30-PERCENT TESTS.—Subsection (b) of section 851 (relating to limitations on the definition of regulated investment company) is amended by adding at the end thereof the following new sentence: "For purposes of paragraphs (2) and (3), amounts excludable from gross income under section 103(a)(1) shall be treated as included in gross income."

(2) LOSSES ATTRIBUTABLE TO TAX-EXEMPT INTEREST WHERE STOCK IS HELD LESS THAN 31 DAYS.—Paragraph (4) of section 852(b) (relating to loss on sale or exchange of stock held less than 31 days) is amended to read as follows:

"(4) LOSS ON SALE OR EXCHANGE OF STOCK HELD LESS THAN 31 DAYS.—

"(A) LOSS ATTRIBUTABLE TO CAPITAL GAIN DIVIDEND.—If—

"(i) under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain, and

"(ii) such share is held by the taxpayer for less than 31 days,

then any loss (to the extent not disallowed under subparagraph (B)) on the sale or exchange of such share shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

"(B) LOSS ATTRIBUTABLE TO EXEMPT-INTEREST DIVIDEND.—If—

"(i) a shareholder of a regulated investment company receives an exempt-interest dividend with respect to any share, and

"(ii) such share is held by the taxpayer for less than 31 days,

then any loss on the sale or exchange of such share shall, to the extent of the amount of such exempt-interest dividend, be disallowed.

"(C) DETERMINATION OF HOLDING PERIODS.—For purposes of this paragraph, the rules of section 246(c)(3) shall apply in determining whether any share of stock has been held for less than 31 days; except that '30 days' shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3)."

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1975.

(u) AMENDMENTS RELATING TO REAL ESTATE INVESTMENT TRUSTS.—

(1) ANNUAL ACCOUNTING PERIOD.—Section 859 (relating to adoption of annual accounting period), as redesignated by section 372 (d)(6) of the Act, is further amended to read as follows:

"SEC. 859. ADOPTION OF ANNUAL ACCOUNTING PERIOD.

"For purposes of this subtitle—

"(1) a real estate investment trust shall not change to any accounting period other than the calendar year, and

"(2) a corporation, trust, or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

Paragraph (2) shall not apply to a corporation, trust, or association which was considered to be a real estate investment trust for any taxable year beginning on or before October 4, 1976."

(2) AMENDMENT OF SECTION 856(C)(3).—Subparagraph (D) of section 856(c)(3) is amended by inserting "(other than gain from prohibited transactions)" after "and gain".

(3) EXCISE TAX ON REIT UNDISTRIBUTED INCOME.—

(A) Paragraph (3) of section 6501(e) (relating to limitations on assessment and collection) is amended by striking out "or 43" and inserting in lieu thereof "43, or 44".

(B) Subsection (b) of section 1605 of the Tax Reform Act of 1976 (relating to technical amendments) is amended by striking out paragraph (1) thereof.

(C) Subparagraph (D) of section 1605(b)(5) of the Tax Reform Act of 1976 is amended to read as follows:

"(D) by striking out 'of chapter 43 tax for the same taxable years,' in subsection (c)(1) and inserting in lieu thereof 'of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year,'."

(4) CORRECTION OF CROSS REFERENCE.—Subparagraph (B) of section 859(b)(2) is amended by striking out "section 6601(c)" and inserting in lieu thereof "section 6601(b)".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 4, 1976.

(v) AMENDMENTS RELATING TO TREATMENT OF FOREIGN INCOME.—

(1) FOREIGN TAX CREDITS NOT DISALLOWED ON CERTAIN DISTRIBUTIONS MADE BY POSSESSIONS CORPORATIONS.—

(A) IN GENERAL.—Paragraph (1) of section 901(g) (relating to certain taxes paid with respect to distributions from possessions corporations) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this chapter, any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation—

"(A) to the extent that such distribution is attributable to periods during which such corporation is a possessions corporation, and

"(B)(i) if a dividends received deduction is allowable with respect to such distribution under part VIII of subchapter B, or

"(ii) to the extent that such distribution is received in connection with a liquidation or other transaction with respect to which gain or loss is not recognized,

shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amount so paid or accrued."

(B) DEFINITION OF POSSESSIONS CORPORATION.—Paragraph (2) of section 901(g) (defining possessions corporation) is amended—

(i) by striking out "or during which section 931" and inserting in lieu thereof ", during which section 931", and

(ii) by inserting before the period at the end thereof the following: ", or during which section 957(c) applied to such corporation".

(C) EFFECTIVE DATES.—The amendment made by subparagraph (A) shall apply as if included in section 901(g) of the Internal Revenue Code of 1954 as added by section 1051(d)(2) of the Tax Reform Act of 1976. The amendments made by subparagraph (B) shall apply to distributions made after the date of the enactment of this Act in taxable years ending after such date.

(2) FOREIGN TAX CREDIT ADJUSTMENTS FOR CAPITAL GAINS.—

(A) IN GENERAL.—Paragraph (2) of section 904(b) (relating to treatment of capital gains for purposes of the foreign tax credit limitation) is amended by striking out "For purposes of subsection (a)—" and inserting in lieu thereof "For purposes of this section—".

(B) SOURCE RULE.—Subparagraph (C) of section 904(b)(3) is amended by striking out "For purposes of this paragraph, there" and inserting in lieu thereof "There".

(C) SOURCE RULE FOR LIQUIDATIONS OF CERTAIN FOREIGN CORPORATIONS.—Paragraph (3) of section 904(b) (relating to source rules for gain from the sale of certain personal property) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) GAIN FROM LIQUIDATION OF CERTAIN FOREIGN CORPORATIONS.—Subparagraph (C) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year during which the distribution occurred."

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years beginning after December 31, 1975.

(3) TREATMENT OF CERTAIN CAPITAL LOSS CARRYOVERS AND CARRYBACKS FOR PURPOSES OF THE LIMITATION ON CREDIT FOR FOREIGN TAXES.—

(A) IN GENERAL.—Clause (iii) of section 904(2)(2)(A) (relating to treatment of capital gains of corporations for purposes of the foreign tax credit limitation) is amended by striking out "any net capital loss" and inserting in lieu thereof "for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a))".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to

taxable years beginning after December 31, 1975.

(4) TREATMENT OF CAPITAL LOSS CARRYOVERS FOR PURPOSES OF FOREIGN LOSS RECAPTURE.—

(A) IN GENERAL.—Subparagraph (A) of section 904(f)(2) (defining overall foreign loss) is amended by striking out "or any capital loss carrybacks and carryovers to such year under section 1212".

(B) FOREIGN OIL RELATED LOSSES.—Subparagraph (A) of section 904(f)(4) (relating to determination of foreign oil related loss where section 907 applies) is amended by striking out "or any capital loss carrybacks and carryovers to such year under section 1212".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply—

(i) to overall foreign losses sustained in taxable years beginning after December 31, 1975, and

(ii) to foreign oil related losses sustained in taxable years ending after December 31, 1975.

(5) EFFECTIVE DATE FOR RECAPTURE OF FOREIGN OIL RELATED LOSSES.—

(A) IN GENERAL.—Paragraph (1) of section 1032(c) of the Tax Reform Act of 1976 is amended to read as follows:

"(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendment made by subsection (a) shall apply to losses sustained in taxable years beginning after December 31, 1975. The amendment made by subsection (b)(1) shall apply to taxable years beginning after December 31, 1975. The amendment made by subsection (b)(2) shall apply to losses sustained in taxable years ending after December 31, 1975."

(B) FOREIGN OIL RELATED LOSSES.—Subsection (c) of section 1032 of the Tax Reform Act of 1976 is amended by adding at the end thereof the following new paragraph:

"(5) FOREIGN OIL RELATED LOSSES.—The amendment made by subsection (a) shall apply to foreign oil related losses sustained in taxable years ending after December 31, 1975."

(6) TRANSITIONAL RULES FOR CERTAIN MINING OPERATIONS.—The second sentence of paragraph (2) of section 1031(c) of the Tax Reform Act of 1976 is amended to read as follows: "In the case of a loss sustained in a taxable year beginning before January 1, 1979, by any corporation to which this paragraph applies, if section 904(a)(1) of such Code (as in effect before the enactment of this Act) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to such loss under the principles of such section 904(a)(1)."

(7) TRANSITIONAL RULES FOR RECAPTURE OF CERTAIN FOREIGN LOSSES.—

(A) COMPUTATION OF DEFICIT IN EARNINGS AND PROFITS FOR PURPOSES OF THE RECAPTURE OF CERTAIN FOREIGN LOSSES.—Paragraph (4) of section 1032(c) of the Tax Reform Act of 1976 (relating to limitation based on deficit in earnings and profits for purposes of the recapture of foreign losses) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, there shall be taken into account only earnings and profits of the corporation which (A) were accumulated in taxable years of the corporation beginning after December 31, 1962, and during the period in which the stock of such corporation from which the loss arose was held by the taxpayer and (B) are attributable to such stock."

(B) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

(i) Subsection (c) of section 1032 of the Tax Reform Act of 1976 (relating to effective dates for recapture of foreign losses) is amended by adding at the end thereof the following new paragraph:

"(6) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply if—

"(i) the taxpayer sustained a loss in a possession of the United States in a taxable year beginning after December 31, 1975, and before January 1, 1979,

"(ii) such loss is attributable to a trade or business engaged in by the taxpayer in such possession on January 1, 1976, and

"(iii) the taxpayer chooses to have the benefits of subpart A of part III of subchapter N apply for such taxable year and section 904(a)(1) of the Internal Revenue Code of 1954 (as in effect before the enactment of this Act) applies with respect to such taxable year.

"(B) NO RECAPTURE DURING TRANSITION PERIOD.—In any case to which this paragraph applies, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, section 904(f) of the Internal Revenue Code of 1954 shall not apply with respect to the loss described in subparagraph (A)(i).

"(C) RECAPTURE OF LOSS AFTER THE TRANSITION PERIOD.—In any case to which this paragraph applies—

"(i) for purposes of determining the liability for tax of the taxpayer for taxable years beginning after December 31, 1978, section 904(f) of the Internal Revenue Code of 1954 shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of section 904(a)(1) of such Code (as in effect before the enactment of this Act); but

"(ii) in the case of any taxpayer and any possession, the aggregate amount to which such section 904(f) applies by reason of clause (i) shall not exceed the sum of the net incomes of all affiliated corporations from such possession for taxable years of such affiliated corporations beginning after December 31, 1975, and before January 1, 1979.

"(D) TAXPAYERS NOT ENGAGED IN TRADE OR BUSINESS ON JANUARY 1, 1976.—In any case to which this paragraph applies but for the fact that the taxpayer was not engaged in a trade or business in such possession on January 1, 1976, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, if section 904(a)(1) of such Code (as in effect before the enactment of this Act) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of such section 904(a)(1).

"(E) AFFILIATED CORPORATION DEFINED.—For purposes of subparagraph (C)(ii), the term 'affiliated corporation' means a corporation which, for the taxable year for which the net income is being determined was not a member of the same affiliated group (within the meaning of section 1504 of the Internal Revenue Code of 1954) as the taxpayer but would have been a member of such group but for the application of subsection (b) of such section 1504."

(ii) Paragraph (3) of section 1031(c) of the Tax Reform Act of 1976 is amended by striking out the last sentence.

(8) LIMITATIONS ON FOREIGN TAX CREDIT WHERE INDIVIDUAL HAS FOREIGN OIL AND GAS EXTRACTION INCOME.—

(A) REDUCTION IN FOREIGN TAX CREDIT FOR CERTAIN INDIVIDUALS HAVING FOREIGN OIL AND GAS EXTRACTION INCOME.—Subsection (a) (as amended by section 301(b)(14) of this Act) of section 907 (relating to special rules in case of foreign oil and gas income) is further amended to read as follows:

"(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN TAX UNDER SECTION 901.—In applying section 901, the amount of any oil and gas extraction taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

"(1) the amount of the foreign oil and gas extraction income for the taxable year,

"(2) multiplied by—

"(A) in the case of a corporation, the percentage which is equal to the highest rate of tax under section 11, or

"(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income."

(B) APPLICATION OF SECTION 904 SEPARATELY TO FOREIGN OIL RELATED INCOME OF INDIVIDUALS.—Subsection (b) of section 907 (relating to application of section 904 limitation) is amended to read as follows:

"(b) APPLICATION OF SECTION 904 LIMITATION.—The provisions of section 904 shall be applied separately with respect to—

"(1) foreign oil related income, and

"(2) other taxable income."

(C) TECHNICAL AMENDMENT.—Paragraph (4) of section 904(f) (relating to recapture of overall foreign loss) is amended by striking out "In the case of a corporation to which section 907(b)(1) applies" and inserting in lieu thereof "In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b)".

(D) EFFECTIVE DATES.—

(i) The amendments made by this paragraph shall apply, in the case of individuals, to taxable years ending after December 31, 1974, and, in the case of corporations, to taxable years ending after December 31, 1976.

(ii) In the case of any taxable year ending after December 31, 1975, with respect to foreign oil related income (within the meaning of section 907(c) of the Internal Revenue Code of 1954), the overall limitation provided by section 904(a)(2) of such Code shall apply and the per-country limitation provided by section 904(a)(1) of such Code shall not apply.

(9) EFFECTIVE DATE FOR DISALLOWANCE OF FOREIGN TAX CREDIT FOR CERTAIN PRODUCTION-SHARING CONTRACTS.—The second sentence of paragraph (3) of section 1035(c) of the Tax Reform Act of 1976 (relating to tax credit for production-sharing contracts) is amended to read as follows: "A contract described in the preceding sentence shall be taken into account under paragraph (1) only with respect to amounts (A) paid or accrued to the foreign government before January 1, 1978, and (B) attributable to income earned before such date."

(10) FOREIGN TAXES ATTRIBUTABLE TO SECTION 911 EXCLUSION.—

(A) IN GENERAL.—The last sentence of section 911(a) (relating to earned income from sources without the United States) is amended to read as follows:

"An individual shall not be allowed as a deduction from his gross income any deductions (other than those allowed by section 151, relating to personal exemptions), to the extent that such deductions are properly allocable to or chargeable against amounts excluded from gross income under this subsection. For purposes of this title, the amount of the income, war profits, and excess profits taxes paid or accrued by any individual to a foreign country or possession of the United States for any taxable year shall be reduced by an amount determined by multiplying the amount of such taxes by a fraction—

"(A) the numerator of which is the tax determined under subsection (d)(1)(B), and

"(B) the denominator of which is the sum of the amount referred to in subparagraph

(A), plus the limitation imposed for the taxable year by section 904(a).".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1976.

(11) SALE OF ASSETS BY A POSSESSIONS CORPORATION.—

(A) IN GENERAL.—Subsection (a) of section 936 (relating to Puerto Rico and possession tax credit) is amended by redesignating paragraph (2) as paragraph (3) and by amending so much of paragraph (1) as precedes subparagraph (A) thereof to read as follows:

"(1) IN GENERAL.—Except as provided in paragraph (3), if a domestic corporation elects the application of this section and if the conditions of both subparagraph (A) and subparagraph (B) of paragraph (2) are satisfied, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the sum of—

"(A) the taxable income, from sources without the United States, from—

"(i) the active conduct of a trade or business within a possession of the United States, or

"(ii) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business, and

"(B) the qualified possession source investment income.

"(2) CONDITIONS WHICH MUST BE SATISFIED.—The conditions referred to in paragraph (1) are:".

(B) INCOME FROM SALE OF CARRYOVER BASIS PROPERTY NOT TAKEN INTO ACCOUNT.—

(i) Subsection (d) of section 936 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(3) CARRYOVER BASIS PROPERTY.—

"(A) IN GENERAL.—Income from the sale or exchange of any asset the basis of which is determined in whole or in part by reference to its basis in the hands of another person shall not be treated as income described in subparagraph (A) or (B) of subsection (a)(1).

"(B) EXCEPTION FOR POSSESSIONS CORPORATIONS, ETC.—For purposes of subparagraph (A), the holding of any asset by another person shall not be taken into account if throughout the period for which such asset was held by such person section 931, this section, or section 957(c) applied to such person.".

(ii) The heading of such subsection (d) is amended to read as follows:

"(d) DEFINITIONS AND SPECIAL RULES.—".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply as if included in section 936 of the Internal Revenue Code of 1954 at the time of its addition by section 1051(b) of the Tax Reform Act of 1976.

(12) GAIN ON DISPOSITION OF STOCK IN A DISC.—

(A) DELAY IN EFFECTIVE DATE.—Paragraph (4) of section 1101(g) of the Tax Reform Act of 1976 (relating to effective date for amendment relating to gain or disposition of DISC stock) is amended by striking out "December 31, 1975" and inserting in lieu thereof "December 31, 1976".

(B) TECHNICAL AMENDMENT.—Paragraph (1) of section 995(c) (relating to gain on disposition of stock in a DISC) is amended by adding at the end thereof the following new sentence:

"Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock."

(C) EFFECTIVE DATE.—The amendment made by subparagraph (B) shall apply to dispositions made after December 31, 1976, in taxable years ending after such date.

(13) LIMITATION ON PARTNER'S TAX WHERE PARTNER RECEIVES AMOUNT TREATED AS SALE OF SECTION 1248 STOCK.—

(A) IN GENERAL.—Section 751 (relating to unrealized receivables and inventory items) is amended by adding at the end thereof the following new subsection:

"(e) LIMITATION ON TAX ATTRIBUTABLE TO DEEMED SALES OF SECTION 1248 STOCK.—For purposes of applying this section and sections 731, 736, and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations)."

(B) CROSS REFERENCE.—Section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest) is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE.—

"For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e)."

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date.

(14 EXCISE TAX ON TRANSFERS OF PROPERTY TO FOREIGN PERSONS TO AVOID FEDERAL INCOME TAX.—

(A) TRANSFERS INVOLVING ESTATES.—Section 1491 (relating to tax on transfer to avoid income tax) is amended by striking out "trust" each place it appears therein and inserting in lieu thereof "estate or trust".

(B) CLARIFICATION OF PARAGRAPH (3) OF SECTION 1492.—Paragraph (3) of section 1492 (relating to nontaxable transfers) is amended to read as follows:

"(3) To a transfer described in section 367; or".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to transfers after October 2, 1975.

(15) ELECTION TO TREAT NONRESIDENT ALIEN INDIVIDUAL AS RESIDENT OF THE UNITED STATES.—

(A) PROVISIONS AFFECTED BY ELECTION.—Paragraph (1) of section 6013(g) (relating to election to treat nonresident alien individual as resident of the United States) is amended to read as follows:

"(1) IN GENERAL.—A nonresident alien individual with respect to whom this subsection is in effect for the taxable year shall be treated as a resident of the United States—

"(A) for purposes of chapters 1 and 5 for all of such taxable year, and

"(B) for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year."

(B) CONFORMING AMENDMENT.—Paragraph (5) of section 6013(g) (relating to termination of election by Secretary) is amended by striking out "chapter 1" and inserting in lieu thereof "chapters 1 and 5".

(C) YEAR OF RESIDENCY.—Paragraph (1) of section 6013(h) (relating to return for year nonresident alien becomes resident) is amended—

(i) by striking out "chapter 1" and inserting in lieu thereof "chapters 1 and 5", and

(ii) by inserting before the period at the end thereof the following: ", and for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year."

(D) CERTAIN AMOUNTS WITHHELD UNDER CHAPTER 3 TREATED AS OVERPAYMENTS OF TAX.—Subsection (b) of section 6401 (relating to excessive credits) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, any credit allowed under paragraph (1) of section 32 (relating to withholding of tax on nonresident aliens and on foreign corporations) to a nonresident alien individual for a taxable year with respect to which an election under section 6013(g) or (h) is in effect shall be treated as an amount allowable as a credit under section 31."

(E) EFFECTIVE DATES.—The amendments made by this paragraph—

(i) to the extent that they relate to chapter 1 or 5 of the Internal Revenue Code of 1954, shall apply to taxable years ending on or after December 31, 1975, and

(ii) to the extent that they relate to wage withholding under chapter 24 of such Code, shall apply to remuneration paid on or after the first day of the first month which begins more than 90 days after the date of the enactment of this Act.

(16) NONRESIDENT ALIEN INDIVIDUAL ALLOWED TO BE TREATED AS RESIDENT OF THE UNITED STATES.—

(A) IN GENERAL.—Paragraph (2) of section 6013(g) (relating to election to treat nonresident alien individual as resident of the United States) is amended by striking out "who, at the time an election was made under this subsection," and inserting in lieu thereof "who, at the close of the taxable year for which an election under this subsection was made,".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1975.

(w) AMENDMENT OF SECTION 1239(a).—

(1) IN GENERAL.—Subsection (a) of section 1239 (relating to gain from sale of depreciable property between certain related taxpayers) is amended by striking out "subject to the allowance for depreciation provided in section 167" and inserting in lieu thereof "of a character which is subject to the allowance for depreciation provided in section 167".

(2) EFFECTIVE DATE.—The amendment made of paragraph (1) shall apply as if included in the amendment made to section 1239 of the Internal Revenue Code of 1954 by section 2129(a) of the Tax Reform Act of 1976.

(x) RECAPTURE OF DEPRECIATION ON PLAYER CONTRACTS.—

(1) IN GENERAL.—Subparagraph (C) of section 1245(a)(4) (defining previously unrecaptured depreciation with respect to contracts transferred) is amended to read as follows:

"(C) PREVIOUSLY UNRECAPTURED DEPRECIATION WITH RESPECT TO CONTRACTS TRANSFERRED.—For purposes of subparagraph (A)(ii), the term 'previously unrecaptured depreciation' means the amount of any deduction allowed or allowable to the taxpayer transferor for the depreciation of any contracts involved in such transfer."

(2) RECAPTURE OF DEPRECIATION WITH RESPECT TO INITIAL CONTRACTS.—Subparagraph (B) of section 1245(a)(4) (defining previously unrecaptured depreciation with respect to initial contracts) is amended—

(A) by inserting "attributable to periods after December 31, 1975," after "depreciation" in clause (i),

(B) by inserting "incurred after December 31, 1975," after "losses" in clause (i), and

(C) by inserting "described in clause (i)" after "amounts" in clause (ii).

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.

(y) TREATMENT OF PENSIONS AND ANNUITIES

FOR 50-PERCENT MAXIMUM RATE ON PERSONAL SERVICE INCOME.—

(1) IN GENERAL.—Subparagraph (A) of section 1348(b)(1) (defining personal service income) is amended by striking out "pension or annuity" and inserting in lieu thereof "pension or annuity which arises from an employer-employee relationship or from tax-deductible contributions to a retirement plan".

(2) TECHNICAL AMENDMENT.—The last sentence of section 1348(b) is amended by striking out "earned income" and inserting in lieu thereof "personal service income".

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) this section shall apply to taxable years beginning after December 31, 1976.

(z) CHANGES IN THE SUBCHAPTER S PROVISIONS.—

(1) GRANTOR TRUST MAY BE TREATED AS PERMITTED SHAREHOLDER AFTER DECEDENT'S DEATH; GRANTOR OR GRANTOR TRUST MUST BE INDIVIDUAL.—Paragraph (1) of subsection (e) of section 1371 (as redesignated by section 341(b)(2) of this Act) is amended to read as follows:

"(1)(A) A trust all of which is treated as owned by the grantor (who is an individual who is a citizen or resident of the United States) under subpart E of part I of subchapter J of this chapter.

"(B) A trust which was described in subparagraph (A) immediately before the death of the grantor and which continues in existence after such death, but only for the 60-day period beginning on the day of the grantor's death. If a trust is described in the preceding sentence and if the entire corpus of the trust is includible in the gross estate of the grantor, the preceding sentence shall be applied by substituting '2-year period' for '60-day period'."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1976.

(aa) WITHHOLDING OF FEDERAL TAXES ON CERTAIN INDIVIDUALS ENGAGED IN FISHING—

(1) IN GENERAL.—Section 1207(f)(4) of the Tax Reform Act of 1976 (relating to effective date of provisions relating to withholding on certain individuals engaged in fishing) is amended by striking out "December 31, 1971" each place it appears and inserting in lieu thereof "December 31, 1954".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on October 4, 1976.

(bb) WITHDRAWALS FROM INDIVIDUALS RETIREMENT ACCOUNTS, ETC.—

(1) IN GENERAL.—The last sentence of section 4973(b) (relating to excess contributions to individual retirement accounts, etc.) is amended by striking out "solely because of employer contributions to a plan or contract described in section 219(b)(2)" and inserting in lieu thereof "solely because of ineligibility under section 219(b)(2) or section 220(b)(3)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in section 1501 of the Tax Reform Act of 1976 at the time of the enactment of such Act.

(cc) AMENDMENTS RELATING TO DISCLOSURE OF TAX RETURNS.—

(1) DISCLOSURE OF MAILING ADDRESS FOR PURPOSES OF COLLECTING CERTAIN STUDENT LOANS.—

(A) Subsection (m) of section 6103 (relating to disclosure of taxpayer identity information) is amended to read as follows:

"(m) DISCLOSURE OF TAXPAYER IDENTITY INFORMATION.—

"(1) TAX REFUNDS.—The Secretary may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

"(2) FEDERAL CLAIMS.—Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the collection or compromise of a Federal claim against such taxpayer in accordance with the provisions of section 3 of the Federal Claims Collection Act of 1966.

"(3) NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH.—Upon written request, the Secretary may disclose the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health solely for the purpose of locating individuals who are, or may have been, exposed to occupational hazards in order to determine the status of their health or to inform them of the possible need for medical care and treatment.

"(4) INDIVIDUALS WHO HAVE DEFAULTED ON STUDENT LOANS.—

"(A) IN GENERAL.—Upon written request by the Commissioner of Education, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan made from the student loan fund established under part E of title IV of the Higher Education Act of 1965 for use only for purposes of locating such taxpayer for purposes of collecting such loan.

"(B) DISCLOSURE TO INSTITUTIONS.—Any mailing address disclosed under subparagraph (A) may be disclosed by the Commissioner of Education to any educational institution with which he has an agreement under part E of title IV of the Higher Education Act of 1965 only for use by officers, employees or agents of such institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made by such institution pursuant to such agreement for purposes of collecting such loans."

(B) Paragraph (3) of section 6103(a) is amended by inserting ", subsection (m)(4)(B)," after "subsection (e)(1)(D)(iii)".

(C) Paragraph (2) of section 7213(a) (relating to penalties for unauthorized disclosure of information) is amended—

(i) by striking out "or any local" and inserting in lieu thereof ", any local";

(ii) by inserting ", or any educational institution" after "enforcement agency"; and

(iii) by striking out "section 6103(d) or (l)(6)" and inserting in lieu thereof "subsection (d), (l)(6), or (m)(4)(B) of section 6103".

(2) DISCLOSURE OF TAX RETURN INFORMATION REGARDING SPECIAL FUEL EXCISE TAXES.—Subsection (d) of section 6103 (relating to disclosure to State tax officials) is amended by inserting "31," after "24,".

(3) RETURN INFORMATION OTHER THAN TAXPAYER RETURN INFORMATION.—Paragraph (2) of section 6103(i) (relating to return information other than taxpayer return information) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, the name and address of the taxpayer shall not be treated as taxpayer return information."

(4) DISCLOSURE OF RETURN INFORMATION CONCERNING POSSIBLE CRIMINAL ACTIVITIES.—Paragraph (3) of section 6103(i) (relating to disclosure of return information concerning possible criminal activities) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the name and address of the taxpayer shall not be treated as taxpayer return information if there is return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal law."

(5) DISCLOSURE UNDER TAX CONVENTIONS.—Section 6103(k)(4) (relating to disclosure of return information under income tax conventions) is amended—

(A) by striking out "income" in the caption thereof,

(B) by inserting "or gift and estate tax" after "income tax", and

(C) by inserting ", or other convention relating to the exchange of tax information," after "convention" the first place it appears.

(6) CRIMINAL PENALTY FOR UNAUTHORIZED DISCLOSURE OF INFORMATION.—Section 7213(a) (relating to unauthorized disclosure of information) is amended—

(A) by striking out "to disclose" in paragraphs (1), (2), and (5) and inserting in lieu thereof "willfully to disclose",

(B) by striking out "to thereafter print or publish" in paragraph (3) and inserting in lieu thereof "thereafter willfully to print or publish", and

(C) by striking out "to offer" in paragraph (4) and inserting in lieu thereof "willfully to offer".

(7) NO CIVIL LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION OF DISCLOSURE REQUIREMENTS.—Section 7217 (relating to civil damages for unauthorized disclosure of return and return information) is amended—

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(B) by inserting after subsection (a) the following new subsection:

"(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103."; and

(C) by striking out "An action" in subsection (d) (as so redesignated) and inserting in lieu thereof "PERIOD FOR BRINGING ACTION.—An action".

(8) EFFECTIVE DATES.—

(A) Except as provided in subparagraph (B), the amendments made by this subsection shall take effect January 1, 1977.

(B) The amendments made by paragraph (6) (7) shall apply with respect to disclosures made after the date of the enactment of this Act.

(dd) AMENDMENTS RELATING TO INCOME TAX RETURN PREPARERS.—

(1) NEGOTIATIONS OF CHECKS BY STATE.—Subsection (f) of section 6695 (relating to negotiations of check) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply with respect to the deposit by a bank (within the meaning of section 581) of the full amount of the check in the taxpayer's account in such bank for the benefit of the taxpayer."

(2) DEFINITION.—Clause (iii) of section 7701(a)(36)(B) (relating to exceptions from the definition of income tax return preparer) is amended to read as follows:

"(iii) prepares as a fiduciary a return or claim for refund for any person, or".

(3) DEFINITION OF RULE.—Section 6694(a) (relating to negligent or intentional disregard of rules and regulations by income tax return papers) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the term 'rule' shall not include any revenue ruling, or written determination (as defined in section 6110(b)(1)) unless such written determination directly applies to the return or claim prepared.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to documents prepared after December 31, 1976.

(ee) CLARIFICATION OF DECLARATION JUDGMENT PROVISIONS WITH RESPECT TO REVOCATIONS OF OR OTHER CHANGES IN THE QUALIFICATIONS OF CERTAIN ORGANIZATIONS.—

(1) QUALIFICATION OF CERTAIN RETIREMENT PLANS.—Subsection (a) of section 7476 (relating to declaratory judgments relating to

qualification of certain retirement plans) is amended by adding at the end thereof the following new sentence: "For purposes of this section, a determination with respect to a continuing qualification includes any revocation of or other change in a qualification."

(2) CLASSIFICATION OF ORGANIZATIONS UNDER SECTION 501(C)(3), ETC.—Subsection (a) of section 7428 (relating to declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.) is amended by adding at the end thereof the following new sentence: "For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification."

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect as if included in section 7476 or 7428 of the Internal Revenue Code of 1954 (as the case may be) at the respective times such sections were added to such Code.

(ff) CONTRIBUTIONS OF CERTAIN GOVERNMENT PUBLICATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 1231(b) (relating to definition of property used in trade or business) is amended—

(A) by striking out "or" at the end of subparagraph (B),

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma and "or", and

(C) by adding at the end thereof the following new subparagraph:

"(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (6) of section 1221.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to sales, exchanges, and contributions made after October 4, 1976.

(gg) EXEMPTION FOR LIGHT-DUTY TRUCK PARTS.—

(1) IN GENERAL.—Section 4063 (relating to exemption of motor vehicles and parts) is amended by adding at the end thereof the following new subsection:

"(e) PARTS FOR LIGHT-DUTY TRUCKS.—The tax imposed by section 4061(b) shall not apply to the sale by the manufacturer, producer, or importer of any article which is to be resold by the purchaser or in connection with the first retail sale of a light-duty truck, as described in section 4061(a)(2), or which is to be resold by the purchaser to a second purchaser for resale by such second purchaser on or in connection with the first retail sale of a light-duty truck."

(2) CONFORMING AMENDMENTS.—

(A) Section 4221(c) (relating to manufacturer relieved from liability in certain cases) is amended by inserting "4063(e)," after "4063(b),".

(B) Section 4222(d) (relating to registration in the case of tax-free sales) is amended by inserting "4063(e)," after "4063(b),".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the first calendar month beginning more than 20 days after the date of the enactment of this Act.

SEC . TECHNICAL, CLERICAL, AND CONFORMING AMENDMENTS TO ESTATE AND GIFT TAX PROVISIONS.

(a) AMENDMENTS RELATING TO TREATMENT OF SECTION 306 STOCK.—

(1) APPLICATION OF "FRESH START" TO SECTION 306 STOCK.—Subsection (a) of section 306 (relating to dispositions of certain stock) is amended by adding at the end thereof the following new paragraph:

"(3) ORDINARY INCOME FROM SALE OR REDEMPTION OF SECTION 306 STOCK WHICH IS CARRYOVER BASIS PROPERTY ADJUSTED FOR 1976 VALUE.—

"(A) IN GENERAL.—If any section 306 stock was distributed before January 1, 1977, and if the adjusted basis of such stock in the hands of the person disposing of it is determined under section 1023 (relating to carryover basis), then the amount treated as ordinary income under paragraph (1)(A) of this subsection (or the amount treated as a dividend under section 301(c)(1)) shall not exceed the excess of the amount realized over the sum of that—

"(i) the adjusted basis of such stock on December 31, 1976, and

"(ii) any increase in basis under section 1023(h).

"(B) REDEMPTION MUST BE DESCRIBED IN SECTION 302(b).—Subparagraph (A) shall apply to a redemption only if such redemption is described in paragraph (1), (2), or (4) of section 302(b)."

(2) CLARIFICATION THAT SECTION 303 OVERRIDES SECTION 306.—Subsection (b) of section 306 (relating to exceptions) is amended by adding at the end thereof the following new paragraph:

"(5) SECTION 303 REDEMPTIONS.—To the extent that section 303 applies to a distribution in redemption of section 306 stock.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1979.

(b) COORDINATION OF DEDUCTION FOR ESTATE TAXES ATTRIBUTABLE TO INCOME IN RESPECT OF A DECEDENT WITH THE CAPITAL GAIN DEDUCTION, ETC.—

(1) IN GENERAL.—Subsection (c) of section 691 (relating to deduction for estate taxes in the case of income in respect of decedents) is amended by adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH CAPITAL GAIN DEDUCTION, ETC.—For purposes of section 1201, 1202, and 1211, and for purposes of section 57(a)(9), the amount of any gain taken into account with respect to any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to decedents dying after the date of the enactment of this Act.

(c) AMENDMENTS RELATING TO CARRYOVER BASIS.—

(1) Amendments relating to the postponement of the effective date of carryover basis provisions.—

(A) FAIR MARKET VALUE WHERE FARM VALUATION ELECTED.—Subsection (a) of section 1014 (relating to basis of property acquired from a decedent) is amended to read as follows:

"(a) IN GENERAL.—Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be—

"(1) the fair market value of the property at the date of the decedent's death, or

"(2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections, or

"(3) in the case of an election under section 2032A, its value determined under such section."

(B) The second sentence of section 2614 (a) (relating to basis adjustments in connection with generation-skipping transfers) is amended to read as follows: "If property is transferred in a generation-skipping transfer subject to tax under this chapter which occurs at the same time as, or after, the death of the deemed transferor, the basis of such property shall be adjusted—

"(1) in the case of such a transfer occurring after June 11, 1976, and before January 1, 1980, in a manner similar to the manner provided under section 1014(a), and

"(2) in the case of such a transfer occurring after December 31, 1979, in a manner similar to the manner provided by section 1023 without regard to subsection (d) thereof (relating to basis of property passing from a decedent dying after December 31, 1979)."

(2) MINIMUM CARRYOVER BASIS FOR TANGIBLE PERSONAL PROPERTY.—

(A) IN GENERAL.—Subsection (h) of section 1023 (relating to adjustment to basis for December 31, 1976, fair market value) is amended by adding at the end thereof the following new paragraph:

"(3) MINIMUM BASIS FOR TANGIBLE PERSONAL PROPERTY.—

"(A) IN GENERAL.—If the holding period for any carryover basis property which is tangible personal property includes December 31, 1976, then, for purposes of determining gain and applying this section, the adjusted basis of such property immediately before the death of the decedent shall be treated as being not less than the amount determined under subparagraph (B).

"(B) AMOUNT.—The amount determined under this subparagraph for any property is—

"(i) the value of such property (as determined with respect to the estate of the decedent without regard to section 2032), divided by

"(ii) 1.0066 to the nth power where n equals the number of full calendar months which have elapsed between December 31, 1976, and the date of the decedent's death."

(B) CONFORMING AMENDMENT.—Paragraph (3) of section 1023(g) (relating to decedent's basis unknown) is amended by striking out "to the person acquiring such property from the decedent" and inserting in lieu thereof "and cannot be reasonably ascertained".

(3) TREATMENT OF INDEBTEDNESS.—

(A) IN GENERAL.—Paragraph (1) of section 1023(g) (defining fair market value) is amended by inserting "(without regard to whether there is a mortgage on, or indebtedness in respect of, the property)" after "chapter 11".

(B) TECHNICAL AMENDMENT.—Subsection (g) of section 1023 (relating to other special rules and definitions) is amended by striking out paragraph (4).

(4) ONLY ONE FRESH START WITH RESPECT TO CARRYOVER BASIS PROPERTY HELD ON DECEMBER 31, 1976.—Subsection (h) of section 1023 (relating to adjustment to basis for December 31, 1976, fair market value) is amended by adding at the end thereof the following new paragraph:

"(4) ONLY ONE FRESH START.—There shall be no increase in basis under this subsection by reason of the death of any decedent if the adjusted basis of the property in the hands of such decedent reflects the adjusted basis of property which was carryover basis property with respect to a prior decedent."

(5) AUTOMATIC LONG-TERM STATUS FOR GAINS AND LOSSES ON CARRYOVER BASIS PROPERTY.—Subparagraph (A) of section 1223 (11) is amended by inserting "or 1023" after "section 1014".

(6) CLARIFICATION THAT ADJUSTED BASIS IS INCREASED FOR STATE ESTATE TAXES.—

(A) Subsection (c) of section 1023 (relating to increase in basis for Federal and State estate taxes attributable to appreciation) is amended to read as follows:

"(c) INCREASE IN BASIS FOR FEDERAL AND STATE ESTATE TAXES ATTRIBUTABLE TO APPRECIATION.—

"(1) FEDERAL ESTATE TAXES.—The basis of appreciated carryover basis property (determined after any adjustment under subsection (h)) which is subject to the tax imposed by section 2001 or 2101 in the hands

of the person acquiring it from the decedent shall be increased by an amount which bears the same ratio to the Federal estate taxes as—

"(A) the net appreciation in value of such property, bears to

"(B) the fair market value of all property which is subject to the tax imposed by section 2001 or 2101.

"(2) STATE ESTATE TAXES.—The basis of appreciated carryover basis property (determined after any adjustment under subsection (h)) which is subject to State estate taxes in the hands of the person acquiring it from the decedent shall be increased by an amount which bears the same ratio to the State estate taxes as—

"(A) the net appreciation in value of such property, bears to

"(B) the fair market value of all property which is subject to the State estate taxes."

(B) The second sentence of paragraph (2) of section 1023(f) (defining net appreciation) is amended by striking out "For purposes of subsection (d)," and inserting in lieu thereof "For purposes of paragraph (2) of subsection (c), such adjusted basis shall be increased by the amount of any adjustment under paragraph (1) of subsection (c), for purposes of subsection (d),".

(C) Paragraph (3) of section 1023(f) (defining Federal and State estate taxes) is amended to read as follows:

"(3) FEDERAL AND STATE ESTATE TAXES.—For purposes of subsection (c)—

"(A) FEDERAL ESTATE TAXES.—The term 'Federal estate taxes' means the tax imposed by section 2001 or 2101, reduced by the credits against such tax.

"(B) STATE ESTATE TAXES.—The term 'State estate taxes' means any estate, inheritance, legacy, or succession taxes, for which the estate is liable, actually paid by the estate to any State or the District of Columbia."

(7) CLARIFICATION OF INCREASE IN BASIS FOR CERTAIN STATE SUCCESSION TAXES.—Paragraph (2) of section 1023(e) (relating to further increase in basis for certain State succession tax paid by transferee of property) is amended by striking out "for which the estate is not liable".

(8) CLARIFICATION OF APPLICATION OF FRESH START.—Paragraphs (1) and (2)(A) of section 1023(h) (relating to adjustment to basis for December 31, 1976, fair market value) are each amended by striking out "for purposes of determining gain" and inserting in lieu thereof "for purposes of determining gain and applying this section".

(9) TECHNICAL AMENDMENT WITH RESPECT TO CERTAIN TERM INTERESTS.—Paragraph (1) of section 1001(e) (relating to certain term interests) is amended by striking out "section 1014 or 1015" and inserting in lieu thereof "section 1014, 1015, or 1023".

(10) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the amendments and additions made by, and the provisions of, section 2005 of the Tax Reform Act of 1976.

(d) AMENDMENTS RELATING TO VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.—

(1) CLARIFICATION THAT SPECIAL VALUATION APPLIES ONLY TO INTERESTS PASSING TO QUALIFIED HEIRS.—Paragraph (1) of section 2032A (b) (defining qualified real property) is amended by striking out "real property located in the United States" and inserting in lieu thereof "real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and".

(2) PROPERTY RECEIVED IN SATISFACTION OF PECUNIARY BEQUEST.—Subsection (e) of section 2032A (relating to definitions and special rules for farm valuation property) is amended by adding at the end thereof the following new paragraph:

"(9) PROPERTY ACQUIRED FROM DECEDENT.—Property shall be considered to have been acquired from or to have passed from the decedent if—

"(A) such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

"(B) such property is acquired by any person from the estate in satisfaction of the right of such person to a pecuniary bequest, or

"(C) such property is acquired by any person from a trust in satisfaction of a right (which such person has by reason of the death of the decedent) to receive from the trust a specific dollar amount which is the equivalent of a pecuniary bequest."

(3) USE OF FARM VALUATION PROPERTY TO SATISFY PECUNIARY BEQUEST.—Section (a) of section 1040 (relating to use of certain appreciated carryover basis property to satisfy pecuniary bequest) is amended by inserting "(determined without regard to section 2032A)" after "chapter 11".

(4) TREATMENT OF CERTAIN COMMUNITY PROPERTY.—Subsection (e) of section 2032A is amended by adding at the end thereof the following new paragraph:

"(10) COMMUNITY PROPERTY.—If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property."

(5) SUBSTITUTION OF BOND FOR PERSONAL LIABILITY OF QUALIFIED HEIR FOR THE RECAPTURE TAX WITH RESPECT TO FARM VALUATION PROPERTY.—

(A) IN GENERAL.—Paragraph (6) of section 2032A (c) is amended to read as follows:

"(6) LIABILITY FOR TAX; FURNISHING OF BOND.—The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e)(11)."

(B) BOND REQUIREMENTS.—Subsection (e) of section 2032A is amended by adding at the end thereof the following new paragraph:

"(1) BOND IN LIEU OF PERSONAL LIABILITY.—If the qualified heir makes written application to the Secretary for determining of the maximum amount of the additional tax which may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge."

(6) EFFECTIVE DATE.—

The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(e) AMOUNT OF SECURITY FOR EXTENDED PAYMENT PROVISIONS FOR CLOSELY HELD BUSINESSES.—

(1) IN GENERAL.—

(A) Paragraph (2) of section 6324A(e) (defining aggregate interest amount) is amended to read as follows:

"(2) REQUIRED INTEREST AMOUNT.—The term 'required interest amount' means the aggregate amount of interest which will be payable over the first 4 years of the deferral period with respect to the deferred amount (determined as of the date prescribed by section 6151(a) for the payment of the tax imposed by chapter 11)."

(B) Subparagraph (B) of section 6324A (b)(2) (relating to maximum value of required property) is amended by striking out "aggregate interest amount" and inserting in lieu thereof "required interest amounts".

(C) Paragraph (5) of section 6324A(d) (relating to special rules) is amended by striking out "aggregate interest amount" and inserting in lieu thereof "required interest amount".

(D) Paragraph (4) of section 6324A(e) (relating to application of definitions in case of deficiencies) is amended by striking out "aggregate interest amount" and inserting in lieu thereof "required interest amount".

(2) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after December 31, 1976.

(f) CLARIFICATION OF THE $3,000 ANNUAL EXCLUSION FROM THE RULE INCLUDING IN GROSS ESTATE TRANSFERS WITHIN 3 YEARS OF DEATH.—

(1) AMENDMENT OF SECTION 2035(b).—Subsection (b) of section 2035 (relating to adjustments for gifts made within 3 years of decedent's death) is amended to read as follows:

"(b) EXCEPTIONS.—Subsection (a) shall not apply—

"(1) to any bona fide sale for an adequate and full consideration in money or money's worth, and

"(2) to any gift to a donee made during a calendar year if the decedent was not required by section 6019 to file any gift tax return for such year with respect to gifts to such donee.

Paragraph (2) shall not apply to any transfer with respect to a life insurance policy."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to the estates of decedents dying after December 31, 1976, except that it shall not apply to transfers made before January 1, 1977.

(g) AMENDMENTS RELATING TO ESTATE TAX MARITAL DEDUCTION.—

(1) DEDUCTION NOT REDUCED FOR GIFT TO SPOUSE WHICH IS INCLUDED IN DONOR'S ESTATE BY REASON OF SECTION 2035.—Subparagraph (B) of section 2056(c)(1) (relating to adjustment to estate tax marital deduction for certain gifts to spouse) is amended by adding at the end thereof the following new sentence:

"For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account."

(2) REDUCTION FOR GIFT TAX MARITAL DEDUCTION IN EXCESS OF 50 PERCENT OF THE VALUE OF GIFTS TO A SPOUSE.—Clause (ii) of section 2056 (c)(1)(B) (relating to adjustment to estate tax marital deduction for certain gifts to spouse) is amended by inserting "required to be included in a gift tax return" after "with respect to any gift".

(3) EFFECTIVE DATE.—The amendment made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(h) COORDINATION OF SECTIONS 2513 AND 2035.—

(1) IN GENERAL.—Section 2001 (relating to imposition and rate of estate tax) is amended by adding at the end thereof the following new subsection:

"(e) COORDINATION OF SECTIONS 2513 AND 2035.—If—

"(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

"(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift."

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 2602(a)(1) (relating to amount of tax on generation-skipping transfers) is amended by striking out "section 2001(b))" and inserting in lieu thereof "section 2001(b), as modified by section 2001 (e))".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to the estate of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977.

(i) INCLUSION IN GROSS ESTATE OF STOCK TRANSFERRED BY THE DECEDENT WHERE THE DECEDENT RETAINS OR ACQUIRES VOTING RIGHTS.—

(1) IN GENERAL.—Section 2036 (relating to transfers with retained life estate) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) VOTING RIGHTS.—

"(1) IN GENERAL.—For purposes of subsection(a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

"(2) CONTROLLED CORPORATION.—For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318), or had the right, (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

"(3) COORDINATION WITH SECTION 2035.—For purposes of applying section 2035 with respect to paragraph (1), the relinquishment or cessation of voting rights shall be treated as a transfer of property made by the decedent."

(2) CONFORMING AMENDMENT.—Subsection (t) of section 2036 is amended by striking out the last sentence thereof.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transfer made after June 22, 1976.

(j) AMENDMENTS RELATING TO INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE.—

(1) APPLICATION OF ESTATE TAX EXCLUSION TO INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE.—Subsection (e) of section 2039 (relating to exclusion of individual retirement accounts, etc.) is amended by striking out "section 219" each place it appears and inserting in lieu thereof "section 219 or 220".

(2) TRANSFERS TO INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE TREATED AS TRANSFERS OF PRESENT INTEREST.—Section 2503 (relating to taxable gifts) is amended by adding at the end thereof the following new subsection:

"(d) INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE.—For purposes of subsection (b), any payment made by an individual for the benefit of his spouse—

"(1) to an individual retirement account described in section 408(a),

"(2) for an individual retirement annuity described in section 408(b), or

"(3) for a retirement bond described in section 409, shall not be considered a gift of a future interest in property to the extent that such payment is allowable as a deduction under section 220".

(3) EFFECTIVE DATES.—

"(A) The amendment made by paragraph (1) shall apply to the estate of decedents dying after December 31, 1976.

(B) The amendment made by paragraph (2) shall apply to transfers made after December 31, 1976.

(k) PROVISIONS RELATING TO TREATMENT OF JOINT INTERESTS.—

(1) REMOVAL OF REQUIREMENT OF ACTUARIAL COMPUTATIONS FOR JOINT INTERESTS IN PERSONAL PROPERTY.—

(A) IN GENERAL.—Subchapter (B) of chapter 12 (relating to transfers for purposes of the gift tax) is amended by inserting after section 2515 the following new section:

"SEC. 2515A. TENANCIES BY THE ENTIRETY IN PERSONAL PROPERTY.

"(a) CERTAIN ACTUARIAL COMPUTATIONS NOT REQUIRED.—In the case of—

"(1) the creation (either by one spouse alone or by both spouses) of a joint interest of a husband and wife in personal property with right of survivorship, or

"(2) additions to the value thereof in the form of improvements, reductions in the indebtedness thereof, or otherwise,

the retained interest of each spouse shall be treated as one-half of the value of their joint interest.

"(b) EXCEPTION.—Subsection (a) shall not apply with respect to any joint interest in property if the fair market value of the interest or of the property (determined as if each spouse had a right to sever) cannot reasonably be ascertained except by reference to the life expectancy of one or both spouses."

(B) CHANGING IN SECTION 2515 HEADING.—The heading for section 2515 is amended to read as follows:

"SEC. 2515. TENANCIES BY THE ENTIRETY IN REAL PROPERTY."

(C) CLERICAL AMENDMENTS.—The table of sections for subchapter 8 of chapter 12 is amended by striking out the item relating to section 2515 and inserting in lieu thereof the following:

"SEC. 2515. Tenancies by the entirety in real property."

"Sec. 2515A. Tenancies by the entirety in personal property."

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to joint interests created after December 31, 1976.

(2) EXTENSION OF FRACTIONAL INTEREST RULE TO CERTAIN JOINT INTERESTS IN REAL OR PERSONAL PROPERTY CREATED BEFORE 1977.—Section 2040 (relating to joint interests) as amended by section 504 of this Act, is further amended by adding at the end thereof the following new subsections:

"(d) JOINT INTERESTS OF HUSBAND AND WIFE CREATED BEFORE 1977.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—In the case of any joint interest created before January 1, 1977, which (if created after December 31, 1976) would have constituted a qualified joint interest under subsection (b)(2) (determined without regard to clause (ii) of subsection (b)(2)(B)), the donor may make an election under this subsection to have paragraph (1) of subsection (b) apply with respect to such joint interest.

"(2) TIME FOR MAKING ELECTION.—An election under this subsection with respect to any property shall be made for the calendar quarter in 1977, 1978, or 1979 selected by the donor in a gift tax return filed within the time prescribed by law for filing a gift tax return for such quarter. Such an election may be made irrespective of whether or not the amount involved exceeds the exclusion provided by section 2503(b); but no election may be made under this subsection after the death of the donor.

"(3) TAX EFFECTS OF ELECTION.—In the case of any property with respect to which an election has been made under this subsection, for purposes of this title—

"(A) the donor shall be treated as having made a gift at the close of the calendar quarter selected under paragraph (2), and

"(B) the amount of the gift shall be determined under paragraph (4).

"(4) AMOUNT OF GIFT.—For purposes of paragraph (3)(B), the amount of any gift is one-half of the amount—

"(A) which bears the same ratio to the excess of (i) the value of the property on the date of the deemed making of the gift under paragraph (3)(A), over (ii) the value of such property on the date of the creation of the joint interest, as

"(B) the excess of (i) the consideration furnished by the donor at the time of the creation of the joint interest, over (ii) the consideration furnished at such time by the donor's spouse, bears to the total consideration furnished by both spouses at such time.

"(5) SPECIAL RULE FOR PARAGRAPH (4)(A).—For purposes of paragraph (4)(A)—

"(A) in the case of real property, if the creation was not treated as a gift at the time of the creation, or

"(B) in the case of personal property, if the gift was required to be included on a gift tax return but was not so included, and the period of limitations on assessment under section 6501 has expired with respect to the tax (if any) on such gift,

then the value of the property on the date of the creation of the joint interest shall be treated as zero.

"(6) SUBSTANTIAL IMPROVEMENTS.—For purposes of this subsection, a substantial improvement of any property shall be treated as the creation of a separate joint interest.

"(e) TREATMENT OF CERTAIN POST-1976 TERMINATIONS.—

"(1) IN GENERAL.—If—

(A) before January 1, 1977, a husband and wife had a joint interest in property with right of survivorship,

"(B) after December 31, 1976, a joint interest of such husband and wife in such property (or in property the basis of which in whole or in part reflects the basis of such property) was created,

then paragraph (1) of subsection (b) shall apply to the joint interest described in subparagraph (C) only if an election is made under subsection (d).

"(2) SPECIAL RULES.—For purposes of applying subsection (d) to property described in paragraph (1) of this subsection—

"(A) if the creation described in paragraph (1)(C) occurs after December 31, 1979, the election may be made only with respect to the calendar quarter in which such creation occurs, and

"(B) the creation of the joint interest described in paragraphs (4) and (5) of subsection (d) is the creation of the joint interest described in paragraph (1)(A) of this subsection."

(1) AMENDMENTS RELATING TO ORPHANS' EXCLUSION.—

(1) ORPHANS' EXCLUSION WHERE THERE IS A TRUST FOR MINOR CHILDREN.—Section 2057 (relating to bequests, etc., to certain minor children) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED MINORS' TRUST.—

"(1) IN GENERAL.—For purposes of subsection (a), the interest of a minor child in a qualified minors' trust shall be treated as an interest in property which passes or has passed from the decedent to such child.

"(2) QUALIFIED MINORS' TRUST.—For purposes of paragraph (1), the term 'qualified minors' trust' means a trust—

"(A) except as provided in subparagraph (D), all of the beneficiaries of which are minor children of the decedent,

"(B) the corpus of which is property which passes or has passed from the decedent to such trust,

"(C) except as provided in paragraph (3), all distributions from which to the beneficiaries of the trust before the termination of their interests will be pro rata,

"(D) on the death of any beneficiary of which before the termination of the trust, the beneficiary's pro rata share of the corpus and accumulated income remains in the trust for the benefit of the minor children of the decedent who survive the beneficiary or vests in any person, and

"(E) on the termination of which, each beneficiary will receive a pro rata share of the corpus and accumulated income.

"(3) CERTAIN DISPROPORTIONATE DISTRIBUTIONS PERMITTED.—A trust shall not be treated as failing to meet the requirements of paragraph (2)(C) solely by reason of the fact that the governing instrument of the trust permits the making of disproportionate distributions which are limited by an ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries.

"(4) TRUSTEE MAY ACCUMULATE INCOME.—A trust which otherwise qualifies as a qualified minors' trust shall not be disqualified solely by reason of the fact that the trustee has power to accumulate income.

"(5) COORDINATION WITH SUBSECTION (c).—In applying subsection (c) to a qualified minors' trust, those provisions of section 256(b) which are inconsistent with paragraph (3) or (4) of this subsection shall not apply.

"(6) DEATH OF BENEFICIARY BEFORE YOUNGEST CHILD REACHES AGE 23.—Nothing in this subsection shall be treated as disqualifying an interest of a minor child in a trust solely because such interest will pass to another person if the child dies before the youngest child of the decendent attains age 23."

(2) AGE 23 FOR TERMINABLE INTEREST RULE IN THE CASE OF ORPHANS' EXCLUSION.—The second sentence of subsection (c) of section 2057 (relating to limitation in the case of life estate or other terminable interest) is amended by striking out "21" and inserting in lieu thereof "23".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(m) DISCLAIMER BY SURVIVING SPOUSE WHERE INTEREST PASSES TO SUCH SPOUSE.—

(1) IN GENERAL.—Paragraph (4) of section 2518 (b) (defining qualified disclaimer) is amended to read as follows:

"(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—

"(A) to the spouse of the decedent, or

"(B) to a person other than the person making the disclaimer."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to transfers creating an interest in the person disclaiming made after December 31, 1976.

(n) AMENDMENTS RELATING TO TAX ON GENERATION-SKIPPING TRANSFERS.—

(1) EFFECTIVE DATE OF GENERATION-SKIPPING TRANSFER PROVISIONS.—Section 2006(c) of the Tax Reform Act of 1976 (relating to effective date of generation-skipping transfer provisions) is amended by striking out "April 30, 1976" each place it appears and inserting in lieu thereof "June 11, 1976".

(2) CERTAIN POWERS OF INDEPENDENT TRUSTEES NOT TREATED AS POWERS.—Subsection (e) of section 2613 (relating to definitions for purposes of the tax on generation-skipping transfers) is amended to read as follows:

"(e) CERTAIN POWERS NOT TAKEN INTO ACCOUNT.—

"(1) LIMITED POWER TO APPOINT AMONG LINEAL DESCENDANTS OF THE GRANTOR.—For purposes of this chapter, an individual shall be treated as not having any power in a trust if such individual does not have any present or future power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries who are lineal descendants of the grantor assigned to a generation younger than the generation assignment of such individual.

"(2) POWERS OF INDEPENDENT TRUSTEES.—

"(A) IN GENERAL.—For purposes of this chapter, an individual shall be treated as not having any power in a trust if such individual—

"(i) is a trustee who has no interest in the trust,

"(ii) is not a related or subordinate trustee, and

"(iii) does not have any present or future power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries designated in the trust instrument.

"(B) RELATED OR SUBORDINATE TRUSTEE DEFINED.—For purposes of subparagraph (A), the term 'related or subordinate, trustee' means any trustee who is assigned to a younger generation that the grantor's generation and who is—

"(i) the spouse of the grantor or of any beneficiary,

"(ii) the father, mother, lineal descendant, brother, or sister of the grantor of any beneficiary,

"(iii) an employee of a corporation in which the stockholdings of the grantor, the trust, and the beneficiaries of the trust are significant from the viewpoint of voting control,

"(iv) an employee of a corporation in which the grantor or any beneficiary of the trust is an executive."

"(iv) a partner of a partnership in which the interest of the grantor, the trust, and the beneficiaries of the trust are significant from the viewpoint of operating control or distinctive share of partnership income,".

"(v) an employee of a corporation in which the grantor or any beneficiary of the trust is an executive, or

"(vi) an employee of a partnership in which the grantor or any beneficiary of the trust is a partner.".

(3) CLARIFICATION OF SECTION 2613(b)(2)(B).—Subparagraph (B) of section 2613(b)(2) defining taxable termination for purposes of the tax on generation-skipping transfer) is amended—

(A) by striking out "an interest and a power" and inserting in lieu thereof "a present interest and a present power", and

(B) by striking out "interest or power" and inserting in lieu thereof "present interest or present power".

(4) ALTERNATE VALUATION IN CERTAIN CASES WHERE THERE IS A TAXABLE TERMINATION AT DEATH OF OLDER GENERATION BENEFICIARY.—

(A) IN GENERAL.—Subparagraph (A) of section 2602(d)(1) (relating to alternate valuation) is amended by inserting "(or at the same time as the death of a beneficiary of the trust assigned to a higher generation than such deemed transferor)" after "such deemed transferor".

(B) SPECIAL RULES.—Subparagraph (A) of section 2602(d)(2) (relating to special rules for alternate valuation) is amended by inserting "(or beneficiary)" after "the deemed transferor".

(5) EFFECTIVE DATE.—

(A) Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if included in chapter 13 of the Internal Revenue Code of 1954 as added by section 2006 of the Tax Reform Act of 1976.

(B) The amendment made by paragraph (1) shall take effect on October 4, 1976.

(o) ADJUSTMENT IN INCOME TAX ON ACCUMULATION DISTRIBUTIONS FOR PORTION OF ESTATE AND GENERATION-SKIPPING TRANSFER TAXES.—

(1) IN GENERAL.—Subsection (b) of section 667 (relating to tax on accumulation distribution) is amended by adding at the end thereof the following new paragraph:

"(G) ADJUSTMENT IN PARTIAL TAX FOR ESTATE AND GENERATION-SKIPPING TRANSFER TAXES ATTRIBUTABLE TO PARTIAL TAX.—

"(A) IN GENERAL.—The partial tax shall be reduced by an amount which is equal to the predeath portion of the partial tax multiplied by a fraction—

"(i) the numerator of which is that portion of the tax imposed by chapter 11 or 13, as the case may be, which is attributable (on a proportionate basis) to amounts included in the accumulation distribution, and

"(ii) the denominator of which is the amount of the accumulation distribution which is subject to the tax imposed by chapter 11 or 13, as the case may be.

"(B) PARTIAL TAX DETERMINED WITHOUT REGARD TO THIS PARAGRAPH.—For purposes of this paragraph, the term 'partial tax' means the partial tax imposed by subsection (a)(2) determined under this subsection without regard to this paragraph.

"(C) PRE-DEATH PORTION.—For purposes of this paragraph, the pre-death portion of the partial tax shall be an amount which bears the same ratio to the partial tax as the portion of the accumulation distribution which is attributable to the period before the date of the death of the decedent or the date of the generation-skipping transfer bears to the total accumulation distribution."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply—

(A) in the case of the tax imposed by chapter 11 of the Internal Revenue Code of 1954, to the estates of decedents dying after December 31, 1979, and

(B) in the case of the tax imposed by chapter 13, to any generation-skipping transfer (within the meaning of section 2611(a) of such Code) made after June 11, 1976.

(p) RELIEF OF EXECUTOR FROM PERSONAL LIABILITY IN THE CASE OF RELIANCE ON GIFT TAX RETURNS.—

(1) IN GENERAL.—Section 2204 (relating to discharge of fiduciary from personal liability) is amended by adding at the end thereof the following new subsection:

"(d) GOOD FAITH RELIANCE ON GIFT TAX RETURNS.—If the executor in good faith relies on gift tax returns furnished under section 6103(e)(3) for determining the decedent's adjusted taxable gifts, the executor shall be discharged from personal liability with respect to any deficiency of the tax imposed by this chapter which is attributable to adjusted taxable gifts which—

"(1) are made more than 3 years before the date of the decedent's death, and

"(2) are not shown on such returns.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to the estates of decedents dying after December 31, 1976.

(q) AMENDMENT OF GOVERNING INSTRUMENTS TO MEET REQUIREMENTS FOR GIFTS OF SPLIT INTEREST TO CHARITY.—In the case of deductions under sections 170, 2055, and 2522 of the Internal Revenue Code of 1954 to which the limitations of sections 170(f)(2), 2055(e)(2)(B), and 2522(c)(2) of such Code apply, provisions comparable to section 2055(e)(3) of such Code shall apply except that the date "1978" shall be substituted for "1977" wherever it appears in section 2055(e)(3) of such Code.

(r) INDEXING OF FEDERAL TAX LIENS.—

(1) IN GENERAL.—Paragraph (4) of section 6323(f) (relating to indexing of tax liens) is amended to read as follows:

"(4) INDEXING REQUIRED WITH RESPECT TO CERTAIN REAL PROPERTY.—In the case of real property, if—

"(A) under the laws of the State in which the real property is located, a deed is not valid as against a purchaser of the property who (at the time of purchase) does not have actual notice or knowledge of the existence of such deed unless the fact of filing of such deed has been entered and recorded in a public index at the place of filing in such a

manner that a reasonable inspection of the index will reveal the existence of the deed, and

"(B) there is maintained (at the applicable office under paragraph (1)) an adequate system for the public indexing of Federal tax liens,

then the notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph (1) unless the fact of filing is entered and recorded in the index referred to in subparagraph (B) in such a manner that a reasonable inspection of the index will reveal the existence of the lien.".

(2) REFILING OF NOTICE OF LIEN.—Section 6323(g)(2)(A) (relating to refiling of notice of lien) is amended to read as follows:

"(A) if—

"(i) such notice of lien is refiled in the office in which the prior notice of lien was filed, and

"(ii) in the case of real property, the fact of refiling is entered and recorded in an index to the extent required by subsection (f)(4); and".

(3) EFFECTIVE DATE.—

(A) The amendments made by this subsection shall apply with respect to liens, other security interests, and other interests in real property acquired after the date of the enactment of this Act.

(B) If, after the date of the enactment of this Act, there is a change in the application (or nonapplication) of section 6323(f)(4) of the Internal Revenue Code of 1954 (as amended by paragraph (1)) with respect to any filing jurisdiction, such change shall apply only with respect to liens, other security interests, and other interests in real property acquired after the date of such change.

(s) CLERICAL AMENDMENTS.—

(1) CLERICAL AMENDMENTS WITH RESPECT TO SECTION 6694.—

(A) IN GENERAL.—Section 6694 (relating to failure to file information with respect to carryover basis property) which was added by section 2005(d)(2) of the Tax Reform Act of 1976 is redesignated as section 6698.

(B) DEFICIENCY PROCEDURES NOT TO APPLY.—Section 6698 (as redesignated by subparagraph (A)) is amended by adding at the end thereof the following new subsection:

"(c) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a)."

(C) TABLE OF SECTIONS.—The table of sections for subchapter B of chapter 68 is amended by striking out

"Sec. 6694. Failure to file information with respect to carryover basis property."

and inserting in lieu thereof the following:

"Sec. 6698. Failure to file information with respect to carryover basis property."

(2) CLERICAL AMENDMENT TO SECTION 2051.—Section 2051 (defining taxable estate) is amended by striking out "exemption and".

(3) CLERICAL AMENDMENT TO SECTION 1016(a).—Subsection (a) of section 1016 (relating to adjustments to basis) is amended by redesignating paragraph (23) as paragraph (21).

(4) CLERICAL AMENDMENT TO SECTION 6324B(b).—Subsection (b) of section 6324B (relating to period of lien for additional estate tax attributable to farm, etc., valuation) is amended by striking out "qualified farm real property" and inserting in lieu thereof "qualified real property".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to estates of decedents dying after December 31, 1976.

SEC. . CORRETIONS OF PUNCTUATION, SPELLING, INCORRECT CROSS REFERENCES, ETC.

(a) ERRONEOUS CROSS REFERENCE IN INVESTMENT CREDIT.—

(1) AMENDMENT OF SECTION 46(f)(8).—The first sentence of paragraph (8) of section 46(f) is amended by striking out "subsection (a)(6)(D)" and inserting in lieu thereof "subsection (a)(7)(D)".

(2) AMENDMENT OF SECTION 46(g)(5).—Paragraph (5) of section 46(g) (relating to definitions) is amended by striking out "Merchant Marine Act, 1970" and inserting in lieu thereof "Merchant Marine Act, 1936".

(3) AMENDMENT OF SECTION 48(d)(1)(B).—Subparagraph (B) of section 48(d)(1) is amended by striking out "section 46(a)(5)" and inserting in lieu thereof "section 46(a)(6)".

(4) AMENDMENT OF SECTION 84(d)(4)(D).—Subparagraph (D) of section 48(d)(4) is amended by striking out "section 57(c)(2)" and inserting in lieu thereof "section 57(c)(1)(B)".

(b) PREPAID LEGAL SERVICES.—

(1) Paragraph (2) of section 2134(e) of the Tax Reform Act of 1976 is amended by striking out "section 120(d)(6)" and inserting in lieu thereof "section 120(d)(7)".

(2) Paragraph (20) of section 501(c) is amended by striking out "section 501(c)(20)" and inserting in lieu thereof "this paragraph".

(c) AMENDMENTS RELATING TO SECTIONS 219 AND 220.—

(1) AMENDMENT OF SECTION 219(c)(4).—Paragraph (4) of section 219(c) (relating to participation in governmental plans by certain individuals) is amended by striking out "subsection (b)(3)(A)(iv)" each place it appears and inserting in lieu thereof "subsection (b)(2)(A)(iv)".

(2) AMENDMENT OF SECTION 220(b)(1)(A).—Subparagraph (A) of section 220(b)(1) (relating to retirement savings for certain married individuals) is amended by striking out "amount paid to the account or annuity, or for the bond" and inserting in lieu thereof "amount paid to the account, for the annuity, or for the bond".

(3) AMENDMENT OF SECTION 220(b)(4).—Paragraph (4) of section 220(b) is amended by inserting "described in subsection (a)" after "any payment".

(4) AMENDMENT OF SECTION 408(d)(4).—Subparagraph (A) of section 1501(b)(5) of the Tax Reform Act of 1976 is amended to read as follows:

"(A) by inserting 'or 220' after '219' each place it appears, and".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1976.

(d) ACCRUAL ACCOUNTING FOR FARM CORPORATIONS.—Subsections (a) and (g)(2) of section 447 are each amended by striking out "preproductive expenses" and inserting in lieu thereof "preproductive period expenses."

(e) AMENDMENT OF SECTION 911.—Subsection (c) of section 911 is amended by redesignating paragraph (8) as paragraph (7).

(f) TRANSITION RULE FOR PRIVATE FOUNDATIONS.—Subparagraph (F) of section 101(1)(2) of the Tax Reform Act of 1969 (relating to private foundations savings provisions) is amended by striking out the period at the end of clause (i) and inserting in lieu thereof a comma.

(g) LOBBYING BY PUBLIC CHARITIES.—

(1) LOBBYING NONTAXABLE AMOUNT.—Paragraph (2) of section 4911(c) (defining lobbying nontaxable amount) is amended by striking out "proposed expenditures" in the heading of the table contained in such paragraph and inserting in lieu thereof "exempt purpose expenditures".

(2) TECHNICAL AMENDMENTS RELATING TO SECTION 501.—

(A) Section 2(a) of Public Law 94-568 is amended by striking out "subsection (h) as subsection (i) and by inserting after subsection (g)" and inserting in lieu thereof "subsection (i) as subsection (j) and by inserting after subsection (h)".

(B) Subsection (g) of section 501 of the Internal Revenue Code of 1954 (as inserted by section 2(a) of Public Law 94-568) is redesignated as subsection (i).

(C) The amendments made by this paragraph shall take effect on October 20, 1976, as if included in Public Law 94-568.

(h) AMENDMENTS TO FOREIGN TAX PROVISIONS.—

(1) Paragraph (2) of section 1035(c) of the Tax Reform Act of 1976 (relating to tax credit for production-sharing contracts) is amended—

(A) by inserting "(as defined in section 907(c) of such Code)" after "gas extraction income" in subparagraph (A), and

(B) by striking out "(as defined in section 907(c)(1) of such Code)" in subparagraph (B) and inserting in lieu thereof "(as so defined)".

(2) Paragraph (1) of section 999(c) (relating to international boycott factor) is amended by striking out "995(b)(3)" and inserting in lieu thereof "995(b)(1)(F)(ii)".

(3) Paragraph (2) of section 999(c) is amended by striking out "995(b)(1)(D)(ii)" and inserting in lieu thereof "995(b)(1)(F)(ii)".

(i) AMENDMENTS TO DISC PROVISIONS.—

(1) The last two sentences of section 995(b)(1) (relating to deemed distributions to shareholders of a DISC) are amended—

(A) by striking out "gross income (taxable income in the case of subparagraph (D))" and inserting in lieu thereof "income"; and

(B) by striking out "subparagraph (E)" and inserting in lieu thereof "subparagraph (G)".

(2) Subparagraph (G) of section 995(b)(1) is amended by striking out "subsection (D)" and inserting in lieu thereof "subsection (d)".

(3) Paragraph (2) of section 996(a) (relating to qualifying distributions) is amended by striking out "section 995(b)(1)(E)" and inserting in lieu thereof "section 995(b)(1)(G)".

(4) Paragraph (5) of section 1101(g) of the Tax Reform Act of 1976 is amended by striking out "section 993(e)(3)" and inserting in lieu thereof "section 995(e)(3)".

(j) AMENDMENTS RELATING TO DEADWOOD PROVISIONS.—

(1) TAX EXEMPT GOVERNMENTAL OBLIGATIONS.—

(A) The heading of paragraph (1) of section 103(b) is amended to read as follows:

"(1) SUBSECTION (a)(1) OR (2) NOT TO APPLY.—".

(B) Paragraph (1) of section 103(c) is amended by striking out "(a) (1) or (4)" each place it appears (including in the paragraph heading) and inserting in lieu thereof "(a) (1) or (2)".

(C) Subparagraph (A) of section 103(c)(2) is amended by striking out "subsection (a) (1) or (2) or (4)" and inserting in lieu thereof "subsection (a) (1) or (2)".

(D) Paragraph (5) of section 103(c) is amended by striking out "subsection (d)(2)(A)" and inserting in lieu thereof "paragraph (2)(A)".

(E) Subsection (d) of section 103 is amended by striking out "subsection (c)(4)(G)" and inserting in lieu thereof "subsection (b)(4)(G)".

(2) AMENDMENTS RELATING TO SECTION 311(d)(2).—

(A) Subsection (b) of section 2 of the Bank Holding Company Tax Act of 1976 is amended—

(i) by striking out "subparagraph (F)" and inserting in lieu thereof "subparagraph (E)", and

(ii) by striking out "subparagraph (G)" and inserting in lieu thereof "subparagraph (F)".

(B) Subparagraph (H) of section 311(d)(2) is redesignated as subparagraph (G).

(C) The amendments made by this paragraph shall take effect as if included in section 2(b) of the Bank Holding Company Tax Act of 1976.

(3) AMENDMENT TO SECTION 453(c).—Paragraph (3) of section 453(c) is amended—

(A) by striking out "(or by the corresponding provisions of prior revenue laws)" in the first sentence, and

(B) by striking out the last sentence.

(4) AMENDMENT OF SECTION 801(g).—Paragraphs (1)(B)(ii) and (7) of section 801(g) are each amended by striking out "subparagraph (A) (B), (C), (D), or (E) of section 805(d)(1)" and inserting in lieu thereof "any paragraph of section 805(d)".

(5) AMENDMENT OF SECTION 1033(a)(2).—Clause (ii) of section 103(a)(2)(A) is amended by striking out "subsection (c)" and inserting in lieu thereof "subsection (b)".

(6) AMENDMENT OF SECTION 1375(a).—Paragraph (2) of section 1375(a) is amended by striking out "such excess" each place it appears and inserting in lieu thereof "such gain".

(7) AMENDMENT OF SECTION 1561(b)(3).—Paragraph (3) of section 1561(b) is amended by striking out "804(a)(4)" and inserting in lieu thereof "804(a)(3)".

(8) AMENDMENTS OF SECTION 1402.—

(A) The last paragraph of section 1402(a) of the Internal Revenue Code of 1954 (definition of net earnings from self-employment) is amended by striking out "subsection (i)" each place it appears and inserting in lieu thereof "subsection (h)".

(B) Section 1402(c)(6) of such Code (definition of trade or business) is amended by striking out "subsection (h)" and inserting in lieu thereof "subsection (g)".

(9) AMENDMENT TO SECTION 46(a).—Subparagraph (C) of section 1901(b)(1) of the Tax Reform Act of 1976 is amended by striking out "Section 46(a)(3)" and inserting in lieu thereof "Section 46(a)(4)".

(10) AMENDMENT RELATING TO SECTION 6504.—Subparagraph (D) of section 1901(b)(37) of the Tax Reform Act of 1976 is amended by striking out "6515" and inserting in lieu thereof "6504."

(11) TERRITORIES.—Subsection (c) of section 1901 of the Tax Reform Act of 1976 (relating to Territories) is amended by striking out paragraph (1) thereof.

(12) ESTATE AND GIFT TAXES EFFECTIVE DATE.—Subsection (c) of section 1902 of the Tax Reform Act of 1976 is amended to read as follows:

"(c) EFFECTIVE DATES.—

"(1) ESTATE TAX AMENDMENTS.—The amendments made by paragraphs (1) through (8), and paragraphs (12) (A), (B), and (C), of subsection (a) and by subsection (b) shall apply in the case of estates of decedents dying after the date of the enactment of this Act, and the amendment made by paragraph (9) of subsection (a) shall apply in the case of estates of decedents dying after December 31, 1970.

"(2) GIFT TAX AMENDMENTS.—The amendments made by paragraphs (10), (11), and (12) (D) and (E) of subsection (a) shall apply with respect to gifts made after December 31, 1976."

(13) EFFECTIVE DATE FOR AMENDMENT MADE BY SECTION 190(a)(22)(A).—Notwithstanding section 1904 (d) of the Tax Reform Act of 1976, the amendment made by section 1904 (a)(22)(A) of such Act shall take effect on the date of the enactment of such Act.

(14) AMENDMENTS TO SOCIAL SECURITY ACT.—

(A) Section 202(v) of the Social Security Act is amended by striking out "section 1402 (h)" each place it appears and inserting in lieu thereof "section 1402(g)".

(B) Section 205(p)(3) of such Act is amended by striking out "Secretary of the Treasury" and inserting in lieu thereof "Secretary of Transportation".

(C) Section 210(a)(6)(B)(v) of such Act is amended by striking out "Secretary of the Treasury" and inserting in lieu thereof "Secretary of Transportation".

(D) Section 211(a)(2) of such Act is amended by striking out "(other than interest described in section 35 of the Internal Revenue Code of 1954)".

(E) Section 211(c)(6) of such Act is amended by striking out "section 1402(h)" and inserting in lieu thereof "section 1402(g)".

(k) CAPITAL LOSS CARRYOVERS.—Clause (ii) of section 1212(a)(1)(C) (relating to capital loss carryovers for foreign expropriation losses) is amended by striking out "exceeding the loss year" and inserting in lieu thereof "succeeding the loss year".

(l) AMENDMENTS RELATING TO CERTAIN AIRCRAFT MUSEUMS.—

(1) Paragraph (2) of section 4041(h) (defining aircraft museum) is amended by striking out "term 'aircraft' means" and inserting in lieu thereof "term 'aircraft museum' means".

(2) Subsection (i) of section 4041 (as added by section 1904(a)(1)(C) of the Tax Reform Act of 1976) is redesignated as subsection (j).

(3) Subsection (d) of section 6427 (relating to repayment of tax on fuels used by certain aircraft museums) is amended by striking out "Secretary or his delegate" and inserting in lieu thereof "Security".

(4) Paragraph (1) of section 7609(c) (defining summons to which section applies) is amended by striking out "6427(e)(2)" and inserting in lieu thereof "6427(f)(2)".

(m) INSPECTION BY COMMITTEE OF CONGRESS.—Paragraph (2) of section 6104(a) (relating to inspection by committee of Congress) is amended by striking out "Section 6103(d)" and inserting in lieu thereof "Section 6103(f)".

(n) AMENDMENT OF SECTION 6501.—Subsections (h), (j), and (o) of section 6501 are each amended by striking out "section 6213(b)(2)" and inserting in lieu thereof "section 6213(b)(3)".

(o) CONFORMING AMENDMENTS TO NEW DEFINITION OF TAXABLE INCOME.—

(1) Subparagraph (A) of section 443(b)(2) (relating to computation based on 12-month period) is amended—

(A) by striking out "taxable income" the second and third places it appears in clause (i) and inserting in lieu thereof "modified taxable income", and

(B) by amending clause (ii) to read as follows:

"(ii) the tax computed on the sum of the modified taxable income for the short period plus the zero bracket amount."

(2) Paragraph (1) of section 443(b) is amended by striking out "gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions)" and inserting in lieu thereof "modified taxable income for such short period".

(3) Subsection (b) of section 443 is amended by adding at the end thereof the following new paragraph:

"(3) MODIFIED TAXABLE INCOME DEFINED.—For purposes of this subsection the term 'modified taxable income' means, with respect to any period, the gross income for such period minus the deductions allowed by this chapter for such period (but, in the case of a short period, only the adjusted amount of the deductions for personal exemptions)."

(4) The amendments made by this subsection shall apply to taxable years beginning after December 31, 1976.

(p) CONFORMING AMENDMENTS TO REPEAL OF SECTION 317 OF TRADE EXPANSION ACT OF 1962.—

(1) AMENDMENTS OF SECTION 172.—

(A) Subparagraph (A) of section 172(b)(1) (relating to years to which loss may be carried) is amended to read as follows:

"(A) Except as provided in subparagraphs (D), (E), (F), and (G), a net operating loss for any taxable year shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss."

(B) Paragraph (3) of section 172(b) (relating to special rules) is amended by striking out subparagraphs (A) and (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (A), (B), and (C) respectively

(C) Subparagraph (B) of section 172(b)(3) (as redesignated by subparagraph (B)) is amended by striking out "subparagraph (C)(iii)" each place it appears and inserting in lieu thereof "subparagraph (A)(iii)".

(2) AMENDMENT OF SECTION 6501(h).—Subsection (h) of section 6501 (relating to net operating loss or capital loss carryback) is amended by striking out the last sentence.

(3) AMENDMENT OF SECTION 6511(d)(2).—The first sentence of section 6511(d)(2)(A) (relating to special period of limitation for net operating loss or capital loss carrybacks) is amended by striking out "except that—" and all that follows down through the period at the end of such sentence and inserting in lieu thereof the following: "except that with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A), the period shall not expire before the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to losses sustained in taxable years ending after the date of the enactment of this Act.

(q) CONFORMING AMENDMENT TO REPEAL OF SECTION 2 OF THE EMERGENCY INSURED STUDENT LOAN ACT OF 1969.—

(1) IN GENERAL.—Paragraph (5) of section 103(d) (relating to arbitrage bonds) is amended by striking out "section 2 of the Emergency Insured Student Loan Act of 1969" and inserting in lieu thereof "section 438 of the Higher Education Act of 1965".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to payments made by the Commissioner of Education after December 31, 1976.

(r) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall take effect on October 4, 1976.

Mr. LONG. Mr. President, as I understand it, this amendment was agreed to unanimously as an amendment to the bill. I ask it be added to the committee substitute.

Mr. PROXMIRE. Before we act on that, will the Senator inform us whether 911 is included in there, the overseas matter?

Mr. LONG. It is included.

Mr. PROXMIRE. It is included, and this would have no revenue effect whatsoever, simply a technical modification?

Mr. LONG. It is minor revenue effect which is taken into consideration. This is already on the bill itself. This has been taken into account. The bill passed by the House, before they passed the bill we are presently considering, and it had been added to the bill. It simply

is a matter of being added to the committee amendment.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment (UP No. 2044) was agreed to.

Mr. MUSKIE. Mr. President, I do not know whether there are other Senators who wish time between now and 2 o'clock. I understand I have 12½ minutes left. I yield myself 30 seconds so that I may make one observation about the mounting costs of this bill.

Now, Members who have been following the debate noted that many amendments have been adopted which have escaped the discipline of the 1979 concurrent resolution, because the date has been slipped toward the end of this fiscal year with the full year costs of the amendments not apparent until fiscal year 1980 and beyond.

I simply want to say, as a rough estimate at this point, certainly, we have added $10 billion in full year tax reductions that will have full effect subsequent to fiscal year 1979.

I am going to do my best, and I am sure the distinguished floor manager will cooperate fully in this, in describing the full year costs of amendments which have been added at dates which minimize the full year's costs in fiscal year 1979.

I thought Members ought to understand that has taken place and that we have to take it into account before we ask Members to vote finally on this bill. But the total cost of that bill on a full year basis now is at least $50 billion, including the amendments which do not take effect fully in fiscal year 1979.

So Members ought to understand that, that it is the sort of thing we do on the floor with tax bills, as my good friend, Senator LONG, understands all too well, and we hope to have a complete analysis at that time.

Mr. President, as I understand the parliamentary situation, Senator LONG and I share the time until 2 o'clock. At that time, we begin debate on the conference reports. At 3 o'clock, we begin debate on the Heinz amendment for 20 minutes, which will then go to a vote about 3:20, and then after that vote, there will be, hopefully, 20 minutes of time left to debate the first cloture motion, and at 4 o'clock, we will have back to back votes on the conference reports, to be followed by a vote on the first cloture motion, and if that one fails, that we then have an hour of debate on the second cloture motion.

That is as I understand the time situation this afternoon. May I ask the Presiding Officer whether or not I have accurately described the scenario for the afternoon up until about 5 to 5:30?

The PRESIDING OFFICER. Let me say that the time from now until 2 o'clock is under the control of the Senator from Louisiana, the Senator from Wyoming, and the Senator from Maine.

I say that from 2 to 3, the time is not under control, but will be used up in debating the conference reports, two different conference reports on the energy legislation.

At 3 o'clock the Heinz amendment will be laid down.

Mr. MUSKIE. How much time do I have remaining between now and 2 o'clock?

The PRESIDING OFFICER. Twelve and a half minutes.

Mr. MUSKIE. I am happy to yield.

Mr. PROXMIRE. If the Senator could yield me 10 minutes, I would appreciate it. If not, I would be happy to take only part of it.

Mr. MUSKIE. Let me have 2 minutes.

Mr. PROXMIRE. All right.

Mr. MUSKIE. The Senator can have the rest of my time if no others wish it.

Mr. President, I would simply like to make this point about the first cloture motion which will be voted on sometime around 4:30 this afternoon.

The effect of that motion, if approved by the Senate, will be to set aside all nongermane amendments, including the sunset amendment, the Glenn amendment to the sunset amendment. I am not sure what the status of Humphrey-Hawkins is with respect to that motion, but I suspect it may affect that as well.

If that cloture motion prevails, all nongermane amendments are ruled out for the balance of the consideration of the tax bill.

So I would like to make the point to those who are interested in the sunset amendment, particularly, because that is of primary concern to me, that a vote for cloture at that time is a vote against the consideration of the sunset bill, in connection with this legislation, and, in my judgment, it will be the last effective chance we will have, however, effective that may be, it will be the last effective chance that we will have to vote for sunset.

I will repeat this theme at, roughly, quarter of 4, or thereabouts, if there is time left after the vote on the Heinz amendment. But I wanted to make that point, and only that point, at this moment.

Now I yield to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I thank the distinguished Senator from Maine.

Mr. President, what I would like to explain to the Senate is the posture, and I think I speak for the Senator from Ohio, too, on this. He has been doing the kind of job I think we should do with respect to this bill.

Mr. President, once again we have a tax bill before us, and once again we are faced with the prospect of having a series of tax amendments, some already in the bill and some in the pockets of various Senators, which would give tax relief for very narrow purposes and for the benefit of one or a very few taxpayers.

They are the "bearded, one-eyed man, with a limp," amendments, mostly couched in general terms but with specific dates and provisions which limit their application to one or a few individuals or companies.

That is why I say a one-eyed man, with a limp, because they have to be very special to qualify.

What is wrong with that? Here is the answer.

First, we set up the Tax Court to take care of the cases where an individual believes that the law has been misinterpreted or the IRS or the Government has been arbitrary. The purpose of the Tax Court is to take care of the special relief provisions through the judicial process and not by seeing who can hire the highest priced Washington, D.C. lawyer with the biggest political clout.

Second, where there is still a grievance or an inequity, the proper legislative procedures should be followed. Under the Constitution tax bills should start in the House. There should be a hearing, a report, a Treasury position, and a vote in the committee followed by passage or rejection by the House of Representatives.

On the Senate side, the same procedures should be followed—hearings markup, approval, a committee report, placed on the calendar, and scheduling for passage.

So far as this Senator is concerned, if those procedures are followed I believe the Senate should have a chance to vote a bill up or down, no matter how good or how bad an amendment or provision is. And I have no objections to the Senate acting on amendments to tax bills which have general application.

But instead, time after time, we are confronted at the last minute with an amendment drawn up to benefit some specific person or company, often without a hearing or a report, with no bill from the House. Time and time again, we are asked to accept what is little more than a private relief bill as an amendment to a bill establishing the general corporate tax rate, the level of taxes for individuals, and policy with respect to broad public tax issues.

It was just such an amendment which provided one of the biggest loopholes ever placed in a tax bill, the so-called unlimited charitable deduction provision which was added to a general tax bill to help a nun in Philadelphia. It looked like a fine provision on behalf of a worthy person, but it turned out to be one of a handful of major causes why some persons with millions of dollars in income paid no taxes.

I want to say, in fairness to the chairman of the Finance Committee and his staff, that there has been a general improvement in the procedures, although I believe much is left to be done.

He and his staff now generally provide us with the facts of the amendments, the Treasury position, who benefits, and the cost to the taxpayers. As a result the "Christmas Tree" provisions have been somewhat less bad recently, and because of the information provided, some of us have been able to draw attention to them and to stop them. But, for all the improvement, much still needs to be done.

Now let me be specific.

In this bill, we already have some "bearded, one-eyed man, with a limp" amendments.

First, there is the E. F. Hutton amendment. When E. F. Hutton talks, the Senate Finance Committee listens. The revenue loss for the next 2 calendar years under the amendment is between $7 and $9 million a year. The provision benefits one security firm and only a very small

number of industrial corporations. It provides no benefit at all to State and local governments.

Second, there is a Texas International Airways amendment worth several million dollars.

Airlines have received very generous tax provisions in recent years. They have been able to take the 3-year carryback and 7-year carry forward provisions for investment credits which greatly helped them when their earnings were low.

In addition, in 1976, this industry was given the option of taking a 10-year carry forward in lieu of the 3-year carryback and 7-year carry forward provision.

Further, the law that limited the investment credit to offset no more than 50 percent of tax liability was increased to allow the airlines to write off 100 percent, thus using their unused tax credits.

Now one airline primarily, which, even with all these favorable general provisions, has been unable to use all of its back credits, has come forward with a tax provision to allow them 1 more year or 11 years.

It is possible that one or more other airlines will get some minor tax breaks from this provision, but essentially it is the Texas International Airways provision—a relief bill for one company.

The Treasury is opposed, but the amendment is in the bill.

There are other provisions in the bill as well. Generally, the investment tax credit has been denied for investments in structures as opposed to machinery and capital equipment. But the committee bill provides it for pigpens, chicken coops, and greenhouses.

The bill also provides an investment tax credit for breed and draft horses, although there is apparently no shortage of them demanding a tax incentive.

There is an amendment benefiting two poultry producers, one in Maine and one in Arkansas, by exempting them from the 1976 reforms requiring large farm corporations to use the accrual method of accounting. Similar provisions were provided for large sod farms.

Not only are these amendments in the bill, but also, others are lurking in the cloakrooms and corridors, ready to be proposed at the appropriate time.

One amendment would mean about $3 million to the New England Patriots football team.

Yet another would allow an independent local newspaper to make tax deductible transfers to a tax exempt trust for the purpose of paying an owner's estate tax.

When these amendments are proposed, I intend to ask certain specific questions about them.

Is there a House-passed bill?

Has there been a hearing on them?

What is the Treasury position?

What specific person or company will benefit from the provision?

How much is the revenue loss?

Have they sought a judgment in the Tax Court?

The answers to these questions may be so embarrassing that they will be withdrawn or not pressed to a vote. They may help the managers of the bill reject them. In some cases the objections can be met. In any case, I will certainly want to know the answers to these questions before I give any unanimous agreement for time to vote on them or not object to their passage.

I think we should pass a general tax bill with general tax provisions. I am willing to vote general provisions up or down. But this bill should not be a vehicle for the private relief of every taxpayer with an alleged problem or who is seeking a special favor, or who has received bad advice, or who did not meet the provisions of the general law and wants a special exemption.

Those problems should first go to the tax court. Second, individual bills should be taken up in proper sequence in the House and Senate, and judged separately on their merits. They should generally meet the approval of the Treasury or at least not be objected to.

I hope very much, Mr. President, that that kind of procedure can be followed with respect to the debate on this bill and in the future.

The PRESIDING OFFICER (Mr. CHILES). All time of the Senator from Maine has expired.

The Senator from Louisiana has 4 minutes remaining, and the Senator from Wyoming has a minute and a half.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. I yield 2 minutes to the Senator from New York.

AMENDMENT NO. 3976

(Purpose: To amend the Internal Revenue Code of 1954 to allow the tax-free rollovers of certain amounts received under section 403(b) annuities)

Mr. MOYNIHAN. Mr. President, I call up amendment No. 3976.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposed an amendment numbered 3976.

Mr. MOYNIHAN. 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 182, between lines 16 and 17, insert the following:

SEC. 136. ROLLOVER OF DISTRIBUTION UNDER SECTION 403(b) ANNUITY CONTRACT.

(a) GENERAL RULE.—Subsection (b) of section 403 (relating to annuities purchased by certain exempt organizations and public schools) is amended by adding the following new paragraph:

"(8) ROLLOVER AMOUNTS.—In the case of an annuity contract described in paragraph (1), if—

"(A) the balance to the credit of an employee is paid to him in one or more distributions which would constitute a lump sum distribution within the meaning of section 402(e)(4)(A) (determined without reference to section 402(e)(4)(B)) if such annuity contract was described in section 403(a),

"(B)(i) the employee transfers all the property he receives in such distribution to an individual account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), or

"(ii) the employee transfers all the property he receives in such distribution to an annuity contract described in paragraph (1) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), and

"(C) the amount so transferred consists of the property distributed to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distribution is not includible in gross income for the year in which paid. For purposes of this paragraph, all annuity contracts described in paragraph (1) purchased by an employer shall be treated as a single contract, and section 402(e)(4)(C) shall not apply. For purposes of applying subparagraph (A), section 402(e)(4)(H) (relating to minimum periods of service) shall be considered to be satisfied with respect to an employee if amounts were contributed by his employer for an annuity contract described in paragraph (1) for 5 or more taxable years before the taxable year in which such amounts are distributed. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution described in section 408(d)(3)."

(b) ROLLOVER CONTRIBUTION.—

(1) Subparagraph (A) of section 408(d)(3) (relating to rollover contributions) is amended by striking out clause (ii) and inserting in lieu thereof the following:

"(ii)(I) the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity,

"(II) no amount in the account and no part of the value of the annuity is attributable to any source other than qualified rollovers and any earnings on such rollovers, and

"(III) the entire amount thereof is paid to another trust (for the benefit of such individual), annuity plan, or contract, referred to in the last sentence of this subparagraph not later than 60th day after the day on which he receives the payment or distribution.

For purposes of clause (ii), the term 'qualified rollover, means any rollover contribution from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a) (other than an annuity plan or trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan) or from an annuity contract described in section 403(b)."

(2) Subparagraph (C) of section 409(b)(3) is amended—

(A) by striking out "or an annuity plan described in section 403(a)" and inserting in lieu thereof "an annuity plan described in section 403(a), or an annuity contract described in section 403(b)", and

(B) by striking out "annuity plan" each place it appears in the last sentence and inserting in lieu thereof "annuity plan or contract".

(c) TREATMENT OF ROLLOVER CONTRIBUTIONS.—Section 403(b)(1) (relating to annuities purchased by certain exempt organizations and public schools) is amended by adding at the end thereof the following sentence: "For purposes of applying the rules of this subsection to amounts con-

tributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8)(B)(ii) of this subsection or section 408(d)(3)(A)(ii) or 409(d)(3)(C) shall not be considered contributed by such employer."

(d) Conforming Amendment.—

(1) Sections 219(b)(4), 220(b)(5), 408(a)(1), 409(a)(4), and 4973(b)(1)(A) are each amended by inserting "403(b)(8)," after "403(a)(4)," each place it appears.

(2) Section 2039(e) is amended by inserting after "403(a)(4)," the following: "section 403(b)(8) (but only to the extent such contribution is attributable to a distribution from a contract described in subsection (c)(3)),".

(3) Section 4973(c)(1) is amended by inserting after "account" the following: "(other than a rollover, contribution described in section 403(b)(8), 408(d)(3)(A)(ii), or 409(d)(3)(C))".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions or transfers made after December 31, 1977, in taxable years beginning after that date.

Mr. MOYNIHAN. Mr. President, this is a simple matter. It has no revenue effect. It is agreed to on both sides of the aisle. It is supported by the Department of the Treasury.

This amendment simply would allow teachers and other employees of nonprofit organizations to take the assets of their retirement plans and, when they leave one employment, reinvest them in the retirement plans of the new employers or in individual retirement accounts. In this respect, they would be treated like their private sector counterparts.

This seems to me a sensible arrangement, particularly at a time when teachers increasingly find they have to move from one school system to another.

I ask the Senate to accept this amendment.

Mr. LONG. Mr. President, I understand that the Treasury has no objection to the amendment and, so far as I know, there is no objection to it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MOYNIHAN. I thank the distinguished chairman. I have one other matter.

AMENDMENT 3978

Mr. President, I call up printed amendment No. 3978.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an amendment numbered 3978.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. LONG. I yield 1 additional minute to the Senator.

Mr. MOYNIHAN. I thank the chairman.

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:

At the appropriate place insert the following new section:

SEC. . CERTAIN ORIGINAL STOCKHOLDERS OF COOPERATIVE HOUSING CORPORATIONS

(a) IN GENERAL.—Subsection (b) of section 216 (relating to deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder) is amended by adding at the end thereof the following new paragraph:

"(6) STOCK OWNED BY PERSON FROM WHOM THE CORPORATION ACQUIRED ITS PROPERTY.—

"(A) IN GENERAL.—If the original seller acquires any stock of the corporation—

"(i) from the corporation by purchase, or

"(ii) by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest in such stock held by the original seller,

the original seller shall be treated as a tenant-stockholder for a period not to exceed three years from the date of acquisition.

"(B) ORIGINAL SELLER MUST HAVE RIGHT TO OCCUPY APARTMENT OR HOUSE.—Subparagraph (A) shall apply with respect to any acquisition of stock only if, together with such acquisition, the original seller acquires the right to occupy an apartment or house to which such stock is appurtenant. For purposes of the preceding sentence, there shall not be taken into account the fact that, by agreement with the corporation, the original seller or its nominee may not occupy the house or apartment without the prior approval of the corporation.

"(C) ORIGINAL SELLER DEFINED.—For purposes of this paragraph, the term 'original seller' means the person from whom the corporation has acquired the apartments or houses (or leaseholds therein)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock acquired after the date of the enactment of this Act.

Mr. MOYNIHAN. Mr. President, this is a simple amendment. It has no revenue effect, and it is supported by the Treasury.

It has to do with facilitating the development of cooperative housing. The present tax law requires that 80 percent of the income of a housing corporation be from tenant stockholders and that only individuals may be tenant stockholders.

The problem is that when there is a somewhat high vacancy rate or when there are foreclosures, this 80 percent figure is sometimes not net. In consequence, the deductibility of interest and taxes for the individual tenant holder is in jeopardy.

In 1976, an amendment was adopted which allowed the banks to be treated as tenant stockholders for a period of 3 years, which covered the instances in which foreclosures occurred.

This amendment would extend the same rules to sponsors of the project as well. It is important for new units under construction.

I believe it has support on both sides. It has no revenue effects. It only facilitates this kind of development.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. LONG. Mr. President, as the amendment has been modified, the Treasury supports the amendment, and I have no objection.

The PRESIDING OFFICER. Will the Senator send a copy of his amendment to the desk?

Mr. MOYNIHAN. The amendment is at the desk.

The PRESIDING OFFICER. The amendment has not been printed as yet.

Mr. MOYNIHAN. The amendment was filed Thursday.

The PRESIDING OFFICER. Because of problems at the Printing Office—there is a tremendous backlog there—we do not have a copy.

Mr. MOYNIHAN. We are searching for one now, Mr. President.

Mr. HANSEN. Mr. President, whatever time remains, I yield to the Senator from Louisiana.

Mr. LONG. I suggest that we vote on the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. PROXMIRE. What was the amendment? It has no revenue effect?

Mr. MOYNIHAN. No revenue effect. It has been approved by the Treasury and agreed to on both sides.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

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

The PRESIDING OFFICER. There are 2 minutes remaining.

Mr. LONG. How much time do I have?

The PRESIDING OFFICER. Two minutes—all of it.

Mr. LONG. Mr. President, I just want to respond to what was said by the Senator from Maine with regard to the cloture matter.

There are some important measures that Senators would like to see passed. Some have a majority vote to recommend them, but they are controversial. To attempt to add those nongermane matters to this bill will mean that the tax bill will not pass or that they will have to be taken off before the tax bill can pass.

One of them is the sunset amendment—not very controversial in the proposal the Senator from Maine initiated, but the part by Mr. GLENN is controversial. If that is added to the bill, I do not think it could muster cloture, and I believe it would result in a very lengthy, dragged-out debate, and the House might not take it. But those of us opposed to it do not feel that we want to let it go that far.

And there is the Humphrey-Hawkins bill. I think most of us would like to vote for it, but that is going to require a considerable amount of consideration, and it cannot be passed on this bill.

The textile quota amendment has a majority vote to recommend it. It is strenuously opposed by the President. It would add more controversy to the bill than this bill could stand, if the bill is going to become law.

There is a proposal for hospital cost containment waiting in the wings, and that is to be used as a hostage with respect to the passage of this bill.

Then there is the matter of lock and dam 26 and the user charges. If that cannot be resolved, that might be used.

Then, the Sugar Act might be used as something to be added to this bill, to try to bring about the enactment of something that many Senators want, which might not be able to pass otherwise.

● Mr. CLARK. Mr. President, I rise in support of the Muskie substitute amendment for S. 2. I believe it would provide

an effective mechanism to assure that Federal programs and regulations are subjected to rigorous scrutiny on a regular basis—for most programs, a rotating 10-year basis. It would force Congress to eliminate deadwood in these programs, and it would hold the bureaucrats who administer the programs accountable for what they do—or do not do.

The amendent requires that all of the programs relating to a particular subject would be reviewed at the same time, in order that duplication and overlap would be eliminated.

It would, in effect, force the Congress to systematically face up to how well Federal programs are working—and it would require such an appraisal be made of almost all Federal programs before they could be reauthorized. Reauthorization would be required at least once every 10 years in accordance with a strict schedule.

Mr. President, a mechanism like this makes so much sense that it is hard to believe that we do not already have one—but we do not. Many—perhaps most government programs have no time limit on them.

For many reasons, Congress has focused on passing new laws, to a great extent. The result is that most programs go on and on, without any real review at all.

I think that is wrong, and I think it is one of the main causes for many of the Government's current problems.

It has made possible the gradual development of a maze of Government programs that often overlap and even work at cross purposes to each other. It has allowed waste and inefficiency to flourish. And it has given Government officials license to be unresponsive and at times, even arrogant.

Some individuals and committees in Congress have tried to chip away at this situation by doggedly reviewing the programs under their jurisdiction.

But isolated efforts are not enough. The Congress as a whole needs to be forced into taking on these kinds of tasks. A good sunset mechanism can do that.

I believe Congress must face up to this task. It is obvious from many, many Government actions that something has gone wrong with our Government. It is obvious when the Government proposes to require Iowa farmers to put toilet facilities in their fields. Or when public housing projects built only a few years ago have to be torn down. And it is obvious that something's gone wrong when hundreds of employees at the Government's procurement agency are being investigated for taking kickbacks to influence government contracts.

The Government often seems to care more about itself than the people it is supposed to serve. And it does not seem to be working well.

It is not that we in Congress have been doing nothing about these problems. We have. We try to deal with these specific problems, one at a time, as they occur. And, we use our committees to oversee the programs, one at a time, or even one part of a program at a time.

These are band-aid approaches. They do not do anything about the causes of the problems; and, they do not prevent them from happening again and again. My office, like all congressional offices spends thousands of hours a year mediating between constituents and the Federal Government, trying to make agencies provide the kinds of services they are supposed to provide, and trying to make them stop doing things they are not supposed to do.

Congress has a choice, I believe. It can develop and implement a system of procedures that will require effective oversight and control of the Government. It can systematically eliminate duplication, overlap, and deadwood. Or, it will almost certainly face meat axe cuts—cuts that will go deep into the muscle and vital organs of our Government in efforts to cut off the fat.

I believe sunset is the most rational way I have come across to deal with the huge problems our Government faces today.

I can see no reason why a government that is active in its efforts to help people who need help should be wasteful, inefficient, or muddleheaded. It does not have to be, and it should not be.

I still have enough faith in society and Government to think that we can still make this Government work and work well.

As I mentioned, the sunset approach makes so much sense, it is hard to believe that we are not doing it already. But we are not, and I hope we will begin. I believe this sunset bill is a strong beginning and I hope my colleagues will join me in its support.●

● Mr. WALLOP. Mr. President, I wish to commend the chairman and the members of the Senate Finance Committee who have worked diligently on the Tax Revenue Act. Their efforts toward the passage of this bill will help relieve some of the unintended tax burdens imposed by the Tax Reform Act of 1976. Clearly, were it not for the committee's efforts to address these problems, and the willingness of the Senate to pass this bill, millions of Americans would face tax treatment with harmful and in many cases, disastrous economic consequences which were not intended by Congress.

There are several important tax problems addressed in this legislation, but it is clear that the provisions in this bill pertaining to the carryover basis are among those most crucial to the well-being of the country.

The committee's bill provides a delay in the carryover basis provisions until January 1, 1980. Conservations with Wyoming ranchers and tax consultants have demonstrated that the carryover basis provisions of the 1976 act must be repealed or dramatically altered. The delay in the implementation of the carryover basis provisions will allow Congress the time and opportunity to reexamine the effects of the carryover basis and draft a responsible alternative to the existing law. I wish to make it clear, Mr. President, that I would rather repeal the carryover basis and rid tax planners and small businessmen of this burden. Delaying the enactment of this provision with no clear indication of how the carryover basis will be changed does a disservice to those who are charged with the responsibility of interpreting estate tax laws. Adding further uncertainty to the estate tax laws makes estate planning an impossible task, requiring a planner to assume the worst case scenario for the tax treatment of his client's estate. Creating this uncertainty is a regrettable move, acceptable only because it prevents the enactment of carryover basis provision.

The best remedy to this situation is to address the carryover basis question early in the next session of Congress, by holding hearings on its projected effects and draft a repeal or acceptable compromise. I urge the Senate Finance Committee to follow through on the excellent job that they have done in the Tax Revenue Act Corrections Act by working on a permanent alternative to the present carryover basis provision as soon as possible in the next session.

Mr. President, it is essential to understand the effects of the carryover provision. I would like to take a moment to illustrate why the carryover basis provision troubles me and the people of my State so greatly, and why I continue to press for its repeal. The State of Wyoming is filled with small family-owned businesses and ranches. The lifeblood of our economy is tied to small, private enterprises.

My concern is that the carryover basis will make it impossible for small businesses and ranches to survive in Wyoming, and across the Nation. Prior to the 1976 act, when a person died, his estate or his heirs received a new income cost basis for his assets—their Federal estate tax value. Under the carryover basis, the original acquisition cost of an asset will be carried over from a decedent to his heirs. In many instances ranches or farms in Wyoming have been held for a long period of time, and have a low cost basis. When the estate or heirs sell the ranch or a small family business, they will pay the tax based upon the difference between the original costs and the cost at the time of the sale.

The carryover basis reverses the trend toward making the tax laws more simple and more understandable. Complexity has increased in estate planning, requiring increased professional counsel and administrative costs. The cost basis of many articles in an estate are nearly impossible to determine, and even where the cost is known, four different sets of calculations are necessary to arrive at the appropriate carryover basis. It has been suggested that a computer provides the best means of handling even a modest estate. Mr. President, ranchers and small businessmen in Wyoming cannot afford to have calculations programed and reviewed by a computer. Computer services are readily available to major corporations, but this is an added financial burden that will only force more and more small businessmen and farmers into bankruptcy.

There is another, more direct way in which the carryover basis provision damages the future of small business and paves the way for large corporate takeovers.

In many cases a widow may wish to turn over the operation of a small business to another individual or even a family member. The carryover basis would impose a large capital gains tax on the sale of the business, even though much of the capital gains tax arises from inflation-induced appreciation, the sale of the family business can only be accomplished at great loss to the widow, and considerable administrative and tax counseling cost to all concerned. One alternative to this scenario is to merge the family business with a larger publicly held corporation. This action would allow the widow to receive income producing stock from the company, tax free, but it also hastens the process of large corporations dominating the economic scene. Can we in Congress not see, and see plainly, the tragedy of this course?

The small businessman is penalized in another way by the carryover basis provision. The fresh start rule of the carryover basis provision (small businesses with unlisted securities) is determined by arbitrarily prorating the value of the business from the time it began until the value at the date of death of its owner. Once again, the owner of a small business is encouraged, by the carryover basis, to effect a tax-free merger with a larger company. Instead of encouraging the continuation and growth of small businesses, the 1976 act accelerates the trend toward concentration of business activity in large corporations, as a rancher, I am particularly disturbed by the effects the carryover basis will have on estate planning for ranchers and farmers. Valuation rules which value the ranch or farm as an agricultural operation rather than its highest and best use could benefit many farmers. Unfortunately the 1976 law restricts these rules so that many deserving parties fail to qualify.

Mr. President, it is particularly important to point out how estate tax planning for ranches and farms is becoming more complex in Wyoming even without the complications created by the carryover basis. As Wyoming, Colorado, Montana, and other Western States provide the Nation with coal and uranium, the farmer and rancher in these areas is faced with a unique burden. There are few ranchers who would willingly sell their land to a coal company and abandon a way of life that is unique to the Western States. Selling one's land outright to the coal company would force the rancher to pay enormous capital gains tax. Coal companies and ranchers have met an accord by agreeing to a tax-free exchange of one ranch for a comparable piece of property. In this way, the rancher can continue with his way of life, and the energy company can get on with its business of recovering the minerals and providing energy to the Nation.

However, one step has been left out of this exchange. If this process is repeated a number of times, we see an artificial inflation of land prices. The Internal Revenue Service is entirely disinterested in the peculiarities of land valuation in energy producing States: it only wishes to look at "comparable sales data in order to determine the estate tax value of agricultural land." The income tax laws as to capital gains tax and tax free exchanges cause a type of activity that further inflates the apparent value of ranch land. This increases the estate tax value of ranch land, and in turn increases the estate tax problems for ranchers, whether or not they receive any benefits from the energy development activities. Under these circumstances it is evident that the Western States will be hit even harder by the 1976 act than other agricultural regions of country.

In conclusion, I support the measures in this bill which provide for a delay in the carry-over basis provision.●

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that Roger LeMaster, of my staff, be permitted the privileges of the floor during the debate and voting on the tax legislation before the Senate.

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

PUBLIC UTILITY RATES—CONFERENCE REPORT

NATIONAL ENERGY CONSERVATION POLICY ACT—CONFERENCE REPORT

The PRESIDING OFFICER. The hour of 2 p.m. has arrived. Under the previous order, the hour having arrived, the Senate will now proceed to consider en bloc the conference reports on H.R. 4018 and H.R. 5037, the time for debate to be limited to 1 hour to be equally divided and controlled by the Senator from Washington (Mr. JACKSON) and the Senator from Wyoming (Mr. HANSEN).

The Senate proceeded to the consideration of the conference reports on H.R. 4018 and H.R. 5037.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, assuming that the Senator from Washington will be agreeable thereto, I ask unanimous consent to yield myself 10 minutes on his time.

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

Mr. METZENBAUM. Mr. President, before us now are the National Energy Conservation Act and the Public Utility Regulatory Policies Act—two of the five components of the national energy plan.

May we have order in the Senate, Mr. President?

The PRESIDING OFFICER. The Chair points out that the staff who are in the Chamber are in here at the courtesy of the Senate and when they leave they should leave quietly so we may have order in the Senate.

Mr. METZENBAUM. I thank the Chair.

These bills reach us none too soon.

In spite of the President's call to arms in April 1977, Americans are today using more energy than ever before.

Our dependence on foreign oil has deepened.

And the Nation's urgent need for a coherent energy plan is even more clear and obvious now than it was a year and a half ago.

Both of the conference reports before us are the end result of countless hours of deliberation.

Both represent extraordinary efforts by the Committee on Energy and Natural Resources and the House conferees to deal with issues of truly staggering complexity.

I want to commend the conferees for their long, hard work on this legislation. I believe that the Senate and the Nation as a whole is in their debt.

But, Mr. President, I must state that I have conflicting feelings about these conference reports.

I believe that these two bills are first steps and small ones at that.

They are good as far as they go, but they do not go nearly far enough.

Mr. President, I believe that the Congress had the opportunity to enact the kind of tough conservation and utility rate reform legislation that this country is going to need in the long run.

But because the lobbyists for the utilities did their work well and because the administration decided not to support mandatory conservation measures, we wound up with legislation that is a mere shadow of what it could have been.

We did not, in other words, finish the job. And because we did not, I know and the Senate knows that in the future, these issues will come before this body time and time again. They will come before us as long as our people use more energy than the Nation can afford.

But, Mr. President, to say that these conference reports represent only a first step is not to say that they do not represent a positive step.

They do.

I say to the chairman of the Energy Committee, Senator JACKSON, with his indulgence, I assumed it would be permissible for me to take 10 minutes of the time. Is that all right with Senator JACKSON?

Mr. JACKSON. Mr. President, I yield to the Senator retroactively whatever time he has used and prospectively so it comes up to 10 minutes.

Mr. METZENBAUM. I appreciate the consideration of the chairman of the Energy Committee.

Both bills include sound provisions that will achieve energy savings and begin to reduce our need for foreign oil.

And both bills show the Nation and the world that we have begun to address problems that we have for far too long ignored.

The National Energy Conservation Policy Act is an important piece of legislation.

For the first time, it requires utilities to offer assistance to customers in assessing the energy efficiency of their homes. This program will save energy. It will make people more aware of the possibilities of conservation. And it will permit homeowners to save money.

In addition, the bill makes Federal funds available to weatherize the homes of our low-income citizens. It also provides financing and loan insurance for energy-conserving home improvements and for installation of solar energy systems. It encourages schools, hospitals, and buildings owned by units of local

governments to become more energy efficient. And it will bring about a reduction in the energy needed to run industrial equipment, home appliances and motor vehicles. Once again, this is a good beginning.

But it is also important to consider what this legislation fails to do. The conservation bill originally contained a measure that would have said to the car makers of America "The time has come when you can no longer make an oversized gas-guzzling automobile. In the national interest, cars must be more energy efficient."

But although we are said to face the moral equivalent of war, the minimum mileage standards which I proposed, and which were overwhelmingly adopted by the Senate did not survive the conference. The administration refused to support the Senate position.

And, Mr. President, another section of the original bill would have said to the manufacturers of industrial motors "The time has come for you to make motors that are as energy efficient as possible, not as inexpensive as possible." The potential energy savings here was the equivalent of over 200,000 barrels of oil per day.

But this, too, was unpalatable—unpalatable not only to a majority of the conferees but also unacceptable to the same administration that had brought the energy situation to our attention in the first place.

In August of 1977, I conducted hearings on several mandatory measures that included minimum mileage standards, minimum efficiency standards for industrial motors, and retrofit for home heating units. Together, these initiatives would have produced savings of close to three-quarters of a million barrels of oil equivalent per day. Yet at those hearings a spokesperson for the administration, while acknowledging the soundness of these proposals, indicated that the administration could not support them.

Turning briefly to the Public Utility Regulatory Policies Act, I would like to point out that there is probably no issue in my State of Ohio, and I suspect, in the country as a whole, that has stirred as much public protest as the budget-busting rise in utility bills over the last few years. In 1977, alone, utility bills rose $13.4 billion and totaled over $60 billion.

As proposed by the President and passed by the House, the Public Utility Regulatory Policies Act was an attempt to get a handle on these tremendous increases. The bill sent to the Senate would have mandated that certain energy conservation standards be applied in State regulatory proceedings for retail rates. The Senate, in its wisdom, decided that it was best to leave the responsibility for setting retail electric rates with the States. Thus, the conference report before us today requires only that the States give full consideration during an open hearing process to a number of standards which have the potential for conserving energy.

It is this hearing process that contains the most promising aspect of this bill. For the first time, the Congress has assured the electric consumers of this country that their voice will be heard. And Mr. President, I should point out that not only will the consumer's voice be heard, but the conference report provides that if the individual or individuals who "substantially contribute" to the ultimate determinations of the hearings may be compensated for their efforts. This is a great victory for the consumer, who will finally be able to compete on an even footing with the utility industry of this Nation. I would like to commend my colleagues on the Conference Committee for preserving this provision.

The conference report on the Public Utility Regulatory Policies Act also requires the Federal Energy Regulatory Commission to make a thorough review of the fuel adjustment clause within individual States.

Mr. President, no single item has done more to undermine the rate setting procedure than the fuel adjustment clause. As a recent congressional study underscored, 80 percent of the increase in the last year in utility bills resulted from the fuel adjustment clause. In my own State of Ohio alone, more than $1 billion was passed on to the consumers by reason of the fuel adjustment clause, almost eight times as much as all the increases permitted through normal rate proceedings. I personally believe the fuel adjustment clause has outlived its usefulness.

I hope that FERC will review these clauses promptly, and that this review will result in their termination, or at the very least, greater protection for the consumer.

Mr. President, I also want to point out to my colleagues that the conference report retains a Senate provision authorizing up to $2 million for the National Regulatory Research Institute located at Ohio State University. In keeping with the philosophy of the conference report, which retains ultimate control in the States, the National Regulatory Research Institute will provide State regulatory authorities with independent expertise on regulatory policy issues and with improved data retrieval systems. As the author of this provision, I am pleased that the conference report affirms our support for this important institution, and seen fit to include it.

In closing Mr. President, let me reiterate my mixed feelings about these two bills before us. Both bills take a step forward in conserving energy, and it is for that reason that I support them. Nonetheless, it is equally clear that both bills fall far short of what is needed. We cannot, and should not, continue to rely almost exclusively upon increasing the price of energy as the sole method of saving energy. Mandatory conservation measures have the potential to save an enormous amount of energy. We should move with dispatch in that direction.

And one further word about this legislation. The chairman of our committee, as well as the ranking minority member have shown great tenacity, patience, perseverance, and personal consideration for all of the members of the committee over a long and difficult period.

The PRESIDING OFFICER (Mr. CHILES). The Senator's 10 minutes have expired.

Mr. METZENBAUM. I ask for 2 more minutes.

Mr. JACKSON. I yield 2 additional minutes to the Senator from Ohio.

Mr. METZENBAUM. I appreciate the consideration of the Senator from Washington.

I am personally grateful to both of them for their leadership and the many accommodations accorded me. And the staff, Dr. Dan Dreyfus, Dr. Ben Cooper, and Jim Bruce has been totally helpful, understanding, and responsible. We owe them a great debt of gratitude. They were most helpful and I thank them much. I am proud that our committee has such able personnel. We could not do our job without them.

I appreciate the consideration that has been accorded me personally by Senator JACKSON and by Senator HANSEN as well. Their leadership in the many endeavors in which they were involved and the staff is also to be commended.

WHEELING AND INTERCONNECTION PROVISION OF PURPA

Mr. President, during consideration of the Public Utilities Regulatory Policies Act, we considered some changes in the Federal Power Act which would give the Federal Energy Regulatory Commission authority to order interconnection and wheeling services among utilities. Such authorities would allow for a more reliable and efficient electric system in this Nation. Many of the original proposals were not adopted and a more limited authority for FERC to issue interconnection and wheeling orders was adopted.

In granting FERC authority to issue wheeling orders under section 203 of the act, the conferees provided that the Commission may act only when it finds that the order is in the public interest and that the order would: First, conserve significant amounts of energy; second, significantly promote the efficient use of facilities and resources; or third, improve the reliability of any electric utility system to which the order applies. There are, to say the least, good reasons for granting the FERC such authority.

Individual electric utility systems need to have adequate reserves in the event some of its generating facilities or transmission lines become inoperable. Unfortunately, to provide for such situations, many utilities have overbuilt. They have made large capital investments in generating facilities which stand idle most of the time. And which add considerably to consumer costs.

A better solution would have been one that has been proposed in legislation by several of my colleagues, but most prominently by the late Senator Lee Metcalf. His proposal would create a national grid. The concept behind this legislation is to provide a reliable national network of transmission facilities so that when one area is power short, energy could be moved across transmission lines to prevent blackouts like we have seen in New York and New England in recent years, and the threat of blackouts which we in Ohio faced this past winter. The bill

pending before us would certainly not create a national grid. However, it would grant to FERC some authority so that we could prevent wasteful overconstruction of new generating and transmission facilities and make better use of existing facilities.

There are terms and conditions other than the three which I have mentioned which must be met before FERC can issue a wheeling order.

One central element or thread tying together the other conditions and restrictions on FERC's authority reflected the desire of the conferees that the legislation be neutral with respect to all affected. Section 4 provides that "nothing in this act or any amendment made by this act affects: First, the applicability of the antitrust laws to any electric or gas utility; or second, any authority of the Secretary or of the Commission under any other provision of law (including the Federal Power Act and the Natural Gas Act) respecting unfair methods of competition or anticompetitive acts or practices." The concept of neutrality is specifically mentioned in the statement of the managers.

Under the language of section 203 adopted by the conferees, FERC is prohibited from issuing a wheeling order unless the Commission determines that the order "would reasonably preserve existing competitive relationships." As noted in the statement of the managers, the FERC is not "required to maintain or protect in any manner any relationship between utilities which is unlawful under the antitrust laws."

There has been, in the last few years, a trend among municipal electric utilities, rural electric cooperatives, and smaller investor-owner utilities to join together and construct generating facilities to serve their own loads as opposed to purchasing power at wholesale from large investor-owned utilities. In some instances, the transmission of the electricity from the generating station to the municipal systems or others owning and operating that facility may not be possible in the absence of wheeling arrangements with an intervening utility. An order to require wheeling of such electricity under those circumstances, or to permit the more efficient plants in a cooperative fashion, would not, of course, be regarded as an action which would disrupt existing competitive relationships.

Mr. President, I would like to emphasize that all this language about competition in section 203 is not intended to prohibit wheeling merely because there is any change in the competitive relationships between utilities; rather, the change must be "substantial." Let me take an example where two utilities are in competition for the same customer in a service area not otherwise protected by State law. If one of those utilities would need wheeling services from the other in order to serve the new customer, there is no absolute ban on such an order from FERC if all other necessary tests can be met. The legislation says that such an order to serve the new customer would have to significantly alter" the competitive relationships between the two utilities. FERC may determine that it would not significantly alter" such relationships and could thus issue a wheeling order.

I am also concerned about the amount a utility must pay for an interconnection or for wheeling services. The language of section 204 requires that such costs include any "reasonably ascertainable uncompensated economic loss." The costs include those ascertainable at the time of the order or any time thereafter. Both present and future costs should, of course, be those associated with the services provided pursuant to the interconnection or wheeling order. Otherwise, there would be endless speculation on "what-if" costs.

It was not the intent of the conferees to modify in any way the rights of parties in presenting a prosecuting allegations of anticompetitive conduct before the Federal and State courts, or before administrative agencies, including the FERC and the Nuclear Regulatory Commission. Both have legal obligations to consider antitrust issues. Where any of these agencies presently have the authority to order transmission, coordination or other relief pursuant to a finding of anticompetitive conduct, undue discrimination or unjust and unreasonable rates, terms, conditions or the like, this authority would not be disturbed. The act does not limit the present authority of these agencies in this regard.

Thus, a party which has been denied wheeling services for anticompetitive reasons will not be hindered by this legislation from proceeding in the Federal courts or elsewhere. Likewise, the authority of the NRS in conducting an antitrust review under the provisions of the Atomic Energy Act of 1954, as amended, would not be affected by this extremely limited wheeling authority granted to FERC under this new legislation. These two agencies are charged with different responsibilities with respect to wheeling. FERC's new authority is conditioned on conservation, efficiency, reliability, and public interest. NRC's authority relates to correcting or preventing a situation inconsistent with the antitrust laws.

Mr. President, let me again state that, while I might like to have seen some other things in this legislation, I am pleased with many aspects of it. We have granted many important rights to the electric consumers and we have granted to the Federal Energy Regulatory Commission some authority to make our nationwide electric system more reliable and efficient. This is, of course, in the best interest of all consumers. I believe this legislation is a step in the right direction and should be adopted.

I thank the Senator from Washington.

The PRESIDING OFFICER. Who yields time? The Senator from Wyoming.

Mr. HANSEN. Mr. President, I yield myself such time as I may require.

I am concerned with clarifying the interpretation of a particular part of this conference report. It was my understanding that the agreement that was reached indicated that this law would not override State procedural law except in very limited circumstances. The paragraph which concerns me is 111(b)(1) which specifies that certain determinations which the State must make shall be (A) in writing, and (C) available to the public. There is no problem with those items. However, subparagraph (B) indicates that the determination must be "based upon findings included in such determination and upon the evidence presented in the hearing."

The statement of managers indicates that if State law conflicted, this section would "override State procedural law to the extent of such conflict."

Looked at very narrowly, I think those words have the potential for some mischief, and should be clarified. The statement of managers is helpful in that it does go on to say that:

> The procedural features of the process of consideration and determination, including such concepts as the nature of evidence and the relationship, if any, between findings and the record of a proceeding, shall be governed by State law. State law governs on such matters as burden of proof, standard for review in State courts, and in any other matters not inconsistent with the requirement of this title.

There are two questions I would like to ask the manager of the bill to further amplify this statement of the managers. To begin with, I note that all of paragraph 111(b)(1) applies to the "determination referred to in subsection (a)." That determination, as I understand it, is the determination of whether or not the Federal standards are "appropriate to carry out the purposes of this title." After the determination has been made as to whether a standard is appropriate to carry out the purposes of the title, subsection 111(c) then allows the State the further discretion of whether or not to implement the standard even if it has determined that such standard would be appropriate to carry out the purposes of the title.

Now, my understanding is that the requirement that the determination be based upon findings and upon evidence refers to the determination of whether the standard would carry out the purposes of the title, and not to the State's discretion to implement or not implement the standard. I ask my friend from Washington, is that correct?

Mr. JACKSON. That is my understanding.

Mr. HANSEN. My second question relates to the process of judicial review of any Commission decision. My concern is that the word "based" in the requirement that the determination be based upon findings and upon evidence could be construed to create new Federal procedural law or import Federal law into State proceedings.

It is rather my understanding of the intent of this section is only that there must be some connection between the determination as to appropriateness to carry out the purposes of the title and the findings or evidence.

However, the nature and quality of the connection required is strictly a matter for State law, as indicated in the statement of managers when it stated that burden of proof, standard for review and other matters were up to State procedure in State courts. Thus, if the

State standard of review is the "arbitrary and capricious standard," then all that is required by this section is that it not be arbitrary and capricious to have made the indicated determination upon the findings contained within it. If the State standard is "scintilla of evidence," then that is the standard for the connection required. Is that an accurate understanding of the intent of the language in 111(b)(1)(B)?

Mr. JACKSON. That is my understanding.

Mr. HANSEN. I thank the Senator for those answers. They confirm my understanding that the States are not required to conform their ratemaking to these Federal precepts. I am happy to see this outcome, because I do not think that our State utility commissions are too stupid to adopt good ideas and reject bad ones.

I am puzzled at just what we think this bill will now accomplish. State commissions already have this same power, and are now using it. I do not believe that having to listen to David Bardin's lawyers will help them very much.

Similarly, the wholesale rate provisions are now properly hedged about with so many restrictions that it is unlikely that this section will cause much change other than more work for lawyers. Senator JACKSON stated on Saturday that this bill was not intended to get the Federal Government into economic contests between utilities. Without this so-called economic wheeling, there is unlikely to be much wheeling at all.

Furthermore, interconnection and wheeling do not produce any additional energy, just as almost all of the President's energy package does not produce any new energy.

Mr. President, if this bill is properly interpreted by the courts, I do not believe it does very much harm. But I believe our standards for legislation should be higher than that. I believe that America will be better off without the complication and regulation introduced by this bill. We need substance, not symbolism, and this bill now provides little but symbolism.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Washington.

Mr. JACKSON. Mr. President, the purpose of section 505(e) of title V "Crude Oil Transportation Systems" is to make clear that this title does not repeal, supplant, or replace the provisions of existing Federal law governing permits, rights-of-way and other authorizations for construction and operation of crude oil pipelines or other crude oil transportation systems.

Section 505(e) of title V provides that, notwithstanding the other provisions of this title, any application for a Federal permit, right-of-way or other authorization under other provisions of law for a crude oil transportation system eligible for consideration under this title shall be accepted and reviewed by the appropriate Federal agency under the provisions of existing law. Section 505(e) also provides that any determination with respect to such an application shall be in accordance with the provisions of section 509(a) of this title.

Section 509(a) of Title V provides that all Federal officers and agencies must insure expedited processing, to the maximum extent practicable, of all actions necessary to determine whether to issue, administer or enforce rights-of-way across Federal lands and to issue Federal permits in connection with, or otherwise authorize, construction and operation of any crude oil transportation system. Section 509(a) provides that such expedited processing shall be afforded "(a)fter issuance of a decision by the President approving any crude oil transportation system."

It should be noted, however, that, in many instances, determinations on applications for Federal permits, rights-of-way or other authorizations submitted pursuant to the provisions of existing law as provided for in section 505(e) will be made, in accordance with the provisions of existing law, directly by the agency head or his designee rather than by the President. For example, if no applications are made under title V and the Presidential decisionmaking procedure in title V is not initiated, applications under existing law would be acted upon by the appropriate Federal officers and agencies without regard to the provisions of section 507(a) or the other provisions of this title. In this and other cases in which a formal determination on such an application is made by a Federal official other than the President, in accordance with existing law, the provisions of section 509 (a) are intended to be applicable at that point in the administrative process without need for consideration of decisionmaking directly by the President, to any future actions which that agency may be required to undertake to implement that decision. Thus, for example, if an agency head grants an application for a right-of-way across Federal lands submitted pursuant to the provisions of section 505 (e) and existing law on behalf of a crude oil transportation system, thereafter the provisions of section 509(a) requiring expedited procedures for approved systems shall apply with regard to all actions necessary to implement that determination.

Finally, under title V an applicant for permits, rights-of-way, and other authorizations for a crude oil pipeline or transportation system may choose to apply under title V of this act, under the Mineral Leasing Act of 1920 and other appropriate provisions of existing law, or under both title V of this act and the provisions of existing law. The conference committee does not intend that applicants who have previously applied for permits under existing law and made substantial expenditures and commitments processing such applications would be required to elect the new procedure exclusively. Rather, it is intended that an application under both procedures may be maintained. Thus, an applicant for permits submitted in accordance with the provisions of existing law may have the appropriate Federal agency continue to process its applications under existing law even if the applicant chooses to also submit an application under the provisions of section 504 of title V. In addition, the submission of applications for Federal permits, rights-of-way or other authorities filed on behalf of a competing crude oil transportation system pursuant to the provisions of section 504 shall likewise have no effect on the continued processing of applications for permits, rights-of-way or other authorizations submitted pursuant to existing law.

Mr. MARK O. HATFIELD. Mr. President, when the Senate was considering the energy conservation conference report on Saturday, October 7, I engaged in a colloquy with the distinguished chairman of the Energy and Natural Resources Committee regarding the utility conservation programs required by this legislation. I have one further question I would like to address to the Senator about these programs.

Section 216(d)(3) exempts utilities from the prohibition on supply, installation, or financing of conservation measures "where a law or regulation in effect on or before the date of enactment of this Act either requires, or explicitly permits, the public utility to carry out such activities." My question of the chairman involves the word "regulation." Is my assumption that an order or ruling of a State public utility commission or similar body constiutes a regulation for the purposes of this exemption?

Mr. JACKSON. The Senator is correct. An order or ruling of a State public utility commission requiring or explicitly permitting a utility to supply, install, or finance conservation measures would qualify that utility for the exemption under section 216(d)(3) of this bill, if that order or ruling is in effect prior to the date of enactment of this act.

Mr. MARK O. HATFIELD. I thank the Senator for his clarification.

Mr. JACKSON. Mr. President, I suggest the absence of a quorum at this time, and ask that it come out of the time on both sides equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. 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. ROBERT C. BYRD. Mr. President, is the time controlled at his point?

The PRESIDING OFFICER. The time is under the control of the Senator from Washington (Mr. JACKSON) and the Senator from Wyoming (Mr. HANSEN).

Mr. ROBERT C. BYRD. Will the Senator from Washington yield me 5 minutes?

Mr. JACKSON. Mr. President, I yield 5 minutes to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, the conference report on the National Energy Conservation Policy Act (H.R. 5037) is a bill for people. It would set in motion a national effort to insulate and weatherize residential and public buildings. Energy savings realized by facilitating retrofitting and other conservation improvements would be significant. The bill also would help to increase the use of

solar energy as a substitute for nonrenewable energy resources.

In addition to conserving energy, the National Energy Conservation Policy Act should help consumers cope with energy inflation. The bill provides for better information about energy savings associated with residential conservation measures, access to private or public financing, and energy efficiency standards for major household appliances.

Direct assistance to owners of houses or multifamily structures is both informational and financial. Information is provided pursuant to a residential energy conservation program. Under this program, a utility is required to provide energy conservation information to owners of residential buildings with four units or less, if requested.

A utility would serve as project manager to inspect the building; suggest conservation measures and project their energy cost savings; supply lists of lenders, suppliers, and contractors; offer to arrange to have conservation measures installed; and offer billing and repayment arrangements as a part of monthly utility bills.

A utility would be prohibited from lending more than $300 per customer and could not supply or install energy conservation measures. A State residential energy conservation plan must include standards and procedures to assure that each utility will charge fair and reasonable prices and interest rates in connection with its conservation program.

Financial assistance is provided in the form of grants, Federal home improvement loan insurance, loans at market interest rates, and subsidized loans. Grants for making energy conservation improvements for low-income homeowners are available through 1980. Grants are also available to multifamily structures financed or insured by the Department of Urban Development for elderly, handicapped, low- or moderate-income families. Among eligible multifamily projects, priority is given to those in financial difficulty because of high energy costs.

Eligibility for loans and insured loans is restricted to low- and moderate-income applicants, except for solar energy loans. They are available to all families during the next 5 years. A taxpayer, however, could not receive a solar loan and also take advantage of the solar energy tax credit.

Promoting the use of solar energy is another policy designed to conserve oil and gas. To show the merits and reliability of solar energy, the National Energy Conservation Policy Act provides for demonstration of solar heating and cooling in Federal buildings.

In addition, the bill directs the Federal Government to procure photovoltaic systems for its own use. Purchases are to be made over a 3-year period. The intent is to stimulate early development of photovoltaic production capability in the private sector.

Energy conservation in the public sector also would be enhanced by another requirement. All Federal buildings must be retrofitted by January 1, 1990 in order to assure maximum life-cycle cost-effectiveness. Each Federal department or agency is directed to conduct a preliminary energy audit to determine the best way to make each building more energy efficient. New Federal buildings would have to be designed and constructed so that cost considerations would be determined on the basis of life-cycle costs to the maximum extent practicable.

The conference report also seeks to make progress on the industrial conservation front. The primary focus is on pumps and motors. The Department of Energy is directed to evaluate them in order to determine standard classifications according to energy efficiency. If the evaluation shows that procedures for testing and labeling the energy efficiency of pumps and motors are appropriate, DOE may prescribe test procedures and require labeling.

The conference report is a significant part of the President's comprehensive energy policy. It not only contributes to the energy conservation objective, but also it plays a role in the import control strategy. I compliment Chairman JACKSON and the Senate energy conferees for the well thought-out energy conservation programs set forth in this document.

Mr. President, the fanfare and drama surrounding the natural gas debate may dwarf Senate Consideration of the conference report on the Public Utility Regulatory Policies Act of 1978 (H.R. 4018). It would be short-sighted, however, to overlook the potential contribution gas and electric utilities can make toward achieving our national energy goals.

This economy is a voracious consumer of electricity and natural gas. We use both throughout our residences and at work. Almost 30 percent of the total amount of energy we consume is used to generate electricity. As a source of energy, natural gas accounts for about 30 percent of all energy used.

After the 1973–74 oil embargo and sharp increases in energy prices, the need to re-examine electric and gas utility regulatory policies became increasingly more apparent. The emphasis of the utility conference report on conservation, cost control, and retail rate reform is intended to help consumers cope with higher energy prices.

This is particularly important in light of the emerging natural gas policy pertaining to wellhead pricing. The utility conference report is no less important for the contribution it could make to achieving our energy conservation and import control goals.

This conference report provides the public, both directly as intervenors and indirectly through Federal and State regulatory authorities, with a framework for conducting a national examination of utility policy. The report establishes Federal standards which a State regulatory authority or unregulated utility must consider in setting or designing rates.

In determining whether to adopt any of these standards, a State regulatory agency must evaluate how the standard, such as time of day rates or seasonal rates, relates to the act's purposes of which there are three: energy conservation by the ultimate end user; efficient use of generating and related facilities, including conservation of imported energy, and equity for ratepayers.

The conservation and rate reform standards must be considered formally on a utility-by-utility basis and within 2 years after the date of enactment. Reasons for rejecting any standard must be put in writing, based on evidence established during a hearing, and made part of the public record of the proceedings.

After considering the Federal standard, the conferees expect that a State regulatory agency or unregulated utility will adopt those which seem likely to accomplish the purposes of the act. As a result, gas and electricity would be used more efficiently, greater quantities of energy would be conserved, and consumers would have service rate options in order to hold down their utility bills. This should help to stretch domestic energy supplies and reduce imports without endangering economic growth or fueling inflation.

The framework for reviewing utility policy and adjusting it to the new energy environment offers advantages which go beyond greater conservation, energy efficiency, and rate equity. It preserves existing regulatory relationships. This means that local conditions will continue to dictate local policies. At the same time, it encourages flexibility and innovation. Indeed, the beauty of the conference report is that it is a national policy which is responsive to each State's needs without penalizing a State which does not fit the norm.

In addition to reviewing electric and gas retail rates, the conference report provides for three other policies to help conserve energy and contain costs. The Federal Energy Regulatory Commission is required to promulgate regulatory policies which favor industrial cogeneration facilities. This includes a provision to insure that a utility buys or sells cogeneration power at fair rates.

Stretching power supplies and reducing long-run costs are expected to result from a national, interconnected powergrid. To this end, the FERC is authorized to require physical interconnections of electric power transmission facilities. To promote even greater reliability, conservation, and efficiency, the FERC is authorized to order utilities to provide transmission services between two noncontiguous utilities.

The bill promotes diversification of sources of power to generate electricity. One source that has been underutilized is water power, particularly small hydroelectric projects. Hydroelectric power contributes only about 5 percent of the energy we consume, but in certain areas its contribution could be expanded significantly by developing small projects. This would ease demand for fossil fuels. For example, New England imports large quantities of fossil fuels, yet the region is crisscrossed by the kind of fast flowing rivers necessary for small hydroelectric projects.

The conference report provides loans for feasibility studies and construction. Preference is given to applicants who do not have access to alternative financing.

This short substantive summary of the

utility conference report highlights those policies which make it an essential component of President Carter's comprehensive energy plan. The modifications made by the conferees in the Senate and House versions are significant improvements and refinements of the original proposal.

I think this is an excellent example of the Congress and the administration working together to tackle our energy problems in a way which preserves the role of the State and keeps decisionmaking flexible and responsive to local needs. I commend Senator JACKSON and the other conferees for their success.

Mr. JACKSON. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

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

The second assistant legislative clerk proceeded to call the roll.

Mr. JACKSON. 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. DOLE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. Mr. President I yield 5 minutes to the distinguished Senator from Kansas.

The PRESIDING OFFICER. The Senator from Washington has 1 minute remaining.

Mr. JACKSON. In behalf of Senator HANSEN, I yield 5 minutes to the Senator from Kansas. There is no problem on it.

The PRESIDING OFFICER. Without objection, the Senator from Kansas is recognized.

Mr. DOLE. Mr. President, the Senate is considering two of the energy conference reports. Some of us are concerned about the so-called gas guzzler tax and the provisions in this bill concerning EPCA standards and penalties on large automobiles. As I understand it, the EPCA penalties are going to be doubled. I should like to make a brief statement, then yield to the distinguished Senator from Michigan.

I am a conferee in the energy tax conference where we are discussing so-called gas guzzlers. The issue is should Congress require the consumer who buys the big car to pay an extra tax on the car. That may sound good on the surface, and to some it does. However, in effect, Congress is telling people what kind of car they can drive.

The guzzler tax is bad policy. Studies have shown it will probably put thousands of people out of work. In addition, the tax discriminates against a certain class of people who cannot afford to pay the added tax. Those with large families and those with small bank accounts will be denied the right to have a car that might fall in this category. Some of us feel that there will be every effort by the auto companies to follow the EPCA standards by the automobile industry. They have all told me the standards will be met. The guzzler tax is a tax on automobiles based on miles per gallon. However, in a letter from the Joint Committee on Taxation, a letter given to me last December, that states if the EPCA penalties are doubled, the imposition of the gas guzzler tax would have no energy impact. The tax saves no energy.

It seems to me the passage of this conference report would make the so-called gas guzzler tax an unnecessary and punitive symbol of what I consider to be a very deficient, defunct energy program. What I am suggesting to the distinguished Senator from Michigan is that there are provisions in this bill concerning EPCA standards and penalties on automobiles. There is a discussion in the so-called tax conference about the very same issue. If, in fact, we are going to double the penalties, it seems to this Senator that we have said to the industry, "Comply with the standards and meet the standards, or you are going to have a very substantial penalty to pay."

That should be enough. I do not know any reason for overkill in this area.

Much of the discussion on the so-called gas guzzler is much like the three-martini lunch. It makes good political speeches. A lot of people felt there should be additional taxes on a larger car until they realized that people who make those cars will be out of work and people with large families could not afford by pay the extra tax. It is a discriminatory tax and I hope with this bill, there will be no further need for the tax.

I shall appreciate any comments from the Senator from Michigan.

(Mr. HODGES assumed the chair.)

Mr. RIEGLE. I thank the Senator for yielding. I think he has made a very important point on this issue. We recognize that by establishing the fleetwide averages as we have under the law, requiring that car manufacturers will get 27.5 miles per gallon from the average car in 1985, really gives us what we need to see that we are getting the mileage from our automobiles that we need to have from the point of view of energy consumption and other international goals. I think the move that has been made here in this particular conference report to solve this issue is a very constructive one. I hope, as has been suggested, that the other conference committee will take a careful look at the ground that has been plowed here, with a very substantial part having been played by my friend from Kansas.

I might just say something with respect to what are often called the larger vehicles, named gas guzzlers. When we are speaking of a situation where a family perhaps has a need for a vehicle to transport six passengers or, in some cases, eight or even more passengers, the idea that somehow we are better off with smaller vehicles, maybe forcing them to have two cars and driving two cars to get from one point to another, rather than one larger vehicle that can handle a family of a larger size, would be false economy of the most extreme kind. I think the proposal that has been put forward here to hold the gas guzzler tax in abeyance and to have that go into effect only if the industry should fail to meet the industrywide standards is an excellent proposal. We forego nothing in terms of assurance that we shall meet the goals that we want. Failing that—which no one anticipates, I might say. All the evidence is to the contrary, that we are on track in making the kinds of mileage improvements that will bring us out in terms of those standards. Should that fail to happen, we can have the gas guzzler tax in abeyance and that can be considered at that time. That would be the time to consider using it, of course, and not beforehand.

Mr. President, I congratulate the energy conferees on presenting to the Senate a valuable and important piece of legislation. I am confident that this bill will make a dramatic contribution to our long-range energy conservation efforts.

When this bill was before the Senate last year, I offered an amendment to delete a provision that was included in the legislation at that time. That version would have imposed an outright ban on the sale of automobiles that did not meet certain minimum miles-per-gallon standards. I opposed that provision because I felt that it imposed unnecessary constraints on consumer freedom of choice, because it would have prevented those who needed large and relatively inefficient cars—such as families with station wagons—from purchasing them, and because it would have contributed almost no additional energy savings to those already achieved by the fleetwide standards passed by the Congress.

Mr. President, I am very happy to note that, after carefully considering this issue, the conferees have decided to adopt my position, and have deleted the minimum mileage standards from the conference report they have now placed before us. I commend them for the wisdom of their judgment in this regard, and for the alternative which they have recommended, namely, an authorization that the Secretary of Transportation, at his discretion, be permitted to raise the civil penalties for violation of the current energy efficiency standards. This would apply to the penalties now specified for falure to meet the fleetwide averages which the Congress first adopted in the Energy Policy and Conservation Act of 1975. The Secretary could raise those penalties if he determined that it would result in energy savings, and would not result in adverse economic impact.

I believe that the Congress took a very sound step when it adopted the fleetwide average mileage standards. They will lead to very large energy savings, particularly with the very tough standards mandated by the Secretary of Transportation. And I have every reason to believe that the automobile manufacturers are making, and will continue to make, a good faith effort to meet those standards. I believe that they will be successful in so doing, and I hope that those of us in the Congress will not prejudge their efforts.

I raise this point, Mr. President, because I understand that the conferees on another portion of the energy bill, that dealing with energy taxes, are considering the matter of imposing a gas guzzler tax, which consumers would be required to pay when purchasing energy-inefficient automobiles. I hope that the conferees on that portion of the bill will display the same wisdom as the conser-

vation conferees have with respect to auto fuel economy, and will not impose a stiff, regressive tax on the American public on the faulty assumption that the automakers are not going to meet the current requirements in the law.

There is widespread agreement that if the fleetwide mileage standards are met, then an additional gas guzzler tax on top of those standards will not significantly improve energy conservation. The Department of Energy, in a report on this subject states:

> If manufacturers meet the EPCA standards, as they have stated they will, it appears that the gas guzzler tax would have insignificant results.

That fact was reiterated by Bernard Shapiro, chief of staff of the Joint Committee on Taxation, with respect to staff estimates of energy savings accruing from the gas guzzler tax.

I cannot imagine why anyone would want to impose an onerous tax on automobile purchasers if that tax would result only in minimal energy savings. I can, therefore, only conclude that the tax is still under consideration because some of us do not believe that the automakers will meet the fleetwide averages, and do not even want to give them the opportunity to prove that they can. If that is indeed the problem, then there is a very simple solution, and one which has been proposed by my colleague from Kansas, Senator DOLE: Hold the gas guzzler tax in abeyance until it is established that the industry has failed to meet the standards. If, and only if, the standards are not met, does it begin to make sense to impose a gas guzzler tax. But let us not saddle the American consumer with a hefty tax increase, ranging from $200 up to $3,850, if that measure would not help us to make any significant progress toward our national goal of reducing energy consumption. And let us not, in effect, declare the automakers guilty of the crime of failing to meet the fuel economy standards that the Congress and the Department of Transportation have established, before they have had the opportunity to demonstrate that they can or cannot meet those standards.

The energy conservation conferees have acted wisely in deleting the minimum mileage standards and in leaving open the possibility of increasing penalties for failing to meet the fleetwide averages. The increased penalties will, I am sure, provide a sufficient incentive for the industry to put forth every effort to meet the standards. I hope the energy tax conferees will see the logic of this decision, and will impose a gas guzzler tax only as a contingency measure.

I commend the Senator from Kansas, also, and hope that other energy conferees will take a look at what has been done here. I think it marks a way in the future that is fair. It meets our energy requirements; at the same time, we see to it that we do not impose by Government mandate things that will be counterproductive in terms of the very goals we want to meet.

Mr. DOLE. I thank my colleague from Michigan. I appreciate his remarks and I concur with his statement.

I might add that a distinguished Member of the House, Representative JOHN DINGELL, has been very active in this area. There is some hope that we can reach some accord on the contingency plan that has been mentioned by my friend from Michigan. Perhaps a modification that would indicate a guzzler tax in 1980 at 1979 tax rates, make the tax rates permanent at the 1984 levels in 1985 and eliminate the first-line tax for the years 1983, 1984, and 1985. That is a compromise that, at least, has been circulated. At least, it has been presented to some of the House conferees and it will be presented some time soon to those of us who are Senate conferees to see if some agreement can be reached.

I think a better plan would be to adopt the contingency plan discussed by the distinguished Senator from Michigan. In other words, the EPCA standards are met the tax will not go into effect. Why punish the consumer? If the standards are met, why punish the manufacturer? I did not know this was a revenue-raising measure. With this provision it would be an outright punitive measure that I do not think should be adopted. If we cannot do what the Senator from Michigan suggests, I hope we will do better than we are doing now, with some compromise.

GEOTHERMAL RESOURCES IN "RENEWABLE RESOURCES"

Mr. DURKIN. The definition of "small power production facility" as contained in title II, section 201, includes a facility which produces electric energy solely by the use of, among other things, "renewable resources." Recent Department of Energy research indicates that substantial geothermal hot dry rock resources may exist in New Hampshire in addition to the large steam and geopressurized brine reserves known to exist across the Nation. Is it intended that, for the purposes of this act, all types of geothermal resources are included within the term "renewable resources"?

Mr. JACKSON. Yes.

RETAIL RATES—STATE DISCRETION SECTIONS 111 THROUGH 124

Mr. DURKIN. Am I correct in understanding that the principal purpose of the standards provisions of sections 111 and 113 is to require the States to give full and fair consideration to each of those standards, but they are to have a broad discretion as to whether or not to actually implement or adopt the standards?

Mr. JACKSON. The Senator is correct.

Mr. DURKIN. And we are not trying to displace other legitimate concerns of the States over other regulatory objectives or purposes?

Mr. JACKSON. No; we are not.

Mr. DURKIN. If a State should decide that one or more of these standards under section 111 would tend to encourage conservation or efficient use of facilities and resources or more equitable rates but might well result in other adverse consequences which the State PUC has authority, pursuant to State law, to take into account, such as the hardship to consumers or utilities, then the State could use these other factors as a basis for refusing to implement or adopt such standards?

Mr. JACKSON. The Senator is quite correct.

Mr. DURKIN. As I read it, the statement of managers makes it quite clear that the State regulatory authority has to consider the standards of section 113 within 2 years and does not have to undertake their consideration whenever an intervenor or a participant raises them in a rate proceeding. While no similar statement is made concerning the section 111 standards, section 112(a) provides that the State may give strong weight to its previous determinations on such standards. Am I correct in my interpretation that such prior determination may, in appropriate circumstances, govern the outcome?

Mr. JACKSON. The Senator's interpretation of these provisions is absolutely correct.

Mr. DURKIN. Where the words "to the maximum extent practicable" appear in the bill, as they do in various places in sections 111 and 113 is it the intent of the legislation that the State regulatory agency will to determine what is the maximum extent practicable?

Mr. JACKSON. Yes.

CLARIFICATION SECTIONS 210, 211, 212 REGARDING SERVICE AREA OF THE TENNESSEE VALLEY AUTHORITY—ENERGY

Mr. RANDOLPH. Sections 210 and 211 of the energy conference report on public utilities provide authority for the Federal Energy Regulatory Commission to issue orders to the Tennessee Valley Authority which might in some instances be in potential conflict with section 15(d) of the Tennessee Valley Authority Act as amended in 1959.

Section 212(f) of the conference report specifically deals with this potential conflict. I wonder if the managers of the conference report would clarify two points for future reference with regard to these provisions:

First, it is my understanding that this legislation does not purport to amend the Tennessee Valley Authority Act and, specifically, that it is the intention of the conferees none of the prohibitions against service outside the established Tennessee Valley Authority service area stated in section 15(d) of that act, are reduced or modified—is that correct?

Second, section 212(f)(2)(B) indicates that Congress may authorize Tennessee Valley Authority service in accordance with a Federal Energy Regulatory Commission order even where such service might be in conflict with the prohibitions of section 15(d) of the Tennessee Valley Authority Act. It would be my understanding that this subparagraph is a restatement of similar language in section 15(d) of the Tennessee Valley Authority Act and that Committee jurisdiction for such action would remain with the Senate Environment and Public Works Committee—is that correct?

Mr. JACKSON. The Senator is correct on both points.

Mr. CRANSTON. Mr. President, I was

cosponsor of the conduit hydroelectric facilities provision of this bill, which is now section 213, and I would appreciate a clarification of the explanation of section 213 that appears in the conference report. It is my understanding that, in conference, the House agreed to state in the conference report a congressional intent that expedited licensing procedures applied when an applicant for an exemption under this provision is denied such an exemption by the Federal Energy Regulatory Commission. Such a statement is contained in the report. However, the explanation of section 213 does not reflect what I believe was a further matter of agreement among the conferees; namely, that applications for exemptions for hydroelectric plants meeting the conditions specified in the amendment will be expeditiously processed by the Commission. Although it is not necessary to state that in the conference report, it would be helpful if the chairman could verify for the RECORD that such an expedited exemption review process is intended by this amendment.

Mr. JACKSON. Senator CRANSTON's understanding of the conference agreement is correct. It was agreed that applications for exemptions be processed expeditiously, and that in such instances as the Commission determines that a conduit hydroelectric facility does not qualify for an exemption, an expedited licensing procedure would be adopted.

Mr. JACKSON. Mr. President, how much time is left altogether on both sides?

The PRESIDING OFFICER. The Senator from Washington had 1 minute, the Senator from Wyoming has 10 minutes.

Mr. SCOTT. Mr. President, I am glad to yield 3 minutes to the distinguished Senator from Montana.

Mr. MELCHER. I thank the Senator for yielding the time. I shall only speak briefly on a problem that we endure with the Alaska oil flowing through the Alaska pipeline to Valdez at about 1.2 million barrels per day, and then having a glut of Alaska crude oil on the west coast.

Part of the bill dealing with regulatory rate reform and present in the conference report before us deals with a speedup in the time frame of arriving at a Federal decision on whether or not building permits will be issued for a pipeline to serve the Northern Tier States and the Midwest by construction of such a pipeline.

The time frame that was called for as the bill passed the House approximately a year ago was an environmental impact statement being completed by December 1 of this year, and that is the agreement of the conferees and is a portion of the conference report before us.

The reason to hasten the Federal decision was to make sure construction of an approved pipeline could start, could move forward. The requirement does not require a Federal decision in the affirmative. It just says, "Reach that decision quickly."

There is no requirement that State law would be pre-empted by this Federal law. Indeed, the decision on a seaport for the only applicant, the Northern Tier Pipeline Co., would use as its Pacific coast terminus, Port Angeles in the State of Washington.

The Washingon State Legislature in 1977 approved by wide margins the location of such a terminal at Port Angeles. However, the decision is up to the State Siting Council of the State of Washington.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. SCOTT. Mr. President, I yield the remainder of the time on this side to the distinguished Senator from Washington.

Mr. JACKSON. I thank my colleague from Virginia.

I yield 2 minutes to the Senator.

Mr. MELCHER. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator is recognized for an additional 2 minutes.

Mr. MELCHER. The application by Northern Tier is before the Washington State Siting Council and the critical point, as an environmental issue, is definitely whether or not an oil port at Port Angeles is accepable. The Governor of the State of Washington, and I suspect members of the State siting council in the State of Washington, have asked, "Where is the Federal position on this, and if it is important, what is the Federal Government doing?"

I think this is the answer to that question. We are in the process of passing legislation that would expedite the environmental impact statement and the decision by the President whether or not to grant permits to a pipeline company, such as Northern Tier Pipeline.

It is important that the time frame for reaching that decision will be early in 1979 because it is important that construction can start during the late spring months or early summer months of next year. This bill expedites the Federal decision process and if that is an affirmative decision and the Washington State Siting Council also reaches a favorable decision on the Northern Tier pipeline construction could start promptly.

It is for that reason, Mr. President, that this portion of the conference report deals directly with the method to reach a decision, to see whether or not the Federal permits will be granted, and, if so, then the State of Washington can see the importance that both the Congress and the executive branch of the Federal Government place on that pipeline, to help serve the Nation, remove the oil glut from the west coast that is caused by the Alaskan production.

Again, I thank the distinguished Senator for yielding me the time.

The PRESIDING OFFICER. The Senator from Washington.

Mr. JACKSON. Mr President we are now in the process of completing the President's legislative program which was submitted to the Congress on April 20 of last year.

The program consisted of five parts. The first, coal conversion; the second, utility rate reform; the third, energy conservation; the fourth, natural gas pricing; and the fifth, the taxing provisions.

When the Senate votes today, it will have completed four of the five parts of this package.

Mr. President, this has been a very difficult period for all of us who had the responsibility of trying to put together the beginning—and I emphasize and underline "the beginning"—of a national energy policy.

We will be debating for a long time as to how much energy we can save in terms of barrels-of-oil equivalent. I would give a rough estimate of about 3 million barrels of oil a day by 1985, give or take a few hundred thousand barrels.

Mr. President, this estimate does not include the taxing features, but I would be the first to remind my colleagues that we have a long way to go.

I would hope that when we have completed our work this week by final action in the House, that we will use this as the foundation to really get underway in the next Congress a program that can bring about more effective energy conservation, better discipline, may I say, in the utilization of our energy resources, and to truly move in developing not only the conventional resources available to us, such as coal, oil, and gas, but also synthetic fuels. We want to find some answers to the problems plaguing the nuclear power industry, especially the issue of standardization of reactors and the elimination of the problems that now beset us in waste disposal. At the same time we want to push the other sources of energy that offer such promise, sources such as solar energy, fusion, biomass, and a long list of others that are in the research and development stage.

So our effort today is a beginning, nothing more than that. But I think it is a good beginning. I think it is a good signal to our friends abroad that we can invoke a certain discipline in the United States in connection with the development of a meaningful energy policy.

Mr. President, as I conclude my remarks, I want to say how much all of us appreciate the help and support from our staff on both sides of the aisle.

I want to, especially in connection with the energy conservation bill, single out the following people: Ben Cooper, Jim Bruce, Debby Merrick, and Pete Smith from the majority staff, and Tom Imeson from the minority staff.

In connection with the utility rate reform bill, again, Jim Bruce, Dan Dreyfus, Ben Cooper from the majority staff, and Dan Boggs from the minority staff.

Mr. President, I believe that concludes the time allotted to us.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold that?

Mr. JACKSON. Yes.

Mr. RANDOLPH. Mr. President, I commend my colleagues in the Senate for their constructive deliberations on the energy conservation policy and electric rate reform sections of national energy legislation. This represents the final step, in the Senate, of formulating a policy which will become the Nation's first comprehensive energy plan, a plan I have been calling for since 1959. The

19-month debate on the energy issue has clearly demonstrated that the Senate and the energy conference committee felt major modifications were necessary to the President's energy program before it could be presented to the American people as a blueprint which will be used to direct our energy efforts in the long term.

Many people, including some in the administration and the Senate, have held that the modifications made in the conference compromise defeat the purpose of national energy legislation. I am convinced the compromise on policy issues debated today will conserve energy and reform energy use patterns on a large-scale basis.

The conservation portion of the national energy plan will offer a variety of incentives to middle-class homeowners and low-income renters to install such fuel-saving measures as insulation and solar heating equipment. Federally backed loans and grants are included, as well as doubling fines on automobile manufacturers who fail to meet fleet-wide mileage standards under existing law.

Electric and gas utilties will perform a major role in informing ratepayers about their individual conservation needs. Utilities will offer to arrange for installation of insulation in their customer's homes to be paid for through utility bills. Schools, hospitals, and local governmnts would receive Federal grants to carry on conservation programs.

Electric rate reform will require State utility commissions to consider a variety of energy-saving rate reforms. The bill would give broad rights to consumers and the Federal Government to intervene in State utility proceedings and to fight for reforms. The Federal Government would gain the power to order various types of power-sharing arrangements among utility systems.

Important reforms that each State commission would consider are time-of-day or seasonal rates that are highest during the times of peak use for the system. Commissions would consider prohibiting discriminatory rates against solar, wind and other small power systems, procedures to protect ratepayers against abrupt termination of service, and prohibitions against charging ratepayers for promotional or political advertising.

To take advantage of energy conservation opportunities will require changes with respect to land use, technology, utilization of the labor force, and consumer behavior. The most important contribution can take place by having the cooperation of individual citizens. We should not wait to act until we are forced to do so. The energy conservation and utility rate reform provisions of the energy bill will enable a more gradual increase in production levels required. while successfully lowering costs to the consumer through their own initiatives.

I am confident this final energy plan emerging from Congress will be an excellent starting point for resolving all complex energy issues.

I emphasize "starting point," because this legislation will continue to be adjusted and refined to fit the changing energy needs of the country.

Decisions made in the 95th Congress, together with the Carter administration, private industry, and our total citizenry will do much to guarantee energy use policies which will strengthen America.

Mr. President, I commend the able chairman, Senator JACKSON of Washington, and the other members of the Energy and Natural Resources Committee. They deserve our thanks as energy conferees for the time and careful attention they have given to each section of this energy legislation. By working together at a well-reasoned pace Americans can comprehend and solve their energy problems. Passage of this legislation gives a clear signal to the American people that Congress does not intend to create another uncertainty accompanying the natural scarcity of oil and gas by being unclear and indecisive on Government policy concerning energy.

Mr. BARTLETT. Mr. President, despite my opposition to the conference report on the Public Utility Regulatory Policies Act of 1978, it may be useful to point out that the legislation at least accomplishes one positive thing in sections 201 through 204, pertaining to interconnection and wheeling for electric utilities.

The history of these provisions, in both the House Committee on Interstate and Foreign Commerce and the Senate Committee on Energy and Natural Resources, shows that one of the problems these provisions are designed to meet is the apparent lack of an appropriate forum in which to resolve the so-called Texas problem. The Electric Reliability Council of Texas, know as ERCOT, contains the major portion of the electric utilities in Texas and has apparently operated in electrical isolation from the rest of the United States for a number of years, except during periods when this area was specially exempted from Federal jurisdiction. In this respect Texas is unique, since the rest of the country is entirely interconnected and, by reason of its interconnections, is subject to the jurisdiction of the Federal Energy Regulatory Commission.

A number of public utilities operating both within and outside the State of Texas have sought to achieve electrical interconnection between ERCOT and the Southwest power pool, but they have been strongly opposed by several of the major utilities in ERCOT. The old Federal Power Commission, which has become the Federal Energy Regulatory Commission, has felt that it had no jurisdiction over the Texas utilities because of their isolation, and hence was powerless to decide whether or not it was in the public interest that they be interconnected with the Southwest power pool. Whatever the merits of this controversy may be, practically everyone who has seriously addressed the question agrees that there should be full authority in the Federal Energy Regulatory Commission, either on its own motion or on the motion of any of the utilities involved, to hold hearings and decide whether it is in the national interest that the isolation of ERCOT be terminated by any adequate system of interconnection and the necessary coordination to accompany, it, or whether the status quo should be maintained.

Of course, the provisions of this legislation to which I refer have, in various respects, application to matters other than the Texas problem, but it is reassuring that these provisions are designed to adjudicate the Texas problem fully and comprehensively based on the standards set forth in the law, so that whatever solution may best serve the public interest may be reached. The interest of a large population served by many utilities is involved here, as is the interest of the entire United States in a reliable electrical energy supply.

Mr. HUDDLESTON. I would like to have a clear understanding of the situation as to Tennessee Valley Authority under the interconnection and wheeling provisions in sections 202, 203, and 204 of the conference report.

In 1959, the TVA Act was amended to give TVA authority to issue a large amount of bonds to finance TVA's power program. The same statute imposed restraints or prohibitions against TVA's expanding its power supply area beyond the area supplied by TVA on July 1, 1957 (16 U.S.C. 831 n-4). The conference report will give to FERC authority to order TVA to interconnect with other utilities or to participate in wheeling arrangements under certain conditions; however, these new provisions of law do not provide authority for TVA to take any action which TVA would be prohibited from taking under the 1959 TVA Act.

Mr JACKSON. That is correct. Section 204 of the conference report specifically provides for a procedure to insure that any FERC order related to interconnection or wheeling which involves TVA is subject to review to determine if such a violation would occur. If such review is requested by any aggrieved person, the order is stayed. If it is determined after an evidentiary hearing and any judicial review thereof that such a violation would occur, the order is further stayed. This stay could then only be lifted by specific congressional authorization. In short, this provision makes it clear that the status quo with respect to limitations on TVA as set out in the TVA Bond Act is to be maintained.

Mr. HUDDLESTON. In various provisions of sections 210, 211, and 212 of the Federal Power Act, as it would be amended by section 202, 203, and 204 of the conference report, which relate to interconnection and wheeling, I find the phrase "electric utility affected by the order" or "affected electric utility" or similar phrases.

In order to avoid confusion as to what these phrases mean, it is specified in the Statement of Managers under section 204 that the utilities involved in an interconnection arrangement; the utility ordered to wheel; or the buyer and seller in an arrangement for the sale or exchange of power; or any utility whose systems, operations, or costs or revenues would be affected by a requested order and the related arrangements; and the

customers of such utilities have an opportunity to participate in the proceeding and hearing. As I understand it, a utility having such right to intervene and participate will be considered a "utility affected by the order." This should not be confused with the explanation in the statement of managers under section 203, which relates to wheeling, that for the purpose of providing notice of the filing of an application for wheeling with FERC, "affected electric utility" includes, as a minimum, the two electric utilities which have made the arrangements for the sale of power as well as the utility being requested to wheel power.

Mr. JACKSON. The Senator's interpretation of our intent is correct.

Mr. MAGNUSON. I want to congratulate my colleague and good friend on the many months of hard work that he and the other conferees have put in on this important legislation. I know it has at times been a trying experience, and the very fact that the Senate is able to vote on an energy package is a testament to his hard work and determination. I believe that there is going to be a number of beneficial effects that will flow from this legislation, not the least of which is an increased confidence abroad in the ability of the United States to get its energy situation under control. While I am pleased that this package of legislation is now finally moving toward final enactment, I do believe that there are a few small items that still need to be clarified. I have discussed them already with the distinguished chairman of the Energy Committee, and he has suggested a colloquy to put to rest, once and for all, the fact that several legislative provisions in this package could be subject to unintended interpretations.

Mr. JACKSON. The distinguished chairman of the Appropriations Committee is correct. While I do not believe that any of these provisions will lead to unintended interpretations, I share his desire to create sufficient legislative history to put this matter to rest.

Mr. MAGNUSON. My concern really relates to matters affecting our home State of Washington and other coastal States as well. As you know, title V, entitled "Crude Oil Transportation Systems," could affect the location of a crude oil transshipment port on the west coast to serve northern tier and inland States. One of the potential sites for such a system is in the State of Washington. Therefore, it is important that there be no confusion about the exact intent of this legislation.

Mr. JACKSON. I fully understand your concerns. One section that might be misread to affect coastal States like Washington is section 505(b)(2)(B). This section says that applications for the expedited siting procedures provided for in the bill must comply with statutes such as the Federal Land Policy and Management Act. The statutes listed are obviously not exclusive; the application must comply with all applicable laws. For example, application for a system in Washington would have to comply with the federally approved State coastal management plans in the State of Washington under the Coastal Zone Management Act of 1972, or any other relevant Federal law.

Mr. MAGNUSON. I thank the Senator for that clarification. I assume that the criteria for approval of a system listed in section 507(b)(1)(A), which mentions environmental impacts has as its intent the minimization of environmental risks, and that an application could seek to reduce both risks imposed by the proposed project itself and existing risks as well.

Mr. JACKSON. That is correct. For example, the State of California is now considering the reduction of existing pollution sources in conjunction with the consideration of approval of the proposed Sohio pipeline from Los Angeles to Midland, Tex.

Mr. MAGNUSON. I think that this is a worthy goal. In Puget Sound, for example, we have experienced a tremendous increase in tanker traffic over the last several years as the Canadian pipeline delivery of oil has diminished. I would assume that any proposed project which would reduce the very real risks imposed by this existing tanker traffic would be a positive factor in the Secretary's consideration of a possible application for a siting decision in our area. It could mean that there would be a proposal, for example, to hook up the existing refineries to any new pipeline in an effort to reduce the risk associated with tanker traffic serving Washington refineries. While I am no supporter of new pipelines in the State of Washington, if there is going to be one, it should consider ways to reduce all environmental risks, including those that exist today.

Mr. JACKSON. That is correct. As you know, this issue is addressed in the joint explanatory statement of the committee of conference on page 102.

Mr. MAGNUSON. I thank the distinguished Chairman of the Committee on Energy and Natural Resources. There is one further matter that concerns me because it has the potential for misunderstanding. In section 508(a), there is a procedure by which the President could propose to Congress the waiver of certain laws if he finds that such a waiver would facilitate the construction or operation of either the so-called Sohio project or one of the projects approved under the criteria we have already referred to. While Congress would have the opportunity to consider such a proposal by either passing or failing to pass a joint resolution, it nonetheless raises the question of congressional intent in allowing for such a procedure to exist in the first place. What is the intent with respect to this waiver procedure?

Mr. JACKSON. This legislation is intended to be expediting legislation. While I cannot foresee at this moment exactly what Federal law might be proposed to be waived, the waiver would be used to facilitate construction or operation of any system approved under section 507. In other words, this provision is designed to speed things up once a decision has been made.

Mr. MAGNUSON. I thank my distinguished colleague for this explanation. Since it is meant only to expedite implementation of a decision to approve a potential project, I think it is fair to say that it is not intended to modify those laws that would affect that decision in the first place. For example, in the case of our State of Washington, Public Law 95-136 prohibits the construction of any new major crude oil transshipment facility east of Port Angeles, Wash. Obviously, waiver of that law would not be an expediting matter; it would fundamentally affect whether or not a possible project could move forward at all. This procedure cannot be used to waive laws that govern whether or not a siting decision is made; it applies only to expediting legislation. Existing laws prohibiting siting of oil port facilities are not eligible to be waived under this procedure.

Mr. JACKSON. That is correct.

Mr. MAGNUSON. I appreciate the efforts of my colleague to clarify these matters, and again wish to congratulate him on the extraordinary effort he has invested in trying to help this Nation formulate a sensible energy policy.

ORDER OF BUSINESS

(The following proceedings occurred earlier and are printed at this point by unanimous consent:)

Mr. JACKSON. Mr. President, I ask unanimous consent that my remarks that I am about to make, and the action that the Senate may take, occur immediately after the completion of the discussion on the two pending conference reports.

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

THE 1978 AMERICAN K2 EXPEDITION

Mr. JACKSON. Mr. President, in June 1978, the 1978 American K2 Expedition set out to climb K2, the second highest mountain in the world. On September 6 and 7, 1978, four members of the expedition achieved this goal, thereby becoming the first Americans ever to stand atop the summit of this treacherous mountain.

K2, a mountain in the Karakoram Range of the Himalayas on the border between Pakistan and China, reaches a height of 28,250 feet above sea level, making its summit the second highest point in the world, only 750 feet lower than the peak of Mount Everest. K2 is one of the most difficult and challenging mountains to climb in the world.

Indeed, in the world of mountaineering, the summit of K2 is one of the least accessible places on Earth. Although many attempts have been made to scale its heights, K2 has been ascended just twice, by an Italian team in 1954 and by a Japanese team in 1977. Five previous American expeditions have been unsuccessful in their attempts to reach the summit.

The 1978 American K2 Expedition was organized by James W. Whittaker of Seattle, Wash. The expedition's goal was to attempt to climb K2 during the summer of 1978 by the hazardous, virgin northwest ridge. The expedition consisted of 13 team members, in-

cluding 8 residents of the State of Washington.

Upon reaching the mountain to begin the assault, the 1978 American K2 Expedition encountered and overcame continuing adversity. Severe snowstorms and the threat of avalanche greatly impeded their progress. Equipment failures plagued the expedition. Nevertheless, in the face, of these adversities, the climbers persevered. Through great determination, strength, and willpower and the valiant teamwork of all of the members of the 1978 American K2 Expedition, the expedition succeeded by having four members reach the summit of K2.

On September 6, 1978, two members of the expedition, James Wickwire and Louis Reichardt, successfully ascended to the summit of K2, becoming the first Americans to reach the virtually inaccessible summit. In reaching the summit late in the day, these men risked their lives in order to achieve the goal which they had set. Indeed, after reaching the summit, Jim Wickwire, a personal friend of mine and a former member of my Senate staff, did not make it back to the safety of the camp that evening and was forced to spend the entire night at 27,000 feet above sea level with an empty oxygen tank in temperatures reaching 25 degrees below zero and facing gale force winds. Miraculously, he survived this ordeal and, the next morning, made his way down to the camp.

On September 7, two more members of the expedition made their way to the summit. These men, Rick Ridgeway and John Roskelley, climbed to the summit and returned safely to the camp.

In view of the great achievement not only of the four members of the expedition who successfully reached the summit of K2 but also of all of the members of the 1978 American K2 Expedition and all those Americans who supported this expedition, I am sending to the desk a Senate resolution, cosponsored by Senator MAGNUSON and myself, to commend these Americans on their unparalled accomplishments. This resolution recognizes the mountaineering success of the 1978 American K2 Expedition and expresses the appreciation of the U.S. Senate to these outstanding Americans for their service in representing themselves, their communities, and their country, with such great distinction.

Mr. President, the resolution is at the desk. I ask for its immediate consideration. The resolution has been cleared by the majority and the minority leaders.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 581) relating to 1978 American K2 Expedition.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 581) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, read as follows:

S. RES. 581

Whereas, K2, a mountain in the Karakoram range of the Himalayas in Pakistan, reaches to a height of 28,250 feet above sea level, making its summit the second highest point in the world, and

Whereas, the summit of K2 is one of the least accessible places on Earth, many attempts having been made to scale its rocky heights, including five unsuccessful American expeditions, and

Whereas, notwithstanding these many attempts, K2 has only been climbed successfully twice in the past, and

Whereas, the 1978 American K2 Expedition was established to attempt to climb K2 during the summer of 1978 by the hazardous, virgin northwest ridge, and

Whereas, the 1978 American K2 Expedition team members included:

James W. Whittaker, Seattle, Washington, team leader;

Craig P. Anderson, St. Paul, Minnesota;

Terrence Bech, Bloomington, Indiana;

Cherie Bech, Bloomington, Indiana;

Albert W. (Skip) Edmonds, Seattle, Washington;

Chris Chandler, Vashon, Washington;

Louis Reichardt, San Francisco, California;

Rick Ridgeway, Malibu, California;

John Roskelley, Spokane, Washington;

William Q. Sumner, Index, Washington;

Robert T. Schaller, Jr., Seattle, Washington;

James Wickwire, Seattle, Washington; and

Dianne Roberts, Seattle, Washington, and

Whereas, the members of the 1978 American K2 Expedition demonstrated exceptional qualities of determination, strength and will power, as well as outstanding mountaineering skills, in the face of great adversity, and

Whereas, through the valiant teamwork of all of the members of the 1978 American K2 Expedition and with the support of the American Alpine Club and many others, the members of the Expedition achieved the goal which they had set, and

Whereas, four members of the 1978 American K2 Expedition, James Wickwire, Louis Reichardt, Rick Ridgeway, and John Roskelley, successfully ascended to the top of K2 on September 6 and 7, 1978, and

Whereas, these four members of the 1978 American K2 Expedition thereby became the first Americans to climb to the top of K2, now, therefore be it

Resolved, That the United States Senate commends the unparalleled accomplishments of the members of the 1978 American K2 Expedition; recognizes their mountaineering success in climbing K2, the second highest mountain in the world, by a route never previously traversed; and expresses its appreciation to these fine Americans for their service in representing themselves, their communities and their country, with such distinction.

(Conclusion of earlier proceedings.)

REVENUE ACT OF 1978

The PRESIDING OFFICER. Under the previous order, the hour of 3 p.m. having arrived, the Senate will now resume consideration of H.R. 13511.

The pending question is on the amendment of the Senator from Pennsylvania (Mr. HEINZ), on which there will be 20 minutes of debate—7½ minutes for the Senator from Pennsylvania, 7½ for the Senator from Louisiana (Mr. LONG), and 5 minutes for the Senator from Maine (Mr. MUSKIE), with the vote thereon to follow.

The amendment will be stated.

AMENDMENT NO. 4078

(Purpose: To provide an energy credit for the elderly)

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an amendment numbered 4078:

Mr. HEINZ. 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 161, between lines 11 and 12, insert the following new section:

"SEC. 123. ENERGY CREDIT FOR THE ELDERLY.

"(a) IN GENERAL.—Part IV of subchapter A of chapter 1 (relating to credits against tax), as amended by sections 141 and 336 of this Act, is amended by adding immediately before section 45 the following new section:

"'SEC. 44E. ENERGY COST CREDIT FOR THE ELDERLY.

"'(a) GENERAL RULE.—In the case of an individual who has attained the age of 65 years before the close of the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year a credit of $75.

"'(b) LIMITATION BASED ON INCOME.—The amount of the credit allowed by subsection (A) shall be reduced by 1.5 percent of the amount by which the adjusted gross income of such individual who maintains a household (within the meaning of section 44A(f)(1) and exceeds $7,500 for the taxable year.'.

"(b) REFUND OF EXCESS CREDIT.—

"(1) Section 6401(b) (relating to excessive credits) is amended—

"(A) by striking out 'and' before '43'; and

"(B) by inserting '44E (relating to energy cost credit for the elderly),' before 'exceeds'.

"(2) Section 6201(a)(4) (relating to assessment authority) is amended—

"(A) by striking out 'or' before 'section 43' and insert in lieu thereof a comma; and

"(B) by inserting 'or section 44E (relating to energy cost credit for the elderly),' before 'the amount so overstated'.

"(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV is amended by inserting immediately after the item relating to section 44D, the following new item:

"'Sec. 44E. Energy cost credit for the elderly.'".

On page 126, after the item relating to section 122, add the following new section:

"Sec. 123. Energy credit for the elderly.".

Mr. HEINZ. Mr. President, I shall not take my 7½ minutes at this point.

This is the amendment I offered on Saturday night as we were about to close our business. It is an amendment that I offer on behalf of Senator DOMENICI, together with Senator BROOKE, Senator CASE, and Senator HASKELL. All of us sponsor this amendment. It is an amendment that originally was drafted by Senator DOMENICI and which I offered during consideration of the energy tax bill last year.

The reason why we are offering it at this time is that, in spite of the fact that this amendment was adopted by the Senate by a vote of 88 to 2 last year, we understand that the conferees on the energy tax bill have dropped this amendment, notwithstanding the vote of 88 to 2 in favor of it, from the energy tax bill. Therefore, we want to be consistent with the will of the Senate in including the

amendment in this tax bill, the Revenue Act of 1978.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, may I ask the distinguished Senator from Pennsylvania a question?

What is the effective date? The amendment I have seen has no effective date.

Mr. HEINZ. The Senator is correct. My understanding would be that this would be effective upon enactment.

Mr. MUSKIE. In that case, Mr. President, I do have some comments to make. In a moment, I will make a point of order against the amendment. I will do so, because the tax losses from that amendment will violate the revenue floor set in the budget resolution which we adopted last month.

Mr. President, the enactment of this amendment when added to the other tax reductions already agreed to and included in H.R. 13511, would cause revenues to be less than the revenue floor set forth in the second concurrent resolution for fiscal year 1979.

The Heinz amendment would provide a $75 refundable tax credit for the elderly for energy-related expenses and would result in a revenue loss of $1.2 billion in the first full year. In fiscal year 1979 revenue loss associated with this amendment is approximately $212 million.

The estimates upon which this point of order is based have been confirmed by the Congressional Budget Office and the Joint Committee on Taxation. I have discussed them with the distinguished floor manager of the bill, Senator LONG, and there is no disagreement about these estimates.

I am not suggesting the Senate cannot consider it in some form which would not violate the budget resolution. For example, if other tax losses in the bill or in amendments already agreed to are reduced, there will be room for this amendment.

But the tax losses from this amendment, when added to the tax reduction already in H.R. 13511 and in amendments which have been added to it so far, will break the congressional budget.

The second budget resolution that passed this body by a 47-to-7 vote provided a revenue floor of $448.7 billion. That floor allowed room for $21.9 billion in tax reductions during the fiscal year.

The amendments to the Finance Committee bill accepted thus far have used up every inch of room provided in the resolution—down to the last $1 million.

Moreover, amendments passed up to this point have bloated the fiscal year 1980 impact of this bill to approximately $50 billion.

When the Budget Committee sits down several months from now to begin work on the first budget resolution it will face an extremely difficult task. We would all like to see further, substantial progress toward a balanced budget in fiscal year 1980, but amendments such as the Heinz amendment, on top of an already overloaded bill, may deny us the opportunity to make much progress in that direction.

Mr. President, the Budget Act provides that we must make a point of order against the consideration of such budget breaking amendments.

Let us be clear about the meaning of this point of order. The other night, when I made a point of order under section 303 of the Budget Act, we were talking about the proper procedures to be followed under the Budget Act.

But in the case of the point of order against this amendment, we are talking about the budget itself.

We will either live within the budget we adopted last month, or the budget process is repealed for all practical purposes.

Fortunately, we have never faced this question before. We have always managed to live within our budgets.

So, I do not relish the need to press this point of order now.

I wish every Senator could have every amendment considered and adopted, if it has merit.

But we have a budget for 1979. And the Budget Act forbids considering or adopting legislation which would cause the revenue floor in that budget to be breached.

This is such an amendment.

This amendment will violate the budget.

We are not talking about the target budget of the first budget resolution.

We are talking about the second and binding congressional budget resolution for fiscal year 1979.

That budget resolution contemplates a deficit of $38.8 billion. This amendment will increase that deficit dollar for dollar, because it cuts beneath the revenue floor specified in the budget resolution.

This amendment and further amendments are simply not in order until other amendments are made in the legislation to make room for this amendment and any others that may be offered.

While the Heinz amendment on its face appears to reduce revenues and increase outlays for a worthy cause, I would like to submit for the RECORD several reasons why I believe that the amendment is unnecessary, aside from its budget-busting impact.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

ARGUMENTS AGAINST HEINZ AMENDMENT

First, sponsors of the amendment argue that the refundable tax credit is designed to ease the burden of rapidly rising utility bills, but in fact the amendment does not relate the tax credit in any way to energy use, energy payments, or energy conservation. Low-income elderly persons in warm, Southern climates would receive as large a tax credit as a poor elderly person in my own State of Maine.

This leads me to my second point, which is that the tax bill before us already provides substantial tax reductions for low income persons and the elderly. The bill provides an increase in the existing tax credit for the elderly, an increase worth $100 million in FY 1979 and nearly $300 million in FY 1980.

The bill as reported by the Finance Committee provides substantial tax reduction to low income groups. Moreover, the Kennedy amendment adopted by the Senate last week reduced taxes for low and middle income households even further. That amendment lowered taxes by an additional $600 million in FY 1979 and nearly $7 billion in FY 1980.

Third, sponsors may point out that this credit passed the Senate a year ago by a lopsided vote, but I must remind my colleagues that at that time the Senate was also expecting further rapid increases in the price of energy in response to other portions of the energy program. At that time the House had passed the crude oil equalization tax. The crude oil equalization tax is now almost certainly a dead issue.

Finally, alternative federal programs are available to provide direct aid to elderly with low incomes who are hit particularly hard by rising energy prices. The Interior Appropriations Conference Report approved by the Senate on Saturday included approximately $200 million for FY 1979 for weatherization of low income housing. This funding will continue the weatherization program, a program which has already helped thousands of low income households adjust to higher energy prices.

In addition, the conference agreement on H.R. 5037, the National Energy Conservation Policy Act, which the Senate will vote on today, provides several hundred million dollars in FY 1979 alone to assist energy consumers in coping with rising energy prices.

The need for tax relief to offset higher energy prices is clearly less than it appeared to be a year ago.

So we must make the point of order, and I do so now.

● Mr. BELLMON. Mr. President, the amendment number 2027, which would provide energy tax credits for the elderly, is a popular initiative. In fact, when proposed last year during the tax debate, it passed this body by a vote of 88 to 2. The dissenting votes were cast by the Senator from Wisconsin (Mr. PROXMIRE) and this Senator from Oklahoma.

Mr. President, neither Senator PROXMIRE nor myself are ignorant of the problem, nor do we lack sympathy for the implications which rising utility costs have on the elderly, especially those whose income is fixed. The amendment, however, was a budget buster last year, and it is a budget buster this year. If such relief is to be provided, Mr. President, then the tax reductions available to others must be reduced. I would not argue with that approach, I do, however, resist this attempt to provide additional benefits without compensatory benefit reductions elsewhere since, if successful, the sponsors will increase the deficit by as much as $1 billion.

Such a result, Mr. President, will not provide tax relief to the needy elderly, but will increase the tax of inflation which they must bear.

In addition, it should be noted that affirmative action on this amendment will break the revenue floor established in the second concurrent resolution. Thus, the amendment is subject to a point of order under section 311(a) of the Budget Act.

Mr. HEINZ and the other sponsors of this amendment may seek to avoid the discipline of the Budget Act by manipulating the effective date of the amendment, making it first applicable in fiscal year 1980. I hope that they will not, but if they do, it should be noted that this loophole has been created by the Senate 2 days ago when the Senate chose to overturn the ruling of the Chair with respect to the interpretation of section 303 of the Budget Act. Prior to that event, fiscal year 1980 would have been

protected from such maneuvers which permit us to "fly now and pay later."

Mr. President, I call upon my colleagues to reaffirm their commitment to the Budget Act and the second concurrent resolution by upholding the point of order which lies against this amendment.●

The PRESIDING OFFICER. The Senator's 5 minutes have expired. Who yields time?

Mr. HEINZ. Mr. President, will the Senator from Maine yield for a question?

The PRESIDING OFFICER. The Senator from Maine has no more time.

Mr. HEINZ. On my time.

Mr. MUSKIE. Yes.

Mr. HEINZ. For calendar 1979, what does the Senator from Maine estimate that the cost of this would be?

Mr. MUSKIE. It would be $1.2 billion.

Mr. HEINZ. I have to disagree strongly with that number, because we called the Joint Committee on Taxation this morning; and for the period of January 1, 1979, through December 31, 1979, they gave us a figure—unless I am misinformed—of $440 million.

Second, they used as the basis for their calculation all elderly people over age 65. In fact, the amendment does not go to all elderly people over age 65. It goes only to elderly heads of households over 65, and not to all of them, because those who would be eligible under this are only those who would be fully eligible at $7,500 a year income or less, and those would be partially eligible between $7,500 and $12,500.

So I say to my good friend from Maine that I am afraid the number he has received does not relate, in fact, to the facts of the amendment. We checked this out ourselves, and I am concerned that the Senator has been given a funny number.

Mr. MUSKIE. The estimates we have as to the cost of the Senator's amendment, as we understand it, were confirmed by the Congressional Budget Office, the Joint Committee on Taxation, and Senator LONG.

Mr. HEINZ. That does not make them right.

Mr. MUSKIE. Whether the figures of the Senator from Pennsylvania are correct or ours are correct, there is not a single dollar in the 1979 fiscal year bank for this amendment. I said that this morning, and I have said it several times in the course of the day—that the amendments already approved have eaten up all the room in the budget resolution.

So whether it is $440 million or $1.2 billion, that the Senator's amendment would cost on a calendar basis, the fact is that there is not room for either figure.

Mr. HEINZ. I appreciate the Senator's response.

Let me just say, Mr. President, that we all know how much money is involved in this bill. In fact the Senate passed a $3.7 billion corporate tax cut just a few days ago and regardless of whether the figure is $1.1 billion or $400 million or $200 million, the fact is it is that ludicrous to say that we are going to give $3.7 billion to the big corporations and not put one cent into this bill explicitly for our elderly who are hard-pressed by utility bills. And that makes the purpose of this Senator's amendment, regardless of any of the legal points that the Senator from Maine may make.

Mr. President, I reserve the remainder of my time.

Mr. MUSKIE. I have no time remaining, I take it, Mr. President, to respond.

Mr. HODGES. The Senator is correct.

Mr. MUSKIE. Mr. President, how is the remainder of the time divided?

The PRESIDING OFFICER. The remainder of time is allocated to the Senator from Louisiana (Mr. LONG). It is the only time that remains on the amendment.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. METZENBAUM. There is no other time remaining, is there?

The PRESIDING OFFICER. A quorum call is not in order until all time is yielded back unless the Senator has time himself. I do apologize. The Senator from Pennsylvania does have 1½ minutes.

If no one is yielding time, it will be charged equally against both sides who have time remaining.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

Mr. HEINZ. Mr. President, I object.

The PRESIDING OFFICER. There is not sufficient time to have a quorum call. There are only about 7 minutes remaining.

Mr. CURTIS. Very well.

The PRESIDING OFFICER. The time is being charged equally now.

Mr. HEINZ. I only have 1½ minutes. Senator LONG has 7 minutes remaining.

Mr. CURTIS. How much time does the Senator want?

Mr. HEINZ. I am controlling the time. I want a minute and a half to respond to whatever Senator LONG says.

Mr. CURTIS. All right. We will give the Senator 2 minutes.

The PRESIDING OFFICER. The Senator does not have a minute and a half. It is being charged against both sides equally at the present time.

Mr. MUSKIE. Mr. President, if I may have the attention of the Senator from Nebraska, unexpectedly I found myself in possession of 5 minutes to oppose the amendment of which I was unaware until I came to the Chamber. I understood that 3½ minutes had been assigned to Senator LONG to oppose the amendment. He is not here. Before I could finish my argument I was cut off, because I had run out of time. The Senator from Pennsylvania is waiting for some debate on the other side to which he might respond.

The PRESIDING OFFICER. Does the Senator from New York, sitting now for Senator LONG, wish to yield time to the Senator from Maine?

Mr. MOYNIHAN. I am happy to yield as much time as we have to the Senator from Maine.

Mr. MUSKIE. I thank my good friend from New York.

I never encountered this situation before, I must say.

But in any case, the Senator from Pennsylvania made the point that I was merely raising legal issues. Believe me, I say to the Senator, with respect to the argument that he has just made, there is more equity in providing this relief than some of the relief provided to others under amendments or provisions already adopted. I could not agree with him more.

But if I were to take that attitude with respect to amendments, favor the new ones that come along that I like, we would now be far above the $38.8 billion deficit that we have already adopted for fiscal year 1979. I have to be neutral or as neutral as human nature makes it possible for me to be to try to apply the rules. And the fact is that we do not have a nickel remaining in the budget resolution bank for any amendment, however worthy, including this one. I wish that some of the provisions already approved could be washed out so we could make room. But I do not have that power. Only the Senate has that power. If the Senator can figure out some way to substitute this one for some less worthy ones in his estimate or mine that are already approved by the Senate, I would be willing to consider it.

The point of order is the only discipline that we have to try to hold some kind of a ceiling on what we do here, and it is my duty to raise it, and I will at 3:20 p.m. for those reasons, even though the equities of his amendment have a great deal of appeal.

Mr. HEINZ. I am delighted the Senator from Maine supports the amendment but just cannot vote for it.

Mr. MUSKIE. No, I do not support it for the reasons that I stated.

Mr. HEINZ. Let me say to the Senator from Maine, first of all the order in which the amendments are voted on appears decided by the Chair, by the President of the Senate. Now on Friday, I was No. 4 on the list to be recognized to offer this amendment when there was plenty of money remaining in the budget resolution. Saturday morning there appeared up there a list with 12 names on it, the first 10 of whom were Democrats. So if there is anyone who is somehow managing to make sure there is no money remaining for the elderly in this bill it is on the Senator's side of the aisle.

This appears to be something called first come, first served, and if the Democratic side of the aisle gets recognized by the Democratic presiding Member, then the Democratic side gets the goodies and the people get shafted.

That is not at all my idea of what is good for this country.

The Senator asks how can we wash this amendment out, and I will tell the Senator how it will be washed out with something else if the Senator and the Finance Committee truly believe it has merit when they take it to conference, and I hope they do.

Mr. MUSKIE. I do not go to the tax conference.

Mr. HEINZ. And I hope when they go back to the House of Representatives

they will find a way to accommodate this amendment.

I do thank the Senator for yielding.

Mr. MUSKIE. Mr. President, is there any time remaining?

The PRESIDING OFFICER. There are 2 minutes remaining.

Mr. MUSKIE. I make this additional point. I am not for all these amendments that have been adopted. But let me give the Senator the consequence of what has occurred. When the bill came out of the Finance Committee there was $1.4 billion remaining in the budget resolution to accommodate the energy tax bill and some other relatively minor tax legislation that was under consideration.

All of that $1.4 billion has been used up and it has been used up in a very interesting way. It has been used up by putting a small wedge in fiscal year 1979, and that small wedge totals $1.4 billion. But the first full-year cost of those amendments is $10 billion.

This is somewhat like the issue discussed the first day. We have put in wedges which in 1979 cost $1.4 billion but in the first full year will cost $10 billion. That is the sort of tax-writing habit we have gotten into here. I do not approve of that at all. I do not know what list the Presiding Officer had on Saturday. I had nothing whatsoever to do with it. But, I was against any increases that would eat up what remained in the budget resolution to take care of these other requirements.

Up to the ceiling, the Finance Committee chairman presumably will clean up the tax bill when he goes back to conference. But for those things that now go above the ceiling in 1979, I have a responsibility to try to take care of them in the Chamber. That is what I am trying to do.

Mr. President, if there is no further——

Mr. HEINZ. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has no time remaining.

Mr. MUSKIE. Mr. President, I make the point of order.

Mr. HEINZ. Mr. President, is there any time remaining?

The PRESIDING OFFICER. There is not.

The Chair is advised that the point of order is well taken. Under section 311 of the Budget Act, legislation is subject to a point of order if it would reduce revenue for fiscal year 1979 below the revenue floor of the second budget resolution.

The Congress has established a revenue floor of $448.7 billion in the second budget resolution for fiscal year 1979. According to the Congressional Budget Office, legislation which has been enacted in prior years or enacted this session and sent to the President for signature, together with the Finance Committee substitute for the 1978 tax bill and floor amendments to that bill adopted to date, leave no room for additional revenue reductions in fiscal year 1979.

Since adoption and enactment of the pending amendment would cause revenues to be less than the appropriate level of revenues set forth in the second budget resolution, the amendment is out of order and cannot be considered.

Mr. HEINZ. Mr. President, is there any time remaining?

The PRESIDING OFFICER. There is none.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The point of order has been made and sustained.

Mr. HEINZ. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not at this time a sufficient second.

Mr. HEINZ. Mr. President, I object on the ground a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

Mr. HEINZ. Mr. President, I ask that the Chair once again ascertain whether or not there is a sufficient second.

The PRESIDING OFFICER. The Chair determines there is not a sufficient second.

Mr. HEINZ. Mr. President, I ask unanimous consent to withdraw the call for a quorum.

The PRESIDING OFFICER. It had never started.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair stand as the judgment of the Senate? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mrs. HUMPHREY), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The result was announced—yeas 65, nays 22, as follows:

[Rollcall Vote No. 464 Leg.]

YEAS—65

Allen	Dole	Huddleston
Bartlett	Durkin	Inouye
Bayh	Eastland	Jackson
Bellmon	Ford	Johnston
Bentsen	Garn	Kennedy
Burdick	Glenn	Leahy
Byrd, Harry F., Jr.	Goldwater	Long
Byrd, Robert C.	Gravel	Magnuson
Chafee	Hansen	Mathias
Chiles	Hart	McGovern
Cranston	Hatch	Melcher
Culver	Hatfield, Paul G.	Metzenbaum
Curtis	Hayakawa	Morgan
Danforth	Hodges	Moynihan
DeConcini	Hollings	Muskie
Nunn	Sarbanes	Nelson
Packwood	Sasser	Talmadge
Pearson	Sparkman	Weicker
Pell	Stafford	Williams
Proxmire	Stennis	Young
Ribicoff	Stevens	Zorinsky
Roth	Stone	

NAYS—22

Baker	Heinz	Schmitt
Biden	Helms	Schweiker
Brooke	Javits	Scott
Case	Laxalt	Thurmond
Church	Lugar	Wallop
Clark	Matsunaga	
Eagleton	McIntyre	
Hatfield, Mark O.	Randolph	
	Riegle	

NOT VOTING—13

Abourezk	Griffin	Percy
Anderson	Haskell	Stevenson
Bumpers	Hathaway	Tower
Cannon	Humphrey	
Domenici	McClure	

So the ruling of the Chair was sustained as the judgment of the Senate.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the decision of the Chair was sustained.

Mr. LONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the time between now and 4 p.m. will be equally divided and controlled by the Senator from Maine (Mr. MUSKIE) and the Senator from Louisiana (Mr. LONG).

The Senator from Louisiana.

Mr. LONG. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order. The Senator is correct, the Senate is not in order. Senators will take their conversations to the cloakroom.

The staff will please take their seats.

The Senate is not in order. The Senator from Louisiana is entitled to be heard.

Mr. LONG. Mr. President, if we are going to conclude this session on Saturday, as we have said we were going to try to do, then we are going to have to vote cloture on this bill. We need cloture on this bill today if we are going to hope to get out of here by Saturday. Assuming we vote cloture today, today being Monday, that gives us today and tomorrow in order to complete action on the bill. The staff will need some time to do all the technical work that is necessary to put all this together. We will need Thursday and Friday for a conference and hopefully on Saturday we could get all the papers together and if the House is willing to waive their 3-day rule over there on the conference report, we could vote on the conference report Saturday and get out of here.

If we do not vote cloture today, it is extremely doubtful that we will be able to get out Saturday no matter how hard we work, how late we work, or in how much of a rush we try to do business.

Mr. President, in order to get out of here we are going to have to agree to leave off these nongermane amendments, like the sunset bill, the Glenn amendment on tax expenditures, the Humphrey-Hawkins bill, textile quotas, hospital cost containment, locks and dam 26, the user charges, and every-

thing else that might muster a majority vote. If the leadership of the Senate is going to insist on acting on all these other things before we act on the tax bill, or as a condition of acting on the tax bill, we might just as well put this tax bill back on the calendar or put it back in the committee and take up these other things, Humphrey-Hawkins, textile quotas, hospital containment, locks and dam 26, all the rest of it, and come back to the tax bill after we have disposed of those issues.

But if the Senate really feels it wants to keep its commitment to conclude this session on the 14th, it should vote cloture so we can limit debate to germane amendments.

Incidentally, Mr. President, if we limit this bill to germane amendments, with all the things that have been put out there, including the amendments I just sent up there, which is a technical correction to the bill to correct all the technical errors in the 1976 Tax Reform Act, which is over 100 pages of technical amendments—and mind you, that will correct all the technical errors in a 2,000-page bill—if we have all that, Mr. President, one would have almost the entire revenue code to look over in offering possible germane amendments.

Furthermore, under the germaneness rule a lot of welfare amendments may be offered because we have a lot of welfare amendments in the bill. But we do not have social security, we do not have public works, we do not have the trade program, and we do not have appropriations provisions. So at least there are a lot of areas that we would not be involved in if we can limit this to germane amendments, and also limit the amount of time available to each Senator so each Senator only has an hour to speak. I have managed bills of this magnitude under cloture before, Mr. President. I know I can live within my 1 hour. As manager of the bill, I can get by with 1 hour. I would think everybody else can get by with 1 hour. I hope the Senate will vote for cloture.

Mr. CURTIS. Will the Senator yield?

Mr. LONG. I yield.

The PRESIDING OFFICER (Mr. ZORINSKY). The Senator from Nebraska.

Mr. CURTIS. Mr. President, I would remind the Senator that the need for cloture is not to protect the domain of the Finance Committee. I think the issue is whether or not we want a tax bill at all and particularly if we want to adjourn in the near future. The reason I say this is no effort to protect the domain of the Finance Committee as I believe the actions taken by the Finance Committee were well-founded, well thought out. There are many people who disagree. After we vote cloture any amendment to strike what the Finance Committee has done is in order. Is that correct?

Mr. LONG. That is correct.

Mr. CURTIS. So those who feel that they disagree with any particular action of the Finance Committee will have full right to strike out any section under the rules. This is merely to protect orderly procedure so that everything else is not added to cause the bill to either fail or delay adjournment.

Mr. LONG. Mr. President, this should be clear. If they want to strike something out of the bill, they should have the amendment at the desk before we are through voting on cloture.

Mr. CURTIS. I thank my distinguished chairman. It was not my thought to convey the idea that they would not have to otherwise qualify. But so far as the rule of germaneness, so far as the narrow issue of germaneness, a motion to strike is in order. I am not urging it to be done. I expect to resist most of them. But the amendments will have to otherwise qualify.

This is a need for cloture to preserve orderly procedure and to make it possible for some sort of tax bill after the Senate and the conference have worked their will. And it has a very direct relationship to any adjournment in the foreseeable future. I thank the Senator.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, I yield myself 3 minutes.

Mr. President, I ask unanimous consent to include in the RECORD at this point a statement by my distinguished colleague, Senator HATHAWAY.

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

STATEMENT BY SENATOR HATHAWAY

SUNSET LEGISLATION AND TAX EXPENDITURES

I support an amendment to extend the provisions of sunset legislation to Federal tax expenditures through a detailed review process by the Senate Finance and House Ways and Means Committees.

I believe sunset legislation is one of the most effective tools that the Congress has to review and control Federal spending. With the adoption of a comprehensive sunset and the Congressional Budget, we will have the tools to effectively control Federal programs.

To include only direct spending programs in sunset will omit the fastest growing portion of the Federal budget—tax expenditures. In Fiscal Year 1978, the revenue losses associated with these provisions are estimated at over $124 billion, compared with a revenue loss of $52 billion in Fiscal Year 1971. According to the Congressional Budget Office, these losses are expected to rise to $199 billion by Fiscal Year 1983. This growth stems in part from the fact that tax incentives—unlike most authorizations—are often enacted in perpetuity and are not required to run the gauntlet of periodic reauthorization and the annual appropriations process.

For example, a study on tax expenditures by the Senate Budget Committee discusses "Higher Education" as follows:

TAX EXPENDITURES

Tax expenditures account for a large portion of total Federal assistance for higher education. The major tax expenditures providing benefits directly to students and their families are the exemption for student dependents, the deduction for interest paid on student loans, and the exclusion from taxable income of scholarships, grants, fellowships, GI bill education benefits, and social security student benefits.

The major tax expenditures that aid educational institutions are the tax deduction for charitable contributions, the exclusion from taxable income of unrealized capital gains on gifts and bequests to higher education institutions, the deduction of State and local taxes used to support higher education, and the exclusion from taxable income of interest on State and local borrowing for higher education purposes.

Higher education tax expenditures will result in revenue losses of approximately $4.8 billion in fiscal year 1979, compared to outlays for higher education spending programs of approximately $8.7 billion.

SPENDING PROGRAMS

Federal higher education policy has three primary objectives: providing equal access to higher education regardless of family background; maintaining the financial stability of colleges and universities; and relieving the financial burden on families caused by education costs. Outlays for the major Federal spending programs for higher education are listed in the following table:

Estimated Outlays for higher education

[In millions of dollars]

Program	1978	1979	1980
Federal grants to students:			
Basic education opportunity grants	1,592	1,837	1,982
Supplemental education opportunity grants	231	301	325
Work study program	411	482	520
State student incentive grants	51	60	65
GI bill education benefits	3,384	3,094	2,801
Social security student benefits	1,800	2,000	2,200
Student loan programs:			
National direct student loans [1]	282	311	357
Guaranteed student loans [1]	619	534	760
Aid to institutions: [2]			
Strengthening developing institutions	107	120	148
Total	8,477	8,739	9,158

[1] Annual loan volume is in many ways a better measure than outlays of program activity in any given year for higher education direct and guaranteed student loan programs. Annual loan volume reflects the sum of all loans obligated during a fiscal year under direct loan programs and the value of all commercial loans insured under loan guarantee programs. Outlays, on the other hand, reflect only administrative costs and net lending activity—interest subsidies, loan defaults, new loans, and repayments on prior-year loans. As such, outlay figures tend to underestimate the full effect of these programs. The total amount of loan funds available under the national direct student loan program, according to the HEW Office of Education, will be approximately $605,000,000 annually in fiscal years 1978–80. The amount of loans guaranteed under the guaranteed student loan program is expected to be $1,648,000,000 in fiscal year 1978, $2,673,000,000 in fiscal year 1979, and $2,949,000,000 in fiscal year 1980.

[2] There are a number of minor programs that provide aid to institutions that render certain student services. Also, a substantial amount of Federal funds go to institutions for research purposes. These latter programs have not been included in this table since they primarily involve the purchase of services by the Federal Government, and do not have as their major purpose the dispersing of aid to institutions. To some extent, however, these research grants help defray institutional costs of instruction.

RELATIONSHIPS BETWEEN THE TAX EXPENDITURES AND SPENDING PROGRAMS

Distribution of benefits; individual beneficiaries

Except for guaranteed student loans and GI bill education benefits—over two-thirds of all student aid spending program benefits are concentrated among students with family income below $10,000. This distribution results primarily because all of these programs, except for social security student benefits, make financial need a major consideration in distributing benefits. Guaranteed student loans are not needs-tested, but loan recipients qualify for the in-school subsidy only if their family's income is less than $31,000. GI education benefits and social security student benefits are provided to persons in all income classes without regard to need. However, social security benefits are distributed progressively across income classes since recipients come from families whose incomes are generally low because the primary worker is dead, disabled, or retired. The table below indicates the distribution of spending program outlays for higher education by income class.

In contrast to the spending programs, higher education tax expenditures provide benefits regardless of family need, but provide no educational support to those low-income families without tax liability. Moreover, since the size of tax expenditure benefits depends upon the recipient's marginal tax bracket, taxpayers in relatively higher brackets receive proportionally greater benefits than those in lower brackets.

Higher education tax expenditures, in the aggregate, are more concentrated among middle and upper income taxpayers than spending program benefits. For example, while 27 percent of the benefits of the parental exemption for students—the largest tax expenditure aiding individuals—accrued to families with expanded gross income over $20,000 in fiscal year 1977, the table below indicates that, in the same year, only 1 percent of all basic and supplemental education opportunity grants and work study benefits went to those with family adjusted gross income above $20,000.

Distribution of higher education outlays to individuals by income class, fiscal year 1977 [1]

[In millions of dollars]

Program	Adjusted gross parental income for dependent students [2]		
	$0 to $10,000	$10,000 to $20,000	$10,000 and over
Federal grants to students:			
Basic education opportunity grants	1,166	273	([3])
Supplemental education opportunity grants	189	57	2
Work study program	233	104	21
GI bill education benefits	1,304	1,463	413
Student social security benefits	694	398	193
Student loan programs:			
National direct student loans [4]	151	114	30
Guaranteed student loans [4]	188	238	22
Total	3,925	2,647	681

[1] Distribution of State student incentive grants unavailable.

[2] Most self-supporting students have incomes below $10,000. The benefits received by self-supported students are reflected in the amounts shown for dependent students, with 90 percent going to the $10,000 and less income class and the remainder to the $10,000 to $20,000 income group.

[3] Amount insignificant.

[4] Numbers reflect only the value of interest subsidies associated with these programs, and not the total value of loans made under these programs in fiscal year 1977.

Source: Congressional Budget Office, *Federal Aid to Postsecondary Students: Tax Allowances and Alternative Subsidies*, February 1978.

INSTITUTIONAL BENEFICIARIES

Tax expenditures and spending programs directly assisting colleges and universities benefit very different types of institutions. The strengthening developing institutions program primarily assists colleges and vocational schools that need funds to compete with other public and private schools that are relatively secure financially. In contrast, the deduction for charitable contributions and the exclusion of unrealized capital gains on gifts and bequests to educational institutions benefit mainly those institutions that most effectively attract these forms of charitable giving. These latter institutions are very often long established and relatively secure financially; few would qualify as developing institutions.

The exemption of interest income from State and local bonds makes it easier for State and local governments to raise funds to support higher education. The benefits of this tax expenditure go to public rather than private institutions.

Empirical studies have not yet reached a consensus as to the effectiveness of the charitable contribution deduction in encouraging giving. Some studies conclude that the deduction increases charitable giving by more than the foregone Treasury revenue and that educational institutions gain more from the deduction than they would from a tax credit or matching grant program. The deduction for charitable contributions is, however, not likely to provide much assistance to developing institutions. Thus, direct Federal spending to strengthen developing institutions complements tax expenditures in this area.

EXPANDING ACCESS TO HIGHER EDUCATION

Education benefits distributed according to need expand access to higher education more efficiently than benefits distributed across all income classes. Programs distributing benefits on a needs basis provide aid to families with only marginal resources who otherwise might not be able to finance the costs of higher education. In contrast, tax expenditures and outlays distributed without regard to need often provide benefits to students from middle and upper income families who are more likely to have the resources to finance higher education without additional Government aid. For many of these students, the provision of aid has little or no effect on their ability to attend an institution of higher education.

The relative size of Federal educational benefit payments also has an important effect on expanding student access to higher education. Educational aid "packages," make up of varying amounts of direct grants, student loans, and work study wages, often finance a substantial percentage of total educational expenses, significantly affecting a student's ability to attend an educational institution.

Tax expenditures, on the other hand, provide low levels of financial aid relative to total college costs. The parental exemption for dependent students is worth only $150 per student for families taxed at the median marginal rate of 20 percent. The tax expenditures that arise from the exclusion of scholarship, fellowship, GI bill, and student social security benefits are only a small percentage of the value of these direct payments for most recipients. Moreover, since tax expenditure benefits are increased in value for recipients in higher marginal tax brackets, low-income persons with the least ability to afford a college education receive the smallest tax expenditure benefits. Present tax expenditure provisions provide, at most, only marginal assistance in financing the costs of higher education.

EFFECT ON TUITION COSTS

Both tax and direct spending programs that provide student aid may allow institutions to raise tuitions, capturing some or all of the benefits meant for students. It is difficult to determine the extent to which institutions engage in this practice. Several theories have been offered, but none has been empirically tested. In general, institutions experience conflicting pressures to remain both financially. viable and price competitive.

Spending and tax programs that distribute benefits to a narrowly defined group of students may be less likely to result in tuition increases compared to more widely available tax or spending programs. Subsidy-induced tuition increases may drive away a significant number of unaided students as well as the students whose education assistance benefits are captured by the institution. Schools that raise tuitions may also find themselves in a weaker competitive position if other institutions do not adopt similar pricing policies.

ADMINISTRATION

Compared to the current tax expenditures for higher education, which distribute funds with few eligibility restrictions, the higher education spending programs target benefits to those with financial need and, therefore, involve more administrative costs and require more effort on the part of applicants to obtain funds. Under the grant and loan programs, student applicants must document need by submitting personal financial statements which require screening and evaluation by the administering agency or institution. Also, administrative judgments are often necessary regarding the distribution of limited appropriations among qualified applicants. The inevitable existence of fraud and abuse increases the administrative burdens in these programs. In the loan programs, high default rates are a problem because student loan recipients are often difficult to find for billing purposes after their graduation.

In contrast, the distribution of higher education assistance through current tax expenditures involves relatively little paperwork for taxpayers or the Internal Revenue Service. Since recipients are not required to document financial need, benefits can be obtained by merely claiming the relevant deductions, exclusions, or exemptions on annual tax forms. The validity of these claims is checked by the Internal Revenue Service through the auditing of tax returns. This procedure is less burdensome and costly than the screening of grant and loan applications because audits are limited to a small fraction of tax returns each year. However, the amount of revenue lost each year as a result of incorrect or fraudulent higher education tax expenditures claims that go unaudited is not known and could be substantial.

The administration of existing tax expenditures is also simpler than of the spending programs because there are no statutory limits on the amount of aid that can be distributed among beneficiaries, and default problems do not arise because the tax expenditures need not be repaid.

OVERLAP OF BENEFITS

All Federal spending programs for higher education, except for the work study and strengthening developing institutions programs, give rise to tax expenditures for re-

cipients with tax liability, producing an overlap between tax and spending program assistance for such recipients. In the case of grant programs, tax expenditures result from the exclusion of grant benefits from taxable income. In the case of loan programs, tax expenditures arise from the deductibility of nonbusiness and noninvestment related interest payments. Because these education spending programs are largely needs tested, their benefits are concentrated among families in the low tax brackets. Consequently, the tax expenditures associated with these direct spending programs are smaller, on average, than they would be if direct spending benefits were distributed without regard to need to those in higher marginal tax brackets.

LEGISLATIVE INITIATIVES

Both the Senate and the House of Representatives recently have passed college tuition tax credits as a form of higher education financial aid for middle-income families not usually eligible for direct Federal assistance. The conference bill would allow full-time undergraduate and post-secondary vocational students or their parents a credit against tax liability of either 35 percent of eligible education expenses. The maximum annual credit would be limited to no more than $250 per taxpayer. The original House and Senate provisions would be phased in either over 2- or 3-year periods and would result in annual revenue losses when fully effective of $1.1 billion under the House bill and $2.8 billion under the Senate version. The conference committee to reconcile the two versions recommended a version with an estimated revenue impact of $.95 billion.

Moreover, benefits to low- and middle-income students from a tax credit would be limited if the credit were reduced or eliminated for students receiving direct Federal student grants or other tax-exempt educational assistance. Only low- and middle-income students currently receive such assistance. The bills approved by each House include rules that would reduce or eliminate tuition tax credits for students who receive such direct assistance.

The distribution of benefits of a tuition tax credit with an offset provision would be concentrated among taxpayers with family income between $15,000 and $40,000. Although a larger percentage of benefits under this type of provision would accrue to low-income persons than under existing tax expenditure provisions, benefits for low-income persons would be reduced significantly by the offset requirement.

As an alternative to the tuition tax credit, the Carter Administration proposed a sizable expansion of the present direct loan, work study, and grant programs, with particular emphasis on expanding the basic education opportunity grant program, in order to funnel aid to middle-income families that presently receive few benefits or are ineligible for program support. This proposal would aid middle-income families in financing higher education costs without necessarily funding those in higher income brackets. It would also provide larger grants to fewer students than the tuition tax credit proposals. The Carter proposal, however, would involve somewhat higher administrative costs.

The Senate has passed and the House is considering modified versions of the Carter proposal as additions rather than as alternatives to tuition tax credit legislation.

CONTINUATION OF STATEMENT

Thus, present tax expenditures are half as large as direct Federal expenditures in higher education and I believe both should be reviewed in the sunset legislation.

As Senator Glenn pointed out on September 30, 1978; this bill does not sunset tax expenditures, it merely provides an initial review process. The amendment does not terminate or modify in any way any tax incentive provision. It merely requires the tax writing committees to report and the Congress to enact, in the next session a procedure for orderly review and reauthorization of all tax incentives, a procedure to be in place by the end of 1980, with the reauthorization process stretching out over a 10-year period. At the present time there is no such regular review process, and during the last few years the Federal revenue foregone as a result of tax incentives has risen from $52 billion in 1971 to $124 billion this year, and is estimated to be $187 billion by 1983. We must keep watch on this fastest growing part of our Federal deficit, one which receives little or no scrutiny compared to direct Federal expenditures which periodically must go through an authorization and appropriations process.

I want to stress a most important factor. The review is neutral. The tax writing committees, in reviewing tax incentives, may find particular incentives working so well that they should be increased, and I would probably support that.

In other cases, the incentives would not be changed. In still other cases, where the incentive provisions are not doing the job for which they were originally intended, and were siphoning off what would otherwise be tax revenue, the committees could and should recommend termination—"sunsetting" of such incentives. In that case, I would hope and expect that as revenue once foregone became available to the Federal Treasury, a reduction in tax rates for individuals and corporations alike would result. Thus, far from prompting a tax increase, the amendment is designed to produce a tax cut for the average American taxpayer.

It is important to this country that sunset legislation be enacted this year—and that it include a tax expenditure provision.

Mr. MUSKIE. Mr. President, I hear the argument to have orderly procedure and to eliminate nongermane amendments.

Mr. President, we did set aside these amendments, the sunset amendment, the Glenn amendment, the Humphrey-Hawkins amendment, for what purpose? So that nongermane amendments could be considered, taken up, and enacted.

We approved a lot of nongermane amendments. Apparently, what we are really talking about are two classes of nongermane amendments; nongermane amendments that the floor managers of the bill approve, and nongermane amendments that they do not approve. That seems to be the argument.

Mr. President, for many years I have thought we ought to have a rule of germaneness to deal with this kind of situation, as a safeguard against this kind of chaos. But we do not. The reason we do not is that the Senate wishes to reserve to itself the flexibility to take up important matters at any time that may not necessarily be germane to the pending business. Those of us who have been around here all understand that.

For 2 days I have agreed to put my amendment aside so that nongermane amendments of lesser importance, even amendments that might not be consistent with the public interest, might be considered and acted upon.

The reason I offered sunset to this bill is that with a week or less left, this is the only chance I can see to get this high priority issue before the Senate and, hopefully, eventually before the House; the last chance. It is an idea we have been trying to implement for 3 years. So I have offered it to this bill.

In a parliamentary sense, it is not germane, but in a real sense it is germane. Because what we are talking about is enacting tax measures that reduce revenues, as this one does at this point, by $50 billion on an annual basis. We ought to be considering an effective policy and program to reduce spending so that deficits will not go through the roof. So in a practical policy sense, sunset is as relevant to this bill as anything else one could consider.

It is not the ideal place to have it. I would rather have it considered separately. I would rather have the House consider it separately. But if this cloture petition prevails you can kiss sunset goodbye for the rest of this session. There is no other vehicle that will permit us to act on it, and at the same time get the issue to the House in a way that will permit the House to act on it.

I am only speaking about sunset. There are other important issues, which are important to other Senators, that have been offered to this bill. This is a legitimate way to consider them.

As a matter of fact, the Senate really wants to consider them and if we are able to get time agreements, this could be the most expeditious way in which to dispose of them, rather than going through this parliamentary maneuver on every new legislative vehicle that comes along.

I urge my colleagues to vote "no" on this first cloture motion and give us an opportunity to dispose of these other issues on an up or down basis.

I yield, at this point, 3 minutes to my good friend from Wisconsin.

Mr. NELSON. Mr. President, let me say for purposes of economy of time that I endorse everything that the distinguished Senator from Maine has just said in the past 3 minutes.

Let me add to that that I agree and I would support and will support a rule next year—and we will find out how many are prepared to do so—that there be nongermane amendments offered to any tax bill when it comes before the Senate. All of those who are now arguing for a rule of germaneness, I think we will find a good many of them refusing to do that.

I offered the hospital cost containment bill, which has been a proposal of the administration running on now to 2 years, almost 2 years. I offered the Humphrey-Hawkins amendment on Saturday, which has been a proposal that has been around for 4 years. I have said to the leadership and to the minority that I will accept a time limitation, either on this bill or, if they do not want it on this bill, just guarantee that we will have a bill before us. I shall agree to a 1-hour time limitation on hospital cost containment so far as I am concerned, 30 minutes to the side.

I would agree, although there are others who are involved here who may not, but so far as I am concerned, to a 1-hour time limitation on Humphrey-Hawkins, with 30 minutes to a side, and

take it off this bill. Just guarantee us a right to vote.

Is that too much to ask? These are two major programs, supported by the President. They had hearings. Humphrey-Hawkins came out of the Human Resources Committee on May 4, 5 months ago. The hospital cost containment proposal was made by the administration more than a year-and-a-half ago. Those who say we ought to keep the amendments to this bill germane but who, at the same time, will not agree to a time limitation force those of us who think these are important enough measures to put them on this bill because that is the only way we can get it before the Senate for a vote. After all, the public is entitled to see where we stand on these issues and we ought to have a vote.

Hospital cost containment, the administration proposal, would save $59 billion through 1981. The compromise I offer would save $30 billion. We hear all this rhetoric on the floor of the Senate about holding down inflation, cutting back on Federal expenditures. Hospital cost containment would save the Federal Government $11 billion between now and 1982. Is that not important enough to vote on? Is there anything in this pending legislation that is going to save $11 billion except possibly Senator MUSKIE's proposal, which is not a tax billion itself?

So the moment the leadership, the minority and the majority, will say, "We will give you 1 hour on Humphrey-Hawkins, and 1 hour of debate on hospital cost containment," I shall be happy to pull down the amendments, set them aside, and take them up. We waste more than an hour. We waste more time on every little unanimous-consent request than anybody can think of around here.

That is the offer. I am happy to go with it. If you want to pass this bill by Saturday, give us an hour on each; I will pull it down. Give us another little tax bill, customs bill or something, and we will settle the issue very quickly.

Now let us find out who it is that wants to vote on these issues and who really does not.

Mr. LONG. Mr. President, the Senate is going to have to decide that it wants to pass this bill; if it wants to pass this bill any time between now and November, the Senate is going to have to give us cloture on this bill. Otherwise, Mr. President, we shall be hearing all sorts of amendments that are not germane to the bill and that are extremely controversial that, if they are added to the bill, will mean that the bill probably will not become law, anyhow. It probably will not even pass the Senate, because that will involve other issues where we could not get a limitation; people just would not agree to it.

Here are the Muskie and the Glenn amendments. I doubt very much that one can get a limitation of debate on that. I do not believe it could be done.

The Humphrey-Hawkins amendment, they cannot get a limitation on that. Both of those two are pending.

Mr. President, just look at all the other amendments that are here. Yes; I have been willing to accept some amendments that are not germane to the bill, but they were tax amendments or they were welfare amendments, and we have some tax and welfare amendments in the bill. But here is all the printed amendments we have to vote on already, Mr. President. Senators have up until the decision on cloture has been announced to file additional amendments. They can, if they want to, file hundreds of additional amendments between now and the time the announcement is finally made. For example, if there is anything in the bill they do not like, they can put an amendment out there to strike it between now and the time the decision on cloture has been announced.

If we do not limit the bill on some reasonable basis, as has been proposed, but instead permit this bill to be the horse, you might say, for more riders—for the Humphrey-Hawkins bill and the sunset bill, for hospital costs containment and the textile quota proposal—all that means is that the horse just cannot carry that much burden.

I have said many times that these enormous bills, if they are going to have a rider, should not have a rider so big that the horse cannot carry it. Mr. President, if you load all these amendments on the bill in addition to what is on there already, then to think that the bill is going to become law is just to deceive ourselves. We have all we can handle here in the area on which we will be voting. Senators are going to have to decide that they will not let this bill be held hostage for the other controversial measures that are yet to be voted on if this bill is to become law.

Otherwise, Mr. President, the October 14 adjournment date is out; just forget about it. We are not going to be able to adjourn on October 14. That is a commitment that has been made, but only the Senate can keep that commitment. Only the Senate can decide that we are going to take care of the crucial matters that must be voted on. But we are going to have to say we will vote on this bill, but this will have to stand alone, we will limit it to germane amendments. Then if you want to take up Humphrey-Hawkins, see if we can get cloture on that; if you want to take up sunset, see if we can get cloture on that. Either this bill will not pass or we will be here in November and December arguing about it.

In addition to all this yet to be voted on, there are 60 unprinted amendments out there that also may have to be voted on, in addition to all those that will come to the desk between now and the time we announce the result of the cloture vote.

Mr. BIDEN. Will the Senator yield for a question?

Mr. LONG. I yield.

Mr. BIDEN. Did I understand the Senator to say he would agree, he would like to see a time agreement on the Muskie and Glenn amendments?

Mr. LONG. I am not in favor of the Glenn amendment, I say to the Senator. As far as I am concerned, I am not ready to agree to an amendment of that sort.

As far as I am concerned, I do not think the Senate understands that amendment. I am not sure I fully understood it myself. So I am not ready to agree to that.

As a matter of fact, that is not germane to this bill and I do not think it is even germane to the Muskie amendment.

Mr. MUSKIE. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. MUSKIE. I yield 2 minutes to the Senator from Ohio.

Mr. GLENN. Mr. President, I think the last statement by the manager of the bill places the blame exactly where it should be. The hesitancy about permitting a vote on these very important matters lies strictly with the floor manager of the bill. I was willing to settle the other night for 15 minutes, evenly divided, 7½ minutes to a side, if we could get a vote. That could not be agreed to.

To say that the amendment I have offered is one that is hard to understand just flies in the face of reason. It is very simple. It says that we will place a review process—nothing more—a review process on tax incentives and tax amendments.

All the other items, any of these things that have been brought up on about what we do to veterans, widows and children, and all the other things, are just not correct.

So I want to correct that impression. The blame lies not with us for being unwilling to accept a vote. We would have accepted a vote at any time, and all in a very short time limit.

So we have not been delaying things.

Mr. President, I am extremely glad the Senate has had an opportunity to consider this proposal, after 3 years of working with Senator MUSKIE on this.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GLENN. I thank the Chair and I thank Senator MUSKIE.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the time for debate having expired, the clerk will state the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION (AS MODIFIED)

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee amendment in the nature of a substitute for H.R. 13511, a bill to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

Robert C. Byrd, Gaylord Nelson, Muriel Humphrey, Harrison A. Williams, Jr., Spark M. Matsunaga, Donald W. Riegle, Jr., Alan Cranston, Russell B. Long, Abraham Ribicoff, Robert Dole, Howard H. Baker, Jr., Jacob K. Javits, Clifford P. Hansen, Howard M. Metzenbaum, Barry Goldwater, Carl T. Curtis, James B. Pearson, Lowell P. Weicker, Jr., Richard S. Schweiker, Paul Laxalt.

VOTE

The PRESIDING OFFICER. The question is, is it the sense of the Senate that debate be brought to a close?

The yeas and nays are automatic. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), and the Senator from Maine (Mr. HATHAWAY) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON) would vote "nay."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "yea."

The PRESIDING OFFICER. Have all Senators voted?

The result was announced—yeas 62, nays 28, as follows:

[Rollcall Vote No. 465 Leg.]

YEAS—62

Allen	Hansen	Pell
Baker	Hatch	Randolph
Bartlett	Hatfield, Mark O.	Ribicoff
Bellmon	Hayakawa	Roth
Bentsen	Heinz	Sasser
Burdick	Helms	Schmitt
Byrd, Harry F., Jr.	Hollings	Schweiker
Byrd, Robert C.	Huddleston	Scott
Chafee	Jackson	Sparkman
Church	Johnston	Stafford
Curtis	Laxalt	Stennis
Danforth	Leahy	Stevens
DeConcini	Long	Stevenson
Dole	Lugar	Stone
Durkin	Magnuson	Talmadge
Eagleton	Mathias	Thurmond
Eastland	Melcher	Wallop
Ford	Moynihan	Weicker
Garn	Nunn	Young
Goldwater	Packwood	Zorinsky
Gravel	Pearson	

NAYS—28

Abourezk	Hart	McIntyre
Bayh	Hatfield, Paul G.	Metzenbaum
Biden	Hodges	Morgan
Brooke	Humphrey	Muskie
Case	Inouye	Nelson
Chiles	Javits	Proxmire
Clark	Kennedy	Riegle
Cranston	Matsunaga	Sarbanes
Culver	McGovern	Williams
Glenn		

NOT VOTING—10

Anderson	Griffin	Percy
Bumpers	Haskell	Tower
Cannon	Hathaway	
Domenici	McClure	

The PRESIDING OFFICER. On this vote, the yeas are 62, the nays are 28. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Each Senator now has 1 hour for debate.

Who yields time?

PUBLIC UTILITY RATES—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senate will now proceed to vote on the conference report on H.R. 4018. On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. JACKSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JACKSON. Mr. President, I ask unanimous consent that the clerk indicate which conference we are now about to vote on. Is it the utility rate reform conference report or the conservation bill?

The PRESIDING OFFICER. It is the utility rate reform conference report.

The Clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. PACKWOOD (after having voted in the affirmative). Mr. President, on this vote I have a pair with the distinguished Senator from Texas (Mr. TOWER). If he were present and voting, he would vote "nay." I have previously voted "yea." I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), and the Senator from Maine (Mr. HATHAWAY) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON) would vote "yea."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. DOMENICI) and the Senator from Illinois (Mr. PERCY) would each vote "yea."

The PRESIDING OFFICER. Have all Members in the Chamber voted?

The result was announced—yeas 76, nays 13, as follows:

[Rollcall Vote No. 466 Leg.]

YEAS—76

Abourezk	Hatfield, Mark O.	Muskie
Allen	Hatfield, Paul G.	Nelson
Baker	Hayakawa	Nunn
Bayh	Heinz	Pearson
Bentsen	Helms	Pell
Biden	Hodges	Proxmire
Brooke	Hollings	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Harry F., Jr.	Humphrey	Riegle
Byrd, Robert C.	Inouye	Roth
Case	Jackson	Sarbanes
Chafee	Javits	Sasser
Chiles	Johnston	Schweiker
Church	Kennedy	Sparkman
Clark	Leahy	Stafford
Cranston	Long	Stevens
Culver	Magnuson	Stevenson
Danforth	Mathias	Stone
DeConcini	Matsunaga	Talmadge
Dole	McGovern	Thurmond
Durkin	McIntyre	Wallop
Eagleton	Melcher	Weicker
Ford	Metzenbaum	Williams
Glenn	Morgan	Young
Gravel	Moynihan	Zorinsky
Hart		

NAYS—13

Bartlett	Goldwater	Lugar
Bellmon	Hansen	Schmitt
Curtis	Hatch	Scott
Garn	Laxalt	Stennis

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Packwood, for.

NOT VOTING—11

Anderson	Griffin	Percy
Bumpers	Haskell	Tower
Cannon	Hathaway	
Domenici	McClure	

So the conference report on H.R. 4018 was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

NATIONAL ENERGY CONSERVATION POLICY ACT—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. METZENBAUM). The question is on agreeing to the conference report on H.R. 5037, the conference report on conservation.

Mr. JACKSON. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JACKSON. Is that not the conference report on conservation?

The PRESIDING OFFICER. The Senator from Washington is correct.

The yeas and nays have been ordered, and the clerk will call he roll.

The legislative clerk called the roll.

Mr. STAFFORD (when his name was called). Mr. President, on this vote I have a pair with the Senator from Texas (Mr. TOWER). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), and the Senator from Maine (Mr. HATHAWAY) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. DOMENICI) and the Senator from Illinois (Mr. PERCY), would each vote "yea."

The PRESIDING OFFICER (Mr. METZENBAUM). Have all Senators voted?

The result was announced—yeas 86, nays 3, as follows:

[Rollcall Vote No. 467 Leg.]

YEAS—86

Abourezk	Burdick	Cranston
Allen	Byrd, Harry F., Jr.	Culver
Baker	Byrd, Robert C.	Curtis
Bartlett	Case	Danforth
Bayh	Chafee	DeConcini
Bellmon	Chiles	Dole
Bentsen	Church	Durkin
Biden	Clark	Eastland
Brooke		Ford

Glenn	Leahy	Riegle
Goldwater	Long	Roth
Gravel	Lugar	Sarbanes
Hansen	Magnuson	Sasser
Hart	Mathias	Schmitt
Hatfield, Mark O.	Matsunaga	Schweiker
	McGovern	Scott
Hatfield, Paul G.	McIntyre	Sparkman
	Melcher	Stennis
Hayakawa	Metzenbaum	Stevens
Heinz	Morgan	Stevenson
Helms	Moynihan	Stone
Hodges	Muskie	Talmadge
Hollings	Nelson	Thurmond
Huddleston	Nunn	Wallop
Humphrey	Packwood	Weicker
Inouye	Pearson	Williams
Jackson	Pell	Young
Javits	Proxmire	Zorinsky
Johnston	Randolph	
Kennedy	Ribicoff	

NAYS—3

Garn	Hatch	Laxalt

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stafford, for.

NOT VOTING—10

Anderson	Griffin	Percy
Bumpers	Haskell	Tower
Cannon	Hathaway	
Domenici	McClure	

So the conference report (H.R. 5037) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLARIFICATION OF CLOTURE VOTE

● Mr. ROTH. Mr. President, earlier this afternoon I voted for the motion to invoke cloture filed by the distinguished majority leader on H.R. 13511, the Revenue Act of 1978. I would like to take just a moment to clarify why I voted as I did.

Mr. President, although the Sunset legislation itself has been through extensive hearings over the past 3 years, I am not satisfied that the Senate has had ample time to consider the tax expenditure review amendment proposed by Senator GLENN. Unlike the Muskie-Roth Sunset bill, which has received broad bipartisan support, the amendment proposed by Senator GLENN has stirred controversy and raised serious concerns among Members on both sides of the aisle. The serious economic effects of the amendment are unknown and we can ill-afford to adopt proposals with such far-reaching effects without a very clear idea of the possible economic repercussions.

Because of my serious reservations and deep concern with respect to the Glenn amendment and my desire that the Senate have the opportunity to fully debate the proposal, I supported cloture. I did so with the full realization that the passage of cloture on the tax bill would spell doom for not only the tax expenditure review amendment but also for the Muskie-Roth Sunset bill for which I have fought hard and the passage of which I have set as one of my major goals. I hope the issue can be debated at length during the next Congress and a more precise understanding of its effects can be obtained.●

REVENUE ACT OF 1978

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, I call up my printed amendment No. 4029 and ask for its immediate consideration.

Mr. President, a parliamentary inquiry. What is the pending business?

AMENDMENT NO. 4049

The PRESIDING OFFICER. Is that an amendment to the Nelson amendment? The pending question is the Nelson amendment.

Mr. HART. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. At what time does the Senate go back to the consideration of the tax bill?

Mr. LONG. Mr. President, a point of order. The announced amendment is not germane.

The PRESIDING OFFICER. The Senate continued with the consideration of the bill which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (H.R. 13511) to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

The PRESIDING OFFICER. The pending business is the Nelson amendment.

Mr. LONG. My point of order is that it is not germane, Mr. President.

The PRESIDING OFFICER. The point of order having been made, cloture having been invoked which requires germaneness of amendments, the Chair holds that the point of order——

Mr. NELSON. Mr. President, I ask unanimous consent that my pending amendment be temporarily laid aside.

Mr. HATCH. Reserving the right to object——

Mr. CURTIS. Reserving the right to object, may I inquire what the request was?

Mr. NELSON. To temporarily lay aside the pending amendment.

The PRESIDING OFFICER. The Chair has not finished ruling on the point of order. The Chair rules that the point of order is well taken.

Does the Senator from Wisconsin desire recognition?

Mr. NELSON. Mr. President, I call attention to the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON. Mr. President, I ask unanimous consent that the order for——

Mr. ROBERT C. BYRD. 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. ROBERT C. BYRD. Mr. President, there has been some inclination on the part of several Senators to appeal the ruling of the Chair. I have implored those Senators not to appeal the ruling of the Chair. The Humphrey-Hawkins amendment obviously is not germane. Therefore, I want to say again that I hope the ruling will not be appealed. I do not believe it will be appealed. I suggest we proceed.

Mr. NELSON. Mr. President, I would just like to say——

Mr. ROBERT C. BYRD. Let me say this, too, Mr. President, on the part of other Senators who may disagree with me. I take the whole burden of urging that there be no appeal of the ruling of the Chair. I make that appeal myself to all Senators, not to appeal this ruling because the appeal is wrong, the amendment obviously is not germane. I do not believe that the appeal would carry, and if the appeal were made and failed I think the chances then of being successful in getting the Humphrey-Hawkins measure up and getting cloture on it would be nil.

Mr. NELSON. Mr. President, I do not intend to appeal the ruling of the Chair on this measure, but I hope that when we complete the tax bill, which we may be able now to do by tomorrow evening, we shall have an opportunity to vote on or to get a chance to take up Humphrey-Hawkins. I, along with a number of others, shall make every effort to see that that is done.

AMENDMENT NO. 3681, AS MODIFIED

The PRESIDING OFFICER. The question now recurs on agreeing to the amendment of the Senator from Maine.

Mr. LONG. I make the point of order, Mr. President, that the amendment is not germane.

The PRESIDING OFFICER. The point of order is well taken.

Mr. MUSKIE. Mr. President, what was the item?

The PRESIDING OFFICER. The amendment of the Senator from Ohio to the amendment of the Senator from Maine.

AMENDMENT NO. 3678, AS MODIFIED

The question now is on agreeing to the amendment of the Senator from Maine.

Mr. LONG. I make the point of order, Mr. President, that that amendment is not germane.

Mr. MUSKIE. Is this the sunset amendment?

The PRESIDENT OFFICER. The Senator is correct.

Mr. MUSKIE. Mr. President, I appeal the ruling of the Chair.

The PRESIDING OFFICER. The point of order is well taken. Does the Senator from Maine desire to appeal the decision of the Chair?

Mr. MUSKIE. In light of the fact that I shall have no other opportunity to get a vote on this issue on its own merits, which I have not yet had——

Mr. GLENN. Mr. President, is this——

The PRESIDING OFFICER. There was a ruling on the amendment of the Senator from Ohio that the amendment is not germane. The Chair has now ruled that the amendment of the Senator from Maine is not germane.

Mr. MUSKIE. That is the ruling that I should like to appeal, because I see no other chance to give the Senators a chance to vote on sunset on its merits in this session. After 3 years, I should at least like to have that satisfaction.

Mr. LONG. Mr. President, will the Senator withhold his appeal for just a moment, long enough for me to make a brief statement?

The PRESIDING OFFICER. Does the Senator from Maine withhold his appeal long enough for the Senator from Louisiana to make a brief statement?

Mr. MUSKIE. Of course.

Mr. LONG. Mr. President, the whole idea of cloture is that the Senate agrees that it is going to limit itself to germane amendments. To do anything other than that is to ask the Senate to stultify itself after having voted to limit itself to germaneness.

The Senator from Maine himself stood there and asked the Senate to vote against cloture earlier, because his amendment would not be in order for the simple reason that it would not be germane. At this point, to ask the Senate to rule that it is germane after the Senator himself said it is not germane is to ask this Senate to stultify itself. If we are going to do that, we might as well not have a cloture rule, because anyone can get up and offer amendments to anything, an appropriation bill or anything else, and ask the Senate to vote on its merits when it is clearly out of order.

The Senator from Maine has kept amendments from being offered as much as anyone, under the budget rule. We have not asked anyone to say what means, but when the Senate agrees in advance that an amendment is not germane, and the Senator himself said it is not, he should not then proceed to appeal the ruling of the Chair and ask that it be germane.

Mr. CHILES. Will the Senator yield?

Mr. LONG. Yes.

Mr. CHILES. If my memory serves me right, the Senator who is the distinguished chairman of the Finance Committee has appealed a ruling on a point of order and had overruled a point of order that was given by the Chair, has he not, on a point raised by the chairman of the Budget Committee. That is all right, I guess: that does not violate anything, if the distinguished chairman of the Finance Committee wants to appeal something.

Mr. LONG. We were talking about an interpretation of the Budget Act and what it means. We were not talking about an amendment that everybody agreed in advance was not germane.

Mr. CHILES. I thought we were talking about rules of the Senate and I thought we were talking about what we passed in here and rules of the Senate and whether they are going to be followed, whether we are going to follow the Parliamentarian and the rules or not. It seems to me the sauce is just the same on the goose as it is on the gander if we are talking about that.

Mr. LONG. Those who vote against cloture can very well contend that they did not vote for cloture and they are not going to abide by the cloture rule. When one votes for cloture, that is a gentlemen's compact at a minimum that you are going to limit this to germaneness.

Mr. CHILES. This gentleman here has a contract and that contract should be just as binding that I am going to follow the Parliamentarian in all matters or not follow him, period; that I am going to follow my own persuasion when I want to, or I am going to follow the rules. It seems to me that that is the kind of contract we are talking about here. It seems to me the distinguished chairman of the Finance Committee is saying, "No, I want to overrule the Chair when it affects my domain or something I am interested in, but don't overrule that Chair if you are affecting something that I am on the other side of."

Mr. LONG. Any Senator has the right to appeal the ruling of the Chair. Every Senator has a right to do so. But I implore the Senate, having agreed that it is going to limit itself to germaneness, to be true to what it, itself, just agreed to when it voted the cloture rule, that all amendments must be germane. It was agreed to in advance that this amendment was not germane and the sponsors of it asked us to vote against cloture for that reason. Therefore, Mr. President, I hope the appeal will not be made.

Mr. MUSKIE. Mr. President, if I may have a couple of minutes to respond to the distinguished chairman of the Finance Committee.

The PRESIDING OFFICER (Mr. ABOUREZK). Will the Senator suspend for just a minute until we get order in the Chamber?

The Senator from Maine is recognized on his own time. The Chair will ask for order in the Chamber so we can hear what is being said.

Mr. MUSKIE. Mr. President, first of all, I think the distinguished Senator from Florida is right on target. The chairman of the Committee on Finance appealed the ruling of the Chair on a point of order that I raised—that I still think was valid—that I think was overruled by the Senate as a whole, because the Senate was more interested in the substantive issue before it than in the point of order. Regardless, if it is the prerogative of the chairman of the Committee on Finance to appeal the ruling of the Chair, it seems to me I have at least the same prerogative.

Second, I did not initiate the cloture motion rule. That was initiated by the majority leader and the chairman of the Committee on Finance in order to cut me off, with a nongermane amendment, because they wanted to proceed to the business of the Senate, which was the tax bill, which is their prerogative.

I was then left with no option but to file a cloture motion to try to protect my rights. I wanted to vote. I was not seeking to delay, I was not filibustering.

Those who offered the first cloture motion, which has now been approved by the Senate, now seek to sustain that motion on the idea that I was filibustering. They are the people who are killing time, and are the people who are trying to kill sunset. So, I have no choice.

I make my argument not in terms of the parliamentary situation, but in broad terms. If we are considering, as we are, a tax reduction bill that would cut revenues by $50 billion in the first full year—if we are talking about that, then it is relevant, in the broad sense if not the parliamentary sense, to be doing everything we can to insure that spending is cut as well. That is what sunset is all about.

This sunset provision does not have the Glenn amendment on it, it does not have anything else on it. It is just the pure mechanism to control spending that a majority of this Senate has indicated support for; even if we cannot control revenues, to control spending. Even in that broad sense, I expect I shall lose, given the vote on cloture that was taken awhile ago. But at least, on the question of germaneness, I shall have the only vote, apparently, that I am going to get in this session, the only vote I am going to get, after 3 years of effort, on sunset. So, I say to the Senator, I am going to appeal in order to get that vote even if I do not get any vote except my own.

Mr. LONG. Will the Senator yield for a question?

Mr. MUSKIE. Yes, I yield.

Mr. LONG. Does the Senator from Maine really contend, does he seriously contend that under the precedents on cloture, his amendment is germane?

Mr. MUSKIE. I have said, if the Senator had been listening instead of working up his indignation against me, that in terms of the parliamentary situation, I may not be germane. But in the broad, practical, policymaking sense, if you try to tell me that cutting spending is not related to cutting taxes, then all you believe in is escalating deficits. I say they are related in the broad policy-related sense and I am going to ask for a vote on germaneness, because it is the only kind of vote I can get in this session after 3 years of effort. If I lose it, and if I am the only Senator voting for it, I am going to get a vote. I do not know of any way to deny me that vote.

Mr. LONG addressed the Chair.

Mr. MUSKIE. So I appeal the ruling of the Chair.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The appeal is not debatable. The question is——

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

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

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to speak for 1 minute on my own time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Maine, in referring to the cloture motion that had been offered, said that the Senator from Louisiana and the majority leader had offered the cloture motion in order to "try to cut me off."

Of course, I did not have the Senator's amendment in mind when I offered the cloture motion. I offered it in order to cut off all nongermane amendments. I did not do so with any intent to direct it to the Senator.

Mr. MUSKIE. I understand that. I made that statement in the context of my sitting here all this morning and

Saturday afternoon, listening to nongermane amendment after nongermane amendment, of much less consequence than this one, be considered, accepted by the floor managers, and adopted by the Senate.

But now I am told that this nongermane amendment ought not be considered. The effect of the cloture motion was to cut off nongermane amendments, and it has done that. I accept that, but it forces me into the corner where there is only one way I can get a vote. This is it.

But I did not mean, and I apologize if I implied, that the majority leader was zeroing in on my situation, because I know he was not.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. President, may I now have 2 minutes, and I ask unanimous consent.

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

Mr. ROBERT C. BYRD. Mr. President, I have urged those Senators who were very interested in the Humphrey-Hawkins amendment not to appeal the ruling of the Chair, and they acceded to my request.

I cannot, in good conscience, then support this appeal.

I would hope the distinguished Senator from Maine would not press his appeal. The amendment is obviously not germane.

I support the sunset amendment. I voted with the distinguished Senator from Maine the other day in the fracas over the budget matter. I voted against the Senator from Louisiana's position that day. I voted with the Senator from Maine, and having urged Senators who are very supportive of the Humphrey-Hawkins not to appeal the ruling of the Chair, I would hope the Senator would not appeal the ruling.

If he does, I will have to vote against the appeal and uphold the Chair because the amendment is obviously not germane.

If cloture is going to mean anything, it means that nongermane amendments are not in order, no matter how appealing they may be on the surface.

I would hope, I say with all due respect to my friend from Maine, I would hope if he presses the appeal that the Senate will uphold the Chair.

I support his amendment, but I do not think this is the way to go about it.

Mr. MUSKIE. Mr. President, if I may say this, I have a sneaking idea—I will not say anything more—that Humphrey-Hawkins is going to get another chance at a vote.

There is nothing to indicate I will get another chance at a vote on sunset in this session.

The distinguished majority leader knows I cooperate with him in every way I can at any time. I think he has done a tremendous job in the last 2 years leading this Senate, dealing with some of the most difficult issues that I have ever seen the Senate have to face, and I have great respect and affection for him. But I just cannot let a third year in a row go by without some indication of whether this idea, which I think the people in the country support, is a sensible idea that deserves consideration.

Mr. RIBICOFF. Will the Senator yield?

Mr. MUSKIE. Yes.

Mr. RIBICOFF. May I ask the majority leader whether he cannot give the Senator from Maine the assurance that he will have a vote before the session is over on sunset?

I followed my chairman of the Finance Committee, but I am in complete agreement with the Senator from Maine that there is not a more important piece of legislation that this Congress, or any succeeding Congress, can adopt than sunset legislation if we really are for economy in Government.

I agree with the Senator from Maine that it does have an impact on the tax bill because if there ever is a way of cutting unnecessary expenditures and having program evaluation, it is the sunset proposal of the Senator from Maine.

I am wondering if the Senator cannot give him the assurance. It would seem to me that in a day or so we will be finished with the tax bill. It is going to take at least 3 more days to go through conference. The Senate will have business until Saturday. I think for this body and the country we should go on record that we are for the Senator from Maine's sunset proposal.

Can the Senator not give the Senator from Maine that assurance?

Mr. ROBERT C. BYRD. I can give him assurance that I will try.

The PRESIDING OFFICER. The 2 minutes of the Senator from West Virginia have expired.

Mr. ROBERT C. BYRD. I ask unanimous consent I may proceed for 1 minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I will try. First, I promised Senators who are supporting Humphrey-Hawkins I would try to get that up, and, second to that, I will try to help the Senator get a vote on sunset.

Mr. MUSKIE. On that promise, Mr. President, because I know the majority leader is a man of his word, because I, personally, instinctively recoil against stretching the precedents of the Senate too far, I will withhold my appeal and work with the Senator to try to get a vehicle that will enable us an up-or-down, yes-or-no vote on sunset. I would like to get a vote this week on sunset.

The PRESIDING OFFICER. The Chair would state that it requires unanimous consent to withdraw the appeal since the yeas and nays were ordered.

Mr. MUSKIE. Mr. President, I ask unanimous consent I may withdraw the appeal under the circumstances we discussed.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Would the Chair state what the pending business is now before the Senate?

The PRESIDING OFFICER. Yes.

There is no amendment pending, but the order for the Senate is to proceed to the Hatch unprinted amendment No. 2031.

Several Senators addressed the Chair.

Mr. HART. Will the Senator yield for a unanimous-consent request?

Mr. HATCH. Yes, on the Senator's time.

Mr. HART. Mr. President, I ask unanimous consent it be in order to call up my amendment No. 4059 at the conclusion of the pending amendment.

Mr. NUNN. Mr. President, reserving the right to object, and I hope not to object, but we have an amendment that is very similar to the Senator from Colorado's amendment. I would ask that he would amend his unanimous-consent request and ask amendment No. 4084, which is on the same subject and really has some similarities, that he would amend the unanimous-consent request so that amendment No. 4084 would be called up immediately subsequent to the disposal of the Senator from Colorado's amendment.

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. SARBANES). The Senator will state it.

Mr. CURTIS. If an amendment is called up by unanimous consent, under the cloture procedure, does that waive the germaneness?

The PRESIDING OFFICER. The Chair would inform the Senator from Nebraska that it does not waive the germaneness requirement postcloture.

Mr. CURTIS. I thank the Senator.

Several Senators addressed the Chair.

Mr. HATCH. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Utah, under the previously entered unanimous-consent request, it is in order to call up the Senator's amendment.

Mr. HATCH. Mr. President, I ask unanimous consent that the amendment of Senator NUNN be permitted to be called up at this time and mine immediately thereafter.

Mr. DANFORTH. Reserving the right to object——

Several Senators addressed the Chair.

Mr. DANFORTH. Would the Senator restate his request?

Mr. GLENN. Mr. President, we could not hear the proposal of the Senator from Utah.

The PRESIDING OFFICER. The point of the Senator from Ohio is well taken. The Senate will suspend proceedings momentarily, while we clear the aisles. Members will take their seats. Members who wish to converse will please withdraw to the cloakroom.

The Senator from Utah, under the previous unanimous-consent request, has been directed to call up an amendment, and he has asked unanimous consent that the Senator from Georgia be allowed to proceed to call up his amendment. Is there objection?

Mr. HART. Mr. President, reserving the right to object, I just want to point out that the Senator from Utah is now calling up his amendment by unanimous consent. I made the same request of the Senate. The Senator from Utah has

objected and has now interposed another objection, which is not even in keeping with what the Senator from Georgia wants. I am curious as to why he would make that request, but under the circumstances I have to object.

The PRESIDING OFFICER. Objection is heard.

UP AMENDMENT NO. 2031

(Purpose: To reinstate the tax treatment with respect to annuity contracts with reserves based on a segregated account as they existed prior to the issuance of Revenue Ruling 77-85. To reaffirm existing law as upheld by U.S. District Court against illegal IRS ruling 77-85, an IRS ruling which unilaterally overturned 70 consistent IRS rulings over a decade and remade tax law without the consent of Congress and in the face of the opposition of the Congress)

Mr. HATCH. Let us proceed with the Hatch amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an unprinted amendment numbered 2031, for himself, Mr. SCHWEIKER, and Mr. TOWER.

The amendment is as follows:

At the end of the bill add the following new section:

SEC. . That in the case of annuity contracts which have related amounts based on a segregated asset account, the tax treatment of such contracts under section 61 of the Internal Revenue Code of 1954 (defining gross income) and section 801(g)(1)(B) of such Code (relating to contracts with reserves based on a segregated asset account) shall be determined—

(1) without regard to Revenue Ruling 77-85 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue ruling); and

(2) with full regard to the rules in effect before Revenue Ruling 77-85.

Mr. HATCH. Mr. President, this amendment would correct the Internal Revenue Service, which has issued more than 70 rulings on investment annuities and now is going to revoke all those rulings, while admitting that they do not know what they are doing. The amendment requires that they not be able to do this unless Congress approves.

With that, I ask for the yeas and nays on my amendment.

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

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, I ask the Chair if this amendment is in order, if it is germane.

The PRESIDING OFFICER. If the Senator will extend the Chair a degree of patience, the Chair will examine the amendment.

The Chair advises the Senator from Wisconsin that if he wishes to lodge a point of order against the amendment on the ground of germaneness, the Chair will be prepared to rule on that point of order; but the Chair does not feel that it can counsel the Senator in response to a parliamentary inquiry as to whether or not the amendment is germane.

Mr. PROXMIRE. I ask the Senator from Utah whether this is the investment annuity amendment.

Mr. HATCH. Yes.

Mr. PROXMIRE. Mr. President, I make the point of order that this amendment is not germane.

The PRESIDING OFFICER. There being nothing in the bill dealing with investment annuity contracts, the Chair sustains the point of order raised by the Senator from Wisconsin.

UP AMENDMENT NO. 2033

(Purpose: To prohibit the issuance of fringe benefit regulations)

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an unprinted amendment numbered 2033, for himself, Mr. STEVENS, Mr. CURTIS, Mr. EASTLAND, Mr. TOWER, Mr. YOUNG, Mr. DOMENICI, Mr. SCHMITT, Mr. HELMS, Mr. GARN, Mr. GOLDWATER, and Mr. HAYAKAWA.

The amendment is as follows:

At the end of the bill add the following section:

SEC. . FRINGE BENEFIT REGULATIONS.

No regulation shall be issued in final form providing for the inclusion of any fringe benefit as part of gross income by reason of Section 61 of the Internal Reveue Code of 1954.

Mr. HATCH. Mr. President, this amendment would prevent the IRS from issuing regulations with regard to fringe benefits without the consent of Congress.

With that, I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. METZENBAUM. Mr. President, I raise the point of order with respect to this amendment that it is not germane.

The PRESIDING OFFICER. A point of order against the amendment on the ground of germaneness has been raised.

Although this bill does deal with the subject of fringe benefits in another regard, this amendment would add new subject matter and therefore is not germane, and the point of order is sustained.

Under the previous order, the Senator from Florida (Mr. STONE) is recognized to call up an amendment numbered 3882.

Mr. MELCHER. Mr. President, I wonder if the proper order is not that my amendment is to be called up at this time.

The PRESIDING OFFICER. Will the Senator repeat that?

UP AMENDMENT NO. 2034

(Purpose: To provide that both the decedent's and spouse's services are given adequate consideration in determining estate tax basis for jointly owned farm or business interests)

Mr. MELCHER. Mr. President, a parliamentary inquiry. I wonder whether a review of the order of amendments will show that mine is the next up.

The PRESIDING OFFICER. The Chair informs the Senator from Montana that it is the Chair's understanding that the Senator's amendment is to follow that of the Senator from Florida. Since the Senator from Florida is not present to call up the amendment, the Chair recognizes the Senator from Montana to call up amendment No. 2034.

The amendment will be stated.

Mr. MELCHER. Mr. President, I yield to the Senator from Colorado for a unanimous-consent request.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 2034.

The amendment is as follows:

On page 374, line 18, strike out "spouse of the decedent" and insert in lieu thereof "decedent and the spouse of the decedent".

On page 374, lines 22 and 23, strike out "acquisition indebtedness" and insert in lieu thereof "value"

On page 375, lines 7 and 8, strike out "acquisition indebtedness" and insert in lieu thereof "value"

On page 376, strike out lines 8 through 15 and insert in lieu thereof the following new subparagraphs:

"(C) Inherited property.—For purposes of applying this subsection and subsection (a) in the case of any property which had been acquired as separate property either by the decedent or surviving spouse by gift, bequest, devise, or inheritance, the value of such property (at the time acquired by the decedent or surviving spouse) shall be taken into account under this subsection as additional consideration furnished by the decedent or spouse who acquired such property by gift, bequest, devise, or

"(D) COORDINATION WITH SUBSECTION (a).—If elected by the executor, the amount of consideration furnished shall be determined solely under this subsection for purposes of applying subsection (a). The election shall be made in such manner as prescribed by the Secretary."

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, I ask unanimous consent that it be in order, following the disposition of the amendments that are pending and which have been set aside, to take up the following amendments in the following order, by number:

My amendment No. 4059; the amendment by the Senator from Georgia (Mr. NUNN), No. 4084; the amendment by the Senator from Missouri (Mr. DANFORTH), No. 4055; the amendment by the Senator from New York (Mr. JAVITS), No. 4076.

Mr. President, this unanimous-consent request is put forward because all four of these measures have to do with the tax rates and in almost all cases with conditional tax cuts. So there is similarity among these measures, and it makes eminent sense to the sponsors to take them up serially.

Mr. HEINZ. Mr. President, reserving the right to object, I have been trying to get recognition to offer an amendment for quite some time—one which happens to deal with the question of corporate rates for small businesses. I would like to go ahead of Mr. DANFORTH and Mr. JAVITS, and I would like to dispose of my amendment first. I would appreciate it if the Senator from Colorado would

modify his unanimous-consent request accordingly.

Mr. HART. Mr. President, I modify the unanimous-consent request as follows: to insert the amendment by Mr. HEINZ following the amendment by the Senator from Georgia (Mr. NUNN) and prior to the amendment by the Senator from Missouri (Mr. DANFORTH).

Mr. HEINZ. Mr. President, reserving the right to object, I thank the Senator from Colorado and all the Senators involved.

Mr. NUNN. Mr. President, reserving the right to object the order would be the amendment by the Senator from Colorado, followed by the Nunn amendment, followed by the Heinz amendment, followed by the Danforth amendment, followed by the Javits amendment.

The PRESIDING OFFICER. Is there objection?

Mr. NELSON. Mr. President, are we going to proceed here with unanimous consent? I would like to get an order in, too. I have been waiting for 2 days.

I am just wondering what is the procedure.

The PRESIDING OFFICER. The Chair will inform the Senate that under previous unanimous-consent orders that were agreed to, the Chair was following the sequence. There is now pending the amendment of the Senator from Montana (Mr. MELCHER). Under those previous orders, that will be followed by Senator BAYH and Senator HELMS. Beyond that there is not at the moment pending a request for sequence.

We now have pending, however, the request which is now being submitted to the Chair which at this point embraces amendments offered on the part of five Members of the Senate.

Mr. HART. Mr. President, let me state to the Senator from Wisconsin one of the reasons for propounding this. I think all of us have also waited a couple of days. But they are related amendments. They make sense back to back with each other. I think the debate will flow by having them back to back because they are all going to relate to each other.

Mr. NUNN. Mr. President, also I might say, if the Senator will yield, it will save the Senate a considerable amount of time to take the amendments in order. Some amendments are interrelated. If some amendments are agreed to, some other amendments will be withdrawn. If we take them out of order, it will take a lot more time. I think it makes sense to everyone to proceed in this general direction.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. LONG. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Reservation is heard.

Mr. LONG. I will be willing to agree to the first two amendments in the order requested, but I wish to reserve judgment on the remainder of them until I know about it. I am willing to agree to the first two, if the Senator will modify it.

Mr. HART. Mr. President, I repeat the request.

Mr. MELCHER. Here it is.

Mr. HART. I ask unanimous consent that it be in order following the disposition of the three Helms amendments to hold up my amendment No. 2059 and the amendment by the Senator from Georgia (Mr. NUNN), No. 4084.

Mr. DANFORTH. Mr. President, reserving the right to object, I wonder if the Senator from Louisiana will not reconsider his concerns about the last three?

Mr. LONG. I might be willing to. I do not know that much. I am willing to agree to the first part of it. We will worry about the remainder of it later on. Let us get the first two up and then talk about the others.

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

Mr. HART. I thank the Senator from Montana.

The PRESIDING OFFICER. Will the Senator suspend momentarily? If we could clear the aisles we would have order in the Senate. Could Members clear the aisles, please, and take their seats?

The Chair will observe there is a great number of staff people in the Chamber. It will help contribute to the decorum if the staff would also take their seats.

The Senator from Montana.

UP AMENDMENT NO. 2045

Mr. MELCHER. Mr. President, earlier today I offered an amendment to more equitably arrange for the inheritance tax for the surviving spouse in the case of the death of her husband for property that was owned originally by the husband and then later on after marriage was shared jointly by the couple.

The situation is that even with the bill that is before us and with the very fine corrections that Senator NELSON incorporated in the bill the surviving spouse is discriminated against. Generally a case is that of a husband who has inherited some property and then during the marriage they work side by side and the property increases in value during their joint ownership, say, for 25 years or longer, and then the husband dies.

Under my amendment the value of the property at the time that the husband acquired or inherited it would then be deducted in determining the most advantageous tax position for the spouse.

As I had it originally drafted, the Treasury Department had some objections to my amendment.

For that reason, I have consulted with the Treasury Department, and I believe we have worked out a satisfactory solution to that. I have a modification of my amendment at the desk.

I ask unanimous consent that the amendment be so modified and stated by the clerk.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request for the modification of the Senator's amendment?

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Montana has been worked out with the Treasury Department, as brought up earlier. As modified, it is acceptable to the manager of this bill.

The PRESIDING OFFICER. There being no objection to the request, the amendment is modified.

The amendment, as modified, is as follows:

On page 374, line 18, of the Committee Amendment strike out "spouse of the decedent" and insert in lieu thereof "decedent and the spouse of the decedent".

On page 374, lines 22 and 23, strike out "acquisition indebtedness" and insert in lieu thereof "value".

On page 374, line 23, following the comma insert the following:

"less the portion attributable to the actual consideration of each spouse including a reasonable return on such consideration; provided that the total value attributable to the deemed consideration is not greater than $500,000."

Mr. MELCHER. Mr. President, there is a question on what should be considered as a reasonable return on such actual consideration attributable to either spouse, and for that purpose I intend that the reasonable return on such consideration will be the prime rate of interest less the amount of the property taxes paid each year and computed for each year. I draw that to the attention of the manager of the bill. I hope that meets with his approval also.

Mr. RIBICOFF. With that interpretation, it is agreeable to the manager of the bill.

Finally, Mr. President, I call attention to all Members of the Senate that there is a cap on this and that the amount attributable to be deemed consideration would not be greater than $500,000.

I hope all Members of the Senate can accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Montana.

The amendment, as modified, was agreed to.

Mr. MELCHER. Mr. President, I ask unanimous consent that Senator PAUL G. HATFIELD be added as a cosponsor.

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

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Indiana is recognized to call up his amendment numbered 3992, as modified.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that that amendment be temporarily laid aside. The Senator from Indiana obviously is not in the Chamber.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Under the previous order, the Senator

from North Carolina (Mr. HELMS) is recognized to call up the first of three amendments.

UP AMENDMENT NO. 2040

(Purpose: To require that certain procedures be followed with respect to the IRS "Proposed Revenue Procedure on Private Tax-exempt Schools")

Mr. HELMS. Mr. President, I call up my amendment 2040.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS, for himself, Mr. HATCH, Mr. HAYAKAWA, and Mr. MORGAN) proposes an unprinted amendment numbered 2040:

At the appropriate place in the bill, add the following:

"That the 'Proposed Revenue Procedure on Private Tax-Exempt Schools' proposed by the Internal Revenue Service and published on page 37296 of the *Federal Register* of August 22, 1978, and any other procedure or regulation proposed by the Internal Revenue Service relating to the same subject shall not take effect unless such Service complies with all procedures applicable to significant regulations of the Department of the Treasury (within the meaning of the proposed Directive of such Department relating to the preparation, review, and approval of regulations, published on page 22319 of the Federal Register of May 24, 1978).

Mr. RIBICOFF. Mr. President, I raise a point of order. The amendment is not germane. There is nothing in this bill relating to it.

The PRESIDING OFFICER. The Senator from Connecticut made the point of order on the ground of germaneness of the amendment of the Senator from North Carolina.

The Chair sustains the point of order of the Senator from Connecticut on the ground of germaneness.

UP AMENDMENT NO. 2041

Mr. HELMS. Mr. President, the next amendment is 2041 which I call up.

The PRESIDING OFFICER. The clerk will report the next amendment of the Senator from North Carolina.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) for himself and Mr. HATCH proposes an unprinted amendment numbered 2041.

At the end of the bill, add the following new section:

"Section . (a) This section may be cited as the "James B. Allen Taxpayer's Attorney Fee Award Act of 1978".

(b) In any action wherein the United States, or the Internal Revenue Service, or any person acting as an agent or employee of either the United States, or the Internal Revenue Service or of both, is a party and in which tax liability to the United States on the part of any person is at issue or in which a declaration, refund, payment, or any other matter pertaining to a tax of the United States is in dispute, the court may in its discretion award reasonable attorney's fees and costs or reasonable practitioner's fees and costs to any prevailing party other than the United States, the Internal Revenue Service, or any person acting as agent or employee of either the United States or the Internal Revenue Service or of both.

(c) As used in this section, the term "prevailing party" means any person the court may in its discretion determine to have before that court prevailed substantially on the merits, notwithstanding the pendency of any appeal.

Mr. RIBICOFF. Mr. President, I make a point of order that the amendment is not germane. There is nothing in the bill relating to it.

Mr. HELMS. Mr. President, will the Senator withhold that and let me make a few comments? Otherwise I am going to appeal the ruling of the Chair and get a rollcall vote.

Mr. RIBICOFF. I do not mind the Senator making a few comments, but I do not think the Senator should be threatened by a rollcall vote. I have no objection to his making a few comments.

The PRESIDING OFFICER. As I understand, the Senator from Connecticut has withheld momentarily the point of order. Does the Senator from North Carolina wish to make comments?

Mr. HELMS. Will the Chair hold up for just a moment?

Mr. HATCH. Mr. President, will the Senator yield to me? I move to modify the amendment, with the permission of the distinguished Senator from North Carolina, and I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. There is. I do not know what the Senator said.

The PRESIDING OFFICER. The Senator from Utah seeks to modify the amendment offered by the Senator from North Carolina. Is there objection to the request?

Mr. PROXMIRE. Mr. President, were the yeas and nays ordered,

The PRESIDING OFFICER. The yeas and nays have not been requested. The reason the unanimous consent is necessary is that post-cloture an amendment cannot be modified except by unanimous-consent request.

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HELMS. Mr. President, I believe an amendment can be amended.

The PRESIDING OFFICER. By an amendment at the desk.

Mr. HATCH. Well, this amendment is at the desk. We filed it before cloture was invoked.

The PRESIDING OFFICER. If the Senator has an amendment at the desk he can call up the amendment.

Mr. HATCH. I call up that amendment and ask that it amend the amendment of the distinguished Senator from North Carolina.

Mr. HELMS. To make it parliamentarily correct, I call up the Senator's amendment.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. The Chair would inform the Senator from Utah that the amendment which he had called up is not an amendment to the amendment offered by the Senator from North Carolina, not drafted as such, but is an amendment to the committee substitute.

Mr. HELMS. Mr. President, I suggest the absence of a quorum on my time.

The PRESIDING OFFICER. It is not necessary for the Senator to do that on his own time. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. Mr. President, the distinguished assistant majority leader and I have conferred, and I think we are going to be able to work out something that is satisfactory to all sides. For that reason, I ask unanimous consent that I be permitted to lay aside this amendment temporarily, and to call up amendment No. 3850 instead, the third amendment that I had hoped to call up.

The PRESIDING OFFICER. Without objection, the pending amendment will be temporarily laid aside, and the Senator from North Carolina is recognized to call up his third amendment.

AMENDMENT NO. 3850

(Purpose: To delete the repeal of the nonbusiness deduction of State and local gasoline taxes)

Mr. HELMS. Mr. President, I call up my amendment No. 3850.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (for himself, Mr. RIEGLE, Mr. HATCH, and Mr. TOWER,) proposes an amendment numbered 3850:

Beginning with line 16 on page 159, strike out through line 6 on page 160.

On page 160, line 7, strike out "Subtitle C" and insert in lieu thereof

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

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

The amendment is as follows:

Beginning with line 16 on page 159, strike out through line 6 on page 160.

On page 160, line 7, strike out "Subtitle C" and insert in lieu thereof "Subtitle B".

On page 161, line 12, strike out "Subtitle D" and insert in lieu thereof "Subtitle C".

On page 201, line 18, strike out "Subtitle E" and insert in lieu thereof "Subtitle D".

On page 211, line 13, strike out "Subtitle F" and insert in lieu thereof "Subtitle E".

On page 224, line 1, strike out "Subtitle G" and insert in lieu thereof "Subtitle F".

On pages 126 and 127, strike out the item relating to subtitle B of title I of the bill and the item relating to section 111, and redesignate the items relating to subtitles B, C, D, E, F, and G of title I of the bill as relating to subtitles A, B, C, D, E, and F.

Mr. HELMS. I yield myself such time as I may require.

Mr. President, in what has become almost an annual event, Congress is again attempting to eliminate State and local gasoline taxes as a legitimate deduction on Federal income tax returns.

I have the greatest respect for the distinguished chairman of the Senate Finance Committee and for the outstanding role he and members of his committee have played in formulating a bill that—in my opinion—attempts to provide meaningful tax reduction.

At the same time, Mr. President, I take

strong exception to the proposed deletion of the gas tax deduction. At the very moment when we are trying to provide some long overdue relief for the American taxpayer, there is no reason to increase taxes by disallowing the deduction. Repeal of the gas tax deduction is simply inconsistent with the general thrust of this bill.

Contrary to a sort of myth that some have attempted to build up, this deduction is not a rich man's deduction. For the very wealthy, the dollar value of this deduction is insignificant. Rather, this is a modest tax break for the average citizen.

Mr. President, the distinguished Senator from Michigan (Mr. RIEGLE) is a cosponsor of this amendment, and I hope that he will be able to come to the floor before a vote is conducted on it, because he agrees that citizens receiving the greatest benefit from the gasoline tax deduction are those who must drive their automobiles to work or who live in rural areas, and who are forced to travel great distances for medical care, groceries, farm supplies, and other necessities. These are primarily middle-income people who are already overburdened with taxes and who benefit by the few extra dollars the deduction affords them. Repeal of the deduction is nothing more than another tax increase, and it cannot and should not be viewed in any other light.

The Finance Committee has listed a number of reasons for repeal of the deduction. Basically, the committee makes four arguments: First, the State gas tax is a user-charge; second, that the deduction invites tax fraud because it is based on miles driven, a figure hard to prove and easy to manipulate; third, that repeal of the deduction will help achieve tax simplification for taxpayers; and fourth, that repeal of the deduction will—at least symbolically—promote the country's efforts to conserve energy.

Under close examination, these arguments simply do not hold up.

The Nation's road system benefits everyone, not just the motorist. Without our modern highway system most essential goods could never be transported to consumers. The fact that State highway taxes are used to provide the principal funding for State and county roads actually highlights the tremendous contribution to the national welfare made by the motorists. The deduction of the gasoline tax does shift part of the cost from the highway user to the general taxpayer. But all taxpayers benefit in many ways from the highway system.

The tax-cheating argument is a false issue. Virtually all tax deductions are subject to some abuse, including the gas tax deduction. But this is certainly not a good reason to eliminate a valid deduction. Our tax system in this country is based upon voluntary filing and compliance with the law. The deduction may indeed present audit difficulties for the Internal Revenue Service but since the amount of tax savings to itemizers resulting from the deduction is relatively small, I seriously doubt that there is more tax avoidance associated with this deduction than others.

In response to the committee's argument that repeal would promote simplification, there is no evidence that the American people favor tax "reform" or simplification at the expense of provisions which benefit the middle-income taxpayer, and that is what we are talking about with this amendment. The vast majority of the American people see the gas tax deduction as perfectly reasonable. The committee report admits that virtually every itemizer claims the deduction. That is proof—so it seems to me—that the deduction is easily understood and simple enough for the taxpayer. It is just not reasonable to argue that one less deduction—out of many—will simplify the return of the itemizers.

The energy argument is also highly questionable, almost to the point of being absurd. A virtual doubling of the cost of gasoline over the past 4 years caused by skyrocketing oil prices has not noticeably altered gasoline consumption in this country because the demand for gasoline is inelastic. Most Americans work for a living, with the vast majority not having access to alternate means of transportation. If enormous increases in the price of gasoline will not deter driving, elimination of a mere tax deduction will have no impact at all. So there goes that argument, Mr. President.

The only impact in disallowing the deduction is a tax increase on the American people. Over 70 percent of the revenue that will be raised from the repeal of this deduction will come from taxpayers making less than $30,000 a year. In 1983 alone, the elimination of this deduction will take an additional $2.2 billion from the pockets of the American taxpayer who will also be facing spiraling fuel prices. In the wake of proposition 13, it is hardly the time for Congress to burden the American people through such a "backdoor" tax increase as this if we allow the removal and elimination of the gasoline tax deduction.

Mr. President, I ask unanimous consent that an editorial published in the Durham Morning Herald on September 4, 1978 entitled "Tax Break Should Be Kept," be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

TAX BREAK SHOULD BE KEPT

The Carolina Motor Club, along with its parent organization, the American Automobile Association, should be commended by taxpayers for a last-ditch effort to try to influence members of the Senate Finance Committee to turn back a bill that would disallow the federal income tax deduction for gasoline taxes paid by motorists at the state level.

Unfortunately, the House of Representatives already has voted to repeal the tax deduction and the bill is scheduled to go before the Senate during the week of Sept. 19.

To date, the repeal provision has not received the notice it deserves because it was only a small part of the omnibus tax package, another case of burying important legislation within a complex congressional proposal.

Some proponents of the rescinding action contend erroneously that the deduction favors the rich because it can be used by only those taxpayers.

That argument is ridiculously invalid. The middle class in this country certainly cannot be considered wealthy—not at today's monstrously inflated prices—but it is upon that group that the heaviest of tax burdens are heaped. Repeal of the tax deduction for gas taxes would deprive the middle-class breadwinners who itemize deductions of a sizable return.

Elimination of the tax deduction also would place a discriminatory budren on those who must use their cars for transportation to and from work. It would be especially hurtful to rural residents who must drive long distances just for the simple necessities of life.

The 178,000-member Carolina Motor Club fears that the repeal is not only possible but very probable—unless some minds in Washington are changed quickly.

Mr. HELMS. Mr. President, I yield to the distinguished Senator from Michigan.

Mr. RIEGLE. Mr. President, I thank the distinguished Senator from North Carolina for yielding. I am delighted to join my friend in cosponsoring this amendment, because it goes basically right to the issue of what I think we are trying to accomplish this year in terms of our entire tax effort, and that is to try to provide some intelligent tax relief, particularly for low and middle income people; and we have a number of provisions in this proposed legislation aimed at doing that.

One of the most important things we have done in the past is to have the gasoline tax deductions for that very same purpose.

So we find ourselves at the moment with a paradox where, on the one hand, we are going to offer some tax relief to low and middle income people, and on the other hand we are in the process of taking away a part of the tax code that has been there for several years and which, as has been pointed out, has worked very well.

In terms of basic philosophy, the gasoline tax deduction is very simple. The question is, should somebody have to pay a tax on income that has already been taxed away in another form?

I would submit that they ought not to. This approach to this particular tax has worked very well over a period of time. As has been pointed out, some 87 percent of the dollar value of these deductions has been taken by people who fall in the $10,000 to $50,000-a-year income bracket. So this is not a deduction which benefits a handful of people in the country but it has very broad application. It has broad application across the whole range of what could be legitimately termed the middle income taxpayers.

If anybody wants to advance the argument that somehow or another eliminating this deduction will produce energy savings, there is not anything that supports that contention. As a matter of fact, what studies have been done suggests the reverse, that to eliminate this deduction will be inconsequential in terms of an effect on energy consumption.

I think it is also important to note that a lot of people think driving automobiles is a luxury in today's society. I think that is a myth that any careful appraisal will dispel. In most instances,

people drive cars to get to work, to go shopping, to visit their families, on the weekends, or what have you. It is for essential use. The notion that somehow or another by various tax mechanisms to try to bite into the normal activities that people have to engage in is really a step in the wrong direction.

It would be quite different if today we had mass transportation systems in place all over the country for people to use as an alternative, but they do not exist. As a matter of fact, even as we found here in the District of Columbia to try to provide them is a multibillion dollar operation, as the subway has proven to be here in Washington, D.C.

I think another point that has to be considered is that people, I believe, are beginning to realize that so often in these tax changes we give something with one hand and we take it away with another. We are running into that right now with the social security tax increase for next year. A large part of the effect of this tax decrease in the legislation before us has already been dissipated because of the social security tax increase of next year. So if in addition to that we are going to eliminate the gasoline tax deduction for really no sound reason, a deduction that has been there for many years, if we are going to take that away, I think this just adds to not only the confusion that people have but even in part the cynicism because on the one hand we propose to be giving people tax relief and on the other hand we are taking it away.

I think this particular deduction has proven itself over a period of time to be a sound one. If there is anybody here who wants to really seriously argue that it makes sense to tax income that has already been taxed away, I would like to hear the argument. That is really where I think the case has to be made in terms of preserving this deduction that has been in the Tax Code and which has worked very well.

I say to my colleague, if we had been able to offer this amendment at a different time we would not have found ourselves in quite the same straits as we do now when other amendments have been offered which provide for very large increases in tax benefits of various sorts.

I know the modification my friend is going to offer shortly to try to deal with that problem.

I would hope if we get a chance to vote seriously on the merits of the issue the vote will be to retain the gas tax deduction because it is sound, it is justified, and it accomplishes the very purposes that this bill is held out to accomplish. I thank my friend for yielding.

Mr. HELMS. I thank my friend.

Mr. President, already today this position has been established because the gasoline tax deduction is in the present law. I believe there was a ruling this morning, and I consider it to be a correct one, that maintaining the present law cannot be considered a revenue loss under the Budget Act.

I ask for the yeas and nays on the amendment, Mr. President.

The PRESIDING OFFICER (Mr. STEVENSON). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, the Senator from North Carolina anticipated what I was going to do. I do make the point of order that this is a violation of 311 of the Budget Act. It would knock $400 million of revenue out of the bill and as a result it would put us $400 million over the budget resolution.

I make that point of order and I ask for a ruling.

The PRESIDING OFFICER. The Chair sustains the point of order.

Mr. HELMS. I did not understand the Chair.

The PRESIDING OFFICER. The Chair sustains the point of order.

Mr. HELMS. I appeal the ruling of the Chair and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. RIEGLE. I do not know that the request of the Senator was heard. I wonder if it can be stated again.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

Mr. STEVENS. Will the Senator withhold that?

The PRESIDING OFFICER. Is there a sufficient second?

Mr. STEVENS. Mr. President, I ask the Senator to withhold his appeal for just a moment. I feel very strongly about this and I would like take time out of my hour under cloture to explain my position.

As one who has supported the Budget Act in both general and specific terms, I have difficulty with the assumption that where the report of the committee recommends a repeal of the existing law which, if sustained by the Senate, would——

The PRESIDING OFFICER. An appeal is not debatable. Does the Senator from North Carolina withhold his appeal?

Mr. HELMS. I did withhold, Mr. President. I am sorry the Chair did not hear.

Mr. STEVENS. Where the committee recommends a repeal of existing law, the net effect of which would be to increase revenues, the committee then draws the conclusion that based on its recommendation to repeal existing law, a further decrease in revenues in terms of a tax cut cannot be justified nor ruled in order.

Based upon that presumption, the bill is presented to us as a balanced proposition under the Budget Act. Having voted to sustain the budget position, I understand their proposition, but I do not believe the ruling of the Chair is proper when it deals with existing law. The net effect of this ruling would be that, if there are some people in this body who feel that existing tax incentives or special exclusions should be changed, all they have to do is tie it to a tax cut and come bring it before the Senate. It is not even subject to a vote, but is subject to a point or order on an amendment denying the committee the right to change existing law. I do not see how we should be prevented from voting up or down on the committee's recommendation to change existing law by virtue of a point or order.

That is the net result of what is happening. The committee's recommendation is to change the existing law with regard to deducations for State gasoline taxes. I think we ought to have a right to vote on that recommendation and not be prevented from challenging the committee provision and deleting from the committee provision the repeal of existing law on the deductibility of State gasoline taxes.

Mr. HELMS. The Senator is absolutely correct.

Mr. STEVENS. The point of order prevents us from challenging the committee's recommendations to change existing law. That is not fair. It is not a proper interpretation of the Budget Act. With due respect to the Budget Committee chairman, I hope he will agree with me that the time to handle budgetary impacts is when the bill comes to final consideration here on the Senate floor. What will need to be changed to prevent the point of order from being valid, is the total amount of tax reductions.

If the amendment of the Senator from North Carolina carries, there would be $400 million less to cut in taxes because we have denied the committee's recommendation to change existing law. We are being denied a chance to vote on the specific issue of whether or not we want gasoline taxes to be deductible on a nonbusiness, individual basis. For those people who itemize their tax returns, this is a personal deduction for State taxes. If we follow this procedure, I think a dangerous precedent will be set. The next thing we know, the committee would recommend that individuals could not deduct State income taxes based on the fact that a reduction in Federal taxes has been provided. Each time, we would be denied the right to vote on these specific issues.

I urge the Chair to look at this again. I do not believe that the Budget Act can deny a specific vote on a repeal of existing law based on the Chair's ruling sustaining the point of order of the Budget Committee. I may not have articulated my position as well as I could, but I am disturbed about this because there are too many provisions in the tax code that could be eliminated this way. Sustaining this point of order would go even farther than the Glenn amendment in eliminating nonbusiness deductions for individuals.

I thank the Senator from North Carolina for his courtesy.

Mr. MUSKIE. Mr. President, will the Senator withhold further?

Mr. HELMS. Yes.

Mr. MUSKIE. The Senator from Alaska seems to argue that I am somehow denying Senators' rights. My only role is to uphold the Budget Act. The

budget provides for $21.9 billion in tax reductions. That is the gross figure. It is the Finance Committee's prerogative to make up that figure by a combination of proposals to change the revenue code, some of which will pick up revenues and some of which will lose revenues.

The Budget Committee does not second-guess the Finance Committee directly on particular provisions.

Mr. STEVENS. Will the Senator allow me to apologize? He took umbrage. I want to apologize. I did not mean to imply that the Senate Budget Committee had second-guessed the Finance Committee. I do imply, however, that a majority of the Finance Committee, in a substitute reported by the Finance Committee, could wipe out the depletion allowance, or any other single incentive in the Tax Code, as long as it was coupled with a sufficient reduction in taxes. All it would take would be a majority of the Finance Committee to get us in this posture. The Senate is faced with a vote to sustain the ruling of the Chair that the Finance Committee's recommendation to repeal existing law is correct.

It is not a proper ruling. I do not imply in any way that the Budget Committee's chairman has brought this about.

Mr. MUSKIE. I have to try, at least, to supply the Senate with the information which will enable the Senate to properly enforce the Budget Act.

In this case, the provision in the pending bill would increase revenues and offset some of the very attractive revenue reductions that are contained in the bill. The bill is, of necessity, a tradeoff between revenue increases and revenue reductions. What the budget resolution states is that the net reduction cannot exceed $21.9 billion.

The bill that the Finance Committee reported to the Senate was $1.4 billion below that ceiling. In other words, the Finance Committee brought to the Senate a bill that would have permitted the Helms amendment, if the Senate chose, without violating the ceilings. The Finance Committee left the Senate with $1.4 billion under the revenue floor of the second budget resolution for fiscal year 1979.

But the Senate has used up that $1.4 billion.

Mr. STEVENS. Will the Senator yield?

Mr. MUSKIE. Let me finish.

But the Senate has used up that $1.4 billion by using wedge-type amendments that have produced a $10 billion additional reduction on an annual basis.

We have done that as a Senate—the Finance Committee did not do it—the Budget Committee did not do it but the Senate has done it. In other words, in order to get $10 billion in annual reductions into this bill, we have slipped effective dates; we have played with the calendar; and we have gotten a total additional cut for fiscal 1979 of $1.4 billion. But on an annual basis, thereafter, the revenue loss will be $10 billion.

Surely, we have the right to raise a point of order based on the $21.9 billion revenue reduction that the budget permits to raise the point of order.

With enactment of this amendment, we would add $400 million to the deficit in the budget.

Mr. LONG. Will the Senator yield at that point?

Mr. MUSKIE. Yes.

Mr. LONG. The Senator's argument is clearly correct. The Senate Finance Committee brought in a bill where the Helms amendment could have been passed and we could have still cut taxes another $1 billion.

But the Senate used all that tax cut up. The Senator from Maine did not vote to use it up. The Senator from Louisiana did not vote to use it up. But those who voted for the Kennedy amendment, the Packwood amendment, and the various other goodies here, voted to use it all up.

Now, if we now adopt the Helms amendment, the committee amendment—I ask the Senator from Maine to hear this—if we now adopt the Helms amendment, which is subject to a point of order, once that is in effect, then the whole committee amendment will be subject to a point of order and the whole thing will go down the drain.

So we will have wasted completely the time that we spent working on this bill, because the whole committee amendment will be subject to a point of order.

Mr. MUSKIE. May I make one other point? Senator HELMS' amendment, which would cut $400 million in fiscal 1979, would cut $1.2 billion in fiscal 1980. So that we would add that $1.2 billion to the $10 billion we have already put in this bill as additional out year revenue losses.

Now, if the Senate wants to support the Helms amendment on that basis, the Budget Act leaves that prerogative to the Senate, do not let me disabuse anyone on that score. But these are the facts of which every Senator should be aware.

Mr. HELMS. If the Senator will yield, on the Senator's figures of 1 year's time, I think that should be a matter of great concern to the voting public. Gasoline prices increase that much, gasoline taxes increase that much; where does the Senator get his figures?

Mr. MUSKIE. These are from the Joint Taxation Committee.

Mr. HELMS. He says it will cost $400 million this year and——

Mr. MUSKIE. Losses this year. Now the Senator is talking about fiscal year.

Mr. HELMS. Yes.

Mr. MUSKIE. Fiscal.

Mr. HELMS. Yes.

Mr. MUSKIE. The loss this year would be $471 million, and for fiscal year 1980, it is $1.2 billion.

The basic point is the $475 million for fiscal year 1979.

Several Senators addressed the Chair.

Mr. STEVENS. Will the Senator now yield for my question?

The PRESIDING OFFICER (Mr. STONE). The Senators will kindly suspend. The Senate will be in order now.

Mr. STEVENS. Will the Senator now——

The PRESIDING OFFICER. If the Senator will suspend, the Senate will be in order.

The Senator may proceed.

Mr. STEVENS. I wish to direct a question to the Senator from Maine.

Let us assume, and I do not imply any bad faith to my good friend from Louisiana, everybody knows my great respect for him, but assume we have a majority of the Finance Committee who wants to do away with the personal exemption, or any one of the existing provisions in the law, and they tie along with it an idea we can reduce taxes significantly if it were approved.

We have here a bill, a committee substitute, and it is supposed to be subject to amendment. But someone else ties on just a little bit of an amendment, that is another reduction in taxes, that makes any further amendment, any further change, financially, in that bill subject to a point of order.

Say that we find ourselves in the position that we cannot have a vote on the recommendation of a majority of the Finance Committee to change existing law because of what might happen under the budget resolution.

Mr. MUSKIE. If a committee—if the tax committee—were that irresponsible, the Budget Act does not prevent the Senate from overturning that result.

Mr. STEVENS. Just have that situation right here.

Mr. MUSKIE. If the Senator can lay out such a case, any time——

Mr. STEVENS. Just happened right now. This amendment would change existing law in a committee substitute. Existing law permits this deduction, this is a tax——

Mr. MUSKIE. Wait a minute. The Senator is putting a different question to me than he had a moment ago.

Mr. STEVENS. I am saying, how do we get to do it under the Senator's position?

Mr. MUSKIE. The Senate addresses——

Mr. STEVENS. All we have to do is come out with a bill that is absolutely balanced, completely, the tax reductions and the revenue increases are balanced, totally balanced. The first time anyone wants to make a change in that bill, he is subject to a point of order which would change the budget resolution.

That is exactly what has happened here. We had the tax increase to the tax reduction first, and we have had no chance at all to challenge the assumptions in the change of the existing law as far as the revenue——

Mr. MUSKIE. That is not true.

Mr. STEVENS. It is. That is what the Chair just ruled.

Mr. MUSKIE. What the Senator is telling me is that I, as chairman of the Budget Committee, am telling the Senate it cannot vote for the Helms amendment. But I am telling the Senator that the fact——

Mr. STEVENS. Cannot vote on it, period. It is subject to a point of order.

We will vote on overruling the Chair's sustaining the point of order that violates the budget resolution.

Mr. MUSKIE. So the Senator does not want the restraint of a point of order, he is saying.

Mr. STEVENS. I am saying——

Mr. MUSKIE. If I may continue——

Mr. STEVENS. The Senator would not accept my postulate. I will state it again.

If the chairman had brought out a bill perfectly balanced under the budget resolution, changes in income and changes in taxes, as far as the Federal Government is concerned, and those changes were postulated, on changes in existing benefits under the tax laws, we would get more revenue because we took away—I said the individual deduction, exclusion from tax, and, therefore, could reduce them generally across the board, and that was, under the budget waiver, completely balanced.

Now, if someone wanted to challenge that and say, "No, we do not accept the proposition that existing law, as far as these individual deductions are concerned, should be changed," we would be in exactly the same position, subject to the point of order.

Mr. MUSKIE. No. I heard the Senator's postulate three times. Now, may I answer it?

Mr. STEVENS. Yes.

Mr. MUSKIE. I understand the postulate. The Senator is postulating the possibility of a perfectly horrendous tax matter, which wipes out long established preferences, like the personal exemption, or like interest on home mortgages. If a committee were that irresponsible, if it ran that far against the grain of the Senate and the grain of the country, somebody would raise that issue on the Senate floor.

A Senator is going to make that case then, and the point of order is going to be made by whomever is chairman of the Budget Committee at that point. The Senate will then consider those changes in the law that should be retained, and the Senate will do what is right.

The purpose of this point of order is not to handcuff the Senate. The Budget Act says that when the point of order is raised—this is a different point of order from the one raised by Senator LONG earlier this week—it is raised for the purpose of alerting the Senate to the fact that the floors and ceilings set in the budget resolution would be breached by this proposal.

All I am saying to the Senator is that this proposal would breach the revenue floor. But the Senator does not even want me to raise the question and provide the information.

Mr. SARBANES. Mr. President, will the Senator yield for a question?

Mr. MUSKIE. I yield.

Mr. SARBANES. If the Helms amendment, in addition to seeking to restore the deduction—which would cost the $400 million, or whatever the figure is—had also carried with it some proposal to raise revenues, since you are now at the ceiling or close to the ceiling, under the budget resolution, and to that extent it would have been balanced within itself, would it have been subject to a point of order? Would the Senator make a point of order?

Mr. MUSKIE. I would not make a point of order.

Mr. SARBANES. There are two ways to deal with the question. One is by the point of order being made. If the Senate wants to overrule the point of order, it can do that on a vote and take the consequences of adding another $400 million to the cost of this bill.

Second, if the Senator from North Carolina wanted to preclude the point of order from even being offered, he could have come in to restore these deductions, which he considers important, and at the same time have found the revenue through some other combination to balance it.

The budget process is supposed to induce that kind of responsible fiscal action on the part of the Senate.

The whole purpose of the budget process on spending and taxing is to get away from the idea that either you can come in here and just add spending through appropriations, without regard to what it adds up to, or, in this instance, add on the loss of tax revenues, without any regard to what it adds up to.

Therefore, the discipline which the process seeks to impose is at work here. The discipline does not run so far that we cannot even overrule it by majority vote. There are ways to deal with this problem, one of which, if the Senator from North Carolina chose, would not have brought a point of order, and the second is that we can overrule the point of order.

Mr. LONG. Mr. President, let me make this point, also.

Let us assume that as of right now, the bill before us has been passed and has gone to the President to be signed. So all the budget authority has been used.

Then let us take the case of the Senator from Alaska. If the Finance Committee still could bring in a bill with a tax cut of $5 billion, we would have to bring in $5 billion of a tax increase. At that point, if anybody struck out any part of the $5 billion tax increase, our bill would be subject to a point of order. We would have to violate the budget process to handle it. You can recommit the bill to the Finance Committee with instructions.

Suppose half of our tax increases were knocked out. You could recommit the bill to the committee with instructions to take that out and to reduce the tax cut, since you had lost half your revenues, and you would still be within the budget.

However, the Finance Committee did not prevent the Helms amendment. The Senate has prevented the Helms amendment when it voted for the other tax cuts, which I opposed and the chairman of the Budget Committee opposed; but the Senate did not see it our way. So it all has been used up.

On the issue of this particular item, Senators should understand that on the energy bill, the House conferees were insisting on this item anyway—the repeal of the deduction for gasoline taxes—on the energy bill. So it is likely to come back in a conference report, anyway. Even if we knock this out on the tax bill, the probability is that it will come back in a conference report between the Senate and the House, because the House Ways and Means Committee has passed it twice and probably will insist on it.

The Senate is not denied these alternatives and does not have to violate the budget process in order to have whatever recourse the Senate wants. In other words, it can vote the whole bill down; it can recommit the bill with instructions. The Senate has other alternatives available to it, if it wants to do them, and does not have to violate the budget process.

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. The Senator from Delaware has suggested that an amendment could be submitted to raise revenues to offset the amendment of the Senator from North Carolina should it be adopted. Would it be in order, under the cloture procedure, to file such an amendment at this time?

The PRESIDING OFFICER. It would take unanimous consent.

Mr. STEVENS. Mr. President, a second parliamentary inquiry.

Under the Budget Act, there is a provision that says that any provision in title 3 or 4 may be waived or suspended in the Senate by a majority vote of Members voting, a quorum being present, or by unanimous consent of the Senate. Is it in order at this time to file such a waiver for the amendment of the Senator from North Carolina?

The PRESIDING OFFICER. The Senator could move at this time, under section 904 of the Budget Act, to waive section 311 of the Budget Act.

Mr. STEVENS. It would take a majority vote to do that?

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. And the effect of that would be to permit a vote up or down on the amendment of the Senator from North Carolina, if it were done?

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. I am learning a little bit myself about this.

I would not like to see the Senate get into the position in which we were unable to get a vote on a recommendation of a committee, with due respect to the Senator's Finance Committee, on an issue of this type, where we would be in such a position that we would be forced to accept recommendations of change in existing law without having the right to challenge those assumptions of the committee, as to what is right in terms of changing existing law, because of the budgetary impact of the cut.

Again, this is perhaps a small item, but it does affect a lot of people who deduct State incomes taxes today. I, for one, want a chance to vote on that. I do not want to see it happen. If that means we reduce the income tax cut a little later on, fine.

I always have taken the position that we should assess the Budget Committee's position as to whether we are in balance after we see what happens to the basic recommendations to change existing law. It seems to me we should find out whether we agree with the Finance Committee as to what portion of existing law should be changed, before we make up our minds as to how much we should cut

taxes. I do not think we can make up our minds as to how much we should cut taxes until we know what we are going to do with the basic recommendations about changing existing law which would bring about increased revenues, which means decreasing the tax incentives and increasing the taxes to some taxpayers.

I hope the Senator from North Carolina understands that he has the right to file and ask for a waiver and would seek the waiver, so that we will have a chance to vote on the committee's recommendation of deduction of State gas taxes.

Mr. ROBERT C. BYRD. The motion would come too late, in view of the fact that the Chair already has ruled and sustained the point of order.

The PRESIDING OFFICER. The Senator is correct.

● Mr. HATCH. Mr. President, I am pleased to be a cosponsor of this amendment along with my very able colleagues, Mr. HELMS and Mr. RIEGLE. I rise with them in opposing the deletion of the itemized deduction for State and local nonbusiness gasoline and motor fuel taxes. I do so for the following reasons:

First. It will have an adverse effect on a large portion of middle-income taxpayers.

Second. It will help undermine the incentive for taxpayers to make use of itemized deductions.

Third. It will not bring about a substantial gain in energy savings.

Present law allows individuals who itemize to deduct State and local excise taxes imposed on gasoline, diesel, and other motor fuels if the fuels are not used for business purposes. If the Senate agrees to repeal this deduction, the middle-income taxpayers will suffer the most from the added tax burden. As a time when the Government is promising tax relief, it is using a "backdoor approach" to impose another new tax on a large segment of American society. According to the U.S. Treasury Department figures, over 70 percent of the revenue that will be raised from the repeal of this deduction will come from taxpayers making less than $30,000 a year. In 1983 alone, the elimination of this deduction will, according to the Treasury, take an additional $2.2 billion from the pockets of the American taxpayer who must also face spiraling fuel prices. Can the Senate justify such an increase during a period when taxpayers are saying "no" to more taxes?

Mr. President, the repeal of this deduction is part of a much larger scenario of tax reform, a scenario that represents a changing attitude within the Treasury with regard to tax legislation. Administration's decision to end the gasoline tax deduction is a disguised attack on the class of itemized deductions. By eliminating a deduction every year, the value of itemized deductions to all taxpayers is gradually eroded.

Contrary to popular belief, those who benfit most from itemizing are not just a few "fat cats." According to the Treasury Department's own figures, taxpayers with an income under $25,000 accounted for over 65 percent of the itemized returns in 1975. These are middle-income people who work hard for their take-home pay.

It is my opinion that Congress should view itemized deductions as a class when making revisions in tax law. As each deduction is eliminated, fewer taxpayers are provided the incentive to itemize. I suggest that Congress avoid the piecemeal approach and consider the total effect that is created by the repeal of itemized deductions. We should not allow the Treasury to sneak tax reform past in piecemeal.

Unfortunately, tax reformers have tricked both Houses of Congress into dealing with deductions by following an item-to-item approach. When it comes time to change the Tax Code, all attention is focused on the merits of one narrow issue. This year it happens to be the gasoline tax. Will the itemized deduction for State income taxes be next? Followed by elimination of the itemized deduction for interest on home mortgages?

Mr. President, if we continue to chop down trees one by one, the forest will soon be gone. Do we want that? I believe we need more information before we go any further. We need to look at the broader picture. American taxpayers deserve that much.

In its report on the tax bill, the Finance Committee mentions its concern about conservation of energy and the reduction of oil imports. In my opinion, however, the repeal of the gasoline deduction will not assist our Nation to achieve its energy goals. Instead, it will create an unfair tax burden for many taxpayers in western and rural States. People who live in these areas must drive greater distances. Should we penalize them when they must drive their family automobiles to seek medical care or travel into town to purchase groceries or farm supplies? And what about commuters? Will the elimination of the gasoline deduction suddenly force them to flee to mass transit? I think not. We promise our constituents a tax cut and then turn right around and pull out a meaningful deduction. We disguise our actions by claiming that it will somehow help cure our energy crisis.

If this measure is designed to save fuel, how can the committee allow business to maintain its fuel deductions? Or will business be next?

Mr. President, this matter was passed by the committee as a sop to the administration during its final hours of markup. I believe it deserves more discussion than it received at that time. I hope that my colleagues will understand the seriousness of this issue and support this amendment to the tax bill.●

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. RIEGLE. Mr. President, I thank the Chair for recognizing me.

I ask, from the parliamentary point of view, whether we are free to use our 1 hour to discuss this issue, pending a decision by the Senator from North Carolina to move for a vote on this.

The PRESIDING OFFICER. The Senator is correct.

Mr. RIEGLE. I will make a point or two about the merits of this issue, because that has been lost along the way.

I have not heard a syllable of argument as to why this deduction, which we have had for many years, should be done away with. I am not aware of any lengthy committee record—there may be one, but it has not come to my attention—in which a strong case has been made to do away with this deduction suddenly. Frankly, I know of no reason to do that.

If somebody is paying the tax to a State authority, I wonder whether we want to put ourselves in the position of applying a Federal tax on income that already has disappeared, because it has been taxed away by the State authority. It seems to me that we should allow a deduction in that case.

The Senate voted on this issue in 1974, and we voted to retain this deduction. We voted on it in 1976 and voted to retain this deduction. We voted on it in 1977 and voted to retain this deduction. I have not heard any argument as to why, suddenly, in 1978, we should go the other way.

I think the Senator from Alaska makes a very good point. I am not sure we want to say that the rule is a blanket rule and locks everything into the same treatment. That is a point that should be raised.

But when we are talking about eliminating an aspect of current law and we are denied an up-and-down vote on that, that to me is very troubling. There happens to be in this particular tax provision such an item. And Senators know there is no fairness as to where an amendment comes up in the order of consideration. We have had other amendments come along that have increased the loss of revenue substantially, increased the tax cut and, in effect, the amount of money not coming into the Government, and I voted for some of those amendments.

But I must say that they were not matched with corresponding revenue-producing items. They were not considered on that basis. So for someone to suggest on this particular item, which deals with an existing deduction, that we should be in a position to have to match that with a revenue-producing item would impose a different test than anyone else had had to meet up until this time.

I hope we can get a clear up-and-down vote on this.

If the Senate wants to do away with the gasoline tax deduction, if there are reasons to do that, and frankly I see none, then let us vote to do it. But let us not have it done by a committee and then deny the full Senate the opportunity to participate. That runs against every decision we have made in the past on this issue.

Mr. DOLE and Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, one should keep in mind that almost 70 percent of the people do take the standard deduction, so it is only the 30 percent who itemize who get the benefit of this.

If this deduction is repealed, it makes for simplification, on the one hand, because it is one thing less to worry about itemizing on your tax return and it also tends to make people use the simple form rather than the long form, but, in addition to that, it means that we can have—I wish the Senator from Michigan to hear this—it means that we can have a bigger reduction in the rates of all individuals, and the Senator voted for that, because we have to have revenue to pay for the reduction.

Otherwise, we just cannot have as much tax cut as the Senate voted for.

The Senator can decide what he wants to do about the matter. But the point of it all is that if we do not have the revenue, we cannot vote as much tax cut as we have in the bill, including the rate cuts.

Mr. DOLE and Mr. MUSKIE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, just a couple of brief comments.

No. 1, section 904 was not intended to serve as a casual routine sidestepping of the Budget Act.

For the life of me. I cannot see why, when there is a provision of the Budget Act itself which permits the Senator from Alaska and the Senator from North Carolina to get a vote on the issue which they have raised, we should suspend the Budget Act or seek to suspend it in order to do the same thing. But let me put a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MUSKIE. Mr. President, if the Senate should vote to suspend the Budget Act what would be the status of the point of order which has been raised on the Helms amendment?

The PRESIDING OFFICER. Section 904 could not timely be invoked at this point, because the Chair had already ruled on the point of order; therefore, the Senator's only recourse would be to appeal the ruling of the Chair.

Mr. STEVENS. Mr. President, I have discussed this with the Senator from Wisconsin, who raised the point of order, and in order that the procedure for waiver might work. would it be possible now to set aside the proceedings which led to the sustaining of the point of order in order that the Senator from North Carolina might use the waiver proceedings; in other words, is it possible for me now to ask unanimous consent that the point of order of the Chair's ruling be set aside?

The PRESIDING OFFICER. The Senator could ask unanimous consent to invoke section 904 and that would have the effect the Senator seeks if he got unanimous consent.

Mr. MUSKIE. I would object, I say to the Senator.

Mr. STEVENS. I am trying to preserve the Budget Act.

Mr. MUSKIE. I just do not understand, when there is a procedure in the Budget Act, which was created for the purpose of letting Senators put the kind of question the Senator wants to put, when there is a procedure available deliberately written into the Budget Act, why the Senator wants to crucify the Budget Act and waive it to get it done his way. All the Senator has to do is pursue the appeal that the Senator from North Carolina said he would pursue. If the Senate accepts the Senator's argument, the argument of the Senator from North Carolina and the argument of the Senator from Michigan, a majority of the Senate can put in place the policy the Senator wishes. Why in heaven's name does the Senator not use that procedure? That is what it was created for. That is why it is there. Now if what the Senator is trying to do is to write the Budget Act in such a way that the chairman of the Budget Committee cannot perform that unpleasant duty of presenting unpleasant facts, then the thing the Senate ought to do is get a new chairman of the Budget Committee. But if what the Senator wants to do is a vote on his question, then pursue his appeal. That is why it was provided in the Budget Act and the Senator can get his answer.

Mr. STEVENS. I might say some of us are not that knowledgeable. Mr. President, about the rulings of the Budget Committee and the impact of what we have done. I have already said I learned a lot here. I did not know we were foreclosed from any further challenge of any recommendation to change existing law in this substitute, and there are many, unless we had the foresight to ask for a waiver under the Budget Act before a point of order was made. Now it seems to me——

Mr. MUSKIE. There is no provision for such a ruling.

Mr. STEVENS. I am trying to assist the chairman of the Budget Committee and at the same time to assist the Senator from North Carolina to get a vote on the merits of whether we want to do away with the existing law deduction of State income taxes on gasoline. That seems to me to be a very worthwhile argument to get a vote on that rather than have the ruling of the Chair be the issue.

The Budget Committee chairman wants us to have the role of constantly upsetting the ruling of the Chair. I do not want to have to vote to upset the ruling of the Chair in order to test a recommendation that has come from the Finance Committee to change existing law which is the basis of the committee's assumptions of the change of the revenues of the United States in order to determine whether we have gone too far in reducing taxes.

Again I just want to state this clearly. I understand the chairman is prepared to object to a unanimous-consent request which would take us back to the position where the Senator from North Carolina could get a vote on the waiver, not on his amendment, but whether the budget should be waived in order to get that provision of the Finance Committee's substitute bill, which would change existing law and take away this deduction. Is that the Chair's position? Am I wrong?

Mr. MUSKIE. Mr. President, I really do not think that the Senator from Alaska understands my position at all. But, Mr. President, before I proceed, how much time do I have remaining out of my hour? I do not want to use it all on this issue. I suspect there are going to be other amendments that are going to require that I speak to.

The PRESIDING OFFICER. The Senator has 45 minutes remaining.

Mr. MUSKIE. I will just say though to the Senator from Alaska, there are provisions of the Budget Act to which the Budget Committee can recommend or refuse to recommend waivers. Waivers can be sought by individual Senators and by committees. Section 402 is such a section. Section 303 is such a section.

But section 904 is nothing more nor less than a statement of what was an obvious fact, if it did not exist, namely, that is, that the Senate as a whole can set aside the Budget Act if it wished to at any time. There is no waiver procedure for us to set aside the Budget Act as a whole, none whatsoever. I cannot give you a waiver under the Budget Act. The Budget Committee cannot give you a waiver under the Budget Act. Only the Senate as a whole can set aside the Budget Act, just as by unanimous consent it can set aside the Senate rules, including rule XXII.

I mean the Senator expresses so much concern about changing a law by this method, but has no compunction about setting aside the whole Budget Act.

Mr. STEVENS. It is too late.

Is the Senator going to object? It is too late to do that.

Mr. MUSKIE. I object to a unanimous consent that would set aside the Budget Act, yes. That is my job.

Mr. RIEGLE. Mr. President, will the Senator from Alaska yield on my time?

Mr. STEVENS. I would be happy to yield on the Senator's time because I have used up my time, and then I am going to do something else.

Mr. RIEGLE. Mr. President, will the Senator from Alaska yield the floor?

Mr. STEVENS. I yield.

Mr. RIEGLE. I thank the Senator for yielding, because I do not think this amendment——

The PRESIDING OFFICER. The Senator from Alaska has not had the floor. The Senator from Maine has the floor, and the Senator from Louisiana has the recognition of the Chair for the moment.

Mr. LONG. Mr. President, I would hope that we could work out a way—I would like the Senator from North Carolina to listen—I would hope we could work out a way that the Senator from North Carolina's amendment can be considered. At this moment I just do not know how we can do it. I do not know how to accommodate all the people with all their problems with the Budget Act. But I do not want to embarrass the Chair by overruling the Chair when the Chair is doing his duty as is required by the rules of the Senate.

I do not want to embarrass the chairman of the Budget Committee for doing his duty. I do not want to embarrass anybody, but I would hope we could just leave this matter in abeyance for awhile; if we cannot pass a bill here tonight, that by the time we come in tomorrow morning, we can figure out a way that the Senator

can offer his amendment. It may take unanimous consent or it may not, but I would hope that by the time we come back tomorrow, we can figure out a way in which to accommodate all men of good will—and they are men of good will at this moment—so we can try to work out some way. I do not know at the moment how to do it.

I ask unanimous consent that when the Senator from North Carolina desires to do so, he can bring the matter back up and the parliamentary situation will be just exactly the way it is now.

Mr. DOLE. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. I thank the Chair.

I do not plan to object, but I want the RECORD to show that this matter was raised by the Senator from Kansas in the Finance Committee. We took action at the very last moment to make up some revenue balances, and it was only done for that reason.

I notified my chairman that Senator HELMS had a real interest in this. So it does not come as any surprise. But I can understand what we have. We have here in effect a selective sunset about to take place or maybe a total eclipse. I think it is good to see my chairman of the Finance Committee arguing for sunset legislation because the sun is about to set on gasoline tax deductions, the very thing I understood this morning my chairman opposed, and that he opposed on Saturday, but today it is all right for the sun to set on gasoline tax deductions that affect middle class Americans.

If we want to do this and impose and increase the taxes, on incomes from $5,000 to $10,000, it increases their taxes $26 million next year; $10,000 to $15,000, an increase in their taxes of $90 million next year; $15,000 to $20,000, will increase their taxes $151 million next year; $20,000 to $30,000, increase their taxes $328 million next year. We can do that. We can do that by having the sun set on this legislation. Perhaps that is what we want. If we want selective sunset this is a good way to start it.

I also point out that 32 percent of all taxpayers use these deductions. The Senator from Michigan pointed out that we voted on this as recently as last year, and I think the margin was almost what, 2 or 3 to 1, against removing that tax deduction.

It does seem to me, as the Senator from Alaska has pointed out, that if we do it on this particular situation we can do it by removing personal exemptions or any other thing. So if we are for sunset legislation, then I guess we vote against the Helms amendment.

Mr. STEVENS. Mr. President, will the Senator yield for a question? This is just for a question, now. The Senator is a member of the committee. Can he tell the Senate are there any other changes in existing law similar to this in order to pick up revenue, existing provisions of the tax law that give specific deductions to individuals, such as this gasoline tax deduction, are there others in here?

I have got to tell you that until this rhubarb started, I did not know that this was in here again.

Mr. DOLE. I am not certain, but I am certain of the—I might say to the Senator from Alaska that the Senator from Kansas has an amendment to add revenue. If that were done it might offset it, because I would change the earned income tax credits, so it would be an exclusion toward the poor and not toward those with $10,000 and $11,000 of income. That might offset any loss we might have from the amendment of the Senator from North Carolina. But I do not know of any other provision.

Mr. STEVENS. I am told the alternative tax on capital gains on individuals has been repealed by this. That would have or could have a substantial impact on individual income taxes.

Mr. DOLE. That is right.

Mr. STEVENS. On an individual basis.

Mr. DOLE. A revenue loss.

Mr. STEVENS. If this point of order is sustained on this one, as I understand it we will have no chance at all to consider that one either because the committee's assumptions must now be taken en bloc. They are subject to a point of order. If any one of us wants to challenge the committee's assumptions of where to "pick up revenue"—

Mr. DOLE. That is more of the selective sunset.

Mr. STEVENS. I do not have the floor.

Mr. RIEGLE. Mr. President, will the Senator from Kansas yield?

Mr. DOLE. I yield.

Mr. RIEGLE. I would say to the Senator from Kansas that the vote last year on this item by the Senate was 65 to 12. We went on record to preserve this particular tax deduction.

I do not know how, stemming from that vote and the previous votes of the same sort, the Finance Committee would take and turn this thing right upside down and come back with a recommendation to eliminate this deduction and, in effect, to increase taxes by so doing.

Let me just point out something else that has not been taken into account in this discussion yet. The increased tax burden to taxpayers that will result if we eliminate this gas tax deduction will actually be greater than the revenue increase to the Federal Treasury. That is because there are 33 States and the District of Columbia that model their income tax returns after the Federal return with respect to the gas tax deduction.

Thus taxpayers in those States would lose both the Federal and State deduction, and in some cases a local deduction as well.

I am just going to list what States those are because they ought to be included in the debate here, too, especially if this is going to be done without any kind of extensive hearing record or testimony to really see what the impact of this is going to be. It includes the States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Ohio—I should say Iowa—Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

If anybody is interested in knowing how much revenue this is going to pull out of these States—because it is going to damage the economies of these States, since it is taking money away from people, and it is, in effect, a tax increase—I would be happy to show him or her what it is going to mean State by State as well as in terms of average taxpayers.

But the thing that is so distressing is this being done without any kind of attention or care to this issue. It troubles me very much that this particular amendment coming up, by the luck of the draw, late in the amendment process is, in effect, ruled out of order where other amendments that propose new tax benefits were in order just because they happen to come first.

Perhaps what we need to do is to revise the procedure. If we are going to have 20 or 30 or 40 or 50 amendments of this sort, they ought perhaps to be put into a hat so that we could draw them out in random order to decide who gets the chance to offer an amendment before there is a point of order that lies. Or perhaps amendments pertaining to a provision of existing law should have priority.

But I think the distinction the Senator from Alaska has made is an important one. We are not dealing with additions here of new tax deductions. We are dealing with the question of attempting to do away with what has been a long-standing tax deduction.

That is different. That crosses a line. Just as the Senator says, I am troubled. I am troubled to see us in a situation where we cannot even have an up or down vote on an issue. In effect we are acceding to the Finance Committee the power to take items out of the tax code that have been there for many years, and as to which the Senate, as recently as last year, by a margin of 5 to 1 said it favored this deduction.

If someone wants to argue about procedure, it seems to me this proposal is a pretty good example of what we are right in the middle of now.

Mr. DOLE. Mr. President, reserving the right to object, let me say to the Senator from Michigan that I totally agree. We have been pointing out how we want to help the middle income taxpayer. We are certainly not going to do it if this is our approach.

Having said that, I withdraw my reservation.

Mr. HELMS. Mr. President, reserving the right to object, I have no objection whatsoever to the suggestion by the chairman, provided that it be in order for me, at an appropriate time, to modify my amendment according to whatever we may be able to work out.

Mr. METZENBAUM. Mr. President, the modification of an amendment is not permissible under cloture, and, since I do not want my friend from North Carolina to be taken by surprise, I wish to state in advance that if such a procedure were undertaken I would object.

Mr. LONG. Mr. President, I simply suggested that we bring the matter back up, and that the parliamentary situation be exactly as it is now, and by that time I had hoped we could work the thing out.

Maybe we could modify the amendment, and perhaps talk to the Senator from Ohio about it.

Mr. HELMS. Mr. President, I have no objection to the unanimous-consent agreement.

Mr. RIEGLE. Mr. President, reserving the right to object, I want to be sure we are preserving the parliamentary situation exactly as it is right now with all Senators retaining their rights. I would ask the Chair for an affirmative answer on that point.

The PRESIDING OFFICER. The Senator is correct. If the unanimous-consent request that the matter lie over and the parliamentary situation be exactly the same tomorrow as it is today is granted, then the parliamentary situation tomorrow will be exactly as it is today.

Mr. RIEGLE. I thank the Chair.

Mr. HELMS. Mr. President, I ask unanimous consent that my amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection as to the unanimous-consent request of the Senator from Louisiana, and without objection as to the unanimous-consent request of the Senator from North Carolina, it is so ordered.

UP AMENDMENT NO. 2041

The PRESIDING OFFICER. The question recurs on agreeing to unprinted amendment No. 2041 of the Senator from North Carolina, which the clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS), for himself and Mr. Hatch, proposes an unprinted amendment numbered 2041.

Mr. LONG. Mr. President, let me say this: This amendment is not germane, but I would ask unanimous consent that it be in order to offer the amendment.

Mr. PROXMIRE. Mr. President, reserving the right to object, what is the amendment?

Mr. METZENBAUM. Reserving the right to object, what was the unanimous-consent request? That it be in order?

Mr. PROXMIRE. As I understand, the manager of the bill has asked unanimous consent that although this is not germane, a unanimous-consent request that it be considered germane be in order.

Mr. LONG. Yes.

Mr. PROXMIRE. I would hope the Senator from North Carolina would be given an opportunity to explain his amendment before the Chair rules.

Mr. LONG. Explain it.

Mr. HELMS. Mr. President, I think I will ask the clerk to read the amendment in full. It is self-explanatory. Then I will elaborate.

That will clarify it.

The PRESIDING OFFICER. The clerk will totally state the amendment.

The assistant legislative clerk read as follows:

At the end of the bill, add the following new section:

"SEC. . (a) This section may be cited as the "James B. Allen Taxpayer's Attorney Fee Award Act of 1978".

(b) In any action wherein the United States, or the Internal Revenue Service, or any person acting as an agent or employee of either the United States or the Internal Revenue Service or of both, is a party and in which tax liability to the United States on the part of any person is at issue or in which a declaration, refund, payment, or any other matter pertaining to a tax of the United States is in dispute, the court may in its discretion award reasonable attorney's fees and costs or reasonable practitioner's fees and costs to any prevailing party other than the United States, the Internal Revenue Service, or any person acting as agent or employee of either the United States or the Internal Revenue Service or of both.

(c) As used in this section, the term "prevailing party" means any person the court may in its discretion determine to have before that court prevailed substantially on the merits, notwithstanding the pendency of any appeal.

The PRESIDING OFFICER (Mr. MATSUNAGA). The Senator from North Carolina.

Mr. HELMS. Mr. President, one of the best friends I ever had was the remarkably able and completely dedicated statesman, Jim Allen, who sat over in that chair so many hours. I miss him, and our country suffered a great loss when he passed away this year.

On countless occasions, Jim Allen and I talked about the terrible inequity that is placed upon the taxpayers in any dispute with the Internal Revenue Service. Here is a taxpayer, required to pay taxes to support an entire phalanx of lawyers for the Internal Revenue Service, all of whom get their brownie points based on how much money they bleed from the taxpayers by intimidation or harassment. On the other hand, the taxpayer has to hire his own attorney, and if the taxpayer wins his suit in the courts, the IRS bureaucrats laugh and say, "Sorry about that."

I think it is high time that we put the bridle on these harassing bureaucrats and lawyers of the Internal Revenue Service who willy-nilly bring actions against taxpayers who refuse to knuckle under. It is only fair play for this Congress to offer some relief to the taxpayers in cases where they have been harassed and intimidated unjustifiably by the Internal Revenue Service.

That is the purpose of this amendment which I have offered in honor of the late Jim Allen, who was appalled by episodes that occurred in his State and other States, and as I am appalled by episodes which have occurred in North Carolina.

I offer this amendment for the purpose of paying tribute to my late friend Jim Allen. I know he must be looking down on the Senate and saying, "Boys, pass this one."

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. HELMS. Yes, I am glad to yield to my friend.

Mr. LONG. I believe we will have an opportunity to pass other revenue bills before the Senate adjourns, and if consent should not be given, perhaps we can add it on some other bill. I sympathize with what the Senator is trying to do.

Mr. METZENBAUM. Mr. President, it is with great reluctance that I rise to oppose anything that memorializes Jim Allen, a Senator for whom I had tremendously great respect; but I cannot accept an amendment that is not germane, even though I frankly believe it is a good amendment. Therefore, I raise a point of order against it.

The PRESIDING OFFICER. The point of order is sustained. It introduces new subject matter.

Mr. HELMS. Mr. President, I am not going to appeal the ruling of the Chair, but I must say that I sincerely regret that the Senator from Ohio has raised his point of order. This is something that needs to be done for the taxpayers. Every Senator in this Chamber knows that in simple equity corrections are long overdue in terms of the well-documented conduct of the IRS bureaucrats and lawyers.

Were it not for my apprehension that the Chair would be sustained—and I acknowledge that this is a nongermane amendment—and the fact that the distinguished Senator from Louisiana has said that he will assist in trying to find another vehicle for this proposal sometime before the Senate adjourns sine die, I would be inclined to appeal. We will be remiss in our responsibility to the taxpayers of the United States if we do not do something to put a bridle on the arrogance of some officials of the IRS.

I thank the Chair.

Mr. METZENBAUM. Mr. President, I would like to recommend to both my good friend from North Carolina and my good friend from Louisiana that they try to put this amendment on one of those consumer protection acts, where we provide for consumers' attorneys fees to be paid. I would be glad to join both Senators in offering to undertake that.

I think that would be fair and equitable and I would be pleased to join with both Senators in such an undertaking. But at this time I think this amendment would not be appropriate.

● Mr. HATCH. Mr. President, on September 26, 1976, in the last days of the 94th Congress, our late and very respected colleague, Senator James B. Allen of Alabama, offered an amendment to the Civil Rights Attorney's Fees Awards Act of 1976.

The Allen amendment, adopted by an overwhelming vote of 72–0, provided for payment of attorney fees to taxpayers who prevailed in litigation with the IRS. This provision was approved in the House of Representatives and became law as part of Public Law 94–559. The provision has been codified in the United States Code at 42 U.S.C. 1988.

We are all familiar with the rapacious attitude of the Internal Revenue Service in its dealings with small taxpayers, and we are all familiar with the excessive legal fees which burden taxpayers in protracted litigation with the IRS. In short, Mr. President, it is a recognized fact that the IRS uses the threat of protracted litigation to extort tax payment often in cases where the merits of the controversy are heavily against the position of the Government. Thousands of taxpayers have simply coughed up the money rather than face armies of attorneys from the IRS bent on embarrassing and frustrating the taxpayer regardless of the likely ultimate outcome of a trial on the merits.

Time and again, we have seen the spectacle of the IRS embroiled in litigation involving matters already decided con-

trary to the position of the IRS by a multitude of courts. Repeatedly, we see the IRS needlessly appealing trial court decisions for the sole purpose of keeping in litigation a disputed tax in the hope that the taxpayer will eventually pay up rather than face more attorney fees and more costs.

So, Mr. President, the Allen amendment adopted by the Senate and ultimately by the Congress in the 94th Congress was intended to cure these problems. Regrettably, the courts have given a highly technical and almost ludicrously narrow interpretation of the language of the Allen amendment. Thus, in spite of the clear intent of the 94th Congress, the Tax Court, on May 16, 1977 in the case of Key Buick Co. against Commissioner rendered the Allen provision virtually meaningless by holding that the law's provision for payment of attorney fees would apply only when the taxpayer was a named party defendant in an action brought by the United States as a party plaintiff. I am advised that in roughly 99 percent of all tax cases, because of a procedural anomaly, the United States or the Internal Revenue Service is not the plaintiff but is rather the technical party defendant, this notwithstanding the fact that in actuality the Government is in the traditional plaintiff role in seeking to impose a tax liability on the taxpayer who defends by asserting that the tax is not due. Because of this procedural anomaly, the Allen provision adopted in the last Congress has been effectively vitiated by the Tax Court, and in my judgment, action is therefore now required by Congress to insure that the purpose of the original provision is carried into effect without further delay.

On the other hand, Mr. President, and for completeness, I must state that a few other courts have given an interpretation to the Allen provision which more closely accords with the true intent of Congress. For example, in United States against Garrison Construction Co., the District Court for the Northern District of Alabama on September 13, 1977, held that vexatious conduct by the Government in filing its action against Garrison was sufficient to support an award of attorney fees to the taxpayer, even though there was no showing that the Government had acted in bad faith.

But, Mr. President, the problem still remains. The Garrison holding is of only slight benefit because in that case the Government was in the unusual position of being the actual party plaintiff. The courts have, thus, in practical effect, made the Allen provision available only to a very few taxpayers who are involved in litigation with the Government when the Government acts as the technical as well as actual plaintiff.

The amendment I am offering today would correct the deficiency of the original Allen provision, at least as that deficiency has been determined to exist by the various courts. And I might state parenthetically, Mr. President, that I do not believe the Allen amendment was, in fact, deficient but that only an unusual and strained black-letter interpretation of the provision resulted in its effective emasculation. I find some irony in our liberal courts giving this statute a strict interpretation when the same courts are always ready to stretch the law to the limits in favor of violent criminals and always ready to paint with a broad brush the novel claims of various activist groups who deluge our court system with frivolous causes. But, irony aside, the courts have virtually destroyed this innovative Allen provision.

Now, Mr. President, I believe that taxpayers are fed up with being abused by the IRS. I believe taxpayers are fed up with being taken for the goat in virtually every litigated tax dispute with the Government. And taxpayers have a right to be, Mr. President. The individual taxpayer or the small businessman is no match for the IRS or for the vast resources of the Tax Division of the Department of Justice. Using taxpayer funds, the Department of Justice is willing to support IRS intransigence and stubbornness by the expenditure of vast amounts for legal costs with the sole, true purpose of forcing settlement of disputed tax claims. Against this backdrop, Mr. President, the Congress ought again to adopt a provision, drafted so there can be no doubt about its intent, designed to help taxpayers facing the vast array of resources available to the Government.

But, Mr. President, this provision should apply, and the amendment I am offering would apply, only if the taxpayer's position were proven correct. The chief object of permitting the courts to make a discretionary award of fees and costs in tax cases to prevailing taxpayers is to encourage taxpayers to seek a vindication of their position when they are certain they are right and to discourage the Government from wasting millions in needlessly litigated disputes for the sole purpose or primary purpose of forcing settlement, notwithstanding the actual merits of the controversy.

Senator Allen recognized the needs to undo the damage done by the courts in their interpretation of his provision. On May 26, 1977, he joined with Senator CRANSTON in introducing S. 1610, a bill designed to broaden the scope, or rather to correct the interpretation, of the original Allen provision. This bill itself has been the subject of much study and comment. Many changes in it have been recommended to guarantee that the courts do not again weasel out of application of a statute expressing congressional will. The Department of the Treasury has proposed various "compromises" during discussion and study of S. 1610. These so-called compromises have been studied by leading tax attorneys who, in all instances, have advised that the Treasury proposals are devoid of true meaning and represent a retreat from the gains already made for taxpayers in the adoption of the original Allen provision. The amendment I am offering has been drafted in light of public comment on S. 1610, and it is broadly drawn, Mr. President, to guarantee that taxpayers get the relief intended. I have no doubt but that the Department of the Treasury, various under secretaries of this and under secretaries of that, are going to be beating their breasts against this amendment, asserting dire consequences, gnashing their teeth, and generally firing the heavy artillery to work against its enactment. But the issue boils down simply to this: Is the Congress willing to give some small measure of relief to prevailing taxpayers in litigation with the Government? Or are we going to side with the bureaucrats, side with the lawyers at the Tax Division who fear the embarrassment of costing the Government an attorney fee in a case they lost? Let us make the lawyers and bureaucrats at Justice and Treasury face that possible embarrassment. Let us make them consider in any dispute with a taxpayer the possibility they may be responsible for the Government paying the taxpayer's costs and attorney fees. That prospect, Mr. President, will cause a needed rebirth of sobriety at the IRS and will be guaranteed to reduce the arrogance of its agents.

I thank Senators for their attention, and I welcome any questions which may be posed regarding the amendment.●

The PRESIDING OFFICER. The Senator from North Carolina is recognized to call up his unprinted amendment No. 2042, under the previous order.

Mr. HELMS. Mr. President, in view of the ruling of the Chair on an earlier amendment, I withdraw that amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The Senator from Colorado, under the previous order, is recognized to call up an amendment.

AMENDMENT NO. 4059, AS MODIFIED

(Purpose: To provide for a reduction in individual tax rates for taxable years beginning in calendar years 1980 through 1982 and thereafter conditioned upon Federal spending and the Federal deficit being held within certain maximum limits)

Mr. HART. Mr. President, I call up my printed amendment No. 4059.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an amendment numbered 4059.

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

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

Mr. HART. I also ask unanimous consent that it be in order to send a modification of this amendment to the desk which would not change the substance of an amendment but which incorporates more recent calculations with regard to deficits relating to this measure.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving my right to object, would the Senator tell us a little bit more about it?

Mr. HART. Yes.

Mr. President, I will describe the amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Colorado.

Mr. HART. Mr. President, was the unanimous consent——

The PRESIDING OFFICER. The unanimous-consent request was objected to. The Senator from Ohio objected and asked for the explanation.

Mr. HART. The changes in the amendment which has been sent to the desk are as a result of calculations with computer assistance in the last few hours. They do not go to the substance of the amendment which was filed and which has been at the desk for several days.

Mr. LONG. Mr. President, I would like to just see the amendment so I will know what the modifications are.

Mr. ROTH. Could I ask the Senator, are these the same rates that are in the so-called Nunn-Roth-Chiles-Bellmon?

Mr. HART. Mr. President, these are changes in calculations having to do with deficits.

Mr. ROTH. I see.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Mr. President, would a quorum call——

Mr. LONG. Mr. President, I do not object.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

Insert at the appropriate place in the bill the following:

"SEC. . Conditional Cuts in Individual Tax Rates.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, the tables in subsections (a), (b), (c), and (d) of Section 1 (relating to tax imposed) shall be adjusted for taxable years beginning after December 31, 1979, by striking such tables in such subsections and inserting in lieu thereof rate tables determined under the applicable taxes for the taxable year, as provided in subsection (b) of this section.

"(b) DETERMINATION OF TABLES.—The Joint Committee on Taxation shall

(1) determine the adjusted 1978 income tax level,

(2) establish taxable income brackets which are the same as the taxable income brackets in effect for calendar 1979, and

(3) establish rate tables and (A) which impose on each taxable income bracket for the calendar year the same proportion of the tax burden borne by such bracket under the taxable income brackets and tax rates in effect for calendar year 1979, and (B) which are estimated to result in total tax revenues from all taxable income brackets summed together in each of the tables under subsections (a), (b), (c), and (d) of Section 1 the same amount of total tax revenue estimated as resulting in calendar 1978, as adjustments provided in subparagraph (A).

(4) Definition of adjusted 1978 income tax level for Calendar Year 1980.

(A) For calendar year 1980, the adjusted income tax level shall be total tax imposed under the 1978 rate tables reduced by 15 percent.

(B) For Calendar Year 1981—For calendar year 1981, the adjusted 1978 income tax level shall be the total tax imposed under the 1978 rate tables reduced by 22 percent.

(C) For Calendar Year 1982 (and subsequent calendar years).—For calendar year 1982 (and subsequent calendar years), the adjusted 1978 income tax level shall be the total tax imposed under the 1978 rate tables reduced by 29 percent.

All estimates of total tax burden and determinations of adjusted 1978 income tax level shall be made separately for each table, as printed in subsections (a), (b), (c), and (d) of Section 1 (1) Determination of Limitations—For purposes of determining the changes in the rate tables provided under subsection (a) for each calendar year after 1979, the Secretary of Treasury shall make the following determinations in paragraphs (A), (B), (C) and (1) of this subsection after the adoption of the Second Budget Resolution by the Congress during the preceding calendar year and before the beginning of the next calendar year.

The Secretary Shall—

"(A) establish the amount of the outlay limit the deficit limit in paragraph 1 to correspond to the levels set forth below:

	Outlay limit	Deficit limit billion
Fiscal year:		
1980	$531 billion	$50
1981	562 billion	21
1982	595 billion	8
1983	628 billion	0

"(B) increase each year the amount of the outlay limits and deficit limits set forth in subparagraph (A) by the annual rate of change of the price index for the preceding fiscal year, minus six percentage points.

"(C) compare the amount of the outlays provided for by the budget resolution for the fiscal year ending on the next September 30 with the amount of the outlay established under subparagraph (A). AMD

"(D) if the amount of outlays authorized by the budget resolution for a fiscal year exceeds the amount of the outlays as established under subparagraph (A), suspend the application of the tables set forth in subsection (b) for the next calendar year.

"(2) Effect of suspension—If the Secretary suspends the application of tables for a calendar year, the tables in effect for the preceding calendar year shall apply, and the remainder of the schedules (including the suspended table) shall be applied one year later than shown in subsection (b) (subject to suspension under paragraph (2)) so long as the deficit does not exceed the deficit limit set forth in subparagraphs (A) and (B) of paragraph (2) above.

"(B) Corresponding adjustments.—For each calendar year for which a schedule under subsection (b) is in effect, the Secretary shall change the zero bracket amount under section 63 for the calendar year, the tax tables prescribed under section 3, the withholding tables prescribed under section 3402, the dollar amounts set forth in section 3402 (m)(1) (relating to percentage method withholding), and the dollar amounts set forth in 6012(a) (relating to filing requirements) necessary to reflect in such tables and amounts the tables in effect for the calendar year. The amounts adjusted by the Secretary under this paragraph for any calendar year shall be the amounts in effect for taxable years beginning in that calendar year.

"(4) Definition of price index.—For purposes of this subsection, the term 'price index' means the average over a 12-month period of the Consumer Price Index for All Urban Consumers.".

Mr. MUSKIE. Will the Senator yield?

Mr. HART. I yield.

Mr. MUSKIE. Mr. President, there will be, I gather, two or three amendments of this kind presented to the Senate. Under my interpretation of section 303(b), which we discussed the other night, a waiver resolution would be in order and, in fact, Senator HART submitted a waiver resolution to the Budget Committee.

In light of the action taken by the Senate the other night, I have not tried to report those waiver resolutions to the floor. They might just complicate the parliamentary situation at the present time.

Mr. President, I still think that issue is a problem which must be addressed in due course. However, I do not think the time for doing so is in the consideration of this tax bill. Consequently, I simply wanted to explain to Senator HART why the waiver resolution has not been acted upon. There are two others. We have not acted upon them because of the action taken by the Senate in overruling the Parliamentarian the other night.

Mr. HART. I thank the Senator from Maine.

Mr. President, I ask unanimous consent that the Senator from Idaho (Mr. CHURCH), the Senator from Wisconsin (Mr. PROXMIRE), and the Senator from Arkansas (Mr. BUMPERS) be added as cosponsors to this amendment.

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

Mr. HART. Mr. President, this amendment does one simple but very important thing.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Colorado.

Mr. HART. Mr. President, this amendment does one simple but I think very important thing. It links tax cuts in the years 1980, 1981, and 1982 to the Congress and the Government meeting limits on the growth of Federal spending.

The first question to ask is, Why are tax cuts needed in those years? The second question is, Why are controls on Government spending needed?

The third question is whether we can have both at the same time.

Mr. President, we have been doing the Nation's economic business pretty much the same way for the last 30 or 40 years. We have approached the problems of inflation and recession, of tax policy, of fiscal policy, as if nothing ever changed. But things have been changing. Five years ago this week OPEC embargoed petroleum exports into this country and energy prices quadrupled overnight. The value of a dollar continues to deteriorate. The balance of trade declines, unemployment is not rampant but it is structural. Budgets are chronically imbalanced.

We continue in this Congress, nevertheless, in spite of these changing circumstances, to try to stimulate the economy through fiscal means that have been used for the last 20, perhaps 30 or more years.

(Mr. STEVENSON assumed the chair.)

Mr. HART. The problem is those fiscal stimulation methods are not producing the same results they once did. The fact of the matter is, Mr. President, in spite

of our efforts to try the old remedies, they just are not working. We have had tax cuts every 4 or 5 years for the last two decades. Those cuts have operated pretty much as political rewards for Members of Congress to offer their constituents, and those cuts have been offered almost totally separately from budget discipline or from any attempt to control the rate of Government spending.

That is one of the reasons why they have become less effective and perhaps even totally ineffective in terms of producing the desired economic result.

Of course, there has been much attention in the last few months to a variety of kinds of tax proposals. Those proposals have to do primarily with very large increases in tax cuts.

The theory is, of course, that it will stimulate demand; that will stimulate investment and production; and that will stimulate growth of the economy. The fact of the matter is, Mr. President, that the historic example offered for that is almost 18 years old. Circumstances have changed. There are different causes for the recession of our economy, and there is certainly a much greater and higher degree of inflation.

Mr. President, this amendment is offered for one very simple reason. That is, for the first time in anyone's memory, we have a continuously sluggish economy combined with inflation. It is because we have these dual economic problems that they have to be counteracted and counterattacked simultaneously.

Briefly, Mr. President, what this plan would do is provide for tax cuts in the years 1980 through 1982 amounting to 23 percent over and above that enacted this year. The size of those cuts is projected in this amendment in 1980 at 9 percent, in 1981 at 7 percent, in 1982 at 7 percent.

Mr. President, at the same time those tax cuts are offered, this amendment would require a degree of budget discipline that we have not attached to tax cuts in the past. That discipline would say that the growth of Federal spending has to be controlled at a certain level. That level amounts, in this amendment, to the range of 6.7 percent increase per year. That figure, Mr. President, is the combination of the assumed 6 percent inflation plus a factor of about three-quarters of a percent net growth over that.

How was that figure arrived at? It was arrived at as the tax cut figures themselves were arrived at, very carefully. We have used some of the best economic advice and expertise that we think is available in this country. The numbers are not derived accidentally or in the abstract. This amendment, Mr. President, is the result of months of work, and weeks of consultation with some of the best experts in the future of economic planning that we were able to locate. Very simply, what this amendment provides is that if we are to have the tax cuts that this Senator believes are needed to stimulate growth, to increase production, to increase expansion in the private sector, then we have to limit the expansion of Federal spending and we have to provide those levels of tax cuts.

What would be the result if this amendment were adopted and implemented, Mr. President? According to the calculations we have done, and given very conservative estimates about the degree of investment and the degree of expansion in private development, we would arrive at something like a $15 billion to $18 billion deficit by 1983. But given the most optimistic calculations, those that incorporate what business is most likely to do with this degree of economic stimulation and increase in demand, it is our calculation that by 1983—we can have a balanced budget. The most optimistic predictions are that we can have a surplus budget in 1983.

Mr. President, I do not think we should make policy only on those most optimistic projections. I think we should take the most conservative projections. That leaves us with a growing economy as a result of that stimulated private investment. It gives us controls on Federal spending at predictable levels that permit us to serve the real needs of the people of this country, but eliminate the waste and the fat and the fraud that is in the budget, and exercise additional discipline to that which we already have in the budget process. It also permits those who have to make very difficult investment decisions to have some predictability about where the Government is going and what its policies are.

Mr. President, even if we take those most pessimistic assumptions, we shall have that growing economy, we shall have the controls on Government spending that I think taxpayers of this country are insisting on. We shall also have a budget that is approaching balance, even under the most pessimistic calculation.

This proposal does not represent absolute limits on what the Government can do in terms of spending. All it says is that if we are to have those tax cuts, which I believe we should have and must have to stimulate increased productivity and investment, we can only do so when the Federal Government exercises the restraint on itself that it has not been doing up to now, with the exception of the effort of the Congressional Budget Committee.

Mr. President, this amendment will permit Congress to exceed the spending limits which it contains. It does not contain any absolute prohibition on that. All it says is that if those spending limits are exceeded, there will be no tax cut. That is in this amendment, and I think it should be part of the law, because the people of this country understand that that is what is necessary. We cannot continue to offer tax cuts every year or every 2 years, or every 3 years or every 4 years, and run the budget deficits that we have been running, not controlling our own expenditures and keeping our own house in order, and expect the American people and the private sector to have any confidence in governmental fiscal policy.

Mr. President, if this amendment were adopted, it would exand and increase and build the constituency for the budget process. It would set preconditions for tax cuts in the next 3 years after fiscal 1979. It would use the second concurrent budget resolution as a point of departure. I think most importantly, Mr. President—and I want to reserve the remainder of my time to respond to comments by the committee—it would offer a departure in governmental policy that I do not think has ever been attempted before. This approach is unique and novel, but it is reasonable. It is thoughtful, it is carefully calculated. We have had much consideration in the last few months and weeks in this country, at the State and Federal levels, of a variety of kinds of economic proposals. Some are massive tax cuts, as proposed by the Finance Committee in the pending legislation. So are tax cuts as proposed by the administration. There have also been a variety of ways of attempting to control Government spending, particularly at the State level. Mr. President, what this amendment does that my cosponsors and I are attempting is link those proposals in a thoughtful and reasonable manner. We have comprehensive data, the best that the expertise available offers, to justify and support the calculations we have made, and the specific limits in spending and tax cuts proposed in our amendment.

Mr. President, I ask unanimous consent that that data be printed in the RECORD. It is a Congressional Research Service analysis using the Chase Econometrics economic model.

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

(The tables are printed in the RECORD beginning on page 35392 of the Senate proceedings of October 10, 1978.)

Mr. HART. Mr. President, in summary, this amendment makes tax cuts in the 3 years beyond fiscal year 1979 contingent upon Federal restraints. It cuts personal taxes only. It takes effect in 1980. It predicates those tax cuts on calculations based on 1978 tax tables. It looks to the second concurrent budget resolution for its spending ceilings. It uses budget ceilings as targets and not as mandatory handcuffs or restraints. It does not change 1979 law, and it would put constraints on the deficits through 1981 and into the 1980's.

Mr. President, I reserve the remainder of my time.

Mr. PROXMIRE. Will the Senator yield for a question?

Mr. HART. I yield to the Senator from Wisconsin.

Mr. PROXMIRE. This amendment, as I understand it, would provide for a reduction in taxes matched by the limit on the increase in spending, is that correct?

Mr. HART. That is correct.

Mr. PROXMIRE. The principal limit on spending would be 1 percent in real terms, with an estimate that there be about 6 percent inflation, is that right?

Mr. HART. Yes, my amendment would set spending limits targets which represent a growth of Federal spending at 1 percent below current projections by the Senate Budget Committee. This would reduce expenditures $40 billion from projected levels in 1983.

Mr. PROXMIRE. Now, what happens in the event of a recession and a deep recession, when the tax revenues are eroded sharply and it may be necessary

to spend more money and the deficit increases?

Mr. HART. Congress, of course, under this amendment, preserves its prerogatives that it is exercising right now, that is, amending tax laws in any year.

It also provides that if the deficits increase beyond the suggested levels as a result of recession, or any other factor, that the tax cut or the calculations set forward in this amendment are set aside. Congress is, of course, free to increase the tax cut or take any other step it may wish.

Mr. PROXMIRE. The same provisions would be in place in the event of a military emergency where we had to spend a great deal of money because of the military situation?

Mr. HART. The Senator is absolutely correct. Obviously, we should not tie the hands of the Congress or the administration.

Even if this amendment passes the administration, the congressional budget process, Finance Committee, the Ways and Means Committee, and, of course, both Houses can still do anything they wish in any given year. My amendment will simply cause a tax cut to take effect in any year that spending is below certain limits. If Congress wishes, of course, it can increase or decrease the tax cut in any year and I would recommend such a change if the economy turns into a recession, for example.

All this says is that under normal circumstances, if projected controls on the growth of Government spending are not met, there will be no tax cut, barring those extraordinary circumstances.

Mr. PROXMIRE. If the Senator will yield very briefly, let me congratulate the Senator on what I think is precisely what we need.

This would provide a tax cut, but a responsible tax cut, a tax cut keyed to holding down spending, which would not be inflationary under the circumstances because spending would have to be reduced, too.

It seems to me the principal objection to Kemp-Roth was it might be, under some circumstances, inflationary.

I happened to vote for it, but that was the view of many Members of the Senate.

The Hart amendment meets that objection. It provides not only for very substantial tax reduction. but a tax reduction keyed to holding down spending increases so that the deficit would be reduced and eliminated in 1983—is that correct?

Mr. HART. The Senator is absolutely correct.

I want to emphasize that the purpose of this amendment is not to provide an election year, or any other year, gimmick for Members of the Senate or Congress to go home and say, "We voted for tax cuts this year and in the next 3 or 4 years."

But it is to address a real and I think growing problem in this country, and that is probably recession.

I think many people on both sides of the political fence, both sides of the political aisle, agree it can only be addressed by some thoughtful and calculated and projected fiscal stimulation that will not only encourage the consumer side, but also give the business sector confidence that if they make investment in increased plant capacity, increased productivity, that there will be some demand there to meet that.

But it also permits an increased demand and increased productivity and growth in the private sector without the even greater problem, and that is inflation. The way that is counteracted is the controls on the growth of Federal spending. As a result this budget deficit is decreased, rather than increased, as with some other proposals.

There may be better ideas as to how to do this, but the Senator from Colorado has not heard them, frankly. I think combining these two for the first time, and I know of no other time this has been done, is the only solution available to us to counteract the simultaneous problems of inflation and recession.

Mr. PROXMIRE. I congratulate the Senator from Colorado. I support the amendment.

Mr. NUNN. I would just like to say a few things about the Hart amendment.

First of all, I agree with the overall concept of the Hart amendment. It has several things in common with what I would call the coalition amendment, which has been cosponsored by Senator CHILES, Senator BELLMON, Senator ROTH, and myself, as well as others—22 different cosponsors, I believe—23 now.

I would like to just point out very briefly the similarities, because the concept is similar.

First of all, both of these amendments make tax cuts contingent on Federal spending restraints. Second, both cut personal taxes only. Third, both begin in 1980. Fourth, both look to the second concurrent budget resolution for spending ceilings. Fifth, both use budget ceilings as targets. Sixth, neither changes the 1979 law, proposed by the committee, as I understand it, neither have deficit constraints through 1981.

But there are some fundamental differences everybody should understand, because I do agree with the general concept the Senator is proposing, and our coalition concept is very similar.

We also have inflation plus a percentage of real growth as a contingency. We have a 1 percent real growth limit in the Nunn coalition amendment, which will follow the Hart amendment.

But we have another contingency, too, because limiting spending to inflation plus a percent of real growth is not sufficient. We also need a measure of how that spending relates to overall GNP, otherwise we could have 15 percent inflation, one year and the next year a 16 percent Federal spending increase.

We also in our amendment, and this is the distinction between the Hart amendment and our amendment, we have a second condition precedent, which is that the percent of Federal spending related to GNP has to start declining and we have a specific schedule that would take us down by 1983 to 19.5 percent of GNP.

This means we are mandating a shift from governmental expenditures to the private sector expenditures.

There is one other important limitation we have in the Nunn coalition proposal. We have a required balanced budget by 1982.

We do not pull this figure out of the air. It is based on economic projections and the amount of our tax cut is geared to balancing the budget in 1982.

We stretch out the overall tax cut over 5 years, including 1979, and we, reluctantly, but, nevertheless, we do reduce the amount of the tax cut to a lesser figure than is proposed by the Senator from Colorado because we felt it was essential to balance the budget in 1982 and to avoid continued deficit spending.

So, without taking a lot of time, I say in summary that there is nothing in the Hart proposal that makes us get to a balanced budget.

The Senate is going to have a chance to vote on such a proposal in the form of the Nunn proposal in just a few minutes. But I would reluctantly have to oppose the Hart proposal because it does not have the restraints I would like to see it have before we implement tax cuts.

Mr. LONG. Will the Senator yield for a question?

Mr. NUNN. I am glad to yield to the Senator from Louisiana or to the Senator from Delaware.

Mr. LONG. As I understand, the Hart amendment would permit a budget deficit of $50 billion next year and still have a tax cut, is that correct?

Mr. NUNN. That is theoretically possible. I do not think that would really happen, in fairness, but I think it is theoretically possible.

Mr. LONG. How much deficit would the Senator's amendment permit next year and still have a tax cut?

Mr. NUNN. In 1980, we have a similarity, neither bill uses a deficit contingency in 1980, but we do use two other criteria. Frst of all, a 1-percent limit in real growth. Second, we would require the percentage of the Federal spending related to GNP be reduced.

This does not directly regulate the deficit, but it does indirectly regulate it. Therefore, we reduce the growth in spending.

We did not put in a deficit constraint in 1980, but we do put a figure on it in 1982.

Mr. LONG. That has the effect of limiting the deficit to a lower figure than the $50 billion or not?

Mr. NUNN. It definitely would, because spending measured against the gross national product would go down, and it has to go down every year. Unless those two conditions are met, you would have no tax cut.

Mr. HART. Mr. President, will the Senator yield to respond to a question?

Mr. NUNN. I yield.

Mr. HART. The calculation of the deficit does not mandate a tax cut. Congress is free to do anything it wishes. The deficit figure does not mandate a tax cut.

The Senator from Georgia has indicated his approach with respect to Federal spending as compared to GNP would be 19.5 percent, from about 21 percent now, by 1983.

The Hart amendment would restrain Federal spending so that spending would decline from 21 percent of GNP today to 19.1 percent in 1983.

Mr. NUNN. The difference is that the Senator does not have anything in his amendment that guarantees that. That is based on a lot of assumptions. We have in our amendment that that percentage of GNP must go down. Otherwise, there is no tax cut. We write it into law, and the Senator merely has it on his wish list. That is a difference we have to address.

Mr. ROTH. Mr. President, I congratulate the Senator from Florida for supporting the concept of a phased-in tax cut, which I think is very important both from the standpoint of the American people and from the standpoint of trying to secure some buoyancy in the economy.

However, for the reasons outlined by the distinguished Senator from Georgia, I think it is important that it be recognized that there is a second coalition, if we want to call it that, a bipartisan amendment, that would achieve the same goals but is much more specific.

One of my concerns about the Hart amendment is the point just dwelled upon, that it does permit next year a $50 billion deficit, which I think is much too high. I do not think the Senate should put itself on record as permitting a deficit that high.

Second, it concerns me that the so-called Hart amendment does not spell out with particularity what the tax cuts would be, in contrast to the coalition amendment, which has the charts spelled out specifically as to what cuts individuals with different incomes would enjoy.

Under the earlier amendment, it is my understanding that the Secretary of the Treasury was the one who is going to spell out or work out the tax rates.

Is my understanding of Senator HART's amendment correct, that this is a Joint Committee on Taxation? That was not a change that was mentioned when we got the unanimous consent.

Mr. HART. The Senator is correct, and I apologize for that. It did not seem to me that that was a material change in the amendement.

Mr. ROTH. I think it is a significant change as to who has that authority; because, while there are some restraints put upon what it can do, there is still a certain amount of flexibility as to how they would be spelled out.

For example, can the Senator from Colorado tell me what would be the tax cut of a family of four if we meet the deficit requirement?

Mr. HART. At what income level?

Mr. ROTH. $20,000 a family of four.

Mr. HART. In which year?

Mr. ROTH. For each year that the tax cut could take effect.

Mr. HART. In 1983, for a family with an income of $25,000, it would be $578. The 1979 figure is about $148, and we can calculate the rates in between.

I must say that I do not think that is a material difference between the two amendments.

Mr. ROTH. I, for one, am not willing to delegate that authority either to the Secretary of the Treasury or to the Joint Committee.

It seems to me that one of the advantages of the coalition amendment is that we spell out with particularity exactly what would happen in tax-rate reductions. I think that gives certainty to the picture that is not found in the Hart amendment.

I also agree with the distinguished Senator from Georgia that it is particularly important not only that we require the meeting of a GNP standard, but also the 1982 requirement that the budget be balanced.

For that reason, I urge my colleagues to oppose the Hart amendment and to support the coalition amendment which will be brought up subsequently.

Mr. HART. Mr. President, I hope that the Senate, in considering these two proposals, does not lose sight of the forest for the trees.

The fact is that in the case of the Sentor from Colorado and his cosponsors, after a period of months of a lot of hard work, we have come up with what we think is a very good proposal.

In addition, the so-called coalition has come up with a similar proposal over a period of time; and now what we have is the individual sponsors of those two approaches trying to point out how different they are and urging the Senate to reject one and support the other. Frankly, I am not sure it makes that much difference, when you consider the importance and, if you will, the uniqueness of this approach. That is what is important about these proposals.

For my part, as a principal sponsor, the Senator from Georgia knows that I am perfectly willing to accept the factors in the Nunn proposal which he has pointed out as different in ours.

The GNP provision is acceptable, and we will make whatever changes are necessary in the deficit calculations. We will incorporate the rate schedule that the sponsors wish to make. I am perfectly willing to accept what the sponsors seem to think are substantial differences and incorporate those into my amendment. It seems to me that that would make the measure agreeable to everyone. If the sponsors wish to make that offer of amendment by unanimous consent, I am perfectly willing to accept it.

Mr. NUNN. I say to the Senator that I agree with him that we have more similarities than differences. There is no question about that. We have been over it very carefully. I agree with the Senator's concept. I believe we have a stronger proposal. I think it has more restraint on Federal spending and does give us a balanced budget position by law. It mandates a balanced budget.

Also, we have a broad coalition in sponsoring this amendment. I do not feel that I have the authority on behalf of 23 or 24 people to agree to provide any kind of substitute.

As the Senator knows, we would have liked the Senator to join us on our proposal. We invited him to join us on our proposal, but that did not work out. I have great respect for the Senator. I say, in all frankness, that if there were not a better alternative going to be voted on right after his, I would be in favor of his, as opposed to the current law.

However, I do believe it is much better to provide in this amendment precisely some limits on Federal spending compared to gross national product. I think it is much preferable to have an overall requirement of a balanced budget in 1982.

I also believe it is preferable to have tax cuts that are based on achieving economic stability. We did not pull our tax cuts out of the air and feed them to a computer—I know the Senator did not, either—and say this is what we want. What we did was to feed some basic assumptions—that is, getting a balanced budget and limiting expenditures to 1 percent real growth—we fed that in and said we want tax cuts which would allow us to have economic stability and real growth. The tax tables that came out were a result of that kind of process.

So I would not be able to speak for the other 22 or 23 Senators on this, but I would hope we could debate both proposals as we are now doing, and then have a back-to-back vote on it.

Mr. BELLMON. Mr. President, the Hart amendment and the coalition amendment set forth a concept relating to tax cuts tied to restraints on spending that I believe embrace an idea whose time has come.

The problem has been in the past that there is always pressure on the Senate to increase spending. Yet, the taxpayers never seem to be heard; so we do not have the same pressures to hold the line on increasing taxes. Both these amendments intend to tie a reduction in taxes to a requirement that Congress hold the line on spending. One amendment would hold the line at 1 percent in real terms and one at three-fourths of 1 percent.

When you compare the two proposals, I am convinced that, while I agree with the intent, the coalition approach, one which I have cosponsored, is superior in many ways to the one that has been offered by the Senator from Colorado.

First, the amendment of the Senator from Colorado would authorize, as has been said, the joint tax committee to exercise some discretion in establishing rate tables. Distributing the tax burden to me is a matter that the entire membership of Congress and not just one committee should undertake. Our amendment sets specific rates that are part of the amendment and reserves this responsibility to Congress.

Second, the Hart amendment proposes a 3-year rate cut beyond 1979. The coalition amendment proposes 4 years. To me this just gives us a longer period of certainty and I believe would serve as a very considerable incentive for the private sector to make greater investments and to help us have a stronger economy.

The size of the third year tax cut reduces the deficit in 1982 down to $18 billion, but to me this is still a very large deficit, and I believe it is unnecessary since the coalition amendment gets us to a balanced budget by 1982, and I think that is one of the major points of difference and it is one that I stress.

Mr. President, there are many very

specific differences, and I shall recite those in some detail for the Senate.

The first, as I have said, the coalition amendment has a balanced budget by 1982. The Hart amendment has no constraints on deficits.

The coalition amendment specifies spending restraint as a percentage of GNP, and the Hart amendment has no such provision.

The coalition constrains outlays to 1 percent above inflation. Hart sets specific levels which rise with inflation plus three-fourth percent. There is not that much difference in that one area.

The coalition specifies a table of reduced rates which produce revenue levels which fit spending constraints. The Hart amendment has the joint committee compute the reduced tax rates and this way takes this responsibility out of the hands of Congress.

The coalition subsumes the Kennedy amendment's redistribution of tax burden but distributes his amendment's tax cuts roughly according to individual tax rates in the Finance Committee bill before amendments. The same provision of redistributing the tax burden is in the Hart amendment, but the Hart amendment distributes those tax cuts according to the bill as finally amended, which is something none of us will know about for some days.

The coalition proposal cuts taxes $8 billion in 1980; $25 billion in 1981; $43 billion in 1982; $66 billion in 1983 below the bill that is before us as amended. The Hart amendment cuts are in percentages and it is to achieve reduced revenue by 15 percent in 1980, 22 percent in 1981, and 29 percent in 1982.

So, Mr. President, I think the main difference between these bills is that the coalition approach is one that is set forth specifically so the Senate will know exactly what we are voting on, and the Hart proposal leaves many things up in the air that will have to be decided and worked out later.

So, I strongly urge my colleagues to vote against the Hart proposal and to be in position to support the coalition amendment when it is brought before the Senate immediately afterwards.

Mr. HART. Mr. President, it is a rather minor point, but I think it should be made. On behalf of the coalition amendment, by calling it that, I do not want us to get into this business that we have with the Senator from Colorado, and then we have a gang of other people. I could call my amendment a coalition amendment also if I chose to. I have several other Senators on it. So I think we should keep that point in mind.

Second, I think what we are doing here is spending a lot of time trying to point out differences, as I have already stated. What I said to the sponsors of the Nunn amendment is that many of these features, if not all of them, are acceptable to me. We are straining at the last 5 percent and on 95 percent of this we are together. I do not know why we have to spend a lot of the Senate's time telling our colleagues or at least the RECORD the differences between them when the vast majority of these proposals are the same.

If the Senator proposing this amendment wishes to offer those changes, I have already indicated that they will be acceptable to me.

Mr. NUNN. Will the Senator be willing to just withdraw his amendment and then we could vote on ours right after that? It would accomplish exactly that purpose.

Mr. HART. Mr. President, I am afraid the Senate is getting itself down to a struggle over pride of authorship.

Mr. NUNN. We could cure that very quickly if the Senator would withdraw his amendment.

Mr. HART. The Senator from Colorado made the first offer. It has not been responded to yet. I have offered to accept the changes which the sponsors of the Nunn amendment have indicated they want.

Mr. LONG. Mr. President, both pending amendments, the Hart amendment and the Nunn amendment, bring in a whole new concept in taxation, and it relates that to spending.

The idea has some merit and perhaps the Senate wishes to vote for one or the other, or both, but I think that one precludes the other.

I gain the impression that the Hart amendment leaves it up to the joint committee to work out what the rates will be, and the Nunn amendment will provide what the rates actually are. It has a schedule for which we will vote. Is that correct?

Mr. NUNN. The Senator is correct.

Mr. HART. To answer the Senator, the Joint Tax Committee woud be performing not a discretionary function but a mechanical function. It would be implementing formula which is already in the law.

Mr. LONG. I gain the impression, Mr. President, that the Nunn amendment is somewhat more sophisticated and it has been more thoroughly worked out. As between the two, I think I would favor the Nunn amendment. I am not sure at this point I would recommend either one of them, but mv impression would be the Nunn amendment is somewhat more thoroughly worked out to meet the problem.

Both of them, I believe, seek to move us toward an ultimately balance of the budget; is that correct?

Mr. NUNN. In fairness I think the Senator has that intention in his, but it does not provide that. There is no requirement in his amendment that that be done. In our amendment it is a requirement that before the 1982 tax cuts go into effect there has to be a balanced budget. Of course, we also have in our amendment two conditions. One is limiting the amount of Federal spending to the GNP deflator, meaning the inflation rate plus 1 percent. The Senator has a condition similar to that in his but really his is three-quarters of 1 percent, as I understand it. We add one more dimension in ours that has a very important effect. That other condition precedent is the tax cut going in effect in 1980, 1981, 1982, and 1983 is a measure of the Federal spending level, the outlay level compared to the gross national product.

This has the effect of putting on a safety valve if we have runaway inflation so that we cannot come up here and have 20 percent inflation and have 21 percent increase in Federal spending under the Hart amendment and still have a tax cut, which would be ludicrous, but I am not saying that is what the Senator intends.

Mr. HART. Mr. President, if the Senator will yield, what was that about a 21-percent increase?

Mr. NUNN. The Senator has no condition precedent to trigger the tax cut except the last year's spending level plus three-quarters of a percent as in his amendment.

You could have an inflation rate of 20 percent and you could have an increase in Federal spending next year of 20.75 percent, and you could still have a tax cut automatically.

Mr. LONG. Mr. President, I would like to ask that the time consumed by the Senator from Georgia be charged to his time.

Mr. NUNN. I join the Senator in that request.

Mr. ROTH. Mr. President, I think it is worthwhile to reemphasize that the so-called Hart amendment would still permit a tax cut next year, but a $50 billion deficit.

I must say it disturbs me that the Senate goes on record for a deficit of that size when the Budget Committee in the second budget resolution has predicted or anticipated a $40 billion deficit. That is bad enough. But I do not think we want to go on record today as even approving a larger deficit of an additional $10 billion.

In the coalition amendment we have lowered that goal to $36 billion. I must confess that is pretty horrendous in and of itself, but it does represent a substantial improvement over the second budget resolution.

So I urge the Members of the Senate to support the coalition amendment which has tougher standards and will not permit deficit of the size anticipated in the Hart amendment.

Mr. HART. Mr. President, will the Senator from Delaware be willing to offer that as a change by adding more constraints from his amenment to my amendment?

If he does, it is acceptable. I find the two proposals so similar that I could accept this sort of change.

Mr. ROTH. As the distinguished Senator from Georgia pointed out we would be very happy if the Senator from Colorado would withdraw his amendment and become a sponsor of the coalition amendment.

Mr. HART. I am afraid my cosponsors would not agree to that.

Mr. CURTIS. Mr. President, I yield myself 3 minutes of my hour.

I rise in opposition to the Hart amendment. It will be possible to have a $50 billion deficit and still get a tax cut.

I think also we should keep in mind in all of these proposals, including the one offered by the distinguished Senator from Georgia and others, that we really cannot bind a future Congress. I do not make that statement with any idea of opposing the amendment. I think it has considerable merit.

But I do say we are never going to permanently set our financial house in order until we get an authority in the Constitution. Someone may come up with a better idea than anyone has ever thought of, but as long as we do this by statute another statute can take its place. There is just no way we can tell Congress 2 and 3 years from now what they must do, and do it by statute.

Here is another reason: Even if this is successful, the time will come—maybe you will have 20 years, I hope it would be more than that—when a very conscientious and careful Congress that held down spending, but without a constitutional amendment, you could have an election that swept in a group of spenders and they could set in motion a great many programs that would just go on and on and on, and it would add to the budget deficit.

Most of our budget troubles this year were not caused this year. They were authorizations going back a good many years.

I will not delay the Senate with further discussion at this time. But I do point out that until we have a constitutional restraint on deficit spending, with a mounting national debt, there will be no control.

Mr. BIDEN. Mr. President, will the Senator yield?

Mr. CURTIS. Just a second.

I particularly oppose the Hart amendment because you can have a $50 billion deficit and still have a tax cut.

We have long since given up paying the interest on the national debt, but now we do not even pay the interest. If you will look at the deficit over a period of years there is quite a parallel between the deficit and the amount of interest on the national debt. We have got to come to a time where we can actually reduce the debt.

Might I also express the hope that Congress quit running away from the idea of cutting expenditures and hoping we can do a little adjusting here and there in the tax law and bring about a balanced budget. It cannot be done, Mr. President. I yield the floor.

Mr. HART. Mr. President, while we are pointing out differences, let me point out that the Nunn amendment has a higher rate of expenditure than is allowed in the Hart amendment. Please note that the Hart amendment has tighter controls on Federal spending than the Nunn amendment.

The PRESIDING OFFICER. The Senate will be in order.

Mr. HART. Mr. President, the requirements of the Nunn amendment that there be a balanced budget theoretically could lead to a situation where the budget was $1,000 out of balance and there could be no tax cut in 1982 or 1983. Should we allow a multibillion dollar tax cut to be put aside, because of an arbitrary estimate of a Federal deficit?

The flexibility which the Senator from Wisconsin rightly said was needed was permitted in the Hart proposal.

If the majority of my colleagues feel strongly about concrete, absolute, ironclad, copper-riveted balanced budgets, however, I will accept that, for the fourth time. But what we would like to see—I had set out or it has been pointed out—some permissible deficit levels in the next 3 or 4 years, and I would like the sponsors of the Nunn amendment to point out what the deficits are in their proposal.

Mr. President, there are a lot of people here saying that you cannot vote for the Hart amendment, because it is going to have budget deficits. A lot of the same people voted for the Roth-Kemp proposal which would have monumental deficits, and nobody denied it. All of a sudden we are hearing that we cannot vote for the Hart amendment, because we might have some deficits next year or in 1980. Well, a lot of those same people a couple of days ago voted for Roth-Kemp; they have been out talking about it. Everybody indicated, everybody who had looked at it at all had indicated, that there were going to be substantial deficits of at least the level of the Hart amendment. I just want to point that out.

My proposal would methodically reduce deficits—to about zero in 1982, if economic growth is rapid.

Once again, Mr. President, all I can say is if these differences, which I think are minor, could be put forward in the form of an amendment I would be more than happy to accept them.

Mr. NUNN. Mr. President, just a brief response to the Senator from Colorado. The Senator basically said the Nunn amendment compared to the Hart amendment allowed a higher level of expenditures. That is a mixed bag. The Senator's amendment allows three-quarters of 1 percent above inflation—the Nunn amendment allows 1 percent above—the rate of inflation. So the Senator has noted that there is a very close relation there of one-quarter of 1 percent. But, and this is a big but, the Senator's amendment, if you had a high rate of inflation, has no way of regulating Government spending except that it must be three-quarters of 1 percent above the rate of inflation. That is a tremendous difference between our amendment and the Senator's amendment, because we have two checks. One is the real growth of 1 percent. But the second check is the percent of Government spending measured against the gross national product has to be declining. That means in simple terms that the deficit has to be declining.

If you had a high rate of inflation and even stayed within the 1 percent, you could have a high level of Federal spending and qualify for a tax cut under the Hart bill and Federal spending as measuser against GNP would not be going down. Therefore, the second condition precedent of the Nunn coalition amendment would not be met and, under our bill, you would not have a tax cut.

So, for the Senator to say ours permits higher spending, I would say that is only accurate if you have a low rate of inflation. If you have a high rate of inflation, it would be just the opposite. We have a doublecheck on this and the Senator has only one.

Mr. HART. Mr. President, will the Senator yield for a question?

Mr. NUNN. I would be glad to yield.

Mr. HART. Will the Senator tell me what the projected levels of the deficit are?

Mr. NUNN. Yes. We have a projection here as compared to the second budget resolution which the Senate has approved this year. This is a comparison of the deficits and the balanced budget position under the Nunn-Chiles-Bellmon-Roth amendment as compared to the second budget resolution, that is to say, current policy.

The second budget resolution predicts a deficit of $40 billion in 1980. The Nunn-Chiles-Roth-Bellmon amendment cuts that by $4 billion. It would be $36 billion, even with the tax cut.

In 1981, the current policy calls for a $30 billion deficit. What we are proposing is a $25 billion tax cut, but a $18 billion deficit in 1981. This is a reduction of $12 billion from current policy.

In 1982, the budget resolution shows a $13 billion deficit. The Nunn-Chiles-Roth-Bellmon amendment shows a balanced budget plus one; that means a surplus of $1 billion.

In 1983, our coalition amendment shows a surplus of $11 billion, compared to the second budget resolution surplus of $3 billion.

So what we have done is reduce the deficit each and every year, and at the same time given over $140 billion worth of tax cuts, which means that we have basically reduced spending very substantially from current policy.

Mr. PROXMIRE. Mr. President, will the Senator from Georgia yield?

Mr. NUNN. Yes.

Mr. PROXMIRE. The Senator has two conditions in the Nunn amendment which would restrain spending. The second recommendation is that it would have to be a limited percentage of the gross national product.

Can the Senator give us 1 single year out of the last 25 in which we have had inflation that has been substantial, and the gross national product has been declining?

Mr. NUNN. The Senator has missed the point entirely. What the Senator from Georgia said was that the second condition was that the percentage of Federal spending as measured against the gross national product was declining. I did not say the gross national product was declining. I said the percentage of Federal spending as measured against the GNP was declining.

Mr. PROXMIRE. Exactly right; but if you had a substantial rise in gross national product which you could have under exceptional circumstances, if the GNP is going up, therefore, there would be a substantial increase in the Federal spending.

Mr. NUNN. The Senator is aware that the GNP has been going up, but the percentage of expenditures measured against the GNP has also been going up. In addition to that, we have a second condition, which is that the percentage of the gross national product must be declining, which means the deficits have to be declining.

Mr. PROXMIRE. I understand; but

an increase in the gross national product would be one condition in which the Senator from Colorado's amendment is more restrictive than that of the Senator from Georgia.

Mr. NUNN. The Senator is wrong on that, unless we have high inflation. If we have high inflation, the Senator from Colorado's amendment is more restrictive.

Mr. PROXMIRE. If you have inflation, you have a rapidly rising GNP, and if you have a rapidly rising GNP, the percentage of GNP to Federal spending would have to be declining.

Mr. NUNN. When is the last time the percentage of Federal spending as compared to the gross national product went down?

Mr. PROXMIRE. Well, it would go down under the Hart amendment.

Mr. CHILES. No, there is no requirement that it goes down under the Hart amendment. Only under our amendment does it go down. It would go down whenever the gross national product rises at more than 1 percent in real terms.

Mr. PROXMIRE. That has been true in every year, with one or two exceptions, for the last 20 years.

Mr. CHILES. It has not been true for the last 5 or 6 years.

Mr. PROXMIRE. It was true last year, the year before, 1975, 1976, and 1977, and it will be true in 1978.

Mr. CHILES. No. it is not.

Mr. PROXMIRE. Yes, it did. The gross national product went up every one of those years.

Mr. CHILES. Yes, but Federal spending also went up every one of those years.

Mr. PROXMIRE. That is what the Hart amendment would control. The Hart amendment would not let it go up more than 1 percent.

Mr. CHILES. No, it says Federal spending cannot go up more than 1 percent over the inflation.

Mr. PROXMIRE. That is right.

Mr. CHILES. Prior to the recession in 1970, we were spending about 20 percent of the GNP for Federal expenditures. Last year we spent 22 percent. During that time, we had some of the highest inflation we have ever had. So we had high inflation and took in more money, as the Senator is pointing out. But we still, on top of that, were spending more than 20 percent of our GNP for Federal expenditures. So it is a double whopper.

Mr. PROXMIRE. Let me interrupt the Senator. You say every one of those years you were increasing spending more rapidly than three-quarters of 1 percent above the inflation rate?

Mr. CHILES. Yes, sir. We were.

Mr. PROXMIRE. And that would be restricted by the Hart amendment.

Mr. CHILES. But in any one of those years, if we had had an amendment that said, "You cannot increase Federal spending as a percentage of GNP, but you must decrease it," then your Government spending would have had to go down. But it did not. So what we did in the past was increase the deficit.

Mr. PROXMIRE. But the fact is that if the Hart amendment had been in effect for the last 15 years, you would have had a sharp reduction in the spending we had.

Mr. CHILES. And the fact is that had the Nunn-Chiles-Bellmon-Roth amendment been in effect, you would have had a sharper decline.

Mr. PROXMIRE. I would like to see the tables that prove that. I am sure the Senator believes that is true, but I think it is probably wrong.

In any event, you would have had a sharp reduction with the Hart amendment in effect.

Mr. CHILES. I agree.

Mr. PROXMIRE. You agree? Thank you.

Mr. CHILES. And the Senator from Georgia is right when he says any time inflation was leveling off, then certainly holding spending to three-quarters of a percent over real growth means you would get more restraint in the Hart amendment. But any time inflation is running rapidly, as it happens to be now, you would not, because you could have a higher percentage of the GNP go for Federal expenditures. It depends on how you want to buy your insurance. Our set of three constraints together in a way that no one constraint can do.

Mr. PROXMIRE. I would like to ask the Senator when, in the last 10 years, it would have been realistically effective.

Mr. CHILES. It would have been realistically effective in 1970, 1971, 1972, 1973, 1974, 1975, in 1976, and in 1977.

Mr. PROXMIRE. I think the Senator is wrong in every year except 1974.

The PRESIDING OFFICER (Mr. MATSUNAGA). The Chair will remind the Senator from Georgia that this is all out of his time.

Mr. NUNN. The Chair is very considerate of the Senator from Georgia in giving him that reminder. How much time do I have left?

The PRESIDING OFFICER. The Senator has 44 minutes remaining.

Mr. NUNN. I would just like to say to the Senator from Wisconsin that basically the GNP, if you look at the percentage of GNP in 1969, it was—well, if you look at it in 1966, the percent of Federal spending compared to gross national product was 18.7 percent. If you look at it now, it is 22.5 percent. Over that period of time it has steadily come up. There have been years when it went down, about 3 or 4 years in a 12-year period when it went down; in the other years it went up. The trend is straight up.

Mr. PROXMIRE. But in every one of those years, if the Hart amendment had been in effect, you would not have had that rise; spending would have been at that 18 percent level or below it.

Mr. NUNN. I have already said that if we did not have a better alternative I would be in favor of the Hart amendment.

Mr. HART. You can have them both.

Mr. NUNN. I know the Senator from Wisconsin is aiming at a balanced budget in 1982. There is nothing in the Hart amendment that requires a balanced budget. The Hart amendment does provide greater tax cuts, but there is no concern for a balanced budget, that is why I favor this amendment, and I would think the Senator from Wisconsin would want a balanced budget also.

Mr. HART. Mr. President, may I respond to the question of the Senator from Wisconsin?

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. The Hart-Church-Proxmire-Bumpers amendment requires——

Mr. NUNN. We are both claiming the Senator from Wisconsin as a cosponsor. I am glad to have him on mine also.

Mr. HART. My amendment has a greater reduction in the ratio of Federal spending to GNP than does the Nunn amendment, year by year.

Mr. NUNN. That is in the Senator's economic projection, not a part of his amendment.

Mr. HART. This change will result result mathematically by lower spending. It is the same result as in the Senator's amendment, is it not?

Mr. NUNN. We have it written into our amendment.

Mr. HART. The fact of the matter is that the result of passing the Hart amendment would reduce the percent of GNP which Federal spending occupies at a faster rate. That is a fact.

Mr. NUNN. We have an analysis from both the CBO and Chase Econometrics Survey. I would disagree with the Senator, but I do not have his analysis. If he has that analysis, I would like to have it. If he does not have it, there is no way I can argue with it as a claim; I do not believe he has an analysis to back it up.

Mr. HART. It is already in the RECORD. I submitted it for the RECORD previously.

Mr. NUNN. If it is in the CONGRESSIONAL RECORD, an econometrics analysis——

Mr. HART. It is the computer printout from the econometric analysis that is in the RECORD.

Mr. BIDEN. Mr. President, this debate is a somewhat unusual debate, I think. We have the proponents of the so-called coalition amendment, of which I am one, and the proponents of the Hart amendment essentially agreeing that both amendments are substantially better than anything that the Senate is likely to have an opportunity to vote on between now and the end of the session. The Senator from Colorado and the Senator from Georgia mentioned that one of the dilemmas here appears to be the question of pride of authorship. It seems to me that the only essential thing is that we get an amendment of this consequence passed, and that we do it as rapidly as we can before we find ourselves in a box that may be produced before the evening is over.

I would like to suggest that the opponents and proponents of the Hart amendment yield back their time and we vote on it, vote up or down. If that fails, then we would move to the so-called coalition amendment.

All the people who have spoken so far here tonight are all saying that essentially what we must do is we must tie the growth of Government to the tax cuts or the lack of growth of Government to the tax cuts and we need substantial tax cuts.

I have the greatest regard for the Senator from Maine, who is not in the

Chamber right now, and I also have tremendous regard for the parliamentary and intellectual capabilities of the magician from Louisiana, the chairman of the full committee.

While we are all here and we all essentially seem to agree to get on with the vote in the interest of both the proponents of the Hart amendment and the proponents of the coalition amendment, I suggest maybe we do that and move on rapidly before we are foreclosed somehow.

Mr. NUNN. I agree with the Senator from Delaware.

Mr. MUSKIE. Mr. President, although I appreciate the effort that Senator HART has put into this amendment I must rise in opposition to it.

Mr. President, the Hart amendment was written in a manner consistent with the Senate Budget Committee's 5-year projections. The Hart amendment would provide future tax reductions only if Federal spending in future years is tightly controlled. For this reason the Hart amendment would not fuel inflation and would not add substantially to the budget deficit.

In this respect the Hart amendment represents a far more responsible approach to multiyear tax cuts than the Roth-Kemp proposal.

The Hart amendment does, however, have several flaws. First, the amendment would unnecessarily complicate the process of putting the budget together each year.

Second, the amendment could force tax cuts in a future year when tax reduction might not be appropriate.

Third, the amendment fails to affect the basic source of high spending and large budget deficits—congressional decisions on individual spending and revenue bills.

Mr. President, the Hart amendment would complicate the work of the Budget Committee and the Congress because revenue reductions could be triggered automatically by outlay changes. That would mean that each time the Budget Committee or the Congress considered a spending program the revenue effect of that spending provision would have to be considered, because each spending program effects the aggregate level of outlays, and the aggregate level of outlays influences the tax reduction under the Hart amendment.

In fact, under the Hart amendment we might not know what the revenue floor would be until early or mid-September when the House-Senate conferees agree on the level of outlays provided in the second budget resolution. The full consideration of tax legislation would therefore be blocked until only a few weeks before the new fiscal year was to begin.

My second concern with the Hart amendment is that it may result in a significant tax cut in a year when a tax cut would not be desirable. For example, if it appeared next year that the pace of the current economic expansion was going to pick up rapidly in 1980, then an appropriate fiscal and budgetary policy for that year might be to increase outlays only as rapidly as the projected inflation rate but not to reduce taxes. The Hart amendment, however, might require a tax reduction in 1980 if outlays, adjusted for inflation, are held constant.

The Hart amendment therefore might result in increasing inflationary pressures precisely when a budget surplus is required.

My final concern with the Hart amendment is that it addresses the symptoms of a budget problem, that is, taxes and budget deficits, but it fails to address the underlying problem—the need for congressional discipline in decisions on specific spending bills. Congress must have the fortitude to vote responsibly on each spending bill if we hope to achieve the goals of budgetary balance and a lighter burden.

Mr. CHILES. Mr. President, I am pleased to be one of the original cosponsors of the coalition amendment to reduce Federal taxes and spending and achieve a balanced budget by 1982. This amendment follows in general the plan I offered as an amendment to the Second Budget Resolution.

ECONOMIC NEED FOR TAX AND SPENDING REDUCTION

Mr. President, we are out of the recession, we have come down from over 9 percent unemployment to less than 6 percent, so we no longer need big deficits to create employment; what we need now is to cut back the "temporary" antirecession spending and move as quickly as possible to a balanced budget.

To reduce 1 to 2 percent of excess unemployment, we need business investment and consumer confidence.

This means we need a firm commitment to balance the budget, reduce inflation and cut taxes. Our amendment provides that commitment.

Inflation is our biggest problem now—inflation impedes economic growth by driving up interest rates and discouraging investment. Greater certainty and stable economic conditions would provide the kind of encouragement people need at this point in time. Our amendment sets forth a plan for that kind of stability.

ECONOMIC FEASIBILITY OF AMENDMENT

We asked the Congressional Budget Office to run our numbers through their economic models, and they told us that if we put both spending and taxes by the amounts we propose, we will get a balanced budget in 1982 without hurting either unemployment or inflation.

To quote a letter from Dr. Alice Rivlin, Director of the Congressional Budget Office:

> In particular, this analysis shows that the revenues you propose would be consistent with a balanced Federal budget by 1982 and a continuation of the real economic growth assumed for the 1979 second budget resolution.

Chase Econometrics goes even further and says that by stimulating investment we will create an extra 1 million jobs by 1983.

In either case, it is clear that we have worked out a responsible, feasible combination of tax and spending reductions.

Mr. President, I ask unanimous consent that a table showing the effect of our amendment on Federal spending, taxes and deficit appear in the RECORD at this point in my remarks.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TAX AND SPENDING REDUCTION AMENDMENT

	1980	1981	1982	1983
Individual income tax cuts:				
Below Finance Committee bill	−8	−25	−43	−66
Finance bill revenues	496	567	638	706
Reduced revenues (amendment)	488	542	597	640
Federal outlay reductions:				
1 percent growth over inflation	524	560	596	634
Second Budget Resolution	536	575	623	669
Spending cuts (amendment)	−12	−15	−27	−30

	1980	1981	1982	1983
Federal deficit (−) or surplus (+):				
Tax & Spending Reduction Amendment	−36	−18	+1	+11
Second Budget Resolution	−40	−30	−13	+3
Federal outlays as percent of gross national product:				
Tax & Spending Reduction Amendment	21.0	20.5	20.0	19.5
Second Budget Resolution	21.2	20.7	20.2	19.7

Mr. CHILES. Mr. President, this table shows that in addition to balancing the budget by 1982, we decrease Federal spending from 21.5 percent of gross national product in 1979 to 19.5 percent in 1983. That is the lowest level since 1966. That is a clear response to the public demand for smaller Government: we take less from the private sector and people pay $66 billion less in taxes.

INFLATION AND CONFIDENCE

Mr. President, the latest polls and studies show that there is now more public concern with inflation than with employment.

A study commissioned and released by the Department of Labor shows that—

> The dominant hope the American people have for the future of the United States is that inflation will be brought under control.

Inflation is the No. 1 item in that study, mentioned by 34 percent of the people interviewed, compared to 24 percent for employment concerns.

University of Michigan surveys also show, and I quote:

> Fears of inflation are undermining consumer confidence.

It also shows only 9 percent of the people think Government is doing a good job

on economic policy. The relationship is clear. People see Congress still increasing spending and running big deficits, and they see inflation going way up. We have got to turn that around.

BUDGETARY FEASIBILITY OF THE AMENDMENT

Our amendment sets a responsible level of restraint. We allow spending to increase realistically at 1 percent a year above the amount needed to compensate for inflation.

This is less than the rapid growth experienced during the recession, but does not require massive cutting of major programs.

One percent real growth is necessary to cover items like the increasing number of social security recipients and the growth built into long-term development programs like defense and energy. However, since the private economy will experience about 3.5 percent real growth in these years, Government will shrink relative to the total economy.

SPENDING CUTS AND CHOICES REQUIRED

This level of spending does require real restraint by Congress. It would mean cutting outlays by $30 billion in 1980 from the levels projected in the 1979 budget resolution. This is tight, but it is achievable.

While 75 percent of Federal outlays are "uncontrollable" in any one year. They can mostly be controlled on a 5-year basis. So-called uncontrollability means that expenditures are locked in by contracts signed in a previous year or by entitlement legislation.

If we begin reforming existing programs and avoiding new entitlements, we can achieve these goals.

EXAMPLES OF SPENDING RESTRAINTS

We need to choose between programs—the Senate Budget Committee successfully killed a $6 billion "soft" public works bill a few weeks ago, because it duplicated the CETA program and continued a "temporary" antirecession program.

I also offered an amendment to the antirecession fiscal assistance bill 2 weeks ago to cut off $.5 billion a year for times when the unemployment rate is below 6 percent. That would have saved over $2 billion in the years we are discussing here. This amendment failed on a close vote, but made it possible to pass another amendment to save $200 million a year.

Mr. President, let me give another example of how duplicative spending can be avoided. Last Friday, in the space of 2 hours, the Senate first passed an amendment to put the tuition tax credit into the tax cut bill. This will cost $300 million in 1979 and $1 billion in 1982.

The HEW appropriations conference next agreed to appropriate $500 million to pay for the President's alternative to the tax credit, and by two votes rejected language I offered that would have prevented the increased grants only if the tax credit becomes law. That program will also grow to cost $1 billion.

It is that kind of duplication and unwillingness to choose between programs that has the American taxpayer fed up with Federal spending. I referred the grant alternative, but we should not have started on both programs at the same time.

Our amendment would put the pressure on Congress to make harder choices in the future or have to forgo the automatic tax cuts we promise.

A successful example of spending restraint was an amendment I offered with several other Senators to the Housing and Community Development Act.

First, my amendment reduced the authorization for housing assistance by $8 billion, back down to the level of the President's budget and the congressional budget resolution.

Second, it eliminated a new cash entitlement program that would have duplicated welfare and food stamps, and grown to cost several billion dollars in future years.

Fortunately, the Senate voted in favor of our amendment and avoided those extra costs. We will have to keep up that kind of pressure to meet the goals of this amendment.

FEDERAL AID TO STATE AND LOCAL GOVERNMENTS

Mr. President, aid to State and local governments is one of the biggest pressures on the Federal Government—mayors and governors come to Washington looking for funds to pay for services, while their local residents are unwilling to raise taxes.

Federal aid to State and local governments will be over $82 billion in 1979—that is over 25 percent of State and local spending.

This aid has grown by $33 billion, or 66 percent, since the 1975 prerecession level of $50 billion. It will increase by $6 billion or 7.7 percent from 1978 to 1979.

State and local governments are running a $30 billion surplus, while we have a $39 billion Federal deficit. The States are buying Treasury bills—they are lending the Federal Government money so it can give them more fiscal assistance. That just doesn't make any sense to me. The only person who loses is the taxpayer. No wonder there is a tax revolt going on.

Mr. President, all these programs have fine goals, but they all cost money. What I hear the taxpayers saying is that we should limit. And that limit should be lower than the share of money going for taxes right now. Let us have Federal programs for important purposes, both defense and domestic programs. But let us pick and choose. Let us pare down the programs to what will really work. Let us stop the waste and stop having 2, or 3 or 10 programs all trying to do the same thing.

Our amendment does not tie the hands of congressional committees to decide what to spend for different programs. But it will set a counter pressure against spending. It will say you cannot have big spending without giving up scheduled tax cuts. We are talking about $66 billion of tax cuts by 1983. That amounts to $1,000 per taxpayers. I hope my colleagues will sign on and join this effort to reduce both Federal spending and Federal taxes.

Mr. NUNN. Mr. President, I am convinced that substantial reduction in the level of Federal taxation is necessary, not only because the people of this Nation have reached the breaking point in paying taxes to every level of government, but also because we must restore a larger share of the decisionmaking authority regarding expenditures to the private sector. Our Nation was built on private initiative and private financial decisions, and its economic health is being eroded by the increasing assumption of these responsibilities by the Federal Government.

The term "tax cut" is somewhat of a misnomer because, absent further action by the Congress, American taxpayers will experience a large tax increase due to the scheduled rise in social security taxes and energy taxes combined with the effect of inflation on individual income taxes. Without tax relief, I fear that these impending increases could cause a significant economic downturn. In other words, a continuation of current policy, even with the 1979 tax cuts, in my view, will carry a grave risk that the reduced purchasing power brought about by increased taxes and rampant inflation will produce a severe recession in the next few years.

There is little doubt that a tax cut is in order for fiscal year 1979 and in future years. Almost all economists and tax experts agree that stimulus in the form of tax reduction is necessary if we are to continue balanced economic recovery.

For these reasons, I supported the Roth amendment embodying the provisions of the so-called "Roth-Kemp bill." While it would have accomplished the laudable goal of phasing in the kind of tax cuts which the people of this country are demanding and which our economy needs, it was gambling on the hope that the Federal Government would correspondingly restrain spending so as to avoid increased inflationary pressures.

I believe that if Roth-Kempt passed, the Carter administration and Congress would have reduced the growth in Federal spending to prevent large increases in the deficit, but there was no certainty in this respect.

In summary, I am concerned that the positive aspects of a phased-in tax reduction could be transformed into inflationary influences if the Congress and the executive branch failed to achieve meaningful restraint in the growth of Federal spending. This concern has led to the development of the amendment which we are offering today.

The bill which the Finance Committee has reported to the floor contains tax cuts for 1979 and this amendment would not alter the work done by the committee. This amendment would, however, go further than the committee bill by incorporating the positive aspects of the Roth proposal, which have so eloquently been stated by the Senator from Delaware, while making constructive alterations in that concept in order to address the reservations which have been expressed by leading economists.

Long-term reduction of individual tax rates is, in my view, critical to the economic and social health of this Nation. There has been a change in the attitude of the American citizen as combined taxes have approached confiscatory levels. American citizens see an increasing percentage of their labors being siphoned off to support government at every level.

Enactment of a long-term phased-in tax reduction would directly address this

condition by informing the taxpayers of this Nation that if the growth in Federal spending is restrained they will have an assured tax cut in each one of a period of years. Advanced notice of this kind would not only change the economic atmosphere in this country by reinstituting incentives for individuals to save, invest, and work, but it would also enable the businessmen of this Nation to plan their investments with some degree of confidence that the Federal Government is committed to spending and tax restraint.

We are all aware of the sluggish economy which is projected by most forecasters over the next few years. There can be little doubt that the economic benefits of a multiyear tax cut enacted now would far exceed those derived from our traditional year-by-year piecemeal approach.

The overwhelming majority of economists who have expressed reservations regarding the so-called Roth-Kemp proposal have mentioned two primary concerns: First, the small number of years called for in Roth-Kemp for the tax cuts, and second, the absence of a firm requirement for reductions in Federal spending.

In drafting this amendment, we have phased in total tax reductions over a 5-year period rather than 3 years. The advantages of the phased-in approach are retained while reducing the potential for overheating the economy.

This amendment provides specific tax tables which would go into effect in each of the 5 years addressed by the amendment. The significant difference between this amendment and the other phased-in tax reduction proposals which have been discussed is the application of a condition precedent to the implementation of each year's proposed tax reduction. The tax reduction scheduled to be implemented in each year covered by this amendment would go into effect if Federal spending, as set by the second concurrent resolution on the budget does not exceed the rate of inflation plus 1 percent.

In practical terms, this means that a tax reduction of defined proportions would be implemented each year if the Federal Government restrained the growth in Federal spending below the specified level.

It would not legally mandate a reduction in Federal spending, nor would it literally restrict the flexibility of Congress to determine spending levels.

What it would do is say to Congress and the executive branch, "If we want to provide a tax reduction to the people of this country over the next 5 years, we must be fiscally responsible in the way we spend."

For the first time in our history, the taxpayers of this country would have a specific, direct, and measurable interest in Federal fiscal responsibility. No spending restraint would mean no tax cut. In my judgment, this proposal puts the horse before the cart—if we are to improve the health of America's economy in a responsible fashion, we must be assured that the growth in Federal spending will be restrained before a tax cut can go into effect. The people of this country want tax relief—there can be little question about that fact. However, I do not believe that they would welcome tax reductions at the expense of increased inflation, continued deficits, and profligate Government spending.

In my view, one of the most important aspects of this amendment would be its psychological effect throughout this Nation if it becomes law. Employees and employers understandably pay very little attention to pleas from Washington to restrain prices and wages when Washington continues to demonstrate an unwillingness to restrain itself.

Mr. President, if this proposal becomes the law of the land, for the first time in many years the President and the Congress will be able to say to the American people:

> We are leaders in the fight against inflation. We are reducing federal taxes and the growth in federal spending. You will keep more of your own money each year for the next five years. Let's all work together as Americans in the fight against inflation while providing at the same time a healthy economy with reduced unemployment.

Mr. President, I urge my colleagues to adopt this amendment and thereby send a clear signal to our Nation that for the first time Congress is willing to plan its spending and its taxing on a long-term basis.

Mr. ROTH. Mr. President, the Nunn-Chiles-Bellmon-Roth amendment will give the Senate the opportunity to vote for what the American people want—lower taxes, less Government spending, and a balanced Federal budget.

This amendment uses the carrot-and-stick approach, holding out the prospects of tax cuts if Federal spending is reduced.

The amendment establishes the principle of across-the-board tax rate reductions, phased in over a number of years, that I have been fighting for.

While the amendment does not go as far as I would like, its adoption would be a major step in the right direction.

This amendment will provide substantial tax cuts for all Americans over the next few years.

It will provide a powerful incentive for Congress to reduce the growth of Federal spending.

The amendment will give those who voted against Roth-Kemp the opportunity to vote for lower taxes and lower Federal spending.

Roth-Kemp would have put pressure on Congress to hold down Federal spending.

Mr. BIDEN. Mr. President, I rise to support the amendment of the distinguished Senator from Georgia which I am cosponsoring with him. This amendment represents a new and imaginative approach to our fiscal and economic problems.

The amendment proposes to add 4 more years of tax cuts to those for 1979 already in this tax bill. However, in each year the tax cut is contingent upon holding the real growth in the Federal budget to 1 percent or less. In addition, Federal spending must decline each year from 21.5 percent of the gross national product to 19.5 percent if the tax reductions are to take place. Finally in 1982 the reduction will not occur unless the Federal budget is balanced.

The bill calls for tax rate reductions of 5 percent a year through 1983. By 1983 this would mean reduction in taxes of $66 billion below those proposed in the Finance Comittee bill.

I have supported and voted for a large, multiyear tax cut. In so doing, I have stated my conviction that such a large tax cut must be accompanied by large spending cuts. This bill accomplishes that. If spending is restricted to 1 percent real growth, spending in 1983 will be about $30 billion less than it might otherwise be.

In the report of the Budget Committee on the second budget resolution I stated my skepticism that a tax cut would automatically result in spending reductions. A tax cut may put some pressure on spending. But it will not automatically lower it. The provision in this amendment suspending tax cuts will not automatically cut spending. But it will increase the pressure tremendously.

My other concern about a large tax cut is that it might be inflationary. Because spending will be cut also, this tax cut will have no perceptible effect on inflation. Chase Econometric Associates has tested this program of tax and spending cuts and has confirmed the lack of inflationary effect. What is more, as a bonus, Chase estimates the stimulative effect of the proposal will result in a gain of one million workers by 1983.

Mr. President, this is a most worthwhile amendment. It can help us to put our economic house in order.

Mr. BELLMON. I am in wholehearted support of this amendment. The multiyear tax cut it is capable of achieving and the downward pressure it places on Federal spending are both welcome prospects to the American taxpayer.

This amendment would accept the tax cuts already proposed by the Finance Committee's bill as amended for fiscal year 1979. That is a sizable and well designed cut and I congratulate the Finance Committee for proposing it. Our amendment would provide for 4 succeeding years of tax relief—totaling a 26 percent across-the-board rate reduction by 1983, an average of 5 percent per year. This tax relief to the American taxpayer would be forthcoming only if Congress and its relevant spending jurisdictions exercised fiscal restraint over that time period, however. Congress must:

First. Hold outlays to no more than a 1 percentage point rate of growth above the Nation's rate of inflation,

Second. Reduce the relative size of the Federal sector to 19.5 percent in successive steps by 1983 from its present 21.5 percent level, and,

Third. Provide a balanced budget by fiscal year 1982.

Mr. President, we all know that every program has a constituency—some beneficiaries. But it is often difficult to hear the voice of the taxpayer above the shouts of the special interests. This amendment would necessarily solidify a new constituency and make the urgency of a balanced budget, a reduced Federal sector and tax relief more immediate to us all.

When I was Governor of Oklahoma we, like many other States passed a law requiring our budget (except for capital improvement items) to be balanced each year. It worked. I came to Washington 10 years ago hopeful that we could do the same here. I was, and still am, convinced that constant yearly deficits erode fiscal discipline and promote inefficient and inflationary Government activities. Similarly they force the Federal Reserve System into the dilemma of having to expand the Nation's money supply with its inflationary consequences.

The budget has been balanced only twice in the last 20 years (1960 and 1969). Cumulative deficits total $311.7 billion over that time period while surpluses amount to only $3.5 billion. Whether or not the deficit was needed on a yearly basis at the time, it is inflationary for the Treasury and Federal Reserve to have to refinance such staggering amounts of debt.

Mr. President, the difficulty of the task of budget balancing has been made very clear in my 4-year tenure on the Budget Committee. There are many upside pressures on the Federal Budget—programs develop constituencies and though everyone talks as if they want a balanced budget no one is willing to sacrifice the programs in which they have a special interest.

This amendment brings forth a new constituency. It provides a carrot and a stick—unless budgetary restraint and fiscal discipline are forthcoming on everyone's part a tax cut will not be in order.

I am convinced that this device does no damage to the budget process and our ability to plan. In fact, it imposes a 5-year planning horizon on the revenue side as upon Congress and the budget process has already attempted to do on the spending side. The program is bold but, by no means, radical. It is similar to many already on the books:

Social security tax increases are scheduled for the next few years—a multiyear tax increase.

Increases in minimum wage are scheduled in a multiyear nature.

Countercyclical revenue sharing and other programs are triggered by unemployment rates just as this tax cut is triggered by reductions in the rate of growth of spending—and that, Mr. President, is something the Congress has much more control over than unemployment.

I would stress that it is not the Budget Committee that must find appropriate places to make reductions in the rate of growth of spending, but Congress as a whole. Appropriate committees with spending jurisdiction are the ones who must exercise restraint if the American public is to receive their taxpayer's dividend—that is annual tax cuts over the next 5 years and a balanced Federal Budget by 1982.

I can also list many reasons as to why I favor a tax cut of this multiyear type:

First, the economic recovery may be slowing. Recent economic data such as leading economic indicators, manufacturing orders, and balance-of-trade deficit support this prospect. While the Budget Committee projects a growth rate of real GNP of 4 percent in 1979, the consensus forecast is for a growth rate around 3.1 percent—not fast enough to reduce the unemployment rate below its present level.

In the absence of a tax cut, there are likely to be increasing pressures on the financial side of our economy which make the chances of significant economic weakness and rising unemployment much greater. If that economic weakness and rising unemployment occur next year, then the recent fiscal restraint which we have seen will likely dissolve and some form of new short-term spending stimulus will be adopted by Congress. If that occurs, we will reduce the probability of achieving a balanced budget.

Second, without additional tax cuts, real after-tax income will fall over the next few years due to inflation and other actions. Inflation rates estimated at 6.7 percent for the next 3 years will cause real tax increases of $13–$14 billion per year because of the progressivity of the individual income tax. Charles Schultze has indicated that the administration now believes the rate of inflation may be closer to 8 percent in 1979 in which case the drain on income would be even greater.

Increases in social security contributions due to increases in the benefit base will amount to $9.8 billion in 1979 and increased payment due to tax rate increases will amount to $3 billion in 1979. The increased burden of corporate taxes due to the overstatement of corporate profits under historic cost depreciation methods will amount to about $4 billion. Economic growth and capital formation are further encumbered by new environmental and safety restrictions, minimum wage laws and other forms of regulation. Large tax cuts will be required to get the taxpayer back toward the average tax burden of the last two decades. The average personal income tax rate in 1964, for example, was 10.5 percent. That burden has risen to an estimated 11 percent in 1978, and will grow under current law to about 15 percent by 1983 unless tax relief is granted.

Third, this tax cut and reduced Federal borrowing will help capital formation and thus reduce future inflationary pressure. One of the major problems, facing the economy is the lack of a level of capital formation which will provide for future capacity and expand job opportunities. The 5-year tax reduction put into place now and which taxpayers can count upon would stimulate capital formation in the United States. Over the last 10 years new capital formation in the United States have averaged 2.7 percent annually—the lowest of all industrialized countries. Even Great Britain added new capital at an average annual rate of 3.6 percent over the same period. It is obvious that a large and predictable tax reduction would increase the rate of return on capital.

Fourth, the tax cut coupled with spending restraint is not inflationary. If one maintains that the current policy level of expenditures shown in the 5-year projections during the budget markup will or should occur, that is, allowing a $200 billion growth in spending over the next 5 years, then and only then, are tax cuts in combination with that level of spending, inflationary.

This amendment would have us approach fiscal policy decisions in a different way. At present, there is a tendency to set expenditures levels first, and then to look at the possibility of reducing taxes only after those spending decisions have been made. This amendment would reverse that procedure. We would start by deciding how much of our national income should be allocated to the Government sector and then expenditure levels would be adjusted to conform to that revenue.

Mr. NUNN. I will speak on my time. I will ask the Senator from Louisiana if he is prepared to vote on this amendment. I will ask the Senator from Oklahoma and the senior Senator from Delaware if they are prepared to vote on this amendment.

Mr. BELLMON. To vote on the amendment of the Senator from Colorado?

Mr. NUNN. Yes.

Mr. BELLMON. We have no objection to proceeding.

Mr. HART. Mr. President, I would like to suggest to the Senator from Georgia that I take 2 minutes and summarize my proposal and he take 2 minutes to summarize his and then we have back-to-back votes on the amendments. I ask for the yeas and nays on my amendment.

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

The yeas and nays were ordered.

Mr. NUNN. Mr. President, I also ask unanimous consent that it would be in order to get the yeas and nays on the Nunn amendment to follow right after that.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

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

The yeas and nays were ordered.

Mr. LONG. Mr. President, I suspect the Senate would want us to take one of these two amendments to conference. Between the two it sounds to me as though the coalition amendment sponsored by Mr. NUNN has been more thoroughly worked out and would give us a better promise of a balanced budget, which means more cuts in spending, and assure us a balanced budget in the text of the bill itself. That being the case, Mr. President, between the two I would hope that the Senate would not agree to the Hart amendment. I personally would certainly be willing to go along with the Nunn amendment and see what we can work out in conference.

Mr. BIDEN. Mr. President, I suspect we are about to agree to back-to-back votes. I was saving my would-be eloquence for the debate on the Nunn amendment.

Mr. NUNN. Mr. President, I ask unanimous consent that we have back-to-back votes on both amendments, unless someone objects.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

Does the Senator from Colorado seek recognition?

Mr. HART. Yes. I yield to the Senator from Missouri.

Mr. DANFORTH. Mr. President, after disposing of the Nunn amendment, I ask unanimous consent that it be in order to call up my amendment No. 4055.

Mr. HEINZ. Mr. President, reserving the right to object——

The PRESIDING OFFICER. There is a previous order for Senator BAYH to be recognized. Does the Senator seek recognition before Senator BAYH?

Mr. DANFORTH. I ask unanimous consent that I be recognized immediately after Senator BAYH.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Objection, Mr. President. If the Chair will look on the list, I am prepared to play whatever are the rules of the game, but I am on the list after Senator BAYH.

The PRESIDING OFFICER. Is there objection?

Mr. GOLDWATER. Reserving the right to object——

Mr. KENNEDY. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. LONG. Mr. President, in view of the fact that we are going to have back-to-back votes, I ask unanimous consent that the second vote be a 10-minute rollcall vote.

The PRESIDING OFFICER. Is there objection?

Mr. NUNN. I did not hear the request.

Mr. LONG. In view of the fact that they will be back-to-back votes, that the second one be a 10-minute rollcall vote.

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

Mr. DOLE. Mr. President, I ask unanimous consent that I be added as a cosponsor to the Nunn amendment and that my remarks be printed at the appropriate place in the RECORD.

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

Mr. HEINZ. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the Nunn amendment.

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

Mr. NUNN. Mr. President. I ask unanimous consent that the Senator from Idaho (Mr. CHURCH) and the Senator from Louisiana (Mr. JOHNSTON) be added as a cosponsor to the Nunn amendment, as well as the Senator from Utah (Mr. HATCH).

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

Mr. BAKER. Mr. President, I ask unanimous consent that I be added as a cosponsor to the Nunn amendment.

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

The Senator from Colorado.

Mr. HART. Mr. President, I would like to take a few minutes to summarize my amendment. It is the first time that the Senate will have the opportunity to vote on a proposal which attempts to condition tax cuts on meeting levels or controls on Government spending. That will be the first vote that the Senators cast. The difference between that first amendment and the second are very minor. As the sponsor of the first amendment I have offered to accommodate those changes. Unfortunately, that offer was not accepted. I am hopeful that Senators realize in casting their first vote they are voting essentially on about 90 percent of the amendment which they will be voting upon second.

The principle is the same; the means of accomplishing it are different only in minor degree. I urge Senators to support the Hart amendments as the first opportunity to register their support for controls on Government spending and fiscal stimulation simultaneously.

Mr. NUNN. Mr. President, I shall take just a brief moment. Again, the difference between the Nunn-Chiles-Bellmon-Roth coalition here, and I refer to it as the coalition amendment, and the Hart amendment is basically that the coalition amendment has a balanced budget constraint in fiscal year 1982; the Hart amendment has no such constraint.

The coalition amendment also specifies a spending restraint as a percentage of the gross national product. The coalition constrains also overall expenditures to 1 percent above inflation.

Mr. President, I think everyone who has heard this debate realizes that there is a very strong consensus in the U.S. Senate to move in a direction of restraining spending and also cutting taxes. I believe that if the coalition amendment passes, it will be a very important psychological breakthrough. It will be a change of direction. It will be the first time that I know of that the American public will have a direct measurable stake in restraint of Government spending.

It will also be, I think, a breakthrough in trying to do something about inflation. We do not claim that our amendment will control inflation. What it will do is provide for continued growth, more money in the private sector, as opposed to the Government sector. It will provide a very large tax cut over a period of years; and it will do so without increasing inflation. I do believe it will also have an effect on inflation, although it will not be measured through an economic model. It will have a psychological effect.

Employers and employees throughout the country today are understandably reluctant to take the lead from Washington in controlling voluntarily wages and prices. But if, for the first time, the Federal Government shows that it can restrain taxes and restrain spending, we shall then be in a position of moral leadership to ask the rest of the country—the private sector employers and employees—to restrain prices and wages. I believe everyone should vote for this long-term approach in terms of a long-range plan for restraining spending and restraining taxes.

I also want to remind everyone that to get to a vote on the coalition amendment, the Hart amendment will have to be defeated. So the coalition vote will be "nay" to the Hart amendment and "aye" on the second vote, which will follow immediately thereafter.

Mr. NELSON. Will the Senator yield for a question?

Mr. NUNN. I am not sure I have more time.

AMENDMENT 4084

The PRESIDING OFFICER. The Chair reminds the Senator from Georgia that, although debate has continued to take place on his amendment, he has not yet called it up. The Chair suggests that he now call his amendment No. 4084 up, because it will be voted on back to back with Senator HART's amendment.

Mr. NUNN. Mr. President, I do call up my amendment to be voted on immediately after the Hart amendment. I ask unanimous consent that it be voted on after the Hart amendment.

The PRESIDING OFFICER. The order has been entered. It merely has not been reported.

Mr. NUNN. I ask that the clerk state the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN), for himself and others, proposes an amendment numbered 4084;

On page 130, between lines 21 and 22 insert the following:

PART 1—1979 REDUCTIONS AND EXTENSIONS

On page 159, between lines 15 and 16, insert the following:

PART 2—ADDITIONAL REDUCTIONS

SEC. 109 ADDITIONAL REDUCTIONS IN RATES.

(a) IN GENERAL.—Section 1 (relating to tax imposed) is amended by striking out subsections (a), (b), (c), and (d) and inserting in lieu thereof the following:

"(a) GENERAL RULE.—There is hereby imposed on the taxable income, for the taxable years beginning in the calendar years specified in subsection (b)(2), of every—

"(1) married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and every surviving spouse (as defined in section 2(a)), a tax determined under the applicable schedule for the taxable year,

"(2) head of a household (as defined in section 2(b)), a tax determined under the applicable schedule for the taxable year,

"(3) every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 143) a tax determined under the applicable schedule for the taxable year, and

"(4) a married individual (as defined in section 143) who does not make a single return jointly with his spouse under section 6013 a tax equal to one-half the tax which would be determined for an individual described in paragraph (1) with the same taxable income.

"(b) APPLICABLE SCHEDULES.—

"(1) APPLICATION OF SCHEDULES TO INDIVIDUALS.—For purposes of subsection (a) the applicable schedule for—

"(A) individuals described in subsection (a)(1) is schedule 2,

"(B) individuals described in subsection (a)(2) is schedule 3, and

"(C) individuals described in subsection (a)(3) is schedule 1.

"(2) APPLICATION OF SCHEDULES TO TAXABLE YEARS.—

"(A) CALENDAR YEAR 1980.—The schedules in effect for taxable years beginning in 1980 are as follows:

"Schedule 1

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:	The tax is the amount in the left-hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
$2,300– $3,400	$0+12.3%	$2,300
$3,400– $4,400	$136+13.3%	$3,400
$4,400– $6,500	$269+15.2%	$4,400
$6,500– $8,500	$588+19.0%	$6,500
$8,500– $10,800	$968+20.9%	$8,500
$10,800– $12,900	$1,449+22.8%	$10,800
$12,900– $15,000	$1,928+24.7%	$12,900
$15,000– $18,200	$2,446+28.5%	$15,000
$18,200– $23,500	$3,358+32.3%	$18,200
$23,500– $28,800	$5,070+37.0%	$23,500
$28,800– $34,100	$7,034+41.8%	$28,800
$34,100– $41,500	$9,249+46.5%	$34,100
$41,500– $55,300	$12,694+52.2%	$41,500
$55,300– $81,800	$19,904+59.8%	$55,300
$81,800–$108,300	$35,765+64.6%	$81,800
$108,300	$52,884+66.5%	$108,300

"Schedule 2

$3,400– $5,500	$0+12.3%	$3,400
$5,500– $7,600	$259+13.3%	$5,500
$7,600– $11,900	$539+15.2%	$7,600
$11,900– $16,000	$1,192+19.9%	$11,900
$16,000– $20,200	$2,010+23.7%	$16,000
$20,200– $24,600	$3,008+27.5%	$20,200
$24,600– $29,900	$4,220+30.4%	$24,600
$29,900– $35,200	$5,831+36.1%	$29,900
$35,200– $45,800	$7,744+40.8%	$35,200
$45,800– $60,000	$12,074+46.5%	$45,800
$60,000– $85,600	$18,685+51.3%	$60,000
$85,600–$109,400	$31,817+56.0%	$85,600
$109,400–$162,400	$45,157+60.8%	$109,400
$162,400–$215,400	$77,381+64.6%	$162,400
$215,400	$111,619+66.5%	$215,400

"Schedule 3

$3,000– $5,100	$0+12.3%	$3,000
$5,100– $7,200	$259+13.3%	$5,100
$7,200– $9,400	$539+15.2%	$7,200
$9,400– $12,500	$873+20.9%	$9,400
$12,500– $15,700	$1,521+22.8%	$12,500
$15,700– $18,900	$2,251+25.6%	$15,700
$18,900– $24,200	$3,071+29.4%	$18,900
$24,200– $29,500	$4,632+34.2%	$24,200
$29,500– $34,800	$6,445+39.9%	$29,500
$34,800– $45,400	$8,559+43.7%	$34,800
$45,400– $61,300	$13,192+51.3%	$45,400
$61,300– $82,500	$21,348+56.0%	$61,300
$82,500–$109,000	$33,231+59.8%	$82,500
$109,000–$162,000	$49,091+64.6%	$109,000
$162,000	$83,329+66.5%	$162,000

"(B) CALENDAR YEAR 1981.—The schedules in effect for taxable years beginning in 1981 are as follows:

"Schedule 1

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:	The tax is the amount in the left-hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
$2,300– $3,400	$0+11.6%	$2,300
$3,400– $4,400	$127+12.5%	$3,400
$4,400– $6,500	$252+14.2%	$4,400
$6,500– $8,500	$551+17.8%	$6,500
$8,500– $10,800	$907+19.6%	$8,500
$10,800– $12,900	$1,357+21.4%	$10,800
$12,900– $15,000	$1,806+23.1%	$12,900
$15,000– $18,200	$2,292+26.7%	$15,000
$18,200– $23,500	$3,146+30.3%	$18,200
$23,500– $28,800	$4,750+34.7%	$23,500
$28,800– $34,100	$6,590+39.2%	$28,800
$34,100– $41,500	$8,665+43.6%	$34,100
$41,500– $55,300	$11,892+48.9%	$41,500
$55,300– $81,800	$18,647+56.1%	$55,300
$81,800–$108,300	$33,506+60.5%	$81,800
$108,300	$49,544+62.3%	$108,300

"Schedule 2

$3,400– $5,500	$0+11.6%	$3,400
$5,500– $7,600	$243+12.5%	$5,500
$7,600– $11,900	$505+14.2%	$7,600
$11,900– $16,000	$1,117+18.7%	$11,900
$16,000– $20,200	$1,883+22.2%	$16,000
$20,200– $24,600	$2,818+25.8%	$20,200
$24,600– $29,900	$3,953+28.5%	$24,600
$29,900– $35,200	$5,463+33.8%	$29,900
$35,200– $45,800	$7,255+38.3%	$35,200
$45,800– $60,000	$11,312+43.6%	$45,800
$60,000– $85,600	$17,505+48.1%	$60,000
$85,600–$109,400	$29,808+52.5%	$85,600
$109,400–$162,400	$42,305+57.0%	$109,400
$162,400–$215,400	$72,494+60.5%	$162,400
$215,400	$104,570+62.3%	$215,400

"Schedule 3

$3,000– $5,100	$0+11.6%	$3,000
$5,100– $7,200	$243+12.5%	$5,100
$7,200– $9,400	$505+14.2%	$7,200
$9,400– $12,500	$818+19.6%	$9,400
$12,500– $15,700	$1,425+21.4%	$12,500
$15,700– $18,900	$2,108+24.0%	$15,700
$18,900– $24,200	$2,877+27.6%	$18,900
$24,200– $29,500	$4,340+32.0%	$24,200
$29,500– $34,800	$6,038+37.4%	$29,500
$34,800– $45,400	$8,019+40.9%	$34,800
$45,400– $61,300	$12,359+48.1%	$45,400
$61,300– $82,500	$20,000+52.5%	$61,300
$82,500–$109,000	$31,132+56.1%	$82,500
$109,000–$162,000	$45,991+60.5%	$109,000
$162,000	$78,066+62.3%	$162,000

"(C) CALENDAR YEAR 1982.—The schedules in effect for taxable years beginning in 1982 are as follows:

"Schedule 1

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:	The tax is the amount in the left-hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
$2,300– $3,400	$0+11.2%	$2,300
$3,400– $4,400	$123+12.0%	$3,400
$4,400– $6,500	$243+13.8%	$4,400
$6,500– $8,500	$532+17.2%	$6,500
$8,500– $10,800	$876+18.9%	$8,500
$10,800– $12,900	$1,311+20.6%	$10,800
$12,900– $15,000	$1,745+22.4%	$12,900
$15,000– $18,200	$2,214+25.8%	$15,000
$18,200– $23,500	$30,40+29.2%	$18.200
$23,500– $28,800	$4,590+33.5%	$23,500
$28,800– $34,100	$6,367+37.8%	$28,800
$34,100– $41,500	$8,373+42.1%	$34,100
$41,500– $55,300	$11,491+47.3%	$41,500
$55,300– $81,800	$180,19+54.2%	$55,300
$81,800–$108,300	$32,376+58.5%	$81,800
$108,300	$47,874+60.2%	$108,300

"Schedule 2

$3,400– $5,500	$0+11.2%	$3,400
$5,500– $7,600	$235+12.0%	$5,500
$7,600– $11,900	$488+13.8%	$7,600
$11,900– $16,000	$1,079+18.1%	$11,900
$16,000– $20,200	$1,820+21.5%	$16,000
$20,200– $24,600	$2,723+24.0%	$20,200
$24,600– $29,900	$3,820+27.5%	$24,600
$29,900– $35,200	$5,279+32.7%	$29,900
$35,200– $45,800	$7,011+37.0%	$35,200
$45,800– $60,000	$10,931+42.1%	$45,800
$60,000– $85,600	$16,914+46.4%	$60,000
$85,600–$109,400	$28,803+50.7%	$85,600
$109,400–$162,400	$40,879+55.0%	$109,400
$162,400–$215,400	$70,050+58.5%	$162,400
$215,400	$101,045+60.2%	$215,400

"Schedule 3

$3,000– $5,100	$0+11.2%	$3,000
$5,100– $7,200	$235+12.0%	$5,100
$7,200– $9,400	$488+13.8%	$7,200
$9,400– $12,500	$790+18.9%	$9,400
$12,500– $15,700	$1,377+20.6%	$12,500
$15,700– $18,900	$2,037+23.2%	$15,700
$18,900– $24,200	$2,780+26.7%	$18,900
$24,200– $29,500	$4,193+31.0%	$24,200
$29,500– $34,800	$5,834+36.1%	$29,500
$34,800– $45,400	$7,749+39.6%	$34,800
$45,400– $61,300	$11,942+46.4%	$45,400
$61,300– $82,500	$19,326+50.7%	$61,300
$82,500–$109,000	$30,083+54.2%	$82,500
$109,000–$162,000	$44,440+58.5%	$109,000
$162,000	$75,435+60.2%	$162,000

"(D) CALENDAR YEAR 1983.—The schedules in effect for taxable years beginning in 1983 are as follows:

"Schedule 1

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:	The tax is the amount in the left-hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
$2,300– $3,400	$0+10.7%	$2,300
$3,400– $4,400	$117+11.5%	$3,400
$4,400– $6,500	$232+13.1%	$4,400
$6,500– $8,500	$508+16.4%	$6,500
$8,500– $10,800	$836+18.0%	$8,500
$10,800– $12,900	$1,250+19.7%	$10,800
$12,900– $15,000	$1,664+21.3%	$12,900
$15,000– $18,200	$2,111+24.6%	$15,000
$18,200– $23,500	$2,899+27.9%	$18,200
$23,500– $28,800	$4,376+32.0%	$23,500
$28,800– $34,100	$6,071+36.1%	$28,800
$34,100– $41,500	$7,984+40.2%	$34,100
$41,500– $55,300	$10,957+45.1%	$41,500
$55,300– $81,800	$17,181+51.7%	$55,300
$81,800–$108,300	$30,871+55.8%	$81,800
$108,300	$45,647+57.4%	$108,300

"Schedule 2

$3,400– $5,500	$0+10.7%	$3,400
$5,500– $7,600	$224+11.5%	$5,500
$7,600– $11,900	$465+13.1%	$7,600
$11,900– $16,000	$1,029+17.2%	$11,900
$16,000– $20,200	$1,735+20.5%	$16,000
$20,200– $24,600	$2,596+23.8%	$20,200
$24,600– $29,900	$3,642+26.2%	$24,600
$29,900– $35,200	$5,033+31.2%	$29,900
$35,200– $45,800	$6,685+35.3%	$35,200
$45,800– $60,000	$10,422+40.2%	$45,800
$60,000– $85,600	$16,128+44.3%	$60,000
$85,600–$109,400	$27,463+48.4%	$85,600
$109,400–$162,400	$38,978+52.5%	$109,400
$162,400–$215,400	$66,792+55.8%	$162,400
$215,400	$96,345+57.4%	$215,400

"Schedule 3

$3,000– $5,100	$0+10.7%	$3,000
$5,100– $7,200	$224+11.5%	$5,100
$7,200– $9,400	$465+13.1%	$7,200
$9,400– $12,500	$754+18.0%	$9,400
$12,500– $15,700	$1,313+19.7%	$12,500
$15,700– $18,900	$1,943+22.1%	$15,700
$18,900– $24,200	$2,651+25.4%	$18,900
$24,200– $29,500	$3,998+29.5%	$24,200
$29,500– $34,800	$5,563+34.4%	$29,500
$34,800– $45,400	$7,388+37.7%	$34,800
$45,400– $61,300	$11,387+44.3%	$45,400
$61,300– $82,500	$18,427+48.4%	$61,300
$82,500–$109,000	$28,684+51.7%	$82,500
$109,000–$162,000	$42,373+55.8%	$109,000
$162,000	$71,926+57.4%	$162,000

"(c) SCHEDULE REDUCTION NOT TO TAKE EFFECT WHEN FEDERAL SPENDING EXCEEDS LIMITATIONS.—

"(1) NOTIFICATION OF CONGRESS.—In calendar years 1979 through 1982, after the adoption by the Congress of the second concurrent resolution on the Budget or any further concurrent resolution on the Budget adopted by the Congress under section 310 of the Congressional Budget Act of 1974 (referred to elsewhere in this subsection as the 'budget resolution') and before the beginning of the next calendar year, the Secretary shall notify the Congress if—

"(A) the total amount of Federal outlays agreed to in the budget resolution for the fiscal year which ends within such next calendar year exceed the following percent of the projected gross national product pro-

jected by the Congressional Budget Office for that fiscal year on the basis of the budget resolution for the fiscal year: 21 percent in fiscal year 1980; 20.5 percent in fiscal year 1981; 20.0 percent in fiscal year 1982; and 19.5 percent in fiscal year 1983.

"(B) only for fiscal year 1982 if the total amount of federal outlays specified in the Second Concurrent Budget Resolution for fiscal year 1982 exceed the total revenues specified in that resolution.

"(C) the increase in total Federal outlays specified in the budget resolution for that fiscal year exceeds the amount of Federal outlays estimated by the Congressional Budget Office to have actually occurred during the preceding fiscal year by a percent greater than—

"(i) the percent increase in the year to year implicit gross national product deflator (as projected by the Congressional Budget Office) for the 4 calendar quarter period ending on September 30 of the year following the one in which the Secretary is to make the notification, plus

"(ii) one percent.

"(2) SCHEDULED REDUCTION NOT TO TAKE EFFECT.—If any event described in subparagraph (A), (B), or (C) of paragraph (1) occurs, then—

"(A) the schedules which, under subsection (b), would be in effect for the next calendar year, shall not take effect for such next calendar year, and

"(B) the schedule which, under subsection (b), is in effect for the calendar year in which the event occurs shall remain in effect for the next calendar year.

"(3) APPLICATION OF PARAGRAPH (2) ON A CUMULATIVE BASIS.—If any scheduled tax reduction under subsection (b) does not go into effect during the calendar year for which it is scheduled (because of the application of paragraph (2)), then the reductions scheduled to go into effect in subsequent calendar years, shall take effect for the scheduled calendar year under subsection (b) unless precluded by the application of paragraph (2) in that year.

"(4) CORRESPONDING ADJUSTMENTS.—For each calendar year for which a schedule under subsection (b) is in effect, the Secretary shall change the zero bracket amount under section 63 for the calendar year, the tax tables prescribed under section 3, the withholding tables prescribed under section 3402, the dollar amounts set forth in section 3402(m)(1) (relating to percentage method withholding), and the dollar amounts set forth in 6012(a) (relating to filing requirements) necessary to reflect in such tables and amounts the schedules in effect for the calendar year. The amounts adjusted by the Secretary under this paragraph for any calendar year shall be the amounts in effect for taxable years beginning in that calendar year.".

The PRESIDING OFFICER. Does the Senator from Wisconsin seek recognition?

Mr. NUNN. Mr. President, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. NUNN. We have already had a unanimous-consent agreement making it possible to call up my amendment immediately after the Hart amendment and calling for a rollcall vote on that amendment, is that correct?

The PRESIDING OFFICER. The Senator is correct. It is merely that his amendment had not been stated.

Mr. NUNN. Is there anything that would not allow us to vote on the Nunn coalition amendment immediately after the Hart amendment with the yeas and nays being ordered?

The PRESIDING OFFICER. No, everything is in order now.

Mr. NUNN. I thank the Chair.

Mr. NELSON. Mr. President, I ask unanimous consent that Mr. Herbert Spira of the staff of the Senate Small Business Committee be granted the privilege of the floor during the course of debate and rollcalls on the pending legislation.

Mr. MAGNUSON. Will the Senator yield? We have a new rule. Just put his name in.

Mr. NELSON. I understood that if they were from a committee, the request had to be from the floor. Am I correct on that?

The PRESIDING OFFICER. The Chair reminds the Senator from Wisconsin that there is a standing Magnuson order which permits a Senator to have two members of his staff on the floor by submission of their names to the Clerk.

Mr. NELSON. Does that include members of committee staffs?

The PRESIDING OFFICER. That includes members of the committee staffs.

Mr. NELSON. Then I withdraw my request, because the last thing I want to do is violate a Magnuson order.

The PRESIDING OFFICER. Unless, of course, the Senator from Wisconsin has requests for staff in excess of two.

Mr. NELSON. I do not know whether I do or not, but I do not want to get into a confrontation with the chairman of the Committee on Appropriations under any circumstances. If I have more than two, I shall submit this to the desk.

I want to commend the Senator from Colorado and the Senator from Georgia.

The PRESIDING OFFICER. The Chair stands corrected. The Parliamentarian informs me that it does not apply to committee staff, only to individual Senators staffs. So, without objection, it is so ordered.

Mr. NELSON. I thank the Chair.

Mr. President, I do wish to commend the Senator from Colorado and the Senator from Georgia for their thoughtful and creative proposals that are now the pending business. I ask unanimous consent to be a cosponsor of each of the proposals.

The PRESIDING OFFICER. Without objection, the commendation will be noted.

Mr. BELLMON. Mr. President, I ask unanimous consent that the distinguished Senators GRIFFIN, SCHMITT, and SCOTT be listed as a cosponsor of the coalition amendment.

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

Mr. MUSKIE. Mr. President, the pending amendment, a multiyear tax cut offered by Senators BELLMON, NUNN, CHILES, and others, raises some serious questions for the budget process. While I appreciate the concerns of these Senators for advance planning on the revenue side of the budget, I believe this approach will tie the hands of future Congresses and reduce the flexibility of the budget process in establishing a revenue floor.

The pending amendment would provide across-the-board tax rate reductions of approximately 6 percent for each of the 5 years beginning in fiscal year 1979 and extending through fiscal year 1983. The estimated revenue loss of the amendment would be $21.9 billion in fiscal year 1979 and would rise to $127.8 billion by fiscal year 1983. The tax reductions in the amendment are, however, contingent on the achievement of certain outlay restraints. Specifically, the proposed tax reduction would become effective only if:

The rate of growth in outlays did not exceed 1 percent in real terms;

The rate of growth in outlays was consistent to the achievement of a balanced budget by the end of fiscal year 1982 and;

The rate of growth in outlays was such that the ratio of Federal spending for GNP was reduced to 19 percent by fiscal year 1983.

Because this amendment provides for an additional 6-percent tax reduction first effective in fiscal year 1980, a year for which no first budget resolution is in effect, it violates the Budget Act in exactly the same fashion as the Roth and Packwood amendments. Unlike the amendments offered by Senators ROTH and PACKWOOD, the amendment offered by Senator BELLMON has also been the subject of a waiver resolution which was referred to the Budget Committee.

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 303(a) of the Budget Act. One of the major purposes of the Congressional Budget Act was to bring the Federal budget under better control. Through the adoption each year of the first and second concurrent resolutions on the budget, Congress sets fiscal policies and national priorities for the fiscal year. To the extent that Congress enacts legislation affecting spending or revenues for a future fiscal year it loses control of the spending and priority decision for that year prior to the adoption of a congressional budget for that year.

The objective of a balanced budget by 1982 and a reduction in the rate of Federal spending in GNP are laudable goals. However, to tie these goals to tax reductions prior to any examination of the economy and other spending and revenue demands, reduces the effectiveness of the budget process to establish national priorities and to respond to national needs. Such formula approaches to tax reductions for example, raise the possibility that taxes may well be automatically reduced as a result under circumstances where the economy might be overstimulated and inflation fueled by such action.

I am also concerned that by establishing a fixed goal for the share of Federal spending in GNP we might encourage an expanded use of off-budget spending, loan guarantees, regulatory policies, and tax expenditures. These mechanisms can be used to provide benefits to some groups in ways which evade the regular authorization and appropriation process. In many cases the costs of these programs can be hidden almost completely from the budget.

Until the Congress has established procedures to control the use of these mechanisms we should be wary of

amendments such as this one which create new incentives to hide the cost of programs.

Mr. President, the Budget Committee has this year pioneered procedures for establishing 5-year revenue and spending targets. The Budget Committee already provides 5-year projections for each spending function in the report on the first budget resolution. The committee has also initiated 5-year projections for the tax side of the budget as well. The report on the first budget resolution for fiscal year 1979 details the fiscal margin which is available for revenue and spending changes between fiscal year 1979 and fiscal year 1983 on the assumption that the economy experiences moderate growth and a balanced budget can be achieved by the end of 1983.

The 5-year budget projections are used by the Budget Committee to evaluate the impact of current tax and spending decisions on future budgets. The projections demonstrate the committee's concern that the Congress move toward a balanced budget at a moderate pace.

I am convinced that the Bellmon-Nunn-Chiles amendment would not aid the Congress in the effort to control Federal spending and move toward budgetary balance. In fact, the amendment may hinder the efforts of future Congresses to make budgets which conform to the changing needs of the economy as well as to the basic goals of budgetary balance and a moderate tax burden.

For these reasons, Mr. President, I oppose the amendment.

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that my name be added as a cosponsor to Senator NUNN's amendment.

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

Mr. KENNEDY. Mr. President, may I have a brief colloquy with the Senator from Georgia?

If we were to face a serious recession in this country, would the requirements under the Nunn amendment preclude us from adopting a substantial tax reduction as a stimulus for the economy? If we were in a serious recession or even a depression, could we take the kind of measures that would be necessary on the spending side and the revenue side in order to bring about a restoration of the health of our economy? This is the concern I have about the amendment.

Mr. NUNN. No, I say to the Senator that Congress would have the absolute right of spending above the 1 percent in any kind of circumstances. It would not even require an emergency. What we do say is if the taxes are going to be cut, there are at last two conditions precedent and for fiscal 1982, there are three conditions precedent to the cut in taxes. If any of those conditions do not come about, then the taxes would not be cut. So Congress would have the right in the future to exceed the spending limits, in which case, the American public would not get a tax cut.

Mr. KENNEDY. Well, as we have seen in 1975 and also at the current time, there is a series of different mechanisms which different administrations have used to deal with recessions in our economy, such as increased spending for jobs programs or public works, and substantial tax cuts. There is a variety of different mixes of fiscal policy which different administrations have used in recent years.

I wonder what kind of restriction this puts on a recommendation of an administration that believes a tax stimulus would be an important measure to increase consumer spending in order to get us out of a recession.

Mr. NUNN. First of all, there is nothing to preclude a larger tax cut. Second, there would not be anything to preclude an expenditure level that exceeds the level recommended here.

What would happen in that case would be that there would be no automatic tax cuts under this proposal.

So there is nothing here to prohibit the Government from responding to any kind of emergency it might want to, whether within, or foreign policy.

I would say to the Senator in fairness, though, it is the intention of the sponsors of this amendment that there be a vested interest in the American public to see for the first time that we begin to restrain expenditures here.

So this does create a degree of political interest on the part of the public to see there is a restraint in spending.

If Congress responds to that kind of political opinion, which I think will exist in normal times, we will, indeed, restrain spending.

Mr. KENNEDY. I understand the sentiment of the sponsors of the amendment. I am concerned that in hard times, such as the dramatic increase in energy costs, or the energy boycott, that a number of steps needed to be taken in order to bring the economy back into balance might be impeded.

Mr. NUNN. There are no restrictions that would preclude Congress going above the levels here.

The sanction would be if Congress goes above these levels, and this is similar to the Hart amendment, if we go above there would be no automatic tax cut.

Mr. KENNEDY. But if there is a recession, and there is a reduction of GNP, it violates the trigger in terms of Federal spending as a percentage of GNP. As I understand it, there is no actual restriction here in terms of the administration's attempting to provide additional spending with a tax reduction as one of the mechanisms in order to stimulate the economy. It seems a little odd to say that the country can not have the automatic tax cut proposed by the amendment, but it will have to have a nonautomatic tax cut to avoid a recession or stop a recession. At least, there is no restraint on a tax cut that might be required by sound fiscal policy.

Mr. NUNN. No such restraint. Only the restraint of public opinion at that time, whatever that might be.

Mr. HART. Will the Senator yield?

Mr. KENNEDY. I am glad to yield.

Mr. HART. I just want to say, on the first vote we are going to cast, which is the amendment offered by the Senator from Colorado, the same answers prevail as the Senator from Georgia gave.

It is my opinion as the principal sponsor, the fact of flexibility for the administration is somewhat greater in the Hart amendment than in the Nunn amendment.

But I think both amendments philosophically accommodate the problem of the Senator from Massachusetts.

Mr. KENNEDY. Fine.

Since the chairman of the Joint Economic Committee, I guess, is a cosponsor of both of those, I would be interested if he has any reaction to this exchange.

Mr. PROXMIRE. I am not chairman, as the Senator knows. I am chairman of the Senate Banking Committee. That is DICK BOLLING. Next year it will be LLOYD BENTSEN.

I appreciate it, though.

Mr. KENNEDY. He is a former chairman.

Mr. PROXMIRE. Well, I think I support both amendments. I think they are wise.

I questioned the Senator from Colorado earlier on this flexibility, in the event of either a deep recession or a war. In that event, of course, we might want to follow policies which might otherwise be restrained.

I think the case by the Senator from Colorado and the Senator from Georgia satisfies me, that there still is a considerable amount of flexibility left here, and I think they recognize the problem, especially in the event of a recession.

I feel I can support them because they are responsible and do work in the direction the supporters and I both want to work, to wit, to hold down Government spending and the size of Government, while at the same time permitting an appropriate response in the event of a recession.

Mr. BIDEN. Mr. President, I do not want to delay this. It seems we are arriving at a consensus on the floor to support one of these two amendments.

I realize it may be a little out of order, but I would like to pay a bit of respect to my senior colleague who, I believe, started this rolling a while ago, and, if he had not, we would not be at this point, in the first instance.

I know that is somewhat parochial, since I am a Delawarian. But I sincerely wish to compliment him because I believe we would not be at this point, which I think we are appropriately at, if not for his endeavors in moving this along.

I would like to compliment him.

SEVERAL SENATORS. Vote!

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I would just like to address to the Senator one question, if I might.

Is it correct, if I understand the difference between the Nunn coalition amendment and the Senator from Colorado's amendment with respect to the cut in individual income taxes, when two amendments are fully effective, recognizing they become effective at different time periods, does the Senator from Colorado's amendment state 29 percent cut versus present law, and the Senator from Georgia's cut is for a 26 percent from current law; is that correct?

Mr. HART. Yes, the Senator is correct.

The tax cut, the Hart proposal, cumulative 29 percent over 4 years, including, roughly, 6 percent cut this year, thereafter 9 percent, 7 percent, and 7 percent.

Mr. HEINZ. Now, the Senator from Colorado's amendment will have what effect vis-a-vis the tax cuts we have put into the Finance Committee bill at this point for individuals? Will it increase or reduce the tax cuts this year?

Mr. HART. It does not affect the tax cut at all, as does not the Senator from Georgia's amendment, also.

Mr. HEINZ. And the Senator's amendment would become fully effective during 1982, assuming this conditional constraint does not exceed——

Mr. HART. The Senator is correct.

Mr. HEINZ. And, further, that the Nunn coalition amendment would become fully effective in 1983?

Mr. HART. The Senator is correct.

Mr. HEINZ. I thank the Senator.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment—

Is the Senator from Washington seeking recognition?

Mr. MAGNUSON. The Senator from Colorado is suggesting a broad number of general programs we should cut.

Shall we cut defense? Shall we cut HEW? I have been cutting all of them and we are going to end up in the Appropriations Committee with a big cut. But which one does the Senator think we should zero in on to accomplish what he is talking about?

Mr. HART. The proposal contained in the amendment which we are about to vote on reduces the controls, the growth of Federal spending. It is not net reduction, as the amendment of the Senator from Georgia is not. Either amendment has a net reduction. These are controls on the degree of growth.

Mr. MAGNUSON. May I suggest something to the Senator from Colorado, and other Senators? Our problem in Appropriations is uncontrollable items that we cannot cut, which the Senator voted for, I voted for, the Senator from Massachusetts has voted for. I would like to know, within about a 40 percent, uncontrollable items, which one are we going to cut? Are we going to cut cancer research? Are we going to cut defense? Are we going to cut mental health?

It is a little bit difficult for us. We are trying to do a great job down there, and we are doing a good job. We are cutting everything. But I would like a little guidance, when somebody reaches up in the air and suggests that we cut something. Just which one do you want? Do you want to cut public works?

Mr. HART. I think the Senator——

Mr. MAGNUSON. Wait a minute. I asked you a question. I do not want to cut it. Everybody is talking about these things. We have to get down to the nitty-gritty about what we appropriate.

If the legislative committees would quit giving entitlements and give us a chance to take a look at it—or the Budget Committee—we could cut a lot of this. In the Federal budget is almost 60 percent of entitlements that we cannot touch. So you are talking about 40 percent, and that includes a lot of human beings.

Mr. HART. I agree with the Senator.

Mr. KENNEDY. Mr. President, I understand that some econometric tables have been introduced. I have one brief area that I would like to explore, either with the Senator from Georgia or the Senator from Colorado.

In the econometric studies has there been a projection as to what this amendment is going to mean in terms of employment and unemployment during the period when this amendment takes effect?

Mr. MAGNUSON. I want to talk about health items, which you and I are concerned about.

It is easy to say all these things, but let us find out what we are going to do. Do you want to cut some health items?

Mr. KENNEDY. No, I do not.

Mr. HART. Mr. President, I introduced on our amendment the latest tables we were able to provide. As to the employment rates if the amendment were adopted, we are presently at a 6.12 rate of unemployment nationally. By 1983, that would be reduced to 4.09—just over 4 percent—based on econometric models, with the stimulation and the growth in productivity and investment which occur as a result of the tax cut.

Mr. CHILES. I can give the figures.

The Chase Econometric models show the gain in employment in 1983 would be a million workers, and the unemployment rate would be reduced. This is under their model for current spending, and they project 6.1, and with this they project 5.3.

Mr. KENNEDY. Has the Budget Committee any different figures on this? Aren't the Chase figures very controversial in some of their projections?

Mr. MUSKIE. I do not know that I can say——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Maine?

Mr. MUSKIE. I yield on my own time.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. The numbers I have are CBO numbers that we have received at the last moment. The difference over a 5-year period——

Mr. KENNEDY. May we have order, Mr. President?

The PRESIDING OFFICER. The point is well taken. The Senate is not in order. Senators will cease conversations on the floor. Senators will please take their seats and cease conversation.

Mr. MUSKIE. The Senate Budget Committee report on the second concurrent resolution is a green document which all Members have received. On page 27 are the 5-year economic objectives which are assumed by the committee with respect to the budget this year and the projections for the next 5 years.

The assumptions are that in 1983, the yearly average unemployment rate would be 4.6 percent. In the fourth quarter of 1983, the unemployment rate would be 4.5 percent, and the Consumer Price Index would increase at a 5.9-percent rate. Those are the 1983 figures.

The Bellmon amendment, according to the CBO, averages 5.6 percent unemployment over the fiscal year 1980 to 1983 period.

The second budget resolution plan averages unemployment at 5 percent over the same period. So that is a difference of 0.6 percent in unemployment over that period, or 600,000 jobs per year for 4 years.

The spread widens in the later years, so that in fiscal year 1983, the difference is 1 million jobs.

The Bellmon amendment averages 5.7 percent inflation over the 1980–83 period. The second budget resolution plan averages 5.9 percent inflation—in other words, more inflation. In 1983, the difference is .6 percent.

In addition, the difference over 5 years between the two is $33 billion in deficit. In other words, the Bellmon amendment would have that much less deficit over the period.

So the tradeoffs are .6 percent more unemployment, .6 percent higher inflation, and $33 billion more in deficit.

So the tradeoff is the classic one between inflation and unemployment over that period, according to CBO's figures.

Mr. CHILES. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. CHILES. Is it not correct that in the 5-year economic objectives, which were set as objectives—where the committee hoped we would go in the Senate report on the second concurrent resolution—would require an additional $33 billion in spending stimulus? So that $33 billion was not part of the budget resolution for 1979, and it is not a part of the Coalition amendment we are talking about here. So, the Senator from Maine is talking about an additional $33 billion in spending stimulus to get to a lower unemployment rate.

Mr. MUSKIE. That is what I just said, yes.

Mr. KENNEDY. As I understand, it is a million more jobs lost to unemployment, five-tenths of a point on the inflation rate, and $33 billion of additional spending.

Mr. MUSKIE. It would be a six-tenths of 1 percent difference in inflation in 1983, in that 1 year. Over the 1980–83 period it averages two-tenths of 1 percent.

Mr. KENNEDY. And a million more jobs.

Mr. MUSKIE. And a million more jobs.

But the Senator is correct about the increased spending over that period.

Mr. KENNEDY. I should like to ask the Senator from Georgia this question: In the rate schedule, which is included in the Hart proposal or the Nunn proposal—how will that be different from what we have already accepted in the Bumpers-Kennedy amendment? Do you change the rates? How will that alter the actions we already have accepted in this debate?

Mr. NUNN. We accept the Finance Committee bill as amended by the Kennedy amendment. Our tables have no effect on that. In the future, on additional or incremental cuts, we take across-the-board cuts from the Kennedy-Bumpers schedule.

Mr. HART. Mr. President, will the Senator yield?

Mr. KENNEDY. So, the future rate cuts will be based on the rate schedule as amended by our proposal?

Mr. NUNN. We made no change in the Kennedy amendment at all. We do not change the rate structure.

Mr. HART. Mr. President, will the Senator yield on that?

Mr. KENNEDY. I yield, on the Senator's time.

Mr. HART. On my time.

I think there is a difference there. One of the criticisms of my amendment was that we left some—not administrative discretion in the Joint Committee on Taxation, but we left flexibility. We also tried to accommodate the distribution schedule of the Senator from Massachusetts in the out years. I think that is a difference between our amendment and the Nunn amendment. As I understand the Nunn amendment, after 1979 the Kennedy-Bumpers distribution formula would not necessarily have to be followed.

Mr. KENNEDY. May I ask the Senator whether that is so?

The PRESIDING OFFICER. Does the Senator from Colorado yield?

Mr. HART. Not on my time. I yield the floor.

Mr. KENNEDY. Mr. President, I do not want to delay the Senate from taking action, but I would like to find out more about the impact of the Nunn amendment on the rate structure which the Senate recently adopted in the Bumpers-Kennedy amendment.

Mr. CHILES. We accepted the Kennedy-Bumpers figures on the first year. We then took across-the-board cuts from all brackets in the years 1980 to 1983 to get our reductions. The prime reason for the amendment offered by the Senator from Massachusetts and the Senator from Arkansas, as I understood it, was to offset the thrust of the total Finance Committee bill, which gave large benefits to low income groups through the earned income case credit, and large benefits to the upper income groups through capital gains provisions. We preserved the balanced package for middle income groups as well.

So we accepted that and took those figures from the Kennedy-Bumpers amendment. Then we used basically across-the-board cuts in the out years. I think the Senator will find that our cuts would yield the current law distribution in the last year, so everyone would end up getting more of a tax cut in the out years.

Mr. KENNEDY. I am not sure I understand completely what that is going to mean to the $10,000-a-year taxpayer. I am not completely relieved of my concern over the fact that we have made a major change in the rate structure to shift a significant benefit into the middle-income groups and into the working-class people of this country with the Bumpers-Kennedy amendment. The change was extremely important for the middle-income taxpayer.

Mr. CHILES. I will be happy to answer that.

Mr. KENNEDY. OK.

Mr. CHILES. I say to the distinguished Senator that by 1983 we would give an average taxpayer in the $15,000–$20,000 bracket a $337 tax cut. This would be in the 1978 dollars on top of the cut that the Senator has. In 1978 dollars the $15,000 to $20,000 would get $337. That would more than double in 1983 dollars. They would be getting almost $700 in 1983. If they were in the $20,000 to $30,000 tax bracket they would be getting a cut of $576 in 1978 and that again would double by 1983. So they would be getting over a $1,000 reduction in 1983.

Mr. KENNEDY. The point that I would make here is the Senator is not indicating what the comparison would have been if we used the Bumpers-Kennedy formula. We cannot tell whether middle-income people are going to be as favorably benefited under the Senator's program, or are going to be taxed more under the Senator's program. If the Finance Committee rate structure is used, middle-income groups will be at a disadvantage. If the Bumpers-Kennedy rate structure is used, they will receive the greater benefits they deserve.

Mr. CHILES. I just told the Senator they are going to be taxed less. In the from $20,000 to $30,000 bracket, they will be taxed $1,000 less. So they are certainly not going to be taxed higher, and at the same time they are going to be enjoying a balanced budget at the time. So they are going to have a lower rate of inflation, they are going to be enjoying a balanced budget, and they are going to be taxed $1,000 less.

Mr. KENNEDY. The Senator has still not answered what the difference would have been between using the Bumpers-Kennedy rate schedule and using the Finance Committee rate schedule.

Mr. CHILES. I say to the distinguished Senator from Massachusetts we are not adding anything to give an additional benefit in capital gains in our amendment. We are not adding anything in our amendment.

Mr. KENNEDY. Neither was our amendment.

Mr. CHILES. So the Senator said are we throwing it out of whack? We are not giving anything extra in capital gains. We are not giving any extra benefit in corporate tax reduction.

Mr. KENNEDY. The Senator did not understand. If he would just compare what was done under the Senator's amendment in outyears, whether the Senator's amendment has grafted on the Bumpers-Kennedy rate structure or the Finance Committee rate structure. If I can get the answer to that and if the Senator's answer is yes, affirmative, I will be satisfied.

Mr. CHILES. We grafted it in the initial year but he did not provide schedules for the future years the way he did.

Mr. KENNEDY. Then I want the Senate to understand this if we can.

May I have order, Mr. President?

The PRESIDING OFFICER (Mr. ABOUREZK). The Senator will suspend until we get order in the Chamber.

The Senator will not continue until we get order.

Mr. MAGNUSON. Who has the floor, Mr. President?

The PRESIDING OFFICER. I ask the Senator to withhold just a minute until we get order.

The Senator from Massachusetts has the floor, but he will withhold until we get order in the Chamber.

Mr. KENNEDY. Not on my time, Mr. President.

The PRESIDING OFFICER. No, we are not counting this against the Senator's time.

The Senator will continue.

Mr. KENNEDY. The question that I asked members of the coalition was with regard to these long-range projections. The figures that were used in the rate structure that the Senate addressed just last week brought a rebalance to the rate structure to tip it more into the middle-income people. That was carried by a substantial degree here in the Senate, and has been accepted in the language of the measure that we are debating here. Were those rate figures used over the out-year projections of the coalition amendment? They were permanent changes in the rate structure which is going to tip and bring a reduction in terms of middle-income people. As I gather the response from the Senator from Florida is that they used those figures in the first year but then they used the Finance Committee rate structure for the out years. That is really the basis for my question. If we were to find out that the projections were based upon the changes in the rate structure which the Senate accepted for all of the out years, then my question is answered.

Mr. HART. Mr. President, will the Senator yield?

Mr. KENNEDY. I ask the Senator from Florida if there is anything more he wants to add.

Mr. CHILES. Yes. I wish to add——

Mr. KENNEDY. OK, if he could do it on his time.

Mr. CHILES. Certainly, on my time.

The rationale, as I understood it, on the Kennedy-Bumpers amendment was that we should change the permanent rate structure. That was the change that was made on the basis that in the bill there was a tremendous advantage given for capital gains, a high advantage given for capital gains and there was a high advantage given for reducing the corporate tax structure, and on that basis we should change the permanent rates. Those were changed. This in no way affects that change. Now what we are coming along and what we are attempting to do in this amendment—Mr. President, may we have order?

The PRESIDING OFFICER. The Senator will suspend until we get order. Will the Senator wait just a minute, please? I ask all Senators and all staff people who are buzzing around the Chamber to kindly stop buzzing because it is just going to delay the proceedings for that much longer. I do not know about the rest of you but I would like to get out of here sometime tonight. The Chair will be very grateful for everyone to be quiet.

Mr. CHILES. What we were attempting to do here, in addition to what the distinguished Senator from Massachusetts has done, is work equity for the middle-income taxpayers, and I think

that was a good amendment. But in addition to that, what we were saying is we were going to come along now with a conditional tax cut that would attempt to hold a carrot in front of Congress to help us restrain spending and by saying if we only increased growth of our real programs by 1 percent over inflation, if we had a declining balance on the percentage of GNP that the Government was using from 21.5 percent down to 19.5 percent, under projections we would achieve a balanced budget by the year 1982. Then when we started working on our amendment, we were using the existing rate structure because that is what we had to work with.

Then, when the Senator had his amendment passed, we changed and picked up his amendment. The first year we could not pick up the tax tables at that time to go out to the outyears. But our feeling was that we do not change what the Senator did in his amendment. The permanent tax rates will continue. They will work the equity that the Senator worked in them. We are, in effect, picking up that rate in the first year and then we are using the existing tax structure and taking across-the-board cuts and nothing in our tax cuts in any way changes the income distribution. It does not change that at all. So we are not playing the game of trying to relate one equity against the other. We are trying to say that everybody is going to be able to enjoy tax cuts, and depending on what rate they start in at, and primarily those in the lower tax brackets and through the middle, will enjoy substantial cuts.

They will also enjoy, if the economy stays the same and if Congress is able to restrain itself, a balanced budget in the year 1982. They will enjoy a government that is only taking 19.5 percent of the GNP into its coffers every year.

Mr. HART. Mr. President, will the Senator yield?

Mr. CHILES. They will enjoy spending——

Mr. HART. Will the Senator yield?

Mr. CHILES. This is on my time. I have an hour under cloture just as the Senator from Colorado has.

Mr. HART. I understand. I am sorry. I just wanted to try to answer the Senator's question.

Mr. CHILES. I am trying to answer it first myself and then I will be delighted to let the Senator from Colorado use all of his time he would like to use under that.

But I think that is what I am trying to explain to the Senator as to what we are trying to do here.

Mr. KENNEDY. I appreciate the response. Of course, in the Bumpers-Kennedy amendment, we did not try to change the capital gains or earned income credit provisions. Those are complex issues.

All we are dealing with is the rate structure. We brought about a significant change and alteration in the rate structure with our amendment.

The question is, although the Senator has accepted our rate schedule in the first year, he has used a different schedule—the Finance Committee schedule—as the basis for tax cuts for future years, and that is a matter of some concern.

If I could ask the Senator from Colorado to answer whether his amendment does so?

Mr. HART. The answer, as I understand, on my time, of the proponents of the Nunn amendment to the Senator is, no. His rate structure is not protected.

The answer from the Senator from Colorado is, yes. If I read the language of the amendment correctly "establish rate tables which impose on each taxable income bracket the same proportion," which is what the Senator's question is, "the same proportion of the tax burden borne by such bracket under the taxable income brackets and attach rates in effect for fiscal year 1979."

The Kennedy-Bumpers proportions are maintained into the eighties.

Mr. KENNEDY. I just have one final——

Mr. NUNN. Just on that point. What the Senator from Colorado is saying is partially correct. What he is basically saying is whatever the conference committee comes back with and whatever is signed into law is what his amendment applies to. That could be the Kennedy formula. If we had another formula it could be that formula or it could be any formula. It could be the formula that came back out of the conference. His amendment does not protect the Kennedy formula, but whatever formula the conference committee comes out with.

I say we have protected the Kennedy formula to all the tax cuts that take place in 1979. That is not changed. It is locked into permanent law. But there is nothing in the Kennedy-Bumpers amendment that basically says all future tax cuts hereafter and forever shall be governed by the Kennedy formula. We do not go to the Finance Committee for the incremental tax cuts. We have protected all of the Kennedy application.

Mr. KENNEDY. The Bumpers-Kennedy amendment changed the rates, and those new rates should be the basis for future charges.

Mr. NUNN. For the tax structure.

Mr. KENNEDY. Yes, it should use them as the basis for tax cut in future years. The question is a serious one, because it relates to whether middle-income groups get their fair share of the future tax reductions promised in the Senator's amendment. They would get their fair share under the Bumper-Kennedy schedule, but not under the Finance Committee schedule.

Mr. CHILES. Mr. President, will the Senator yield?

Mr. KENNEDY. Yes.

Mr. CHILES. I understand. But the Senator——

Mr. KENNEDY. Just on the Senator's time.

Mr. CHILES. Yes, on my time.

The Senator does understand that his tax amendment put in one tax table and that rate will not change under the way the Senator now has it in. So by the year 1982 the Senator is going to have $100 million to $200 million more in taxes collected by virtue of inflation under the Kennedy-Bumpers amendment. So the taxes really are going to go up because of inflation, because there is nothing in there to say that we are reducing any taxes.

Mr. KENNEDY. It seems to me that the effect of these amendments is similar in some respects to the indexing amendments offered here earlier. They promise future tax reductions keyed to spending cuts, rather than inflation.

The challenge is to control spending. The Budget Committee has made a start, and the deficit is down this year to $33 billion, from the $60 billion forecast last January. If we can decide where to cut spending, we can have tax cuts, without making them automatic, without surrendering our prerogatives and discretion to cut taxes as conditions warrant, without a carrot that will prove just as illusory as all the other devices used in lieu of facing the hard decisions over which spending to cut. Automatic tax cuts keyed to spending are subject to many of the same objections as automatic tax cuts keyed to inflation.

Mr. HARRY F. BYRD, JR. The indexing presents a very significant——

Mr. KENNEDY. Mr. President, will the Senator be good enough to use his own time.

Mr. HARRY F. BYRD, JR. Yes, on the Senator's time. Indexing would provide very significant tax cuts. But that is entirely different from this proposal, as I understand it.

Mr. NUNN. The Senator is correct.

Mr. HARRY F. BYRD, JR. This proposal ties tax cuts to control of spending which the indexing did not do, so it makes it entirely different.

Mr. McGOVERN. Will the Senator from Florida yield for a question on my time, very briefly? Do I understand the Senator from Florida to say that under the proposal that he supports, the average middle-income taxpayers will get an additional $1,000 beyond what they are supposed to get? [Laughter.] Could the Senator answer that question?

Mr. CHILES. I said they would pay $1,000 less than they would have paid.

Mr. McGOVERN. Does not the Senator think that is an awfully radical amendment?

Mr. CHILES. It is very radical. [Laughter.]

The PRESIDING OFFICER. The Senator from Washington.

Mr. MAGNUSON. I still persist—maybe I have become redundant, but all you people here, the Senator from Georgia, he is on the Armed Services Committee. The Senator authorizes more money, does he not, did he not, way up? The Senator from Massachusetts and I are concerned with health problems. He authorized all kinds of money. You are all around here. The Senator from Colorado wants more money for different projects out there, and I am for it. But when you get all through with this then you all come around here and you want to cut down the revenue, is that correct? I am not concerned with the rate structure. I think you are right. I vote with you, but you are cutting down the revenue, and you cannot have both.

Mr. NUNN. Mr. President, will the Senator yield on that?

Mr. MAGNUSON. Let me finish.

Mr. NUNN. All right.

Mr. MAGNUSON. Because I am responsible. What counts when you have a deficit is how much you appropriate, correct? Do you know who gets the blame? I do. You all come around—we had 294 requests from Senators to up HEW $6 billion, different Senators.

We turned them all down. You cannot have both. So I want to know, when you people talk about all this—I agree with the Senator from Massachusetts about the structures; I think we have to change that. But I want you to come down, then, and ask me to take some money out of some appropriation. Will you do that? Will you take something out of defense?

Mr. NUNN. We did this year, as the Senator knows.

Mr. MAGNUSON. You will?

Mr. NUNN. As the Senator knows, we did this year. Let me respond briefly——

Mr. MAGNUSON. We have to get this in perspective.

Mr. NUNN. The Senator is absolutely correct there. Absolutely correct.

Mr. MAGNUSON. Listen: Now, we can do a job with more efficiency, and save money. That is something we are talking about, too. We can save money with Government regulations, and we are doing that. But, by golly, you people just cannot stand around here and keep talking about reducing all this. We can have the formula; sure, that is all right. But you better come around, then, and ask us to reduce some place. I will be glad to do it, but I do not feel that atmosphere. Everybody wants more appropriations for this or that.

Mr. NUNN. The Senator is absolutely correct. Will the Senator yield?

Mr. MAGNUSON. And everyone has his own constituency. I am going to vote for all of this sort of thing, but I just want to suggest, do not come downstairs to room 128 and ask us for more appropriations, because if I vote with you, you are not going to get it.

Mr. NUNN. Will the Senator yield?

Mr. BENTSEN. Mr. President——

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I think that the gentlemen who have offered these amendments have rendered a service.

The PRESIDING OFFICER. Will the Senator suspend until we can get order in the Chamber? The Senator will please suspend until the Chamber is quiet.

The Senator may proceed.

Mr. BENTSEN. Mr. President, I think that in suggesting these amendments the coalition and Senator HART have rendered a real service. I think what they have proposed is an intriguing idea.

I am for reducing the budget, and I am for trying to put some limits on the percentage of expenditures of GNP by the Government. I am for reducing the taxes as far down as we can go. But I have heard so many questions concerning what the Senators are trying to accomplish; I hear the Senator from Massachusetts trying to decide, if the Bumpers-Kennedy correlation of taxes up and down that rate structure is carried through, whether it is permanent legislation.

What we are having proposed tonight is one of the most profound things that has been done in the tax structure in a long time, and one I do not know how many economists have been involved in. I do not know how many hearings have been held on it. I am not sure whether labor has made its contribution to this discussion, or whether business has, or whosoever has had a part in this decision.

For that reason, since I think there are so many questions still left unanswered in spite of some rather laudatory objectives, I am going to have to vote against it, and frankly, I think if it is passed in this body I do not see how it can possibly survive the conference.

But again, in spite of my opposition, I think those gentlemen have made a fine contribution.

Mr. NUNN. Mr. President, I can understand the Senator's feelings in this matter. Let me say I have such confidence in the vast ability of the Finance Committee, in conference, to achieve any kind of oversight or change or additional goal, that I have the greatest confidence in their ability to carry out our instructions.

Mr. BENTSEN. Mr. President, I am glad for that, but my confidence in the Finance Committee is so meager I cannot support the amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Just a minute. The Senator from Maine has asked for recognition. The Chair recognizes the Senator from Maine.

Mr. MUSKIE. Mr. President, first of all I would like to compliment the Senator from Colorado and my colleagues on the Budget Committee, Mr. BELLMON and Mr. CHILES, and Mr. NUNN, who has been a member of the Budget Committee, for their efforts.

But, you know, I have lived with these 5-year projections for a long time. We have those projections in the Senate report on the second budget resolution this year.

But these projections, on which so much discussion has been based, were based upon moderate assumptions of what is going to happen to the economy in the next 5 years; and they anticipate a continuation of the current economic expansion for the next 5 years.

If we were to get that kind of real world for the next 5 years, it would be without precedent in the country's history. So when we talk about these projections, about what unemployment will be in 1983, what the inflation rate will be in 1983, and what spending will be in 1983, we are making very unreal projections in terms of what the real world is likely to produce. So to gear tax reductions and spending levels on any such 5-year projection, I happen to think, is a very unwise thing to do.

Now, with respect to the Budget Committee's projections, we, for example, anticipate assuming a moderate expansion for that 5-year period on top of the expansion we have had, so that we would have a total cumulative $128 billion available for additional spending or tax cuts in that period.

Now, the Hart amendment and the Bellmon-Chiles-Nunn amendment use that $128 billion in different ways. In the case of the Hart amendment, he would use it totally for mandated tax reductions, that is, mandated under the formula of this bill, tax reductions leaving no room for additional spending beyond current policy.

BELLMON, CHILES, and NUNN would use that $128 billion in a different way. They would advance the year for achieving a balanced budget by 1 year, and so they would not use it all for a tax reduction.

That is an oversimplified comparison of the two. What I do not like about either of them is that each is an attempt to reach conclusions about revenue aggregates and spending aggregates 5 years in advance.

The goals that they talk about are goals that are consistent with those that the Budget Committee has established for its own policies for this budget resolution, and I think our record demonstrates that we have worked persistently and effectively to reduce spending, to reduce deficits, and to try to stimulate moderate and wise changes in the revenue code.

I think that has to be done on a flexible basis as we move through this period. The reason we have 5-year projections in this document is so that we can hold them up to the Senate year by year as the plan to which we are committed as we adopt each budget resolution.

To freeze ourselves into mandated tax cuts or mandated spending levels without being able to really anticipate economic conditions, I think, is to tighten up our budget process to the point of inflexibility, and that is what troubles me about either of these proposals.

If we have to have one or the other, I know which one I would choose, although I would not say. I might choose one of these. But I do not really choose any of them, from the Kemp-Roth amendment to Hart to Bellmon-Chiles-Nunn, and I am very fond of all these gentlemen and have worked with them in one way or the other on matters affecting the budget.

But I really think we are taking a bill like this, or others produced by other econometric models, and undertaking to predict in advance what we can prudently produce in revenues and what we can prudently produce for outlays, and undertaking to budget 5 years in advance, with those constraints with which the Budget Committees and Congress will have to live.

For that reason, Mr. President, I am inclined, with all due respect and appreciation for the very intelligent efforts which have been made, to vote against both of these proposals.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I share the views of the Senator from Texas and the Senator from Maine. No GNP forecaster would, for a moment, in appearing before a congressional committee to testify, assert that his forecasts, pro-

jected out over a 5-year period, constitutes an adequate basis for the formulation of policy in the sense being proposed in these amendments.

The question being put by the amendments is, of course, a basic question, and one which we have to answer. But we have to answer within the context of the best facts we can have and a time frame which is as good as we can get in terms of making projections. The budget process, coupled with the work of the Appropriations and Finance Committees, now gives us a chance to do that. In the use of that process in this year alone we have gone from a $60 billion deficit which the President had projected in the budget he submitted to the Congress at the beginning of the year, to a $38 billion deficit projected in the second concurrent resolution. But we are able to make those judgments in the light of where the economy is and how it is moving.

To move into this situation, leaving aside some of the questions about 1-percent increase in spending and what you do with the defense budget—which, it is my understanding, increased by more than 1 percent this year in real terms, and if that is the case in one area of spending what happens in other areas of spending—leaving aside those questions, the model of the Chase econometrics people is resting on certain assumptions about where the economy is going to go. Those are assumptions not only about Government spending and taxing, but assumptions about business investment, assumptions about consumer spending, assumptions about consumer saving, assumptions about the actions of the Federal Reserve Board with respect to the money supply and the interest rate.

You cannot make these kinds of projections without building certain assumptions into that econometric model which covers all of those variable factors in terms of how this very complex economy works.

To come on the floor at this point and to, in effect, legislate as these two amendments propose to do—I grant there is a little movement in there—really into a fairly rigid spending revenue connection out over a 3- to 5-year period, in my view is not the way to make policy. I think we would be better advised, having benefited from the thrust of this discussion, from a very basic question which has been put, not to accept these amendments and then to go on and pursue the issues they raise in a more orderly fashion over time in which we can develop the sort of backup information which these proposals require.

I would support the Senator from Maine and the Senator from Texas.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I would like to join with my colleagues from Maine, Texas, and Maryland. I will make five points.

First, these proposals would constitute the single most important change in the American political economy since the introduction of the unified Federal budget under President Harding. It would be ary arrangements of political democracy. One might find it ineptly pursued in the centrally planned economies of the Soviet bloc, but no democracy has tried it. And it would certainly be a profound and significant change that merits more than a single evening's debate.

Second, the fundamental proposal sets fixed limits with respect to the growth of expenditures. It is important to recognize that we would be setting these limits at a time when the future is less than certain. For example, we are now in the 14th quarter of consecutive economic growth.

It is probable, based on normal business cycle conditions, that we will begin to experience a downturn in economic performance. Hence, it would become difficult to project with any degree of certainty.

Third, the President has just brought forward one of the truly great diplomatic triumphs, and opportunities, in the post war world—peace in the Middle East.

If this condition is to be consolidated it will almost certainly require great American expenditures. What that expenditure will be we do not know, but certainly we ought not to limit that possibility.

Fourth, the President is about to come forward with a strategic arms limitation treaty. We can not yet know exactly what that will entail either. But, it is almost certain that it will involve some changes in our conventional forces, it could involve greater expenditure. And, if a trade between strategic weapons and conventional ones is necessary, then our negotiators ought to have the flexibility to accomplish it.

Mr. NUNN. Will the Senator yield for a brief comment? I think the Senator missed the earlier part of the debate.

Mr. MOYNIHAN. I am happy to yield.

The PRESIDING OFFICER. The Chair will remind Members of the Senate that under the rules of cloture one Senator cannot yield to another.

Mr. NUNN. If the Senator will yield on my time——

Mr. MOYNIHAN. My final point is that there is something fundamentally fearful about this effort to bind ourselves to future limitations. We have been governing this Nation for almost two centuries on the basis of the free choices of successive Congresses. I see nothing in our past record to make us fearful of our future performance.

The President, in his economic report this last January raised an important concept—that of our expenditures as a proportion of our GNP. He suggested that it be reduced to 21 percent. This is a basic idea, and a good one. But it is one that would be carried out by future Congresses. We need not fear an inability to accomplish this, we have performed well in the past, and will continue to do so in the future. I thank the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, let me just say to the Senator from New York that the only thing we are binding ourselves to is a commitment to the American people that we will offer the tax cuts necessary to get us out of this recession only if we meet certain controls on spending.

That is the only thing we are binding ourselves to. There iss nothing else that is binding.

Mr. President, my staff and I started working on this project and this proposal almost a year ago. I feel that that proposal received a great deal of hearing here, on the floor of the Senate, for the first time here tonight. I am gratified by that.

I am also gratified by the fact that my colleagues have come 90 or 95 percent of the way toward adopting that proposal. I compliment them for that.

Mr. President, having achieved most of what I set out to do, I ask unanimous consent that the order for the yeas and nays be vitiated and that the amendment be voted on by voice vote.

Mr. MAGNUSON. Will the Senator yield now for a question?

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

Mr. HART. I yield.

Mr. MAGNUSON. Did the Senator not appear before the Committee on Appropriations just about 3 hours ago? Is that correct?

Mr. HART. The Senator is correct.

Mr. MAGNUSON. And he asked for further appropriations?

Mr. HART. Within the authorization limits.

Mr. MAGNUSON. All right, within the authorization limits. That is what I am talking about.

Mr. HART. May I answer the Senator?

Mr. MAGNUSON. Yes. I agree with him. I am going to vote with him. The trouble is, we make these speeches about all this and all the authorizations come down this high and we have to cut them down. When you talk about the deficit, it is controlled by what we expend, is that correct?

Mr. HART. The Senator is correct.

Mr. MAGNUSON. Appropriations, expenditures. My point is that if we want all these things, and the Senator himself—his proposition was good. I think we need it. That is why, maybe, we should have the flexibility that the Senator from New York talks about. This is something we need. He made a good case. We are going to agree with him. But it added, did it not? It added to the appropriation.

Mr. HART. It was less than the administration requested.

Mr. MAGNUSON. Well, all right. I do not think any of you get my point, that you keep coming down there wanting more.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado.

The amendment was rejected.

Mr. NUNN. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. NUNN. Under the previous unanimous-consent order, was it not agreed to unanimously that there would be a rollcall vote on the Nunn coalition amendment immediately following the disposition of the Hart amendment?

The PRESIDING OFFICER. That is correct.

Mr. HARRY F. BYRD, JR. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HARRY F. BYRD, JR. Will this be 15-minute rollcall or a 10-minute one?

The PRESIDING OFFICER. This is to be a 10-minute rollcall under the order previously entered.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that this be a 15-minute rollcall under the circumstances, because there is no preliminary vote now.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Georgia. The yeas and nays have been ordered.

The assistant legislative clerk called the roll.

Mr. PAUL G. HATFIELD (after having voted in the negative). On this vote, I have a pair with the distinguished Senator from Montana (Mr. MELCHER). If he were present and voting he would vote "aye." I voted "nay." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Montana (Mr. MELCHER), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Jersey (Mr. CASE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona Mr. GOLDWATER), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. DOMENICI) would vote "yea."

The PRESIDING OFFICER (Mr. GRAVEL). Have all Senators voted?

The result was announced—yeas 65, nays 20, as follows:

[Rollcall Vote No. 468 Leg.]

YEAS—65

Baker	Hansen	Nunn
Bartlett	Hart	Packwood
Bayh	Hatch	Pearson
Bellmon	Hatfield, Mark O.	Pell
Biden	Hayakawa	Percy
Brooke	Heinz	Proxmire
Burdick	Helms	Randolph
Byrd, Harry F., Jr.	Hodges	Roth
Byrd, Robert C.	Huddleston	Sasser
Cannon	Inouye	Schmitt
Chafee	Jackson	Schweiker
Chiles	Johnston	Scott
Church	Laxalt	Stafford
Cranston	Leahy	Stennis
Danforth	Long	Stevens
DeConcini	Lugar	Stone
Dole	Magnuson	Talmadge
Eagleton	Matsunaga	Thurmond
Ford	McGovern	Williams
Garn	McIntyre	Young
Gravel	Morgan	Zorinsky
Griffin	Nelson	

NAYS—20

Abourezk	Hathaway	Muskie
Bentsen	Hollings	Ribicoff
Clark	Javits	Riegle
Culver	Kennedy	Sarbanes
Curtis	Mathias	Stevenson
Durkin	Metzenbaum	Weicker
Glenn	Moynihan	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Paul G. Hatfield, against.

NOT VOTING—14

Allen	Eastland	Melcher
Anderson	Goldwater	Sparkman
Bumpers	Haskell	Tower
Case	Humphrey	Wallop
Domenici	McClure	

So the amendment (No. 4084) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. May I be recognized, Mr. President? Who is to be recognized?

The PRESIDING OFFICER. The Senator from Indiana.

Mr. ROBERT C. BYRD. Will the Senator from Indiana yield to me?

Mr. BAYH. I yield.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate;

The PRESIDING OFFICER. Will the majority leader suspend? The Chair intends to wait until we have order. We will be patient, and we are prepared to wait until there is order in the Chamber. Will the majority leader withhold until we have order?

The majority leader may proceed.

Mr. ROBERT C. BYRD. I thank the Chair.

THANKS TO ROTH-KEMP

● Mr. HATCH. Mr. President, this evening was a historic one, and the long efforts of Mr. ROTH and Mr. KEMP and others of us to provide a real tax cut has come closer to fruition with the passage this evening of the Nunn amendment of which I am a cosponsor. Now if the Budget Committee finally establishes control over spending in keeping with the Nunn amendment, the American people will finally get a tax cut.

I submit for the RECORD an editorial from today's Wall Street Journal, which chronicles this struggle to provide a tax cut. Tonight we showed that this cut might be closer than the Wall Street Journal thought this morning.

The editorial follows:

UNMORTGAGE THE FUTURE

When the dust finally settles on the tax bill currently before the Senate, a considerable change in philosophy will be apparent. Both houses have moved away from closing "loopholes" toward promoting growth. Corporate tax reduction has become noncontroversial, if not almost a liberal position. The capital gains tax will not be raised but cut. But there is one element of the growth formula that Congress still refuses. Despite growing support for the idea, it will not commit itself to a systematic program of tax reduction in future years.

The House and Senate rejected the Roth-Kemp bill, various indexing proposals and most other efforts to get us off the curent tax treadmill. The Senate Finance Committee did postpone some of its tax cuts to reduce the impact on the next year's deficit, but even this was opposed by the Budget Committee and the administration. They warned that voting tax reductions for future years would "mortgage the future."

To put this matter in some perspective, it's only necessary to look at the long-range projections in, say, the administration's own mid-session budget review. They show that between 1978 and 1983, government receipts are expected to grow to $720.5 billion from $401.2 billion, an increase of $319.3 billion, or 79%. This is an average annual growth of 12.4%, even though the numbers include the projected impact of the administration proposals for "tax reform and relief." In other words, even after the administration's alleged tax cuts, tax receipts are going up 12% a year. It somehow seems to us that stopping this would not be mortgaging the future but unmortgaging the future.

The current tax system, with inflation pushing everyone up through progressive rate brackets, is guaranteed to increase taxes faster than the growth in gross national product. It is especially important to keep this in mind in assessing claims by the Democratic leadership that the Kemp-Roth bill, a 33% tax cut phased in over three years, would be an engine of inflation. The Democrats fully intend to "cut" taxes in those three years, and given the current Senate festivities are in no position to quibble over amounts. Their position is essentially that one three-year tax cut is wildly inflationary but three one-year tax cuts are not.

In fact, declaring rate reductions in advance has two important advantages. First, it gives tax cuts an even break with expenditure increases. Spending programs have long been voted in advance, often—indeed typically—designed to start small in early years and escalate thereafter. For that matter, tax increases, such as the Social Security boosts taxpayers now face, are often voted in advance. Faced with "uncontrollable" expenses from past programs, Congress then decides whether it can "afford" to reduce taxes in any particular year. Scheduling tax reductions in advance would stop this no-win game.

Secondly, the prospect of lower tax rates in future years has economic effects now. It is being more widely recognized that tax cuts do have incentive effects, at least where marginal rates are unusually high, and do produce revenue feedbacks. The knowledge that taxes are going down in future years will affect current decisions, particularly long lead-time investment, and thus help the economy even before the lower rates take effect.

The Kemp-Roth bill, the clearest embodiment of these principles was defeated in the Senate Friday by a 60–36 vote in which Democrats, not surprisingly, dominated the majority. But the notion of cutting taxes in future years has spread across party lines. Sen. Gary Hart of Colorado joined Republicans Griffin, Dole and Brooke in proposing to index personal income tax brackets and exemptions, a good way to reduce the tax take in future years. And the Senate will vote today on a proposal by Sen. Sam Nunn (D. Ga.), which essentially would phase the Kemp-Roth bill in over five years with a proviso to delay the scheduled cuts unless spending limits are met, thus finessing the usual objection to Kemp-Roth and laying bare the issue of whether to get off the treadmill.

As the year's debate progressed, Congressman Kemp, Sen. Roth and their allies sometimes seemed to suggest incentive effects were so sure and so powerful that any level of expenditure could be financed by cutting taxes fast enough. While this rhetorical ex-

aggeration hurt their case, their bill has nonetheless been a moving force in the changes in tax philosophy we are witnessing. With the successful effort for capital gains tax cuts by Congressman Steiger and Sen. Hansen, it helped educate the Congress about incentives and revenue feedbacks. Even if this year's bill does not include a systematic multi-year program of tax rate reduction, the idea of offsetting the present automatic increases has taken root. The foundation has been laid for some future Congress to unmortgage the future.●

Mr. ROBERT C. BYRD. Mr. President, a religious holiday begins tomorrow evening at 6 o'clock and extends until 6 o'clock on Wednesday evening. This means that after 6 o'clock tomorrow evening, we will not have any rollcall votes until 6 o'clock on Wednesday. Business will be transacted. There can be voice votes; rollcall votes can be ordered. But out of deference to those Senators who would be observing the holiday, we have given them our word that there will be no rollcall votes, other than a procedural vote necessary to establish a quorum, and so on.

That being the case, and in view of the fact that the Senate conferees on the tax bill need to be in conference on Wednesday and Thursday, possibly Friday and Saturday, in order to complete action on this bill Saturday—and hopefully adjourn sine die at the close of business Saturday—I ask unanimous consent that a final vote on the committee substitute and the bill occur no later than 6 p.m. tomorrow, with the understanding that there be a time limitation of not to exceed 1 hour on any amendment.

Mr. BAKER. Mr. President, reserving the right to object, I just say to the majority leader that I only just now—meaning the last few minutes—learned of this proposed request. I have tried to confer with as many Members on this side of the aisle as possible in the brief time we have had.

I notice that we have good attendance on this side, and I hope that Members who are agreeable to this or have concern about it will express their own views.

My own concern, Mr. President, is whether or not there will be time between now and 6 o'clock tomorrow night to dispose of the several amendments. I wonder how many amendments we have to deal with and if the distinguished managers of the bill can give me some idea of how many amendments—that is, serious amendments—would be dealt with between now and 6 o'clock tomorrow night.

Mr. LONG. Mr. President, I am advised that there are about 25 amendments at the desk that are germane and about 10 of them we regard as serious amendments, in that it will be important to the committee as to whether they are agreed to or not. As to the others, I think we could live with them, if the Senate saw fit to agree to them.

Mr. BAKER. Mr. President, further reserving the right to object, if there are 25 at the desk and 10 are serious, that is 10 hours. To do 10 hours of careful deliberation by 6 o'clock tomorrow night would be extremely difficult. But if the managers of the bill think that is possible, I will withhold any objection at this point.

However, I must say at this point that I am very concerned about that.

Mr. LONG. If Senators would not be offended if the manager of the bill would move to table when he thinks their side has been heard adequately, with the understanding that when the other side rises to present their amendment, they make their presentation in chief, and if we think we have the votes, after a brief statement of ours, we would propose to table, so that the debate would not drag on, we think we probably would make it.

Mr. BAKER. Is the Senator talking about a tabling motion before the expiration of the hour provided for in the majority leader's request?

Mr. LONG. Yes.

Mr. HEINZ. Mr. President, reserving the right to object, it would be helpful to try to establish, at least for a few of us who I am sure have been trying to obtain recognition all afternoon and all evening, whether we might have the opportunity to have our amendments called up at a reasonable time, at a time certain.

Mr. KENNEDY has an amendment. Mr. BAYH has an order to be recognized following the conclusion of this discussion. I know that Senator DANFORTH has an amendment, as has Senator JAVITS, and there probably are others.

Mr. LONG. Let us put it this way: Some of these are very important and significant amendments. From the point of view of those who are very much interested in a particular amendment, unless they win, they are not going to think we spent adequate time debating it.

Mr. HEINZ. The Senator misunderstands. I am not talking about adequate time. I want to be sure we have some orderly method of procedure.

Mr. LONG. It is all right with me. It is just that today we have withheld making motions to table, out of deference to Senators.

For example, on the previous amendment, it was the judgment of the Senator from Louisiana, after we heard that debate for the first hour, that the Senate was likely not to agree to the Hart amendment and would agree to the Nunn amendment; and I would agree to table the Hart amendment, just to get on with the business, except that I did not want to offend the Senator, to make him feel that we cut him short on the time we took on his amendment.

If the Senate wants to move, so that the amendments of other Senators could be considered, we could move to table rather than spend as much time in answering as the other side spends in debating.

Keep in mind that any time I say something that the sponsor does not agree with, ordinarily he wants to respond. If we could make our statements and move to table, we would be inclined to do that.

Mr. HEINZ. My concern is that we have some orderly procedure for recognition now.

Yesterday, there were either 8 or 10 straight recognitions on the Democratic side of the aisle—not yesterday, Saturday—because a list was being kept up there. It was not an order; it was a list. In spite of the fact that it was not an order, you could not get recognized, because the Chair had a list.

If there were some agreement whereby the Chair would alternate recognition, as long as somone was seeking recognition between the majority and the minority sides, this Senator would not object. Some other may object.

Mr. LEAHY. Mr. President, I recall being in the chair during part of that time. The name of the Senator from Pennsylvania was added about 3 seconds after he requested it. The Senator was perhaps somewhat delinquent in getting his name up there. That might have been the reason for it. I do not think there was an attempt on the part of anybody in the chair——

Mr. HEINZ. I can solve the Senator's problem. My name was the fourth name and the last name on the list from the night before, and that list was thrown away. Now, as Exhibit C, there was a list——

The PRESIDING OFFICER. The Chair would observe——

Mr. HEINZ. Mr. President, reserving the right to object, there was a list at the desk a few minutes ago when one of the Senators was in the chair. I asked that my name be put on the list. It was. I went back up to the desk and found a new list, and I found the list with my name on it crumpled up and put in the wastebasket. I will be happy to go up there and get it out of the wastebasket.

The PRESIDING OFFICER. The Chair observes that there is a list here, and there are three Democrats and three Republicans on the list.

Mr. SARBANES. Mr. President, reserving the right to object. I would like to make the point right here, having presided in the chair, that there is nothing in the Senate rules that sanctions those lists.

Mr. ROBERT C. BYRD. Right.

Mr. SARBANES. I suggest to this body in the circumstance—and we are almost through with this session—that in the next session, those lists should be abandoned. They have no official status. They make it extremely difficult on the Presiding Officer.

If a unanimous-consent order is obtained by Members which gives everyone the opportunity to object and insist that they be included, or if some other planning be done, or some other sequence, that is a different proposition. But to be sitting in the chair and have Members come up and say, "Is there a list? If so, put my name on it," and someone else comes up and says, "Put my name on it"—there is no sanction in the rules to do that.

It places the Presiding Officer in an extremely difficult position. I frankly think it makes difficult to conduct the business of the Senate and it creates problems. I have a lot of sympathy in

what the Senator from Pennsylvania is saying. Simply on the basis of what he has asserted I suggest to the Members that those lists probably should be scrapped altogether.

Mr. ROBERT C. BYRD and Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Maryland has stated it preeminently, accurately, and articulately. No lists are recognized in the rules. The Chair is supposed to recognize the Senator who first seeks recognition but it is in the discretion of the Chair to recognize whomever he wishes to recognize. But lists have no place. They do make it burdensome on the Presiding Officer and they are unfair to other Senators who do not even know there is a list at the desk. Sometimes it can make it impossible for a Senator to get his amendment in at all because, depending on what degree his amendment is, he may have to offer it as a second degree amendment or he may have to offer it as a first degree amendment. It puts him at a disadvantage in many instances.

So I hope we will get away from the lists. I think the Senator raised a valid point.

Mr. GLENN. Mr. President, reserving the right to object, I checked at the desk a few moments ago and was told there were probably somewhere over 200 amendments still pending. I have no concept of how many of these are likely to be called up. But I am sure that some of us will not be willing to give up our right to call up amendments, just assuming that our amendment would be one of the 10 that the floor manager says he feels are important to this bill.

We have excellent attendance in the Chamber here tonight. I ask the majority leader if it might be possible to poll the Members here and see how many are serious about bringing up amendments tomorrow. Perhaps we could ascertain whether that limit of 10 is valid as to what is important to the Senate. This is extremely important legislation. Some of us feel very strongly about amendments that we have put in and perhaps we could ascertain from the Members in the Chamber now a better count of how many would be expected to be brought up tomorrow because I am sure many Members would join me in not wanting to be iced out by any 6 p.m. limit tomorrow night. As to a bill of this importance and magnitude and importance to the American people we should not be rushed into this with some amendments that we might wish to propose.

Mr. LONG. Mr. President, once Senators start objecting to amendments because they are not germane, because the amendments violate the budget, or because they are drafted in such a fashion that it is not in order to present them now, no one had a right to complain about any other Senator doing something that he had every right to do. Every Senator has a right to make a point of order that an amendment is not germane. So every Senator should talk to the Parliamentarian if he wants to call his amendment up and find out whether that amendment is germane. He should not waste the time of the Senate by bringing up an amendment that the Parliamentarian is going to have to rule is nongermane. We consult the Parliamentarian and we know what amendments we think are germane. Also if they are subject to the Budget Act he can find out. So he does not need to waste the time of the Senate calling something up only to find that it violates the Budget Act and therefore is not in order or that it is not germane or that the way it has been drafted is in such a fashion that the amendment cannot be considered except by unanimous consent because the probabilities are it is not going to be agreed to. If he is going to require unanimous consent, he better start clearing it on both sides of the aisle before he asks for it; otherwise, it will not be agreed to.

I have been notified with regard to various amendments that there will be no waiver, that the consent will not be given. Oftentimes it is because the Senator opposes the amendment. That being the case, if he does not agree to waive the defect, whatever it may be, that is the end of it.

Now, if we will proceed in that fashion rather than make the leader, manager of the bill, or chairman of the Budget Committee, stand here and make the objection, then we are only talking about 25 amendments and we will save a huge amount of time if the sponsors of the other amendments will find out what the objection to that amendment might be. Then we can get down to real serious issues which are 25 amendments that should not be too much to do in 8 hours.

Mr. ROBERT C. BYRD. Ten hours. We will come in at 8 a.m. That will give us 10 hours.

Mr. LONG. As far as I am concerned we can come in at 7 a.m.

Mr. CANNON. Why not stay today and all night?

Mr. JAVITS. Mr. President, reserving the right to object, in view of the fact the reason for this procedure is laid at the door of the Jewish holiday, if necessary I will object. I am not afraid to raise it at all.

Mr. President, it is very serious business. I know we want to get home. But we cannot cheat America because we want to get home. So I for one will do my praying off the Chamber tomorrow night and will stay as long as it is necessary, if it is all night, to give every Member a chance to argue and debate his amendment. If he has only 10 minutes, he has that right. I will not keep the majority leader to his promise that we have to finish by 6 p.m. tomorrow night. So if necessary—I hope it will not be; I think it would be very embarrassing to me—I will object myself.

Mr. RIBICOFF. Mr. President, I express my appreciation and gratitude to the majority and minority leaders for the thoughtfulness and consideration of the religious convictions and sensibilities of five Members of this body.

Unfortunately, the distinguished Senator from Florida is not here.

When I was aware of the dilemma that the leadership faced in this body, I consulted with the distinguished Senator from New York, the Senator from Ohio, and the Senator from Nebraska. We are members of the Jewish faith. We have been sent here by our constituents to do our duty. Under our religion when it is our obligation to perform our duty in the national interest it is permissible, I believe, for us to be here in the performance of our obligations to the people of our country and our respective States.

Under the circumstances—and I regret that I do not see, and I tried to find the distinguished Senator from Florida—we have consulted together, the four of us who are here. This is a matter of such basic importance to all the people of our Nation, and we realize what this means for the entire schedule of the Senate and every Member here, we would not put that restriction—I regret that I cannot speak for the Senator from Florida. I tried to find him, but I cannot find him here.

The Senator from New York, the Senator from Nebraska, and the Senator from Ohio, and I will make arrangements somewhere in this building to perform our religious obligation, and if there is a basic vote we will be able to vote accordingly. But we do not feel under these circumstances we have the right to expect our other colleagues to give up what is absolutely essential in the performance of their duties and for us, and I do want to say we are deeply appreciative of the commitment made by the leadership and we respect them for it. But we will not hold the leadership under these circumstances. It would be our hope, however, that we would stay as late as possible tomorrow night to finish this bill, and as I understand the colloquy between the manager of this bill and the majority leader, there is no reason why we cannot finish tomorrow night.

I hope that those Senators who have an amendment that is not germane or would be ruled out in accordance with the budget procedure, would not call up that amendment and maybe we can finish by 6 p.m. If we cannot, I am sure that we will all be willing to stay as late as possible.

I know the obligations and I know the burden also to members of the staff, and I pay tribute to the hard-working members of the staff who carry this burden also and happen to be of the same religious faith.

I am sorry to impose upon them the breach of what they consider proper. But again it is their duty to perform for the interests of our country and the interests of the Senate.

So under those circumstances I regret that I cannot speak for the Senator from Florida, and if he disagrees, all of us will have to apologize to him for our making that decision, but we could not find him.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. RIBICOFF. I would be glad to yield.

Mr. JAVITS. I would like to adopt what Senator RIBICOFF has said. I also feel that way.

May I make a suggestion, if the Sena-

tors would allow me. I think this is the kind of a situation in which the two leaders or their attachés can call in the very Senators whom Senator LONG has identified and work it out with them so that everybody does get an opportunity and so that we finish some time tomorrow night. With this situation you now have ample time.

I have, for example, a dozen amendments. We winnowed them down to three, and one that I share with Senator DANFORTH, because I went and did exactly what RUSSELL LONG suggested, found out what was in order, what was not, and will simply eliminate those that are not.

We are not helpless, Mr. Leader. There are other Finance Committee bills, and we can always find a place to put what we want to do there. So I really believe, sir, that you can work it out, and I hope, as Senator RIBICOFF had said, that you will not press this upon the Senate under the circumstances he has so properly described.

Mr. BAKER. Mr. President, will the Senator yield to me for a moment?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Mr. President, in view of this colloquy—and I express my personal thanks and appreciation to the distinguished Senators from New York and from Connecticut for their remarks in this respect—in this view I think there is nothing I can add except to say that I think it would be far preferable to simply resolve tonight that we will try our best to finish tomorrow night. I will pledge to the majority leader that I will cooperate in that respect. I think it will eliminate a lot of problems on this side of the aisle, and I suspect on the other, not to put a rigid 6 o'clock time but rather represent that all of us will try to complete this bill as rapidly as we can and, hopefully, tomorrow night.

Mr. STEVENS. Mr. President, reserving the right to object, I think the comments made by the Senator from New York and the Senator from Connecticut lead to the conclusion that we should do everything we can to accord them the privilege of offering any amendments they might have to this bill before 6 o'clock, if that should be worked out.

Second, I have just been given a "Dear Colleague" letter that indicates that the Glenn amendment will come up in another form and that there has been indication that the amendment is germane.

I have no indication whether the amendment was filed by the time cloture was voted, but I hope that the majority leader will not insist on a 1-hour limitation on these amendments until we see what amendments are going to be called up. I would be perfectly willing to go to a 1-hour limitation——

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. RIBICOFF. I hope that one of the controversial amendments that will take a considerable amount of time can be laid down tonight, and that the Senate will come in early tomorrow morning so that we can feel that by 9 o'clock we will have the first vote on a controversial one.

I also hope we can finish tomorrow night so that we will not have to go into Wednesday and finish the bill, not only for the religious problems, but knowing what is involved in the conference, to get this together in a matter of such complexity and the time it will take to get the papers ready to go to conference mean it will be absolutely essential, in my opinion, to definitely finish this by tomorrow night or we will be unable to adjourn sine die by Saturday. This is what I would request.

Mr. ROBERT C. BYRD. I thank the Senator. I will not press the request.

The Senators who have spoken and for whom I had agreed that there would be no rollcall votes after 6 o'clock tomorrow night, made a very, very reasonable request. We have observed that request before, and I wanted to observe it on this occasion.

I appreciate the reasoning with which they have spoken tonight. I had hoped we could finish the bill tomorrow night because, as Mr. RIBICOFF has stated, if we adjourn sine die Saturday it is going to be absolutely necessary to finish this bill tomorrow at some point.

So, Mr. President, I hope that Senators will all keep this in mind tomorrow.

I hope the Parliamentarian can arrange to have a listing of amendments that are not germane, of amendments that are out of order, because they go to different places in the bill or are out of order for other reasons, and let us have that list by tomorrow morning, if it is not already available. This may be helpful as we proceed tomorrow.

So, with that understanding, Mr. President, that we try to complete action on the bill tomorrow night, I withdraw the request.

Mr. BAYH. Mr. President, I regret that the amendment of the Senator from Indiana now that I will ask the clerk to report, 3992, has been kicking around since this morning, and I will explain why in just a moment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. BAYH. I yield to the majority leader.

ORDER FOR THE CONSIDERATION OF S. 2566 WITH A TIME LIMITATION THEREON

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its work on the tax bill today that it proceed to the consideration of S. 2566, the Pennsylvania Avenue Corporation bill, with a 20-minute time limit, this to be divided equally; with a time limitation on any amendment of 5 minutes.

ORDER FOR THE CONSIDERATION OF S. 791, WITH A TIME LIMITATION AGREEMENT THEREON

Therafter, the Senate will proceed to the consideration of S. 791, the omnibus parks bill, with a 30-minute time limitation, with the time to be equally divided, and a time limitation on any amendment thereto of 5 minutes.

Mr. BAKER. Mr. President, reserving the right to object, and I have no intention of objecting at this moment, but if the majority leader will withhold for just a moment, I have not been able to clear the first request on our calendar, and I wonder if the majority leader would give me just a moment?

Mr. STEVENS. Mr. President, reserving the right to object, and I shall not object, it is my understanding that S. 791 is the omnibus parks bill. I have no objection to considering S. 2566 which, I understand, has a slight amendment, as long as we are not going to incorporate the provisions of the second bill in the first one. We are working on some changes to that bill and we are not prepared yet to——

Mr. ROBERT C. BYRD. Mr. President, does the Senator object to either or both of the requests?

Mr. STEVENS. I have no objection to S. 2566 which, I understand, is the Pennsylvania Avenue Corporation bill, which has an amendment to be offered by the Senator from Arizona. There is no problem about that as long as it is not an amendment that goes to the subject matter of S. 791. I would have no objection.

Mr. MAGNUSON. Mr. President, reserving the right to object, the Senator from Alaska and I are concerned about an Executive Calendar bill which amends the International Convention for the High Seas Fisheries of the North Pacific Ocean. I was wondering can we have an Executive Calendar—the Senator from Alaska and I are concerned, and we have to get this done before we quit, about a protocol amending the International Convention for the High Seas Fisheries of the North Pacific Ocean.

Mr. ROBERT C. BYRD. Mr. President, could we have the attention of the Senator from Alaska?

The PRESIDING OFFICER. Will the Senator suspend?

Mr. ROBERT C. BYRD. Can we have the attention of the Senator from Alaska?

Mr. MAGNUSON. I told the majority leader and asked him, we are very concerned, the Senator and I, about this North Pacific Fisheries Treaty which is on the Executive Calendar. There is no objection to it, and I do not know why it is being held up. Can we pass it right now? There is no objection whatsoever.

Mr. STEVENS. I am deeply interested, and I think all of us from the Pacific Northwest are, because that meeting is scheduled to take place almost imminently, and we would like to see that cleared. But I do know that there is an objection to it.

Mr. BAKER. Mr. President, I think the matter can be disposed of tomorrow. I am not in a position to agree to it tonight.

Mr. MAGNUSON. If we can get agreement it will not take 2 minutes.

Mr. BAKER. I am sorry. I would like to accommodate the distinguished chairman of the Appropriations Committee, and I think I will be able to do this tomorrow, but I cannot do that tonight.

Mr. MAGNUSON. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, can the majority leader identify for me again the items he referred to in his request?

Mr. ROBERT C. BYRD. S. 2566, the

Pennsylvania Avenue Corporation bill, and S. 791, the Omnibus Park bill. They are both House messages.

Mr. JAVITS. Mr. President, will the Senator withhold that for just a few minutes? I am trying to check.

The PRESIDING OFFICER. Will the Senator suspend? I cannot even hear from the chair, much less the Members of the Senate. Will Senators suspend until we can get order, and hear what business is being transacted?

Mr. STEVENS. Has the Chair registered my objection?

The PRESIDING OFFICER. The Chair will not permit the transaction of business until there is order.

Mr. BAKER. Mr. President, Mr. President, Mr. President——

The PRESIDING OFFICER. The Chair does not propose to permit any transaction until there is order in the Chamber.

Mr. ROBERT C. BYRD. Will the Chair let the minority leader object?

The PRESIDING OFFICER. The Chair now recognizes the majority leader.

Mr. ROBERT C. BYRD. I respect the Chair for trying to get order. That is the duty of the Chair, to get order, and to maintain order if it can be done.

The PRESIDING OFFICER. Attachés will please take their seats, so that business can be transacted.

The Chair recognizes the minority leader.

Mr. BAKER. I thank the Chair.

Mr. President, I reluctantly must say that neither item, S. 2566 or S. 791, is cleared on this side. I hope we can clear them later, but it is necessary for me to object tonight, and I do object.

The PRESIDING OFFICER. Objection is heard. The Senator from Indiana has the floor.

Mr. BAKER. Mr. President, I wonder if the majority leader could indicate to me whether there will be any more rollcall votes this evening.

Mr. ROBERT C. BYRD. Mr. President, if I might have the attention of the manager of the bill (Mr. LONG), is it anticipated that there will be further rollcall votes today?

Mr. LONG. Well, Senator, I would hope that before we conclude today Mr. BAYH's amendment could be laid down, and if no one insists on a rollcall vote, we could vote on it, or if someone insists on it, if the Senate does not want to vote on it this evening, or someone objects, we can vote on it tomorrow when Senators come in.

Then I would hope that after we conclude that, we could call up H.R. 8533, a House-passed bill to which I understand there is no objection in the Senate, and add to that the waterway user measure; I think that issue has been compromised to where all sides are willing to go along, so far as I can determine, and we can send both the waterway tax and locks and dam 26 over to the House on that bill.

That is all I contemplate doing this evening, and then we can come back tomorrow and resume work.

Mr. ROBERT C. BYRD. Very well. I thank the chairman.

Mr. LONG. If that runs into a snag, we will have to continue on that tomorrow.

ORDER FOR RESUMPTION OF THE UNFINISHED BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow morning at 8 o'clock the Senate resume consideration of the tax bill.

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

ORDER FOR RECESS UNTIL 7:30 A.M.

Mr. ROBERT C. BYRD. I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 7:30 tomorrow.

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

REVENUE ACT OF 1978

The Senate continued with the consideration of H.R. 13511.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

AMENDMENT NO. 3992

Mr. BAYH. Mr. President, for the information of my colleagues, I have no desire to ask for a rollcall vote on this amendment. Any Member, of course, would be within his rights to do so.

The PRESIDING OFFICER. Will the Senate please be in order? The Senator is entitled to explain his amendment, and I think he should be given an opportunity to do so.

Mr. MAGNUSON. Mr. President, will the Senator yield for a unanimous-consent request?

The PRESIDING OFFICER. The Chair will not entertain the transaction of business until we have order. Will Senators who choose to transact personal business accommodate the remainder of the body by doing it in the cloakrooms?

Will Senators show the courtesy to their colleagues of permitting the Senate to go forward in its transaction of business?

The Senator from Indiana may proceed.

Mr. BAYH. Mr. President, the amendment I present to the Senate now is one which was brought——

Mr. PROXMIRE. Mr. President, will the Senator use his microphone, please?

Mr. BAYH. I am using my microphone, I would say to my colleagues. I do not know why they are not hearing.

The amendment was brought up earlier this morning——

Mr. DOLE. Mr. President, may we have order?

Mr. HANSEN. Mr. President, may we have order?

Mr. BAYH. And was subject to a point of order, since we had reached the revenue floor for purposes of the budget resolution.

So the Senator from Indiana revised his amendment, so that it would not take effect until the beginning of the next fiscal year, and thus there would be no revenue loss. As originally presented, the revenue loss would have been $1 million for calendar year 1979, and since that would have left only 9 months in the fiscal year, the amendment would only have cost about $750,000; but that is moot, because as it is revised there would be no revenue loss this year.

I delayed in presenting the amendment, because I hoped there would be amendments passed which raised revenue and provided room for my proposal under the budget resolution. Unfortunately this has not occurred. I would hope, however, that in conference the distinguished chairman of the Finance Committee would consider making the amendment effective on January 1, 1979, if further amendments or action in conference make this possible under our budget procedures.

This amendment would make financing through industrial development bonds more available to communities participating in the urban development action grant (UDAG) program.

My amendment, Mr. President, would not increase the small issue exemption beyond the $12 million provided for in the Finance Committee bill. It would, however, permit IDB financing for facilities involved in a UDAG program which will be worth more than $12 million and up to $20 million. Under the committee's bill, eligibility for the small issue exemption is lost if the total expenditures for the facilities exceed the $12 million limit. More simply put, if my amendment were enacted there could be up to $12 million in IDB financing for a UDAG facility worth up to $20 million.

I believe, Mr. President, that the change I propose will be extremely helpful to the 181 communities presently participating in the UDAG program and the scores more which will participate in the future. That program has not been a total Federal subsidy. On the contrary, UDAG money has acted as seed money to attract many times more private dollars into projects to revitalize and reclaim severely distressed urban areas and neighborhoods. On an average, each UDAG dollar has attracted $5 from private sources. In some instances the ratio has been as low as one Federal dollar to 30 private dollars.

The UDAG program is an integral part of President Carter's urban policy, and it has had broad support in this body. It makes such good sense to stimulate private investment in our urban areas to help reverse the economic deterioration, high unemployment, outward migration, and housing abandonment which have plagued so many of our cities.

And it is because I believe so strongly in addressing the problems of distressed urban areas that I propose this amendment. As interest rates grow higher, the cost of financing facilities in UDAG programs will become increasingly burdensome. In some instances, high financing costs for private capital will limit the scope of the project. In others, parties with much to offer will be discouraged from taking part in the UDAG program.

To insure maximum participation and projects of the highest quality I believe it is important that we provide at least some low cost financing to the private investors who are willing to address our great urban problems. This could be accomplished through industrial develop-

ment bonds if we were to provide tax exemption for IDB's even though the facilities they financed cost more than $12 million, which they do in many instances where UDAG grants have been extended.

My amendment would give such an exemption, Mr. President, and I believe that for a very small loss in tax revenues it will provide a strong impetus to our urban program and bring much needed help to our distressed urban areas. I hope my colleagues will agree and that the amendment will be accepted by the Senate.

Mr. NELSON. Mr. President, may we have order in the Senate so we can hear the Senator?

The PRESIDING OFFICER. The Senator is quite correct. I will ask the Senator from Indiana to withhold until there is order in the Chamber. We are prepared to sit here until there is order. It is only 20 minutes to 11. We have a lot of time.

Mr. BAYH. The Senator from Indiana can be finished in just 1 minute, I will say to my colleagues.

The PRESIDING OFFICER. But I would like the Senator from Indiana to have the attention of the Senate for that 1 minute. If it takes 5 minutes to do that, the Chair is prepared to do that.

Mr. NELSON. Mr. President, there are still Members conversing on the floor. The Senate is not in order.

The PRESIDING OFFICER. I thought it was quiet for a moment, but the Senator is correct. Will the staff members please take their seats? Will Senators please take their private conversations to the cloakrooms?

Does the Senator from Wisconsin think the order is proper at this point?

If so, the Senator from Indiana may proceed.

Mr. BAYH. Mr. President, I find the silence deafening. I have three points to make.

First, the combination of urban development grants and industrial development bonds brings private capital into the development of our cities; second, this helps to prevent the blight of our major metropolitan areas; and, third, this provides jobs for those who participate in the building projects.

(Mr. SARBANES assumed the chair.)

Mr. PROXMIRE. Will the Senator from Indiana yield, Mr. President?

Mr. BAYH. I yield to my distinguished colleague.

Mr. PROXMIRE. Is this amendment opposed by the Treasury Department or approved by the Treasury Department?

Mr. BAYH. Well, in all candor, I have to say it has luke warm opposition. Let me say to my friend from Wisconsin what the exact facts are. The administration, President Carter, proposed that the limit for IDB's be raised to $20 million, but that these bonds be limited to distressed areas.

I ask unanimous consent that a letter I have received from Donald C. Lubick, Department of the Treasury, dated September 29, 1978, be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.
September 29, 1978.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: This is in reply to your letter of September 25, 1978. You propose an amendment to relax the capital expenditure test to $20,000,000 for facilities that have received UDAG grants. You correctly point out that your proposal would not go beyond what would be permitted under the President's urban program.

The urban program, of course, was conditioned upon a reduction in the volume of tax-exempt industrial development bonds under the small issue exemption, by a repeal of the general exemption save for distressed area financing.

Since neither the House bill nor the Senate Finance bill adopted the reduction recommendation, we would be reluctant to accept an addition to the level of small issue industrial financing by an add-on provision. Recognizing that total repeal of the exemption is not likely, we would, however, accept and support your amendment if combined with a maintenance of the small issue exemption at present law $1 million and $5 milion levels.

Sincerely,

DONALD C. LUBICK.

Mr. BAYH. The administration says it does not oppose the $20 million capital expenditure level proposal but it opposes the raising of the 1 and 5 figures to 2 and 12. Because my amendment does not address the 2 and 12 figures, the administration thus opposes my proposal.

Mr. PROXMIRE. I can understand their opposition to the committee position, which I share. I think that was a mistake. After all, industrial revenue bonds are something that can be very easily abused. What happens, of course, is that industry goes into a city and is able to borrow money at a subsidized rate well below market. Right now, that is particularly advantageous because interest rates are so high. In this case, the Senator would permit it to go to $12 and $20 million on the overall structure.

Mr. President, as I understand it, and I have talked to the Senator from Indiana about this several times, we discussed it this morning, under the circumstances, with the support of the committee, I simply want to be recorded as opposing the amendment. I will not ask for a rollcall.

I think this is a mistake. It is not the way to spend $20 million. It should be spent in neighborhoods where the poor live rather than the downtown areas, which every mayor wants to spend the money in to make his city attractive.

I understand the Senator's views, but I do oppose the amendment.

Mr. BAYH. I appreciate the thoughtfulness of the Senator from Wisconsin. I share his concern that we have investment in the neighborhoods. He is absolutely right. That is where a lot of that abject poverty is located. I feel a little different from him in thinking that if we can refurbish the downtown areas, we are really providing job opportunities for those who live in the neighborhoods. I appreciate his courtesy at this hour of the night.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. BAYH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DURKIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SEVERAL SENATORS. Mr. President?

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I was planning to ask for unanimous consent to discharge the committee from considering H.R. 8533 and to offer a compromise on the inland waterways, which was approved by Mr. DOMENICI and which is approved by the administration, so far as I can determine, and which is also agreeable, in the spirit of compromise, by the waterway users. We thought we had worked the matter out in a way that there would be no objection to it and that it could pass almost by unanimous consent.

Apparently, the Senator from Wisconsin (Mr. PROXMIRE) has some objection to it. He is rather concerned about the matter and does not want the bill to be voted tonight. I would hope we would have the opportunity to discuss that matter with the Senator between now and sometime tomorrow when perhaps we might consider the matter. That being the case, I will not seek to bring the matter before the Senate at this time.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 4021

(Purpose: To simplify Federal income tax forms and instructions)

Mr. DURKIN. Mr. President, I call up amendment No. 4021 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. DURKIN) proposes an amendment numbered 4021.

Mr. DURKIN. Mr. President, I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

On page 223, line 24, insert the following:

"(c) TASK FORCE.—(1) The Secretary of the Treasury Department shall establish a task force which shall conduct a study and investigation with respect to methods of simplifying Federal individual income tax return forms and instructions accompanying such forms.

(2) The task force shall report from time to time on its progress directly to the Secretary and shall submit a final report to the Secretary which includes its findings with respect to simplification of such tax forms and instructions and any recommendations with respect thereto. Such final report shall be submitted by such time as is necessary to enable the Secretary to file the report called for in subsection (4) of this Section.

(3) The Secretary is authorized to appoint such employees, not in excess of 10, as may be necessary to carry out the functions of the task force without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, ex-

cept that such employees shall not be paid at a rate in excess of the annual rate of pay under grade GS-18 of the General Schedule under section 5332 of such title 5.

(4) The Secretary, after studying the report and recommendations of the task force, shall, not later than two years after the date of enactment of this Act, submit a report to the Congress on the findings of the task force, together with his recommendations, including such recommendations for legislation as he finds necessary for simplifying Federal individual income tax return forms and instructions accompanying such forms."

Mr. DURKIN. This amendment provides that the Secretary of the Treasury will establish a task force which shall report back to the Secretary, and the Secretary will report to the Congress within 2 years, on ways in which to simplify the individual tax forms. I have given up hope trying to simplify the tax code at present.

The GAO study indicated that the tax form itself could be made such simpler with the result that the great majority of Americans would be able to fill out their own tax returns, at least those taking the standard deduction.

Mr. President, as I said the other day when I introduced this amendment as a separate bill, this provision is modest in scope, but it can have a significant impact on the effectiveness and fairness of our tax system.

This amendment would require the Treasury to submit to the Congress, within 2 years, recommendations on how to simplify the 1040 and 1040A forms and instructions.

The amendment would not change a single substantive provision in the Internal Revenue Code. But it would, I hope, make that code more understandable and make April less of a traumatic month for all of us.

The amendment differs from the separate legislation I introduced last week by deleting the separate authorization which the earlier bill provided to develop these recommendations. I believe that the Treasury can find the salary and expense funds needed to meet the requirements of this provision. In addition, the amendment provides for excepted authority so that the Treasury can employ up to 10 outside experts to develop these recommendations. I expect that the Treasury would use this provision to employ outside graphics and communications people to complement their own resources.

Mr. President, improving the forms and instructions that the vast majority of Americans use to meet their obligation to support the general Government through the income tax offers a number of important benefits to the Government and to all individual taxpayers. Clearer forms and instructions would increase public confidence and understanding about the tax code. They would reduce involuntary errors such as simple arithmetic mistakes. They would help the taxpayer get all of the benefits that he or she is entitled to receive. And they would help remove some of the murkiness that now seems to engulf the governmental process.

The General Accounting Office has recently reported to the Congress that further simplification of the tax forms and instructions are, to quote from the report, "both needed and possible." The GAO report showed how these reforms can be carried out. I believe that any Senator who looked at their report would agree that the results are, indeed, infinitely superior to the current exercise in clutter and confusion.

Mr. President, I understand that this amendment is acceptable to the floor managers of the bill.

I understand that the Treasury supports my amendment.

For the benefit of every American who must face the complex and befuddling 1040 and 1040A tax forms, I urge the adoption of my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DURKIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIEGLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DURKIN. I thank the distinguished manager and the distinguished ranking Member.

Mr. NELSON. Mr. President, I wonder if I might make an inquiry of the manager of the bill, the Senator from Louisiana.

Did I understand that the Senator did bring up or was bringing up locks and dam 26 at some stage?

Mr. LONG. I had intended to, but I was informed by the Senator's colleague, the senior Senator from Wisconsin, that he was opposed to it and he has very serious objections.

Mr. NELSON. I did not understand that.

I had mentioned last night, and earlier, that I would like to lay down an amendment tonight if we could agree upon a time. I have two amendments to the bill, both of them major, both of them dealt with in the Committee on Finance. One of them is on the capital gains tax and one of them involves accelerated depreciation, for which I shall be offering a substitute amendment for a 3-year depreciation.

I do not know what the schedule is, but I have talked to Senator BENTSEN. He is agreeable to a time limitation. He is available between 9:30 and 10:30. If that time is not occupied, I should like to call up the amendment, and agree to a vote at 10:30 tomorrow morning, with a 1-hour time limit—I do not think we shall use it all—then lay it aside for any amendments.

Mr. LONG. We talked about coming in at 8 tomorrow. I think we will take up this bill, I think the Senator said before 8. It is all right with me for the Senator to lay the amendment down now, and then, of course, to take it up as the first order of business when we come in tomorrow.

Mr. NELSON. I believe Senator BENTSEN is not available at that time.

Mr. LONG. I do not know about that. I do not know about anybody's plans.

Mr. NELSON. Could we take it up at 9:30 and vote at not later than 10?

Mr. LONG. The only thought that occurred to me is that I hoped we would not lose the time from the time we come in until that point. It is all right with me to give up unanimous consent that, as soon as the Senate has completed whatever it is working on at 9:30, the Senator be recognized to call up his amendment at that point.

AMENDMENT NO. 4482

Mr. NELSON. I ask unanimous consent on this amendment, which I shall identify—it does not have a number—as an amendment to the tax law to provide for accelerated depreciation for small business—and to identify the amendment for the desk, it reads, "Beginning with line 24, on page 312, strike through line 12 on page 313 and insert in lieu thereof." That is the amendment I introduced earlier today.

I ask unanimous consent that at the conclusion of—what is it that the manager is willing to do?

Mr. LONG. That as soon as the Senate has acted on whatever amendment may be before the Senate at that time, the Senator from Wisconsin be recognized to call up his amendment. In other words, if we are considering some other amendment at 9:30, as soon thereafter as that has been disposed of, that the Senator from Wisconsin be recognized to call up the amendment to which he has made reference.

Mr. NELSON. I ask unanimous consent for a 1-hour time limitation, with the time equally divided with the Senator from Texas.

Mr. LONG. I believe the Senator is under the impression that the Senator from Texas would not object to that 1-hour limitation.

Mr. NELSON. He would not.

Mr. HANSEN. Reserving the right to object, Mr. President, I just happened to note that a number of Senators have amendments that they hope might be considered tomorrow. I am a little reluctant to enter into an agreement to vote at a time certain or not later than a time certain tomorrow morning. It is not my intention to delay a vote on this, but I shall have to object to the specific unanimous-consent request that the Senator made.

The PRESIDING OFFICER. The Chair will observe that no time certain was set, either for considering the amendment or voting upon it, other than that it would follow upon the disposition of whatever amendment was pending at 9:30.

Mr. HANSEN. Maybe I misunderstood the distinguished Senator from Wisconsin. I thought his request included the proviso that it be brought up at 9:30, with the vote to occur not later than 1 hour.

Mr. NELSON. That had been my request, but the manager of the bill made the later suggestion just repeated by the Chair.

Mr. HANSEN. I have no objection to its being called up at a certain time. It may very well be that it can be disposed of quicker, but I would not want to get into a posture where we agree to vote at not later than a time certain.

Mr. NELSON. That is not the request.

The PRESIDING OFFICER. Without objection, the unanimous-consent request is granted.

Mr. STEVENS. There was no time limit on that, was there?

Mr. HANSEN. That is right.

The PRESIDING OFFICER. The unanimous-consent request, as stated by the manager of the bill, as the Chair understood it, was that it would be in order for the Senator from Wisconsin to lay down the identified amendment upon the disposition of whatever amendment would be pending at 9:30, whatever time that might be, and that there would be a 1-hour time limit on the amendment, to be equally divided.

Mr. STEVENS. Reserving the right to object, if I may, does that waive any point of order of germaneness?

The PRESIDING OFFICER. No, it does not.

Mr. STEVENS. It amounts to a 1-hour time limit on the amendment of the Senator from Wisconsin?

The PRESIDING OFFICER. To be 1 hour limited to considering the amendment of the Senator from Wisconsin.

Mr. HANSEN. Does it follow, Mr. President, that we would vote at the expiration of that 1 hour's time?

The PRESIDING OFFICER. That is correct.

Mr. HANSEN. I would like the RECORD read back, because that is precisely the point that the Senator from Wyoming attempted to make. I thought he was assured that we are not getting into a situation or a posture where we will vote at a time not later than a time certain. That is exactly what I tried to ask about.

Mr. LONG. Mr. President, the way the Chair stated the unanimous-consent agreement just before it was agreed to, the Senator from Wyoming was correct in assuming that there would be no 1-hour limitation. I ask unanimous consent that there be no limitation on the debate prior to the vote on that amendment.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request as modified, just modified by the manager of the bill?

Mr. HANSEN. I have no objection.

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

AMENDMENT NO. 3996

(Purpose: To eliminate the WIN credit and include WIN recipients under the targeted jobs credit)

Mr. BELLMON. Mr. President, I call up amendment 3996 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON) proposes amendment numbered 3996.

Mr. BELLMON. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendent is as follows:

On page 264, strike out lines 6 through 10.

On page 264, line 20, strike out "or".

On page 264, line 21, strike out the period and insert in lieu thereof ", or".

On page 264, between lines 21 and 22, insert the following:

"(G) a WIN registrant.".

On page 269, between lines 12 and 13, insert the following:

"(12) WIN REGISTRANT.—The term 'WIN registrant' means any individual who—

"(A) is certified by the Secretary of Labor as having been placed in employment under a work incentive program established under section 432(b)(1) of the Social Security Act; or

"(B) is eligible for financial assistance under a State plan approved under part A of title IV of the Social Security Act and has continually received such assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer.".

Beginning on page 275, line 12, strike out all through page 284, line 7, and insert in lieu thereof the following:

"SEC. 322. WORK INCENTIVE PROGRAM CREDIT TERMINATION.

"Subsection (a) of section 50B (relating to definitions; special rules for WIN credit) is amended by adding at the end thereof the following new paragraph:

"'(4) TERMINATION.—For purposes of this subpart, the term "work incentive program expenses" shall not include any amount paid or incurred by the taxpayer in a taxable year beginning after December 31, 1978.'".

Mr. BELLMON. Mr. President, it is my understanding the distinguished Senator from Georgia (Mr. TALMADGE) wants to be on the floor when amendment No. 3996 is considered, and he is not presently on the floor. So I ask unanimous consent that the amendment may be withdrawn until a later time.

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

The amendment is withdrawn until a later time.

Mr. LONG. Mr. President, I believe we have done all we can do on this bill for today. I hope we can stand in recess, unless the leadership wants us to bring another matter up.

EXPLANATION OF THE RIBICOFF AMENDMENT RELATING TO HISTORIC STRUCTURES

● Mr. RIBICOFF. Mr. President, on Friday the Senate agreed to an amendment to the tax bill sponsored by Senator HATHAWAY which essentially added most of the Technical Corrections Act (H.R. 6715) to the Revenue Act of 1978 (H.R. 13511). At my request, Senator HATHAWAY included in his amendment two important improvements in our tax laws with respect to historic structures. I would like to take this opportunity to explain those two provisions.

Under present law, there are certain tax disincentives imposed on those who demolish a historic structure. The law also has a procedure for a property owner to have his building "decertified." He could then demolish his building without suffering the tax disincentives. A building can only be decertified if it is not a certified historic structure, is not of historic significance to the district, and if the building is decertified before it is demolished.

There are, however, exceptional cases where an owner did not get the building decertified because he did not know of the requirements of the tax laws with respect to historic structures. For example, an owner of a rundown gas station in a historic district might tear down his station and then realize that any replacement structure is limited to straight line depreciation. This result is unjust if the building torn down was not of historic significance to the district.

My amendment allows decertification of a building in a historic district in the limited situation where the owner certifies that he did not know of the requirements that his building be decertified prior to demolition, and the Secretary of the Interior certifies that the building was not a certified historic structure and was not of historic significance to the district. I intend for the burden to be on the taxpayer to show that it is appropriate to permit retroactive decertification in his particular situation.

The second part of my amendment deals with the aspects of the Tax Code providing incentives to aid in the preservation of historic structures. The eligibility of lessees for the tax incentives is presently in doubt. H.R. 6715 as approved by the Finance Committee clarified this question by stating that lessees of historic properties could qualify for the advantages provided by section 191 only if the lease was for a term of at least 30 years, if the owner of the structure was a Federal, State or local government or a nonprofit organization and if the structure was listed in the National Register or located in a district listed in the National Register.

After extensive discussions with interested outside groups and the Department of Treasury and Interior, all agreed that two of the restrictions in the bill as reported from committee are inappropriate. My amendment would remove those restrictions leaving only the requirement that there be a lease of at least 30 years. Under this amendment, leases from private owners would qualify as would leases of building located in State or local historic districts. This will make the provisions with respect to lessees consistent with the rest of the tax incentives to encourage preservation of historic structures.

Both these amendments are supported by the Treasury Department, the Interior Department, the Advisory Council on Historic Preservation, the National Trust for Historic Preservation and Preservation Action.

Mr. President, I submit for the RECORD letters from the Department of Interior and the Department of Treasury.

The letters follow:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 5, 1978.

Hon. ABRAHAM RIBICOFF,
U.S. Senate,
Washington, D.C.

DEAR SENATOR RIBICOFF: I am writing to express support for your proposed amendments to Section 2(f) of the proposed Technical Corrections Act (H.R. 6715). The Department of the Interior is responsible for making historic preservation certifications under Section 2124 of the Tax Reform Act of 1976. Our experience with this Section of the Tax Reform Act has shown the necessity for the corrective amendments contained in Section 2(f) as reported by the Senate Finance Committee, and we feel strongly that the amendments you propose with regard to lessees and retroactive decertification will make the provisions more equitable and effective. As currently enacted, the historic preservation provisions of the Tax Reform Act create some uncertainties that have, in part, limited the planning for and investment in the rehabilitation of our neglected historic resources. Because Section 2124 of the Tax Reform Act expires in 1981, corrective action now is even more urgent.

Our experience thus far indicates tremendous interest in the rehabilitation of historic resources by owners, lessees and other investors. Over 350 rehabilitation projects in 40 States have been approved by the Department of the Interior, representing a private investment of approximately $295 million. We believe this investment will be further stimulated by enactment of the corrections and clarifications contained in Section 2(f) of the Technical Corrections Bill as reported by the Senate Finance Committee. However, the two provisions contained in your proposed amendment would, we believe, increase the impact of the historic preservation incentives and more successfully meet the objectives of the 1976 Tax Reform Act.

Therefore, we support:

1. extending the tax incentives to all long-term lessees of certified historic structures (currently the Senate version of H.R. 6715 would restrict use of the incentives to nonprofit organization and governmentally owned buildings); and

2. expanding the Secretary of the Interior's authority to certify after demolition or substantial alteration those buildings in historic districts which are not of historic signficance and thereby exempting them from the tax penalties (retroactive decertification). This certification of no significance provision would substantially lessen the existing hardship for taxpayers who demolish or substantially alter nonsignificant structures before securing necessary certifications. Taxpayers who are unaware of the tax penalties and tear down a nonsignificant building in a historic district without getting a certification of nonsignificance are now being penalized by not being permitted to deduct the demolition costs and by never being allowed to take accelerated depreciation on improvements on that land. These penalties now apply even if the building was not actually significant but was only located in a historic district.

Thank you for this opportunity to comment on your proposed amendments. We are hopeful that they will be expeditiously enacted into law.

Sincerely,

——— ———,
Assistant Secretary.

DEPARTMENT OF THE TREASURY,
Washington, D.C., July 21, 1978.

Mr. ROBERT M. UTLEY,
Deputy Executive Director, Advisory Council on Historic Preservation, Washington, D.C.

DEAR MR. UTLEY: This is in response to your letter of May 11, 1978, regarding proposed amendments to section 191 of the Internal Revenue Code of 1954 (the "Code"), as added by section 2124(a) of the Tax Reform Act of 1976. Section 191 permits owners of certified historic structures to elect to amortize the costs of certain rehabilitations of such structures over a 60-month period in lieu of depreciating the costs over the actual useful lives of the improvements. Section 2(f) of the Technical Corrections Act of 1978, as reported by the Senate Finance Committee (the "Act"), would extend the availability of 5-year amortization to certain long-term lessees from tax exempt or governmental owners of certified historic structures located in Federally-registered historic districts. You propose amending section 2(f) of the Act to permit (1) certain renewal options to be included in determining the term of a lease, (2) otherwise qualified lessees to utilize 5-year amortization without regard to the identity of the lessor, and (3) lessees of certified historic structures located in approved state and local historic districts to elect 5-year amortization.

Proposed section 191(f)(2)(C)(i) (section 2(f)(7) of the Act) would permit lessees to amortize expenses incurred in a certified rehabilitation only if the remaining term of their lease is 30-years, or actual asset life if greater, as of completion of the rehabilitation. The Act would require this 30-year term to be determined without regard to any renewal period. The amendment you propose would permit renewal periods to be taken into account if they would be taken into account for purposes of depreciation generally. In support of this suggestion you rely on section 178 of the Code. Your argument appears to be that this change would accord lessees of certified historic structures the same treatment as other lessees.

First, I note that lessees of historic structures already enjoy the same benefits as other lessees. Section 191 merely provides a preferential timing rule for the allowance of certain depreciation or amortization deductions.

Second, section 178 was enacted to remedy a specific abuse that is unrelated to section 191. Normally a lessee is permitted to depreciate leasehold improvements over their useful life if that life is shorter than the remaining term of the lease. If the asset life is greater than the remaining lease term, the costs may be amortized over the remaining term. Before enactment of section 178, judicial decisions had permitted lessees to amortize the costs of long-lived improvements over a short initial lease term even though the actual asset life, coupled with the presence of renewal options, made it more probable than not that the lease would be renewed. Such lessees were thereby permitted to secure unduly rapid write-offs of depreciable improvements.

Section 178 requires the inclusion of renewal periods in determining the period over which asset costs may be recovered unless the lessee establishes that it is more probable than not that the lease will not be renewed. Thus, it controls depreciation abuse by requiring a lessee to depreciate leasehold improvements over a period that reflects actual recovery of the cost of those improvements.

In contrast, the period over which the costs of rehabilitating historic structures may be recovered is prescribed by statute. In the case of lessees, the prescription of a minimum lease term is designed to ensure that a lessee permitted to elect the benefits of section 191 has a long-term interest in the rehabilitated property similar to that of a true owner. Without a substantial minimum initial lease term requirement the section invites abuse. For example, one could expect developer-lessees to execute leases with relatively short initial terms (e.g., 5 to 10 years) and a series of renewal options. At the end of the initial term the developer-lessee would fail to exercise the first renewal option. If the renewal options were counted in determining initial section 191 qualification, the lessee would have received all of the tax benefits of section 191 and none of those benefits would be subject to recapture upon the failure to renew the lease. Consequently, this office will oppose any amendment that would either shorten the requirement of a 30-year minimum lease term or include renewal periods in determining whether the 30-year requirement has been met.

In your letter, you also urge our support for a proposal to extend the benefits of section 191 to lessees of buildings whose owners are other than governmental bodies or organizations exempt from tax under section 501(a). In the case of exempt or governmental lessors, the exemption from tax eliminates the incentive to historic rehabilitation provided by section 191. These incentives are not frustrated where the owner is taxable. However, you have advised us that there may be situations where rehabilitation by the owners is not feasible, and your letter cites several examples of structures whose owners will not sell their properties and who are unable or unwilling to rehabilitate the buildings themselves. While these examples do not convince us of the need for extending section 191 to lessees from taxable lessors, we would not object to permitting otherwise qualified lessees from taxable lessors to utilize section 191 if, in turn, you assure us of your willingness to assist in securing remedial legislation should any unanticipated abuses develop.

The final proposed amendment for which you urge our support would permit lessees of certified historic structures located in approved state and local historic districts to elect the benefits of section 191. The proposed amendment would conform treatment of lessees of structures in approved state and local historic districts to that of lessees of structures listed in the National Register. Since, under the amendments to the designation procedures that would be effected by the Act, the Department of the Interior would be required to approve the state or local enabling legislation, the criteria for the district, and the rehabilitation of structures in these districts, we would have no objection to this change.

Should you have other questions or comments concerning the matters discussed in this letter, please do not hesitate to contact this office.

Sincerely,

DONALD C. LUBICK,
Assistant Secretary, (Tax Policy). ●

TAX REFORM ISSUES IN THE REVENUE ACT OF 1978

● Mr. KENNEDY. Mr. President, I have had prepared, for the use of Senators in the debate on the Revenue Act of 1978, a set of papers discussing selected tax reform issues. I submit these papers for the RECORD so that they may be considered by those outside the Senate who are interested in tax reform.

The material follows.

TAX REFORM ISSUES

DELETE FINANCE COMMITTEE REDUCTION OF TAX ON CAPITAL GAINS

Present law

A deduction is allowed equal to 50% of an individual's realized long term gains. In effect, therefore, the basic tax rates on capital gains range from 7% to 35%, one-half the rates on ordinary income such as wages, interest on savings accounts, etc.

A special alternative 25% maximum rate is provided for the first $50,000 of an individual's gains each year.

For corporations, an alternative 30% rate on capital gains is provided (as compared to the normal 48% corporate tax rate).

House bill

Retains 50% exclusion for capital gains in present law.

Repeals the 25% alternative tax in present law.

Retains the 30% alternative tax for capital gains of corporations in present law. (The major tax relief for capital gains in the House bill was provided by eliminating capital gains from the list of tax preferences subject to the minimum tax. This minimum tax aspect of the capital gains issue is discussed in the separate analysis of the minimum tax.)

Senate finance committee action

Increases the present 50% exclusion for capital gains to 70%. As a result, the basic rates on capital gains will range from 4.2% to 21%.

Reduces the corporate alternative capital gains rate from 30% to 28%.

Proposed amendment

Delete the SFC provision that provides for an exclusion from income of 70% of the gain on long-term capital gains.

Delete the reduction of the corporate capital gain rate from 30% to 28%.

Reasons for rejecting SFC capital gains changes

1. The Finance Committee action would drastically undermine the fairness of the federal income tax system and reverse the efforts of several Congresses to provide tax equity between capital gain income and ordinary income such as wages and interest from savings:

Under the SFC bill, the $250,000 a year corporate executive will pay a top marginal rate of only 21 percent on his capital gains; a factory worker with $12,000 of taxable income is in the 22-percent bracket.

1.4 percent of the taxpayers in the country have incomes in excess of $50,000, per year. But these individuals receive 69 percent of the SFC capital gain tax reduction, a total tax cut of over $2.3 billion.

The SFC action provides a $1.1 billion tax cut to individuals with $200,000 and over; this group consists only of about 50,000 taxpayers in the country, the richest 6/100 of 1 percent of the people in the United States. The average tax reduction for each of these highest income individuals is over $20,000. The SFC capital gains provisions give a tax reduction to the over $200,000 group that is larger than the annual income earned by 83.6 percent of all Americans.

By contrast, there are over 16 million taxpayers in the $10–15,000 income class; this group received total tax reductions under the SFC bill of $941 million—$70 million less for the entire group of 16 million than the bill gives to the group of 50,000 in the richest category through the capital gains cut.

The average tax reduction for those in the $10–15,000 income class is 56 cents per return.

2. By widening the gap between the top rates on capital gains and ordinary income—21% versus 50% or 70%—high income individuals such as doctors, lawyers, corporate executives, investment bankers and entertainers will once again instruct their high-priced tax lawyers and accountants to develop artificial and intricate schemes to convert every income transaction into a "capital gain" deal. This wasteful expenditure of time, effort and brain power was significantly curtailed by the 1969 and 1976 Acts.

3. Reductions in capital rates are an inefficient and ineffective method of stimulating capital investment. Only 29% of capital assets consist of corporate stock. Yet the needed capital stimulus is in corporate investment. As Federal Reserve Board Chairman Miller has demonstrated, only 15% of the capital gain cut will ever find its way into increased funds for corporations. An improved investment credit and corporate rate reductions would represent a far more efficient stimulus for increased capital investment.

4. The $3–4 billion cuts in capital gains taxes would help our economy far more if placed in the hands of average workers who can use the funds to meet rising housing and education costs, or increase savings for future needs.

The capital gains tax cut will provide a large windfall to investors in tax shelters that specialize in converting ordinary income into capital gains—notably real estate. Using such tax shelters, high income investors take large deductions from their ordinary income, then sell the property for large profits taxed at the favorable capital gains rates (21% maximum rate under the committee bill).

Questions on capital gains tax cuts

1. Q: Won't the cut in capital gains rates encourage realization of built-in gains and thus free locked-in capital

A: At best, there might be a short term increase in realizations. But once the investors for whom a 10–15 percentage point rate differential is the crucial factor between selling and holding have in fact sold, the rate of realized capital gains will return to historic levels. In short, the rate cuts may produce a surge in fees for stock brokers for the next few months, but there can be no realistic basis for believing that a permanent increased level of buying and selling activity will be produced.

Moreover, the SFC bill actually makes worse one aspect of the "lock-in" effect. It proposes to return to the old law allowing a step-up in basis for assets transferred at death. A person faced with a choice of selling an asset and having 30% of the gain taxed or holding it until death so that none of the gain is taxed will obviously hold and not sell.

2. Q: Won't the capital gains tax cuts encourage entrepreneurial activity and therefore aid small business?

A: Out of the $3.3 billion in capital gains cuts provided by the SFC bill, only a small amount will go to small business and high risk enterprises. Most of the tax benefits will go to stocks in large publicly held companies, buildings, real estate, and residences. Therefore, if the objective is to provide assistance to enterpreneurs and small business, the capital gains cuts are an extraordinarily wasteful way to achieve the objective.

A federal tax or direct program targeted directly to entrepreneurs and small business may well be desirable. As one example, the pending 1978 amendments to the Small Business Administration Act provide for funds to be directly targeted to provide venture capital for small business. But the Senate cannot responsibly waste billions of dollars in other areas to get a relatively small amount of funds to these deserving groups.

3. Q. Won't a cut in the capital gains rate provide a needed boost to the stock market?

A. No. There is no demonstrable correlation between capital gains rates and stock prices. After the 1969 tax *increase* on capital gains, the stock market *rose* by over 40%. The reduction in stock prices that occurred subsequently was obviously related to the huge oil price increases, the recession and other adverse economic developments totally unrelated to the capital gains tax rate. Indeed, the latest stock market recovery has come after the 1976 Act changes that again increased the tax rate on capital gains.

More likely, the rush of sales by investors now waiting for the lower rates to take effect will *depress* the stock market.

4. Q. Isn't a lower capital gains tax rate justified because a portion of a taxpayer's gain represents inflation gain, rather than an increase in real value?

A. In the first place, even if it were desirable to protect only gains from capital assets from the effect of inflation, an increase in the exclusion factor is an irrational and arbitrary way to achieve the objective. Inflation has different effects on every element in the economy. The possibility that an exclusion of 70% of the gain will offset inflation for any given asset is extremely unlikely.

Moreover, many kinds of assets are affected by inflation—individuals with savings accounts, holders of U.S. savings bonds, any holders of corporate bonds all suffer losses due to inflation. But they do not get preferential tax treatment to offset inflation. There is no reason why holders of capital assets—primarily the highest income persons, who are least adversely affected by inflation—should be given first priority in being protected from inflation-induced tax consequences.

5. Q. Isn't it true that many other countries do not even tax capital gains?

A. No. All industrialized countries tax some of the gains that we call "capital gains"—in some cases even more heavily than the U.S. taxes them. For example, countries like Germany and The Netherlands are frequently said to have no capital gains tax. But in those countries, a person who owns more than 30% of the stock of a corporation is taxed at ordinary income rates on gains realized from the sale of the stock. It is true that these countries have no "capital gains" taxes as such. But for many persons in these countries, the current U.S. capital gain tax rate would constitute tax relief. This simply illustrates that it is very dangerous to use other countries' tax systems as models for particular U.S. tax policy issues.

6. Q. Won't reduction of the capital gains rates provide funds for needed research and development to spur productivity?

A. If the members of Congress assembled to throw $3 billion off the Capitol steps, some of it undoubtedly would go into more research and development. A $3 billion cut in capital gains taxes has about the same relationship to expanding R. & D. activities.

We should remember that we already provide a powerful tax incentive for R & D by allowing an immediate deduction for all R & D costs. If even more federal aid is justified, it should be provided in a form directly targeted to R & D. Reducing the rate of tax on the sale of land by an individual surely must be one of the most bizarre incentives every conceived to promote R & D.

7. Q. The Kennedy Administration in 1963 proposed an increase in the exclusion factor for capital gain from 50% to 70%. Why isn't this a good idea now?

A. The proposal was one part of a package of major recommendations concerning capital gains. In addition, the 1963 proposals included:

Full taxation of gains on property transferred by gift or at death.

Recapture of depletion on the sale of oil and gas properties.

Recapture of all depreciation on buildings sold at a gain (not just the excess of accelerated over straight-line depreciation as under present law).

Taxation of timber income as ordinary income.

Taxation of all coal sales as ordinary income.

Treatment as ordinary income of gain on long-term deferred sales.

If the SFC bill included all these measures, it might be seriously considered as a responsible piece of legislation. But in their absence, the 1963 Kennedy proposal provides no support whatever for the SFC bill.

It should also be remembered that when Congress decided in 1963–64 *not* to adopt the above proposals, it also decided that it would *not* cut the tax rate on capital gains. That is a persuasive precedent for the Congress to follow now, by rejecting the SFC capital gains proposal.

8. Q. Won't the capital gain tax cut actually increase revenues, through the so-called "feedback" effect?

A. No. The Treasury, even after allowing for an overly generous "feedback" effect, estimates that the SFC proposal will cost the average taxpayer $3 billion in fiscal 1979.

A September 1978 Staff Paper by the senior economist of the Council of Economic Advisers is sharply critical of the economic study relied upon by feedback proponents. As the CEA Staff Paper states:

"The [Feldstein] study contains several theoretical and econometric flaws, the results of the study have been misinterpreted, and a replication of their approach . . . yields exactly the opposite results: it implies that a capital gains tax cut would actually decrease realizations."

The Staff Paper goes on to state that all results in this area are dubious, and more research is needed.

Moreover, the econometric models embraced by proponents of capital gains tax cuts to support their feedback argument have been thoroughly debunked by other responsible economists in the private sector. The estimates rest on unrealistic assumptions that provide no proper basis for sound tax policy decisions. For Congress to accept

the "feedback" argument on the basis of current economic knowledge would be irresponsible.

In essence, the "feedback" argument is just the old "trickle down" theory dressed up in computer print-outs. The increased revenues—if there are any—will not come from the sellers of capital assets. The increased taxes are supposed to come from people who have been put to work by the invested tax savings. In effect, the SFC bill is saying: "Take the rich off the tax rolls and trust them to use the funds to create jobs and investment, so that other people can pay the taxes needed for government." This argument has been wisely rejected by Congress in the past, and should be rejected now. It is no easier to find a "free lunch" in the tax laws than in any other area of life.

STRENGTHEN THE MINIMUM TAX

Present law

For individuals, a 15% minimum tax is applied to tax preference income, to the extent it exceeds the greater of (1) one-half the individual's regular tax liability or (2) $10,000.

There are ten tax preference items, including such items as: 50% of long-term capital gains that are excluded from income; accelerated depreciation on real and personal property in excess of straight line depreciation; five-year rapid amortization allowed for various facilities in excess of normal depreciation; percentage depletion in excess of cost depletion; qualified stock options; certain intangible drilling and development costs; and itemized deductions in excess of 60% of adjusted gross income.

In addition, these same tax preferences affect the maximum tax, by reducing dollar-for-dollar the amount of earned income that otherwise would qualify for the 50% maximum tax rate.

The minimum tax is an "add on" tax; it must be paid in addition to the regular tax.

House bill

The House bill eliminates the excluded one-half of capital gains from the *minimum* tax.

The House bill also eliminates the excluded one-half of capital gains from the *maximum* tax. Thus, an individual's earned income qualifying for the maximum 50 percent rate would not be reduced by his untaxed portion of capital gains.

These changes in the House bill were intended to provide substantial tax relief for capital gains.

Senate Finance Committee bill

The SFC bill chose a different approach to providing tax relief for capital gains. In addition, it completely restructures the minimum tax to make it an "alternative" tax rather than an "add on" tax. Under the SFC approach, the taxpayer would add his tax preference items to his regular taxable income, and then apply a set of rates ranging from 10 percent to 25 percent (above a $20,000 exemption). If the minimum tax computed in this way exceeds the tax as regularly computed, the taxpayer would pay the higher minimum tax.

In general, the tax preferences are similar to those under present law. However, gain from the sale of a principal residence would not be a tax preference.

Impact on capital gains

The major debate over the present minimum and maximum tax rules has centered on their impact on capital gains. The following table shows the top marginal tax rate on capital gains that can be achieved under present law, the House bill and the SFC bill:

[In percent]

	Present law	House bill	SFC bill
Basic rate	35.0	35.0	21
Minimum tax	4.875	0	21
Maximum tax	9.25	0	0
Highest possible rate	49.125	35.0	25

Proposed amendment

Revise the SFC alternative tax rate structure to increase the top minimum tax rate from 25% to 35%.

Reasons for proposed amendment

1. The 35% top minimum tax rate will insure that individuals with large amounts of preference income will pay at least some significant amount of federal income taxes. In effect, the amendment insures that a person cannot shelter more than one-half of his total income without incurring some minimum tax obligation. Under the SFC bill, an individual can have ⅔ of his total economic income in tax preferences and still pay not a penny of minimum tax.

2. The SFC bill proposes to cut the top marginal rate on capital gains in half—from the present near-50% to 25%. There is no justification for taking the top rate down below the 35% proposed in the House bill.

3. A weak minimum tax is also unjustified in light of the separate relief provided by the SFC bill for capital gains, by means of the increase from 50% to 70% in the amount of such gains that may be excluded from income.

REPEAL OF TAX DEFERRAL FOR U.S. CONTROLLED FOREIGN SUBSIDIARIES

Present law

U.S. multinational corporations are generally not taxed on a current basis on the earnings of their foreign subsidiaries, since U.S. tax is imposed only when dividends are in fact paid by the subsidiary to the U.S. parent.

The only exceptions to this rule are for subsidiaries located in "tax haven" countries, whose earnings are taxed to the U.S. parent on a current basis.

The current revenue loss from deferral is estimated at $665 million for FY 1979.

Proposed amendment

Earnings of controlled foreign subsidiaries will eventually be taxed to the U.S. parent on a current basis. Deferral will be phased out over five years; 50% of earnings will be taxed in 1979; 60% in 1980; and so on until 100% of foreign earnings will be subject to U.S. tax in 1984.

A foreign tax credit will continue to be allowed for foreign taxes paid on foreign earnings.

The U.S. parent will be entitled to consolidate profits and losses of all foreign subsidiaries, and pay tax only on the net earnings.

The result will be to make the U.S. international tax laws more neutral with respect to foreign investment, neither encouraging it (by deferral), nor discouraging it (by restricting the foreign tax credit).

The problem

Deferral creates a "runaway plant, runaway jobs" loophole. It operates as an incentive for U.S. firms to build plants overseas and hire foreign workers, draining capital from the U.S. and costing U.S. jobs.

So long as earnings of foreign subsidiaries are retained abroad, the U.S. tax is deferred. In many cases, the deferral is for such long periods of time that it is tantamount to a total exemption from U.S. tax.

Deferral is a strong incentive for U.S. companies to locate plants abroad, and to invest and re-invest capital there. Deferral makes it more profitable for U.S. corporations to invest abroad than in the U.S. To benefit from the tax advantage, a corporation cannot invest at home. It must invest abroad. As a result, deferral causes a loss of U.S. jobs, U.S. capital and U.S. tax revenues.

These problems are caused by the low tax rates sometimes offered by foreign nations to attract investment. Often, corporations get a double tax break—a tax subsidy from the U.S. to export capital, and a tax subsidy from a foreign nation for investing the capital there.

Ford received a five-year tax holiday to locate a Philco car-radio plant in Taiwan costing 1,600 jobs in Philadelphia.

Motorola received a three year tax holiday for an investment in Korea.

RCA abandoned a two-year-old color TV plant in Memphis and moved to Taiwan.

Often, deferral subsidizes U.S. foreign operations in competition with U.S. facilities. Thus, U.S. auto manufacturers now import more cars into the United States from their foreign affiliates than they export from the United States.

Although foreign investment induces growth in some domestic U.S. industries, an independent study commissioned by the State, Labor and Treasury Departments in 1975 found that the net employment effect was a loss of at least 150,000 jobs a year in the United States. The study also found that between 1966 and 1973, the United States could have had one million more jobs if U.S. multinationals had attempted to serve foreign markets from U.S. production sites instead of foreign subsidiaries.

The same study estimated the following job losses in U.S. manufacturing in 1972 because of foreign investment.

[In billions]

Industry	Direct foreign investment	U.S. jobs lost
Food Products	0.26	6,800
Paper & Allied Products	0.32	7,200
Chemicals & Allied Products	0.88	14,900
Rubber & Plastic	0.12	5,000
Metals	0.33	8,800
Non-Electrical Machinery	1.24	46,900
Electrical Machinery	0.36	17,600
Transportation	0.78	2,700
Other Manufacturing	0.36	4,400
Total	4.68	114,600

A Business International survey of 111 U.S. multinational corporations shows that for the period of 1970–73, the firms expanded their U.S. employment by only 90,000 jobs (3.3 percent), while expanding foreign jobs by 360,000 (31.5 percent).

Frequently, the shift to investment abroad by U.S. firms has involved highly labor-intensive production, such as electronic products, electrical appliances, textiles, and footwear. In such industries, U.S. workers displaced by investment abroad cannot readily be absorbed elsewhere in the U.S. economy. Often, low cost foreign labor in "offshore" or "runaway" plants is used in assembly operations for products which are then shipped back to the U.S. market, thereby displacing competitive U.S. goods and jobs.

Continued export of investment raises serious long-run problems for U.S. capital formation, threatening a decline in the nation's productive capacity and productivity, and contributing to a decline of U.S. domestic investment opportunities.

Reasons for phase-out of deferral

Jobs: With a 6 percent U.S. unemployment rate, a U.S. tax incentive to build plants and create jobs overseas makes no sense.

Capital: Deferral causes a U.S. capital outflow, since the only way a company can get the benefit of deferral is by investing overseas. At a time when the U.S. needs additional capital at home, deferral is counterproductive, since it encourages new investment abroad and retention of earnings abroad, in spite of the obvious need for capital funds at home.

Tax Equity: Deferral is inequitable in three ways: it discriminates among U.S. corporations, since earnings of U.S. subsidiaries are taxed currently. It discriminates among U.S. multinational corporations, since a firm that operates abroad through a branch (rather than a subsidiary) is taxed currently on the earnings of the branch. Also, U.S. multinationals are among the wealthiest and strongest U.S. taxpayers, and are not entitled on grounds of hardship or necessity to pay lower taxes than other U.S. taxpayers

Efficiency: Deferral is a waste of $665 million in revenues. U.S. companies locate subsidiaries overseas because of competitive conditions, access to markets or sources of supply. and they will continue to do so to keep their markets. Repeal of deferral eliminates the tax windfall element from such decisions. If it makes business sense to create a foreign subsidiary, then a company will do so; but the tax system should be neutral in that decision.

Smokescreen: To a large extent, the multinational lobbying campaign against repeal of deferral is a smokescreen to prevent any change in the foreign tax credit rules. The amendment assures proper and full availability for the foreign tax credit.

Questions and answers on deferral

Q. Don't other countries grant deferral for foreign operations?

A. No. The argument is factually incorrect; several industrialized countries tax the profits of all foreign operations that are managed or controlled from the home country. Countries such as Germany, Japan, and Canada have adopted rules similar to the U.S. to begin to end their versions of tax deferral. Regardless of what other countries do, the U.S. should adopt tax rules that are fair and consistent with its own economic objectives.

Q. It is argued that ending deferral will actually cost U.S. jobs; is this so?

A. No number of economists have examined the issue and found that deferral is costing a net losss of U.S. jobs—elimination of deferral will increase U.S. jobs, which is why the AFL–CIO favors complete repeal.

Q. Won't repeal of deferral invite retaliation by foreign governments, who will raise their tax rates and thereby deprive the U.S. of the tax revenues (because of the foreign tax credit)?

A. No. In order to do this, a foreign country would have to raise rates on all corporations operating within its borders. It is highly unlikely that a country would be willing to raise taxes on all corporations, just because the U.S. has ended tax deferral. Tax treaties generally prevent foreign countries from raising tax rates only on U.S. corporations. Such action would constitute the kind of discriminatory treatment that is forbidden by the treaties. Countries with which the U.S. does not have treaties are generally developing countries and it is highly unlikely that they would raise taxes and thereby discourage U.S. investment given their policies to encourage U.S. investment.

Q. Won't ending deferral impair the ability of U.S. corporations to compete with multinationals based in other countries?

A. No. Factors such as U.S. technological, managerial, and research superiority are much more critical to competitiveness than tax deferral. If deferral does help U.S. multinationals to compete—and the data here are less than convincing—the net cost in loss of U.S. jobs, capital and tax equity far outweighs the marginal benefit of the tax advantage. Moreover, the reduction in the corporate tax rate from 48% to 46% more than offsets the tax increase from repeal of deferral and the corporate rate reduction is a much more effective device to give U.S. corporations an increased after tax return on their activities abroad.

Q. Don't other industrial nations give similar advantages to their multinational corporations?

A. No. In many cases, other nations impose strict controls on foreign capital investment. Japan, France, Sweden, West Germany, and the United Kingdom all have procedures to regulate the flow of capital overseas.

Q. How are U.S. jobs lost from foreign investment?

A. Jobs are lost by U.S. workers who lose their jobs when U.S. plants go overseas; by U.S. workers who would have been hired if plants had been built at home; by U.S. construction workers who would have built the plants now going overseas; by U.S. workers in supply industries for domestic producers; by workers in service industries serving American workers.

Q. How are U.S. jobs gained by foreign investment?

A. Jobs are gained by domestic suppliers servicing overseas plants, by extra white collar employment in multinational home offices, and by increased U.S. exports in response to increased foreign demand. But these factors offset to only a small extent the principal job losses caused by deferral and overseas investment.

Q. Hasn't a recent Arthur Andersen study concluded that ending deferral would actually decrease U.S. tax revenues while increasing U.S. companies' overall tax costs?

A. The Arthur Andersen study reached this unlikely conclusion by a series of improbable assumptions and technical errors. Briefly, the reasons why the study is unpersuasive include:

The study's assumptions about behavioral responses by U.S. corporations to terminating deferral are incomplete in some instances and counter to common sense in others. First, the study considered behavioral responses that would decrease U.S. revenues, but failed to take into account likely behavioral responses that would increase revenues. A key omission is the fact that ending deferral would encourage U.S. multinationals to locate more plants in the U.S., an action that would increase U.S. tax revenues. Moreover, ending deferral would reduce the present incentive for corporations to make artificial allocations shifting their income to low tax countries and their deductions to the U.S. Second, the study assumes that in response to ending deferral, U.S. controller subsidiaries will take steps deliberately to increase their total U.S. and foreign tax costs above what they would be if these companies did nothing in response to deferral. This is such an absurd assumption that it taints the entire study.

The Arthur Andersen conclusion is based on serious statistical errors. It assumed that its relatively small sample was representative of all multinational companies. In fact, Treasury analyses indicate the sample was not representative and therefore the study's conclusions cannot be relief upon. Moreover, the study apparently failed to take into account the 1976 changes in the tax treatment of foreign income that would significantly affect revenue estimates.

Recent action

In action on the Tax Reduction Act on the Senate floor in March, 1975, the Senate voted 73–24 to repeal deferral immediately for all firms, and voted 75–20 to convert the foreign tax credit to a deduction for oil companies.

In action on the Tax Reform Act of 1976, the Senate defeated by only one vote (in the crucial vote on the issue) an amendment to terminate deferral over a five-year period. The amendment was strongly opposed by the Ford Treasury.

In 1978, President Carter recommended repeal of deferral.

REPEAL OF TAX SUBSIDY FOR DOMESTIC INTERNATIONAL SALES CORPORATIONS (DISC)

Present law

A parent corporation is permitted to form a "paper" DISC subsidiary to obtain tax benefits for export sales.

Federal income tax is deferred on one-half of DISC income in excess of its base level export income. The base level is 67% of the DISC's average export income over a 4-year period.

The effect of DISC for those corporations that are unaffected by the incentive rule is to reduce the corporate tax rate on export income from 48% to 36% (or even 24% in some cases).

The estimated revenue loss from DISC is over $1.3 billion in FY 1979 and over $1.5 billion in FY 1980.

Proposed amendment

Repeal DISC over a 3-year period.

Principal arguments against DISC

DISC was designed to promote U.S. exports in a world of fixed exchange rates; that world no longer exists. DISC now involves a significant waste of money ($1.3 billion in FY 1979).

According to the most recent Treasury study, DISC is cost inefficient, generating only between $1-3 billion in additional exports for a $1.3 billion revenue cost.

U.S. export growth since 1971 has been generated by the two devaluations of the dollar (December 1971 and February 1973), the shift to the international system of floating exchange rates in March 1973, inflation of export prices and the increase in the real volume of world trade, not DISC.

Since the export industry is capital intensive, DISC is an inefficient and perhaps counter-productive subsidy if jobs are the goal. Dollars for DISC are one of the least efficient job-creating incentives, ranking well behind almost all other incentives. For example, Labor Department data show that, per dollar of expenditure, 50% more jobs are created by a general tax cut, compared to spending on exports. According to a 1975 study of the House Budget Committee, a $1.4 billion DISC tax expenditure might create at most, 16,000 jobs. As a direct Federal expenditure, the same $1.4 billion would create 112,000 jobs in defense, 120,000 jobs in health, 150,000 jobs in education, and 240,000 public service jobs. The 1977 Treasury DISC study concluded that DISC may actually produce a decline in U.S. jobs.

Under floating exchange rates, DISC may actually cause a net U.S. job loss. Increased exports strengthen the dollar, leading to increased imports. Since U.S. imports are historically labor-intensive (shoes, textiles, automobiles, etc.), a net job loss may result. Thus, increases in exports are not the same as increases in net exports or improvements in the overall U.S. trade balance.

DISC is a windfall for large multinational U.S. exporters who would be exporting anyway; 22.5% of DISC benefits went to only 10 corporations; 66% went to 316 corporations with assets over $250 million. U.S. corporations don't even use DISC benefits to make export sales more competitive; in a recent study, 76% of corporations surveyed reported that DISC had no effect on their export prices.

Export profits are extremely high. The Treasury Report shows DISC companies earned about 15% on export sales, over dou-

ble the 6.5% profit margin on domestic sales. A tax subsidy like DISC is hardly needed when export sales are already so profitable.

DISCs are just paper corporations that exist only in file drawers and on accountants' balance sheets. They have no real economic substance.

DISC is a subsidy for foreign consumers. Because of DISC, goods produced for American consumption are taxed more heavily than goods produced for foreign consumption. Some large U.S. corporations use DISC simply to offer more favorable long-term payment conditions for foreign purchasers.

DISC was enacted in 1971 as an antidote to deferral. Yet the deferral subsidy costs $665 million, whereas DISC costs $1.3 billion.

In July 1975, President Lee Morgan of Caterpillar Tractor testified before the House Ways and Means Committee that, although Caterpillar had received $9 million in DISC tax benefits,

"I am not really sure that we did anything extra in order to generate additional exports. Not much has happened, at least at our company, in order to earn the tax deferral that has come from DISC."

A recent study, based on a survey of 142 large corporations, found that of 110 DISC-electing firms, 35% said that DISC had *no* impact on export sales, 1% said it decreased sales and 64% said it increased export sales.

DISC has been one of the most notorious tax overruns in the history of the Internal Revenue Code. When originally enacted in 1971, the estimated Treasury cost was $100 million for 1972 and $170 million for 1973. Actual costs were $350 million and $620 million, respectively, or four times the original estimate, and the cost has continued to climb.

DISC is a violation of our international trade commitments; a GATT panel held it to be a prohibited export subsidy under GATT.

More than one hundred bipartisan independent economists and tax experts in 1976 called for repeal of DISC as a wasteful and inefficient tax subsidy that distorts the free market system.

President Carter urged repeal of DISC as part of his 1978 Tax Program.

DENIAL OF TAX DEDUCTIONS FOR FIRST CLASS AIR TRAVEL

Purpose

Disallow as a deductible business expense the excess of commercial first class air travel fare over coach fare; coach fare would remain deductible.

Prohibit the use of appropriated funds for first class air travel by Members of Congress and Federal officers and employees.

Revenue effect

Based on Treasury estimates, the amendment will produce a revenue gain of $281 million in calendar 1979 and $311 million in calendar 1980.

Explanation

1. The Internal Revenue Code allows a tax deduction for "ordinary and necessary" business expenses. Over the years, the deduction has been abused in some cases as a subsidy for "expense account living." Travel and entertainment expenses have been a particular and continuing source of controversy, confusion, and injustice in this aspect of the tax law.

2. The amendment deals with only a small part of the issue—first class versus coach class commercial air travel. It does not affect travel by rail, ship or private aircraft and it does not affect meals, hotels, entertainment, etc., all of which raise separate issues.

3. With a corporate tax rate of 48% (or 46% under the pending bill) each dollar of deductible expenses saves the corporation 48 cents (or 46 cents) in tax. In the case of first class travel, the Treasury (and therefore the average taxpayer) pays half the cost of the first class ticket. For high bracket individuals, the saving is even greater—the Treasury may pay up to 70 cents of each dollar of expenses.

4. It is a legitimate business decision to travel by air instead of by car or train or bus or ship. But once the decision is made to travel by air, the business objective is achieved by traveling in coach class. The executive travels on the same flight, and arrives at the same time and in the same place. This is all that is required to implement the valid business decision, and it is all that should be allowed as a deductible business expense. The additional cost of first class travel is primarily a luxury item and should not be deductible.

5. There are many precedents for the legislation. The Internal Revenue Code and Regulations contain detailed rules limiting deductions for foreign travel and for luxury items like yachts, hunting lodges, gifts and entertainment. These areas of existing law denying business deductions are far more complex than the present proposal. In addition, in the Tax Reform Act of 1976, Congress enacted specific limits on the deduction for foreign conventions.

6. Since the bill is likely to increase the demand for coach class seats, the airline industry will meet the demand and the traveling public will benefit. A first class seat now takes up the space of one and one-half coach seats. As airlines modify their cabin space, the total number of available seats per plane will increase, thereby relieving the crowded conditions and waiting lists that coach passengers now endure during peak travel periods, and producing a more rational allocation of space throughout the entire airplane.

7. The bill may accelerate the trend to lower air fares. We have had dramatic evidence in the last few months that low cost air transportation will be eagerly availed of by travelers. Airline revenues may actually increase. To the extent the bill facilitates this development, citizens will benefit as both taxpayers and travelers.

8. Thus, the legislation is justified on grounds of both tax equity and airline efficiency. The large annual Treasury subsidy for first class air travel should be ended.

Prior action in this Congress

A similar amendment sponsored by Senators Kennedy and Thurmond was defeated by a vote of 45–43 on April 28, 1977, during the debate on H.R. 3477, the Tax Reduction and Simplification Act of 1977.

DENIAL OF DEDUCTION FOR ENTERTAINMENT

Purpose of amendment

Disallow as a deductible expense all costs of entertainment activities and facilities.

The Senate Finance Committee approved a provision denying a deduction for the cost of acquiring or maintaining entertainment facilities such as yachts, hunting lodges, etc., and for fees paid to athletic, sporting, country or social clubs.

Substantial areas of tax deductible entertainment are not covered by the Finance Committee bill, including tickets for athletic and theatrical events and entertainment of "business" friends at parties and other social events.

Full disallowance of deductions for entertainment costs will increase revenues by $114 million.

The problem

1. Entertainment costs are the purest form of personal consumption; the vast majority of Americans pay for their entertainment out of every tax dollar. But for a privileged few—high income individuals and executives of large corporations—as much as 70 percent of entertainment costs are subsidized by the U.S. Treasury.

2. One result is that the best seats at baseball, basketball, football and other sporting events are always occupied by the subsidized spectators. The average fan, paying for his own ticket, sits in the farthest reaches of the stadium or arena.

3. Present law is too vague, too subjective and too open to abuse.

Examples

A segment of a recent "60 Minutes" broadcast revealed corporate jets flying corporate executives and their friends into New Orleans for the Super Bowl. It also featured lavish parties thrown for their favored few—all at the expense of the average taxpayer.

Luxury "Superboxes" in football stadiums, baseball parks, and basketball arenas are occupied by the largest corporations. The annual cost of one of these plush facilities—used only by the executives and their "business" friends can be $15,000 a year or more—all subsidized by the U.S. Treasury.

A dental surgeon deducted $17,000 for costs of entertaining other dentists and their wives—all personal friends of the dentist—at his home, at athletic events, at a country club and at a vacation cottage. Obviously, it is important to be more than just a "friend" to a high income individual; it is crucial to be a "business" friend.

The controlling shareholder of a corporation deducted $26,000 for entertainment expenses at a cottage on a Caribbean island. (What is truly remarkable is that the individual drew a salary of only $19,000 from the corporation.)

Having "business friends" allows some individuals to "double their pleasure" in attending sporting events. Suppose a 50% bracket taxpayer wants a season ticket to his favorite team's home games. The ticket costs $100. If the individual has some "business friends" he can buy two season tickets for the same $100 out of pocket cost, since $100 of the total $200 cost is deductible. The average fan, who only has "friends," not "business friends" would have to pay the full $200 himself.

Effect of the amendment

1. No deduction will be allowed for the cost of entertainment. In addition to the items covered in the Finance Committee bill (entertainment facilities and club dues), deductions will also be disallowed for other entertainment costs, such as tickets to sporting events and theatrical performances, as well as other types of entertainment.

2. As a result, the entertainment costs of all taxpayers will be treated alike—there will no longer be a privileged small group whose entertainment is subsidized by other taxpayers, who must budget for their entertainment in after-tax dollars.

Questions about the amendment

1. Q. Aren't entertainment costs like other deductible business costs (such as advertising to promote good will)?

A. No. Paying entertainment costs provides a personal benefit to the recipient, unlike other business costs such as advertising. Where the entertainment consists heavily of personal consumption, it is inappropriate for the Treasury to be subsidizing the entertainment because of a presumed "business" relationship.

2. Q. Won't the amendment have an adverse effect on business practices?

A. If entertainment makes good economic sense, business will continue to entertain. The present deduction distorts business decisions in the other direction, by favoring the usage of entertainment as opposed to other business promotion methods.

3. Won't the amendment hurt professional athletic teams that rely on corporations to buy blocks of season tickets and luxury boxes?

A. No. If it is good business to buy the tickets, corporations will do so, but not with a federal tax subsidy. There is no chance that

Congress, in order to aid professional athletic teams, would appropriate federal dollars for corporations to defray part of the cost of season tickets to athletic events. Congress should not allow a similar subsidy through the back door of the tax laws.

4. Q. Wouldn't more vigorous enforcement of present law take care of the abuses in this area?

A. No. Present law is too vague and it is too easy to hide abuses in such innocuous categories as "business promotion," "advertising," etc. The present rule is an invitation to taxpayers to label all entertainment as "business" and hope that the item is not picked up in audit.

5. Q. Isn't entertainment for business persons the same as fertilizer for farmers? Doesn't it increase the yield?

A. No. Fertilizer has its own built-in disincentive that keeps it from becoming a popular item for personal, as opposed to business, consumption.

DENIAL OF DEDUCTION FOR "BUSINESS" MEALS

Purpose

Disallow as a deductible expense 50 percent of the cost of meals, other than the cost of meals incurred by a person on business travel status. Phase-in the amendment over a three-year period.

Prohibit the use of appropriated funds for the cost of meals by Members of Congress and Federal officers and employees.

Revenue effect

The current revenue loss from allowing deductions for meals is $1.2 billion. The revenue gain from the amendment would be $600 million when fully phased in.

The problem

1. Thousands of Americans are maintaining a luxury status of living by deducting the costs of meals on "business" expenses; in 1978 these taxpayers will eat $4 billion of meals subsidized by the rest of their fellow citizens.

2. Meal costs are personal expenses. Everyone has to eat. It is unfair that millions of American workers must pay for their meals out of their own pockets, while the privileged few have 40%, 50% and even 70% of the costs of their meals subsidized by the Treasury.

3. Present law is too subjective, the standards are too vague, and the problems of auditing are too great:

Examples

One taxpayer claimed deductible business lunches for 363 out of 365 days for the year (he didn't have a business lunch on Thanksgiving); lunches were always at top restaurants at an average cost of over $20 per meal. The tax subsidy for each meal for this taxpayer was more than most workers can afford to spend on their lunches.

A salesman arranged his calls so that he ate breakfast, lunch and dinner with a client five days a week; as a result, the vast majority of his food costs (and those of his clients) was subsidized by the U.S. Treasury.

A lawyer who has lunch with a partner at their private club can deduct the cost of the lunch; a construction worker who eats lunch with his fellow worker on the job site cannot deduct the cost of his lunch.

The owner of a business agency claimed that every meal he ate for 2 years (except for 1 day) was a business meal; the American taxpayers were stuck with a total of $63,000 in deductions as a result.

4. Present rules cause an enormous waste of time and money in terms of record keeping, audit and litigation.

5. The proper question that should be asked is whether Congress would vote a direct appropriation for a jobs program that consists of $1.2 billion in subsidies for the cost of meals for upper income individuals, in the hope that luxury restaurants will hire additional waiters and waitresses. The answer to this question is an obvious "No."

Effect of the amendment

1. No deductions will be allowed for half the cost of any meals (whether "business" related or not) except for business meals of a person who is on business travel status. The amendment will be phased in over a three-year period.

2. As a result, all Americans will be treated more alike—the amendment will reduce the abuse by which one small class of citizens eat Treasury-subsidized meals, while the vast majority eat non-subsidized meals.

3. A highly visible and irritating symbol of tax inequity will be removed from the Internal Revenue Code.

Questions about the amendment

1. Q: Aren't business meals a cost of doing business, just like advertising:

A: No. Unlike the vast majority of business costs, meals provide a large direct personal benefit to the individual. It is inappropriate for the Treasury to subsidize expenses heavily dominated by such personal consumption.

2. Q: Won't the limitation on the meals deduction upset established business practices?

A: No. If it is economically sound for a business to pay for employee or client meals, it will continue to do so. But that economic decision will not be artificially influenced by the presence of a government subsidy.

3. Q: Can't the desired results be obtained by better enforcement of our present laws?

A: No. Present rules are so vague and IRS audits so rare (less than 3% of individual returns) that the law is an open invitation to taxpayers to claim a deduction for every meal that has even a slight "business" connotation.

4. Q: Won't denial of the deductions for meals cause large-scale unemployment among restaurant workers?

A: No. The three-year phase-in will avoid any significant dislocation.

An impartial recent study by the Library of Congress refutes the claim that reducing the tax deduction will cause layoffs among restaurant workers. Using standard economic techniques, the study estimated that if the deduction is limited to 50 percent, expenditures for meals will decline by only about one percent. At the same time, the general economic stimulus from the tax cuts for individuals and corporations will produce an increase of a similar magnitude in restaurant meals. In other words, the tax cut will offset the impact of the tax reform, and the overall effect on jobs in the industry will be negligible.

In addition, employment figures for food service workers in recent years show an average rate of growth of 5% in jobs, with a low of 2.9% in the recession year of 1975 and a high of 7.7% in the recovery year of 1976. By contrast, total employment growth in the nation averaged only 1.2%, with an actual drop of 1.3% in 1975 and a gain of only 3.2% in 1976.

The study concluded that "the restaurant industry has experienced a much faster growth rate than the aggregate economy in the past few years, reflecting in part increased tastes for dining out."

If the tax proposals had been in effect in 1976, jobs in the restaurant industry would have grown at the 7.7% rate, or 280,000 jobs. However, jobs in the economy as a whole would have grown at a rate of 4%, or somewhat higher than before, because of the general tax stimulus. At most, therefore, the effect of the tax reform in the area of business meals would have narrowed by about 1% the gap in growth rates between the fast-growing restaurant industry and the slower-growing economy as a whole.

Recently, the Employment and Training Administration of the Department of Labor reported that waiters and waitresses continue to be the workers most in demand across the country. The report announced that there were 18,700 full-time jobs available for waiters and waitresses in the month of September.

5. Q: Why is the deduction reduced only to 50 percent, instead of being disallowed completely? Why is the limitation phased-in over a three-year period, instead of being made effective at once?

A: The Carter Administration proposed the 50 percent limitation as a reasonable and workable method of limiting the serious abuses of the current deduction.

At its annual meeting in Bal Harbour, Florida, in February 1978, the AFL–CIO Executive Council voted 32–1 to support the Carter Administration proposal, but with a proviso that the business meals reform should be phased in over a three year period "to prevent job loss and hardship to workers".

MAKE THE INVESTMENT CREDIT REFUNDABLE

Present law

A tax credit is allowed equal to 10% of the cost of new machinery and equipment.

The maximum amount of the investment credit that a taxpayer can use in a year cannot exceed the first $25,000 of tax liability plus 50% of tax liability in excess of $25,000 (excess credits can be carried back three years and forward seven).

House and Senate Finance Committee actions

The present 50% limit would be increased to 90% over a four-year period: 60% in 1979, 70% in 1980, 80% in 1981, and 90% in 1982 and subsequent years.

Proposed amendment

The limit on the investment credit would be increased to 100% of tax liability in 1983 and the credit would be fully refundable for 1984 and subsequent years.

Questions on the effect of a refundable investment credit

1. Q. What organizations does the refundable investment credit help that the SFC bill does not?

The refundable investment credit helps new firms, firms suffering business losses from adverse economic conditions, firms making large current capital investments compared to tax liability, and tax exempt organizations that purchase capital equipment.

New firms frequently do not incur any tax liability for the first several years they are in business since their large start-up costs often exceed their income. Nonetheless, these firms must make significant investments in machinery and equipment. It is no help to these firms to tell them that they will get an investment credit seven years later. They need financial assistance on a current basis to help pay for the costly machinery and equipment that they require in order to get started in their operations. The current investment credit does not provide that assistance. Increasing the limit to 90% does not help these businesses either. But a refundable credit can give new firms immediate cash to help offset costs of vital plant machinery and equipment.

Other firms may suffer losses due to recessions or slow down in the economy. These losses can result, not from mismanagement, but from poor economic conditions over which they had no control. However, for tax purposes, the losses eliminate their tax liability during the year machinery is purchased and in succeeding years. A 90% limit on the investment credit is of no help to these firms. A refundable investment credit will provide needed current assistance for these firms to make capital investments.

Tax exempt organizations such as colleges and universities and hospitals have substan-

tial needs for machinery and equipment. They need to replace obsolete items. At the present time, they receive no incentive or benefit from the investment tax credit to make the acquisitions. Office equipment and computers acquired by a tax exempt organization do just as much for the economy as when purchased by a taxable organization.

2. Q. Why should the investment credit be made refundable?

A. The investment credit is the major program by which the federal government provides financial assistance to industry. Because of its present limitations, however, the program is inequitable. Two firms can make identical investments, yet one of them may receive the investment credit currently and one may not.

Assume Corporation A, a profitable company, buys a $100,000 machine. It pays only $90,000 because of the investment credit. Corporation B, its competitor, buys the same machine, but B has a tax loss for the current year. It makes no sense to say that A's purchase should be currently subsidized but B's should not. Yet this is precisely the discrimination caused by present law—and it will remain so even if the limit is increased to 90%—which favors wealthy firms at the expense of less affluent and struggling firms.

It is safe to say that if the investment credit program were run as a direct subsidy program through the Commerce Department, no one would try to condition the subsidy for capital investment on the amount of a taxpayer's income tax liability to the Treasury. Instead, those taxpayers who made a $100 investment would receive a $10 Commerce Department check, regardless of their tax situation. The refundable amendment moves us in the direction of this more rational system.

3. Q. Doesn't a refundable investment credit subsidize poorly managed and inefficient companies?

A. Some economists think that a portion of a refundable credit might go to such firms. The refundability feature is not scheduled to take effect until 1984. Between now and then the Treasury can study the matter to see if there really is a problem in this regard and, if so, the scope of the problem. If refining legislation proves to be appropriate, Congress can adopt legislative techniques to insure that the refundable credit does not subsidize inefficient firms.

4. Q. Is there any precedent for a refundable tax credit?

A. Yes. There are a number of precedents:

In 1975, under Senator Long's leadership, Congress enacted the first refundable credit—the earned income credit for low income workers.

In 1976 and 1977, the Senate adopted refundable energy tax credits to encourage the goal of energy conservation.

In 1976, the Senate also voted to make the child care credit refundable, but the refundable feature was dropped in the conference with the House.

In 1974, the Treasury, under Secretary Simon, proposed that the then existing 7% investment tax credit be made refundable.

On April 7, 1977, Senator Long introduced S. 1270, a bill to make the investment credit refundable on a permanent basis.

6. Q. What is the revenue cost of the refundable feature?

A. At 1978 levels, a fully refundable credit would cost $3.6 billion.

EXTEND THE EARNED INCOME CREDIT TO MARRIED COUPLES AND SINGLE PERSONS WITHOUT DEPENDENTS

Present law

A worker with $4,000 of earned income or less is entitled to a tax credit equal to 10% of that income (the maximum tax credit is $400). If the tax credit exceeds tax liability, the excess is refunded.

The credit phases out between $4,000 and $8,000 of income.

Only individuals who maintain a household with one or more minor or disabled dependents are eligible for the credit.

House bill

The House bill maintained the present level of the earned income credit. (It also made a number of changes to make the credit more simple and more widely available to eligible workers.)

Senate Finance Committee bill

The SFC bill increases the earned income credit to 12% of the first $5,000 of earned income (for a maximum credit of $600).

The credit is phased out between $6,000 and $11,000 of income.

Simplifying and clarifying amendments were adopted, but no changes were made in the eligibility standards.

Proposed amendment

Retain the present 10 percent credit and the $400 maximum credit. Use the revenues saved to extend the present $400 credit to married couples and single workers who have no dependents. (Students would not be eligible for the credit.)

The revenue cost of the proposed amendment is about the same as the changes proposed by the Finance Committee.

Reasons for amendment

1. The earned income credit has proved to be an imaginative and valuable incentive to encourage low income persons to work to lift themselves out of poverty. However, millions of low income workers have been excluded from its benefits because of the requirement that the workers must have dependents to qualify.

2. Married couples without children and single persons who are working to get out of the poverty cycle also deserve encouragement and support. Before the amount of the credit is increased, these deserving workers should be made eligible for the existing credit. To prevent possible abuse, students would not be eligible for the credit.

3. The SFC increase in the credit takes its benefits well above established poverty levels. This may be a desirable step in the future. But before the credit is extended to those above the poverty level, we should first cover all workers whose incomes are still below poverty levels.

4. In 1976 the child care tax credit was extended to assist above-poverty level working parents. To a considerable extent, the SFC provision duplicates this coverage.

5. The revenue cost of the SFC provision is $1.7 billion for 1979. The cost of extending the amendment to persons without dependents who currently do not qualify for the credit is:

Married couples, $500 million.
Heads of households, $100 million.
Single persons, $1,100 million.*
Total, $1.7 billion.

EXTEND TAX SHELTER "AT RISK" RULE

Present law

1. In 1976, Congress adopted an "at risk" rule to deal with what were then the most flagrant types of tax shelter activities: farms, oil and gas, equipment leasing and motion pictures. In addition, the at-risk rule was applied to all limited partnerships (except partnerships engaged in real estate activities)—the legal form then most commonly used for tax shelter deals.

2. The "at-risk" rule provides that an investor is not entitled to deductions from a particular activity except to the extent he has actually invested his own funds in the project or is personally liable on any loans incurred to finance the project. If the activity is financed with non-recourse borrowing—so that the investor has no personal liability to repay the loan—the investor cannot claim deductions that result from use of those borrowed funds in the project.

The problem

Since the "at-risk" rule adopted in 1976 applies only to four specific activities and one form of legal entity, many tax shelter enterpreneurs easily evade it by shifting tax shelter deals into other areas and other forms.

In the hands of tax shelter experts, almost any activity can be converted to a tax shelter if it is not covered by the "at-risk" rules. Some of the more exotic examples of tax shelters that have appeared on the scene in the past two years include:

For example, suppose an individual invests $20,000 in an equipment tax shelter deal, and the manager of the shelter uses the $20,000 to borrow an additional $80,000 and finance a $100,000 share in a machine. If the loan is on a non-recourse basis, the investor is not personally liable for payment of the loan. Thus, he has $10,000 "at risk," and $90,000 not "at risk." Without an "at risk" rule, the investor can claim deductions (accelerated depreciation and interest) based on the full $100,000, not his actual investment of $20,000. The "at risk" rule would limit his deduction to his actual investment.

The Pierre Cardin Cadillac Tax Shelter: Pierre Cardin has designed custom interiors for Cadillacs. A tax shelter has now been constructed to market these luxury items. The entire U.S. has been divided into regions, and each investor purchases a "distributorship" for a region (all the work is actually done for each distributorship by a management company).

For his distributorship the investor pays a small amount in cash; for the balance, he gives his own non-recourse note, payable only out of proceeds from the sale of the interiors. The "fee" (including the face amount of the non-recourse note) is claimed as a deduction in the first year of the ten-year distributorship. The value of the tax deductions promised in the first year is designed to exceed the investor's out-of-pocket cash payment. The at risk rules do not apply because the activity is not one covered by present rules, and it is claimed that the nationwide network of investor-distributors is not a partnership.

The Gold Mine Tax Shelter: The tax shelter dealer takes a gold mine and breaks it up into separate plots, each one "purchased" by an individual investor. The purchase price is financed in large part by a non-recourse loan. The investor then claims deductions for the costs of mining the gold from his particular plot. Gold mining is not covered by the at risk rules, and it is asserted that the separate mine owners do not constitute a partnership.

The CATV Tax Shelter: The holder of a CATV license for a particular city divides it into sections. Each investor pays to acquire the rights for an individual section, using non-recourse financing for a large part of the purchase price. All the investors use the same manager for the system. The investors claim depreciation and other deductions are not affected by the at risk rules because they are not a partnership, and because cable TV is not covered by the at risk rules.

The Book Tax Shelter: An individual investor approaches an author who has written a book. In a typical deal, the investor offers to purchase the foreign distribution rights and movie and TV rights for (1) $20,000 cash; and (2) a $400,000 note payable only out of the profits realized from any use of the rights by the investor. The author has only $20,000 of income, but the investor

*The maximum credit for single persons will be reduced if the full $400 credit exceeds $1.1 billion, so that the cost of the amendment will not exceed $1.7 billion in revenues available.

claims that he is entitled to $420,000 of deductions for the "purchase" price of the rights. The present "at risk" rules do not apply because books are not one of the covered activities, and the investor is a single individual, not a partnership.

The Art Tax Shelter: An artist creates a wood or metal plate from which prints can be run. The plate is "sold" to an investor for $20,000 cash plus a $220,000 non-recourse note payable only out of a portion of the proceeds realized by the investor from the sale of prints. The investor claims an investment tax credit of $24,000 (10% of $240,000) and uses ADR and accelerated depreciation to claim additional tax deductions against his other income. Assuming a ten-year life, the claimed first year depreciation deduction is $60,000 (ADR reduces the life to eight years; accelerated depreciation allows a 200% deduction in the first year; 2 times $30,000 equals $60,000). Thus, for a 50% bracket taxpayer, the first year tax benefits total $54,000 ($24,000 from the investment credit plus $30,000 from depreciation (50% times $60,000 equals $30,000). The tax benefits are almost triple the amount actually paid to the artist. Again, the present "at risk" rules do not cover the transaction, since art works are not listed and the investor is not a partnership.

The House Bill

The House bill extended the "at risk" rules to all activities (except real estate) and to all taxpayers (except widely held corporations).

Senate Finance Committee action

The SFC deleted the "at risk" provision in the House bill.

Proposed amendment

Restore the House bill "at risk" provision.

Effect of amendment

1. It would put an end to the maneuvering that goes on under present law in efforts to avoid the "at risk" rules. Congress cannot legislate a separate rule to deal with every new type tax shelter that is created.

2. The new types of tax shelters are pure tax gimmicks and ought to be permanently eliminated. It is extremely wasteful to force the IRS to try to discover every new tax shelter that circulates in the large "underground" tax shelter world.

3. The amendment would provide uniform rules for all taxpayers and all activities (other than real estate). The present situation—where some taxpayers are under the "at risk" rules and others are not—is unfair and needlessly complex.

4. The rule would not apply to real estate, where non-recourse financing is less likely to create the abuses it does in other areas. Nor does it apply to widely held corporations (more than five shareholders), which are not likely to be vehicles for tax shelter operations.

REPEAL TAX DEDUCTION AND MODIFY TAX CREDIT FOR POLITICAL CONTRIBUTIONS

Present law

A tax credit for political contributions is given to all taxpayers, equal to 50% of contributions, up to a maximum credit of $25 for single persons and $50 for married couples filing a joint return.

Taxpayers who itemize their deductions may, as an alternative, take a deduction for political contributions up to a maximum $100 for single persons or $200 for joint returns.

House bill

Repeals the tax reduction but retains the existing credit.

Senate Finance Committee bill

Doubles the maximum amount of the tax credit to $50 for single persons and $100 for married couples.

Retains the existing alternative deduction for itemizers.

Proposed amendment

Repeal the deduction for political contributions.

All taxpayers would be eligible for a credit equal to 75% (rather than 50%) of political contributions up to the existing maximum limits of $25 for a single person and $50 for married couples filing joint returns.

Reasons for amendment

1. The present alternative itemized deduction is only available to the 20% of upper-income taxpayers who itemize their deductions. This means that the amount of the benefit increases as the individual's tax bracket increases—the higher the bracket, the bigger the tax break. For example, a 70% bracket married couple gets a $140 tax reduction for a $200 contribution, but a standard deduction married couple can only get a tax reduction of $50 for the same $200 contribution. This is manifestly unfair. A tax credit for everyone insures that all donors, regardless of their income tax brackets, are given equal incentives to make political contributions.

2. Repeal of the alternative deduction will also be a significant tax simplification measure. Under persent law and the SFC bill, taxpayers must make two computations, one under the credit and one under the deduction, to determine which provides the greater tax benefits. The double computation involves needless complexity as well as unjustifiable inequity.

3. The SFC proposes to increase the maximum credit to $50 for single persons and $100 for married persons. Such an action would only help higher income donors who can well afford to give larger amounts to political campaigns without federal support.

By contrast, increasing the percentage limitation from 50% to 75% of a donation provides a greater incentive to lower income persons who cannot afford large out-of-pocket donations.

As the following example shows, the proposed amendment will effectively encourage political participation by middle-income persons:

Example

Under present law a $15,000 per year married couple who makes a political contribution of $50 is entitled to a $25 tax credit (one-half the contribution). The net out-of-pocket cost is $25. The SFC bill does not change this result.

Under the proposed amendment this middle income family can make a contribution of $75, obtain a tax credit of $50 (75% of $75=$56.28, so the $50 limit applies), and still be out of pocket the same $25.

This middle income family's financial investment in the political process has been increased by one-third; under the SFC bill they have no incentive for increased participation at all.

4. On the other hand, the SFC bill will simply give a tax reduction to many high income donors who do not increase their political contributions at all.

Example

A $40,000 per year married couple gives $200 to a political campaign. They claim a deduction and under present law receive $90 tax benefit (45% of $200). Under the SFC bill, this couple will get a $100 tax credit for the same $200 contribution. Though the couple has not increased participation in the political process at all, they get an additional $10 tax reduction.

5. President Carter recommended repeal of the political contribution deduction as part of his 1978 tax program.

REQUIRE ACCRUAL ACCOUNTING FOR LARGE FARM CORPORATIONS

Present law

The Tax Reform Act of 1976 established the general rule that farm corporations must use the accrual method of accounting and must capitalize pre-productive period costs. This change brought farm tax accounting rules into conformity with those applicable to other types of businesses.

Important exceptions, however, have been provided for:

(1) Nurseries and farms engaged in the raising or harvesting of trees (other than fruit and nut trees);

(2) Corporations with annual gross income of $1 million or less;

(3) Subchapter S corporations;

(4) Certain farm corporations controlled by one, two or three families (the exception for certain two and three family-owned corporations is effective only until 1978 and is intended to benefit two large poultry farms).

Certain tax shelter "farming syndicates" are also subject to the accrual accounting requirements.

House bill

The exception provided for two and three family-owned corporations is made permanent.

Senate Finance Committee bill

Same as House bill for family corporations. An exception for sod farms is also added.

Proposed amendment

Require accrual accounting (and capitalization of pre-productive period costs) for (1) all farm corporations (and partnerships with a corporate partner) with annual gross income of $1 million or more; and (2) for all farm syndicates (as defined under present law) regardless of size.

The present exceptions will be continued for Subchapter S corporations and for nurseries and other farming corporations that raise or harvest trees (other than fruit and nut trees).

Reasons for proposed amendments

1. The cash method of accounting was originally introduced in the 1920's to relieve the small family farmer of the complexities of accrual accounting. But the large farm corporations of today are "big business" and can employ the necessary accounting expertise to use the accrual method for tax purposes. For these "agri-giants" the cash method of accounting is an unjustified subsidy.

2. Congress in the 1976 Act basically adopted the proposition that large farm operations—those with annual sales over $1 million—should be required to use the accrual method of accounting for tax purposes. However, the exceptions adopted by the Congress have allowed continued use of the cash method by farm corporations that are not small farm operations.

3. Under the proposed amendment, only the largest farm corporations will be required to shift to accrual accounting. Retention of the exception for farm corporations that have less than $1 million in gross income means that 94% of all farm corporations will continue to be able to use the cash method for tax purposes.

4. The present exception for family-owned corporations is not justifiable. The relevant fact is the size of the corporation, not the relationship among its shareholders. A family-owned corporation with gross sales in excess of $1 million is just as sophisticated and can employ accountants just as easily as a large corporation with unrelated shareholders. In short, family ownership has no relevance to the desire to provide simple accounting methods for small corporations.

5. The exclusion for family corporations creates unfair competition between farm corporations that are not family owned and farm corporations that are. There is no reason why Farm Corporation A with $10 million of gross income should get more favorable tax treatment than its competitor. From Corporation B, also with $10 million of income, just because A is owned by 1, 2, or 3 families and B is not. It is illogical to argue that a corporation with $65 million in annual sales

cannot cope with the alleged complexities of accrual accounting just because it is family-owned.

6. Accrual accounting should be required of all farm "syndicates," because these are the entities used for sophisticated tax shelter deals; most of them use the accrual method for financial reporting purposes.

7. The proposed amendment was recommended by President Carter in his 1978 Tax Program.

DELETE INCREASE IN ADR METHOD OF DEPRECIATION

Present law

Under the ADR (Asset Depreciation Range) system of depreciation, a taxpayer is given the option to reduce by 20% the useful life of qualifying property for depreciation purposes. Thus, for example, if a company acquires a machine with a useful life of ten years, the ADR system allows the company to reduce the life to eight years and then take depreciation deductions based on the shorter period.

The ADR system was introduced in 1971 to provide an investment stimulus in the form of accelerated depreciation, and to reduce disputes between taxpayers and the IRS concerning useful lives.

House bill

No Provision.

Senate Finance Committee bill

Changes the allowable range for ADR purposes from 20% to 30%. Thus, a company that acquires a machine with a ten-year useful life could reduce that life under ADR to seven years for depreciation purposes, instead of eight years under present law.

The revenue cost of the Finance Committee provision is $513 million for calendar year 1979 and rises to over $2.6 billion by 1982.

Proposed amendment

Delete the Finance Committee provision increasing the ADR range from 20% to 30%. (The present law ADR range of 20% would be retained).

Reasons for proposed amendment

1. Increasing the ADR range is a discriminatory method to provide business tax reductions. It provides the greatest relief for capital intensive companies and, within capital intensive companies, the greatest relief goes to those companies that buy assets with the longest useful lives. Labor intensive industries get little or no benefit from increased or more rapid depreciation methods such as ADR.

A general corporate rate reduction, as provided in the bill, is a far more neutral method of providing tax relief to the corporate sector. Rate reductions provide tax benefits to labor intensive as well as capital intensive businesses. Moreover, general rate cuts provide needed funds for working capital and for research and development expenditures, neither of which are assisted by increasing the ADR range.

2. Increasing the ADR range provides no benefits to newly formed businesses that typically experience large start-up losses. Increasing ADR simply adds to the net operating loss carryover of these firms and provides no immediate assistance. Similarly, increasing ADR is of no assistance to firms experiencing current net operating losses. The only method for aiding these types of businesses that are most in need of financial benefits is by the refundable investment credit.

3. Accelerated depreciation is a key element in equipment leasing tax shelters. Increasing the ADR range will provide an added stimulus to the formation of tax shelters in the equipment leasing area. This development would produce an undesirable waste of tax benefits needed for capital investment.

4. The ADR changes proposed by the Finance Committee involve unacceptable revenue losses. The revenue cost to the Treasury for the years 1979 through 1982 is almost $7 billion.

5. The increase in the ADR range is opposed by the Administration.●

ORDER FOR CONSIDERATION OF DANFORTH-JAVITS AMENDMENT TOMORROW

Mr. HANSEN. Mr. President, I ask unanimous consent that after the consideration of the Nelson amendment tomorrow morning, the Danforth-Javits amendment may be next considered.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Wyoming?

Without objection, it is so ordered.

SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow morning, after the two leaders are recognized, Senator PROXMIRE be recognized for not to exceed 5 minutes, and Mr. GOLDWATER for not to exceed 10 minutes.

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with statements therein limited to 3 minutes each.

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment and an amendment to the title:

H.R. 39. An act to designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes (together with minority and supplemental views) (Rept. No. 95-1300).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with amendments:

S. 1403. A bill to provide for conveyance of certain lands near Dixon, New Mexico, to the University of New Mexico (Rept. No. 95-1301).

By Mr. JACKSON, from the Committee on Energy and Natural Resources:

Special Report Pursuant to Section 302(b) of the Congressional Budget Act (Rept. 95-1302).

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

H.R. 9937. An act to amend the Bank Holding Company Act Amendments of 1970 (Rept. No. 95-1303).

S. 3581. An original bill to extend the authorization for the striking of bicentennial medals (Rept. No. 95-1304).

By MR. HANSEN, from the Committee on Energy and Natural Resources, with amendments:

H.R. 12349. An Act to provide for the Du-Noir Basin Addition to the Washakie Wilderness (Rept. No. 95-1305).

By Mr. LONG, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 12973. An act to amend title XX of the Social Security Act to increase the entitlement ceiling and otherwise provide for an expanded social services program, to promote consultation and cooperative efforts among States, localities, and other local public and private agencies to coordinate services, to extend certain provisions of Public Law 94-401, and for other purposes (Rept. No. 95-1306).

By MR. LONG, from the Committee on Finance, with amendments and an amendment to the title:

H.R. 5551. An act to suspend until the close of June 30, 1980, the duty on 2-Methyl, 4-chlorophenol (Rept. No. 95-1307).

By MR. LONG, from the Committee on Finance, without amendment, but with a preamble:

S. Res. 475. A resolution disapproving Internal Revenue Service reorganization (Rept. No. 95-1308).

By Mr. MUSKIE, from the Committee on the Budget without amendment:

S. Res. 576. A resolution waiving section 303(a) of the Congressional Budget Act of 1974 with respect to consideration of an amendment intended to be proposed by Mr. Kennedy (for himself and other Senators) to H.R. 13511 (Rept. No. 95-1309).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WILLIAMS, from the Committee on Human Resources:

Charles William Benton, of Illinois, to be a Member of the National Commission on Libraries and Information Science.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. DURKIN:

S. 3580. A bill to amend the Internal Revenue Code of 1954 to increase the amount of the dividend exclusion; to the Committee on Finance.

By Mr. PROXMIRE (from the Committee on Banking, Housing, and Urban Affairs):

S. 3581. A bill to provide for the authorization for the striking of bicentennial medals. Original bill reported and placed on the calendar.

By Mr. HATCH:

S. 3582. A bill to amend the Small Business Act by adding at the appropriate place an Employee Protection Program; to the Select Committee on Small Business.

By Mr. BARTLETT:

S. 3583. A bill to prohibit the use of any name, official title, photograph, or other communication of any individual, public official, business association, or nonprofit organization without obtaining prior written consent; to the Committee on the Judiciary.

S. 3584. A bill to amend the "Joint Owners" provision of the Patent Act, Title 35,

U.S.C., Sec. 262; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURKIN:

S. 3580. A bill to amend the Internal Revenue Code of 1954 to increase the amount of the dividend exclusion; to the Committee on Finance.

THE DIVIDEND EXCLUSION

● Mr. DURKIN. Mr. President, I am today introducing legislation to reduce taxes for the average citizen who invests in stocks, by increasing from $100 to $250 the amount of dividends a taxpayer may deduct from taxable income. This will not only benefit the modest stockholder but it will also benefit business by increasing investment. Increased investment means increased business growth, and this means more jobs and less unemployment.

There is no question that the time has come to increase this exclusion. This exclusion was last increased in 1963, and in the intervening 15 years the Consumer Price Index has more than doubled, increasing by 113 percent. It is time to bring the dividend exclusion in line with this reality.

Many of us in the Senate and elsewhere have become increasingly concerned over the precipitous decline in capital investments and the sluggish performance of the equity markets.

In good part, at least, this record of poor performance reflects the growing difference between the potential returns on common stocks and the alternatives available in a high-inflation economy. But we should bear in mind that equity market is critical to stimulating a healthy innovation in the country.

The increase that I am proposing will not make anybody rich. It will not help the Rockefellers and the Mellons. But it will increase the attractiveness of equity investments for millions of small investors.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 116 of the Internal Revenue Code of 1954 (relating to partial exclusion of dividends received by individuals) is amended by striking out "$100" each place it appears and inserting in lieu thereof "$250."

(b) The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1978.●

By Mr. HATCH:

S. 3582. A bill to amend the Small Business Act by adding at the appropriate place an employee protection program; to the Select Committee on Small Business.

SMALL BUSINESS EMPLOYEE PROTECTION EQUALIZATION ACT OF 1978

● Mr. HATCH. Mr. President, the airline industry, ConRail, Amtrak, and the steel industry have prevailed on the Congress to enact "Employee Protection, and Trade Readjustment Assistance" programs which provide generous compensation from the U.S. Treasury for employees in those industries which lose their jobs or must relocate due to regulatory actions or economic policies of the Federal Government.

These programs discriminate against other American workers, not employed in these favored industries, who are equally disadvantaged by our regulatory actions and trade policies.

Accordingly, I am introducing today, the Small Business Employee Protection Equalization Act of 1978 to correct this glaring inequity and blatant discrimination in our laws. This bill, which comports identically with section 22 of the airline deregulation bill recently passed by the Senate, authorizes monthly payments for up to 36 months, from the U.S. Treasury to all employees, except corporate officers and directors, having 4 years or more service in small businesses who lose their jobs or suffer "qualifying dislocation" due to regulatory action, trade or economic policy of the Federal Government.

Like the airline deregulation bill, this measure provides: First, that the monthly assistance or reimbursement payments shall be sufficient to maintain the displaced employee in the same financial and fringe benefit status he or she enjoyed in their job; second, that payments will also be made to cover the relocation expenses of such employee and his family when he or she must relocate because of Government action to accept other employment, and third, that the Treasury will also cover any loss such employee incurs because of selling his home, canceling or forfeiting his lease or purchase contract because of the relocations.

While this bill would not benefit a small business worker nearly to the extent of the $100,000 a year plus that the Treasury will pay some airline pilots under their employee protection plan, nor will the American taxpayer be obliged to pay the high compensation of Amtrak, ConRail and steelworkers are entitled to, it will go a long way toward removing the outrageous discrimination against the Nation's "little people" under existing law.

Why should we continue to "squeeze the little guys" in our economy by relegating them to the meager unemployment compensation handouts, while paying these enormous benefits to some of the most privileged and highest paid workers in the country?

It does not make any sense to me and I am confident it does not make any sense to most Members of the U.S. Senate.

I therefore urge this body to remove this affront to the 100 million Americans who rely on small business for a livelihood by acting speedily and favorably on this measure.●

By Mr. BARTLETT:

S. 3583. A bill to prohibit the use of any name, official title, photograph, or other communication of any individual, public official, business association, or nonprofit organization without obtaining prior written consent; to the Committee on the Judiciary.

S. 3584. A bill to amend the "Joint Owners" provision of the Patent Act, title 35, U.S.C., section 262; to the Committee on the Judiciary.

UNAUTHORIZED USE OF ENDORSEMENT ACT

● Mr. BARTLETT. Mr. President, the legislation that I am introducing today is a serious proposal which should be considered during the 96th Congress, and after hearings, it should be inacted in some form designed to protect the unsuspecting consumer.

The legislation arises from the use of names and statements of both public figures and other citizens to promote products and or services. This use was done completely without the authorization of the individual whose name and statement was used, and this practice proved to have significant misleading effect on the general public. In fact, the majority cases showed a detrimental impact on the unsuspecting consumer.

It is a fact of life that people of various occupations and social strata often enjoy having their name used in some public format, but this use is usually done with the person's permission, particularly when the use relates to the promotion of a product or a service.

Most political figures seek publicity in many shapes and forms, but when it comes to the promotion of a product or service, I believe that most politicians have a policy of requiring notice of the use and some form of granting official permission.

My policy has always been to require a complete written request and accurate explanation of the proposed use of my name or statements. I have followed this rule whether it was a product, service, or another person for which the support is requested. Notwithstanding my policy, I have rarely allowed my name to be used for the promotion of a product or service. I believe this is the general rule followed by my colleagues, and is what the general public expects has occurred when they see such endorsement.

The legislation I am introducing codifies this accepted practice. The need is based on the fact that some businesses have and probably still are not following the procedure, and it has proven, in the discovered cases, to be very detrimental to the general public.

Mr. President, I have a second piece of legislation which is indirectly related to the matter I have just discussed. The legislation arises out of testimony that occurred during the investigation of complaints pertaining to the deception to consumers where names and statements were used without authorization to promote a patent service.

My amendment merely provides that where there is joint ownership of a patent, the joint owners must be informed in writing that any of them may use or sell the patented invention without the consent of the other joint owners, or an accounting to the other joint owners.

Title 35 U.S.C. section 262 provides that any joint owner:

. . . may make, use or sell the patented invention without the consent of and without accounting to the other owners.

My amendment requires that at the outset of the joint ownership, all parties must be informed in writing of the provisions contained in section 262.

This is particularly important to the person who has never been involved with patent procedures and must seek the promotion of an invention through the sale of a joint ownership interest.

Again, I would hope for hearing and action on these matters during the 96th Congress.

Mr. President, the development of these two pieces of legislation has taken a good deal of time and careful consideration. I would like to particularly thank Harriet Guber Mulhern, senior staff attorney, Federal Trade Commission, New York regional office, for her thoughts and advice while my staff was preparing this legislation. Mrs. Mulhern has a good deal of experience in this area, because of her involvement in the prosecution of such cases.

Mr. President, I ask unanimous consent that my two bills be printed at this point in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 3583

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Unauthorized Use and Endorsement Act".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the names, official titles, photographs, and other communications of persons, public officials, business associations, or nonprofit organizations have been used to promote and endorse certain products and services without their permission;

(2) there is reason to believe that the general public has been and will continue to be mislead and rely upon the unauthorized use of names, official titles, photographs, and other communications of individuals, public officials, business associations, or nonprofit organizations in the purcase of products or services;

(3) there is a reasonable possibility of loss of reputation or detriment to individuals, public officials, business associations, or nonprofit organizations, whose name, official title, photograph, or other communication is used, without prior knowledge and written consent, to promote a product or service;

(4) there is a reasonable possibility of loss to consumers who have erroneously relied upon unauthorized endorsements of products or services by individuals, public officials, business associations, or nonprofit organizations whose name, official title, photograph, or other communication has been used for commercial purposes without prior knowledge and written consent. (b) The purposes of this Act are—

(1) to prohibit the unauthorized use of the name, official title, photograph, or other oral or written communication of an individual, public official, business association, or nonprofit organzation to promote the sale of products or services; and

(2) to provide a remedy for individuals, public officials, business associations, or nonprofit organizations, who are misled by or rely upon such unauthorized use, and to provide a remedy for the individual, public official, business association, or nonprofit organization whose name, official title, photograph, or other communication is used without prior knowledge and written consent.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(1) "business association" means a corporation, partnership, joint venture, or other association whose purpose is the sale for profit of a product or service;

(2) "electronic communication" means any communication made in whole or in part through the use of radio, television, telephone, telegraph, or any other electronic or mechanical means;

(3) "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(4) "nonprofit organization" means an organization described in section 501(c)(3) of the Internal Revenue Code of 1954;

(5) "person" includes an individual, public official, business association, and nonprofit organization as defined by this Act;

(6) "printed material" means a brochure, pamphlet, flyer, book, magazine, advertisement, letter, circular, or notice of any kind; and

(7) "public official" means an individual elected or appointed to an office in Federal, State, or local government, whether or not reimbursed for his or her services, or an individual employed by a Federal, State, or local unit of government.

PROHIBITIONS

SEC. 4. (a) Any person who uses, in any printed material or any electronic communication, the name, official title, photograph, or other oral or written communication of any other person, without that person's prior written consent and knowledge, or if such person is a minor, the consent of such person's parent or guardian, for—

(1) promoting or advertising the sale of products or services;

(2) solicitation of patronage; or

(3) solicitation of contributions;

shall for each violation be fined not more than $10,000, imprisoned for not more than thirty days, or both.

(b) Any person who represents, directly or indirectly, orally, in writing, or by other manner or means, that another person has endorsed, used, or has been satisfied with the products or services of the first person, and such representation is made without the prior written consent and knowledge of such person, or if such person is a minor, the consent of that person's parent or guardian, shall for each violation be fined not more than $10,000, imprisoned for not more than 30 days, or both.

(c) Prior written consent for to the use of any person's name, official title, photograph, or other oral or written communication required in subsections (a) and (b) of this section shall be voluntarily given and may be limited to a particular purpose or time period, and revoked by written notice at any time after such consent is given.

REMEDIES

SEC. 5. (a) The Federal Trade Commission may bring an action for injunctive relief in a United States district court in any district in which a violation of subsection (a) or (b) of section 4 is alleged to have occurred, or in any district in which the alleged violator is found or transacts business.

(b) The Federal Trade Commission may bring a civil action in a United States district court in any district in which a violation of section 4 (a) or (b) is alleged to have occurred to recover a civil penalty of or in any district in which the alleged violator is found or transacts business.

(c) Any person whose name, official title, photograph, or other oral or written communication is used in violation of section 4 (a), or who is the subject of a representation of endorsement, use, or satisfaction with a product or service in violation of section 4 (b), may bring an action for damages sustained as the result of such violation in any United States district court in the district in which a violation is alleged to have occurred or in which the complainant resides, without regard to the amount in controversy, within two years from the date on which the cause of action arises. In any case in which the violation was committed knowingly, the complainant may be awarded exemplary damages.

(d) Any person who relies to their detriment on the unauthorized use of a person's name, official title, photograph, or other oral or written communication in violation of section 4 (a), or the unauthorized representation of a person's endorsement, use, or satisfaction with a product or service in violation of section 4 (b), may bring an action to recover damages sustained as the result of such reliance in any United States district court in the district in which a violation is alleged to have occurred or in which the complainant resides, without regard to the amount in controversy, within two years from the date on which the cause of action arises. In any case in which the violation was committed knowingly, the complainant may be awarded exemplary damages.

S. 3584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 262 of title 35, United States Code is amended by adding the following new subsection:

(b) Any assignment of a part interest in a patent is voidable at the instance of any party if it does not set forth in writing the provisions of the proceeding subsection.●

ADDITIONAL COSPONSORS

S. 2725

At the request of Mr. MATSUNAGA, the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2725, to grant early retirement benefits to air traffic control specialists employed at flight service stations.

S. 3392

At the request of Mr. MATSUNAGA, the Senator from Colorado (Mr. HART) was added as a cosponsor of S. 3392, to accelerate solar photovoltaic energy research, development, and demonstration.

SENATE RESOLUTION 571

At the request of Mr. DOLE, the Senator from New York (Mr. JAVITS) was added as a cosponsor of Senate Resolution 571, a resolution regarding the situation in Lebanon.

AMENDMENT NO. 4058

At the request of Mr. NELSON, the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Alabama (Mr. SPARKMAN) were added as cosponsors of amendment No. 4058 intended to be proposed to the committee amendment to H.R. 13511, the Revenue Act of 1978.

AMENDMENTS SUBMITTED FOR PRINTING

REVENUE ACT OF 1978—H.R. 13511

AMENDMENT NO. 4083

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself, Mrs. HUMPHREY, Mr. WILLIAMS, Mr. CRANSTON, and

Mr. KENNEDY) submitted an amendment intended to be proposed by them, jointly, to the committee amendment in the nature of a substitute to H.R. 13511, an act to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

AMENDMENT NO. 4084

(Ordered to be printed and to lie on the table.)

Mr. NUNN (for himself, Mr. CHILES, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4085

(Ordered to be printed and to lie on the table.)

Mr. CULVER (for himself, Mr. EAGLETON, Mr. NELSON, Mr. PEARSON, Mr. ROTH, Mr. GRIFFIN, Mr. HELMS, and Mr. HEINZ) submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4086

(Ordered to be printed and to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4087

(Ordered to be printed and to lie on the table.)

Mr. BAYH submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4088

(Ordered to be printed and to lie on the table.)

Mr. BARTLETT (for himself, Mr. BELLMON, Mr. BENTSEN, Mr. CURTIS, Mr. DOLE, Mr. DOMENICI, Mr. GOLDWATER, Mr. GRAVEL, Mr. GRIFFIN, Mr. HANSEN, Mr. HATCH, Mr. MARK O. HATFIELD, Mr. HELMS, Mr. LAXALT, Mr. LUGAR, Mr. MCCLURE, Mr. MELCHER, Mr. SCHMITT, Mr. SCOTT, Mr. STEVENS, Mr. TOWER, and Mr. WALLOP) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENTS NOS. 4089 THROUGH 4115

(Ordered to be printed and to lie on the table.)

Mr. LONG submitted 27 amendments intended to be proposed by him to amendment No. 3678 (as modified) proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4116 AND 4117

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE submitted two amendments intended to be proposed by him to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENT NO. 4118

(Ordered to be printed and to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4119

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4120

(Ordered to be printed and to lie on the table.)

Mr. DOLE submittted an amendment intended to be proposed by him to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4121 AND 4122

(Ordered to be printed and to lie on the table.)

Mr. GRAVEL submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4123 AND 4124

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4125

(Ordered to be printed and to lie on the table.)

Mr. JAVITS (on behalf of Mr. HATHAWAY and himself) submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4126

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4127 THROUGH 4129

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 4130 AND 4131

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE submitted two amendments intended to be proposed by him to Amendment No. 3678 (as modified) proposed to H.R. 13511, supra.

AMENDMENT NO. 4132

(Ordered to be printed and to lie on the table.)

Mr. HUDDLESTON submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4133

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS submitted an amendment intended to be proposed by him to an amendment intended to be proposed by Mr. CULVER to H.R. 13511, supra.

AMENDMENTS NOS. 4134 THROUGH 4136

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4137

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to Amendment No. 4036 intended to be proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4138 AND 4139

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE submitted two amendments intended to be proposed by him to Amendment No. 4083 intended to be proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4140 AND 4141

(Ordered to be printed and to lie on the table.)

Mr. PACKWOOD submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511. supra.

AMENDMENTS NOS. 4142 AND 4143

(Ordered to be printed and to lie on the table.)

Mr. PACKWOOD submitted two amendments intended to be proposed by him to a pending amendment intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4144

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4145

(Ordered to be printed and to lie on the table.)

Mr. CULVER (for himself, Mr. EAGLETON, Mr. NELSON, Mr. PEARSON, Mr. ROTH, Mr. GRIFFIN, Mr. HELMS, and Mr. HEINZ) submitted an amendment intended to be proposed by them, jointly. to H.R. 13511, supra.

AMENDMENTS NOS. 4146 THROUGH 4148

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NOS. 4149 AND 4150

(Ordered to be printed and to lie on the table.)

Mr. HELMS sumitted two amendments intended to be proposed by him to Amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4151 AND 4152

(Ordered to be printed and to lie on the table.)

Mr. BAKER (for Mr. GRIFFIN) submitted two amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4153

(Ordered to be printed and to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4154 AND 4155

(Ordered to be printed and to lie on the table.)

Mr. GLENN submitted two amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4156

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted an amendment

intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4157

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to Amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4158 AND 4159

(Ordered to be printed and to lie on the table.)

Mr. HEINZ (for himself, Mr. DOMENICI, Mr. BROOKE, Mr. CASE, Mr. HASKELL, and Mr. DURKIN) submitted two amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENTS NOS. 4160 AND 4161

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself and Mr. BELLMON) submitted two amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4162

(Ordered to be printed and to lie on the table.)

Mr. BELLMON submitted an amendment intended to be proposed by him to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4163 THROUGH 4167

(Ordered to be printed and to lie on the table.)

Mr. BELLMON (for himself and Mr. CHILES) submitted five amendments intended to be proposed by them, jointly, to the bill or an amendment proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4168 THROUGH 4172

(Ordered to be printed and to lie on the table.)

Mr. BELLMON (for himself and Mr. CHILES) submitted five amendments intended to be proposed by them, jointly, to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4173 THROUGH 4175

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4176

(Ordered to be printed and to lie on the table.)

Mr. BELLMON, on behalf of Mr. CHILES and himself, submitted an amendment intended to be proposed by them, jointly to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENT NO. 4177

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to amendment No. 4061 intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4178

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to amendment No. 4062 intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4179

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to the committee amendment in the nature of a substitute.

AMENDMENT NO. 4180

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to Amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENT NO. 4181

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to Amendment No. 4060 intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4182

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to Amendment No. 4059 intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4183

(Ordered to be printed and to lie on on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4184

(Ordered to be printed and to lie on on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4185

(Ordered to be printed and to lie on on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them to the pending amendment proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4186 THROUGH 4464

(Ordered to be printed and to lie on on the table.)

Mr. HATCH submitted 279 amendments intended to be proposed by him to Amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4465 THROUGH 4469

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted five amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 4407 THROUGH 4481

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted 12 amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4482

(Ordered to be printed and to lie on the table.)

Mr. NELSON submitted an amendment intended to be proposed by him to the committee amendment to H.R. 13511, supra.

Mr. NELSON. Mr. President, today I am submitting this amendment to the Revenue Act of 1978, H.R. 13511. I ask that the text of this amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

On page 313, line 2, strike "30 percent" and insert in lieu thereof "25 percent".

On page 314, between lines 3 and 4, insert the following new section:

DEPRECIATION REFORM

SEC. 363(a) Section 167 of the Internal Revenue Code of 1954 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(q) THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

"(1) GENERAL RULE.—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term 'reasonable allowance' as used in subsection (a) means (with respect to property which has a useful life of 36 months or more) an allowance based on a useful life of 36 months computed under the straight-line method (within the meaning of subsection (b)(1)).

"(2) $25,000 BASIS LIMITATION.—For purposes of this subsection, the basis (as determined under subsection (g)) of property placed in service during the taxable year shall, to the extent that such basis exceeds $25,000 for the taxable year, not be taken into account.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.

"(4) LIMITATION.—

"(A) GENERAL RULE.—Subject to the exception provided by subparagraph (B), the provisions of this section shall not apply to property to which an election under section 179 applies.

"(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to that portion of the basis of property placed in service during the taxable year which exceeds $25,000 for the taxable year."

(b) Subsection (c) of section 46 is amended by adding at the end thereof the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—Notwithstanding subsection (c)(2), in the case of property with respect to which an election under section 167(q) applies, the useful life of any such property for purposes of this subpart shall be the useful life determined without regard to section 167(q).".

EFFECTIVE DATE

(c) the amendments made by this section shall apply in the case of property acquired and placed in service in taxable years beginning after December 31, 1978.

AMENDMENT NO. 4483

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself and Mr. DURKIN) submitted an amendment intended to be proposed by them, jointly, to the committee amendment to H.R. 13511, supra.

Mr. NELSON. Mr. President, today I am submitting this amendment to the committee amendment to the Revenue Act of 1978, H.R. 13511. I ask that the text of this amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

Beginning with line 24, on page 312, strike through line 12, on page 313, and insert in lieu thereof the following:

DEPRECIATION REFORM

SEC. 361(a). Section 167 of the Internal Revenue Code of 1954 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(q) THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

"(1) GENERAL RULE.—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term 'reasonable allowance' as used in subsection (a) means (with respect to property which has a useful life of 36 months or more) an allowance based on a useful life of 36 months computed under the straight-line method (within the meaning of subsection (b)(1)).

"(2) $25,000 BASIS LIMITATION.—For purposes of this subsection, the basis (as determined under subsection (g)) of property placed in service during the taxable year shall, to the extent that such basis exceeds $25,000 for the taxable year, not be taken into account.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.

"(4) LIMITATION.—

"(A) GENERAL RULE.—Subject to the exception provided by subparagraph (B), the provisions of this section shall not apply to property to which an election under section 179 applies.

"(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to that portion of the basis of property placed in service during the taxable year which exceeds $25,000 for the taxable year."

(b) Subsection (c) of section 46 is amended by adding at the end thereof the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—Notwithstanding subsection (c)(2), in the case of property with respect to which an election under section 167(q) applies, the useful life of any such property for purposes of this subpart shall be the useful life determined without regard to section 167(q).".

EFFECTIVE DATE

(c) the amendments made by this section shall apply in the case of property acquired and placed in service in taxable years beginning after December 31, 1978.

AMENDMENT NO. 4484

(Ordered to be printed and to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4485

(Ordered to be printed and to lie on the table.)

Mr. INOUYE (for himself and Mr. MATSUNAGA) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4486

(Ordered to be printed and to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4487 AND 4488

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4489

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS (for himself and Mr. HODGES) submitted an amendment intended to be proposed by them, jointly, to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4490

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS (for himself and Mr. HODGES) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4491

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS (for himself, Mr. SPARKMAN, Mr. BROOKE, Mr. BENTSEN, Mr. TOWER, Mr. MATHIAS, Mr. STONE, Mr. FORD, Mr. SARBANES, Mr. HODGES, Mrs. ALLEN, Mr. HUDDLESTON, Mr. ANDERSON, Mr. HODGES, Mr. RANDOLPH, Mr. MAGNUSON, Mr. CHILES, Mr. LUGAR, Mr. CURTIS, Mr. SCHWEIKER, Mr. HAYAKAWA, Mr. MOYNIHAN, Mr. MORGAN, and Mr. SCHMITT) submitted an amendment intended to be proposed by them, jointly, to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4492

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4493 AND 4494

(Ordered to be printed and to lie on the table.)

Mr. LONG submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

SAWTOOTH NATIONAL RECREATION AREA—S. 791

AMENDMENT NO. 4495

(Ordered to be printed and referred to the Committee on Finance)

Mr. MELCHER submitted an amendment intended to be proposed by him to S. 791, a bill to authorize additional appropriations for the acquisition of lands and interests in lands within the Sawtooth National Recreation Area in Idaho.

TAX RATE OF MARRIED INDIVIDUALS—S. 2941

AMENDMENT NO. 4496

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS submitted an amendment intended to be proposed by him to S. 2941, a bill to amend the Internal Revenue Code of 1954 to provide that a married individual who files a separate return may be taxed at the same rate as an unmarried individual.

SOLAR PHOTOVOLTAIC ENERGY RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1978—S. 3392

AMENDMENTS NOS. 4497 AND 4498

(Ordered to be printed and to lie on the table.)

Mr. BARTLETT (for himself, Mr. BELLMON, Mr. BENTSEN, Mr. CURTIS, Mr.

DOLE, Mr. DOMENICI, Mr. GOLDWATER, Mr. GRAVEL, Mr. GRIFFIN, Mr. HANSEN, Mr. HATCH, Mr. MARK O. HATFIELD, Mr. HELMS, Mr. LAXALT, Mr. LUGAR, Mr. MCCLURE, Mr. MELCHER, Mr. SCHMITT, Mr. SCOTT, Mr. STEVENS, Mr. TOWER, and Mr. WALLOP) submitted an amendment intended to be proposed by them to S. 3392, a bill to provide for an accelerated program of research, development, and demonstration of solar photovoltaic energy technologies.

CONSTITUTIONAL RIGHTS OF INSTITUTIONALIZED PERSONS—S. 1393

AMENDMENTS NOS. 4499 THROUGH 4508

(Ordered to be printed and to lie on the table.)

Mr. DANFORTH submitted 10 amendments intended to be proposed by him to S. 1393, a bill to authorize actions by the Attorney General to redress deprivations of constitutional and other federally protected rights of institutionalized persons.

DUTY ON YANKEE DRYER CYLINDERS—H.R. 7108

AMENDMENTS NOS. 4509 AND 4510

Mr. HOLLINGS submitted two amendments intended to be proposed by him to H.R. 7108, an act to amend the Tariff Schedules of the United States in order to suspend the duty on Yankee dryer cylinders until the close of December 31, 1981.

CONSTITUTIONAL RIGHTS OF INSTITUTIONALIZED PERSONS—H.R. 9400

AMENDMENTS NOS. 4511 THROUGH 4519

(Ordered to be printed and to lie on the table.)

Mr. DANFORTH submitted nine amendments intended to be proposed by him to H.R. 9400, an act to authorize actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the Constitution or laws of the United States.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be given permission to meet on October 10 and 11 at 10 o'clock a.m., to conduct hearings on export policy.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, October 10, to hear remarks of Ambassador Warnke relative to SALT and to consider nominations.

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

ADDITIONAL STATEMENTS

BANKING COMMITTEE ACTS ON GOLD MEDALLION LEGISLATION

● Mr. HELMS. Mr. President, the Senate Committee on Banking, Housing, and Urban Affairs has approved an amendment which would require the Treasury to offer for sale to the public gold pieces of not more than one ounce if they choose to sell gold at all. This was added to the regulation Q bill, S. 3499.

The distinguished Senator from Indiana (Mr. LUGAR) spoke very capably on this topic when the Banking Committee held hearings on S. 2843, the Gold Medallion Act of 1978 on August 25. He also is a cosponsor of this legislation which I first offered in April of this year. Senator LUGAR offered a slightly modified version of the Gold Medallion Act as an amendment to the regulation Q bill, and the committee chairman, Senator PROXMIRE, offered as a substitute, an abbreviated version of the bill which reads as follows:

> Sec. X. (a) Whenever the Secretary of the Treasury authorizes the sale of gold to the public, not less than ten percent by weight of the gold offered for sale each fiscal year pursuant to such authorization shall be offered in units containing not more than one troy ounce of gold.
>
> (b) Notwithstanding any other provision of this Act the number of units to be produced and sold in units of one ounce or less in fiscal years after fiscal year 1979 shall be adjusted to meet anticipated demand.

The meat of the legislation is in that substitute: that if the Treasury sells some of the vital U.S. gold stocks, then it should do so in the form U.S. citizens are demanding. The committee also acted to approve language to be included in the committee report on the bill which reads:

> In approving this section, the Committee recognizes the sizeable market for gold pieces in the United States and anticipates that the items produced pursuant to this section would be manufactured to compete in this market and would bear appropriate design, and weight and fineness markings so as to enhance their marketability. The Committee further recognizes that demand for such items may change and anticipates that production and sales in any year such units are produced, would be expanded or reduced to meet such demand, but in the first year, would not be reduced below 10% of total gold sales.

In other words, the committee intends these "units" or "pieces" to compete in the same market with Krugerrands—one ounce gold pieces from South Africa—with Mexican gold pesos, Austrian gold kronen, and the new Canadian gold $100 coin.

Senator PROXMIRE noted that the Treasury Department is concerned about the use of the term "medallion" in that it might have a monetary connotation which would give the impression Treasury is relenting in its efforts to "demonetize" gold.

The staff "explanation" of the amendment reads as follows:

> The Secretary of Treasury would be required, in the first fiscal year after date of enactment of this Act in which he authorizes gold sales to the public, to offer not less than ten percent of the gold offered for sale in that fiscal year in the form of units containing not more than one troy ounce of gold. The provision would give the public an opportunity to buy Treasury gold in small quantities, but would not require issuance of "medallions" which could be mistaken for coins or legal tender and create an erroneous impression that the United States Government believes gold should have a monetary role.

Mr. President, the monetization fear is trivial. The dollar has no connection with gold; if it did there would not be vast numbers of people in the world trying to get into gold and out of dollars. Let it be clear that I do not advocate investment in gold or any other inflation hedge. I advocate getting rid of inflation.

No "hedge" can provide real protection from a depreciating and corrupting monetary system that no longer serves some of the prime functions of money: The dollar is no longer a store of value or a standard of value. It serves as a medium of exchange almost exclusively.

Well, if the Treasury wants to call a gold piece a "unit" or a "wafer" or a "thingamabob," it makes no difference. The important thing is that it be designed, produced, and marketed in the manner that the American market wants. The Banking Committee has in effect, acted to give the Treasury authority to make that determination. I know that many in the Congress and in the public sector will watch carefully to see that the intent of Congress is carried out if, in fact, this is the language finally enacted.

I support the committee's action. Although I would have preferred that the bill contain more specific language as to the design and other details, I am satisfied that decisions on these issues will not be made in a vacuum. Obviously, if the Treasury Department puzzles over a gold piece that would be most unmoney like, it might consider offering for sale a gold toothpick. But, if Treasury officials ask any person in this country who either sells or buys 1 of the 3 million ounces of gold being sold in this country this year in small units what he wants, I think they will come up with something better.

The General Services Administration has sent to the Banking Committee a proposed set of marketing plans which offer a number of alternatives. I think that a plan can be adopted which would provide maximum opportunities to individuals to participate in the sales and maximize revenues to the Federal Government.

There are basically two alternative forms of sale. One would be an over-the-counter method wherein the gold pieces would be sold at a daily changing price equal to the world price of gold bullion plus a premium to cover production, distribution, and some profit for the retailers. The General Services Administration draft proposal for marketing the gold medallions my initial bill would have authorized, stated that the gold medallions could be produced, distributed, and advertised for approximately $4.40 each, plus some profit margin for banks or other institutions who would handle them. This might make the retail price $6 to $10 above the bullion price. That

is equivalent to 3 to 5 percent above the bullion price. It would be highly competitive to the most popular gold item: the Krugerrand which is sold wholesale at 3 percent above the bullion price.

The difficulty that this method of sale poses with the bill I initially offered is that in the first year after enactment, at most, 1.5 million ounces of medallions would be produced. In other words, the supply would be finite. If supply is limited, then the over-the-counter method has the obvious disadvantage of potential shortages if the marketplace determines that at the "fixed" price, the demand is greater than the available supply.

Under the legislation approved by the Banking Committee, however, the production could be expanded during the course of the year to meet demand if gold sales continued. This may cause some production problems, of course, for changing production levels may increase unit costs somewhat. There is a great deal of time, however, between now and October 1979 to work out these details and a great deal that must first be accomplished—including getting the legislation to the President's desk.

The second marketing alternative is to offer the pieces via monthly, common-price auctions. This provides the advantage of maximum revenues to the Federal Government and assuring that the marketplace will determine the price.

In other words, if it was known that a specific number of gold pieces were to be sold in the month of October 1979, bids could be solicited, and then the price would be the price at or above which there were sufficient bids to sell all pieces offered for sale on that day. If half a million pieces were offered and half a million pieces were bid for at or above $225, then all pieces would be sold at $225. This is sometimes known as a common-price or "Dutch" auction system. It has the advantage of providing some protection to individual bidders who may be less sophisticated than big dealers in that they will pay the same price all other successful bidders pay. Since the price at which the pieces are sold is the lowest price proposed by enough bidders to purchase all items sold, it encourages those who have a great desire to own the pieces to bid higher. Some experts say that by providing these two aspects—protection for the unsophisticated and one price for all—the "Dutch" auction system encourages more bidders and thus tends to increase the average price at which the pieces are sold. This increases the revenues to the Government.

The disadvantages to this is that it costs more to manage. GSA has estimated that such a system of marketing might result in a cost of up to $11.70 apiece to deliver gold pieces into the hands of the successful bidders. This would be equal to about 6-percent premium above the bullion price.

I believe that the Treasury Department will be able to produce the kind of item that the American people want and in the quantities they want. I predict that demand for a U.S. gold piece will be far greater than 10 percent of gold sales. Sales of the new gold pieces could come to $500 million per year and that would soak up $500 million out of the grossly inflated U.S. money supply.

It is time to put gold back into the hands of the American people. The legislation approved by the Senate Banking Committee could do it. It is flexible enough to provide for gold pieces that would appeal to various markets. It is specific enough to make it clear to the Treasury Department that the desires of the American people should be met.

I know there is considerable support in the House of Representatives for some legislation which would authorize the production of gold pieces. Certainly, speedy action in that body will help insure enactment of a gold piece law this year.

For whatever success we may be able to achieve this year, much credit goes to the other Members of Congress in the House and Senate who have worked on various pieces of legislation which would result in the production of a U.S. gold piece. In particular, I owe much to my friend, the distinguished chairman of the Senate Banking Committee, BILL PROXMIRE, who scheduled hearings on S. 2943, the Gold Medallion Act, and who offered many good words of encouragement.

In addition, I will take this time to compliment the work done by a little-known public policy research organization: The Institute on Money and Inflation. This organization is dedicated to providing information on monetary policy and related matters to Members of Congress and it gave me and others vital assistance on the issues related to the gold piece legislation and its policy implications.

PUBLIC WORKS FLOOD CONTROL PROJECTS OF CRITICAL IMPORTANCE IN MINNESOTA

● Mrs. HUMPHREY. Mr. President, while I am supportive of some of the criteria applied by the President regarding his decision to veto the public works appropriation bill as approved by the Senate and the House of Representatives, I have some very real concerns in regard to my own State of Minnesota. This bill, as passed, was the product of a great deal of consideration and deliberation this year.

Last year, despite considerable concern over a number of vitally needed flood control and energy projects, the Senate agreed to a compromise with the President and supported his policy of no new construction starts until completion of the formulation of a comprehensive water policy. I know that in my State of Minnesota, this meant the temporary termination of a number of much needed flood control measures, of relatively low cost, which would save millions of dollars in Federal, State, and local disaster relief efforts.

Senator Hubert Humphrey was sympathetic to the committee's recommendation for no new construction starts and concurrence with the administration's budget request. At the same time, he remained sympathetic to the residents of Minnesota who live in constant fear of spring flooding, the extent of which depends entirely on winter and spring precipitation and the rate at which the snow and ice melts in the upstream areas of my State. The initiation of several projects authorized by the Army Corps of Engineers and the Soil Conservation Service would have put an end to this uncertainty and would prevent the high cost of fighting floods that are cutting deeply into the capital improvement projects of the urban and rural communities of Minnesota.

Let me address the question of whether $20 million appropriated under this bill for construction and planning funding to alleviate this annual problem is a justifiable cost. The answer lies in the fact that in the summer of 1978 alone Minnesota experienced over $230 million in personal, industrial and agricultural damages resulting from flooding which could have been prevented. In all these projects, the Army Corps of Engineers indicated the capability of performing the necessary improvement and preventive measures.

I agree with and share the administration's commitment to the alleviation of wasteful Government spending. However, the expenditure of close to $700 million in fiscal 1978 nationally, over $200 million of which came from the President's disaster authorizations alone, is proof that the relatively small appropriations, in comparison to the total Federal budget, will do a great deal in the alleviation of the wasteful spending than the veto of H.R. 12928.

I wholeheartedly support the views of the distinguished majority leader. I share the administration's concern, but believe that the benefits inherent in the previously authorized public works projects—specifically, the relief of disaster potential, long-term capital improvement projects, and job preservation and creation—far outweigh the administration's expressed purpose in vetoing these appropriations.

In July, I participated in a tour of several flood ravaged areas of Minnesota. Most notable was the city of Rochester, which suffered damages amounting to millions of dollars in applications to the Federal Disaster Assistance Administration, the Small Business Administration, Farmers Home Administration, and the Federal Highway Administration, in addition to other Federal assistance programs. H.R. 12928 includes the modest amount of $700,000 in Federal assistance in my State, which would eventually eliminate similar flood relief disasters in the Minnesota River Valley. I wish to point out that the State of Minnesota has already committed over $500,000 and the SCS a total of about $700,000 to supplement the Federal projects. Neither of these projects is supported by the administration despite the request of the Army Corps of Engineers and the Soil Conservation Service, but both were funded by H.R. 12928. The same is true of a $500,000 project on the Roseau River in northern Minnesota which would prevent millions of dollars damage to personal

property as well as commercial, industrial, and agricultural interests.

Mr. President, on the basis of my personal observation of these disaster struck areas, the funds required for the administration of many Federal agencies charged with the responsibility of responding to these disasters, and careful analysis and consideration of the pleas and experiences of many of my colleagues in the Senate, I must express my strong support for a number of projects not on the administration's list, dedication to the support of efforts to realize my objectives.

It is my opinion that the administration's justification for the action taken on October 5, does not justify neglecting the personal and economic disasters experienced by the people of Minnesota and of the entire Nation.

I strongly urge that every effort be made to enact legislation which will enable critically important public works projects, such as I have discussed, to go forward.●

NUCLEAR WASTE DISPOSAL: CAN THE GEOLOGIST GUARANTEE ISOLATION?

● Mr. MARK O. HATFIELD. Mr. President, since the National Academy of Sciences issued its report in 1956 recommending the burial of high-level radioactive wastes in deep salt beds, it has been taken for granted that the solution of the radioactive waste problem was merely a question of the application of the appropriate technology. Although geologic isolation still appears to be the most promising approach to this problem, the past year has seen the publication of numerous articles outlining some of the as of yet unanswered technical questions involved in geologic disposal. These articles have generally disputed the claim that: "The problem is as good as solved," and pointed to the need for a long-term carefully researched approach to waste disposal and indepth investigation of sites ultimately chosen as locations for high-level waste repositories. The present schedule of the Department of Energy appears to be predicated on the assumption that getting the wastes into the ground as quickly as possible is the proper approach. This and subsequent reviews of the aforementioned articles are intended to show that DOE's approach may ultimately cause more problems than they solve.

In an article published in Science last year—G. deMarsily, E. Ledoux, A. Barbreau and J. Margat, "Nuclear Waste Disposal: Can the Geologist Guarantee Isolation?" Science, 197, page 519, August 5, 1977, four French geologists discussed their investigations into the efficacy of deep geologic isolation. They considered the behavior of three major radioactive elements with half-lives equal to or greater than 20,000 years: iodine-129—16 million years, neptunium-237—2.13 million years, and plutonium-239—24,400 years. The geologists assumed that high-level liquid wastes from spent fuel reprocessing would be disposed of in five geologic formations with different hydraulic parameters. It should be noted here that the United States is currently leaning toward disposal of unreprocessed spent fuel. The formations considered corresponded to no actual types of rock, although rock formations with some of the characteristics certainly do exist. The results of their investigation are discussed below; some of their cautionary statements need to be mentioned.

Heat production by the wastes poses one of the critical problems for safe geologic disposal. The geologists state that:

> The heat flux of the waste is too high to permit large-scale underground disposal in usual formations until at least 50 years after extraction from the reactor, if the liquefaction of the glass is to be avoided or if the repository is not to be artificially cooled. It is therefore necessary to store the waste for a relatively long period in a transient storage facility on the ground surface.

In particular, if the wastes are to be emplaced in bedded salt, certain unique problems could arise. They point out that:

> [T]he plastic behavior of the saline formation may create diapirism if stable conditions are not ensured, and the heat produced by the waste might modify these conditions; the waste blocks might also migrate inside the formations.

In discussing the different mechanisms which might lead to the release of radionuclides to the environment—groundwater flow, faulting, diapirism, erosion, meteorite fall, magma intrusion, or changes in the level of the water table—the geologists state:

> An approach to geologic confinement is often sought by trying to quantify the probability of occurrence of any of these events and their nuisance value to man. Then, by combining these probabilities and nuisance values, one tries to assess the safety coefficient of the repository and to compare it to the accepted safety coefficient for present risks. This approach does not seem realistic to us because basically, the earth's development has not been a random process (possibly apart from the fall of meteorites), and no geologist can seriously give reasonable figures for these probabilities.

As an example, faulting is discussed. In a so-called "earthquake-free" zone neither a record of past faulting nor evidence of present faulting exists. Information on faulting in the rest of the world is irrelevant, since only the risk of faulting at the repository location is of importance. Faulting is not caused by random mechanisms but rather by deterministic ones, and although any repository will be located in a historically stable area, the past stability of an area is not enough to calculate the probability of the future stability of the same area.

Ultimately, water will provide the means of transport of radioactive waste to the environment; the investigations of these geologists were intended to assess how different ground-water regimes might affect this transport. They found that the capacity of the rock to chemically attract the radioactive species was of great importance: a radionuclide which is not attracted to the surrounding rock could, under appropriate conditions, reach the environment in less than ten years. Even if some chemical attraction does exist, the extremely long half-lives of some radioactive atoms means that inevitably some wastes will reach the environment.

The geologists point out that "neither the thickness of the geologic formation nor its low permeability are major factors in the confining of radionuclides with very long half-lives over periods of time on the geological scale." They recommend that escape of the waste into the ground water system of the repository be delayed by encapsulating the wastes; with sufficient delay, the radioactivity of the escaping radionuclides could be reduced sufficiently so as to pose minimal hazards.

The geologists conclude that the specific ground water characteristics of a site are of the greatest importance in disposing of radioactive wastes. No one site will have all favorable characteristics, and although some rock types may be more favorable than others, no site of a particular rock type is likely to have all the required characteristics. Finally, a site cannot be chosen before these favorable characteristics are well known, whereas current DOE policy seems to be based upon choosing the site first and then determining what, if any, favorable characteristics are present in the site.●

ANNOUNCEMENT OF POSITION ON VOTES

● Mr. CLARK. Mr. President, had I been here for votes Nos. 461 and 462 on Saturday, October 7, 1978, I would have voted in the following manner:

Vote No. 461: "Yea."

Vote No. 462: "Nay."●

SPEECH BEFORE ASSOCIATION OF COMMUNITY COLLEGE TRUSTEES

Mr. PERCY. Mr. President, last week I was the guest speaker at the ninth annual convention of the Association of Community College Trustees.

I spoke about the Federal Government's role in education. And I covered the new proposed Department of Education, the tuition tax credit bill and the financial problems education at all levels face because of spiraling inflation.

This convention brought approximately 2,000 governing board members and chief executive officers of our Nation's community and junior colleges, to Washington, D.C. They come from all walks of life, represent varied perspectives but have in common a dedication to helping every high school graduate obtain a quality higher education at reasonable cost.

The concept for community colleges was developed in my home State of Illinois by William Rainey Harper, president of the University of Chicago—my alma mater. Today, there are 39 public community college districts with 51 campuses in Illinois.

Raymond Hartstein, president of the Illinois Community College Trustees As-

sociation, has done a tremendous job in promoting community colleges and junior colleges in Illinois. He was the speaker at the Illinois congressional breakfast this morning and at this time I ask that his remarks be printed in the RECORD.

The statement follows:

REMARKS MADE AT ILLINOIS CONGRESSIONAL BREAKFAST

Honored guests, presidents and administrators, trustees, spouses: good morning, everyone. I am Ray Hartstein of Oakton Community College and Skokie, Illinois, and president of the Illinois Community College Trustees Association.

The Illinois Community College Trustees Association is a federation of the 39 public community college districts in the State of Illinois. It exists as a continuing education and lobbying organization speaking for the needs of the colleges and Illinois' Community College students.

Each of our members is a locally-elected trustee serving a three-year term on the board of one of the community college districts. Some have been on their boards for 9 to 12 years.

One of the great strengths of community colleges nationally, and certainly in Illinois, is their closeness to the people of the local communities. This closeness is enhanced through the governing structure of locally-elected trustees and is encouraged so that we can meet the educational needs of the people we serve.

Last year one out of every 33 who live in Illinois was enrolled at an Illinois public community college. That totaled 335,000 students in the fall of 1977.

Thus, the community colleges in Illinois last year served over half of all students in public higher education and 49% of all students in all forms of higher education in the State.

Sixty-five percent of our students are day students; 35% are night students.

Community colleges in Illinois enroll a greater proportion of minorities than the percentage of minorities in the total state population.

Twenty-eight percent of our students attend classes full time; 71% are part-time students, many of whom are continuing other responsibilities such as jobs or homemaking while working to upgrade their educational background, seek new careers, etc.

More than one-third of our students are enrolled in occupational programs.

(The Illinois community colleges, as you know, endorse the philosophy of a "comprehensive" community college which includes instruction both in transfer curricula, which lead to four-year universities and baccalaureate degrees, and vocational curricula, which prepare students for immediate entry into the world of work.)

A major study recently completed by the Illinois Community College Board shows that there is greater employability and earning power in the community colleges than in other institutions of Illinois. Better job opportunities and higher salaries are two of the benefits of community college education. Students who go into the job market following graduation from a community college show only a 3% unemployment rate after six months and receive annual salaries averaging $1,100 a year more than those without community college experience. Students transferring to senior universities maintain very satisfactory progress as measured by grades received. In addition, they are highly successful in earning college degrees from the four-year universities and do excellent at senior universities and on the job.

Three main sources of revenue support the Illinois Community Colleges: (1) tuition and fees make up one-fifth of the revenue; (2) local property taxes make up two-fifths of the revenue; and (3) State and Federal monies supply the remainder.

Last year the total operating expenses of the Illinois Community College system were $285 million. Federal revenue directly contributed $1.2 million to that total. Other Federal monies received in the State through such programs as CETA, Federal Work Study, and Federal grants and loans benefited the community college system.

The total Federal Government revenue which came to Illinois to benefit community college students last year was $36 million. Sheets showing the breakdown of money by college district are available here today.

Illinois community colleges employ 16,000 full time and part time faculty members.

The idea of community colleges was developed in Illinois by William Rainey Harper, president of the University of Chicago. The oldest continuing junior college in the world, Joliet Junior College, was founded in our State in 1901. Today there are 39 public community college districts with 51 campuses in Illinois and over 1,100 community colleges nationwide.

We are a strong and growing part of higher education in the United States.

WORLD BANK LIVES HIGH AT THE EXPENSE OF THE AMERICAN TAXPAYERS

● Mr. HATCH. Mr. President, astute observers have known for a long time that the real beneficiaries of foreign aid are the international organizations, those who control political power in the recipient countries, those who staff the foreign aid agencies of the giving countries, and the Western professors who advise on economic development schemes. Although the World Bank operates behind a moral guise of helping the poor, there is a saying that the World Bank takes tax money from poor people in rich nations to give to rich people in poor nations.

Salaries of U.S. Senators are slim pickings when compared to employees of the World Bank, but the real telltale fact is that the new Washington social season opened recently with a round of parties for the delegates of 130-odd countries assembled here for the annual meeting of the International Monetary Fund and the World Bank. They were flown in and booked at luxurious hostelries at the expense of the World Bank and IMF, which is substantially at the expense of the American taxpayers, all in the name of relieving global poverty. An article by Shirley Scheibla in the September 25 issue of Barron's explains how the World Bank actually provides little help for the poor and is accountable to no one. Congressmen CLARENCE LONG and BILL YOUNG of the House Appropriations Subcommittee on Foreign Operations have been unsuccessful in their attempts to improve various aspects of the Bank's operation.

Currently the World Bank, thanks to money the U.S. Congress provides, is able to lend millions to Vietnam to finance the forced resettlement of millions of people and to replace private agriculture with socialist agriculture.

Mr. President, the October 16 issue of Forbes points out that the total tax take in the United States has grown at an astonishing rate. In fiscal year 1977 the combined rake-off of Federal, State, and local governments amounted to $521 billion. That figures out to over $2,400 for every man, woman, and child, and it is a whopping 62 percent increase in the tax burden in just 5 years. It seems to me that we have more responsibility to cut the taxes of the people who put us here than we do to provide millions to Communist tyrants, who we recently fought in a long and bloody war, to finance more oppression of the people of South Vietnam.

Until we greatly reduce the tax burden on our own people, we have no justification for financing the unaccountable and unacceptable schemes of the World Bank. I ask that the article from Barron's be printed in the RECORD.

[From Barron's, Sept. 25, 1978]

DOWN A RATHOLE? THE WORLD BANK IS LENDING MONEY TO LAOS, VIETNAM

(By Shirley Hobbs Scheibla)

WASHINGTON.—The new social season will open today with a round of parties for the delegates of 130-odd countries assembled here for the annual meeting of the International Monetary Fund and the World Bank. They've been flow in and booked at luxurious hostelries at the two organizations' expense, all in the name of relieving global poverty.

In between the parties and speeches, they'll take up the most serious piece of business confronting the Bank: to double its callable capital, now at $30 billion, with $7 billion promised by the U.S. This week, moreover, Congress is expected to take final action on an appropriation for the World Bank. In response to a request for $2.2 billion, the House approved $1.5 billion voted last year (as we went to press, measure was pending in the Senate). The total includes $1.2 billion for the Bank's soft loan window, the International Development Association. Rep. Clarence Long (D., Md.), chairman of the Appropriations Subcommittee on Foreign Operations & Related Agencies, tried unsuccessfully to reduce that figure to $900 million.

IDA loans, which are virtual giveaways, are burgeoning. They run for 50 years, with a 10-year grace period, and, except for an administrative charge of three-quarters of 1%, are interest-free. These loans go directly to governments, which sometimes then relend the money at rates as high as 17%.

LITTLE HELP FOR THE POOR

Friends of the World Bank, notably the Carter Administration, claim that it's good public policy to emphasize multilateral over bilateral foreign aid. In this way, or so runs the argument, lenders may achieve reforms that would be politically impossible otherwise. But Congress is having second thoughts about what the World Bank is trying to achieve. For one thing, the Congressional Research Service has found that the Bank is doing relatively little to help the poor and that reform projects may not generate the foreign exchange needed to repay the amounts of money borrowed. In short, "The Bank is seen as presiding over the build-up of debts which will ultimately be defaulted." (On June 30, loans on the books totaled $47.8 billion.) To make matters worse, many of the social reforms that the Bank is funding involve fostering the spread of socialism and communism.

The U.S. no longer has an effective veto

over which governments get these subsidies or any other Bank money. Though it has contributed 37 percent of IDA's funds and 25 percent of the Bank's, the U.S. controls only 23 percent of the voting power.

FULL ACCOUNTING LACKING

Loans to such countries as Laos and Vietnam have gone forward despite negative U.S. votes, which, by the way, will not be obligatory for four other loans to Vietnam and two to Laos currently pending at the Bank. To gain Congressional approval of a multimillion-dollar appropriation for the World Bank last year, President Carter promised negative votes only during fiscal 1978, and the projects won't be ready to go before the directors by then.

By the same token, the White House found an escape clause in its pledge to Congress that the U.S. director of the Bank would vote against loans for the production of such surplus commodities as citrus fruits, palm oil and sugar. As a result, a negative vote was cast for only two out of nine such loans, all of which won approval.

The U.S. can't even effectively keep track of what happens to the money it contributes. According to the U.S. Comptroller General, the Secretary of the Treasury has failed to carry out the directive of the Foreign Assistance Act of 1973 to work through the U.S. director of the Bank to obtain a full accounting of what is done with World Bank money. Although the Bank has flooded the lawmakers with material, it sheds little light on what they want to know.

Rep. Long, for example, complains that they've been unable to determine what money went to whom for individual projects. While the Bank boasts that contracts are awarded under international competitive bidding, it adds that awards are made on the basis of the lowest *evaluated* bid. We asked John King, a Bank procurement expert, what there is to evaluate if the bidders are qualified and their proposals meet specifications. He said that some might meet them better than others.

CITIZEN OF THE WORLD

In return for its huge contributions, the U.S. has insisted upon an American president. The theory is that he will look out for U.S. interests. But those who have talked with Robert S. McNamara (he wouldn't see us) say he views himself as a citizen of the world; Rep. C. W. (Bill) Young (R., Fla.), ranking minority member of the Appropriations Subcommittee, calls him a super-sovereign, responsible to no one.

On this score, the Congressional Research Service study has noted: "Robert McNamara's presidency, 1968-present, has been characterized as a period in which development has come to be seen as social change." He's now embarking on a third five-year term, reportedly with a likely salary boost from $116,000 to $150,000. Under McNamara's tenure, the Bank's lending has zoomed from less than $1 billion per year to $8.7 billion.

As such events suggest, the World Bank has changed a great deal since it opened for business in 1947. At that time, its mission was to help the free world recover from World War II; hence its formal name, the International Bank for Reconstruction & Development. In 1962, it added the soft loan window, and IDA's virtual giveaways are moving in an ominous direction.

IDA's recent $60 million loan to Vietnam is a case in point. The southern part of Vietnam is the agricultural heartland of the nation, and most of the land is privately owned. *Barron's* has obtained two confidential World Bank reports which show that one of the main purposes of the loan is to finance a scheme for the Communist government to seize land from farmers in the south and force them into cooperatives (communes) of about 75 families each.

BORROWER AUDITS ITSELF

The project involves a dam on the Saigon River and irrigation and drainage ditches. The money would go directly to the Vietnamese government, which then would levy user charges on the newly formed cooperatives. According to the Bank report, the project also is linked to the forced resettlement of four-five million people by the end of 1980 in New Economic Zones in the south.

According to the report, the co-op development will have three phases. At first there will be loose forms of work teams for work exchange or mutual aid. With the establishment of co-ops, part of a member's compensation will be related to the amount of land he contributes. When the government owns all the land, a member's pay will hinge solely on the amount of work he does. The government will tell the co-op members how much they can produce and what they can charge.

Both reports warn that because of the possibility of rebellion among farmers, the loan is very risky.

There is another risk which the reports fail to mention. Recent newspaper reports indicate that Vietnam is either at war or on the verge of it. *Barron's* asked John Merriam, the Bank's director of information and public affairs, about the institution's longstanding policy of not lending to a country at war. He said that Vietnam appears to be involved only in border skirmishes, but that, in any event, the Bank will lend to a country engaged in hostilities so long as they won't interfere with a project.

While the Bank asserts that it requires independent audits for its projects, such a policy is impossible in a Communist country. But the Bank staff claims that the auditing procedures of the Vietnamese government are completely satisfactory. In other words, it is okay if the government audits itself.

The $60 million loan is designed to increase the production of rice. When an IDA mission visited Vietnam a year ago, it found that an irrigation scheme for sugar cane would cost about $150 million and that another $300 million would be needed for factories, power transmission lines, roads and housing. The mission found that this scheme was not as well prepared as the one for rice, and the government agreed to postpone development. Despite opposition of the U.S. Congress to any loans encouraging sugar production, the Bank is keeping this on the back burner.

NEW POWER PLANTS CONSIDERED

According to the report, the institution plans future discussions with Vietnam over arrangements for transforming southern agriculture along the lines of what it calls the successful Socialist model in the north. (Overall, the Bank is eyeing $10 billion worth of worldwide agricultural projects for possible financing. That could mean a lot of transformation.)

To bolster its program for cooperatives, Vietnam is placing new emphasis on rural electrification. The World Bank expects to send a mission there in November or December to discuss a loan for that purpose. The idea is to build two hydro-electric power plants of 70 megawatts each as an addition to the Da Nhim project near Da Lat, built by the South Vietnamese government.

Nicholas Gibbs, the Bank's chief expert on Vietnam, says he's already been there for a preliminary look. While in Hanoi, he visited the Australian, British and Japanese embassies to discuss the possibly of co-financing. The Japanese appeared the most interested, perhaps because Japan helped finance the existing plant.

Gibbs reveals that the Bank is encouraging energy development in Vietnam, with the aim of self-sufficiency within 10 to 15 years. Accordingly, IDA is weighing a coal project estimated to cost between $50 and $60 million. A Bank mission is scheduled to go to Vietnam in November to determine foreign exchange costs and the amount and sources of equipment for development of a mine in Quang Ninh Province, near Hai Phong.

Gibbs says that Vietnam appears to have offshore oil and gas potential, but he asked the Bank to hold off on proposed financing for an exploration project estimated to cost $10 million. The country now is working directly with a number of oil companies, and also is negotiating with France, Germany, Italy and Norway.

At the annual meeting here, World Bank officials expect to discuss with representatives of Hanoi the financing of industrial rehabilitation. A Bank "identification mission" already has visited the country and completed its report, which is unavailable either to the U.S. director of the Bank or to members of Congress.

When we talked with Gibbs, a representative of the United Nations Development Program was in Hanoi, expecting to sign an agreement to put up $2 million to study a proposed Bank project for rehabilitation and expansion of the Di An Railways Workshop near Ho Chi Minh City. The cost is tentatively estimated at $80 million.

Meantime, Vietnam has obtained $33 million for reconstruction from India, the largest single recipient of World Bank (IDA) funds; India plans to give Vietnam another $50 million for the same purpose.

HUMAN RIGHTS STANDARD

As word of the World Bank's financing for Vietnam spreads, Rep. Young says that opposition from veterans' groups, mindful that 50,000 young Americans gave their lives to prevent the spread of Communism to South Vietnam, is mounting. His amendment to the appropriation bill passed by the House says that the President shall instruct the U.S. director to seek a change in the Bank's Articles of Agreement to establish human rights standards to be considered in connection with all loans.

Over the negative vote of the U.S. director, Edward R. Fried, the Bank approved an IDA loan of $8.2 million last year to Laos (Lao People's Democratic Republic) for small irrigation schemes, breeding pigs and improving the quality of seeds. In contrast to his simple negative vote for the Vietnam loan, Fried explained to the Board that the U.S. objected on grounds of violations of human rights by Laos. The Bank now is mulling two more IDA loans for Laos.

OVERRULED BY WASHINGTON

There's a saying that the Bank takes tax money from poor people in rich nations to give to rich people in poor nations, and what happened to a tubewell for irrigation in Bangladesh furnishes a case in point. Rep. Long cited a report by the Center for International Policy which says that Dacca Fibers won a $12 million contract to supply pumpsets for the tubewell, although another company had reportedly offered to provide them at the World Bank's original cost estimate of $9 million. At this point, the Dacca staff of the Bank urged that the project be postponed or cancelled, but it was overruled by Washington. According to the Center, Dacca Fibers is owned by Jahural Islam, reputed to be Bangladesh's richest citizen.

Such activities are one reason why Congress is insisting upon obtaining more information from the Bank. In response to growing criticism of its disclosure policy, the Bank has started to make public a quarterly summary of proposed loans. The first issue, published in July, gave only sketchy data.

As noted earlier, the Foreign Assistance Act of 1973 said that the President, acting through the U.S. representative to the Bank, should seek establishment of an independent review and evaluation system. It also di-

rected the U.S. Comptroller General to prepare auditing and reporting standards to help in formulating the terms of reference for a review and evaluation group, and periodically review audit report and related information and report to Congress and the President.

LACK OF TRAINING

In a report issued in early June, Comptroller General Elmer Staats found that the Operations Evaluations Department formed by the Bank conforms with neither the Foreign Assistance Act nor the standards he stressed. The staff is recruited from within the Bank, he declared, and "is not provided with guidance or training in basic evaluation techniques."

The Department has been reviewing projects completed since 1972, but no current ones. "The Director-General [who heads the Department] informed us that the reviews focus on completed projects which were approved five to seven years earlier and that Bank practices followed at that time may not be relevant to current practices. . . ."

The Department's Annual Review of Project Performance Audit Results, dated February 1978, states that it is based on findings regarding loans totaling $1.3 billion for 70 projects. It explains that it doesn't identify the projects because the Bank is accountable only to its "shareholders," its member governments. But U.S. Congressmen have been unable to learn the identity of the projects cited. Although the U.S. director of the Bank got a report which identified the projects, he is precluded by Presidential Executive Order 11652, issued by President Nixon in March 1972, from making it available to members of Congress.

The dearth of useful information makes it virtually impossible to tell what the Bank is doing. It is known, however, that the U.S. has contributed $5.6 billion, not counting the sum voted recently by the House. And that, as Rep. Young points out, "doesn't even include the $7 billion in callable capital which the Congress has appropriated for the World Bank. It is this 'callable capital,' i.e., the full faith and credit of the United States, which gives the World Bank so much financial stability."

Without doubt, however, the Bank's staff has been highly successful in eliminating poverty at home. When Congress complained that Bank salaries for U.S. employes were tax-free, the latter started paying taxes; the Bank simply raised their pay by the amount of taxes paid. McNamara's salary has been mentioned. The senior vice president now grosses $106,950. The U.S. executive director gets $83,830. That compares with $66,000 for U.S. cabinet members and $57,000 for members of Congress. The Bank also makes loans to its staff members at below-market rates.●

FLOODS RAVAGE SOUTHEAST ASIA

● Mr. KENNEDY. Mr. President, over the past few days confirmed reports have come from Southeast Asia telling of massive flooding caused by typhoons and heavy rain, endangering the lives of millions of people throughout the region. Officials in Thailand have launched an emergency flood relief program, and both Laos and Vietnam have appealed for international disaster assistance.

According to reports from the field, confirmed by our Government and United Nations agencies, heavy rains and typhoon Lola have combined to produce the worst flooding in 35 years in part of Thailand, in vast areas of Vietnam, and in the lowland areas of Laos. The American Embassy in Bangkok has cabled that serious crop damage has been reported in Thailand, and other reports describe some 2½ million acres of cropland are under water in Vietnam, with a loss of perhaps 2.8 million tons or rice.

Mr. President, this natural calamity comes to an area of the world devastated by years of war, and still suffering from its dislocations and the movement of refugees. Food shortages were already critical in both Laos and Vietnam before this latest tragedy struck. And Thailand has been faced with the serious humanitarian burden of Indochinese refugees, only now to confront relief needs among its own people.

Although Thailand has not yet requested international assistance, both the governments of Vietnam and Laos have appealed to United States agencies for assistance.

Mr. President, I would hope that the administration would study their request, and respond expeditiously and generously to any United Nations appeal—especially an appeal from the United Nations Office for Disaster Relief (UNDRO)—for emergency assistance to Vietnam, Laos, or Thailand. The need is obviously there, and once reports are confirmed as to specific relief needs, I hope our response will be forthcoming.

Clearly, the law provides for such assistance to meet natural disasters wherever they occur, "notwithstanding any other provision of law." Once the international disaster assistance account of the Foreign Assistance Act is funded when the appropriations bill is signed by the President, hopefully in the next few days, no legal obstacle should remain in our ability to respond to an international appeal for disaster assistance in Vietnam or Laos.

Mr. President, I ask that the text of two press reports from the field, be printed in the RECORD.

The report follows:

[From the Washington Post, Oct. 5, 1978]

FLOODS RAVAGE SOUTHEAST ASIA; VIETNAM AND LAOS APPEAL FOR AID

BANGKOK.—Heavy floods have ravaged wide areas of Thailand, Laos, Cambodia and Vietnam, submerging millions of acres of rice paddy and driving millions of families from their homes, according to reports here yesterday.

Officials in Vietnam and Laos have appealed for help from abroad to meet needs for rice and other food grains as well as canned goods, fish, clothing and medicine.

"Heavy losses will affect both production and the (Vietnamese) people's life for a long time," said a Vietnamese Foreign Ministry spokesman at a news conference Tuesday broadcast by the official Vietnam News Agency.

Unseasonally heavy rains generated by Typhoon Lola produced the worst flooding in 35 years in Vietnam, the spokesman reported, adding that 2.3 million acres of crops were submerged in North and South with a loss of 2.8 million tons of rice.

The flood waters affected 4.5 million Vietnamese and about 3 million require emergency relief in the form of makeshift housing and food handouts, he said.

In Thailand, Prime Minister Kriangsak Chamanan allocated $2.5 million for immediate flood relief and set aside more money to assist in recovery once the swollen rivers subside.

More than 200,000 villagers have abandoned their homes to escape flooding in Thailand's northern, northeastern and central provinces and the official death count stands at 34, officials in Bangkok said. More than 300,000 acres of farmland were under water and some low-lying areas around Bangkok also were flooded.

The government flew vaccine and other medicine to flood-stricken areas in the northeastern province of Udorn after reports that cholera had broken out. Two deaths were attributed to cholera and nine other cases were confirmed, public health officials reported.

In addition to the flooding, the Vietnamese Foreign Ministry official said, nearly 900,000 acres of ricelands were destroyed by insects. An international official in Bangkok said the insects constituted a long-term problem in Vietnam because of a scarcity of pesticides and working spray equipment.

Flooding was particularly devastating in the Mekong Delta, Vietnam's main food-growing region. More heavy rains in Thailand, Laos and Cambodia have raised the threat of still higher waters in the Mekong River, the ministry spokesman said.

The New China News Agency, meanwhile, reported that eastern China's major provinces, hundreds of miles northeast of the flood area, are fighting the longest drought in more than 120 years.

[From the Wall Street Journal, Oct. 4, 1978]

VIETNAM ASKS FOR FOREIGN AID AFTER LOSS OF ONE-FIFTH OF RICE CROP TO HEAVY RAINS

(By Barry Kramer)

HONG KONG.—Vietnam appealed for emergency international aid following six weeks of torrential rains that it says wiped out about 2.9 million tons of rice, or more than one-fifth of the Communist nation's estimated 1978 output.

The disastrous crop failure, the worst of three due to natural calamities in as many years, could curtail severely Vietnam's plans for economic recovery and may force its 50 million people, already on food rationing, to tighten their belts another notch.

The latest economic setback comes when hundreds of thousands of soldiers have been removed from agricultural and civil reconstruction projects to fight a border war with Vietnam's western neighbor, Cambodia, and to face an increasingly hostile northern neighbor, China. The crop shortage could force Vietnam into further reliance on the Soviet Union. Hanoi's main source of previous emergency food aid. The relationship with the U.S.S.R. already is the root cause of Vietnam's falling out with its Communist neighbors.

Diplomatic observers in Asia have been predicting that Vietnam would launch a military offensive in a few months against the anti-Vietnamese regime in Cambodia and attempt to replace it with one more friendly to Hanoi. It isn't clear if or how Vietnam's food crisis might affect that expected confrontation.

FERTILIZER SHORTAGE

Vietnam's grain shortage can't be blamed entirely on the weather. The country still suffers from a chronic shortage of fertilizer and insecticides, spare parts for water pumps and fuel to run them. Furthermore, refugees fleeing Vietnam report that the elimination of the free market for rice last March in what was South Vietnam has reduced the incentive to grow rice for sale. Collectivization of southern farms, which is proceeding gradually, could further slow production, some observers predict.

Some riceland along the Cambodian border is lying fallow because of the fighting, while most military units that had been farming or improving farmlands have been called away from border duties. Instead of producing food, they must be fed. Fuel, which could have been used for water pumps and tractors, has been diverted for military use.

Vietnam announced its dire situation Monday when it took diplomats and repre-

sentatives of international organizations on a tour of some flooded areas. Foreign Ministry officials then told foreign newsmen in Hanoi that the floods, plus insect infestation, had destroyed about 2.9 million tons of rice since Aug. 20, when the first of several typhoons and tropical storms hit the North and the South.

TARGET OUTPUT

The Vietnamese previously targeted output for the year at about 14.9 million tons. But before the floods, Western experts had estimated the crop at about 12.9 million tons. If the estimated loss is correct, then actual production could be only 10 million metric tons—22 percent below the earlier Western estimate and several million tons less than is needed to feed Vietnam's population.

Last year, when Vietnam harvested an estimated 12.4 million tons of rice, it still had to import about 1.7 million tons of rice and other grains to help bridge the gap between production and consumption. Even so, rice rations were cut, and other starchy foods such as manioc were substituted for rice, Vietnam's staple food.

The country isn't likely to get all 2.9 million tons of grain as gifts or loans from other countries, nor is it likely to purchase any but a small part of that amount. It is likely that the Soviet Union will supply a large portion of whatever relief grain is obtained.

Meanwhile, Thailand, a would-be supplier of rice to Vietnam, has been hit by the same heavy rains, and large areas of its rice paddies are damaged. Laos and Cambodia also will suffer.●

VISIT OF RHODESIA'S PRIME MINISTER IAN SMITH

● Mr. GARN. Mr. President, I would like to take this opportunity to welcome to the United States Prime Minister Ian Smith and the Reverend Ndabaningi Sithole of Rhodesia's transitional government. It is of utmost significance that the American people have this chance to hear directly from these leaders of Rhodesia's internal settlement regarding the conditions in their country and their efforts to bring about majority rule.

The State Department's delay in granting visas to Prime Minister Smith and Reverend Sithole was more than simply another manifestation of this administration's misguided and ill-convicted policy in southern Africa—it was an unconscionable obstruction to the earnest attempts of these leaders to bring about black majority rule in Rhodesia through peaceful means.

This administration has consistently pursued a policy that is weighted heavily in favor of the pro-Marxist guerrilla forces of Joshua Nkomo and Robert Mugabe. Our Government's insistence that these leaders of the Patriotic Front must be part of any overall settlement has provided them with a de facto veto over the efforts of Rhodesia's internal leaders to resolve the issue peacefully. The obstinate refusal of the Carter administration to support the brave initiatives of Rhodesia's biracial interim government is nothing less than scandalous.

Should this administration maintain its opposition to the Rhodesian internal settlement it will severely reduce the prospects for a peaceful transition to democratic rule, and will make a black-against-black civil war all but unavoidable—with the potential that such a conflict has for further Soviet-Cuban armed intervention in the affairs of Africa.

Mr. President, I sincerely hope that this visit by Prime Minister Smith and Reverend Sithole will help the American people gain a greater appreciation for the tremendous difficulties which these leaders face in combating anarchy while working to fundamentally transform the nature of their country's political system. Their endeavors deserve our wholehearted support and I once again welcome their arrival here in Washington.

Mr. President, in today's Washington Post, Evans and Novak have spelled out the moral bankruptcy of the Carter administration's African policy, and I ask that their article be printed in the RECORD.

RHODESIA POLICY: THE SENATE FILLS A VACUUM

(By Rowland Evans and Robert Novak)

Contortions in the State Department to delay a visa for Rhodesian Prime Minister Ian Smith and Executive Council member Ndabaningi Sithole symbolized the bankruptcy of Carter administration Rhodesia policy, a failure that has created a vacuum now being filled by the Senate.

Implicit bankruptcy was declared by the Senate more than three months ago when a resolution to remove economic sanctions from Rhodesia barely failed, 42 to 48. That was followed Sept. 14 by a letter to Smith, signed by 27 senators, inviting him and Sithole to Washington. Moderates such as Republican Sens. John Heinz (Pa.) and Bob Packwood (Ore.) and Democratic Sens. Jennings Randolph (W. Va.) and Ernest Hollings (S.C.) were among the signers.

But even such clear warnings from senators determined to arrest the move toward all-out racial war failed to awaken the makers of African policy in the State Department. Trapped in a policy that in effect gives veto power over the United States to feuding black states bordering Rhodesia and to feuding guerrilla forces armed and trained by Soviet and Cuban officers, State's African specialists shied from making any gesture to the outlawed Smith.

So when Smith's request for a visa arrived, the State Department blocked it. At work was the same detachment from reality that has dogged the administration's Rhodesian policy ever since former secretary of state Henry Kissinger's basic plan for ending white domination of black Rhodesia was adopted by Smith last March.

The pretext for the department's preliminary decision Sept. 30 denying the visa was the U.N. resolution imposing sanctions against the onetime British colony. Smith being a government official in an outlawed nation, his passport has no international standing, but the United States can waive that U.N. ban anytime it wants.

For example, both Sithole and Bishop Abel Muzorewa, another member of Rhodesia's Executive Council, got U.S. visas for previous visits here despite U.N. sanctions. The State Department was singling out Smith for special treatment.

But the true hypocrisy of the department's preliminary decision to bar Smith on spurious legalistic grounds is exposed by the fact that Zambia, one of the "front-line" black states bordering Rhodesia, itself waived the U.N. ban and admitted Smith just two months ago.

Smith was invited by Zambian President Kenneth Kaunda for secret negotiations with Joshua Nkomo. The purpose: to find common ground between the two so that Nkomo, a principal leader of guerrilla forces now attacking Rhodesia, could be brought into the Rhodesian government. U.N. sanctions counted for nothing against Zambia's desperate need for a solution to racial war in southern Africa and economic disaster for Zambia and other frontline states.

The political rationale behind the invitation for Smith to come here and talk to senators and other American leaders was grounded on precisely the same hopes that motivated Kaunda: press Smith to find some formula to entice Nkomo into a "share of power" in the Rhodesian government.

The leading Senate player in this game is conservative Sen. Jesse Helms (R-N.C.), who is now working through private channels to soften both Smith and Nkomo in the hope of continuing the August contacts started in Zambia—a meeting that lasted several hours and achieved limited objectives.

But State Department specialists shrank from exposing the shrewd and wily Smith to the U.S. public or risking the political anger of Third World activists in the United Nations and blacks at home. Despite Helms's pleading, Smiths' request for a visa languished.

Helms then served notice that he would enter formal objections, under the rule of senatorial courtesy, to the State Department's entire list of foreign-service promotions, and hold up three ambassadorial confirmations. There were other well-founded threats.

Helms, however, is small potatoes in Jimmy Carter's State Department. What broke the visa barricade was not Helms or his Senate colleagues but a compelling editorial in the Washington Post on Oct. 4. By no stretch could The Post be charged with harboring bias toward Smith. Accusing the State Department of playing a "shabby game," the Post asked: "Must the United States be 'purer' than Zambia?" Within hours of that Oct. 4 editorial, the State Department granted the visa, making a mockery of its sanctimonious pretexts for delay.

Having breached the visa barricade, the Senate intends to play out its activist role and fill the policy vacuum that has been spreading since last March, when Smith launched his "internal solution" pointing toward black majority rule. As perceived by Senators, the United States for too long has bartered away its prestige and power in the Rhodesian tragedy in a vain search for a solution satisfying black and other interests, many of which are clearly irreconcilable.●

FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978—CONFERENCE REPORT

Mr. KENNEDY. Mr. President, I submit a report of the committee of conference on S. 1566 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1566) to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1978).

Mr. KENNEDY. Mr. President, today, the U.S. Senate writes a final chapter in the ongoing 10-year debate to regulate foreign intelligence electronic surveillance. In accepting the conference report on S. 1566, "The Foreign Intelligence Surveillance Act of 1978," the Senate will at long last place foreign intelligence electronic surveillance under the rule of law. The abuses of recent history sanctioned in the name of national security highlighted the need for this legislation. Working closely with our House colleagues we have fashioned a final product which strikes a careful balance between the needs of national security and the civil liberties and rights of the American people.

This legislation benefits from broad bipartisan support. It passed the Senate 95 to 1. My distinguished colleagues, Senator BAYH, Senator THURMOND, and Senator GARN have been particularly instrumental in the development of this legislation. Senator BAYH in particular proved to be a valuable ally, processing the bill through the Senate Select Committee on Intelligence with skill and dedication.

The bill has been endorsed and supported not only by this administration, but by the Ford administration as well. Both Attorney General Bell and Attorney General Levi have been most cooperative and helpful in its drafting and processing. The legislation constitutes a major step forward in bringing needed safeguards to the unregulated area of foreign intelligence surveillance. It is a recognition, long overdue, that the Congress does have a role to play in this area.

This legislation would, for the first time, substitute carefully prescribed accountability and oversight for the arbitrariness of the past. The bill would require that most foreign intelligence electronic surveillance in the United States be subject to a judicial warrant requirement based on probable cause. For an American citizen to be surveilled, there must be probable cause that he is an agent of a foreign power, engaging in sabotage, terrorism or clandestine intelligence activities. It is the courts, not the Executive, that would ultimately rule on whether the surveillance should occur. The bill would require that, before such surveillance could occur, a named executive branch official—such as the Secretary of Defense—certify in writing and under oath that such surveillance is necessary to obtain foreign intelligence information.

Mr. President, these statutory provisions are the very heart of the legislation. It is true that we have acceded to the House and eliminated the formal warrant requirement when certain foreign powers are the target of the surveillance. I have reluctantly accepted this modification because of the need to retain a bipartisan consensus concerning the legislation. Although the modification exempts certain targets from the warrant requirement, it will, nevertheless, prevent the National Security Agency from wiretapping any American citizen without first securing a warrant.

The legislation also provides the type of accountability which has heretofore not existed. It would for the first time expressly limit whatever inherent power the Executive may have to engage in electronic surveillance in the United States. In so doing, the bill ends a decade of debate over the meaning and scope of the "inherent power" disclaimer clause currently found in title III.

The bill also provides civil and criminal sanctions to those who violate its provisions. It requires that all extraneous information—unrelated to the purposes of the surveillance—be minimized. And it mandates that before any information obtained can be used at a subsequent criminal trial, the trial court must again find that all statutory wiretap procedures have been met.

Most of the concerns expressed by some about various provisions of the bill have been satisfactorily resolved in conference. Thus, the Senate provision creating a special court to process the warrant applications has been retained by the conferees; a section has been added from the House bill suspending the warrant procedures for a period of up to 15 days in times of declared war; and new definitions of terrorism have been worked out.

Mr. President, some might argue that this legislation is regressive and does not provide sufficient protection for civil liberties: Others might maintain that it goes too far and will inhibit the functioning of our intelligence agencies. I disagree on both counts. The bill places strict statutory controls on foreign intelligence electronic surveillance. The judicial warrant and executive certification procedures guarantee the type of external and internal controls which I and others have long advocated. To those who maintain that the bill does not go far enough, I would remind them that today there is no statute at all.

On the other hand, the legislation will not undercut the effectiveness of our intelligence agencies. Two Attorneys General, two directors of the FBI and two heads of the CIA have testified in support of this legislation. They made convincing arguments that without this bill, their agents will continue to operate in a "twilight zone", unsure of what constitutes legal surveillance techniques.

The needs of our intelligence agencies in protecting the national security have also been carefully taken into account by the Congress, the conferees, the administration and, perhaps most importantly, the intelligence community itself. The legislation has built-in safeguards to preserve the flexibility and secrecy of our intelligence effort. For not only did the conferees agree to exempt from the warrant requirement certain foreign powers, we also agreed to limit the notice requirements of what detail must go into the warrant application.

Finally, the conferees agreed that the legislation must differ substantially from the provisions of current law authorizing wiretaps in domestic criminal investigations. The bill requires evidence of criminal activity before a warrant may be issued in foreign intelligence cases but established a less stringent "probable cause" standard of criminality, thus making it easier for the Government to secure a warrant for these limited purposes. Other provisions dealing with length of surveillance, minimization of the surveillance and congressional oversight are carefully drafted with national security interests paramount.

Mr. President, I believe the time has at last arrived when Congress and the Executive together can fill one of the last remaining loopholes in the laws governing wiretapping and other electronic surveillance in the United States. One should view this bill for what it is, a major effort by the Congress, long overdue, to place foreign intelligence electronic surveillance under the rule of law. I urge the adoption of the conference report.

Mr. BAYH. Mr. President, I would like to say a word of deep appreciation to the Senator from Massachusetts for the tremendous effort that he and the other members of the conference expended in working out this very important piece of legislation.

This is really the first time we have had this kind of joint effort between the Judiciary Committee and the Senate Select Committee on Intelligence. The Senator from Indiana, as the chairman of that latter committee, is indeed grateful for the kind of cooperation that has been exhibited.

This bill, for the first time in history, protects the rights of individuals from government activities in the foreign intelligence area.

It is to President Carter's credit that he is the first President in history willing to waive the implied rights of inherent powers which other Presidents have demanded.

I think we have drawn a very careful balance. On one side we have protected the rights of individual citizens from spying and prying. On the other, we have done it in such a way it does not weaken the capacity of our intelligence agencies to provide the kind of information our country needs to protect the Nation from those who would do us harm.

Mr. THURMOND. Mr. President, although I rise in support of the conference report on S. 1566, the Foreign Intelligence Surveillance Act of 1978, I must indicate that I signed the conference report with some reluctance.

The need for certain safeguards in the use of electronic surveillance by the Government is accepted by this Senator. I do not, however, support procedures that would unduly restrict the ability of the President, under his inherent power, to engage in intelligence-gathering activities against foreign powers or their agents.

Mr. President, the procedures under this legislation are designed to permit the President to continue his power to engage in foreign intelligence surveillance, but with judicial safeguards in the form of a warrant procedure. Although I am agreeable to such procedures at this time, I would expect that if these procedures were to become cumbersome and an obstacle to the ability of our Nation to engage in necessary foreign intelligence gathering, the Congress would immediately reconsider this legislation and make changes in order to

avoid such barriers to effective foreign intelligence-gathering activities.

Finally, I am supporting this legislation because, without a clear expression from Congress in this area, especially when the case law is somewhat divided, there may be a chilling effect on the executive branch to engage in foreign intelligence gathering activities. I would not want to see that happen, Mr. President, so with the reservations that I have expressed, I shall agree to the adoption of the conference report on S. 1566 now before the Senate.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. KENNEDY. I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Nos. 1190, 1194, 1210, 1211, 1212, and 1213.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. There is no objection.

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

COMPTROLLER GENERAL ANNUITY ADJUSTMENT ACT OF 1978

The Senate proceeded to consider the bill (S. 3412) to provide for cost-of-living adjustments in the annuity of a retired Comptroller General, and for other purposes, which had been reported from the Committee on Governmental Affairs with an amendment on page 6, beginning with line 6, strike through and including line 8, so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comptroller General Annuity Adjustment Act of 1978".

SEC. 2. Section 319 of the Budget and Accounting Act, 1921 (31 U.S.C. 43b) is amended—

(1) by striking out "3" wherever it appears in subsections (b) and (c) and inserting "4½";

(2) by striking out in subsection (e)(2) beginning with "one-half" through the word "lesser" and inserting the following: "(A) $1,548, or (B) $4,644 divided by the number of children, whichever is lesser";

(3) by inserting "(A)" immediately after "equal to" in subsection (e)(3) and by striking out in such subsection beginning with "survived," through the word "year" and inserting "survived, divided by the number of children, or (B) $1,860, or (C) $5,580, divided by the number of children, whichever is the lesser"; and

(4) by striking out "the last five years of such service" in subsection (n) and inserting "the three years of service in which his annual salary was greatest", and by striking out "37½" in such subsection and inserting "40".

SEC. 3. The Budget and Accounting Act, 1921, is amended by adding after section 319 the following new section:

"SEC. 320. (a) Except as provided in subsection (b), the annuities authorized by sections 303 and 319 of this Act shall be increased as follows:

"(1) The Comptroller General shall—

"(A) on January 1 of each year, or within a reasonable time thereafter, determine the per centum change in the Consumer Price Index published for December of the preceding year over the Consumer Price Index published for June of the preceding year, and

"(B) on July 1 of each year, or within a reasonable time thereafter, determine the per centum change in the Consumer Price Index published for June of such year over the Consumer Price Index published for December of the preceding year.

"(2) If in any year the per centum change determined under either paragraph (1)(A) or (1)(B) indicates a rise in the Consumer Price Index, then—

"(A) effective March 1 of such year, in the case of an increase under paragraph (1)(A), each annuity payable under sections 303 and 319 of this Act commencing not later than such March 1 shall be increased by the per centum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum, or

"(B) effective September 1 of such year, in the case of an increase under paragraph (1)(B), each annuity payable under sections 303 and 319 of this Act commencing not later than such September 1 shall be increased by the per centum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum.

"(3) The per centum increase authorized by the Comptroller General under this section shall not exceed the per centum increase as authorized from time to time by the Civil Service Commission under section 8340(b) of title 5, United States Code.

"(b) The annuity authorized by section 303 of this Act shall not, by reason of the application of subsection (a), exceed the annual rate of compensation of the Comptroller General.".

SEC. 4. (a) The second paragraph of section 303 of the Budget and Accounting Act, 1921 (31 U.S.C. 43) is amended by inserting between the third and fourth sentences the following new sentence: "There shall be deducted from the salary of any person appointed to the Office of the Comptroller General after the date of enactment of this sentence as a contribution to the annuity authorized by this paragraph (1) a sum equal to 3½ per centum of his salary, in the case of a Comptroller General who has elected survivor benefits under section 319, or (2) a sum equal to 8 per centum of his salary, in the case of a Comptroller General who has not elected such survivor benefits.".

(b) The third paragraph of such section is amended by—

(1) inserting after "that Act," in the first sentence "and no deduction from his salary shall be made under the preceding paragraph,"; and

(2) adding at the end thereof the following new sentence: "Any person who is appointed to the Office of Comptroller General after the date of enactment of this sentence and who makes such an election under this paragraph shall deposit with the General Accounting Office for covering into the general fund of the Treasury as miscellaneous receipts as a contribution to the annuity authorized under the preceding paragraph (1) a sum equal to 3½ per centum, in the case of a Comptroller General who has elected survivor benefits under section 319, or (2) 8 per centum, in the case of a Comptroller General who has not elected such benefits, of the salary received by him as Comptroller General prior to the date current deductions begin from his salary, plus interest thereon at the rate of 3 per centum per annum compounded on December 31 of each year.".

(c) Such section is amended by adding at the end thereof the following new paragraph:

"Any Comptroller General who is separated from office prior to becoming eligible to receive an annuity under the second paragraph shall be entitled to a lump-sum refund of the total amount deducted from his salary in accordance with the provisions of such paragraph or deposited by him as a contribution to his annuity in accordance with the provisions of the preceding paragraph, plus interest thereon at the rate of 3 per centum per annum compounded on December 31 of each year. The lump-sum refund authorized by this paragraph shall be paid to the Comptroller General or to his survivors in the order of precedence of such survivors established in section 319(j) for survivor benefits.".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1267), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SUMMARY AND PURPOSE

S. 3412 amends the law providing for retirement of the Comptroller General of the United States to enable retired Comptrollers General and their survivors to obtain cost-of-living adjustments to their annuities.

BACKGROUND AND LEGISLATIVE HISTORY

The Budget and Accounting Act of 1921, as amended in 1953, authorizes a retirement annuity for the Comptroller General. He is entitled to the salary payable for his office at the time of retirement (1) upon completion of his single 15-year term, (2) upon retirement on permanent disability after 10 years of service, or (3) after 10 years of service if he has attained the mandatory retirement age of 70. He can retire at half pay if permanently disabled after less than 10 years of service.

Benefits for survivors of retired Comptrollers General were enacted in 1959. These benefits generally followed those provided in 1956 for survivors of Federal judges. Surviving spouses of retired judges and Comptrollers General received a maximum of 37½ percent of the average salary for the last 5 years of creditable service. Benefits for dependent children were also provided.

The 94th Congress updated benefits for survivors of Federal judges (Public Law 94–554). Cost-of-living allowances were provided. The ceiling on a spouse's annuity was increased to 40 percent of a deceased judge's highest 3-year average salary. The annuity for dependent children of deceased judges was increased. Judges' contributions toward survivor benefits were increased from 3 to 4½ percent of their salaries. With passage of Public Law 94–554 it appears that all Federal employees, except for the Comptroller General, have retirement and survivor benefits adjusted by cost-of-living increases.

Legislation providing cost-of-living increases for retired Comptrollers General and their survivors was transmitted this year by the General Accounting Office to the Senate Committee on Governmental Affairs and the House Committee on Government Opera-

tions. The bill was introduced in the House as H.R. 12196. A hearing was conducted on May 17, with Comptroller General Elmer Staats testifying. The bill was reported on June 1 (H. Rept. 95–1241) and passed the House on July 25.

S. 3412 provides twice-a-year cost-of-living increases for retired Comptrollers General and their survivors. The bill also increases benefits for widows and dependent children of retired Comptrollers General, along the lines provided for survivors of Federal judges in Public Law 94–554.

S. 3412 differs from the House-approved bill proposed by GAO in two respects. First, S. 3412 provides that the annuity of a retired Comptroller General not exceed the salary of the incumbent Comptroller General. Because a Comptroller General retires at full pay—except under conditions noted above—the biannual cost-of-living increases could raise his annuity appreciably higher than the salary of his successor, whose salary increases only when statutory increases are authorized generally for high-level Federal executives. Only three such increases have been approved and funded in the past 11 years.

At the hearing on S. 3412 on August 21, conducted by the Subcommittee on Energy, Nuclear Proliferation and Federal Services, Comptroller General Staats stated his agreement with this provision of the Senate bill.

Secondly, S. 3412 requires future Comptrollers General to contribute 8 percent of their salaries toward their retirement and survivor benefits, as Members of Congress do. At present the Comptroller General is not required to contribute toward his own retirement. However, if he elects to provide survivor benefits, 3 percent of his salary is deducted for that purpose. The House bill would increase the 3-percent deduction to 4½ percent, in line with the higher deduction to provide increased benefits for survivors of Federal judges in the Judicial Survivors' Annuities Reform Act (Public Law 94–554). The Senate bill requires, in the case of a Comptroller General who elects survivor benefits, 4½ percent of his salary be deducted for survivor benefits, and 3½ percent be deducted for retirement benefits.

The committee believes that the principle of individual contributions to retirement systems should be followed. The only major category of Federal civilian employees from which contributions toward their own retirement is not required is the judiciary. Judges and Comptrollers General can retire at full pay. Unlike the Comptroller General and other Federal civilians, judges are on call for Federal service during their entire lifetime. Judges do, as noted above, contribute 4½ percent of their salaries toward survivor benefits, if they so elect, as the Comptroller General would under the House-approved bill (an increase from the present 3 percent).

The requirement of contributions by future Comptrollers General will not affect the incumbent. Nor should it, because he assumed office under the provision of previous legislation that his contribution be covered by appropriated funds.

BOUNDARY WATERS CANOE AREA WILDERNESS

The Senate proceeded to consider the bill (H.R. 12250) to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

FINDINGS

SECTION 1. The Congress finds that it is necessary and desirable to provide for the protection, enhancement, and preservation of the natural values of the lakes, waterways, and associated forested areas known (before the date of enactment of this Act) as the Boundary Waters Canoe Area, and for the orderly management of public use and enjoyment of that area as wilderness, and of certain contiguous lands and waters, while at the same time protecting the special qualities of the area as a natural forest-lake-land wilderness ecosystem of major esthetic, cultural, scientific, recreational, and educational value to the Nation.

PURPOSES

SEC. 2. It is the purpose of this Act to provide for such measures respecting the areas designated by this Act as the Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area as will—

(1) provide for the protection and management of the fish and wildlife of the wilderness so as to enhance public enjoyment and appreciation of the unique biotic resources of the region,

(2) protect and enchance the natural values and environmental quality of the lakes, streams, shorelines, and associated forest areas of the wilderness,

(3) maintain high water quality in such areas,

(4) minimize to the maximum extent possible, the environmental impacts associated with mineral development affecting such areas,

(5) prevent further road and commercial development and restore natural conditions to existing temporary roads in the wilderness, and

(6) provide for the orderly and equitable transition from motorized recreational uses to nonmotorized recreational uses on those lakes, streams, and portages in the wilderness where such mechanized uses are to be phased out under the provisions of this Act.

BOUNDARY WATERS CANOE AREA WILDERNESS DESIGNATION AND MAP

SEC. 3. The areas generally depicted as wilderness on the map entitled "Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area" dated September 1978, comprising approximately one million and seventy-five thousand five hundred acres, are hereby designated as the Boundary Waters Canoe Area Wilderness (hereinafter referred to as the "wilderness"). Such designation shall supersede the designation of the Boundary Waters Canoe Area under section 3(a) of the Wilderness Act (78 Stat. 890) and such map shall supersede the map on file pursuant to such section. The map of the wilderness shall be on file and available for public inspection in the offices of the Supervisor of the Superior National Forest and the Chief, United States Forest Service. The Secretary of Agriculture (hereinafter, referred to as the "secretary") shall, as soon as practicable but in no event later than one year after the date of enactment of this Act, publish a detailed legal description and map showing the boundaries of the wilderness in the Federal Register. Such map and description shall be filed with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this Act. Correct of clerical and typographical errors in such legal description and map may be made.

ADMINISTRATION

SEC. 4.(a) The Secretary shall administer the wilderness under the provisions of this Act, the Act of January 3, 1975 (88 Stat. 2096; 16 U.S.C. 1132 note), the Wilderness Act of 1964 (78 Stat. 890; 16 U.S.C. 1131–1136), and in accordance with other laws, rules, and regulations generally applicable to areas designated as wilderness.

(b) Paragraph (5) of section 4(d) of the Wilderness Act of 1964 is hereby repealed and paragraphs (6), (7), and (8) of such section 4(d) are hereby redesignated as paragraphs (5), (6), and (7).

(c) Effective on January 1, 1979, the use of motorboats is prohibited within the wilderness designated by this Act, and that portion within the wilderness of all lakes which are partly within the wilderness, except for the following:

(1) On the following lakes, motorboats with motors of no greater than twenty-five horsepower shall be permitted:

Fall, Lake County,
Newton, Lake County,
Moose, Lake County,
Newfound, Lake County,
Sucker, Lake County,
Snowbank, Lake County,
East Bearskin, Cook County,
South Farm, Lake County,
Trout, Saint Louis County,
Basswood, except that portion generally north of the narrows at the north end of Jackfish Bay and north of a point on the international boundary between Ottawa Island and Washington Island,
Saganaga, Cook County, except for that portion west of American Point: *Provided*, That, on the following lakes, until January 1, 1984, the horsepower limitations described in this paragraph shall not apply to towboats registered with the Secretary:
Moose, Lake County,
Newfound, Lake County,
Sucker, Lake County,
Saganaga, Cook County, as limited in this paragraph.

(2) On the following lakes and rivers, motorboats with motors no greater than ten horsepower shall be permitted:

Clearwater, Cook County,
North Fowl, Cook County,
South Fowl, Cook County,
Island River east of Lake Isabella, Lake County,
Sea Gull, that portion generally east of Threemile Island, Cook County,
Alder, Cook County,
Canoe, Cook County.

(3) On the following lakes, or specified portions of lakes, motorboats with motors of no greater than ten horsepower shall be permitted until the dates specified:

Basswood River to and including Crooked Lake, Saint Louis and Lake Counties, until January 1, 1984,
Carp Lake, the Knife River, and Knife Lake, Lake County, until January 1, 1984,
Sea Gull, Cook County, that portion generally west of Threemile Island, until January 1, 1999,
Brule, Cook County, until January 1, 1994, or until the termination of operation of any resort adjacent to Brule Lake in operation as of 1977, whichever occurs first.

(4) On the following lakes, or specified portions of lakes, motorboats with motors of no greater than twenty-five horsepower shall be permitted until January 1, 1984:

Birch, Lake County,
Basswood, Lake County, that portion generally north of the narrows at the north end of Jackfish Bay and north of a point on the international boundary between Ottawa Island and Washington Island.

(d) The detailed legal description and map to be published pursuant to section 3 of this Act shall contain a description of the various areas where the motorized uses permitted by this section are located. No provision of this section shall be construed to limit mechanical portages or the horsepower of motors used on motorboats in the following areas within the wilderness:

Little Vermilion Lake, Saint Louis County,
Loon River, Saint Louis County,
Loon Lake, Saint Louis County, that por-

tion of the Lac La Croix, Saint Louis County, south of Snow Bay and east of Wilkins Bay.

(e) For the purposes of this Act, a snowmobile is defined as any motorized vehicle which is designed to operate on snow or ice. The use of snowmobiles in the wilderness designated by this Act is not permitted except that the Secretary may permit snowmobiles, not exceeding forty inches in width, on (1) the overland portages from Crane Lake to Little Vermilion Lake in Canada, and from Sea Gull River along the eastern portion of Saganaga Lake to Canada, and (2) on the following routes until January 1, 1984:

Vermilion Lake portage to and including Trout Lake,

Moose Lake to and including Saganaga Lake via Ensign, Vera and Knife Lakes East Bearskin Lake to and including Pine Lake via Alder Lake and Canoe Lake.

In addition to the routes listed above, the Secretary may issue special use permits for the grooming by snowmobiles of specified cross-country ski trails for day use near existing resorts.

(f) The Secretary is directed to develop and implement, as soon as practical, entry point quotas for use of motorboats within the wilderness portions of the lakes listed in subsection c, the quota levels to be based on such criteria as the size and configuration of each lake, and the amount of use on that lake: *Provided,* That the quota established for any one year shall not exceed the average actual annual motorboat use of the calendar years 1976, 1977, and 1978 for each lake, and shall take into account the fluctuation in use during different times of the year: *Provided further,* That on each lake homeowners and their guests and resort owners and their guests on that particular lake shall have access to that particular lake and their entry shall not be counted in determining such use.

(g) Nothing in this Act shall be deemed to require the termination of the exisitng operation of motor vehicles to assist in the transport of boats across the portages from Sucker Lake to Basswood Lake, from Fall Lake to Basswood Lake, and from Lake Vermilion to Trout Lake, during the period ending January 1, 1984. Following said date, unless the Secretary determines that there is no feasible nonmotorized means of transporting boats across the portages to reach the lakes previously served by the portages listed above, he shall terminate all such motorized use of each portage listed above.

(h) The motorized uses authorized by this section shall be confined to those types of snowmobiles, motorboats, and vehicles which have been in regular use in the Boundary Waters Canoe Area prior to the date of enactment of this Act. The Secretary may set forth additional standards and criteria to further define the type of motorized craft which may be permitted.

(i) Except for motorboats, snowmobiles, and mechanized portaging, as authorized and defined herein, no other motorized use of the wilderness shall be permitted. Nothing in this Act shall prohibit the use of aircraft, motorboats, snowmobiles, or other mechanized uses in emergencies, or for the administration of the wilderness area by Federal, State, and local governmental officials or their deputies, only where the Secretary finds that such use is essential.

RESORTS

SEC. 5. (a) The owner of a resort in commercial operation during 1975, 1976, or 1977 and located on land riparian to any of the lakes listed below may require purchase of that resort, including land and buildings appurtenant thereto, by written notice to the Secretary prior to September 30, 1985. The value of such resort for purposes of such sale shall be based upon its fair market value as of July 1, 1978, or as of the date of said written notice, whichever is greater, without regard to restrictions imposed by this Act:

Fall, Lake County, Moose, Lake County, Snowbank, Lake County, Lake One, Lake County, Sawbill, Cook County, Brule, Cook County, East Bearskin, Cook County, Clearwater, Cook County, Saganaga, Cook County, Sea Gull, Cook County, McFarland, Cook County, North Fowl, Cook County, South Fowl, Cook County, Jasper Lake, Lake County, Ojibway, Lake County.

(b) An owner requiring purchase of a resort under this provision may elect to retain one or more appropriate buildings and lands not exceeding three acres, for personal use as a residence: *Provided,* That the purchase price to the Government for a resort shall be reduced by the fair market value of such buildings and lands, with the same valuation procedures outlined above.

(c) With respect to any privately owned lands and interests in lands riparian to the lakes listed above, and if the Federal Government has been required to purchase a resort on said lake, said lands shall not be sold without first being offered for sale to the Secretary who shall be given a period of one hundred days after the date of each such offer within which to purchase such lands. No such lands shall be sold at a price below the price at which they have been offered for sale to the Secretary, and if such lands are reoffered for sale they shall first be reoffered to the Secretary: *Provided,* That, this right of first refusal shall not apply to a change in ownership of a property within an immediate family.

(d) There are authorized to be appropriated such sums therein as provided by this section.

TIMBER SALE CONTRACTS

SEC. 6. (a) The Secretary is directed to terminate within a period of one year after the date of passage of this Act, all timber sale contracts in the Boundary Waters Canoe Area Wilderness. There shall be no further logging of the virgin forest areas formerly enjoined from logging by the United States district court on said contract areas during the termination period. The purpose of said termination period is only to permit completion of the harvesting of timber within existing areas under contract that are not within the areas described above and permit the taking of ameliorative measures, including land and cover restoration that will, at the earliest feasible date, make the imprint of man's work substantially unnoticeable on the lands included as wilderness in this Act.

(b)(1) In the event that termination of timber sale contracts in subsection (a) reduces the total national forest volume which a purchaser has under contract on the Superior National Forest to less than two years cut based on the average volume of Superior National Forest timber harvested by the purchaser in the last three years, the Secretary may, with the consent of the purchaser, substitute, to the extent practicable, timber on other national forest lands approximately equal in species and volume to the timber sale contract affected. In offering substitute timber, the Secretary shall negotiate the substitution at a price that is mutually equitable considering such factors as species, volume, logging accessibility, and other terms of the agreement.

(2) The United States will pay just compensation for any timber contracts terminated or modified by this Act, consistent with amendment V to the Constitution of the United States. Losses due to costs incurred in directly fulfilling the terms of such contracts shall be paid by the United States. Any action for the recovery from the United States of costs as provided above shall be brought in a court of competent jurisdiction. Any such judgments shall be paid from the claims and judgments fund (31 U.S.C. 724a).

(c) Within the limits of applicable laws and prudent forest management—

(1) the Secretary shall, in furtherance of the purposes of subsection (a) of this section and of section 4 of the National Forest Management Act of 1976 (90 Stat. 2949), expedite the intensification of resource management including emphasis on softwood timber production and hardwood utilization on the national forest lands in Minnesota outside the wilderness to offset, to the extent feasible, the reduction in the programed allowable timber harvest resulting from reclassification of the Boundary Waters Area, and the Secretary shall make a review of progress to date in 1983, and a forecast of planned achievements by 1985 and shall submit, as a part of the 1985 program under the schedule called for in the Resources Planning Act of 1974, a Plan and recommendations for 1985–1990. In administering the Superior National Forest, the Secretary is authorized and directed to engage in artificial and natural regeneration, release, site preparation, and other forms of timber production enhancment.

(2) The Secretary, in carrying out the requirements in section (c)(1), is authorized and directed to cooperate with the State of Minnesota and its political subdivisions to develop and implement a system of grants, for the development of renewable resources on State, county, and private lands. He may also seek the cooperation of other Federal departments and agencies to assure a coordinated approach to renewable resources development.

(d) There is authorized to be appropriated, in addition to such sums as may otherwise be appropriated for the Superior National Forest from existing authorities established by law, the following additional sums for the fiscal years 1980 through 1990 inclusive:

(1) to carry out the purposes of subsection 6(c)(1) an additional $8,000,000 annually; and

(2) to carry out the purposes of subsection 6(c)(2) an additional $3,000,000 annually: *Provided, however,* That the Federal share of any grant made pursuant to subsection 6(c)(2) shall not exceed 80 per centum of the total cost of said grant.

(e) Funds appropriated pursuant to this section shall remain available until expended. Authorizations in excess of funds appropriated in a given fiscal year shall remain available for appropriation in subsequent fiscal years.

(f) In addition to those personnel who would otherwise be available, the Secretary is authorized to appoint and fix the compensation not to exceed that of grade 15 on the General Schedule for Federal employees of additional full-time personnel for the Superior National Forest to carry out the purposes of this Act.

LAWS APPLICABLE TO CERTAIN LANDS AND WATERS IN THE SUPERIOR NATIONAL FOREST

SEC. 7. (a) The provisions of the Acts listed in paragraph (b) of this section shall continue to apply to lands and waters specified in such Acts notwithstanding the inclusion of any such lands and waters in the wilderness or mining protection area designated under this Act. For lands and waters to which such Acts listed in paragraph (b) apply which are also within the wilderness or mining protection area designated under this Act, any withdrawal, prohibition, or restriction contained in such Acts listed in paragraph (b) shall be in addition to any withdrawal, prohibition, or restriction otherwise applicable to such wilderness or mining protection area under any other law.

(b) The Acts referred to in paragraph (a) are as follows:

(1) The Act of July 10, 1930 (46 Stat. 1020; 16 U.S.C. 577a, 577b), herein referred to as the "Shipstead-Nolan Act".

(2) The Act of June 22, 1948 (62 Stat. 568, as amended; 16 U.S.C. 577c-577b), herein referred to as the "Thye-Blatnik Act".

(c) The provisions of the Shipstead-Nolan Act are hereby extended and made applicable to all lands and waters not otherwise subject to such Act which are within the wilderness designated under this Act.

(d)(1) The authorities contained in the Thye-Blatnik are hereby extended and made applicable to all lands and waters not otherwise subject to such Act which are within the wilderness designated under this Act.

(2) In applying the second proviso of section 5 of such Thye-Blatnik Act to the areas to which such Act is extended and made applicable under this subsection, the phrase "fiscal year 1980" shall be substituted for the phrase "the first full fiscal year after the approval of this Act" in such proviso.

(3) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of the Thye-Blatnik Act with respect to the lands and waters within the wilderness designated under this Act. Such sums may be used for the payment of court judgments in condemnation actions brought under the terms of the Thye-Blatnik Act without regard to the date such condemnation actions were initially instituted. Funds appropriated from the Land and Water Conservation Fund may be used for the acquisition of any lands and waters, or interests therein within such wilderness.

EXISTING AIRSPACE RESERVATION

SEC. 8. The provisions of Executive Order 10092 as made applicable to the Boundary Waters Canoe Area established by the Wilderness Act of 1964 shall be deemed incorporated into this Act.

MINING PROTECTION AREA ESTABLISHMENT

SEC. 9. In order to protect existing natural values and high standards of environmental quality from the adverse impacts associated with mineral development, there is hereby established the Boundary Waters Canoe Area Mining Protection Area (hereinafter in this Act referred to as the "mining protection area"), comprising approximately two hundred and twenty-two thousand acres.

MAP AND BOUNDARIES

SEC. 10. The mining protection area shall comprise the area generally depicted as a mining protection area on the map entitled "Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area" dated September 1978, which shall be on file and available for public inspection in the offices of the Supervisor of the Superior National Forest and of the Chief, United States Forest Service. As soon as practicable after this Act takes effect, the Secretary shall file a map and a legal description of the mining protection area with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such description may be made.

MINING AND MINERAL LEASING IN THE WILDERNESS AND MINING PROTECTION AREA

SEC. 11. (a) In addition to any other applicable prohibition or withdrawal from entry or appropriation under any provision of the Wilderness Act or under any other provision of law, no permit, lease, or other authorization may be issued by any agency or authority of the United States for—

(1) exploration for, or mining of, minerals owned by the United States within the Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area; or

(2) exploration for, or mining of minerals within such areas if such activities may affect navigable waters; or

(3) the use of property owned by the United States in relation to any mining of or exploration for minerals in such areas which may materially impair the wilderness qualities of the wilderness area or which may materially impair the natural values and environmental quality of the mining protection area.

The prohibitions contained in this subsection and any withdrawal from entry or appropriation for mining of or exploration for minerals applicable to the Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area shall not apply to the extent specifically provided in legislation enacted by the United States after the date of enactment of this Act pursuant to a national emergency declared by the President.

(b)(1) Consistent with the prohibitions and other requirements in subsection (a) of this section, no permit, lease, or other authorization shall be issued unless and until—

(A) the Secretary shall have approved a plan that details how mining will be conducted consistent with this Act and with other Federal, State, and local requirements, and that details how the area will be restored to its original condition or to a substantially equivalent condition, including the estimated cost thereof:

(B) the applicant has posted a bond for performance payable to the United States in an amount determined by the Secretary to be sufficient to assure completion of the reclamation plan if the work had to be performed by the United States;

(C) the applicant shall have obtained all permits, licenses, certifications, and approvals required by Federal, State, or local law; and

(D) the Secretary has determined that no permanent facility will be constructed nor alteration will occur that could render the area incapable of reverting to its original condition or to a substantially equivalent condition.

(2) The provisions of paragraphs (2) and (3) of section 4(d) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1133(d)(2) and 16 U.S.C. 1133(d)(3)) shall not apply to the area designated herein as the Boundary Waters Canoe Area Wilderness.

(c) The Secretary is authorized to acquire any minerals or mineral rights within the wilderness and mining protection area alleged to be owned by persons other than the Federal or State governments in the following manner:

(1) The Secretary first may seek to acquire these minerals or mineral rights by donation. In seeking a donation, the Secretary shall inform the person alleging the ownership interest of the procedures and limitations to be followed in acquisition by purchase as set forth in paragraph (2) below.

(2) If the person alleging the ownership interest does not donate his minerals or mineral rights to either the Federal or State governments, the Secretary is authorized to acquire the rights by purchase, within the limits of funds appropriated for property acquisition in the Superior National Forest, and in an amount appropriately discounted for the following factors if existent in relation to the particular mineral interest:

(A) The original patenting from the Federal public domain was fraudulent. The patenting of lands in the Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area is prima facie fraudulent if (1) the Act under which the patent was issued was one of the Acts intended to put settlers on the land, such as, but without limitation, the Cash Purchase Act of 1820 (chapter LI, Act of April 24, 1820, 3 U.S. Stat. 566,567, as amended); the Preemption Act of 1830 (chapter CCVIII, Act of May 29, 1830, 4 U.S. Stat. 420, 421, as amended); the Homestead Act of 1862 (chapter LXXV, Act of May 20, 1862, 12 U.S. Stat. 392-394, as amended); and the Timber and Stone Act (chapter 150, Act of June 3, 1878, 20 U.S. Stat. 88, 89, as amended, particularly by chapter 375, Act of August 4, 1892, 27 U.S. Stat. 348); and (2) the land was patented after 1875 and before the establishment of the Superior National Forest by proclamation on February 13, 1909. The Secretary also shall consider any other evidence of fraud when determining the value of the minerals such as (1) the transfer by the entryman or patentee of whole or partial interests in the property during the patenting process or soon thereafter, (2) the appearance in the chain of title of persons known to have participated in land speculation as land brokers, entrymen, or in other capacities.

(B) The date of separation of the mineral or mineral rights from the surface interest, if the separation occurred after 1927, the year when the courts have determined that the roadless policy was established by the Secretary for the area.

(C) Any other factor, such as restrictions on mining within the area imposed by State or local government, or by operation of treaty.

(d) In the event any legal action or proceeding is instituted by or against the United States in relation to minerals or mineral rights where the patenting is prima facie fraudulent as described in subsection (c) of this section, the Attorney General of the United States shall assert the public's equitable right to constructive or public trusts, or to recover or offset damages including but not limited to those based on the value of land fraudulently acquired plus interest at 6 per centum per annum.

(e) Notwithstanding any requirement of this section, the Secretary shall have authority to acquire within the wilderness or mining protection area designated by this Act, existing mineral interests by donation, purchase, exchange, or through exercise of the power of eminent domain.

(f) There is authorized to be appropriated to the Secretary such sums as may be required to carry out the purposes of this section, to be available until expended.

SEVERABILITY

SEC. 12. If any provision of this Act is declared to be invalid, such declaration shall not affect the validity of any other provision hereof.

EXISTING STRUCTURES

SEC. 13. Nothing in this Act or the Wilderness Act shall be construed to prohibit the maintenance of the Prairie Portage Dam (on the international boundary chain between Birch and Basswood Lakes), and the Secretary is authorized to perform such maintenance work as may be required to keep that dam functional at its present height and width. The Secretary is authorized to maintain other existing water control structures only where such structures are necessary to protect wilderness values or public safety.

JURISDICTION OVER FISH AND WILDLIFE

SEC. 14. Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State with respect to fish and wildlife in the wilderness and the mining protection area.

JURISDICTION OVER WATERS

SEC. 15. The Secretary is authorized to promulgate and enforce regulations that limit or prohibit the use of motorized equipment on or relating to waters located within the wilderness in accordance with the provi-

sions of this Act: *Provided*, That nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State with respect to such waters except to the extent that the exercise of such jurisdiction is less stringent that the Secretary's regulations promulgated pursuant to this section: *Provided further*, That any regulations adopted pursuant to the Act shall be complementary to, and not in derogation of regulations issued by the United States Coast Guard. The Secretary is authorized to enter into cooperative agreements with the State of Minnesota with respect to enforcement of Federal and State regulations affecting the wilderness and the mining protection area.

COOPERATION WITH STATE

SEC. 16. (a) The Secretary shall cooperate with the State of Minnesota and any political subdivisions thereof in the administration of the mining protection area and in the administration and protection of lands within or adjacent to the mining protection area owned or controlled by the State or any political subdivision thereof. Nothing in this title shall deprive the State of Minnesota or any political subdivision thereof of its right to exercise civil and criminal jurisdiction within the wilderness and the mining protection area and impose land use controls and environmental health standards on non-Federal areas within the wilderness and the mining protection area, or of its right to tax persons, corporations, franchises, or other non-Federal property, including mineral or other interests, in or on lands or waters within the wilderness and the mining protection area.

(b) The Secretary is authorized to enter into cooperative agreements with the State of Minnesota with respect to enforcement of Federal and State regulations affecting the wilderness and the mining protection and shall consult with the State of Minnesota in an effort to enhance the multiple-use benefits to be derived from both State and national forest lands.

SEC. 17. Nothing in this Act shall affect the provisions of any treaty now applicable to lands and waters which are included in the mining protection area and the wilderness.

EXPANSION OF RECREATION PROGRAMS

SEC. 18. (a) The Secretary is authorized and directed to expedite and intensify the program of dispersed outdoor recreation development on the Superior National Forest outside the Boundary Waters Canoe Area Wilderness, as designated by this Act. The Secretary shall consider in such new program developments the need for the following: additional snowmobile trails, particularly those now planned or under construction; remote campsites on lightly developed lakes; and lake access sites and parking facilities to provide motorized recreation experiences similar to those previously available in the Boundary Waters Canoe Area.

(b) The Secretary, consistent with the Wilderness Act of 1964 and with this Act, is authorized to construct a system of new hiking, backpacking, and cross-country ski trails within the Boundary Waters Canoe Area Wilderness as designated by this Act, and on appropriate adjacent Federal lands outside the wilderness. In constructing such a trial system, consideration should be given to locating portions of the system near existing resorts on the perimeter of the wilderness to provide additional outdoor recreation opportunities for resort guests.

(c) The Secretary is authorized and directed to develop an educational program for the recreational users of the wilderness which will assist them to understand the purpose, value, and appropriate use of wilderness lands and the functioning of natural ecosystems in wilderness.

(d) The Secretary in cooperation with the State of Minnesota and other appropriate groups, consistent with the purposes of this Act, is authorized and directed to develop a program providing opportunities for a wide range of outdoor experiences for disabled persons.

(e) There are authorized to be appropriated such sums as may be necessary for the Secretary to carry out the purposes of this section.

SEC. 19. (a) The Secretary, in cooperation with other appropriate executive agencies, is authorized and directed to develop a cooperative program of technical and financial assistance to resorts in commercial operation in 1975, 1976, and 1977; and outfitters in commercial operation in 1977 which are located within the mining protection area or which are located on land adjacent to any of the lakes listed in section 5 of this Act. There are authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

(b) There are authorized to be appropriated to the Secretary funds to be made available as grants to the Agricultural Extension Service, University of Minnesota, to provide over a three-year period educational and technical assistance to businesses and communities adjacent to the Boundary Waters Canoe Area Wilderness in order to improve economic opportunities for tourism and recreation-related businesses in a manner which is complementary to the management of the wilderness.

MANAGEMENT STUDY

SEC. 20. The Secretary, acting through the Chief, United States Forest Service, shall, not later than October 1, 1981, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive management plan setting forth the specific management procedures to implement the objectives of this Act. An interim report setting forth public involvement procedures, management alternatives, and a timetable for the remaining study actions, shall be submitted within one year from the date of enactment of this Act.

LIMITATION OF AUTHORIZATIONS

SEC. 21. All authorizations for any funds to be appropriated under the terms of this Act shall not be effective until October 1, 1979. Notwithstanding any other provision of this Act, authority to enter into agreements, or to make payments under this Act shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-1274), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of H.R. 12250, as reported by the Committee on Energy and Natural Resources, is to establish the Boundary Waters Canoe Area Wilderness, consisting of some 1,075,500 acres in the State of Minnesota. A Mining Protection Area of some 222,000 acres is also established to link the three units of the wilderness together. The continuation of motorized watercraft use, under the control of the Secretary of Agriculture, is authorized in portions of the wilderness. Funds are authorized for the intensive management of the Superior National Forest in northern Minnesota. Various provisions are made for the administration and protection of the Boundary Waters Area.

BACKGROUND

The presently designated Boundary Waters Canoe Area runs for 110 miles along the Minnesota-Canada border. At 1,030,000 acres, it is the largest unit of the National Wilderness Preservation System east of the Rock Mountains. It is the nation's only lakeland canoe wilderness—a network of more than 1,000 lakes linked by hundreds of miles of streams and short portages which served as the highway of fur traders who followed water routes pioneered by Sioux and Chippewa Indians. It is the most heavily visited unit of the entire wilderness system, drawing people from throughout the country.

Despite extensive logging, the BWCA still contains 540,000 acres of virgin forests, by far the largest such area in the eastern United States. It is the home of a remarkable variety of wildlife, including moose, deer, beaver, snowshoe hare, porcupine, eastern timber wolf, pine marten, fisher, lynx, and bald eagle. The area is a valuable educational and scientific resource; it has been the focal point of research in wildlife behavior, forest ecology, nutrient cycles, lake systems, and vegetation history.

For almost three-quarters of a century, battles have been fought to protect the wilderness qualities of this environment. The history of Federal involvement began with the setting aside of approximately 1 million acres of land as a Federal "forest reservation" in 1902, 1905, and 1908. Several subsequent actions stand out:

First, in 1909 Teddy Roosevelt established by proclamation the Superior National Forest; second, in 1930 Congress passed the Shipstead-Newton-Nolan Act which prohibits logging within 400 feet of lakeshores and forbids dam building; third, in 1948 Congress passed the Thye-Blatnik Act which created the authority for the Forest Service to remove private inholdings scattered throughout the BWCA. Congress has appropriated $9 million for the implementation of this Act.

Fourth, in 1949, President Truman established a 4,000 foot airspace reservation over the area to prevent floatplanes from landing on wilderness lakes; fifth, in 1964 Congress passed the Wilderness Act including the BWCA in the new Wilderness Preservation System. The Act contained a paragraph that has permitted logging and motorboating to continue in the BWCA; paragraph 4(d)(5) says:

Other provisions of this Act to the contrary notwithstanding, the management of the Boundary Waters Canoe Area shall be in accordance with the general purpose of maintaining, without unnecessary restrictions of other uses, including that of timber the primitive character of the area, particularly in the vicinity of lakes, streams, and portages; *Provided*, That nothing in this Act shall preclude the continuance within the area of any already established use of motorboats.

Sixth, in 1965, Secretary of Agriculture Freeman promulgated a management plan for the BWCA. The Secretary designated 19 routes, including well over 100 lakes, and covering 60 percent of the area's water surface for motorboat and snowmobile use. He also divided the BWCA into a 600,000 acre Interior Zone closed to logging and a 400,000 acre Portal Zone open to logging.

In recent years, numerous legal and administrative battles have been waged regarding what use and activities should be allowed in the BWCA. This interest has inten-

sified in recent years with the introduction of several major bills in both the House and Senate.

LEGISLATIVE HISTORY

Legislation to give the Boundary Waters Canoe Area complete wilderness protection was first introduced in the 94th Congress. The legislation was designed to end the controversy and court suits that had surrounded this area and to provide for the protection of this wilderness.

The Subcommittee on National Parks and Insular Affairs of the U.S. House of Representatives held 5 days of hearings on this issue. On July 7 and 8, 1977, hearings were held in St. Paul and Ely, Minnesota, and in August and September 1977, further hearings were held in Washington, D.C.

The Subcommittee reported H.R. 2820 and H.R. 5968 as amended on March 14, 1978, and following full Committee mark-up, H.R. 12250 was introduced as a clean bill. H.R. 12250 was reported with amendments from the full Committee on Interior and Insular Affairs on April 26, 1978.

The House companion bill, H.R. 12250, passed the House on June 5, 1978, by a vote of 324–29. S. 3242 was introduced by Senators Anderson and Humphrey on June 23, 1978.

The Senate Subcommittee on Parks and Recreation conducted a field inspection of the BWCA in July 1978. Hearings in Washington, D.C. were held by the Parks Subcommittee on August 17, 1978.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. ANDERSON be permitted to have printed in the RECORD a statement in support of H.R. 12250, together with attachments.

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

STATEMENT BY SENATOR ANDERSON

BOUNDARY WATERS CANOE AREA

I strongly support H.R. 12250 as amended by the Senate Energy and Natural Resources Committee. A similar measure passed the House of Representatives on June 5, 1978 by a vote of 324–29. This measure before the Senate today differs from the House passed bill on one significant section, the management provisions over future motorized use in the Boundary Waters Canoe Area Wilderness.

The BWCA has been given protection by the Federal government as early as 1930. In 1964, when Congress enacted the Wilderness Act, the Boundary Waters was distinguished as the only area designated immediately as wilderness by its specific inclusion in the Act. This provision, however, also contained two important exceptions allowing for the continuation of logging and motorboat use in this unique area. These exceptions have given rise to years of controversy and lengthy court battles.

In 1975, legislation was introduced in the House of Representatives as at attempt to settle once and for all, the management plan for this unique area. Two measures were considered by the House of Representatives in this Congress. One to give full wilderness protection to the entire 1,030,000 acres which make up the present BWCA and one to divide the area into a National Recreation Area of 400,000 acres and a Wilderness Area of 600,000 acres.

The bill passed by the House attempted to give wilderness protection to this unique area while still providing for continuation of limited motorized use. This area is a prized area for sports enthusiasts and fishermen of all kinds. Many small resorts have flourished surrounding these beautiful lakes. In order to protect these businesses and to continue to allow sport fishermen to fish these prize trout and walleye lakes. I have worked to amend the House version of this bill to provide motorized use on a greater number of lakes. In almost every case lakes necessary for a resort to maintain its business have been kept open for the use of small motors. In the event that a resort owner finds that the new management plan precludes him from maintaining his business, the bill allows the resort owner to sell his property to the Federal government. Clearly, no acquisitions can take place under this bill without an appropriation from Congress.

After the Senate Energy and Natural Resources Committee conducted a two day investigative tour of the area, the Chairman of the Parks and Recreation Subcommittee, Senator Abourezk, asked the two concerned citizen groups involved in the dispute over the BWCA to sit down and try to mediate their differences. After three long and difficult days, Ron Walls, representing the Boundary Waters Conservation Alliance and Charles Dayton, representing the Friends of the Boundary Waters Wilderness drafted a management plan. It is a proposal which attempts to provide a balance between the competing interests, motorized and nonmotorized, in the area. While no plan is perfect, this is a sincere effort to protect local business and protect the unique, scenic lakeland quality of the area which makes the BWCA an ideal canoe area.

It is this compromise plan which has been included in the bill before the Senate. It is not entirely acceptable to those favoring substantial restrictions on the present use of the area or those favoring the continuation of the long-accepted uses of the area. But I believe the provisions in this bill are as reasonable and sensible a solution to the future management of the BWCA as is possible, given the competing positions of those interested in this legislation and the necessity, in my judgment, of resolving this issue now.

Since the Committee report more than adequately describes the provisions of H.R. 12250, as amended, and the legislative history of this legislation, I will not deal with those issues in this statement.

I do expect that the Secretary of Agriculture will fully utilize all the authority provided under this Act. Snowmobile use on the three designated routes will be allowed for five years. Winter snowmobile access routes into Canada should remain open indefinitely. Grooming of cross-country ski trails by special permit should be allowed. The Secretary is expected to develop a cooperative program of technical and financial assistance in conjunction with the Economic Development Administration, the Small Business Administration and other executive agencies, to assist local business in adjusting to the new management plan for the area. In addition, the Secretary should give serious consideration to issuing special permits to allow for the storage of canoes by resorts which presently store boats along Wood Lake and the North Kawiskiwi River.

This legislation will hopefully end the continuing dispute over the management of the BWCA. Senator Humphrey and I recognize that many people are not completely supportive of all of the provisions of this bill but I believe the economic health of Northeastern Minnesota will be enhanced by enacting H.R. 12250 now.

FRIENDS OF THE
BOUNDARY WATERS WILDERNESS,
September 26, 1978.

Hon. WENDELL ANDERSON
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR ANDERSON: The Friends of the Boundary Waters Wilderness is pleased to learn that you are moving forward with a bill that will implement the substance of the so-called Dayton-Walls compromise on the BWCA. As I understand it, the proposed bill largely follows the House Bill's language on other issues, but will incorporate the list of lakes and the motorboat-snowmobile regulations worked out in negotiations between the Friends of the Boundary Waters Wilderness and the Boundary Waters Conservation Alliance in Washington last July.

As you know the FRIENDS Coalition has worked for legislation that would increase the areas dedicated to non-mechanized recreation more than will your bill, and that also included several other measures not implemented by this proposal. But we recognize the intensity of citizen concerns in northeastern Minnesota, and support your effort to strike a balance that everyone can live with under these most difficult present circumstances. Your proposal would end the threats of logging and mining within the wilderness, and those are major goals on which there is already a consensus.

Given these facts, the FRIENDS Coalition supports your proposed legislation, and I offer my personal help in moving the bill quickly in the Senate. Your commitment to pass the compromise bill this year is a courageous move that will help put the divisive BWCA issue to rest in our home state. But the Boundary Waters Wilderness is also a precious national resource that we Minnesotans are fortunate to share with our neighbors near and far. And we have a responsibility to pass it on unspoiled to future generations of Americans. If you can achieve passage of this legislation, I firmly believe we will have taken a long step toward that goal.

Sincerely,

MIRON L. HEINSELMAN,
Chairman.

SEPTEMBER 26, 1978.

Hon. WENDELL ANDERSON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR ANDERSON: We understand that you are about to introduce and work for passage of legislation on the Boundary Waters Canoe Area which embraces in nearly every detail what has come to be known as the "Dayton-Walls Compromise."

As you know, the Dayton-Walls Compromise does not in our opinion represent the optimum solution for future management of the famous Boundary Waters country, and for that reason, we have supported other legislation in the past. However, representatives of the Minnesota conservation community did participate in the drafting of the compromise, and we now believe that it represents the best available legislative option under the present circumstances.

Therefore, we are pleased to advise you of our support for the compromise legislation you will introduce and work for in the Senate. We want to thank you for your long efforts to secure adequate protection for the Boundary Waters Canoe Area, and stand by to assist you in any way possible to accomplish this goal.

Sincerely,

CATHERINE SMITH,
Friends of the Earth.
MICHAEL D. ZATAGA,
National Audubon Society.
PAT GOGGIN,
National Wildlife Federation.
CELIA HUNTER,
The Wilderness Society.
JACK LORENZ,
Izaak Walton League.
DESTRY JARVIS,
National Parks & Conservation Assn.
BROCK EVANS,
Sierra Club.

BWCA COMPARISON

PRESENT LAW	HOUSE BILL	SENATE BILL
	Issue: Motorboat use	
124 to 1060 lakes or 60 percent of water surface area open to motorboats.	11 of 124 lakes remain open permanently or 5 percent of water surface area; 11 lakes represent 25 percent of present motorboat use.	23 of 124 lakes remain open permanently or 24 percent of water surface area; 23 lakes represent 52 percent of present motorboat use.
	5 additional lakes open to motorboats until 2010.	7 additional lakes open to motorboats until 2000.
	16 lakes represent 17 percent of water surface area and 41 percent of present motorboat use.	30 lakes represent 33 percent of water surface area and 64 percent of present motorboat use.
	Any international border lake closed on the Canadian side, would be automatically closed on the U.S. side.	No comparable provision.
	Secretary has discretion to close any lake for reason of public safety, wildlife management or to alleviate resource damage.	No comparable provision.
Some motorboat lakes have horsepower limitations.	All motorboat lakes have 10 or 25 horsepower limitations.	All motorboat lakes have 10 or 25 horsepower limitations.
	Motorboat use limitation effective Jan. 1, 1979.	Same.
	None of 5 largest lakes (Lac La Croix, Basswood, Trout, Saganaga & Seagull) open to motorboats on a permanent basis.	Basswood (90 percent of water surface area) Trout & Saganaga open to motorboats permanently.
	Issue: Lakes partially in BWCA	
		20 year use on ⅔ of Seagull, remainder of lake open permanently.
		Permanent access to Canadian side of Lac La Croix; part of Lac La Croix open on U.S. side.
No horsepower restrictions on portion outside of BWCA.	Horsepower limit extended to entire lake.	No horsepower restriction on portion outside of BWCA.
	Issue: Towboats	
Allowed.	Prohibited.	Permitted for 5 years on Moose Lake, Newfound, Sucker and Saganaga.
	Issue: Overnight motorboat camping	
Allowed.	Prohibited.	Allowed.
	Issue: Day use entry quotas	
Permits are required for anyone crossing federal land. No limit on the number of permits issued.	Day use entry quotas to be established on a rolling basis according to the average use for the 3 preceding years.	Day use entry quotas to be established based on motorboat use during calendar years 1976, 1977 and 1978.
	In addition, the Secretary could establish further restrictions on motorboat use based on noise emission levels, ratio of motor horsepower to watercraft weight and ratio of horsepower to watercraft length.	Private property owners and guests and resort owners and guests exempted from the quota for lakes upon which the resort or private property is located.
	Mechanized portages	
Allowed.	Prohibited.	Permitted for 5 years; if no feasible nonmechanized method of portaging is developed, mechanized portages will continue indefinitely.
	Issue: Snowmobiles	
Prior to 1976 permitted on 21 routes; banned since 1976 by USDA.	Two access corridors to Canada—Crane Lake to Little Vermillion Lake & Seagull River along the eastern portion of Saganaga Lake to Canada.	Secretary may allow for: Two access corridors (same as House bill). 3 routes for 5 years: 1. Vermillion Lake to Trout Lake. 2. Moose Lake to Saganaga Lake. 3. East Bearskin to Pine Lake. Special use permits for grooming snowmobile trails.
	Issue: Resorts	
No special provision.	Until 1983 resorts on 13 lakes listed in Sec. 5 can require purchase by the federal government.	Until 1985 any resort on 15 lakes listed in Sec. 5 can require purchase by the federal government.
	Issue: Purchase of private property	
No special authority for the purchase of property outside wilderness boundaries.	Fed government has "right of first refusal" on sale of all private property on lakes listed in Sec. 5.	"Right of first refusal" limited to property on 15 lakes and *only* if a resort is purchased by the federal government before 1985 on that lake.
	Government must act within 100 days of offer.	Same.
	Issue: Size of BWCA	
1,030,000 acres.	1,077,000 acres; addition of 47,000 acres.	1,075,500 acres; addition of 45,500 acres.
	Issue: Timber harvesting	
An acceptable practice under the terms of the 1964 Wilderness Act.	All timber contracts in BWCA terminated within 1 year of enactment.	Same.

6 valid timber contracts exist for logging of 2,683 acres in the BWCA.	Substitute timber can be made available to affected contractors or just compensation paid.	Same.
	Authorizes a 5 year $55 million intensified forest management program for the Superior National Forest and with the State of Minnesota on state and county land.	Authorizes a 10 year $110 million program for intensified forest management and wood utilization. Funds will be available to the Forest Service and the State of Minnesota for use on state, county and private lands.
	Issue: Mining protection area	
Does not exist.	Establishes a 220,000 acre area bordering the BWCA where mining or mining exploration is prohibited for any minerals in federal ownership.	Same.
	Issue: Mining	
Federal law does not clearly prohibit mining in the BWCA.	Mining or mining exploration is prohibited for any minerals in federal ownership in the BWCA.	Same.
	USDA must acquire private mineral rights by donation or purchase in the wilderness and Mining Protection Area.	USDA may acquire private mineral rights by donation or purchase in wilderness and Mining Protection Area.
	Issue: Existing structures	
Several small dams exist within the BWCA which have served for many years to control the water level in many lakes.	Except for Prarie Portage Dam, all water control structures would have to be removed.	In addition to Prairie Portage Dam, USDA authorized to maintain any existing water control structure for the purposes of protecting wilderness values or public safety.
	Issue: Jurisdiction over waters	
State of Minnesota has jurisdiction over surface water use.	No provision to affect the jurisdiction of the State of Minnesota over the waters of the BWCA.	Same.
No special provisions.	Federal government will enforce regulations on the use of motorboats on the waters in the BWCA.	
	Issue: Recreational programs	
	USDA authorized to expand recreational programs outside the BWCA for new snowmobile routes and remote campsites.	Same.
	Within the BWCA new hiking trails are to be constructed near existing resorts.	Within the BWCA, new hiking and cross-country ski trails are to be constructed near existing resorts.
	Issue: Economic assistance programs	
None.	Secretary of Agriculture in conjunction with SBA, EDA, Dept. of Labor and others is to develop a program of technical and financial assistance to local businesses to assist in the adjustment to the new management plan.	Same.
	Grants are authorized to the Ag. Extension Service at the University of Minnesota for educational & technical assistance to local businesses to improve opportunities for recreational related businesses.	Same.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate insist on its amendments to H.R. 12250, that a conference be requested with the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. JACKSON, Mr. ABOUREZK, Mr. METZENBAUM, Mr. CHURCH, Mr. JOHNSTON, Mr. BUMPERS, Mr. ANDERSON, Mr. MATSUNAGA, Mr. HANSEN, Mr. HATFIELD (Oregon), Mr. MCCLURE and Mr. WEICKER conferees on the part of the Senate.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the Senate amendments to H.R. 12250.

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

DISTRIBUTION OF PUBLICATIONS TO FOREIGN GOVERNMENTS

The bill (S. 3578) to transfer to the Superintendent of Documents the function of distributing Government publications to certain foreign governments, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1719 of title 44, United States Code, is amended by striking out "Smithsonian Institution" and inserting in lieu thereof "Superintendent of Documents".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-1295), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The bill would amend section 1719 of title 44, United States Code, to provide that the function of distributing Government publications to certain foreign governments be transferred from the Smithsonian Institution to the Superintendent of Documents.

Section 1719 of title 44 provides:

"For the purpose of more fully carrying into effect the convention concluded at Brussels on March 15, 1886, and proclaimed by the President of the United States on January 15, 1889, there shall be supplied to the Library of Congress not to exceed one hundred and twenty-five copies each of all Government publications, including the daily and bound copies of the Congressional Record, for distribution, through the Smithsonian Institution, to foreign governments which agree to send to the United States similar publications of their governments for delivery to the Library of Congress."

EXPLANATION FOR THE PROPOSAL

An explanation for the proposal is expressed in an excerpt from a letter by the Librarian of Congress, which excerpt is as follows:

"The preparation and dispatch of these exchange publications has for many years

been assigned within the Smithsonian Institution to the International Exchange Service, the duties of which also include the transmittal of exchange materials from a large number of institutions in the United States, to their exchange partners overseas, as well as the receipt and transshipment of materials from these overseas sources to their American counterparts. In the late 1800's Congress originally requested the Smithsonian Institution to handle shipments of official documents sent on international exchange because the Smithsonian had taken the lead in the international exchange of scientific publications and thus established favorable working relationships with shipping companies in many areas. The arrangement worked well for over 80 years.

"It has become evident to both the Library of Congress and the Smithsonian Institution that this arrangement is no longer satisfactory. At the same time, the advances achieved by the Government Printing Office in the efficient distribution of documents have made the U.S. depository library program the most efficient operation of its kind in this country. The Superintendent of Documents has indicated that his agency could, with little additional effort, undertake the shipment of official publications for international exchange. He believes that his agency is the logical choice to perform this service for the Library because of its unique and centralized facilities. The Smithsonian Institution could not comparably modernize the facilities of the International Exchange Service without a great increase in its operating budget for personnel and equipment. Since the Superintendent of Documents is willing to undertake the responsibility for distribution of these documents and the Smithsonian Institution has no other direct interest in the Library's document exchanges, there seems no good reason why the International Exchange Service should continue to send documents on behalf of the Library when the Superintendent of Documents could do this work so much more efficiently and without extensive modification of work routines and facilities."

COST ESTIMATE

Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office reviewed the bill and concluded that "it appears that no additional cost to the Government would be incurred as a result of enactment of this bill."

PRAYERS OF THE SENATE CHAPLAIN

The concurrent resolution (S. Con. Res. 108) authorizing the printing of the prayers of the Chaplain of the Senate during the 95th Congress as a Senate document, was considered and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed with an appropriate illustration as a Senate document, the prayers by the Reverend Edward L. R. Elson, S.T.D., the Chaplain of the Senate, at the opening of the daily sessions of the Senate during the Ninety-fifth Congress, together with any other prayers offered by him during that period in his official capacity as Chaplain of the Senate; and that there be printed and bound two thousand additional copies of such document, of which one thousand and thirty shall be for the use of the Senate and nine hundred and seventy shall be for the use of the Joint Committee on Printing.

SEC. 2. The copy for the document authorized in section 1 shall be prepared under the direction of the Joint Committee on Printing.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was passed.

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

The motion to lay on the table was agreed to.

HIGHWAY NEEDS TO SOLVE ENERGY PROBLEMS

The resolution (S. Res. 559) authorizing the printing of the report entitled "Highway Needs To Solve Energy Problems" as a Senate document, was considered and agreed to, as follows:

Resolved, That the report of the Secretary of Transportation to the Congress of the United States (in compliance with section 153 of the Federal-Aid Highway Act of 1976, Public Law 94-280) entitled, "Highway Needs To Solve Energy Problems" be printed with illustrations as a Senate document.

SEC. 2. There shall be printed one thousand additional copies of such document for the use of the Committee on Environment and Public Works.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was passed.

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

The motion to lay on the table was agreed to.

TOIYABE NATIONAL FOREST, NEV.

The Senate proceeded to consider the bill (S. 2774) to extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 2, beginning in line 5, strike out all of section 2 and insert in lieu thereof the following:

SEC. 2. This Act shall be applicable to the following lands:

(a) a tract of land, referred to as the "Whittell property," situated in section 10, lot 2, township 13 north, range 18 east, Mount Diablo Meridian, Nevada, containing 34.4 acres more or less.

On page 3, line 18, strike "6" and insert "7".

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read a third time and passed, as follows:

S. 2774

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to aid in the protection and management of the various resources of the lands, including the protection, improvement, and maintenance of the watershed, wildlife, recreation, and natural environment values thereof, situated in the Lake Tahoe Basin, and to promote the management and protection of such lands under principles of multiple use and sustained yield, the boundaries of the Toiyabe National Forest are hereby extended to include the area described in section 2 hereof. Subject to any valid claims now existing and hereafter maintained, any lands of the United States within such area are hereby added to such National Forest and shall be subject to laws and regulations applicable to the National Forests.

SEC. 2. This Act shall be applicable to the following lands:

(a) a tract of land referred to as the "Whittell property", situated in section 10, lot 2, township 13 north, range 18 east, Mount Diablo, Meridian, Nevada, containing 34.4 acres more or less.

SEC. 3. Funds appropriated and available for acquisition of lands, water, and interests therein, in the National Forest System pursuant to section 7 of the Act of September 3, 1964 (78 Stat. 903), shall be available for the acquisition of any lands, waters, and interests therein, within the area described in section 2 of this Act. In addition, the Act of August 5, 1970 (Public Law 91-372) is hereby amended to remove the limitation on expenditures of $12,500,000 as it applies to the area described in the Act of August 5, 1970 (84 Stat. 694).

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-1298), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

I. PURPOSE

As recommended by the committee, the purpose of S. 2774 is to provide legislative authority to add one site, referred to as the Whittell Estate, to the Toiyabe National Forest in Nevada.

II. BACKGROUND AND NEED

The entire Whittell Estate consists of over 400 acres and all but 35 acres are within the Toiyabe National Forest. The administration recommends extending the boundary to include the remaining 35 acres within the forest boundary.

Lake Tahoe is one of the largest and oldest pure alpine lakes in the world. It covers 193 square miles of land in Nevada and California to a maximum depth of 1,645 feet. Unfortunately, the beauty of the lake and surrounding area are endangered by increased sewage due to development, and automobile congestion has significantly increased air pollution.

In 1969 a bi-State commission was established to regulate growth in the area, but changes in the commission are necessary in order for it to function adequately. Officials for California, Nevada, and the Federal Government have been negotiating such changes, and an agreement is imminent. It is expected to be approved by the California and Nevada State legislature and by the Congress early next year.

Section 4 of S. 2774 amends an August 5, 1970 act, which extended the Toiyabe National Forest boundary, by removing the appropriations ceiling. This provision is supported by the administration, and with the removal of this limitation, acquisition priorities could be considered along with other areas which are funded through the Land and Water Conservation Fund Act.

The committee amended S. 2774 by reducing the acreage from 5,649.38 to approximately 34.4 acres. With the amendment, the boundary includes only one specific site, and alleviates the concern of the administration that the bill potentially could result in unwarranted appropriations at a future time.

HEALTH MAINTENANCE ORGANIZATION AMENDMENTS OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Sen-

ate a message from the House of Representatives on S. 2534.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2534) entitled "An Act to revise and extend the provisions of title XIII of the Public Health Service Act relating to health maintenance organizations", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SHORT TITLE, REFERENCE TO ACT

SECTION 1. (a) This Act may be cited as the "Health Maintenance Organization Amendments of 1978".

(b) Whenever in this Act (other than in section 13) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

EXTENSION OF PROGRAM

SEC. 2. (a) Section 1304(j) is amended (1) by striking out "may be made through September 30, 1978;", and (2) by striking out "1979" and inserting in lieu thereof "1981".

(b) Section 1305(d) is amended by striking out "1980" and inserting in lieu thereof "1981".

(c) Section 1309(a) is amended (1) by striking out "and" after "1977" and (2) by striking out the semicolon and all that follows in that section and inserting in lieu thereof the following: "$63,000,000 for the fiscal year ending September 30, 1980, and $63,000,000 for the fiscal year ending September 30, 1981.".

REQUIREMENTS FOR THE PROVISION OF SERVICES

SEC. 3. (a) Section 1301(b)(1) is amended by adding at the end the following: "The requirements of this paragraph respecting the basic health services payment shall not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or an insurance policy but only to the extent such benefits apply to such services. For the provision of such services for an illness or injury for which a member is entitled to benefits under such a law, the health maintenance organization may, if authorized by such law, charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law, the insurance carrier, employer, or other entity which under such law is to pay for the provision of such services or, to the extent that such member has been paid under such law for such services, such member. For the provision of such services for an illness or injury for which a member is entitled to benefits under an insurance policy, a health maintenance organization may charge or authorize the provider of such services to charge the insurance carrier under such policy or, to the extent that such member has been paid under such policy for such services, such member.".

(b)(1) The second sentence of section 1301(b)(3) is amended by striking out "thirty-six month" and inserting in lieu thereof "forty-eight month".

(2) Section 1301(b)(3) is amended by striking out the fourth sentence and inserting in lieu thereof the following: "A health maintenance organization may not enter into contracts with physicians (other than physicians who are members of the staff organization) or with entities other than medical groups or individual practice associations for services of physicians if the amounts to be paid under such contracts for the provision of basic and supplemental health services—

"(A) in the first four fiscal years of the organization beginning after the month in which the organization becomes a qualified health maintenance organization (within the meaning of section 1310(d)) exceed 50 per centum of the total amount to be paid by the organization in such fiscal year for the provision of basic and supplemental health services by physicians, and

"(B) in the fifth and succeeding fiscal years of the organization beginning after such month exceed (i) 15 per centum of the total amount to be paid by the organization in such fiscal year for the provision of such services by physicians, or (ii) in the case of a health maintenance organization which principally serves a rural area, 30 per centum of such total amount.

The limitations prescribed by the preceding sentence do not apply to contracts for the provision of basic and supplemental health services through an entity which but for the requirements of section 1302(4)(C)(i) would be a medical group for purposes of this title.".

(3) The first sentence of section 1301(b)(3) is amended by striking out "(A)" and "(B)".

(c) The last sentence of section 1301(b)(4) is amended by inserting before the period a comma and the following: "except that a member shall not be reimbursed for any service provided other than through the organization because the member intentionally left the area served by the organization for the purpose of securing such service".

(d) Section 1301(b) is amended by adding at the end the following new paragraph:

"(5) To the extent that a major disaster, war, riot, civil insurrection, or any other event not reasonably within the control of a health maintenance organization (as determined under regulations of the Secretary) results in the facilities, personnel, or financial resources of a health maintenance organization not being available to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of paragraphs (1) through (4) of this subsection, such requirements only require the organization to make a good-faith effort to provide or arrange for the provision of such service within such limitation on its facilities, personnel, or resources."

(e) Section 1302(1) is amended by inserting before the second sentence the following: "Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence."

ORGANIZATION REQUIREMENTS

SEC. 4. (a) Section 1301(b) is amended (1) by inserting "except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education," after "(C)" in paragraph (1), and (2) by inserting "unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education," after "community rating system" in the second sentence of paragraph (2).

(b) Section 1301(c)(1) is amended (1) by inserting "(A)" after "(1)", and (2) by inserting before the semicolon a comma and the following: "and (B) have administrative and managerial arrangements and capabilities satisfactory to the Secretary".

(c) Section 1301(c)(3) is amended (1) by inserting "(A)" after "(3)", and (2) by inserting before the semicolon a comma and the following: "and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act in accordance with procedures approved under regulations promulgated by the Secretary".

(d) Section 1301(c)(6) is amended (1) by striking out "(6)" and inserting in lieu thereof "(6)(A) in the case of a private health maintenance organization,", (2) by redesignating clauses (A) and (B) as subclauses (i) and (ii), respectively, and (3) by inserting before the semicolon a comma and the following: "and (B) in the case of a public health maintenance organization have an advisory board to the policymaking body of the public entity which operates the organization which board meets the requirements of clause (A) of this paragraph and to which may be delegated policymaking authority for the organization".

FEASIBILITY SURVEYS AND INITIAL DEVELOPMENT

SEC. 5. (a) Section 1306(b)(2) is amended by inserting "in the case of an application for assistance under section 1304, 1305, or 1305A," before "he determines".

(b)(1) The first sentence of section 1304(b)(3) is amended by striking out "in the one-year period beginning on" and inserting in lieu thereof "incurred in a period not to exceed three years from".

(2) The second sentence of such section is repealed.

(c)(1) Subparagraph (A) of section 1304(f)(2) is amended to read as follows:

"(A) $1,000,000 in the case of a project for the establishment of a health maintenance organization or $600,000 in the case of a project for the significant expansion of the membership of or areas served by a health maintenance organization, or".

(2) The first sentence of section 1304(b)(2) is amended by striking out "includes" and inserting in lieu thereof "means the establishment of a health maintenance organization or the".

(d) The amendments made by this section shall only be effective for fiscal years beginning on or after October 1, 1978.

COSTS OF OPERATION

SEC. 6. (a) Section 1305(a) is amended by striking out "operating costs" each place it occurs and inserting in lieu thereof "costs of operation".

(b) The second sentence of section 1305(b)(1) is amended by striking out "any fiscal year" and inserting in lieu thereof "any twelve-month period".

(c) Section 1305(b)(1) is amended (1) by striking out "$2,500,000" and inserting in lieu thereof "$4,000,000", and (2) by striking out "$1,000,000" and inserting in lieu thereof "$2,000,000".

(d) The title of section 1305 is amended by striking out "OPERATION COSTS" and inserting in lieu thereof "COSTS OF OPERATION".

(e) The amendments made by this section shall only be effective for fiscal years beginning on or after October 1, 1978.

PAYROLL DEDUCTION FOR HEALTH BENEFITS

SEC. 7. Section 1310(c) is amended by adding at the end the following: "Each employer which provides payroll deductions as a means of paying employees contributions for health benefits or which provides a health benefits

plan to which an employee contribution is not required and which is required by subsection (a) to offer his employees the option of membership in a qualified health maintenance organization shall, upon request of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions.".

FUNDING UNDER OTHER AUTHORITIES FOR THE PROVISION OF HEALTH SERVICES ON A PREPAID BASIS

SEC. 8. Section 1313 is amended by adding after and below paragraph (4) the following:

"The preceding sentence does not prohibit the use of funds appropriated under section 319 or 330 of this Act for grants to an entity, other than a health maintenance organization, for the planning and development of health services to be provided on a prepaid basis or for the provision of health services on a prepaid basis.".

LOANS AND LOAN GUARANTEES FOR ACQUISITION AND CONSTRUCTION OF AMBULATORY HEALTH CARE FACILITIES

SEC. 9. (a) Title XIII is amended by inserting after section 1305 the following new section:

"LOANS AND LOAN GUARANTEES FOR ACQUISITION AND CONSTRUCTION OF AMBULATORY HEALTH CARE FACILITIES

"SEC. 1305A. (a) The Secretary may—

"(1) make loans, from the fund established under section 1308(e), to public and nonprofit private health maintenance organizations for projects for the acquisition or construction of ambulatory health care facilities and for the acquisition of equipment for facilities acquired or constructed under a loan made under this paragraph; and

"(2) guarantee to—

"(A) non-Federal lenders for their loans to nonprofit private health maintenance organizations for projects described in paragraph (1) and to private health maintenance organizations for such projects which will serve medically underserved populations, and

"(B) the Federal Financing Bank for its loans to nonprofit private health maintenance organizations for projects described in paragraph (1) and to private health maintenance organizations for such projects which will serve medically underserved populations, the payment of principal and interest on such loans.

"(b)(1) Except as provided in paragraph (2), the aggregate amount of principal of loans made or guaranteed, or both, under subsection (a) for a health maintenance organization may not exceed $2,500,000.

"(2) The cumulative total of the principal of the loans outstanding at any time which have been directly made or with respect to which guarantees have been issued under subsection (a) may not exceed such limitations as may be specified in appropriation Acts.

"(3) The authority of the Secretary to make loans under subsection (a) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

"(c) For purposes of this section—

"(1) the term 'ambulatory health care facility' means a health care facility for the provision of diagnostic, treatment, and prevention services to ambulatory patients; and

"(2) the term 'construction' means the (A) construction of new facilities, (B) alteration, expansion, remodeling, replacement, and renovation of existing facilities, (C) cost of offsite improvements in connection with an activity described in clause (A) or (B), and (D) cost of the acquisition of land in connection with an activity described in clause (A), (B), or (C).".

(b)(1) Section 1308 is amended by adding at the end the following new subsection:

"(f) The Secretary may take such action as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this title, including taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.".

(2)(A) Subsection (d) of section 1308 is amended (i) by inserting before the period in the first sentence of paragraph (1) the following: "and to take the action authorized by subsection (f)", and (ii) by inserting after "under this title" in the first sentence of paragraph (2) the following: "and to take the action authorized by subsection (f)".

(B) The first sentence of subsection (e) of section 1308 is amended by inserting before the period the following: "and to take the action authorized by subsection (f)".

TRAINING AND TECHNICAL ASSISTANCE

SEC. 10. (a) Title XIII is amended by adding at the end thereof the following new section:

"TRAINING AND TECHNICAL ASSISTANCE

"SEC. 1317. (a)(1) The Secretary shall establish a National Health Maintenance Organization Intern Program (hereinafter in this subsection referred to as the 'Program') for the purpose of providing training to individuals to become administrators and medical directors of health maintenance organizations or to assume other managerial positions with health maintenance organizations. Under the Program the Secretary may directly provide internships for such training and may make grants to or enter into contracts with health maintenance organizations and other entities to provide such internships.

"(2) No internship may be provided by the Secretary and no grant may be made or contract entered into by the Secretary for the provision of internships unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form and contain such information, and be submitted to the Secretary in such manner, as the Secretary shall prescribe. Section 1306 does not apply to an application submitted under this section.

"(3) Internships under the Program shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the recipients of the internships as the Secretary deems necessary. An internship made to an individual for training at a health maintenance organization or any other entity shall also provide for payments to be made to the organization or other entity for the cost of support services (including the cost of salaries, supplies, equipment, and related items) provided such individual by such organization or other entity. The amount of any such payments to any organization or other entity shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the organization or other entity for establishing and maintaining its training programs.

"(4) Payments grants under the Program may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

"(b) The Secretary shall provide (directly, through contracts, or both) technical assistance to (1) entities engaged in surveys or other activities to determine the feasibility of developing and operating or expanding the operation of a health maintenance organization, (2) entities engaged in the planning for the initial development of health maintenance organizations, (3) entities engaged in the initial development of health maintenance organizations, and (4) health maintenance organizations in connection with their operation.

"(c) The authority of the Secretary to enter into contracts under subsections (a) and (b) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.".

(b) Section 1309(a) is amended by striking out "and 1304(b)" and inserting in lieu thereof "1304(b), and 1317".

(c) The amendments made by this section shall only be effective for fiscal years beginning on or after October 1, 1979.

ADMINISTRATION OF PROGRAM

SEC. 11. (a) Subsection (h) of section 1310 is amended to read as follows:

"(h) The administration of the duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a qualified health maintenance organization within the meaning of subsection (d), shall be integrated with the administration of section 1312.".

(b) Section 1312(c) is repealed.

DISCLOSURE OF OWNERSHIP AND RELATED INFORMATION

SEC. 12. (a) Section 1310(d) is amended (1) by inserting "(1) after "(d)", (2) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively, (3) by inserting before the comma at the end of clause (A) (as so redesignated) the following: "and will meet the requirements of paragraphs (2), (3), and (4) of this subsection", (4) by inserting before the period at the end the following: "and will meet the requirements of paragraphs (2), (3), and (4) of this subsection", and (5) by adding at the end the following:

"(2) Each health maintenance organization shall, in accordance with regulations promulgated by the Secretary—

"(A) provide the information required to be reported under section 1124 of the Social Security Act by disclosing entities, and

"(B) supply the information required to be supplied under section 1902(a)(38) of such Act.

"(3)(A) Each health maintenance organization shall file with the Secretary, at such times as the Secretary shall prescribe, such information as the Secretary may require—

"(i) to demonstrate that the health maintenance organization has a fiscally sound operation, and

"(ii) respecting—

"(I) any sale, exchange, or leasing of any property between the organization and a party in interest,

"(II) any furnishing by the organization of services to a party in interest and any furnishing of services to the organization by a party in interest, and

"(III) any lending of money or other extension of credit between the organization and a party in interest.

"(B) Each health maintenance organization shall provide the Secretary with assurances satisfactory to the Secretary that the terms of each transaction between the health maintenance organization and a party in interest will be at least as favorable to the health maintenance organization as if the transaction was between the health maintenance organization and a person who is not a party in interest.

"(C) For purposes of subparagraphs (A) and (B), the term 'party in interest' means with respect to a health maintenance organization providing information under such subparagraph—

"(i) a person with an ownership or control interest (as defined in section 1124(a)(3) of the Social Security Act) in the health maintenance organization.

"(ii) a managing employee (as defined in section 1126(b) of such Act) of the organization,

"(iii) any entity with respect to which an individual described in clause (i) or (ii) is a

person with an ownership or control interest, (as so defined) or a managing employee (as so defined), and

"(iv) any member of the immediate family of an individual who is a person described in clause (i) or (ii).

"(4) Each health maintenance organization shall make available to its members the information reported by the organization pursuant to paragraphs (2) and (3).

"(5) The Secretary shall include in the annual report required by section 1315 a summary of evaluations made by the Secretary of information provided under paragraphs (2) and (3) and a description of any action taken as a result of such evaluations.".

(b) Paragraph (5) of section 1306(b) is amended to read as follows:

"(5) in the case of an application which is made for a health maintenance organization, contains or is supported by assurances satisfactory to the Secretary that the organization will comply with the requirements of paragraphs (2), (3), and (4) of section 1310(d);".

(c) Section 1312(a) is amended (1) by striking out "or" at the end of paragraph (2), (2) by inserting "or" at the end of paragraph (3), and (3) by adding after paragraph (3) the following:

"(4) fails to meet the requirements of paragraph (2), (3), or (4) of section 1310(d) or to act in accordance with assurances provided under paragraph (3)(B) of such section,".

AMENDMENTS TO THE SOCIAL SECURITY ACT

SEC. 13. (a)(1) Section 1902(a)(4) of the Social Security Act is amended (A) by striking out "and" at the end of clause (A), and (B) by inserting before the semicolon a comma and the following: "and (C) that each State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer or employee, and each partner of such an officer or employee shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code".

(2)(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) shall take effect one hundred and eighty days after the date of the enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the requirement added by the amendments made by paragraph (1), such amendments shall not apply with respect to such State plan before ninety days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(b) Section 1122 of the Social Security Act is amended—

(1) by striking out "or health maintenance organizations" each place it occurs, and

(2) by striking out "or health maintenance organizations" each place it occurs, and

(3) by striking out "or organization, or of any facility of such organization," in subsection (d)(2).

(c) Section 1903(m)(1)(B) of the Social Security Act is amended by striking out "shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions".

EMPLOYEE HEALTH BENEFITS PLANS

SEC. 14. (a) Section 1310(d)(1) (as amended by section 12) is amended by (1) striking out "and" at the end of clause (A), and (2) by inserting before the period at the end a comma and the following: "and (C) an entity described in paragraph (6)(B) of this subsection which has (i) received a waiver under such paragraph from the requirements of paragraph (6) of section 1301(c), and (ii) has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 1301(b), that it is operated in the manner prescribed by section 1301(c), that, except with respect to the requirements of paragraph (6) of section 1301(c), it is organized in the manner prescribed by section 1301(c), and that it will meet the requirements of paragraphs (2), (3), and (4) of this subsection".

(b) Section 1310(d) (as amended by section 12) is amended by adding after paragraph (5) the following new paragraph:

"(6)(A) For purposes of paragraph (1) of this subsection, the Secretary may, upon application, grant a waiver to an entity described in subparagraph (B) from the requirements of section 1301(c)(6) upon such terms and conditions as the Secretary may determine are appropriate if the entity (i) provided, before the expiration of one hundred and eighty days after the date of the enactment of this paragraph, notice to the Secretary of its intent to apply to be a qualified health maintenance organization, and (ii) made such an application before the expiration of eighteen months after such date of enactment. A waiver granted to an entity under this subparagraph shall be granted on the condition that if, after the date the waiver is granted, the entity expands its service area, the waiver shall terminate upon the date the entity so expands such area. If a waiver granted an entity is terminated because of the expansion of its service area, the entity may apply to the Secretary for another waiver under this subparagraph for the entity with its service area as so expanded. No grant, contract, loan, or loan guarantee may be made under this title for an entity granted a waiver under this subparagraph.

"(B) An entity eligible to apply for a waiver under subparagraph (A) is a health maintenance organization (as defined in regulations promulgated under section 1122 of the Social Security Act as in effect on the day before the date of enactment of this paragraph) (i) which is operated (but not as a separate legal entity) either by a commercial insurance carrier or a nonprofit carrier which provides hospital service benefits or medical or surgical benefits, or both, (ii) which has an advisory board to the policymaking body of such carrier which board meets the requirements of section 1301(c)(6)(A) and to which may be delegated policymaking authority for the organization, (iii) with respect to which Federal financial assistance has not been provided under this Act, and (iv) which on January 1, 1974, was engaged in providing basic health care services (as defined in regulations promulgated under such section 1122 as so in effect) to the organization's members."

(c) Section 1310(b) is amended by adding at the end the following: "The Secretary, as a condition to approving as a qualified health maintenance organization for an area for purposes of this section an entity which is described in subsection (d)(1)(C) and which provides basic and supplemental health services in a manner described in paragraph (1) or (2) of this subsection, may require the health benefits plan of each employer subject to subsection (a) which has at least 25 employees residing in such area to include in such plan at least two qualified health maintenance organizations which provide such services in such area in such manner when at least two such organizations are willing to be included in such plan.".

ONE-YEAR EXTENSION

SEC. 15. (a) Section 1304(i) is amended by striking out "1978" and inserting in lieu thereof "1979".

(b) Section 1309(a) is amended (1) by striking out "ending September 30, 1979" and inserting in lieu thereof "ending September 30, 1980", (2) by striking out "and" after "1977,", and (3) by inserting ", and $25,000,000 for the fiscal year ending September 30, 1979" after "1978".

Amend the title so as to read: "An Act to amend the Public Health Service Act to revise and extend the program of assistance under that Act for health maintenance organizations.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House to the Senate bill; that the Senate ask for a conference; and that the Chair be authorized to appoint conferees.

The motion was agreed to, and the Presiding Officer appointed Mr. KENNEDY, Mr. NELSON, Mr. PELL, Mr. HATHAWAY, Mr. WILLIAMS, Mr. SCHWEIKER, Mr. JAVITS, and Mr. CHAFEE conferees on the part of the Senate.

HEALTH SERVICES RESEARCH, HEALTH STATISTICS, AND HEALTH CARE TECHNOLOGY ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2466.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2466) entitled "An Act to amend the Public Health Service Act to extend and revise the assistance programs for health services research and health statistics; to establish the Office of Health Technology, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SHORT TITLE, REFERENCE TO ACT

SECTION 1. (a) This Act may be cited as the "Health Services Research, Health Statistics, and Health Care Technology Act of 1978".

(b) Whenever in this Act (other than in sections 11 and 12) and amendment or repeal is expressed in terms of an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

EXTENSION OF AUTHORIZATIONS

SEC. 2. (a) Section 308(i)(1) is amended—

(1) in the first sentence (A) by striking out "and" after "1976,", and (B) by inserting before the period a comma and the following: $36,000,000 for the fiscal year ending September 30, 1979, $44,000,000 for the fiscal year ending September 30, 1980, and $49,000,000 for the fiscal year ending September 30, 1981"; and

(2) by striking out the second sentence and inserting in lieu thereof the following: "At least 20 per centum of the amount appropriated under the preceding sentence for any fiscal year or $6,000,000, whichever is less, shall be available only for health services research evaluation and demonstration activities directy undertaken by the Center. There are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1979, $4,000,000 for the fiscal year ending September 30, 1980, and $4,000,000 for the fiscal year ending September 30, 1981, for heath services research training under section 304(b)(1)(B).".

(b) Section 308(i)(2) is amended (1) by striking out "and" after "1976,", (2) by inserting before the period a comma and the

following: "$60,000,000 for the fiscal year ending September 30, 1979, $75,000,000 for the fiscal year ending September 30, 1980, and $80,000,000 for the fiscal year ending September 30, 1981", (3) by adding at the end the following: "Of the amount appropriated under the preceding sentence for any fiscal year, at least $1,000,000 in the fiscal year ending September 30, 1979, $2,000,000 in the fiscal year ending September 30, 1980, and $2,000,000 in the fiscal year ending September 30, 1981, shall be available only for health statistics training in epidemiology and biostatistics under section 304(b)(1)(B).".

(c) Section 308(i) is amended by adding after paragraph (2) the following new paragraph:

"(3) The authority of the Secretary to enter into contracts under sections 304, 305, and 306 shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.".

GENERAL AUTHORITY

"SEC. 3. (a) Subsection (a)(2) of section 304 is amended (1) by striking out "and" at the end of subparagraph (C), (2) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and", and (3) by adding at the end the following new subparagraph:

"(E) health care costs, increases in such costs, and the reasons for such increases".

(b) Subsection (b)(1)(B) of such section is amended by inserting after "training" the following: "through the National Center for Health Services Research and the National Center for Health Statistics".

(c) The second sentence of subsection (c) of such section is amended to read as follows: "Coordination of the health services research, evaluation, demonstration, and health statistical activities authorized by this Act shall be carried out through the National Center for Health Services Research and the National Center for Health Statistics.".

NATIONAL CENTER FOR HEALTH SERVICES RESEARCH

SEC. 4. (a) Subsection (b) of section 305 is amended—

(1) by striking out "may undertake and support" and inserting in lieu thereof "shall undertake and support"; and

(2) by striking out "construction," in paragraph (3).

(b) Subsection (e) of section 305 is redesignated as subsection (f) and the following new subsection is inserted after subsection (d):

"(e) No application for a grant or contract for health services research under a law administered by the Secretary may be approved before the Center and the Health Care Financing Administration (or its successor) have been given a reasonable opportunity to review the application for technical competence.".

NATIONAL CENTER FOR HEALTH STATISTICS

SEC. 5. (a) Subsection (b) of section 306 is amended (1) by striking out "may", (2) by inserting "shall" after "(1)" after "(2)", (3) by striking out "and" at the end of paragraph (1), (4) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and", and (5) by adding after paragraph (2) the following:

"(3) may collect, furnish, tabulate, and analyze statistics, and prepare studies, on matters referred to in paragraph (1) upon request of public and nonprofit private entities under arrangements under which the entities will pay the cost of the service provided.

Amounts appropriated to the Secretary from payments made under arrangements made under paragraph (3) shall be available to the Secretary for obligation until expended.".

(b)(1) Subsection (e) of section 306 is amended to read as follows:

"(e)(1) The Secretary shall by regulation establish standardized means for the collection of health information and statistics under laws administered by the Secretary.

"(2) For the purpose of producing comparable and uniform health information and statistics, there is established the Cooperative Health Statistics System. The Secretary, acting through the Center, shall—

"(A) coordinate the activities of Federal agencies involved in the design and implementation of the System;

"(B) undertake and support (by grant or contract) research, development, demonstrations, and evaluations respecting the System;

"(C) make grants to and enter into contracts with State and local health agencies to assist them in meeting the costs of data collection carried out under the System; and

"(D) review the statistical activities of the Department of Health, Education, and Welfare to assure that they are consistent with the System.

States participating in the System shall designate a State agency to administer or be responsible for the administration of the statistical activities within the State under the System. The Secretary, acting through the Center, shall prescribe the types of organizaton systems (including consortia of entities which use health information and statistics and entities which produce health information and statistics) for statistical activities which may be used by States participating in the System.".

(2) Paragraph (4)(D) of subsection (i) of section 306 is amended by inserting before the semicolon the following: ", with respect to the Cooperative Health Statistics System established under subsection (e)(2), and with respect to the standardized means for the collection of health information and statistics to be established by the Secretary under subsection (e)(1)".

(c) The first sentence of subsection (f) of section 306 is amended by inserting ", acting through the Center," after "the Secretary".

(d) Paragraph (2)(A) of subsection (i) of section 306 is amended by inserting "health planning," after "health statistics,".

(e) Section 306 is amended by redesignating subsection (i) as subsection (k) and by inserting after subsection (h) the following new subsection:

"(i) The Center may provide to public and nonprofit private entities engaged in health planning activities technical assistance in the effective use in such activities of statistics collected or compiled by the Center.".

(f) Section 306 is amended by adding after subsection (i) (added by subsection (e) of this section) the following:

"(j)(1)(A) The Secretary, acting through the Center, shall by regulation establish, not later than two years after the date of the enactment of this subsection, guidelines for the collection, compilation, analysis, publication, and distribution of statistics and information necessary for determining the effects of conditions of employment and indoor and outdoor environmental conditions on the public health. Guidelines established under this subsection shall not (i) authorize or require the disclosure of any matter described in section 552(b)(6) of title 5, United States Code, and (ii) authorize or require the disclosure of any statistics or other information which is exempt from disclosure pursuant to subsection (a) of section 552 or title 5, United States Code, by reason of subsection (b)(4) of such section. The guidelines shall be reviewed and, if appropriate, revised at least every three years after the date they are initially established. Guidelines shall take effect on the date of the promulgation of the regulation establishing or revising the guidelines or such later date as may be specified in the guidelines.

"(B) The guidelines shall be designed—

"(i) to improve coordination of environmental and health studies, statistics, and information, and to prevent overlap and unnecessary duplication with respect to such studies, statistics, and information;

"(ii) to assure that such studies, statistics, and information will be available to executive departments responsible for the administration of laws relating to the protection of the public health and safety or the environment;

"(iii) to encourage the more effective use by executive departments of such studies, statistics, and information;

"(iv) to improve the statistical validity and reliability of such studies, statistics, and information; and

"(v) to assure greater responsiveness by the Department of Health, Education, and Welfare and other executive departments in meeting informational and analytical needs for determining the effects of employment and indoor and outdoor environmental conditions on public health.

"(C) In establishing and revising guidelines under subparagraph (A) the Secretary shall consult with and take into consideration any recommendations of the Task Force on Environmental Cancer and Heart and Lung Disease, the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Consumer Product Safety Commission, the United States National Committee on Vital and Health Statistics, and the National Academy of Sciences through its Institute of Medicine.

"(D) For purposes of this subsection, the term 'guidelines' means the guidelines, either as initially established or as thereafter revised, in effect under this subsection.

"(2) The Center shall serve as a clearinghouse for statistics and information with respect to which guidelines have been established under paragraph (1) and shall assist executive departments in obtaining such statistics and information for purposes of administering laws under their jurisdiction relating to environmental health protection or the safety and health of employees.

"(3)(A) Each executive department shall comply with the substantive and procedural requirements of the guidelines.

"(B) The President shall by Executive order require each executive department to comply with requests, made in accordance with the guidelines, by the Secretary, the Administrator of the Environmental Protection Agency, the Consumer Product Safety Commission, or the Secretary of Labor for statistics and information.

"(C) The President may by Executive order exempt any executive department from compliance with a requirement of the guidelines respecting specific statistics or other information if the President determines that the exemption is necessary in the interest of national security.

"(4) In carrying out his duties under this subsection, the Secretary, acting through the Center, shall, insofar as practicable, provide for coordination of his activities with those of other Federal agencies and interagency task forces relating to the collection, analysis, publication, or distribution of statistics and information necessary for determining the effects of conditions of employment and indoor and outdoor environmental conditions on the public health."

(g) The first sentence of subsection (d) of section 308 is amended by inserting after "unless authorized" the following: "by guidelines in effect under section 306(j) or".

STUDY OF COSTS OF DISEASES AND ADVERSE EFFECTS WHICH ARE ENVIRONMENTALLY RELATED

SEC. 6. (a) Section 304 is amended by adding at the end the following:

"(d)(1) The Secretary and the National Academy of Sciences (hereinafter in this subsection referred to as the 'Academy') shall, jointly and in cooperation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Consumer Product Safety Commission, the Council of Economic Advisers, the Council on Wage and Price Stability, the Council on Environmental Quality, and other entities of the Federal Government which the Secretary determines have the expertise in the subject of the study prescribed by this paragraph, conduct, with funds appropriated under section 308(i)(1), an ongoing study of the present and projected future health costs of pollution and other environmental conditions resulting from human activity (including human activity in any place in the indoor or outdoor environment, including places of employment and residence). In conducting the study, the Secretary and the Academy shall, to the extent feasible—

"(A) identify the pollution (and the pollutants responsible for the pollution) and other environmental conditions which are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating human diseases and adverse effects on humans;

"(B) identify each such disease and adverse human effect and specifically determine whether cancer, birth defects, genetic damage, emphysema, asthma, bronchitis, and other respiratory diseases, heart disease, stroke, and mental illness and impairment are such a disease or effect;

"(C) identify (on a national, regional, or other geographic basis) the source or sources of such pollutants and conditions and estimate the portion of each pollutant and the extent of each condition which can be traced to a specific type of source;

"(D) ascertain (i) the extent to which the pollutants and conditions identified under subparagraph (A) are, or may reasonably be anticipated to be, responsible, individually or collectively, for causing, contributing to, increasing susceptibility to, or aggravating the diseases and effects identified under subparagraph (B), and (ii) the effect upon the incidence or severity of specific diseases and effects of individual or collective, as appropriate, incremental reductions in the pollutants and changes in such conditions; and

"(E) quantify (i) the present and projected future health costs of the diseases and effects identified under subparagraph (B), and (ii) the reduction in health costs which would result from each incremental reduction and change referred to in subparagraph (D)(ii).

"(2) The Secretary shall enter into appropriate arrangements with the Academy under which the Secretary shall be responsible for expenses incurred by the Academy in connection with the study prescribed by paragraph (1).

"(3) The first report on the study prescribed by paragraph (1) shall be made to the Congress by the Secretary and the Academy not later than eighteen months after the date of the enactment of this subsection. Subsequent reports on the study shall be made by the Secretary and the Academy every two years after the date the first report is submitted. Each report shall include (A) such recommendations for legislation as the Secretary determines appropriate, and (B) a description of any administrative action proposed to be taken by the Secretary, the Administrator of the Environmental Protection Agency, the Secretary of Labor, and the Consumer Product Safety Commission to reduce the costs which have been quantified under paragraph (1)(E)(i). In conducting the study, the Secretary and the Academy shall seek assistance from public and private health financing entities in securing the data needed for the study.

"(4) For purposes of paragraph (1), the term 'health costs of pollution and other environmental conditions' means the costs of human diseases and other adverse effects on humans which pollution and other environmental conditions are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating, including the costs of preventing such diseases and effects, the costs of the treatment, cure, convalescence, and rehabilitation of persons afflicted by such diseases, costs reasonably attributable to pain and suffering from such diseases and effects, loss of income and future earnings resulting from such disease and effects, adverse effects on productivity (and thus increases in production costs and consumer prices) resulting from such diseases and effects, loss of tax revenues resulting from such decreases in earnings and productivity, costs to the welfare and unemployment compensation systems and the programs of health benefits under titles XVIII and XIX of the Social Security Act resulting from such diseases and effects, the overall increases in costs throughout the economy resulting from such diseases and effects, and other related direct and indirect costs."

TASK FORCE ON ENVIRONMENTAL CANCER AND HEART AND LUNG DISEASE

SEC. 7. (a) The Directors of the National Center for Health Statistics and the Center for Disease Control (or the successor to such entity) shall serve as members of the Task Force on Environmental Cancer and Heart and Lung Disease established under section 402 of Public Law 95-95.

(b) The Task Force referred to in subsection (a) shall, effective October 1, 1978, conduct a study to identify the need for and recommend guidelines for the collection, compilation, analysis, publication, and distribution of statistics and information necessary for determining (1) the extent to which conditions of employment and indoor and outdoor environmental conditions may reasonably be anticipated to cause, contribute to, aggregate, or increase susceptibility to cancer or heart or lung diseases, and (2) the other effects on the public health which may reasonably be anticipated to result from such conditions. Within eighteen months of the date of the enactment of this subsection, the Task Force shall complete the study prescribed by this subsection and report the results of the study to the Congress, the Administrator of the Environmental Protection Agency, the Secretary of Health, Education, and Welfare, the Secretary of Labor, and the Consumer Product Safety Commission.

NATIONAL CENTER FOR HEALTH CARE TECHNOLOGY; HEALTH CARE TECHNOLOGY ADVISORY COMMITTEE

SEC. 8. (a) Section 309 is amended—

(1) by amending the section heading to read as follows:

"HEALTH CONFERENCES AND HEALTH EDUCATION INFORMATION";

(2) by inserting "(a)" before "A conference"; and

(3) by striking out "309" and inserting in lieu thereof "310".

(b) Section 310 is amended—

(1) by striking out the section heading; and

(2) by striking out "SEC. 310." and inserting in lieu thereof "(b)".

(c) Part A of title III is amended by adding after section 308 the following new section:

"NATIONAL CENTER FOR HEALTH CARE TECHNOLOGY; HEALTH CARE TECHNOLOGY ADVISORY COMMITTEE

"SEC. 309. (a) There is established in the Department of Health, Education, and Welfare the National Center for Health Care Technology (hereinafter in this section referred to as the 'Center') which shall be under the direction of a Director who shall be appointed by the Secretary and supervised by the Assistant Secretary for Health (or such other officer of the Department as may be designated by the Secretary as the principal adviser to him for health programs).

"(b)(1)(A) The Secretary, acting through the Center, shall undertake and support (by grant or contract) comprehensive assessments of health care technology. Such assessments shall take into account the safety, effectiveness, and cost effectiveness of, and the social, ethical, and economic impact of health care technologies. In determining if the assessment of a particular health care technology should be given priority, emphasis shall be placed on—

"(i) the actual or potential risks and the actual or potential benefits to patients associated with the use of the technology,

"(ii) the actual or potential cost of the technology,

"(iii) the actual or potential rate of its use, and

"(iv) the stage of development of the technology.

"(B) The Secretary may by grant or contract assist public and private nonprofit entities in meeting the costs of planning, establishing, and operating centers to assess health care technology.

"(C) Any grant or contract under this paragraph, the direct cost of which will exceed $35,000, may be made or entered into only after appropriate review for scientific merit by peer review groups composed of experts in the relevant fields and only after the Health Care Technology Advisory Committee has had an opportunity to review the project with respect to which the grant or contract is to be made.

"(2) The Secretary, acting through the Center, shall undertake and support (by grant or contract) research in, and demonstrations and evaluations of—

"(A) the factors that affect the use of health care technologies in the United States; and

"(B) methods for disseminating information on health care technologies to health professionals.

"(3) The Center shall make recommendations to the Secretary respecting health care technology issues in the administration of the laws under the Secretary's jurisdiction, including recommendations with respect to reimbursements under titles XVIII and XIX of the Social Security Act.

"(c)(1) Not later than December 1, 1979, and December 1 of each succeeding year, the Secretary shall report to Congress, a comprehensive description of the activities of the Center under subsection (b) during the preceding fiscal year.

"(2) Not later than two years after the date of the enactment of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978, the Secretary shall submit a report to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Human Resources of the Senate—

"(A) describing the various types of activities undertaken and supported under subsection (b)(1) for the assessment of health care technology.

"(B) describing the recommendations made under subsection (b)(3) and the action taken with respect to such recommendations, and

"(C) describing any additional authority or organizational changes which the Secretary determines are required to more effectively carry out the functions prescribed by subsection (b).

The Office of Management and Budget may review the report required by this paragraph before its submission to the Committee on

Interstate and Foreign Commerce and the Committee on Human Resources, but the Office may not revise such report or delay its submission beyond the date prescribed for its submission and may submit to Congress its comment repecting the report.

"(d)(1) No grant or contract may be made under this section unless an application therefor has been submitted to the Secretary in such manner, and containing such information, as the Secretary may by regulation prescribe.

"(2) Payments of any grant or under any contract under this section may be made in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may prescribe.

"(e)(1) There is established the Health Care Technology Advisory Committee (hereinafter in this subsection referred to as the 'Committee') to advise the Secretary and the Director of the Center with respect to the performance of the functions prescribed by subsection (b), including the establishment of priorities for the assessments to be undertaken or supported under paragraph (1) of such subsection.

"(2) The Committee shall consist of—

"(A) the Director of the National Institutes of Health, the Chief Medical Officer of the Veterans' Administration, the Assistant Secretary for Health and Environment of the Department of Defense, the Chairman of the National Professional Standards Review Council, the Chairman of the National Council on Health Planning and Development (established under section 1503), the Director of the Office of Science and Technology Policy, the Commissioner of the Food and Drug Administration (or the successor to such entity), the Director of the Center for Disease Control (or the successor to such entity), and the head of the Health Care Financing Administration (or the successor to such entity) who (or their designees) shall be ex officio members, and

"(B) sixteen members appointed by the Secretary.

The Secretary shall make his initial appointments to the Committee within one hundred and twenty days of the date of the enactment of this section. Seven of the appointed members shall be selected from individuals who are distinguished in the fields of medicine, engineering, or science (including social science). Of such seven members, at least two shall be physicians and two shall be selected from representatives of business entities engaged in the development or production of health care technology. Two of the appointed members shall be selected from individuals who are hospital administrators, two of the appointed members shall be selected from individuals who are distinguished in the field of economics, two of the appointed members shall be selected from individuals who are distinguished in the field of law, one of the appointed members shall be selected from individuals who are distinguished in the field of ethics, and two of the appointed members shall be selected from members of the general public who represent the interests of consumers of health care.

"(3)(A) Each appointed member of the Committee shall be appointed for a term of four years, except that—

"(i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed for the remainder of such term; and

"(ii) of the members first appointed after the date of the enactment of this section, four shall be appointed for a term of four years, four shall be appointed for a term of three years, four shall be appointed for a term of two years, and four shall be appointed for a term of one year, as designated by the Secretary at the time of appointment.

Appointed members may serve after the expiration of their terms until their successors have taken office.

"(B) Members of the Committee who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the functions of the Committee compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(4) The Committee shall annually elect one of its appointed members to serve as Chairman until the next election.

"(5) The Committee shall meet at the call of the Chairman, but not less often than four times a year.

"(6) Section 14 of the Federal Advisory Act shall not apply with respect to the duration of the Committee.

"(e) There are authorized to be appropriated to carry out this section $15,000,000 for the fiscal year ending September 30, 1979, $25,000,000 for the fiscal year ending September 30, 1980, and $35,000,000 for the fiscal year ending September 30, 1981. Not less than 20 per centum of the amount appropriated for the fiscal year ending September 30, 1981, shall be obligated for assessments directly undertaken by the Secretary under subsection (b)(1). The authority of the Secretary to enter into contracts under subsection (b) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.".

STUDY

SEC. 9. (a) The United States Committee on Vital and Health Statistics (established by section 306 of the Public Health Service Act) shall, effective October 1, 1978, conduct a study of the issues respecting and the recommendations for establishing a Federal system—

(1) to facilitate studies of the effects of hazardous substances on humans, and

(2) to assist, in a manner designed to avoid invasion of personal privacy, Federal, State, and other entities in locating individuals who have been or may have been exposed to hazardous substances to determine the effect on their health of such exposure and to assist them in obtaining appropriate medical care and treatment.

In conducting such study, the Committee shall consult with the Administrator of the Environmental Protection Agency, the Director of the National Cancer Institute, the Council on Environmental Quality, the Director of the National Institute on Environmental Health Sciences, the Director of the National Institute for Occupational Safety and Health, the Secretary of Labor, and the head of the Occupational Safety and Health Administration, and the Committee may consult with any other public and private entity which it determines has expertise in any matter to be considered in the study.

(b) Not later than one year after the date of enactment of this Act, the Committe shall complete the study required by subsection (a) and report to the Congress the results of the study and any recommendations for legislation or administrative action.

SEC. 10. (a) Subsection (g) of section 208 is amended (1) by striking out "one hundred and fifty-five" and inserting in lieu thereof "one hundred and seventy-nine", (2) by striking out "and not less than" and inserting in lieu thereof ", not less than", and (3) by inserting after "alcoholism," the following: "not less than ten shall be for the National Center for Health Services Research, not less than twelve shall be for the National Center for Health Statistics, and not less than seven shall be for the National Center for Health Care Technology,".

(b) Section 453 is amended by adding at the end the following: "The Secretary, through the Institute, may, effective October 1, 1978, and without regard to section 405, carry out a program of grants for public and nonprofit private vision research facilities.".

(c)(1) The second sentence of subsection (a) of section 705 is amended to read as follows: "Such records shall include records which fully disclose (A) the amount and disposition by such entity of the funds paid to it under such grant, loan, loan guarantee, interest subsidy, or contract, (B) the total cost of the project or undertaking for which such grant, loan, loan guarantee, interest subsidy, or contract is made, (C) the amount of that portion of the cost of the project or undertaking received by or allocated to such entity from other sources, and (D) such other records as will facilitate an audit conducted in accordance with generally accepted auditing standards.".

(2) Subsection (b) of section 705 is amended to read as follows:

"(b) Each entity which received a grant or entered into a contract under this title shall provide for a biennial financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant or contract and such other funds received by or allocated to the project or undertaking for which such grant or contract was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with such requirements concerning the individual or agency which conducts the audit, and such standards applicable to the performance of the audit, as the Secretary may by regulation provide. A report of each such audit shall be filed with the Secretary at such time and in such manner as he may require.".

(d) Section 771(d) is amended by adding at the end the following:

"(5) The Secretary may waive (in whole or in part) application to a school of dentistry of the requirement of any paragraph of this subsection if the Secretary determines, after receiving the written recommendation of the appropriate accreditation body or bodies (approved for such purpose by the Commissioner of Education) that compliance by such school with such requirement will prevent it from maintaining its accreditation.".

HEALTH PROFESSIONS REPORTS AND PROGRAMS

SEC. 11. (a) Section 708(d) is amended (1) by striking out "not later than September 1 of each year", and (2) by inserting at the end the following: "Such report shall be submitted biennially, and the first such report shall be due not later than October 1, 1979.".

(b) Section 709(b) is amended by striking out "January 1, 1979" and inserting in lieu thereof "February 1, 1980".

(c) Section 751(i) is amended by striking out "December" and inserting is lieu thereof "March".

(d) Section 771(b)(2)(B) is amended by striking out "45 days after the date for which the determination is made" and inserting in lieu thereof "the first December 31 occurring after the date for which the determination is made".

(e) Section 782(c) is amended by striking out "September 30, 1979" and inserting in lieu thereof "March 1, 1980".

(f) Section 788(b)(6) is amended by striking out "September 30, 1978" and inserting in lieu thereof "October 1, 1979".

(g) Section 793(c) is amended (1) by

striking out "annually" and inserting in lieu thereof "biennially", and (2) by striking out "December 1, 1978" and inserting in lieu thereof "October 1, 1979".

(h) Section 951(b) of the Nurse Training Act of 1975 is amended by striking out "Not later than February 1, 1977, and February 1 of each succeeding year" and inserting in lieu thereof "Not later than October 1, 1979, and October 1 of each odd-numbered year thereafter".

(i)(1) Section 702(d) of the Health Professions Educational Assistance Act of 1976 is amended by striking out "not later than two years after the date of enactment of this Act" and inserting in lieu thereof "not later than October 1, 1979".

(2) Section 903(a)(2) of the Health Professions Educational Assistance Act of 1976 is amended by striking out "January 1, 1979" and inserting in lieu thereof "April 1, 1979".

(j) Section 772(e) of the Public Health Service Act is amended by inserting before the period a comma and the following: "except that a student who, for other than academic reasons, withdraws from a year class before the end of an academic year or does not complete an academic year shall not be considered as having been enrolled in a year class in that academic year".

MISCELLANEOUS

SEC. 12. (a)(1) Section 111(h) (42 U.S.C. 7411) of the Act of July 14, 1955, as amended by Public Law 95-95, is amended by adding the following at the end thereof:

"(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this Act (other than the provisions of subsection (a) and of such section are each amended by strik- this subsection).".

(2) Subsections (d)(1)(A) and (g)(4)(B) ing out "under subsection (b)" and inserting in lieu thereof "under this section".

(3) Subsection (j) of such section is amended by striking out "subsection (b) of" in paragraphs (1)(A) and (2)(A) thereof.

(b) Section 112(e) of such Act (42 U.S.C. 7412) is amended by adding the following at the end thereof:

"(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as an emission standard for purposes of the provisions of this Act (other than the provisions of this subsection)."

(c) Section 117(c)(3) of such act (42 U.S.C. 7417) is amended by striking out "(b)(1)(B)" in each place it appears.

(d) Section 317(a)(1) of such Act (42 U.S.C. 7617) is amended by striking out "(b)".

Amend the title so as to read: "An Act to amend the Public Health Service Act to revise and extend the authorities under that Act relating to health services research and health statistics and to establish a National Center for Health Care Technology, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House, request a conference with the House, and that the Chair be authorized to appoint the Senate conferees.

The motion was agreed to; and the Presiding Officer appointed Mr. KENNEDY, Mr. NELSON, Mr. PELL, Mr. HATHAWAY, Mr. WILLIAMS, Mr. SCHWEIKER, Mr. JAVITS, and Mr. CHAFEE conferees on the part of the Senate.

NURSE TRAINING AMENDMENTS OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2416.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2416) entitled "An Act to amend title VIII of the Public Health Service Act to extend for two fiscal years the program of assistance for nurse training", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

TITLE I—NURSE TRAINING

SEC. 101. (a) This Act may be cited as the "Nurse Training Amendments of 1978".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 102. Section 801 (relating to authorizations for construction grants) is amended by inserting after "for fiscal year 1978" the following: "and for each of the next two fiscal years".

SEC. 103. (a) Subsections (a) and (b) of section 805 (relating to loan guarantees and interest subsidies) are each amended by striking out "1978" and inserting in lieu thereof "1980".

(b) Subsection (e) of such section is amended by inserting after "in fiscal year 1978" the following: "and in each of the next two fiscal years".

SEC. 104. Subsection (f) of section 810 (relating to capitation grants) is amended by inserting after "fiscal year 1978" the following: "and for each of the next two fiscal years.".

SEC. 105. The first sentence of subsection (d) of section 820 (relating to special project grants and contracts) is amended by striking out "and" after "1977," and by inserting before the period the following: ", $20,000,000 for the fiscal year ending September 30, 1979, and $20,000,000 for the fiscal year ending September 30, 1980".

SEC. 106. Subsection (b) of section 821 (relating to advanced nurse training programs) is amended by inserting after "for fiscal year 1978" the following: "and for each of the next two fiscal years".

SEC. 107. Subsection (e) of section 822 (relating to nurse practitioner programs) is amended by striking out "for fiscal year 1978" and inserting in lieu thereof "for the fiscal year ending September 30, 1978, and for each of the next two fiscal years".

SEC. 108. Subsection (b) of section 830 (relating to traineeships) is amended by inserting before the period "and for each of the next two fiscal years".

SEC. 109. (a) Subsection (b)(4) of section 835 (relating to loan agreements) is amended by striking out "1978" and inserting in lieu thereof "1980".

(b) Section 837 (relating to authorizations for student loan funds) is amended (1) by inserting before the period in the first sentence "and for each of the next two fiscal years", (2) by striking out "fiscal year 1979" and inserting in lieu thereof "the fiscal year ending September 30, 1981", and (3) by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1980".

(c)(1) Subsection (a) of section 839 (relating to distribution of assets) is amended by striking out "September 30, 1980, and not later than September 30, 1977" and inserting in lieu thereof "September 30, 1981, and not later than December 30, 1983".

(2) Paragraph (1) of such subsection is amended by striking out "1980" and inserting in lieu thereof "1983".

(3) Subsection (b) of such section is amended by striking out "1980" each place it occurs and inserting in lieu thereof "1983".

SEC. 110. (a) Subsection (b) of section 845 (relating to scholarship grants) is amended (1) by striking out "next two fiscal years" in the first sentence and inserting in lieu thereof "next four fiscal years", (2) by striking out "1979" and inserting in lieu thereof "1981", and (3) by striking out "1978" and inserting in lieu thereof "1980".

(b) Subsection (c)(1) of such section is amended (1) by striking out "next two fiscal years" in subparagraph (A) and inserting in lieu thereof "next four fiscal years", (2) by striking out "1978" in subparagraph (B) and inserting in lieu thereof "1980", and (3) by striking out "1979" in such subparagraph and inserting in lieu thereof "1981".

SEC. 111. Subpart I of part B of title VIII (relating to traineeships) is amended by adding after section 830 the following new section:

"TRAINEESHIPS FOR TRAINING OF NURSE ANESTHETISTS

"SEC. 831. (a)(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeship for the training, in programs which meet such requirements as the Secretary shall by regulation prescribe and which are accredited by an entity or entities designated by the Commissioner of Education, of licensed, registered nurses to be nurse anesthetists.

"(2) Payments to institutions under this subsection may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. Such payments may be used only for traineeships and shall be limited to such amounts as the Secretary finds necessary to cover the costs of tuition and fees, and a stipend and allowances (including travel and subsistence expenses) for the trainees.

"(b) For the purpose of making grants under subsection (a), there are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1979, and $3,000,000 for the fiscal year ending September 30, 1980.".

SEC. 112. Section 836(b)(3) (relating to student loans) is amended (1) by inserting after "(3)" the following: "in the case of a student who received such a loan before the date of enactment of the Nurse Training Amendments of 1978,", and (2) by striking out "any such loan" and inserting in lieu thereof "any such loan made before such date".

SEC. 113. (a) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") shall arrange, in accordance with subsection (b), for the conduct of a study to determine the need to continue a specific program of Federal financial support for nursing education, taking into account—

(1) the need for nurses under the present health care delivery system and under that system as it may be changed by the enactment of legislation for national health insurance,

(2) the cost of nursing education, and

(3) the availability of other sources of support for nursing education, including support under general programs of Federal financial support for post secondary education, under State and other public programs, and from private sources.

(b)(1) The Secretary shall first request the National Academy of Sciences (hereinafter in this section referred to as the "Academy"), acting through the Institute of Medicine, to conduct the study, required by subsection (a), under an arrangement whereby the actual expenses incurred by the Academy directly related to the conduct of such study will be paid by the Secretary. If the Academy agrees to such request, the Secretary shall enter into such an agreement with the Academy.

(2) If the Academy declines the Secretary's request to conduct such study under such an arrangement, then the Secretary shall

enter into a similar arrangement with another appropriate public or nonprofit private entity to conduct such study.

(3) Any arrangement entered into under paragraph (1) or (2) of this subsection for the conduct of a study shall require that such study be completed and reports thereon be submitted within such period as the Secretary may require to meet the requirements of subsection (c).

(c) Not later than October 1, 1979, the Secretary shall report to the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives the results of the study conducted pursuant to subsection (a) together with such recommendations for legislation as the Secretary determines are appropriate.

(d) The authority of the Secretary to enter into any contract for the conduct of the study under this section shall be effective (1) only on and after October 1, 1978, and (2) for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

TITLE II—OTHER HEALTH PROFESSIONS PROGRAMS

SEC. 201. Section 338(a) (relating to authorizations for the National Health Service Corps) is amended by striking out "$57,000,000" and inserting in lieu thereof "$63,000,000".

SEC. 202. Section 729(a) relating to limits on Federal loan insurance and insured loans) is amended—

(1) by inserting before the period in the first sentence a comma and the following: "except that in the case of loans to students in schools of medicine, osteopathy, and dentistry, the Secretary may increase the total of such loans which may be covered by Federal loan insurance to $15,000 if he determines that the costs of education at such schools requires such increase"; and

(2) by inserting before the period in the second sentence a comma and the following: "except that the Secretary may increase such amount for borrowers who are or were students in schools of medicine, osteopathy, and dentistry to $60,000 if he determines that the costs of education at such schools requires such increase".

SEC. 203. Section 739(b)(2) (relating to eligibility of institutions to participate in the guaranteed student loan program) is amended by striking out "in each class in the institution" and inserting in lieu thereof "enrolled in the institution".

SEC. 204. Section 752(b)(5)(A) (relating to service requirements for National Health Service Corps scholarships) is amended by striking out "(not to exceed three years)" and inserting in lieu thereof "(not to exceed three years or such greater period as the Secretary may authorize)".

SEC. 205. Section 781(c) (relating to requirements for participation of schools in area health education center programs) is amended by adding at the end thereof the following:

"The requirement of paragraph (3) shall not apply to a medical or osteopathic school participating in an area health education center program if another such school participating in the same program meets the requirement of that paragraph.".

SEC. 206. Section 802(a) of the Health Professions Educational Assistance Act of 1976 (relating to transitional provisions on area health education centers) is amended—

(1) by striking out "for the next fiscal year" and inserting in lieu thereof "for the next three fiscal years";

(2) by striking out "no payment shall be made to an entity under such a contract" and inserting in lieu thereof "no payment under such a contract shall be made to an entity which had not first entered into such a contract before October 12, 1976, (1)"; and

(3) by inserting before the period at the end thereof the following: ", or (2) for any fiscal year beginning after September 30, 1979".

SEC. 207. For the purpose of awarding grants under section 748 of the Public Health Service Act for the fiscal year ending September 30, 1978, the Secretary of Health, Education, and Welfare shall consider an individual who received a traineeship under section 312 of such Act (as in effect on September 30, 1977) for the school year 1977–78 to be an individual described in subsection (b)(3) of such section.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House, request a conference with the House, and that the Chair be authorized to appoint the Senate conferees.

The motion was agreed to; and the Chair appointed Mr. KENNEDY, Mr. NELSON, Mr. PELL, Mr. HATHAWAY, Mr. WILLIAMS, Mr. SCHWEIKER, Mr. JAVITS, and Mr. CHAFEE, conferees on the part of the Senate.

TRAFFICKING IN CONTRABAND CIGARETTES

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1487.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1487) entitled "An Act to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That title 18, United States Code, is amended by inserting after chapter 113 the following new chapter:

"CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES

"Sec.
"2341. Definitions.
"2342. Unlawful acts.
"2343. Recordkeeping, reporting, and inspection.
"2344. Penalties.
"2345. Effect on State law.
"2346. Enforcement and regulations.

"§ 2341. Definitions

"As used in this chapter—

"(1) the term 'cigarette' means—

"(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

"(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

"(2) the term 'contraband cigarettes' means a quantity in excess of 30,000 cigarettes, which bear no evidence of the payment of applicable State cigarette taxes in the State where such cigarettes are found, if such State requires a stamp, impression, or other indication to be placed on package or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

"(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1954 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

"(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

"(C) a dealer—

"(i) Who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

"(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

"(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State) having possession of such cigarettes in connection with the performance of official duties;

"(3) the term 'common or contract carrier' means a carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under the Interstate Commerce Act, or under equivalent operating authority from a regulatory agency of the United States or of any State;

"(4) the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands;

"(5) the term 'dealer' means any person who sells or distributes in any manner any quantity of cigarettes in excess of 30,000 in a single transaction; and

"(6) the term 'Secretary' means the Secretary of the Treasury.

"§ 2342. Unlawful acts

"(a) It shall be unlawful knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes.

"(b) It shall be unlawful knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records of a dealer.

"§ 2343. Recordkeeping, reporting, and inspection

"Each dealer shall—

"(1) maintain such records of shipment, receipt, sale, and other distribution of cigarettes; and

"(2) submit to the Secretary such reports and information with respect to such records;

in such form and manner as the Secretary shall by regulation prescribe. Upon the consent of any dealer, or pursuant to a duly issued search warrant, the Secretary may enter the premises (including places of storage) of such dealer for the purpose of inspecting any records or documents required to be maintained by such dealer under this chapter, and any cigarettes kept or stored by such dealer at such premises.

"§ 2344. Penalties

"(a) Whoever violates any provision of this chapter or regulations promulgated thereunder shall be fined not more than $10,000, or imprisoned not more than two years, or both.

"(b) Any contraband cigarettes involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of such Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

"§ 2345. Effect on State law

"Nothing in this chapter shall be construed to affect the concurrent jurisdiction of a State to enact and enforce cigarette tax laws,

to provide for the confiscation of cigarettes and other property seized for violation of such laws, and to provide for penalties for the violation of such laws.

"§ 2346. Enforcement and regulations

"The Secretary shall enforce the provisions of this chapter and may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.".

SEC. 2. The table of chapters of part I of title 18, United States Code, is amended by inserting immediately below the item relating to chapter 113 the following:

"114. Trafficking in Contraband Cigarettes ---------- 2341".

SEC. 3. (a) Section 1(b) of the Act of August 9, 1939 (ch. 618, 53 Stat. 1291 (49 U.S.C. 781(b)), is amended—

(1) by striking out "or" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) Any cigarette, with respect to which there has been committed any violation of chapter 114 of title 18, United States Code, or any regulation issued pursuant thereto.".

(b) Section 7 of the Act of August 9, 1939 (ch. 618, 53 Stat. 1291 (49 U.S.C. 787)), is amended—

(1) by striking out "and" at the end of subsection (e);

(2) by striking out the period at the end of subsection (f) and inserting in lieu there "; and"; and

(3) by inserting after subsection (f) the following new subsection:

"(g) The term 'cigarettes' means 'contraband cigarettes' as now or hereafter defined in section 2341 of title 18, United States Code.".

(c) Section 1961(1)(B) of title 18, United States Code, is amended by inserting after "sections 2314 and 2315 (relating to interstate transportation of stolen property)," the following: "sections 2341–2346 (relating to trafficking in contraband cigarettes),".

SEC. 4. (a) Except as provided in subsection (b), this Act shall take effect on the date of its enactment.

(b) Sections 2342(b) and 2343 of title 18, United States Code, as enacted by the first section of this Act, shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act.

Amend the title so as to read: "An Act to amend title 18 of the United States Code to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendment of the House, agree to the conference requested by the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. EASTLAND, Mr. KENNEDY, Mr. BIDEN, Mr. THURMOND, and Mr. HATCH conferees on the part of the Senate.

ORDER OF BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, how many orders are there for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. The Chair informs the majority leader that there are two orders, one for the Senator from Wisconsin (Mr. PROXMIRE) for 5 minutes, and one for the Senator from Arizona (Mr. GOLDWATER) for 10 minutes.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, the motion to invoke cloture on the committee substitute is vitiated, is it not?

The PRESIDING OFFICER. That motion was negated by the action which the Senator took earlier today.

Mr. ROBERT C. BYRD. What about the motion to invoke cloture on the Humphrey-Hawkins amendment?

The PRESIDING OFFICER. That, likewise, was negated.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, that amendment went to the bill and not to the committee substitute.

The PRESIDING OFFICER. The Senator is correct. That amendment fell on a point of order. Cloture having been invoked on the substitute, amendments to the bill also were required to be germane.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS UNTIL 7:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered—with the understanding that the Senate will resume consideration of the tax bill at 8 o'clock tomorrow morning and that rollcall votes will occur throughout the day and may occur as early as 9 a.m.—that the Senate stand in recess until 7:30 a.m. tomorrow.

The motion was agreed to; and at 11:13 p.m., the Senate recessed until tomorrow, Tuesday, October 10, 1978, at 7:30 a.m.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of all meetings when scheduled, and any cancellations or changes in meetings as they occur.

As an interim procedure until the computerization of this information becomes operational the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, October 10, 1978, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 11

10:00 a.m.

Banking, Housing, and Urban Affairs
To continue oversight hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

Rules and Administration
To consider S. Res. 575, authorizing funds for additional expenses of the Select Committee on Indian Affairs.
301 Russell Building

Conferees
On S. 1487, to eliminate racketeering in the sale and distribution of cigarettes.
S-146, Capitol

OCTOBER 12

8:00 a.m.

Appropriations
District of Columbia Subcommittee
To resume hearings on a proposed second campus for the University of the District of Columbia, and on the proposed Convention Center in the District of Columbia.
1114 Dirksen Building

9:00 a.m.

Armed Services
Manpower and Personnel Subcommittee
To continue hearings on alleged abuses in U.S. Marine Corps recruiting practices.

9:30 a.m.

Human Resources
Labor Subcommittee
To resume joint hearings with House Committee on Education and Labor Subcommittee on Labor Management Relations on the administration of the Service Contract Act (P.L. 89-286).
2175 Rayburn Building

10:00 a.m.

Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To resume hearings on the quality of care in nursing homes participating in Medicaid and Medicare programs.
3302 Dirksen Building

OCTOBER 13

9:30 a.m.

Human Resources
Health and Scientific Research Subcommittee
To resume hearings on national health insurance programs.
4232 Dirksen Building

CANCELLATIONS

OCTOBER 12

10:00 a.m.

Foreign Relations
African Affairs Subcommittee
To receive testimony from Assistant Secretary of State for African Affairs Richard Moose on U.S. policy in Southern Africa.
4221 Dirksen Building

Statements or insertions which are not spoken by the Member on the floor will be identified by the use of a "bullet" symbol, i.e., ●