

surveys, penalties up to \$4.4 billion, and an amendment to go to \$7.7 billion.

Does my colleague from Arizona realize there is a difference between \$7.7 billion and \$2 billion? and that \$5.5 of this new penalty is product-specific? and the industry did not agree to a product-specific penalty? These provisions were not in the industry settlement, as I am reading it right now.

Mr. GRAMM. Will the Senator yield?

Mr. MCCAIN. Did you ask me a question?

Mr. NICKLES. No.

Mr. MCCAIN. You didn't.

Mr. GRAMM. Will the Senator not agree with me that whether the tobacco companies agreed to it or not, that article I of the Constitution gives the Congress the power to tax? and that we ought not to be delegating that power to a poll?

Mr. NICKLES. I agree totally. And I also tell my colleague and friend from Texas, I wasn't part of the tobacco companies' deal. I am part of the Finance Committee. And I think if we are going to legislate on taxes, we ought to do it right. This is not the right way to tax.

I will also tell my colleague from Texas, I have heard people say the tobacco industry is confident they can challenge these look-back assessments and win in court and have it thrown out as unconstitutional. Regardless of the constitutional argument, I say this is a crummy way to tax. I don't want to give the Secretary of the Treasury the authority to conduct a poll and then determine that the poll is accurate, proper, correct for purposes of this act, and be able to make assessments. Under the agreement the tobacco companies agreed to, it was up to \$2 billion. Under the bill that came out of the Commerce Committee, it was \$3.96 billion. Under the bill the administration wrote and introduced on Monday, it came up to \$4.4 billion. And on the amendment we have pending now, it is \$7.7 billion, also indexed for inflation.

The industry did not sign off on any \$7.7 billion look-back.

Mr. GRAMM. Will the Senator yield further?

Mr. NICKLES. Yes.

Mr. GRAMM. Just two questions. No. 1, you are not here to represent the industry, are you?

Mr. NICKLES. No, sir. I could care less—

Mr. GRAMM. Second, when you put your hand on the Bible and you swore to uphold the Constitution of the United States against all enemies, foreign and domestic, you were not saying, well, I'll uphold the Constitution and article I, the power of Congress to tax, only in those cases where the tobacco companies didn't agree to let a pollster raise taxes, did you?

Mr. NICKLES. The Senator is absolutely right.

Mr. MCCAIN. A "pollster"?

Mr. NICKLES. I got on the Finance Committee because I did not like the

way our tax system was structured. I want to work with our colleagues from Mississippi and Texas, to take the Tax Code and rewrite it and come up with something that is fair, flat, and simple. This is tobacco bill just the opposite. This is a mess. We could clean this bill up a lot if we went through the conventional process, if we had the Finance Committee mark up this bill on the tax side and call a tax a tax.

Instead, we have this unbelievably complicated system, and the look-back is maybe the most complicated. Delegating to the Secretary of the Treasury to take a poll, and then, if they don't meet the targets that we set, we are going to assess them billions of dollars, up to \$7 billion or \$8 billion, I find to be ludicrous. It doesn't make sense. It is not a good way to legislate.

That is the reason that the Commerce Committee doesn't have taxation power, in the Senate. In the Senate, the Finance Committee has the power to raise taxes.

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

Mr. NICKLES. And not the attorneys general and not the Commerce Committee.

I will be happy to yield.

Mr. MCCAIN. I thought the Finance Committee did take up this issue and ended up raising taxes, and doing all kinds of other havoc to it in 24 hours. I wonder what they would have done in 72.

Mr. NICKLES. I will tell my friend and colleague, the Finance Committee did consider this bill for 24 hours. I didn't support their \$1.50 tax increase, but I think their \$1.50 tax increase is a lot more honest, is a lot more plain, a lot more doable. We have excise taxes on tobacco today of 24 cents. Congress last year, when we passed the kid-care bill, increased that another 15 cents. So, tobacco taxes are going to 39 cents already in present law.

People say that the Commerce Committee bill, the administration bill, increases that another dollar and a dime. That takes the tax to \$1.49. But they do not call it a tax, they call it a fee. So we are telling everybody who is in this industry—and we have wholesalers and distributors and so on—that the tax is \$1.49 and it is increasing. But that bill, the bill that we have before us, doesn't say anything about a dollar and a dime. It says put all these billions of dollars into a fund. That is not very workable. It is not very legitimate. I think we should have the committees of jurisdiction take this bill.

The Finance Committee did take the bill, but unfortunately the Commerce Committee and the administration looked at our changes, and they just ignored them. They dropped the changes that the Finance Committee made.

I resent having the Commerce Committee write the tax portions of this bill as well as I resent the Commerce Committee writing the ag portions of the bill. And I think those are two of

the more contentious and two of the more difficult things that we have to deal with. The committee that marked it up didn't have, in my opinion, the taxation expertise, they didn't follow the same taxation procedures that we have on every other excise tax in history. And, frankly, I think the Agriculture Committee should have written that instead of the Commerce Committee as well.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Is the Senator—has the Senator from Oklahoma completed his remarks? Were you through with your remarks?

Mr. NICKLES. Yes.

#### MORNING BUSINESS

Mr. LOTT. Mr. President, I know we are having a lot of fun here, but for the information of all Senators, there will be no further votes this evening. The Senate has tried to work out an agreement that would resolve the impasse that we have right now parliamentary, and with regard to the substance of those amendments, but we have not been able to get that worked out yet. There are very strong feelings on both sides of the amendments that are pending, so I can understand that. So, since we haven't worked out an agreement, I now ask there be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

Mr. GRAMM. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Texas reserves the right to object.

Mr. GRAMM. Would it be possible for us to just have a short final statement on this issue? Or would you prefer we do it—

Mr. LOTT. I would prefer you do it in morning business, because if you had a short final statement, there would need to be a short final reaction. I see the Senator from Massachusetts is anxious to get recognition.

Mr. GRAMM. In that case, it is not worth it.

Mr. LOTT. You can continue in morning business.

Mr. GRAMM. Thank you.

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

#### ORDER OF PROCEDURE

Mr. LOTT. Mr. President, tomorrow we will convene at 9:30, and there will be 1 hour for morning business, and then we will begin consideration of two items tomorrow, calendar No. 299, H.R. 2709, relative to Iran sanctions, with a total of 3 hours for debate. We already entered into an agreement back before the Easter recess as to how this issue would be considered, on or before May 22. So we will have this issue up tomorrow. There could be an amendment offered by Senator LEVIN. But we hope to get that up tomorrow.