94th Congress } 2d Session } COMMITTEE PRINT

TAX REFORM ACT OF 1976

H.R. 10612

TESTIMONY TO BE RECEIVED TUESDAY, JULY 20, 1976

AND

Administration Position on Certain Provisions of H.R. 10612

COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

JULY 1976

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Opening Statement, Senator Russell B. Long,
Tuesday, July 20, 1976

The Finance Committee this morning begins three days of hearings on various provisions of the bill, H. R. 10612, the Tax Reform Act of 1976. These hearings will give us an opportunity to hear testimony on the bill as it has been amended by the Committee and by the Senate.

In its present form, the bill contains provisions which, because they arose after our hearings or for other reasons, may not have been the subject of public comment. In addition, there are amendments which the Committee agreed to recommend to the Senate on the floor. A description of the provisions which will be covered in the hearings was contained in the Committee's press release of July 8th.

Complaints have been voiced by several Senators that a number of provisions were added to the bill by the Committee without sufficient public notice or comment. It is our intention in these hearings to allay such concern.

For several months, we have been committed to a deadline which has denied the Committee the time needed to explore all amendments as thoroughly as we would like. Everyone familiar with the legislative process knows that the need to move expeditiously has frequently forced the Senate to accept amendments on the floor with the understanding they would be more thoroughly considered in conference.

This Committee has on occasion been forced to make decisions under the pressure of a deadline with the clear understanding that its decisions will be more thoroughly considered at a later date, either in Committee or in the next stage of the legislative process.

Tax legislation has been the subject of open discussion and debate throughout the 94th Congress. The House Ways and Means Committee spent more than a year initiating this legislation. It conducted extensive public hearings and drafted the bill in public session.

The Finance Committee, for its part, held 20 days of hearings and heard testimony from 265 witnesses. In addition, the Committee met in open mark-up in this hearing room over a period of 21 days. Extensive briefing materials were made available in advance to the members of this Committee and to the public prior to each day's work. Committee decisions were recorded in detailed and often lengthy press releases which were made available almost immediately to the press and the public. By agreement, the Committee's decisions were tentative and subject to reconsideration at the request of any member. In this manner, Committee decisions were subject to on-going review and refinement. The public and the media, from the beginning, have been involved in the legislative process to an unprecedented extent.

Accordingly, I believe the criticism of the Committee's procedures is unwarranted. It is impossible to work against a deadline, and at the same time do business as though no deadline existed.

At the heart of the criticism of this bill is a fundamental disagreement over what tax legislation should do and what tax reform should be.

When you get down to specifics, you find as many different views of tax reform as there are people whose opinion you ask. Tax reform is in the eye of the beholder, and nothing but insufferable conceit would cause anyone to believe that his view is always right and that of others is always wrong.

Some people start with the premise that the Government has primary rights in all income and wealth. I don't share that view; nor do the American people.

Some people think tax reform is the way to finance large new spending programs. I don't agree; nor do the American people.

Some people believe that good tax reform can ignore the need for investment, capital formation, increased productivity, and expanded employment opportunities. Tax policy is a vital factor in assuring adequate investment to finance economic growth, and we should encourage it.

Finally, some people fail to understand that our tax laws are complex because our economy is complex and that to impose an invariable rule of uniformity to situations which are not uniform injects inconsistency and inequity into our tax laws.

I don't support every provisions of this bill. I voted against several of its major provisions. However, the number of provisions I favor vastly outnumber the provisions I oppose.

I have a view of tax reform, which I believe to be shared by a majority of my colleagues in the Congress and a majority of the American people. In fact, part of that view was adopted by me precisely because I believe it to be the view of the Senate and that of the American people. I believe our goals should be tax simplification and the elimination of unjustified exemptions and deductions, not so we can raise effective tax rates but so we can reduce them. An improved tax system would increase economic activity and in doing so, it would yield us more revenue at lower rates. We should make certain that all taxpayers pay their fair share, but not by raising the tax rates of businesses and individuals to the point that they are counter productive.

This is what the Committee attempted to accomplish in the Tax Reform Act of 1976. We have proposed more than $1 billion in new taxes aimed at those who do very well and pay very little in the way of income taxes. At the same time, we have tried to reduce the tax burden of lower income taxpayers and those taxpayers who are paying too much to the Federal Treasury.

Many of the Committee's decisions will simplify our tax laws. For example, under the Committee bill, it is estimated that an additional nine million taxpayers will begin using the standard deduction. This means that about 40 percent of those who presently itemize their deductions will shift to the simplified approach in the near future. In addition, under the Committee bill, 92 percent of taxpayers will use simplified tax tables. Likewise, little attention has been given to the approximately 50 Committee decisions -- including a major change in the minimum income tax -- which close loopholes in present law.

These are the objectives which have guided the Committee in its work and these are the issues which we will explore in our hearings during the next few days.

from the office of

Senator Edward M. Kennedy

of Massachusetts

TESTIMONY OF SENATOR EDWARD M. KENNEDY

HEARINGS ON SPECIAL INTEREST PROVISIONS

SENATE COMMITTEE ON FINANCE

FOR IMMEDIATE RELEASE
JULY 20, 1976

I am pleased to appear this morning before the Committee on Finance, and to testify at these hearings on various "special interest" provisions in the pending tax reform legislation now on the Senate floor.

I welcome the hearings and the opportunity they afford for a fuller public airing and discussion of these numerous provisions, whose presence in the bill has become a source of controversy and concern to many of us involved in tax reform and the debate on the pending legislation.

At the outset let me say that, given the time available, it will require an effort comparable to the twelve labors of Hercules for the Committee and the Senate to reach an informed judgment on all of the complex provisions that are the subject of this week's hearings. The Committee's press release of July 8 lists 53 sections of the bill itself that are to be considered, plus 18 additional provisions in the amendments which are to be offered as committee amendments to the bill but the details of which are not yet available.

Quite properly, these special interest provisions have become the subject of widespread public concern. Few things are more calculated to destroy the confidence of ordinary taxpayers in the fairness of the nation's tax laws than the mushrooming suspicion that numerous provisions are being surreptitiously written into the laws for the special benefit of certain wealthy individuals and corporations.

One of the first questions is whether all of the special interest provisions in the bill have come to light. Virtually all of the provisions listed as subjects of these hearings are those that had been identified by various public interest groups. To some extent, it requires a Sherlock Holmes to detect a special interest provision. I hope that the committee, as part of its new procedures for dealing with this issue, will be able to assure the Senate that all such provisions have been brought to light.

The special interest measures identified so far have had varying characteristics:

— Some are written so narrowly that they are obviously intended to benefit only a single individual or corporation. Their hallmark is their "one-eyed, bearded, man-with-a-limp" language — tax "fingerprints" designed to fit only one taxpayer. Sometimes, the provision leaps out from the page, revealing itself because of its narrow language in the midst of an otherwise general provision. Occasionally, as in the case of the Southern Scrap Material Co. provision, the language is drafted so narrowly that even the intended beneficiary fails to meet the test.

— Other provisions have a larger group of beneficiaries, because they are designed to benefit favored industries like oil and waste recyclers, by giving them new tax advantages not available to less fortunate taxpayers.

-- In other cases, the special provisions are intended to reverse an unfavorable IRS ruling or court decision. In this way, taxpayers try to short-circuit the administrative process or bypass the courts. They skew the tax laws by obtaining redress from Congress that they cannot get on the merits from the executive or judicial branches of the government. In effect, these taxpayers are legally taking the law into their own hands, but in ways not open to the ordinary taxpayer without such ready access to the ear of Congress.

Perhaps the most questionable aspect of these provisions is the lack of analysis that many of them have received. That is why I welcome the reopening of the hearings this week, because the hearings can begin the process of close scrutiny and analysis that these provisions must have before they are enacted into law.

It is not too much to say that in many cases, the hand of the lobbyist or big campaign contributor or special interest group has been caught in the Treasury's cookie jar.

I would emphasize, however, that not all of these provisions fall into that category.

If past experience is any guide, the current provisions probably fall roughly into three categories -- one third will be found meritorious, one third are in a gray area where the merits are not immediately clear, and one third will turn out to be bad apples.

In cases where a special interest provision does have merit, it is because it is designed to alleviate an unintended hardship caused by the application of a general tax law to a particular situation. Necessarily, Congress cannot always anticipate the precise impact of complex general tax provisions on specific facts and taxpayers. A responsible Congressional procedure is essential, therefore, to assess such situations and determine if relief is appropriate.

What is clear, however, is that the present procedure fails to meet that test. And I have serious doubts that the three days of hearings scheduled this week can do more than scratch the surface of the extremely complex issues involved in assessing the merits of the provisions.

The House of Representatives has developed a way of dealing with special interest provisions in its tax bills, and I would urge the Committee to follow those procedures in judging the provisions of the current bill. Under the House procedures, the following steps are taken:

-- Notice is given of special interest provisions, and an opportunity for hearings is provided in advance. Proposals are published in the Congressional Record, and staff summaries are prepared. The Treasury Department has an opportunity to consider the proposals and make recommendations on their merit.

-- Adequate time is also available to find the answers to two of the most crucial questions about these measures: Who receives the benefits? How much revenue loss to the Treasury is involved?

-- Then, when the necessary information is obtained and the questions are answered, the House Committee assesses the merits of the proposals and votes on whether to enact them into law.

Obviously, a large number of the special interest provisions in the pending bill have not been examined with anything resembling the degree of close scrutiny required for the Senate to judge them accurately. Adequate machinery can and should be developed to deal with future legislation.

But what about the pending bill? The assembly line hearings scheduled for this week can hardly fill the void.

My suggestion is that, given the controversy that has developed, the Committee should reconsider each of the special interest provisions and apply certain rules of thumb so far as the pending bill is concerned:

1. The Treasury Department and the IRS should be asked to analyze and comment on the merits of each provision, and make a recommendation to the Committee.

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2. If there is no substantial controversy about a provision -- which will usually mean that it is not opposed by either the Treasury or the various public interest groups that have analyzed it -- the Senate can give the provision a clean bill of health and allow it to remain in the bill on the Senate floor.

3. But if a provision is the subject of significant controversy -- and if it has not had a full and thorough public airing, either as part of the House proceedings or in the course of the earlier Finance Committee hearings -- I feel that the Committee should withdraw it from the pending bill for further consideration, under conditions more conducive to accurate judgment than the present situation allows.

Obviously, a decision to defer consideration of a provision does not mean it will be killed. If additional analysis indicates that it is meritorious, there is ample time before the end of this session of Congress for such measures to be brought to the floor for final action.

In addition, some of these special interest provisions involve substantial future revenue losses, which is another ground for serious concern and special scrutiny. Some provisions involve losses running in the hundreds of millions of dollars:

-- The recycling tax credit, a windfall to the solid waste recycling industry, will cost the Treasury up to $345 million a year.

-- The refundable investment credit, designed for the benefit of airlines and utilities, will costthe Treasury $300-$500 million.

-- The ESOP employee stock ownership provision, written in large part to the specifications of A T & T, will cost the Treasury an astronomical $900 million.

Other provisions, particularly those benefitting the oil industry, will run up costs in the tens of millions of dollars:

-- Exxon, Mobil, and other giants in the Iranian oil consortium stand to gain up to $40 million a year from an exemption to the foreign tax credit rules that repeals part of the Tax Reduction Act of 1975.

-- Natomas and others involved in Indonesian oil operations stand to gain up to $25 million a year from similar exemptions that would reverse a recent IRS revenue ruling. Natomas also figures in a separate provision, worth up to $10 million a year, which allows a carryback of excess foreign tax credits.

-- Sun Oil Co. and others involved in North Sea oil operations stand to gain up to $21 million a year from special rules provided for foreign oil losses.

-- The shipping industry, (particularly oil companies, banks and steel companies, who have large shipping fleets) will receive benefits up to $45 million a year from the extension of the investment credit to their so-called Capital Construction Funds."

-- An ad hoc consortium of the nation's largest life insurance companies will receive benefits up to $55 million a year through a provision which allows the consolidation of life insurance and casualty insurance operations and which raises complex questions of equity and competition for the entire insurance industry.

-- The giant U.S. grain exporters will receive benefits up to $17 million a year from changes in the foreign tax rules.

-- Integrated oil and gas producers with retail sales of $5 million a year or less will receive benefits of up to $18 million a year through a provision restoring their percentage depletion allowances.

Mr. Chairman, it is difficult, if not impossible, to justify any of these provisions. The controversy over their merits is heightened by their substantial revenue loss. They deserve much more careful consideration than they have received so far before they are enacted into law.

And this is only the beginning of the list of special interest provisions that should give the Senate pause. In my statement on the Senate floor on June 28, I listed the special interest provisions in the bill and the beneficiaries known at that time. I am attaching a copy of that list to my testimony. The present hearings will bring substantial new information

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to bear on these provisions and others more recently identified. I look forward to working with the Committee in analyzing these provisions and in trying to restore the confidence of the average taxpayer in one of our nation's most important resources, the fairness of our tax laws.

Finally, and curiously, the Committee's announcement of these hearings mentions a Senate floor amendment offered by Senators Haskell, Hollings, Hathaway, and myself. The amendment, already adopted by the Senate, provides that limited partners would not be entitled to include in their tax basis any portion of non-recourse financing obtained by the partnership.

The effect of this provision is to insure that limited partners will not be able to claim deductions for amounts in excess of their actual investment at risk. The amendment, in its application to real estate, is essentially similar to the "at risk" rules already adopted by the Committee and the Senate in the areas of farming, oil exploration, movies and equipment leasing. The estimated revenue loss from the amendment is $5 million in 1977 and $6 million in 1978, rising to $90 million in 1981.

In recent weeks, I have received a number of comments about the amendment which deserve consideration. To assist the Committee and the Senate, the following points on certain aspects of the amendment may be helpful.

First, the amendment is generally applicable to partnerships formed after June 30, 1976. This provision could reasonably be modified in three respects: First, the applicable date could be changed to December 31, 1976. Second, new partnerships formed after that date should be subject to the new rules; so also should limited partners who are admitted to the partnership after December 31, 1976, even if the partnership itself was formed before that date. Third, any substantial changes in investments or activities after December 31, 1976 should be treated as the formation of a new partnership with respect to such activities. These modifications will insure that artificial arrangements are not used to avoid the new rule.

Second, it has been brought to my attention that the law of some states classifies partners as "general partners" even though the nature of their interest is similar to that of a limited partner in other jurisdictions. It is the intent of the amendment that the new rule should apply to any partner whose liability is limited, however that result may be achieved by state law on contractual arrangements.

Third, the amendment provides that partnerships engaged in constructing or rehabilitating low income housing are to be exempt from the new rule until after 1981. The amendment refers to housing programs described in section 1039(b). That reference is technically outdated. The Finance Committee bill redefines low income housing in its proposed new section 1250(a)(1)(C). It is our intention that the exception in the amendment should likewise refer to the broader definition proposed in section 1250(a)(1)(C).

In addition, Mr. Chairman, with respect to the effect on real estate, I am submitting a memorandum prepared by the Library of Congress comparing the "at risk" rule adopted by the Senate with the LAL proposal as approved by the House. Contrary to the reaction of some who oppose the "at risk" amendment, it is actually a relatively mild reform that is likely to have no harmful effect on real estate or the housing and construction industry. Certainly, the extremely modest revenue estimates for the provision belie any deleterious impact on this vital industry.

The provision does stand out, however, as the only one that produces a revenue gain among the entire group of special interest provisions listed by the committee for these hearings.

PARTIAL LIST — SPECIAL INTEREST PROVISIONS IN H.R. 10612,

THE TAX REFORM ACT OF 1976

1. Airlines and Utilities (Bill p. 288; report p. 177)
Allows refunds for investment credits still unused after seven-year carryforward. Appropriately, the first refunds will occur in 1984. Revenue loss in 1984 estimated at $300-500 million.

2. Chrysler (Bill p. 289; Report p. 178)
Two year additional carryforward of investment tax credits and foreign tax credits that expire in 1976.

3. Shipping Industry (Bill p. 323; Report p. 196)
Allow investment tax credit for costs of building ships in U.S., even though the construction is financed with previously untaxed profits in so-called "Capital Construction Funds." Revenue loss: $21 million in 1977; $45 million in 1981.

4. Foreign Trust Beneficiaries (Bill p. 452; Report p. 215); delay House effective date by 8 days for provision taxing grantors on income of foreign trusts.

5. Superior Oil Co. (Bill p. 463; Report p. 225); retroactive exemption from tax on foreign earnings invested in drilling rig on continental shelf.

6. American Investors Group, Inc. (Bill p. 468; Report p. 229) exempt the firm's Bermuda operation from foreign tax haven rules.

7. Hall Shipping Corporation; Louisiana and Texas Oil Servicing Vessels; Cargill and other grain and commodity exporters. (Bill p. 469; Report p. 230), various exclusions of shipping profits from foreign tax haven rules.

8. Pittsburgh Plate Glass Co; Freeport Sulphur Co. (Bill p. 478; Report p. 238): three years postponement of change in foreign tax rules for a mining company and for operations of PPG in Puerto Rico.

9. Boise Cascade Corp; Robert Hall Co. (Bill p. 485; Report p. 240); exception from foreign loss recapture rules for Chilean expropriation losses and for liquidation of a clothing company.

10. Natomas Corp. (Bill P. 496; Report p. 246) Special carryback for foreign tax credits or oil.

11. Sun Oil Co. (Bill p. 498; Report p. 247): Special transitional rule for recapture of foreign oil losses for North Sea operations .

12. Major Oil Companies (Bill p. 499; Report p. 248): Expands definition of "oil related income," against which foreign tax credits may be used, to include certain interest income.

13. Tenneco (Bill p. 499; Report p. 250): Benefit under oil-related income provisions for liquidation of Canadian subsidiary.

14. I. U. International Corp. (Bill p. 500; Report p. 250); Allow a Philadelphia conglomerate to consolidate gas utility income and non-oil income.

15. Iranian Oil Consortium (Bill p. 501; Report p. 251): allow foreign tax credits until 1986, even though Mobil and other U.S. oil companies may no longer own an "economic interest in the oil and gas fields."

16. Natomas Corp. (Bill p. 502; Report p. 253): Reverse IRS ruling denying foreign tax credit for oil in Indonesia production-sharing contracts

17. American Investors Group (Bill p. 504; Report p. 257); allow foreign tax credit for income from insurance contracts written in U.S. on overseas risks.

18. H. H. Robertson Co. (Bill p. 516: Report p. 270): Retroactive benefit for a corporate liquidation

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19. Royal Bank of Canada (Bill p. 540· Report p. 276): favorable capital loss carryforward rule.

20. Hanna Mining Co. (Bill p. 553; Report p. 264): favorable treatment for a Canadiron ore subsidiary under foreign tax rules.

21. Political Consultants (Bill p. 813; Report p. 401): allow a bad debt deduction in certain cases involving unpaid debts owed by candidates to professional political consultants

22. Encyclopedia Britannica (Bill p. 814; Report p. 403): overrule IRS position and allowed research costs and other prepublication expenses to be deducted immediately, rather than depreciation over the life of the publication.

23. Investors Diversified Services (Bill p. 817; Report p. 407): overrule IRS position that interest on "face amount" certificates must be included currently in income.

24. Coca Cola Co. (Bill p. 818; Report p. 409): exempt a particular franchise from the personal holding company rules, which would require tax at 70% rate, not 48% corporate rate; 12-year retroactivity granted for exemption.

25. Texas Optical Co. (Bill p. 822; Report p. 414): allow capital gains treatment for the transfer of a professional practice before 1970.

26. Marriott Corp. and Restaurant Employee Unions (Bill p. 823; Report p 416); Reverse IRS ruling requiring employers to include tip income stated on charge account slip in the employers' reports to the IRS.

27. Belco Petroleum Co. (Bill p. 829, Report p. 424): restore oil depletion allowance for independent producers with retail outlets in Israel

28. Integrated Oil Companies (same); restore depletion allowance for companies with $5 million in retail outlet sales or less. Some of the largest oil and gas companies will benefit

29. Oil Trusts (same); restore depletion allowance in cases where interests change hands by birth, death, or adoption; restore depletion allowance in certain other cases.

30. Major Life Insurance Companies (Bill p. 920; Report p. 454); permit companies to consolidate life insurance operations with casualty insurance operations.

31. Businessmen's Assurance Co of America (Bill p. 924· Report p. 457): special treatment for inadvertent dividends: retroactive to 1958.

32. Honeywell (Bill p. 1472; Report p. 550); inclusion of clock thermostats in definition of insulation for which the home insulation credit will be available.

33. General Electric, Westinghouse (Bill p. 1432; Report p. 555): tax credit for residential heat pumps

34. Union Oil Co; Pacific Gas and Electric Co: (Bill p. 1498; Report p. 571); allow intangible drilling deduction and 22% depletion deduction for geothermal property

35. Waste Recycling Industry (Bill p. 1503; Report p. 575): tax credit to recyclers for purchase of recyclable solid waste materials. Revenue loss: $9 million in 1977; $345 million in 1981.

36. Eaton Corp (Bill p. 1515; Report p 581)· equalize treatment of propane and diesel fuel by exempting propane from excise tax

STATEMENT BY SENATOR WILLIAM PROXMIRE BEFORE SENATE FINANCE COMMITTEE - TUESDAY, JULY 20, 1976

Mr. Chairman, first let me say that I owe you and the Committee an apology. My statement on the floor last month in which I criticized this Committee for including in the pending tax legislation provisions that benefit specific firms may well have implied an attack on the integrity of committee members. I intended nothing of the sort.

This is not only one of the most powerful committees in the Senate. It is not only one of the most expertly staffed committees. It is not only one of the most intelligently and persuasively manned and led, by a chairman who knows the tax code about as thoroughly as the Pope knows the Lord's Prayer. But - and this may not have been clear in my statement last month - as far as I am concerned every member of this committee is thoroughly honest, and is convinced that the provisions in this bill that he supports are right, just and in the public interest.

The difference is simply in how I regard what is right, what is just, and what is in the public interest.

There is one other profound difference, I vigorously disagree with the procedures this committee has followed until this morning in considering provisions in the bill that are primarily designed to benefit particular companies.

If you want to tell me what's wrong with the procedures of the Senate Banking Committee, I'll welcome the criticism. I may disagree with it. But I'm sure I would find it constructive and useful.

In the same spirit, I suggest that the Senate Finance

Committee may benefit from adopting the provisions used by the House Ways and Means Committee with respect to sections of the bill that provide tax benefits to particular concerns.

As you know, Mr. Chairman, the Ways and Means Committee now has a three member task force to screen all amendments to the Tax Code. Any special interest bill with a significant revenue impact is referred to Treasury for comment, and is the subject of a full and frank staff report. The Committee holds hearings on these proposed amendments, to discuss the revenue loss, the real author and beneficiary, and to give opponents an opportunity to testify.

Unfortunately, special interest bills are still processed in the traditional manner in the Senate. They were not offered or analyzed far enough in advance to permit a full hearings with opposition witnesses until today. And so we have a long list of amendments, some possibly justified on their merits, some not, bearing informally the names of their author and beneficiary--the Coca Cola amendment, the Robert Hall amendment, the Natomas amendment, the IDS amendment, the Texas Optical Company amendment, the Hanna Mining Company amendment, and on down the list. It is almost a corporate status symbol to have your own special tax bill.

Most of these amendments are so surgically tailored for a particular beneficiary that they might as well include the company's name or corporate logotype. More disturbingly--some fifty of these provisions were quietly added on the final day of Committee mark-up, last May 27. Some were the subject of Committee analysis, Treasury comment, and opposing testimony. Most were not.

I would submit, Mr. Chairman, that this entire process is embarrassing and demeaning. Just as the founding fathers had the good sense to ban bills of attainder or special legislation to punish a given individual, we should have the good sense not to pass bills of attainder in reverse. And that is what these provisions are--special, private legislation to benefit a particular individual.

Apart from the purported merits of specific cases, there must be a strong presumption against all such narrow-interest tax legislation. When the average individual has a bad year in his business or makes a miscalculation in his personal finances, he simply does not have available as a remedy the opportunity to hire a high priced tax lawyer or a well-connected lobbyist to fashion a private raid on the Treasury. The average person simply suffers the consequences. Narrow-interest tax legislation is the worst kind of special privilege for the well-connected and the well to do. And it undermines both the substance of tax equity and public's confidence in tax equity, as well as the integrity of the legislative process.

The main purpose of my appearance today is to urge you to insure that in the future all such amendments be subject to full scrutiny, well in advance. It should not be necessary for the public interest groups to play detective at the last hour in order to ferret out just who is behind some of these provisions.

Occasionally, where Congress has unintentionally injured a particular class of taxpayers, there is no harm in having a full discussion. The remedy will stand up on its merits. On the other hand, it is almost never justified for a particular company or individual to quietly make an end run to Congress solely to frustrate a ruling of the IRS or the tax court, or in order to reap a windfall.

The fifty or so narrow interest provisions contained in the bill before us run the gamut from arguably defensible provisions to pure rip-offs. Let me focus on a few of the worst:

Sections 502 and 503 of the bill would require the Treasury to pay companies, beginning in 1984, an amount equal to unused investment tax credits, and would extend for two years investment and foreign tax credits that would otherwise expire at the end of this year. This provision, incidentally, is not quite as narrow as some. It would benefit the Chrysler Corporation and several airlines, in the case of Section 503, and utilities as well as airlines in the case of Section 502.

My concern is less the worthiness of the intended beneficiary than whether there has been sufficient discussion of the merits of the underlying policy question. The issue here is a very fundamental one. After a taxpayer has run out of income to offset tax credits, should the Treasury start paying the taxpayer -- in a kind of negative corporate income tax, which will cost other taxpayers half a billion a year? I'm very skeptical about a negative income tax payment to individual taxpayers - such a step - paying a non-taxpayer out of other taxpayer funds - may or may not be a sound welfare policy. But to begin a corporate welfare policy by a negative income tax for corporations, certainly merits separate consideration and should not be buried in an alleged tax reform bill.

At least that provision involves a relatively broad question of tax policy. Even less defensible are the provisions written for a single company, or written to overturn a tax ruling, or written to benefit companies that are in no way hardship cases.

Consider the Natomas amendment and the Mobil Oil amendment. In the 1975 Tax Reduction Act, Congress wisely provided that companies that ceased to have an economic interest in foreign oil, that is companies which simply purchased crude oil from foreign governments or government controlled companies, could not define their payments as foreign taxes to shelter their profits from US income taxes. In a recent revenue ruling, the IRS rules that the Natomas Corporation's gimmick to get around the 1975 law -- a production sharing agreement in Indonesia -- would still fail to qualify for the desired tax credit, and that the company would actually have to pay some tax in the United States.

In the case of Mobil Oil, Mobil designed Section 1035 E of this bill as a private grandfather clause giving Mobil's Iranian interests a ten year exemption from the loophole which was closed in the 1975 Tax Reduction Act. Under the Mobil amendment, any interest owned as of March 29, 1975, could continue to qualify for the foreign tax credit for ten more years. Result: the bill would create the fiction that Mobil owned the oil yielding property and based on that fiction permit a foreign tax credit - not for months or a year but for a solid decade.

The cost of these two provisions, incidentally, has been estimated at upwards of $65 million per year, depending on who else takes advantage of it. What kind of public policy is this? Are Mobil and Natomas really hardship cases?

Section 806 of the bill is also unwarranted, in my view. At present, shipbuilding companies can shelter their earnings from tax to the extent that they plow them back into a capital construction fund. This shelter is the equivalent of a [illegible] investment tax credit. On top of that, the shipbuilders want to take the 10% investment tax credit. This is nothing more than a double dip, which would cost the Treasury more than $[illegible]0 million the first year, rising to $[illegible] million by 1981. Again, I've been [illegible] that the shipbuilding corporations are welfare cases. If they are we should consider separate legislation for them. Relief for them does not in my view constitute tax reform legislation.

Section [illegible] is another [illegible] special interest provision. The [illegible] beneficiaries are the [illegible] grain traders, Cargill, [illegible], [illegible], Continental, and [illegible]. Under present law, if a grain exporter sets up a subsidiary in a foreign tax haven to sell foreign-grown agricultural products, he must pay US tax on earnings to the extent that he pays no tax or a lesser tax overseas. Under section [illegible], profits from products grown overseas and marketed in a foreign tax haven would escape U.S. taxation altogether, with a cost to the Treasury of more than $15 million a year, and more as others begin to use the loophole.

Obviously, this can't be defended as aiding U.S. agriculture. It hurts American agriculture. Why? Because it gives a competitive advantage to foreign products. From everything I read, the big grain companies are not hardship cases.

I oppose most of these special interest provisions. I wanted to single out some of the worst for special comment. I have identified others in my floor statement of June 28, which I am including for the record.

The fact that the Committee has scheduled these hearings to give some of these special interest amendments an airing is a welcome sign. In future years, I hope you will provide for a full analysis of all such amendments well in advance of floor action, with testimony by proponents and opponents, Treasury comment and staff analysis on the specific provisions proposed to be added in mark-up.

Mr. Chairman, in my view, a new tax expenditure should be tolerated only as a last resort, when there is an overriding public policy purpose that cannot be obtained as efficiently through a direct subsidy. The test should be rigorous. The social benefit clear and emphatic. Obviously in the cases I have discussed no social benefit, none, has been the motivating force.

Statement of Senator Gary Hart

DRAFT TESTIMONY FOR GWH BEFORE THE FINANCE COMMITTEE ON SECTION 2006 OF THE FINANCE COMMITTEE AMENDMENTS TO H.R. 10612 (TAX REFORM ACT OF 1976) PERTAINING TO RECYCLING TAX CREDITS.

Mr. Chairman, I thank you for allowing me the opportunity to present testimony today in opposition to sec. 2006 of the Committee amendments to H.R. 10612, The Tax Reform Act of 1976. I understand that there are other witnesses in opposition to this provision who will offer more detailed testimony on behalf of the Public Interest Economics Center, the Public Citizen-Tax Research Group, the Sierra Club, the Environmental Policy Center, Taxation With Representation, Friends of the Earth, and Environmental Action. So, I will just briefly outline here my own objections to this tax credit proposal.

Section 2006 of the Committee amendments would allow a tax credit on purchases of recyclable ferrous and nonferrous metals, textiles, wastepaper and glass. On metals, the credit would equal one-half the percentage depletion allowance for the virgin metal; glass would be allowed a 5% credit, and textiles and paper would receive a 10% credit, with the credit for paper no lower than $5.50 per ton and no higher than $8.00 per ton. No credit would be allowed on purchases lower in volume than the base period amount. The base period amount is defined as 75% of the average amount of recyclable material consumed during the base period, 1973 - 1975. The provision would be phased in over a three year period, with consumers of recyclables receiving 25% of the credit in the first year, 50% of the credit in the second year, and the full credit in all succeeding years. After full phase-in, the base period will be calculated as the average amount of recyclable material purchased during the three years previous to the year the credit is taken.

Tax credits or favorable tax treatments of some sort for recycling have been proposed in the past, the most recent example being the credit proposed by the House Ways and Means Committee in H.R. 6860, the Energy Conservation and Conversion Act. This tax credit provision was deleted from the bill, however, on the House Floor by a vote of 249 - 170 when opponents argued successfully that the credit would do little to increase recycling while costing the Treasury $1 billion over a five-year period.

The proponents of tax credits for the use of recycled materials point out that increased recycling will result in the conservation of finite resources, reduced energy consumption, and reduced environmental degradation. I agree with this proposition. Increased recycling will definitely have these results. But, I oppose the proposed tax credit as prescribed in sec. 2006 because the proponents have not demonstrated that this is an effective tool to increase the supply and utilization of recyclable materials.

To the contrary, the Department of the Treasury presented testimony before the House Ways and Means Committee stating that tax incentives are not a practical device to encourage increased recycling for a variety of reasons, primarily the inelasticity of supply of and demand for secondary materials. This inelasticity results to a great degree from the fact that the fixed costs of collecting, sorting, decontaminating and shipping the postconsumer wastes often far exceed the market price for these commodities.

The credit proposed by the Finance Committee will lower the cost of recovered materials only slightly and is therefore unlikely to increase the demand significantly. If demand is increased at all, scrap dealers and suppliers are likely to raise their prices. The net effect, therefore, will be that the portion of the waste stream which is already being recycled, primarily fabricating (or "prompt") scrap, will be subsidized, and mixed municipal wastes, which should be the real target of this proposal, will continue to be so prohibitively expensive that little increased recycling will result.

This assertion is supported by many companies involved in recycling, and I ask that statements from the Association of Brass and Bronze Ingot Manufacturers, the Aluminum Recycling Association, and the Garden State Paper Company, all of whom oppose this tax credit proposal, be printed in the record at this point in my statement.

Proponents of recycling tax credits also claim that such a credit is necessary to offset the preferences enjoyed by producers of virgin materials -- a sort of tax "neutrality."

It is true that we encourage the use of virgin materials in manufacture through a variety of favorable tax treatments such as the depletion allowance and the capital gains treatment. While this subsidy is estimated to cost the Treasury well over $1 billion a year in lost revenues, it represents only a miniscule percentage of the market price of the commodities.

But then, we further subsidize the use of virgin resources by paying billions of dollars a year out of local taxes for solid waste collection and disposal costs associated with the use of these virgin materials. If tax neutrality is really our objective, let us 1) repeal the favorable federal tax treatments for virgin materials and 2) place the burden of the collection and disposal costs directly on the manufacturer whose product ends up in the waste stream.

But, instead, the Finance Committee proposes yet another subsidy, this time to the users of recycled materials in an attempt to achieve some sort of economic parity, and the cost of this proposal in terms of lost revenues is estimated to be $345 million a year after full phase-in. Mr. Chairman, two subsidies do not add up to no subsidy. It is possible for us to literally bankrupt ourselves in our simple efforts to push this material around, giving tax breaks to the user of the material through every stage from extraction to reuse.

If this tax credit will not significantly increase recycling, what will it do? First, it will probably exacerbate the already erratic price fluctuations in the scrap market. When demand for scrap is high, and the scrap is bringing high prices, the credit will increase, further driving up the price and artificially stimulating the supply. When demand and prices plummet, the credit will shrink correspondingly and will not be adequate to have any effect.

But, aside from the supply and demand disruptions, the proposed tax credit will have an even more undesirable effect in providing windfall profits to consumers of recyclables who simply maintain their current level or percentage of recycling. For example, a hypothetical manufacturer who uses 100 tons of recyclable materials in each year of the base period, and continues to use that same amount year after year when the credit is fully phased in, will receive a tax credit annually on the purchase of 25% of this amount.

But, has any new recycling been stimulated? No. The only result is a windfall profit for that manufacturer.

The Association of Brass and Bronze Ingot Manufacturers estimates that the tax credit accruing to its members for recycling copper base scrap alone will be $27 million a year after the credit is fully phased in. And, this estimate assumes no increase in copper base scrap prices <u>and no increase in recycling above current levels</u>. Under the terms of Amendment no. 2016 which Senator Gravel has proposed to the Finance Committee provision, this revenue loss would be four times greater, or well over $100 million a year for this one commodity.

Another example of the windfall potential is the case of Garden State Paper Company which estimates that it would qualify for a tax credit of $227,000 in the first year of full credit phase-in without increasing its purchases of wastepaper over current levels.

The Committee's definition of postconsumer waste rightly excludes so-called "home" scrap, -- defective batches of pig-iron and other wastes associated with products produced from raw materials. This "home" scrap is automatically recycled at present and is highly substitutable for virgin materials.

However, the Committee definition of postconsumer waste <u>does</u> include what is known as "prompt" scrap, which consists of cuttings, defective stampings and clippings left over at the fabricating stage. Nearly 90% of all "prompt" scrap is already being economically recycled because it needs little sorting or decontamination and is highly substitutable for virgin materials. But, while most of this "prompt" scrap is already being recycled, the

Finance Committee proposal would extend the tax credit to those who use this scrap anyway, although clearly, no incentive is necessary.

Meanwhile, those wastes which are the real problem, primarily mixed municipal wastes, will continue to be uneconomical to recycle because of the large costs associated with the necessary collection, sorting, decontamination and shipping. The proposed tax credit provision will do little to improve this situation.

To put all of these figures in perspective, I offer a table, prepared at the Department of the Treasury, which demonstrates the likely results of this tax credit on five commodities which would qualify for the credit. I ask that the table be included in the record at this point in my testimony.

In only one instance, aluminum, will the proposed recycling credit increase the volume of recycling by as much as 1%, while the cost per ton of increased recycling is a multiple of 2.6 to 20 times the current market price per ton of the recycled materials. Mr. Chairman, I would submit that it would be far cheaper for the Federal government to purchase these recycled materials at the current market prices and give them to manufacturers than to offer the tax credit proposed by this Committee.

Finally, as I mentioned earlier, I would prefer to reduce or eliminate the subsidy for virgin material usage rather than subsidize, in turn, the competing secondary material. I prefer this approach first, because it involves no drain on the Treasury and second, because I believe it to be a more effective tool to promote recycling. The Public Works Committee has taken testimony on this subject before the Panel on Materials Policy. Subsequently, the Committee reported, and the Senate passed by a vote of 89-3, S. 3622, the Solid Waste

Utilization Act. Sec. 224 of this bill requires the EPA to coordinate a comprehensive study of the effects of existing tax policies on recycling and the possible effects of both tax incentives and disincentives on recycling of postconsumer wastes. I ask that the language of sec. 224 of S. 3622 be printed at this point in my statement.

Mr. Chairman, I urge that the Committee defer consideration of the proposed tax credit pending the development of the type of empirical data this study will provide. I thank the Committee for the opportunity to present my views on this subject.

be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

"RESOURCE CONSERVATION STUDY

"SEC. 224. (a) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, and the Secretary of Treasury, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

"(1) the appropriateness of recommended incentives and disencentives to foster resource conservation;

"(2) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;

"(3) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy; and

"(4) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product.

"(b) The study required in subsection (a) (4) of this section may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

"(1) the product categories on which such charges would be imposed;

"(2) the appropriate state in the production of such consumer product at which to levy such charge;

"(3) appropriate criteria for establishing such charges for each consumer product category;

"(4) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and

"(5) procedures for amending, modifying, or revising such charges to reflect changing conditions.

"(c) The results of such investigation and study, including recommendations, shall be reported to the President and the Congress not later than two years after enactment of the Solid Waste Utilization Act of 1976.

"(d) There are authorized to be appropriated not to exceed $5,000,000 to carry out this section.".

STATEMENT

OF

RICHARD M. COOPERMAN
EXECUTIVE DIRECTOR
ALUMINUM RECYCLING ASSOCIATION

BEFORE THE

SENATE FINANCE COMMITTEE

ON

PROPOSED RECYCLING TAX CREDIT PROVISION

The Aluminum Recycling Association is opposed to any recycling tax credit as it may apply to secondary, or as they are known today, recycled aluminum producers whose product, specification aluminum alloy, is sold almost exclusively to the die casting, sand and permanent mold casting markets and is not a substitute for virgin metal or alloy of virgin metal.

The Association is comprised of 31 companies with 44 plants throughout the United States. These companies represent over 83 percent of the nation's capacity to produce secondary aluminum. For over 70 years, they have applied technology, capital, and equipment to process aluminum scrap into recycled aluminum for American industry. Since records were first kept, starting in 1913, secondary aluminum producers have recovered and produced aluminum in their furnaces from over 45 billion pounds of scrap. This scrap was purchased from industrial sources, from scrap collectors, dealers and brokers. For almost eight decades we have been environmentalists and conservators of energy and resources.

(MORE)

We provide secondary aluminum specification alloy ingot for use by over 800 die casters who produce components for automobiles, large and small household appliances, business machines, stationery motors and hundreds of other industrial, commercial and consumer uses.

The ingot we produce from reclaimed scrap represents over 20 percent of this nation's annual aluminum supply. Our furnaces recycle over 70 percent of all aluminum scrap generated, of which incidentally, can scrap is only about 13 percent.

There are two types of scrap indigenous to our industry: New scrap produced by primary aluminum companies and by fabricators of primary aluminum products and components, and post-consumer, or old scrap. Virtually all new scrap is recovered and recycled. As recently as three and four years ago, certain kinds of old scrap were too contaminated to be used effectively in the recycling process. However, we developed the technology necessary to recycle it and to produce aluminum alloy from it. Now our industry is reaching beyond its historical sources of raw material and we are exploring the nation's municipal wastes because much post-consumer scrap is too widely dispersed for collectors to bring it in and market it economically.

Aluminum recyclers in the U.S. have the productive capacity to process annually 2.236 billion pounds of scrap into recycled ingot. Last year, we produced approximately 1.4 billion pounds of recycled ingot. That was the full extent of the demand for our product in 1975. We recycle in response to die casters' and end-users' demands.

(MORE)

During the year of greatest demand for recycled aluminum alloy, 1973, we had to scratch to get enough scrap to produce approximately 1.9 billion pounds of alloy. Scrap became so scarce at the peak of the production curve that we sought an embargo against aluminum scrap exports from this country to preserve our supply. The nation's production capacity for recycled aluminum at that time was two billion pounds. There was not enough scrap to produce to that level.

Today, we have the capacity to produce two and a quarter billion pounds of secondary aluminum. We need no incentive to do our job; we have been doing it since 1904. As total demand for aluminum increases and expansion of primary aluminum capacity becomes increasingly expensive requiring primary companies to recover and use more and more new scrap in their plants, we would like to see scrap from municipal waste and widely dispersed post-consumer scrap become a dependable source of raw material.

Perhaps herein is the area for tax incentive to go either to the municipality or the ultimate consumer. As recyclers we are concerned with buying scrap as a raw material and not with the gathering, storing, or distribution of scrap.

(MORE)

In closing I cite reports of a Federal Agency whose concern with and impact upon the concept and practice of recycling is considerable. The U.S. Environmental Protection Agency, Page 56, of its Second Report to Congress in 1974, said the major constraint to aluminum recycling is supply of scrap. In its third and most recent report to Congress, September, 1975, Page 59, EPA stated that the future of aluminum recovery depends on the rate of expansion of collection centers and in the development of technology to extract aluminum mechanically from solid waste.

We have made tremendous strides in recycling scrap; we know there are futher technical and scientific developments ahead of our industry. We yield to no one in our understanding either of the various processes or of the economics of our industry or of our market place. No industrial association other than the Aluminum Recycling Association speaks for the secondary aluminum producers. ARA, as the representative of the secondary aluminum industry, declares that we neither need nor wish a recycling tax incentive. A proposed tax credit will not expand our use of aluminum base scrap since we produce only in response to demand for our product.

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THE HONORABLE GARY HART
RM NO. 4213
U. S. SENATE
WASHINGTON, D.C. 20510

CORRECTED COPY

SEC. 2006 OF H.R. 10612 TAX REFORM ACT OF 1976 PURPORTS TO PROVIDE INCENTIVES TO INCREASE RECYCLING OF VALUABLE WASTE MATERIAL RESOURCES. SEC. 2006 DOES NOT ACHIEVE THIS OBJECTIVE. MOREOVER THE COST TO THE TREASURY IN LOST REVENUE IS ESTIMATED TO BE $300 MILLION DOLLARS BY FISCAL YEAR 1980.

WE URGE THAT YOU VOTE TO STRIKE SEC. 2006 FROM THE BILL FOR THE FOLLOWING REASONS:

1. THE TAX CREDIT WOULD CAUSE A LARGE LOSS IN TAX REVENUES WITHOUT ANY CORRESPONDING BENEFIT.

2. WASTE PAPER PRICES ARE EXTREMELY SENSITIVE TO CHANGES IN DEMAND AND THE TAX CREDIT WOULD INCREASE THE PRICE OF WASTE PAPER AND RAISE PRODUCTION COSTS WITH BENEFITS TO NO ONE.

3. THE TAX CREDIT PROVISION WOULD NOT RESULT IN A SIGNIFICANT INCREASE IN THE RECYCLING OF WASTE PAPER.

GARDEN STATE PAPER COMPANY
WORLD'S LARGEST RECYCLER OF OLD NEWSPAPERS IN THE MANUFACTURE OF QUALITY NEWSPRINT
RICHARD B. SCUDDER
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STATEMENT ON
TAX REVISION AND ENERGY TAX MATTERS
TO THE
SENATE COMMITTEE ON FINANCE
BY THE
JOINT GOVERNMENT LIAISON COMMITTEE
OF THE
ASSOCIATION OF BRASS AND BRONZE INGOT MANUFACTURERS
BRASS AND BRONZE INGOT INSTITUTE

April 22, 1976

This statement in opposition to a proposed "recycling tax credit" is made by the Joint Government Liaison Committee on behalf of the members of the Association of Brass and Bronze Ingot Manufacturers and the Brass and Bronze Ingot Institute. The members of these two associations recycle thousands of tons of copper base scrap each week to produce over 90 percent of the brass and bronze ingot manufactured and consumed in the United States. Brass and bronze ingot is manufactured by smelting and refining copper base scrap, primarily old scrap, and therefore firms in this industry would be eligible to receive the proposed recycling tax credit that was considered by the Committee on Finance for inclusion in the energy tax bill, H.R. 6860, last summer.

Even though the brass and bronze ingot producers would be beneficiaries of a "recycling tax credit" they recommend and urge that a tax credit for the use of copper base scrap not be included in the tax revision legislation for the following reasons:

1. Tax credit would cause a large loss in tax revenues without any corresponding benefit;

2. Tax credit would cause severe dislocations in scrap market;

3. Copper base scrap prices are extremely sensitive to changes in demand and tax credit would increase price of scrap and articles produced for scrap;

4. Ultimate consumers of products produced from copper base scrap would not benefit from lower prices due to tax credit;

5. Large fluctuation in copper base scrap prices have not significantly affected the supply of scrap;

6. Tax credit does not assure most economic use of scrap versus alternate sources of copper;

7. Lack of demand for copper base scrap in the United States is not a problem. One of the first items reclaimed from a junked car is the radiator. It has been necessary in the past for the United States to control exports of copper base scrap.

On July 18, 1975 representatives of the National Association of Recycling Industries (NARI) testified before the Senate Committee on Finance in support of a recycling tax credit. Unfortunately, the testimony* was vague and cast in generalities about savings in energy and did not explain the specifics of the proposed recycling tax credit. The testimony did condemn the House of "unwisely" deleting the recycling tax credit when H.R. 6860 was before the other body "apparently" as a result of "misunderstanding" and "misinformation."

The action taken by the House of Representatives on the recycling tax credit was decisive. First, the Ways and Means Committee before reporting the bill deleted copper base scrap from the recycling credit and severely limited the use of the credit for all other scrap and waste materials. Then the House of Representatives by a vote of 249 to 170 deleted the complete watered-down recycling tax credit provisions from H.R. 6860. This was not the result of the alleged "misunderstanding" on the part of 249 members of Congress; it was a result of them seeing the tax credit for what it is--an unjustified windfall, a rip-off.

Members of the Ways and Means Committee said it very well in the Committee's report as follows:

"The recycling tax credit (Sec. 533) is a particularly bad provision. It will cost us about $1 billion in tax revenues lost over the next five years, yet it will probably increase recycling by only 2 percent! It would provide tremendous windfalls to those connected with this industry. Even the environmentalists, who strongly support recycling, oppose this give-away."**

It was pointed out during the debate on the House floor that the recycling tax provision is opposed by environmental groups such as the Sierra Club, the Environmental Action Organization, the Friends of the Earth, the Conservation Congress and the Environmental Policy Center as well as the AFL-CIO and the Department of the Treasury. It was also pointed out during the House debate that it is opposed by major recycling groups such as the Aluminum Recycling Association, and the American Iron and Steel Institute.

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* Hearings before the Committee on Finance, Energy Conservation and Conversion Act of 1975, H.R. 6860, part 2, pages 849-873.

** House Report No. 94-221 on H.R. 6860, May 15, 1975, page 225.

The recycling tax credit is too important and costly to be rammed through Congress on an unsubstantiated claim of equity because of certain tax advantages enjoyed by virgin materials. Congress legislated depletion allowances and if they are wrong they should be changed rather than adding to the tax laws new special interest tax loopholes. The attempt to use the energy crisis or tax reform to justify this unwise tax credit is a farce.

Attached to the NARI statement presented to the Committee on Finance on July 18, 1975 were five exhibits showing energy savings by recycling metals rather than using competing ores. There is no question of the energy savings by recycling and the brass and bronze ingot industry is today saving large quantities of energy by recycling copper base scrap. However, it is interesting to see the comments in these exhibits on the use of taxes to encourage increased recycling. For example, on page 198 of the Ford Foundation's Energy Conservation Papers* on changes in taxes it is stated "Whether or not 'reform' would lead to significant increases in the recovery of metals in mixed wastes is still undemonstrated."

What will be the actual effect of the recycling tax credit? Senator Fannin asked a question at the July 18, 1975 hearing about the effect of the credit on foreign purchases of U.S. scrap. The sponsors of this tax credit replied that it would keep material in the United States by increasing prices!** This is just what we need--higher prices and more inflation.

Senator Nelson also put his finger on a major inequity in the proposed recycling tax credit between established recyclers and new recyclers.*** The full credit would apply only to recycling purchases that exceed the amount of purchases during the base year (1975). This would be a definite advantage for a taxpayer going into recycling because his base year volume would be his first year purchases and no doubt very small. Purchases in subsequent years would no doubt be much larger and the increase would qualify for the full tax credit. A decided advantage for the new recycler as opposed to one that has been recycling for years.

The members of the Joint Government Liaison Committee agree that the United States must conserve energy and natural resources and, as recyclers, have been doing this for years. The brass and bronze ingot

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* Exhibit D to the NARI statement--not printed in the hearings but placed in the Committee files.

** Hearings before the Committee on Finance, Energy Conservation and Conversion Act of 1975, H.R. 6860, part 2, pages 857-858.

*** Ibid. pages 860-861

industry justifies its existence by the fact that its members can produce ingot from copper base scrap at a cost lower than the same ingot could be produced from virgin metals. This is done through our free market system without windfalls and rip-offs.

The brass and bronze ingot industry urges that if the recycling tax credit is considered by the Senate Committee on Finance that it specifically provide that it not include copper base scrap.

Respectfully submitted on behalf of the Joint Government Liaison Committee.

Robert V. Maudlin
Executive Director
628-8777

Estimated Impact of Fully Effective Recycling Credit; Five Major Recyclable Materials 1/

Recyclable material	Typical market price per ton	Unsubsidized recycling volume	Incremental recycling due to credit 2/		Cost per ton of incremental recycling 3/	
			Amount (tons)	Percent	Amount	Ratio to market price
Paper (overall)	$ 45	16,000,000	120,000	0.75	$ 230	5.15
Scrap iron (overall)	75	40,000,000	190,000	0.47	310	4.10
Copper	1,100	400,000	750	0.19	11,100	10.10
Aluminum	300	350,000	3,900	1.10	785	2.60
Lead	220	560,000	500	0.09	4,400	20.10

Office of the Secretary of the Treasury
Office of Tax Analysis

June 21, 1976

1/ These calculations are based on assumptions intended to overstate response to the subsidy, hence understate the cost per incremental ton of recycling:
(1) Induced cyclable instability of the credit due to use of prior year bases is ignored.
(2) No allowance provided for administratively uncontrollable fraud.
(3) Estimates of market response rounded upward.

2/ This assumes that the base for the credit is purchases in excess of 75 percent of the taxpayer's base period quantity. If the base is redefined to be purchases in excess of 50 percent of the base period quantity, the numbers in this column would be doubled.

3/ Entries in this column are independent of the definition of the credit base, they depend only on price response of market demand and supply.

STATEMENT OF CONGRESSMAN CHARLES A. VANIK (OHIO)
BEFORE THE SENATE FINANCE COMMITTEE

I appreciate the opportunity to appear before your committee on such short notice. My testimony will be brief.

Your committee's version of the Tax Reform Bill raises serious questions about the so-called ARAMCO amendment which was enacted in the Tax Reduction Act (P.L. 94-12). This Act passed the Congress on March 29, 1975. The ARAMCO amendment gave four of our largest multi-national oil companies a tax break worth $35 million a year. Now your committee has recommended that this special provision should be expanded to benefit a handful of other multi-national oil companies. The revenue loss from this proposal is another $90 million a year.

The Tax Reduction Act contained a reform package designed to achieve two objectives: first, to limit the amount of foreign tax credits resulting from a rise in OPEC prices; and, second, to impose some U.S. tax on foreign income generated from oil production.

These objectives were thwarted, however, when the conference committee, in March 1975, inserted a special provision to benefit the four corporate owners of ARAMCO. These companies -- Texaco, SoCal, Exxon, and Mobil -- were allowed to treat their dividend income from ARAMCO as "oil-related income." That is income the oil companies may shelter from U.S. tax with the use of foreign tax credits which have been artificially inflated with OPEC's manipulation of the posted price system. As a result, it is likely that no U.S. tax can be collected on the profits ARAMCO distributes to its owners.

As a member of that conference committee, I have no recollection of this matter ever being discussed. I have interrogated other members and staff and have been unable to determine where this special provision for ARAMCO ever came up.

Page two.

Now your committee has taken one additional step. It has expanded this loophole in order to benefit other U.S. multi-national oil companies. Specifically, the committee's amendment shelters from U.S. tax "interest income" received by one domestic corporation from another domestic corporation. This income arises when a U.S. oil company borrows capital from another U.S. oil company to conduct oil operations abroad. Including interest income in the definition of oil-related income is simply an expansion of the ARAMCO loophole and will lose the Treasury $90 million each year. This $90 million will be spread over a small number of multi-national companies.

Mr. Chairman, we are seeing the birth and growth of another special tax benefit. This loophole, like so many others in our tax laws, was born in the secrecy of the conference committee. I urge the committee to reject both the ARAMCO Amendment and its expansion. It is time these companies make at least a token contribution to this government which provides them with security and assistance world-wide.

Mr. Chairman, I appreciate your time to bring these matters of concern to the committee's attention.

(From the Congressional Record, December 2, 1975)

CONFERENCE COMMITTEE ON TAX BILL MUST BE OPEN TO PUBLIC

HON. CHARLES A. VANIK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 2, 1975

Mr. VANIK. Mr. Speaker, during the coming week, the House will be debating H.R. 10612, the Tax Reform Act of 1975. After passage, the bill will go to the Senate where at least some part of it is expected to be approved before the end of the 1st session of the 94th Congress. In particular, title IV of the bill relating to the extension of individual and corporate income tax reductions—some $15.5 billion worth of tax reductions—must be enacted before December 31, 1975. Action within the month is needed in order to prevent a major increase in employee withholding rates, an action which would destroy any economic recovery which may be underway.

Therefore, it appears that there will be a House-Senate conference committee later this month to iron out the differences—which may be substantial—between H.R. 10612 and any Senate passed bill.

If I am a conferee on the part of the Ways and Means Committee, I will move that the conference be open to the public and that a stenographic record be kept of its proceedings.

If I am not a conferee, I will move to instruct the House conferees to vote for an open and recorded conference.

On November 6, the Senate adopted language in S. 5, the Government in the Sunshine Act, to require open conferences. The language reads as follows:

SEC. 108. (a) CONFERENCE COMMITTEES.—The Legislative Reorganization Act of 1946 is amended by inserting after section 133C, as added by section 101(a) of this Act, the following new section:

"OPEN CONFERENCE COMMITTEE MEETINGS

"SEC. 133D. Each conference committee between the Senate and the House of Representatives shall be open to the public except when the managers of either the Senate or the House of Representatives in open session determine, by a rollcall vote of a majority of those managers present, that all or part of the remainder of the meeting on the day of the vote shall be closed to the public.".

(b) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133C, as added by section 101(c) of this Act, the following:

"133D. Open conference committee meetings.".

I am introducing this language as a separate bill in the House of Representatives with additional language requiring the maintenance of an official transcript of the proceedings of each and every conference:

An accurate stenographic record shall be kept of each meeting of a Conference Committee, whether open or closed to the public and shall be maintained in the offices of the Committees of jurisdiction of the matter before the Conference Committee. This record shall be available to the public at reasonable times and places, unless declared an executive record by a rollcall vote of a majority of those managers present. An executive record shall be available for inspection by Members, together with their staffs.

Conference committees are really a third legislative body. The House can pass a bill, and the Senate can pass another bill, and by the time a conference committee gets through with it, you have another, entirely new bill. The final product can look like a legislative Frankenstein—a final product that no one recognizes and no one wants to claim. Because many of the most important conferences resolve their work in the closing days of a Congress, the members of the parent chambers have little or no opportunity to determine what exactly happened and what they are voting on in approving the conference report. The confusion which often accompanies a conference committee and the approval of its work leaves the system open to abuse—to the last minute insertion of new language or language that benefits a particular group or set of individuals.

Open conferences and recordings of the debates and decisions in conferences can help protect the public against these types of abuses.

PERSONAL EXPERIENCE IN CONFERENCE ON TAX REDUCTION ACT

This spring, I had a personal experience with the type of problem I have just described. I was appointed on behalf of the House and the Ways and Means Committee to the conference on the Tax Reduction Act of 1975, which subsequently became Public Law 94-12.

The bill which passed the House did not touch the foreign tax credit provisions of the Internal Revenue Code. The bill was amended on the Senate floor, however, to completely eliminate the foreign tax credit—FTC—for the oil companies. Thus as the bill went to conference, there was wide latitude left to the conferees: they could drop all reference to changing the foreign tax credit—as in the House version—they could eliminate the foreign tax credit—as in the Senate version—or they could provide some modified foreign tax credit for oil and gas production.

The conferees elected to provide a modification of the FTC which placed some limits on its use, but which did not go as far as the Senate in repealing its use for the oil companies.

Where did the language for the modification come from? That was relatively easy. During 1974, the Ways and Means Committee had spent months and months working on energy legislation and oil windfall profits proposals. On April 30, 1974, the committee approved a bill, H.R. 14462, the Oil and Gas Energy Tax Act of 1974. That bill contained a provision limiting the use of the FTC by oil companies. However, for various reasons, this major piece of legislation was not brought to the floor of the House. However, on November 21, 1974, a larger bill containing both energy tax changes and individual tax relief was reported from the committee. This bill, H.R. 17488, included language identical to that in H.R. 14462 limiting the use of FTC by the oil companies. Unfortunately, this bill also died in the closing days of the last Congress.

Since the Ways and Means Committee had twice approved language providing a formula for limiting the oilmen's use of FTC's, the conferees felt that at least this proposal had some support and had been carefully worked out by the legislative draftsmen. So the language from the bills of the 93d Congress was lifted out and put in the Tax Reduction Act.

The bill was brought to the floor under the most hectic of conditions. The Easter recess was beginning and a large number of Members had made irrevocable commitments in their districts. A quorum was rapidly disappearing, so the conference bill was brought to the floor with only 90 mimeod copies of the bill available for distribution to the House Members. Under these conditions, careful scrutiny of the final language was not possible.

But then several weeks later, Prof. J. Reid Hambrick, professor of law at George Washington University and one of the Nation's experts on oil taxation and foreign tax credits, asked me how certain language in section 907 had been added to the bill.

Language for section 907 which deals with the FTC for oil had been drawn from section 202 of H.R. 14462 and from an identical section 122 of H.R. 17488—the two bills which had been approved by the Ways and Means Committee but which had failed to pass the Congress in 1974. But as Professor Hambrick pointed out, there was "new" language in section 907 which had not been included in either the House or Senate passed versions of the Tax Reduction Act of 1975 and had not been included in either of the 1974 bills.

Following is the present section 907(c)(3). I have capitalized the language which was not included in either of the two bills voted on by Ways and Means in 1974:

"(3) Dividends, INTEREST, Partnership, Distribution, Etc.—The term 'foreign oil and gas extraction income' and the term 'foreign oil related income' include—

"(A) dividends AND INTEREST from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902,

"(B) DIVIDENDS FROM A DOMESTIC CORPORATION WHICH ARE TREATED UNDER SECTION 861(a)(2)(A) AS INCOME FROM SOURCES WITHOUT THE UNITED STATES,

"(C) amounts with respect to which taxes are deemed paid under section 960(a), and

"(D) the taxpayer's distributive share of the income of partnerships,

to the extent such dividends, INTEREST, amounts, or distributive share is attributable to foreign oil and gas extraction income, or to foreign oil related income, as the case may be; EXCEPT THAT INTEREST DESCRIBED IN SUBPARAGRAPH (A) AND DIVIDENDS DESCRIBED IN SUBPARAGRAPH (B) SHALL NOT BE TAKEN INTO ACCOUNT IN COMPUTING FOREIGN OIL AND GAS EXTRACTION INCOME BUT SHALL BE TAKEN INTO ACCOUNT IN COMPUTING FOREIGN OIL-RELATED INCOME.

What does the "new" language mean? According to the staff of the Joint Committee on Internal Revenue Taxation, it means about $36 million per year, probably mostly to ARAMCO—the giant consortium of oil companies operating in Saudi Arabia. It appears to ensure that dividends from ARAMCO to its parent companies—Mobil, Standard of California, Exxon, and Texaco—will be counted as foreign source income. This will permit the use of FTCs to offset any U.S. tax which might otherwise be levied against this dividend income.

Where did this "new" language come from? I have written to the members of the conference committee asking if they could recall this special new section. No conferee could recall such a section. Members of my staff have interviewed the offices of the House and Senate legislative counsels. They do not know where the language came from, and they do not recall any discussion of the provision in conference.

This complex new language, fitting deftly into a difficult section of the tax code, did not come from the Easter bunny. At this date, I believe that I may never find out exactly how this "new" language and this paragraph of the tax code was brought to life.

There is no question that it is another tax loophole. I believe that if the full implications of the section had been understood in the conference or in the House, it would have been rejected. But now it is in the code—and loopholes in the code die hard. A month ago I moved in Ways and Means to strike this new language. I lost by a vote of 17 to 19.

I believe that if the conference committee process were opened to the public and a record of conference committee proceedings were maintained, that the type of subversion of the legislative process demonstrated by section 907(c)(3) would be made more difficult and the public's interest would be better protected. A recorded conference is also necessary to provide a legislative history which sets forth and explains the legislative purpose.

For these reasons, I believe we all must work to ensure that the next tax bill conference is an open and recorded conference.

STATEMENT OF REP. FORTNEY H. STARK, JR.
BEFORE THE SENATE FINANCE COMMITTEE,
JULY 20, 1976

Mr. Chairman and Members of the Committee, I am pleased to have this opportunity to appear before you today, not just as a member of the Ways and Means Committee, but as a witness opposed to the many special interest provisions which are the subject of this hearing.

The House has obviously been far from perfect in keeping special interest provisions out of its own bills. You're all familiar with the "Ross Perot amendment" which sneaked into the Ways and Means Committee Tax Reform bill late one night, much to everyone's professed surprise. Fortunately, thanks to good work by the press, we were able to reverse this giveaway on the House floor. Yet the fact that this "Perot amendment" is not an isolated case attests to the need for thorough review of all special interest loopholes and favors.

This entire process of special interest tax legislation, obviously, has its roots in earlier days of secret and closed Committee meetings with little or no public input. When no outsiders, and certainly no members of the press even knew what the tax-writing Committees would be considering on a given day, public accountability was not even imaginable. The provisions, carefully tailored to the needs of the influential taxpayers, were simply included in complex tax bills, and then signed into law before any outsiders could begin to figure out who was being benefitted, or how they put their cases across to the Committees.

Many of us thought that those days were behind us. The new "sunshine" atmosphere has begun to have some results. The Ways and Means Committee, for example, has a new procedure for considering its special interest bills, known as Members Bills, or the so-called "technical" provisions. We hold hearings on the bills at one time, receiving testimony from the proponents, as well as a staff and Treasury analysis of each one. Then several weeks later, after the Committee members,public interest groups and the press have had time to study carefully the impact of each bill, we have an open mark-up session. The bills are then amended or voted up or down on the merits.

It was during this type of proceeding that the Ways and Means Committee considered a bill for Investors Diversified Services, Inc. (IDS). It was defeated outright in Committee, thus preventing it from even reaching the House floor. The consensus was simply that the change IDS wanted wasn't merited. Since this same provision, however, was added to this Committee's bill on the infamous date of May 27, I'd like to go into some background on it to illustrate why we were able to decide, through a careful study, that it didn't belong in the Tax Code:

First, these face-amount certificates are one of the biggest rip-offs in the country. You must hold them for 8 years before you can get your principal back in full. Currently, one-half of all purchasers cash them in within 8 years, which means they lose from 2.5% to 19% of their original investment. Then, even if they are held to full-term, the interest is only 3% -- after 20 years! (information from the Prospectus). One of the biggest selling points of them was their special tax status: Unlike similar investment plans offered by banks, the purchaser did not have to pay taxes, annually, on the interest earned amortized over the full term. That is the reason IDS came before us late last year.

Under IRS Regulations effective January 1, 1976, this tax-deferral feature was to be denied. IDS wanted to overrule the proposed Regulation, contending that without this tax deferral, they would be unable to continue their sales. In fact, they suspended sales of these installment plan certificates when the Regulations went into effect, and will resume only if this provision in your bill becomes law. But look a little more closely at why the IRS took the position they did in this Regulation, and at the nature of these installment plan certificates. This summary of the legislative history gives a good indication:

Until 1954, "discount", or the interest on face-amount certificates, was treated under the Code as capital gains. In 1954, this was changed to ordinary income treatment under Section 1232. However, at the same time, a cross-reference was added for the "special treatment of face-amount certificates on retirement" to Section 72, which deals with the 3-year averaging treatment upon retirement. Regulations arising out of the 1954 Act were finally written in 1957, stating that the tax treatment of face-amount certificates was to be governed by Section 72, as for endowment contracts, and not by Section 1232, covering "discount"

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interest. In 1964, the language of Section 72 on income-averaging was repealed, to be replaced by the new general averaging rules. But the cross-reference from Section 1232 on face-amount certificates was not repealed. No one is certain how this happened, and whether this was a deliberate omission, or simple inadvertence.

The question we face today arises out of what happened in the 1969 Act. Language was included that year to require that bond holders must compute original discount annually, and pay taxes ratably over the life of the bond. However, the language did not specifically refer to face-amount certificates, or to the cross-reference between Section 1232 and Section 72. Regulations on this provision were issued in 1971, and did explicitly refer to bank discount certificates, which accordingly were withdrawn from the market. Again, no reference was made to face-amounts. But in October, 1973, further Regulations specified that the ratable inclusion rules <u>were</u> to apply to face-amount certificates.

The IRS twice postponed implementati[illegible]s Regulation to give IDS (which has 95% of the market in these certificates) the chance to persuade Congress to legislate the clarification of the 1969 Act they wanted, exempting face-amounts from the new rule. Since no such bill was passed, IDS filed for a declaratory judgement in November 1975, for the Regulations to be found invalid. The District Court here in D.C. refused to issue such a declaratory judgement, thereby stating its position that the government had reasonable basis for its position in the Regulations. In addition, the Court took the unusual step of going even further, stating that it found the interpretation of the law by the IRS to be correct, and that clearly IDS was covered by Section 1232, the ratable inclusion rules on "discount".

It was at this point that the Ways and Means Committee took up the bill for IDS, to overrule the Regulation. It was our consensus, based on the legislative history alone, and the aspect of competition with banks, that there was no justification for opposing the IRS. The fact that these certificates are also as bad an investment as can be found anywhere was not central. But we decided that IDS should not be given, in effect, a special tax advantage to peddle them. The bill was defeated in the Ways and Means Committee 18 - 12, and then again, 20 - 14.

I cite this case as a perfect example of the importance of careful examination of these so-called "technical" provisions. Moreover, I cite it because in spite of all our careful study of this bill, your Committee, following its usual procedure, simply slipped it in, as if the Ways and Means Committee had never devoted the time and attention it did to this matter.

This is how all the other special interest provisions have filled the Tax Code. But what is different this time is that it no longer has to be done that way. We in the Ways and Means Committee have begun to move away from this time-honored tradition. While our new procedure is far from circumspect, it does have some semblance of public accountability. An infamous day such as May 27 would be less likely under House procedures.

The result of this Committee's actions speaks for itself: In one Tax Reform bill, you have benefitted the following taxpayers: United Airlines, Chrysler Corporation, Sun Oil Company, Mobil Oil Company, Hanna Mining Company, the Marriott Corporation, Boise Cascade, and Tenneco, to name a few. The list goes on, numbering perhaps as many as 40 such well-heeled corporate taxpayers -- few of which pay as high a tax rate as my poorest constituents. If anything attests to what is wrong with the way our tax laws are written, it is a list of beneficiaries such as this. As in the case of IDS--whose past and present Board of Directors includes names like Richard Nixon, Melvin Laird, Paul McCracken, Donald Kendall, former Ways and Means Ranking Member John W. Byrnes -- these companies are the most influential in the country. They can afford the most expensive lawyers and lobbyists, and have direct access to influential members of Congress, such as this Committee, to plead their case. Naturally, the Tax Code is tipped in their favor, time and time again.

This Member of the House, and of the Ways and Means Committee, wants to go on record as opposed to continuation of such a process for even one more day. The Tax Code can no longer be the source of private relief for the wealthy few. We have to stop providing subsidies for airlines, insurance companies, oil companies and anybody else with influence, and take this same revenue and distribute it where it is needed -- to the average taxpayer, for social services, education, health care, and so on down the line.

The changes have to come from this Committee, beginning right here in this room, this summer, before another such bogus "Tax Reform" bill is passed by this Congress. It has to be done equally by the House and Senate, and, I submit, this is the golden opportunity to take a step in the right direction. These special interest provisions -- I call them "special giveaways" of billions of dollars -- can be removed from the bill before the Senate completes action, so we can go into Conference with something close to "reform" legislation.

STATEMENT OF
DONALD C. ALEXANDER
COMMISSIONER OF INTERNAL REVENUE SERVICE
BEFORE THE SENATE FINANCE COMMITTEE
JULY 20, 1976

IN MY APPEARANCE THIS MORNING IT IS MY PURPOSE TO ADDRESS THE COMMITTEE SOLELY AS ONE WHO IS RESPONSIBLE FOR THE ADMINISTRATION OF THE TAX LAWS. MY CONCERN IN REVIEWING THE PROVISIONS OF H.R. 10612 THAT ARE REFERRED TO IN THE SENATE FINANCE COMMITTEE PRESS RELEASE OF JULY 8, 1976, HAS BEEN TO DETERMINE THE EFFECT THAT SOME OF THESE PROVISIONS MAY HAVE ON THE ABILITY OF THE INTERNAL REVENUE SERVICE TO ADMINISTER THE TAX LAWS EFFECTIVELY. I ALSO WANT TO COMMENT UPON THE EFFECT WHICH THE CONGRESS' TIMETABLE FOR ITS CONSIDERATION OF THE PENDING BILL WILL HAVE ON THE PRINTING AND DISTRIBUTION OF OUR FORMS AND PUBLICATIONS AND THE PROCESSING OF RETURNS, REFUNDS, AND BILLS FOR UNPAID TAXES.

A NUMBER OF PROVISIONS OF THE BILL APPEAR TO BE INAPPROPRIATE IN LIGHT OF THEIR LIKELY EFFECT ON PUBLIC CONFIDENCE IN THE FAIRNESS OF THE TAX LAWS. I AM CONCERNED, ALSO, BY THE FACT THAT A NUMBER OF PROVISIONS OF THE BILL PROPOSE TO OVERRULE BY STATUTE RECENT RULINGS OF THE SERVICE. ALTHOUGH THE CONGRESS CLEARLY HAS THE POWER TO ACT AS A FINAL COURT OF APPEALS OVER THE RESOLUTION OF CONTROVERSIES BETWEEN THE INTERNAL REVENUE SERVICE AND TAXPAYERS, A FREQUENT PATTERN OF SUCH ACTION WILL CAUSE THE CONGRESS TO BE DELUGED BY APPLICATION FOR SUCH RELIEF BY THOSE PERSONS WHO HAVE, OR BELIEVE THEY HAVE, THE ABILITY TO ACHIEVE THEIR SPECIFIC OBJECTIVE BY LEGISLATIVE MEANS, AND MAY RESULT IN REDUCED PUBLIC CONFIDENCE IN THE FAIRNESS AND EFFECTIVENESS OF THE TAX SYSTEM AND ITS ADMINISTRATION. I THINK, TOO, THAT IT CAN BE SERIOUSLY QUESTIONED WHETHER THE PATCHWORK

LEGISLATION WHICH RESULTS FROM REVERSING SPECIFIC RULINGS OF THE SERVICE RESULTS IN THE KIND OF BROAD LEGISLATIVE OVERVIEW WHICH CONGRESS PERHAPS SHOULD BE GIVING QUESTIONS OF THIS SORT. I CERTAINLY AM CONCERNED ABOUT THE EFFECT WHICH SUCH SPECIFIC LEGISLATIVE RESPONSES HAVE UPON THE RULINGS PROCESS SPECIFICALLY AND TAX ADMINISTRATION GENERALLY. CHIEF AMONG THE PROVISIONS OF THE BILL IN THIS REGARD IS SECTION 1312 WHICH WOULD NULLIFY REVENUE RULING 76-231 (DESPITE THE FACT THAT THE APPROACH CONTAINED THEREIN HAS BEEN SPECIFICALLY FOUND BY THE U. S. DISTRICT COURT TO BE CONSISTENT WITH EXISTING LAWS) WITH RESPECT TO EMPLOYER REPORTING OF TIPS PAID BY CHARGE ACCOUNT CUSTOMERS.

THE EXPERIENCE OF THE SERVICE HAS CONFIRMED THE COMMON SENSE CONCLUSION THAT IN BUSINESSES CONDUCTED LARGELY IN CASH AND WITHOUT BASIC ACCOUNTING RECORDS THERE IS WIDESPREAD UNDERREPORTING OF INCOME. ONE OF THE AREAS IN WHICH THIS PROBLEM OCCURS IS TIP INCOME OF EMPLOYEES IN

SERVICE INDUSTRIES, PRIMARILY RESTAURANTS.

FAILURE TO REPORT INCOME FROM TIPS IS A CHRONIC AND PERSISTENT COMPLIANCE PROBLEM. SINCE THE EARLY SIXTIES THE SERVICE HAS PERIODICALLY DIRECTED SPECIAL EFFORTS AT THE LOCAL LEVEL TO DETECT AND TAKE CORRECTIVE ENFORCEMENT ACTIONS TO IMPROVE COMPLIANCE WITH TIP REPORTING REQUIREMENTS. THE RESULTS OF SUCH ENFORCEMENT ACTIONS HAVE BEEN DISAPPOINTING IN THAT REPEAT AUDITS HAVE REVEALED THAT TAXPAYERS RECEIVING TIPS OFTEN REVERT TO PRIOR HABITS OF NONREPORTING. COLLECTION OF ADDITIONAL TAXES FROM SUCH TAXPAYERS, WHO MAY HAVE USED THE INCOME FOR LIVING EXPENSES, IS COSTLY. OBTAINING COMPLIANCE WITH THE TAX LAWS BY THOSE EMPLOYEES IS COMPLICATED BY THE ITINERANT NATURE OF MANY OF THE INDIVIDUALS.

FEW TIP RECIPIENTS MAINTAIN ADEQUATE RECORDS FOR VERIFICATION OF TAXABLE INCOME. TO DETERMINE TIP INCOME IT IS NECESSARY TO OBTAIN INFORMATION FROM THIRD PARTIES.

THEREFORE, ENFORCEMENT ACTIONS HAVE PRIMARILY BEEN DIRECTED TO IDENTIFYING ENTITIES EMPLOYING INDIVIDUALS WHO RECEIVE TIP INCOME AND OBTAINING INFORMATION ON EMPLOYEES TO DETERMINE OMITTED INCOME. THE RECONSTRUCTION OF INCOME IS A DIFFICULT PROCEDURE WHICH REQUIRES THAT A SAMPLE OF DIFFERENT TYPES OF EMPLOYEES (SUCH AS MAITRE D', WAITERS, BARTENDERS, ETC.) BE AUDITED IN DEPTH, THAT A RATIO OF TIPS TO INCOME BE ESTABLISHED FOR THE VARIOUS SECTIONS OF EACH RESTAURANT, AND THAT THE RATIO BE APPLIED TO GROSS SALES MADE BY ALL EMPLOYEES. ALLOWANCES MUST ALSO BE MADE FOR TIP SPLITTING PRACTICES. VARIATIONS OF AUDITING TECHNIQUES ARE EMPLOYED DEPENDING ON THE RECORDS MAINTAINED BY RESTAURANTS AND TIP RECIPIENTS. IN SOME SITUATIONS, AVERAGE TIPS PER HOUR IS COMPUTED AND APPLIED TO THE HOURS WORKED. DESPITE THE DIFFICULTY IN USING THIS METHOD OF PROOF, THE COURTS HAVE RECOGNIZED THE SERVICE'S PROBLEMS IN THIS AREA BY ALMOST UNANIMOUSLY SUPPORTING THE RECONSTRUCTION

OF INCOME IN OVER 50 CASES DATING BACK TO THE EARLY SIXTIES.

IN 1964, CONGRESS ADDRESSED THE PROBLEM OF UNREPORTED TIP INCOME BY ENACTING SECTION 6053 OF THE INTERNAL REVENUE CODE. THE BASIC THRUST OF SECTION 6053 IS TO REQUIRE THE EMPLOYEE TO FILE MONTHLY REPORTS WITH HIS EMPLOYER STATING THE AMOUNT OF TIPS RECEIVED. THE EMPLOYER IS THEN REQUIRED TO WITHHOLD INCOME AND FICA TAXES BASED ON THE AMOUNT REPORTED.

THE REQUIREMENT OF SECTION 6053 HAS NOT, HOWEVER, REDUCED MATERIALLY THE PROBLEM OF UNDERREPORTING OF TIPS BY SERVICE EMPLOYEES. IN GENERAL, THE PROBLEM IS THAT AN EMPLOYEE WHO IS WILLING TO FILE AN INCOME TAX RETURN UNDER-REPORTING HIS TIP INCOME WILL NOT BE RELUCTANT TO UNDER-REPORT HIS TIP INCOME - WHETHER IT BE CASH TIPS OR CHARGED TIPS -- ON HIS MONTHLY REPORTS TO HIS EMPLOYER.

AS A PARTIAL STEP TOWARD REDUCING THE PROBLEM OF UNDERREPORTING OF TIP INCOME, THE INTERNAL REVENUE SERVICE

PUBLISHED A RULING UNDER SECTION 6041 OF THE CODE REQUIRING THAT A PERSON EMPLOYING WAITERS, SUCH AS A RESTAURANT OWNER, WHO COLLECTED TIP ALONG WITH THE PRICE OF A MEAL BY REASON OF A CHARGE PURCHASE AND THEN PAID THE TIP OVER TO THE EMPLOYEE, MUST REPORT TO THE INTERNAL REVENUE SERVICE THOSE CHARGED TIPS OF WHICH THE EMPLOYER HAS A RECORD, AND WHICH THE EMPLOYEE DID NOT REPORT, AS REQUIRED, TO THE EMPLOYER. THE ORIGINAL RULING, REVENUE RULING 75-400 WAS WIDELY CRITICIZED BY THE INDUSTRY AND ATTACKED IN COURT AS INVALID. IN <u>NATIONAL RESTAURANT ASSOCIATION V. SIMON</u> (D.C.D.C. 1976), 76-1 USTC PARA 9311, THE COURT SPECIFICALLY HELD THAT THE RULING WAS NOT IN CONFLICT WITH THE PROVISIONS OF THE CODE BUT WAS CONSISTENT THEREWITH. HOWEVER, BECAUSE OF OUR SENSITIVITY TO THE CONCERNS OF THE INDUSTRY, THAT RULING HAS BEEN EXTENSIVELY RECONSIDERED WITHIN THE SERVICE.

THE SERVICE'S RECENT MODIFICATION OF ITS 1975 REVENUE RULING (WHICH RESULTED IN REVENUE RULING 76-231) MADE EVERY EFFORT TO BE RESPONSIVE TO THE CONCERNS OF BOTH THE RESTAURANT OWNER AND OPERATOR AND THE EMPLOYEE. THE NEW REVENUE RULING SETS OUT VERY CLEARLY THE MANNER IN WHICH THE EMPLOYER WILL REPORT CHARGED TIPS ON THE EMPLOYEE'S FORM W-2. THIS IS INFORMATION WHICH THE RESTAURANT OWNER HAS--VIA THE CUSTOMER'S CHARGE ACCOUNT SLIPS--READILY AVAILABLE. THE NEW REVENUE RULING ALSO PROVIDES FOR A POSTPONED EFFECTIVE DATE--JANUARY 1, 1977--FOR THE NEW REPORTING PROCEDURES. THIS WILL GIVE EMPLOYERS A SUFFICIENT AMOUNT OF TIME TO MAKE THE NECESSARY ARRANGEMENTS FOR THE MINOR BOOKKEEPING PROCEDURES WHICH WILL BE INVOLVED IN REPORTING THE CHARGED TIP INCOME ON THE FORM W-2. INSOFAR AS THE EMPLOYEE IS CONCERNED THE MODIFIED REVENUE RULING INFORMS EMPLOYEES HOW THEY CAN, IN INSTANCES WHERE

THEY ENGAGE IN TIP SPLITTING OR POOLING ARRANGEMENTS, EXPLAIN THE DISCREPANCY BETWEEN THE TIP INCOME SHOWN ON THEIR W-2 AND THEIR NET INCOME AFTER SPLITTING OR POOLING.

UNLIKE CASH TIPS THERE IS A PAPER RECORD OF CHARGED TIPS. THIS RECORD IS ON THE CREDIT CARD CHARGE SLIP WHICH THE RESTAURANT OWNER RECEIVES WHEN THE CUSTOMER MAKES THE CHARGE. BY REQUIRING THE RESTAURANT OWNER-EMPLOYER TO REPORT THE AMOUNT OF THE CHARGED TIP ON THE EMPLOYEE'S FORM W-2, THE TAX SYSTEM IS ABLE TO TAKE ADVANTAGE OF THE FACT THAT THERE IS A WRITTEN RECORD OF THE AMOUNT PAID AS A CHARGED TIP. IF THE EMPLOYER DOES NOT REPORT THE FULL AMOUNT OF THE CHARGED TIPS RECEIVED BY AN EMPLOYEE ON THE EMPLOYEE'S FORM W-2, THE RECORD OF THAT PAYMENT IS LOST TO THE TAX ADMINISTRATION. WHEN THE HIGH LEVEL OF NONCOMPLIANCE IN THE TIP INCOME AREA IS CONSIDERED IT SEEMS EXTREMELY UNWISE NOT TO TAKE ADVANTAGE OF THIS WRITTEN RECORD--

ESPECIALLY IN VIEW OF THE FACT THAT VOLUNTARY COMPLIANCE IN THIS AREA WILL BE ENCOURAGED BY HAVING THESE TIPS PLACED ON THE EMPLOYER'S FORM W-2. FURTHER, BY UTILIZING THE RECORD OF THE CHARGED TIP THE SERVICE IS IN A POSITION TO OBTAIN INFORMATION FROM THE EMPLOYEE CONCERNING THE IDENTITY OF THE PERSON WITH WHOM HE OR SHE SPLIT THE TIP--FOR EXAMPLE, THE BUS BOY OR WINE STEWARD.

I THINK IT IS IMPORTANT FOR THE COMMITTEE TO HAVE SOME APPRECIATION OF THE AMOUNT OF TIP INCOME AND PROBABLE REVENUE IMPACT THAT IS INVOLVED IN THIS AMENDMENT. OUR STATISTICAL PEOPLE HAVE DONE A THOROUGH ANALYSIS OF THE TIP INCOME AREA AND HAVE CONCLUDED (BY APPLYING A CONSERVATIVE 12% TIPPING RATE TO A $36-1/2 BILLION TIP RELATED SALES INCOME FIGURE) THAT TIP INCOME IN THE UNITED STATES AMOUNTED TO $4.4 BILLION IN 1975. BASED ON DATA OBTAINED

FROM THE NATIONAL RESTAURANT ASSOCIATION AND A CERTIFIED PUBLIC ACCOUNTING FIRM SPECIALIZING IN RESTAURANT ACCOUNTS, WE THEN DETERMINED THAT 25% OF THE TIPS PAID ON SALES OF FOOD AND BEVERAGES WERE SHOWN ON CREDIT CARDS. IN THIS MANNER WE ESTIMATED THAT $1.1 BILLION OF TIP INCOME IN 1975 WAS PAID BY CREDIT CARD. IF WE ASSUME, AGAIN CONSERVATIVELY, THAT THE NONCOMPLIANCE IN THE TIP INCOME AREA IS 35%, WE ARE ABLE TO ESTIMATE THAT APPROXIMATELY $385 MILLION IN CHARGED TIP INCOME WAS UNREPORTED DURING 1975. APPLYING LOW EFFECTIVE TAX RATES TO SUCH AMOUNTS, IT CAN BE CONSERVATIVELY ESTIMATED THAT THE REVENUE LOSS ATTRIBUTABLE TO THE FAILURE TO ALLOW FULL IMPLEMENTATION OF REVENUE RULING 76-231 WOULD AMOUNT TO ABOUT $100 MILLION.[1]

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[1]The Service does not have comprehensive statistics in this area. Some examples of findings on tip reporting are indicative of the overall problem:

a) Examination of those receiving tips from one large key club revealed that the employees reported $107,753 as both cash and charge tips. However, an analysis of the club's records revealed that $370,247 had been paid to the employees as their share of the charge tips only.

b) The examination of a hotel and country club revealed that the average charge tip income underreported by 550 employees was $3,512 for 1973 and $4,810 for 1974.

c) The examination of a supper club recently revealed that waiters and waitresses were reporting less than 5% of their share of gross food sales as tip income. However, an analysis of charge sales revealed that tips received amounted to 18.8% on charge sales.

d) The following is a quotation from one project report: "The overall results of the project revealed that employees were reporting only 10% of their tip income for Federal tax purposes, with the remaining 90% escaping taxation. The average annual understatement approximated $3,500 per employee. In some instances, employees were reporting no tip income whatsoever. To our knowledge, all employees audited realized that tips constituted taxable income. There were only a few isolated instances in which the employee kept a record of their tip income. Many of the taxpayers audited admitted they knowingly understated tip income. Their standard excuse for not reporting all tip income was that no one else does, so why should they."

e) A revenue agent during the audit of the corporation income tax return of a well-known private club determined that employees were not reporting tips in full to their employer. Tips charged on various charge cards were $45,000. Tips reported to the employer for the entire year were $23,000. A total tip figure of $122,000 was computed by the agent based on a combination of cash and charge sales.

f) In the examination of one club the IRS found that the total tips disbursed as reflected in the employer's records were $281,634. Total tips reported by employees amounted to $78,222 resulting in an underreporting of $203,412.

Several other provisions of the Bill are similarly addressed to the reversal of specific rulings or regulations, and are therefore subject to the same observations which I have made. For example, section 1035(f) which would delay for five years the effective date of Revenue Ruling 76-215 holding that certain amounts denominated as taxes under production-sharing contracts entered into with an agency of the government of Indonesia are royalties, and not taxes, and therefore are not eligible for the foreign tax credit.

Section 1305 of the Bill would authorize taxpayers to disregard Revenue Ruling 73-395 dealing with the accounting methods utilized by publishers. The published revenue ruling provided that certain amounts expended in the publishing business must be capitalized rather than deducted currently as expenses. Under the Bill, the Internal Revenue Service will be precluded from applying the traditional capital

EXPENDITURE/DEDUCTIBLE EXPENSE PRINCIPLES WHICH ARE APPLICABLE TO OTHER TAXPAYERS UNTIL SUCH TIME AS IT PROMULGATES NEW REGULATIONS.

THERE ARE OTHER EXAMPLES OF SERVICE RULING POSITIONS BEING OVERRULED BY THIS BILL. SECTION 1322 OF THE BILL WOULD REVERSE REVENUE RULING 75-557 WHICH CONCLUDED THAT CERTAIN CONNECTION FEES RECEIVED BY A PUBLIC UTILITY WATER COMPANY FROM ITS CUSTOMERS ARE TAXABLE INCOME TO THE UTILITY AND DO NOT REPRESENT CONTRIBUTIONS TO CAPITAL OF THE UTILITY. SOME EARLY CASES DECIDED BY THE BOARD OF TAX APPEALS IN THE 1920'S AND 1930'S HAD HELD THAT THESE CONNECTION FEES AND OTHER SIMILAR FEES RECEIVED BY UTILITIES WERE NONTAXABLE CONTRIBUTIONS TO CAPITAL AND THE INTERNAL REVENUE SERVICE ACQUIESCED IN THESE CASES. IN RECENT YEARS, HOWEVER, THE SUPREME COURT AND OTHER FEDERAL COURTS HAVE ADOPTED A MORE REALISTIC VIEW OF WHAT IS INCOME AND WHAT CONSTITUTES A CONTRIBUTION TO CAPITAL. BECAUSE OF THIS NEW AUTHORITY, THE SERVICE RECONSIDERED THE OLD BOARD OF TAX APPEALS CASES AND

CHANGED ITS POSITION. THIS CHANGE IN POSITION WAS ANNOUNCED BY REVENUE RULING 75-557.

SECTION 2106 OF THE BILL WOULD AMEND SECTION 513 OF THE CODE TO EXCLUDE FROM THE DEFINITION OF UNRELATED TRADE OR BUSINESS "QUALIFIED PUBLIC ENTERTAINMENT ACTIVITIES" AND "QUALIFIED CONVENTION AND TRADE SHOW ACTIVITIES." THE PROPOSED PUBLIC ENTERTAINMENT ACTIVITY AMENDMENT WOULD LEGISLATIVELY OVERTURN REVENUE RULING 68-505, IN WHICH THE SERVICE RULED THAT AN EXEMPT COUNTY FAIR ASSOCIATION THAT CONDUCTS A HORSE RACING MEET WITH PARIMUTUEL BETTING IS CARRYING ON UNRELATED TRADE OR BUSINESS.

WITH RESPECT TO TRADE SHOWS, SECTION 2106 OF THE BILL WOULD ALSO OVERRULE THE HOLDINGS IN REVENUE RULINGS 75-516 THROUGH 75-520. THE CHANGES PROPOSED BY THIS SECTION OF THE BILL TEND TO UNDERMINE THE FUNDAMENTAL CONCEPT OF THE UNRELATED BUSINESS INCOME TAX PROVISIONS AND LAY THE FOUNDATION FOR A PIECEMEAL APPROACH TO THE TAX'S REPEAL.

In conclusion I would like to ask that the Committee give special attention to the practical problem of translating changes in the Code into those actions which the Service must take to administer the law.

As you know, the Tax Reform Act (H.R. 10612) is presently being debated in the Senate. This massive Bill, if enacted, will have a major impact on the Service. I would like to bring to your attention some of the problems which the Service will encounter if the Bill is not enacted until Fall but a number of its provisions affecting individuals are made effective for calendar year 1976.

The timing of the legislation impacts heavily upon (a) the development, printing, and distribution of the forms, schedules, instructions, and taxpayer publications; (b) the processing of tax returns; and (c) the rendering of taxpayer service.

THE SERVICE'S TAX FORM AND PUBLICATION PROGRAM INVOLVES THE PRINTING OF 1-1/2 BILLION COPIES OF VARIOUS "FLAT" TAX FORMS AND INSTRUCTIONAL PAMPHLETS FOR DISTRIBUTION THROUGH 30,000 OUTLETS, AND THE PRINTING, ADDRESSING, AND MAILING OF "TAX PACKAGES" TO ABOUT 85 MILLION TAXPAYERS. UNDER PRESENT CONTRACT ARRANGEMENTS, PRINTING AND DISTRIBUTION OF THE TAX PACKAGES ARE CURRENTLY PROGRAMMED FOR A 90-DAY PRODUCTION PERIOD. TO CHANGE THIS TIME FRAME WOULD REQUIRE ADDITIONAL PRINTERS AT INCREASED COSTS.

TAX FORMS, INSTRUCTIONS, AND PUBLICATIONS MUST, OF COURSE, BE DEVELOPED, REVISED, AND REVIEWED FOR TECHNICAL ADEQUACY, ACCURACY, AND ADMINISTRATIVE FEASIBILITY PRIOR TO THEIR BEING RELEASED WITH AN "O.K. TO PRINT". THE FORMAT AND WORKING MUST BE METICULOUSLY DONE TO CONVEY, IN NON-LEGAL TERMINOLOGY, THE TECHNICALLY CORRECT MEANING OF THE LAW TO TAXPAYERS, WITHIN TIGHT SPACE LIMITATIONS. SEPARATE PUBLICATIONS TO ASSIST TAXPAYERS, E.G., "YOUR FEDERAL INCOME TAX",

"FARMERS TAX GUIDE", ETC., MUST ALSO BE UPDATED TO REFLECT CHANGES IN THE LAW. ANY DELAY IN ENACTMENT OF THE BILL WILL ADVERSELY AFFECT THE AVAILABILITY OF THESE PUBLICATIONS.

OUR NEXT AREAS OF CONCERN RELATE TO THE PROCESSING OF TAX RETURNS, RELATED REFUNDS AND BILLS, AND THE DEMANDS TO BE MET BY OUR TAXPAYER SERVICE FUNCTION. THESE ARE BY NECESSITY CAREFULLY SCHEDULED OPERATIONS. WE RECRUIT AND TRAIN TEMPORARY HELP TO SUPPLEMENT OUR REGULAR WORK FORCE SO THAT WE CAN MEET THE ANTICIPATED VOLUMES OF INQUIRIES AND RETURN FILINGS MADE BY TAXPAYERS. A DELAY IN ENACTMENT MEANS A SEVERE COMPRESSION OF OUR REQUIRED PRE-FILING PERIOD PREPARATIONS WHICH WILL LEAD TO SIGNIFICANT ADDITIONAL EXPENDITURES FOR RECRUITING, TRAINING, SYSTEMS DEVELOPMENT, AND PRE-OPERATIONAL TESTING.

THE SCHEDULES WHICH THE SERVICE HAS ADOPTED NOT ONLY RECOGNIZE THE SERVICE'S OWN REQUIREMENTS, BUT THOSE OF TAXPAYERS. EXPERIENCE INDICATES THAT ROUGHLY ONE-THIRD OF

FORMS 1040/1040A ARE FILED IN JANUARY AND FEBRUARY. SOME TAXPAYERS FILE THEIR RETURNS PRIOR TO JANUARY 31 TO AVOID HAVING TO MAKE PAYMENT OF THE 4TH INSTALLMENT OF ESTIMATED TAX. OTHERS FILE EARLY TO GET QUICK REFUNDS. A DELAY IN THE AVAILABILITY OF FORMS AND RELATED MATERIALS TO TAXPAYERS WILL, OF COURSE, HAVE A CORRESPONDING IMPACT UPON THE PROCESSING OF RETURNS BY THE SERVICE AND WILL AFFECT SUCH MATTERS AS THE PROMPT MAILING OF REFUND CHECKS.

IF THE LEGISLATION IS APPROVED BY SEPTEMBER 1, WE CAN MINIMIZE THE PROBLEMS DISCUSSED ABOVE. HOWEVER, EVEN WITH AN ENACTMENT DATE AT OR ABOUT THAT TIME, THERE WILL CERTAINLY BE SOME TAXPAYER INCONVENIENCE, ADDITIONAL COSTS AND GENERAL DELAY IN RETURNS PROCESSING. IF THE ENACTMENT DATE IS LATER THAN SEPTEMBER 1, 1976, THE CONSEQUENCES UPON ALL THESE ASPECTS OF TAX ADMINISTRATION WHICH I HAVE BEEN DISCUSSING COULD BE DIRE. THE LATER THE ENACTMENT, THE MORE SERIOUS AND COSTLY THE CONSEQUENCES.

STATEMENT OF

FRED WERTHEIMER

VICE PRESIDENT OF OPERATIONS

COMMON CAUSE

on

SPECIAL INTEREST AMENDMENTS

to HR 10612

before

THE COMMITTEE ON FINANCE

U.S. SENATE

July 20, 1976

Mr. Chairman, Common Cause appreciates this opportunity to testify today before the Senate Finance Committee. I am accompanied by Jack Moskowitz, who is Common Cause's principal lobbyist on tax issues. This Committee occupies a unique position of public trust because of its jurisdiction and power over matters that deeply affect the pocketbooks of every American. This trust places on the Committee a heavy responsibility to the nation's taxpayers. This responsibility is not being met.

For our tax system to work, taxpayers must believe it is fair and equitable. Overwhelming voluntary compliance has been the hallmark of the faith of American taxpayers in the fairness of the system. It has distinguished Americans from taxpayers in other countries.

But in recent years there has been a dramatic change in attitude. Many taxpayers no longer believe in the fairness of our tax system. They view it instead as a vehicle for providing special advantages for the wealthy and the influential. Every time a new "tax reform" bill passes Congress it is enacted at the cost of public cynicism and public disillusionment.

The American people today perceive a fundamental lack of integrity in our taxing system, a grave danger for any democracy. This perception is well founded. There is a basic lack of integrity in the political process that determines our tax system. The adding of dozens of special interest amendments to the pending Senate tax bill -- in the evening after two weeks of exhausting markup sessions -- without following even the most elementary legislative procedures reinforced this perception. So did the infamous Ross Perot case documented last year through the investigative reporting of the Wall Street Journal.

We wish to discuss today some of the steps that can be taken to correct the widespread view that the average taxpayer perpetually stands at the end of the line, while special interests perpetually stand first in line in determining this nation's tax policies. These steps deal with the role of money in politics; with undisclosed lobbying activities; with secrecy and the unavailability of relevant information; with inadequate Committee procedures for making public policy; and, with potential conflicts of interest by public officials.

Money in Politics

We recognize and applaud the central role played by the Chairman of this Committee in the creation of the new public financing system for our Presidential elections. But the same evils and dangers that led to this historic Presidential reform apply at the Congressional level as well.

Ask American citizens if they believe that private campaign contributions buy political influence and affect Congressional decisions in this country and they will respond with a resounding yes. You yourself, Mr. Chairman, have described the dangers of money in politics as aptly as anyone.

Ten years ago you said:

> "[W]hen you are talking in terms of large campaign contributions...the distinction between a campaign contribution and a bribe is almost a hair's line difference."
> Hearings on S. 3496, Amendment No. 732, S.2006, S.2965 and S.3014 before the Senate Comm. on Finance, 89th Cong., 2d Sess. 78 (1966).

Nine years ago you said:

> "Insofar as [public financing] would result in long term economies in government it is the one approach that the favored few would want the least. Of all expenditures by government, this is the one which the robber barons will oppose the most. The cost of financing a presidential campaign is one expense that they welcome. Investments in this area can often be viewed as monetary bread cast upon the water to be returned 1,000-fold."
> S4586 Cong. Rec., April 4, 1967.

Three years ago in supporting Congressional public financing you said:

> "Whether the amendment is agreed to or not, this amendment will one day be agreed to in this Republic. It is just a matter of time. Perhaps that might be today, and if Congress understands it, ...we will avoid all the criticism that has been heaped on Congress and the Government generally because of the influence of money from private contributions."
> S14816 Cong. Rec., July 26, 1973.

The absence of Congressional public financing and the need to raise large private sums to finance political campaigns has left its mark -- a large mark -- on the Internal Revenue Code. It has also left an indelible black mark on Congress in the eyes of the public -- a public which believes that political favors are up for sale. Erasing this black mark will only occur when we take Congress off the auction block by providing for public financing of Congressional elections.

In order to give some sense of the potential effect campaign contributions could have on this powerful Committee, as well as the potential appearance of influence they may have to the general public, I would like to introduce into the record an exhibit which accompanies my testimony.

The exhibit sets forth campaign finance information, derived from the federal campaign finance disclosure reports, for the seven members of this Committee who raised money and ran for election in 1974. The exhibit provides for each Senator summary financial information regarding campaign contributions and expenditures, a list of each individual contributor who gave $500 or more, including the contributor's identification as listed on the federal reports, and a list of each special interest group contribution to the candidate.

A review of these documents reveals that individuals and groups with substantial economic interests have provided the political lifeline for the various members of this Committee. While similar findings no doubt hold true for other Senate committees, the fact remains that this Committee has an almost unmatched Congressional power to grant or withhold direct economic benefits to private interests.

We have only been able to do a limited analysis in the time available to prepare for this hearing, and would like to give a few examples of how this political money might impact.

The seven members of the Committee who ran in 1974 received approximately $3,129,000 during the period from September 1, 1973 to December 31, 1974. Approximately 45% of that total came in contributions from larger individual givers ($500 or more) and interest groups. Listed below are the figures for each Senator:

CANDIDATE	RECEIPTS (9/1/73 thru 12/31/74)	% OF RECEIPTS (Individual Contributions, $500 or more, and Interest Group Contributions)	INDIVIDUAL CONTRIBUTIONS ($500 and over)	INTEREST GROUP CONTRIBUTIONS
Talmadge	$179,041	69.07	$ 65,965	$ 57,705
Gravel	482,635	63.30	157,996	147,524
Ribicoff	437,564	57.60	244,255	7,800
Packwood	324,207	38.50	56,800	68,032
Nelson	215,956	37.68	15,995	65,372
Dole	993,826	34.28	258,214	82,555
Long	496,074	32.64	91,024	70,900
TOTAL RECEIPTS:	$3,129,303		$890,249	$499,888

During the 1974 elections Common Cause categorized individual givers of $500 or more by economic background, based on the information set forth on the federal disclosure reports. Looking at these categories, as well as the affiliation of 1974 interest group givers, we have come up with the following overall analysis for the seven Senators involved in 1974 races.

Economic identifications for individuals were based solely on the information revealed by the federal disclosure reports and were made only on the basis of an interest clearly identified on the report. Further research would no doubt result in substantial increases in the amounts stated.

INTEREST	AMOUNT
Labor	$ 253,501
Oil *	211,492 *
Medical	95,987
Real Estate	64,693
Financial Institutions	57,465
Forest Products	30,800
Insurance	27,595
Securities	27,450
Ross Perot	21,000
Washington D.C. Attorneys	20,174

The seven Senators analyzed included Senators Dole, Gravel, Long, Nelson, Packwood, Ribicoff, and Talmadge. Not each Senator received contributions from all of these interests nor were the contributions evenly divided among the Senators. This analysis is not intended to do more than provide one example of the way in which economic pressures can build upon members of this Committee.

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* In addition, Senator Bentsen, who also raised substantial funds in 1974, received $134,954 from oil related donors.

Of course, we realize that a number of these contributions may have been made without regard to any interest in the legislative activities of the Senate Finance Committee or of its members. However, it is only rational to assume that many large contributions are made because of the financial interest the contributors have in the Committee's work.

An analysis of names of the D.C. attorneys who contributed, for example, revealed such Washington lawyer-lobbyists as J.D. Williams, William C. Foster and Edward L. Merrigan. Mr. Foster is himself a member of the only Washington law firm with its own political action committee, Patton, Boggs and Blow. The firm's committee has also made a series of contributions to members of the Senate Finance Committee. These lawyers are regularly in contact with Committee members on tax matters and have been identified as representing interests that benefit from amendments to the tax bill. We would like to insert in the record at this point, Mr. Chairman, a copy of an article that appeared in the New York Times on Monday, July 19, 1976, that deals with this matter.

One significant amendment to the tax bill is of substantial benefit to the maritime industry. We therefore did an analysis of the amount of money contributed since September 1973 from the maritime unions to members of the Finance Committee. We found that $112,875 had been contributed to 7 members as listed below:

Gravel	$46,500
Long	22,000
Hartke	14,000
Packwood	13,000
Bentsen	7,375
Byrd	5,000
Talmadge	5,000
TOTAL	$ 112,875

The problem of money of course is not exclusive to this Committee. The Senate recently passed, for example, by a close vote an amendment to limit the tax advantages of real estate investors. One Senator, Richard Stone (D-Fla.), who voted against this amendment, received over $76,000 from real estate interests in his campaign. It was an amendment that you, Mr. Chairman, described as creating "a very severe, unanticipated problem for the real estate industry" and therefore likely to be reversed when Senators hear from local real estate interests.

Disclosure of Lobbying Activities

There is far too much at stake in the structure of our tax system not to expect heavy lobbying by private sector interests affected by changes in the tax code. Comprehensive public disclosure of such lobbying activities is essential if both Congress and the public are to be provided with the information necessary to assure that special interest pressures are balanced by general public interest considerations in Congressional decision-making.

Under present laws, however, the public is left completely in the dark about most lobbying activities. The result -- the public has the clear impression that lobbyists are consistently arranging special deals behind the scenes for their employers and clients.

Under the outstanding leadership of Senator Ribicoff, the Senate has passed a new comprehensive lobby disclosure law designed to remedy many of the deficiencies in the existing lobby law. Unfortunately, the House has yet to act on this measure. There are certain steps that the Committee should take above and beyond the Senate bill requirements that would significantly strengthen the integrity of the tax writing process.

We recommend that this Committee immediately initiate a system to require members of the Committee and the Committee staff to log all communications concerning matters pending before the Committee, and to make these logs available to the public on a timely basis.

Open and Democratic Procedures

There are other aspects of the Committee's procedures that should be changed to strengthen the integrity of the tax writing process. Until this Congress, the Committee conducted its deliberations in secret. That record has improved in the 94th Congress, but there are other essential steps toward open and accountable procedures that should be adopted by the Committee. Common Cause urges the Committee to adopt rules to require:

(a) full and timely disclosure of the Senate sponsors, beneficiaries, projected revenue loss or gain, and justification for each tax amendment or special tax bill;

(b) record votes by individual member on bills and on each substantive amendment;

(c) open conference meetings on all tax and other legislative matters within the Committee's jurisdiction;

(d) transcripts of open meetings being made available to the public on a timely basis;

(e) all amended bills to show clearly the matters added since the previous print; and

(f) advance notice and the opportunity for public hearings on all private or special tax bills and amendments.

Conflicts of Interest

The jurisdiction of the Senate Finance Committee covers the entire economic landscape, not just with regard to tax matters, but also in dealing with health, welfare, trade and other issues. The existing provisions to protect against potential conflicts of interest by members of the Senate, and their staffs are totally inadequate. A system of public disclosure by government officials of sources of income, assets and other holdings as well as gifts is the key to dealing with potential conflict of interest problems. The Senate has recognized this by passing comprehensive public financial disclosure legislation three times in the last four years only to see such legislation die in the House. The Senate once again this week is considering personal financial disclosure legislation as part of the Watergate Reform Act. It was unanimously reported out by the Government Operations Committee under the leadership again of Senator Ribicoff.

Common Cause urges this Committee to implement the basic provisions of this legislation immediately by adopting rules that require full public disclosure of personal financial interests and sources of income by members of the Committee and senior staff personal. Nine members of the Committee (Senators Ribicoff, Nelson, Mondale, Gravel, Bentsen, Haskell, Dole, Packwood, and Roth) have already made a voluntary financial disclosure in past years according to a Congressional Quarterly article.

The Committee should also establish procedures for members and staff to refrain from voting or taking part in deliberations on matters in which they have a personal interest of more than a *de minimus* amount.

Conclusion

Common Cause believes that adoption of the proposals we have recommended would start the Committee on the path to restoring public trust in the integrity of the tax system. It would assure that a comprehensive record is developed for Senators, the media and the public to make judgments regarding tax proposals and preferences considered and recommended by the Senate Finance Committee. It would also begin the process of convincing the American people that the tax system is designed to serve the public interest, not the various special interests who can exercise the most pressure and undue influence over legislators.

APPENDIX A

CAMPAIGN CONTRIBUTIONS TO THE SEVEN MEMBERS OF THE SENATE FINANCE COMMITTEE WHO RAN FOR REELECTION IN 1974

Prepared by:

Common Cause Campaign Finance
Monitoring Project

ELECTION CANDIDATES	TALMADGE,HERMAN E DEM/INCUMBENT GENERAL ELECTION INFO: WON/OPPOSED 627,376 VOTES (71.7%) PRIMARY ELECTION INFO: WON/OPPOSED				JOHNSON,JERRY E REP/CHALLENGER GENERAL ELECTION INFO: LOST/OPPOSED 246,866 VOTES (28.2%) PRIMARY ELECTION INFO: WON/UNOPPOSED			
	-NMBR-	$-AMOUNT	AVER	--%--	-NMBR-	$-AMOUNT	AVER	--%--
TOTAL FUNDS AVAILABLE		254,870				12,640		
CASH ON HAND - BEGINNING		75,829				0		
INDIVIDUAL CONTRIBUTIONS-$500 AND OVER:	68	65,965	970	25.9	0	0	0	.0
IN STATE	56	45,465	812	17.8	0	0	0	.0
OUT OF STATE	12	20,500	1,708	8.0	0	0	0	.0
COMMITTEE CONTRIBUTIONS:	33	59,705	1,809	23.4	0	0	0	.0
INTEREST COMMITTEES	32	57,705	1,803	22.6	0	0	0	.0
POLITICAL PARTY COMMITTEES	1	2,000	2,000	.8	0	0	0	.0
LOANS RECEIVED	0	0	0	.0	1	6,000	6,000	47.5
LOANS REPAID	0	0	0	.0	0	0	0	.0
NET LOANS OUTSTANDING	0	0	0	.0	1	6,000	6,000	47.5
TOTAL EXPENDITURES		65,207				12,856		
CASH ON HAND - ENDING		183,668				204		

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT T
GA 55 DEM	*TALMADGE,HERMAN E	ADAIR,JACK	ATLANTA	GA	RETIRED MORTGAGE BANKER	1,000
		ADAMS,L CLIFFORD JR	ELBERTON	GA	ATTY HEARD,LEVERETT&ADAMS	500
		ALSTON,PHILIP JR	ATLANTA	GA	ATTY ALSTON,MILLER & GAINES	500
		BAIZE,E P	ATLANTA	GA	PRES BAIZE BROS TRUCKING CO	1,200
		BEEBE,W T	ATLANTA	GA	CHM DELTA AIR LINES	500
		BIRD,F M	ATLANTA	GA	ATTY JONES,BIRD & HOWELL	500
		BROOKS,D W	ATLANTA	GA	CH BD GOLDKIST INC	1,000
		CALHOUN,LAWTON M	SAVANNAH	GA	PRES ATLANTIC TOWING CO	500
		CALLAWAY,CASON	COLUMBUS	GA	PRES DIXIE SIZE & CHEMICAL CO	2,000
		DAVIS,A C	JACKSONVILLE	FL	EXEC WINN-DIXIE INC	3,250
		DAVIS,JAMES E	JACKSONVILLE	FL	EXEC WINN-DIXIE INC	3,250
		DEWBERRY,L GLENN JR	DECATUR	GA	PRES ATLANTIC STEEL CO	500
		DRAKE,HENRY C	PEACHTREE CTY	GA	PHYSIC	600
		DUKE,PAUL A	ATLANTA	GA	PRES DUKE ENTERPRISES	1,000
		DUNCAN,JOHN P JR	ALEXANDRIA	VA	RAILRD EXEC	1,000
		DUVALL,W C	ATLANTA	GA	CH BD ATLANTA FED SVNGS & LN	1,000
		ELSAS,HERBERT	ATLANTA	GA	ATTY SUTHERLAND,ASBILL,BRENNAN	500
		ELSON,ED	ATLANTA	GA	PRES THE HEALEY BLDG CO	1,100
		ENGELHARD,MRS CHARLES W JR	FAR HILLS	NJ	HSWF PHILANTHR	500
		FLOWERS,W H	THOMASVILLE	GA	EXEC FARMER FLOWER INDUSTRIES	1,000
		GARRETT,DAVID C JR	ATLANTA	GA	PRES DELTA AIR LINES	500
		GOODLOE,JOHN D JR	ATLANTA	GA	ADAMS CATES CO	500
		GRIFFIN,WARREN S	ATLANTA	GA	WARREN S GRIFFIN INS AGENCY	1,000
		HALL,J A III	ATLANTA	GA	1ST VP THE C&S NTL BK	500
		HARRINGTON,JAMES C JR	CUMMINGS	GA	PRES FORSYTH INDUSTRIES	500
		HAYMAN & SIZEMORE	ATLANTA	GA	PARTNERSHIP	1,000
		HEARD,ROBERT M	ELBERTON	GA	ATTY	1,000
		HOFMANN,PHILIP B	ANNANDALE	NJ	RETIRED	500
		HOLMAN,W J JR	PLAINFIELD	NJ	RETIRED	1,000
		HULSE,FRANK W	BIRMINGHAM	AL	PRES SOUTHERN AIRWAYS	500
		ISON,ROBERT L	ATLANTA	GA	PRES ISON FURNITURE CO	500
		JALIL,A	ELBERTON	GA	PRES GA SYNTHETICS INC	2,500
		JOHNSON,J SEWARD	SKILLMAN	NY	RETIRED	1,000
		JONES,CHARLIE W	ALEX	VA	EXEC	500
		KATTEL,RICHARD L	ATLANTA	GA	PRES C&S NATL BK	1,000
		KAUFMAN,DR JAMES A	ATLANTA	GA	PHYSICIAN	500
		KENNEDY,A T	ATLANTA	GA	DAVIDSON KENNEDY CO	500
		LANDERS,DR R RANDAL	COLLEGE PARK	GA	DOCTOR OF DENTAL SURGERY	500
		LEVERETT,E FREEMAN	ELBERTON	GA	ATTY HEARD,LEVERETT&ADAMS	500
		LOONEY,WILTON	ATLANTA	GA	CH BD GENUINE PARTS CO	1,000
		LOUDERMILK,ROBERT C	ATLANTA	GA	BUS MN AARON RENTS INC	1,000
		MCCLELLAND,JOHN E	ATLANTA	GA	PRES BACHE & CO	500
		MCNEIL,HENRY S	PLYMOUTH MTNG	PA	BD MEM JOHNSON & JOHNSON INC	1,000
		METTS,J C SR	SAVANNAH	GA	M D	500
		MOUNTCASTLE,PAUL	ALBANY	GA	BLUE SPGS PLANTATION	500
		MUNFORD,DILLARD	ATLANTA	GA	PRES MUNFORD INC	500
		MYRICK,RICHARD S	ATLANTA	GA	PRES THE MYRICK CO	500
		NESMITH,BUDDY M	HAWKINSVILLE	GA	BUS EXEC BUDDY NESMITH OIL CO	500

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CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT 1
GA 55 DEM	*TALMADGE,HERMAN E	OLIN,JOHN M	ST LOUIS	MO	RETIRED EXEC OLIN CO	3,000
		PEROT,H R	DALLAS	TX	CH EDS	5,000
		POOLE,JAMES P	ATLANTA	GA	JAMES P POOLE & CO INC INS	1,000
		POST,ALLEN	ATLANTA	GA	ATTY HANSELL,POST,DORSEY	500
		PRINCE,JOHN III	TIFTON	GA	PRES PRINCE RETAIL & LSNG	465
		REDWINE,H R	FAYETTEVILLE	GA	PRES FARMERS & MERCHANTS BK	1,000
		RICHARDS,ROY	CARROLLTON	GA	PRES SOUTHWIRE CORP	1,000
		ROLLINS,C WAYNE	ATLANTA	GA	PRES ROLLINS INC	1,000
		RUTLAND,GUY W III	DECATUR	GA	EXEC TRUCKING INDUS	1,000
		SCOTT,WALTER C	SAVANNAH	GA	SR VP SAVANNAH FOODS & INDUST	500
		SIBLEY,JOHN A	ATLANTA	GA	RETIRED ATTY KING & SPALDING	1,000
		SINGLETARY,L H	THOMASVILLE	GA	BUSMAN	500
		SPRAGUE,R G	SAVANNAH	GA	CH BD SAVANNAH FOODS & INDUS	500
		SPRAGUE,W W JR	SAVANNAH	GA	PRES SAVANNAH FOODS & INDUST	500
		STRICKLAND,LOYD	CHESTNUT MT	GA	CHBD CRYSTAL FARMS	500
		THARPE,ROBERT	ATLANTA	GA	CHAIRMAN THARPE & BROOKS	500
		TOPPLE,JAMES A	DECATUR	GA	CONSTR PATTILLO CONSTR CO	500
		TROUTMAN,SANDERS	ATLANTA	GA	ATTY	1,000
		VEREEN,W C	MOULTRIE	GA	RIVERSIDE MFG CO	500
		WATKINS,BILL	ATLANTA	GA	WATKINS CAROLINA EXP INC	3,000
TOTAL FOR CANDIDATE ---						65,965

CONTRIBUTIONS FROM SPECIAL INTEREST GROUPS
CONTRIBUTOR WITHIN CANDIDATE

ST AC PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
GA 55 DEM	*TALMADGE,HERMAN E	DAIRYMEN INC	SPACE (TRUST FOR SPEC AGRI COMMUNITY ED)	5,000
		MID AMERICA DAIRYMEN INC	ADEPT (AGRI & DAIRY EDUC POL TRUST)	5,000
		AM RICE GROWERS COOP ASSN	RICE PRODUCERS PEC LAKE CHARLES LA	1,000
		FLORIDA AGRICULTURE	FLORIDA AGRICULTURAL EDUCATION COMM	500
		NATL COUNCIL OF FARMER COOPS	PACE (POL ACTION FOR COOP EFFECTIVENESS	500
	SUB-TOTAL FOR ALL AGRICULTURAL COMM.	---		12,000
		HUGHES AIRCRAFT CO	HUGHES ACTIVE CITIZENSHIP FUND	5
		NATL TELEPHONE CO-OP ASSN	TELEPHONE EDUCATION COMM ORGANIZATION	200
		US INDEPENDENT TELEPHONE ASSN	COMPAC (COMMUNICATIONS PAC)	1,650
		GENERAL ELECTRIC CO	NON PARTISAN POL COMM (NEW YORK)	1,000
		AMERICAN BANKING	BANKPAC (BANKING PROFESSION PAC)	1,000
		TRUST CO OF GEORGIA	GOOD GOVT GROUP (GEORGIA)	1,000
		SECURITIES INDUSTRY	SECURTIES INDUSTRY CAMPAIGN COMM	3,000
		COCA COLA COMPANY	NON-PARTISAN COMM FOR GOOD GOVT (GA)	5,000
		FOOD INDUSTRY	FOOD INDUSTRY GOOD GOVT COMM	500
		KRAUSE MILLING COMPANY	EAST WISCONSIN CLUB (MILWAUKEE)	100
		NATL CONFECTIONERS ASSN OF US	GOVT IMPROVEMENT GROUP	3,000
		FOREST PRODUCTS INDUSTRY	FOREST PRODUCTS POL COMM	1,000
		NATL RESTAURANT ASSN	RESTAURATEURS PAC	1,000
		N A OF LIFE UNDERWRITERS	LIFE UNDERWRITERS PAC (LUPAC)	1,500
		SOUTHERN RAILWAY SYSTEM	SOUTHERN RAILWAY TAX ELIGIBLE GGF	2,000
		N A OF REALTORS	REAL ESTATE PAC	2,000
		AM COTTON SHIPPERS ASSN	COMM ORGANIZED FOR TRADING OF COTTON	250
	SUB-TOTAL FOR ALL BUSINESS COMM.	---		24,205
		AM DENTAL ASSN (NATL)	AMERICAN DENTAL PAC (ADPAC)	2,000
		AM MEDICAL ASSN (NATL)	AMERICAN MEDICAL PAC (AMPAC)	2,500
		AM NURSING HOME ASSN	ANHEPAC AMERICAN NURSING HOME ED & PAC	500
		AM PHYSICAL THERAPY ASSN	AMERICAN PHYS THERAPY CONG ACTION COMM	100
		AM PODIATRY ASSN	PODIATRY PAC	5,000
		AM SOCIETY OF ORAL SURGEONS	ORAL SURGERY PAC (OSPAC)	5,000
	SUB-TOTAL FOR ALL HEALTH COMM.	---		15,100
		MARINE ENGINEERS	MEBA POL ACTION FUND	2,500
		SEAFARERS	SEAFARERS POL ACTIVITY DONATION	2,500
		MEATCUTTERS	AMCOPE	400
	SUB-TOTAL FOR ALL LABOR COMM.	---		5,400
		NATL RURAL ELECTR COOP ASSN	ACRE(ACTION COMM FOR RURAL ELECTRIFICAT)	1,000
	SUB-TOTAL FOR ALL MISCELLANEOUS COMM.	---		1,000
		NATIONAL CONGRESSIONAL LEVEL	DEMOCRATIC SENATORIAL CAMPAIGN COMM	2,000-
	SUB-TOTAL FOR ALL DEMOCRATIC COMM.	---		2,000
	TOTAL FOR CANDIDATE IS ---			59,705

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ELECTION CANDIDATES	RIBICOFF,ABRAHAM A DEM/INCUMBENT GENERAL ELECTION INFO: WON/OPPOSED 690,820 VOTES (63.7%) PRIMARY ELECTION INFO: WON/CONVENTION				BRANNEN,JAMES H (III) REP/CHALLENGER GENERAL ELECTION INFO: LOST/OPPOSED 372,055 VOTES (34.5%) PRIMARY ELECTION INFO: WON/CONVENTION			
	-NMBR-	$-AMOUNT	AVER	--%--	-NMBR-	$-AMOUNT	AVER	--%--
TOTAL FUNDS AVAILABLE		454,027				67,893		
CASH ON HAND - BEGINNING		16,463				0		
INDIVIDUAL CONTRIBUTIONS-$500 AND OVER:	223	244,255	1,095	53.8	7	5,000	714	7.4
IN STATE	89	90,057	1,012	19.8	6	3,000	500	4.4
OUT OF STATE	134	154,198	1,150	34.0	1	2,000	2,000	2.9
COMMITTEE CONTRIBUTIONS:	17	14,800	871	3.3	4	5,740	1,435	8.5
INTEREST COMMITTEES	16	7,800	488	1.7	3	740	247	1.1
POLITICAL PARTY COMMITTEES	1	7,000	7,000	1.5	1	5,000	5,000	7.4
LOANS RECEIVED	0	0	0	.0	1	1,500	1,500	2.2
LOANS REPAID	1	250	250	.1	1	1,500	1,500	2.2
NET LOANS OUTSTANDING	1	250	0	.0	0	0	0	.0
TOTAL EXPENDITURES		435,985				66,162		
CASH ON HAND - ENDING		18,042				1,732		

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT T
CT 55 DEM	*RIBICOFF,ABRAHAM A	ABRAHMS,JOHN	W HARTFORD	CT	INS ABRAHMS AGY	[illegible]
		ABRAMS,MR&MRS DAVID	W HARTFORD	CT	PRES PIONEER SYS	[illegible]
		ABRAMSON,ALBERT	BETHESDA	MD	PRTNR TOWER CONST CO	2,000
		ABUZA,HENRY	ROCKVILLE	CT	BUILDER	[illegible]
		AMPER,ALAN	PITTSBURGH	PA	CH BD & PRES STEELMET INC	[illegible]
		APPLEMAN,NATHAN	PALM BEACH	FL	N APPLEMAN CO	1,500
		ARNHOLD,HENRY H	N Y	NY	PRTNR ARNHOLD & BLEICHROEDER	[illegible]
		ARONS,HUBERTON	W HARTFORD	CT	EXEC HTFD FREEZER CORP	500
		BANK,MERRILL L	BALTIMORE	MD	V CHMN MD CUP CORP	1,000
		BASKIN,PHILIP	PITTSBURGH	PA	ATTY	1,000
		BELFER,ARTHUR B	N Y	NY	CHBD BELCO PETROLEUM CORP	2,000
		BENJAMIN,ROBERT S	N Y	NY	CO CH BD UNITED ARTISTS	[illegible]
		BERGIN JR,EDWARD D	WATERBURY	CT	ADMIN GOLDEN HILL NURSING HOME	[illegible]
		BERNSTEIN,HYMAN S	WASH	DC	CH BD MODERN ELEC CORP	1,000
		BERNSTEIN,NORMAN	WASH	DC	PRES N BERNSTEIN MGMT INC	1,[illegible]
		BISHOP,EDWARD	N Y	NY	PRES BISHOP ROSEN INC	2,[illegible]
		BISHOP,WARREN	N ROCHELLE	NY	MEM NY STOCK EXCH	[illegible]
		BLACK,ELI M	WESTPORT	CT	CH BD UNITED BRANDS CO	2,[illegible]
		BLACK,SHIRLEY L	WESTPORT	CT	HSWF	2,[illegible]
		BLANC,CHESTER	W HARTFORD	CT	RET	1,[illegible]
		BLANK,JEROME	MIAMI BCH	FL	PRES NATL BRANDS	[illegible]
		BORWICK,CHARLES M	RANCHO MIRAGE	CA	RETIRED	1,[illegible]
		BROAD,ELI	LOS ANGELES	CA	CH BD KAUFMAN & BROAD	[illegible]
		BURKE,DOMINICK	RIDGEFIELD	CT	LAWYER	[illegible]
		BURROWS,SELIG S	N Y	NY	CH BD CELLUCRAFT INC	1,[illegible]
		CALDER,ALEXANDER	ROXBURY	CT	ARTIST	4,[illegible]
		CANTOR,ARMAND	BROOKLYN	NY	NATL COLD STORAGE CO	[illegible]
		CARTER,VICTOR M	LOS ANGELES	CA	RET EXEC	[illegible]
		CHASE,DAVID	W HARTFORD	CT	DEV	1,[illegible]
		CLARK,GEORGE L	SOUTHPORT	CT	CONSULTANT SANITAS CORP	1,[illegible]
		COHEN,EMMANUEL	WASH	DC	VP GIANT FOOD INC	1,[illegible]
		COHEN,N M	WASH	DC	CH BD GIANT FOOD INC	2,[illegible]
		COHEN,RUBY	COLCHESTER	CT	REST	[illegible]
		COHEN,WILFRED P	BOCA RATON	FL	CH B JOS M COHEN & SONS	[illegible]
		COHON,J DONALD	W HARTFORD	CT	EXEC STERN & CO INC	[illegible]
		COUMANTAROS,GEORGE	GREENWICH	CT	SHIPOWNER	[illegible]
		COWAN,IRVING	HOLLYWOOD	FL	PRES DIPLOMAT HTL	1,000
		COYNE,MARSHALL B	WASH	DC	PRES MADISON HOTEL	1,0[illegible]
		DANE,MAXWELL	N Y	NY	RET	[illegible]
		DANZANSKY,JOSEPH B	WASH	DC	PRES GIANT FOOD INC	1,500
		DAPSKY,JULIUS	MIAMI BCH	FL	RET	500
		DAVID,MR&MRS ROY C	SIMSBURY	CT	EXEC CENTRAL METAL CO	[illegible]
		DAVIDSON,DONALD	W HARTFORD	CT	EXEC DAVIDSON & LEVENTHAL	[illegible]
		DAVIS,JACK	PALM BCH	FL	CH BD METROPOLITAN NATL BK	[illegible]
		DAVIS,JEROME	BEDFORD	NY	PRES CONSOL DIESEL ELEC CO	[illegible]
		DAVIS,LEONARD MR&MRS	N Y	NY	DIR COLONIAL PENN	5,000
		DEF LORD,MR&MRS GEORGE	NEW HAVEN	CT	PROF YALE UNIV	500
		DEITCH,ALECN,MR&MRS	PITTSBURGH	PA	PRES DEITCH & CO	5,000

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
CT 55 DEM	RIBICOFF,ABRAHAM A	DEKELBAUM,MARVIN	BETHESDA	MD	EXEC VP C E SMITH BLDG	1,500
		DEVOL,GEORGE	WILTON	CT	ENG	500
		DIBNER,BERN	WILTON	CT	ENG BURNDY LIBRARY	500
		EDELL,MORTON	BOCA RATON	FL	PRES BISHOP INDUSTRIES	500
		ENGELBERGER,JOSEPH F	NEWTOWN	CT	PRES CONSOLIDATED CONTROLS	1,000
		FACTOR,JOHN	BEVERLY HILLS	CA	INVESTOR	1,000
		FARKAS,GEORGE	PALM BEACH	FL	RETIRED	5,000
		FIERMAN,HAROLD L	N Y	NY	ATTY	1,000
		FISCHBACH,HENRY F	WESTPORT	CT	ENGINEERING	2,000
		FREEMAN,CARL M	GAITHERSBURG	MD	CH BD C FREEMAN ASSN	1,000
		FUNGER,MORTON	CHEVY CHASE	MD	PRES COMM RLTY OFC CO	1,000
		GAMPEL,HARRY	W HARTFORD	CT	PRES GAMPEL REALTY	500
		GEWIRZ,CARL S	BETHESDA	MD	INVESTOR GEWIRZ,MORRIS&BERNARD	1,000
		GIMBEL,MRS BERNARD F	GREENWICH	CT	HSEWF	500
		GLADSTEIN,ANSEL	FAIRFIELD	CT	BLDR	1,000
		GLADSTONE,HERBERT	STAMFORD	CT	VP TREAS CONDEC CORP	500
		GOLDBERG,HENRY L	N Y	NY	BRKR GOLDBERG & CO	500
		GOLDFARB,J A	N Y	NY	RETIRED	2,000
		GOLDMAN,NATHAN	N Y	NY	PRES SONNENBLICK GOLDMAN CORP	500
		GOLDSTEIN,COL JULIUS	WASH	DC	INVESTOR	500
		GOODMAN,ABRAHAM	ESSEX FALLS	NJ	EXEC H GOODMAN & SONS	500
		GRADMAN,DAVID J	PALM BCH	FL	RETIRED CONSULT	1,000
		GREENBERG,ARNOLD C	W HARTFORD	CT	PRES COLECO INC	1,000
		GREENBERG,LEONARD E	W HARTFORD	CT	EXEC COLECO IND	500
		GREENBERG,SANFORD D	WASH	DC	V CH KMS IND INC	1,000
		GREENE,JEROME L	NEW YORK	NY	ATTY	500
		GRIMSON,BETTINA	NEW YORK	NY	DOCTOR	500
		HARITON,MORRIS B	WASH	DC	FOUNDER M B HARITON & CO	500
		HARRIS,J E	SHORT HILLS	NJ	HARRIS & SONS STEEL CO	1,000
		HAUSSAMEN,CAROLYN	NEW YORK	NY	REAL ESTATE	1,000
		HERSHMAN,DR&MRS HARRY	BRISTOL	CT	PHYSICIAN	500
		HILL,MORTON	MIAMI BCH	FL	RET	1,000
		HILL,RAYMOND	KENSINGTON	CT	PRES NRTHRN PETRO	1,000
		HOFFMAN,MR&MRS BURTON	W HARTFORD	CT	HOFFMAN OLDS	500
		HOFFMAN,SAMUEL K	W HARTFORD	CT	PRES HOFFMAN PAINT & WALLPAPER	500
		HOKIN,MR&MRS EDWIN E	HGHLAND PK	IL	EXEC UNARCO INDUS	2,000
		HORDESTY,C HOWARD	GREENWICH	CT	EXEC VP CONTINENTAL OIL	500
		HORNSTEIN,BENJAMIN S	N Y	NY	RET INVESTMENTS	500
		HOROWITZ,ARTHUR R	MIAMI BCH	FL	PRES JUNIORS OF PLM BCH	1,000
		ISAACS,EDWARD	WESTPORT	CT	CPA	1,000
		ISAN,JERRY	CORAL GABLES	FL	FRANCH OWNER MCDONALDS	500
		ISENBERG,CHARLES	W HARTFORD	CT	EXEC L ISENBERG ASSOC	500
		KAISERMAN,HORTENSE M	WYNNEWOOD	PA	HOUSEWIFE	500
		KALMAN,HENRY	N Y	NY	INVESTOR	500
		KAPLAN,BERNARD B	W HARTFORD	CT	INS	500
		KAROSEN,LEON	KANSAS CTY	KS	PRES YOUTHCRAFT INC	2,000
		KARR,DAVID	PARIS FRANCE		INVESTMENTS	1,000
		KIMMEL,EDWARD A	N Y	NY	ATTY	1,000

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST	RC	PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
CT	55	DEM	*RIBICOFF,ABRAHAM A	KLEIN,SAM W	CLEVELAND	OH	DIR & TREAS BALLY MFG CO	500
				KOGOD,ROBERT P	BETHESDA	MD	PRES C E SMITH MGMT INC	3,000
				KOHN,BERNHARD L	W HARTFORD	CT	RET	500
				KORMAN,SAMUEL J	JENKINTOWN	PA	RL EST	1,000
				KRAMER,ARNOLD	N Y	NY	MFG DIST OF HOSIERY	500
				KRAMER,NORMAN M	STAMFORD	CT	BUS EXEC	500
				KRAUS,WILLIAM J	CLEVELAND	OH	ATTY	[illegible]
				KRAVIS,RAYMOND F	TULSA	OK	ENGINEER	1,000
				KRETSCH,HANS W	NEWTOWN	CT	VP CONSOLIDATED CONTROL	[illegible]
				KRIEGER,LEONARD H	RANCHO MIRAGE	CA	RETIRED	[illegible]
				KRONHEIM,MILTON S	WASH	DC	PRES M KRONHEIM & CO	500
				KUCHEL,THOMAS H	BEVERLY HILLS	CA	ATTY	1,000
				LANE,HAROLD M	BYRAM	CT	PRES LERNER SHOPS	1,000
				LEHRMAN,JACOB	WASH	DC	EXEC VP & SECY GIANT FOOD INC	1,000
				LENTZ,MERVYN D	W HARTFORD	CT	PRES BROSCOME DIS	[illegible]
				LEVESTON,SAMUEL	W HARTFORD	CT	INSUR	500
				LEVY,HARRY	MIAMI BCH	FL	LND DEVELOPER	[illegible]
				LEVY,SAMUEL J	WHITE PLAINS	NY	CHMN CELLU CRAFT INC	[illegible]
				LINOWES,ROBERT E	BETHESDA	MD	ATTY	1,000
				LIST,MR&MRS ALBERT A	BYRAM	CT	CH BD ALBERT LIST FOUNDATION	4,000
				LUBIN,CHARLES W	CHICAGO	IL	RETIRED	2,000
				MACK,H B	MASPETH	NY	BLDR INVESTOR	[illegible]
				MAILMAN,J L	N Y	NY	MAILMAN BROS PRIVATE INVEST	5,000
				MALKIN,PETER L	GRNWCH	CT	ATTY	500
				MASHKIN,JACK	W HARTFORD	CT	EXEC MASHKIN TRUCKING	500
				MASLOW,LESTER	GREAT NECK	NY	EXEC WEST MFG CO	500
				MATHES,PETER	NEW YORK	NY	PHOTOGRAPHER	1,000
				MCCOLOUGH,CHARLES P	GREENWICH	CT	EXEC XEROX CORP	2,000
				MCDONOUGH,E MERRITT	W HARTFORD	CT	INS C MCDONOUGH & SONS	1,000
				MELTZER,ABE	GREAT NECK	NY	EXEC TRIANGLE PAC FOREST PROD	2,500
				MERCEDE,NICHOLAS J	STAMFORD	CT	GEN CONTRACTOR	[illegible]
				MERKIN,MICHAEL J	NEW YORK	NY	V-CH BD FRANKLIN NATL BK	1,000
				MINSKOFF,HENRY H	N Y	NY	RL EST	[illegible]
				MOORE,HYMAN L	NEW BRITAIN	CT	EXEC MOORE DRUG EXCH	[illegible]
				MUGAR,STEPHEN P	BOSTON	MA	EXEC STAR MARKET CO	1,000
				NABOICHECK,N AARON	W HARTFORD	CT	EXEC STANDARD MATTRESS CO	500
				NEIDITZ,MOSES J	W HARTFORD	CT	PRES M J NEIDITZ & CO	500
				OCHSMAN,RALPH	WASH	DC	BUILDER O F C CO	1,000
				OURISMAN,FLORENZ R	WASH	DC	INVESTOR	500
				OURISMAN,MANDELL J	CHEVY CHASE	MD	CHMR OURISMAN CHEV	500
				PARKER,JACK	BOCA RATON	FL	RLTR	1,000
				PEDERSEN,WILLIAM F	NEW HAVEN	CT	ARCHITECT PLANNER	1,000
				PERRY,JACK A	FAIRFIELD	CT	BUS EXEC & ATTY PERRY OPTICAL	500
				PETRIE,MILTON J	N Y	NY	CHMN PETRIE STORES	1,000
				PISAR,SAMUEL	PARIS	FR	ATTY	500
				PLISHER,PAUL	NORWALK	CT	RADIO RESEARCH	500
				PLOTKIN,BENJAMIN L	FAIRFIELD	CT	PRES FAIRFIELD LUMBER	500
				POLLIN,ABE	WASH	DC	CH BD CAPITAL CENTRE	1,000

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
CT 55 DEM	*RIBICOFF,ABRAHAM A	POSES,JACK I	WESTPORT	CT	RET	1,700
		PRATT,GEORGE D JR	BRIDGEWATER	CT	AGRIC SUNNY VALLEY FARM	1,500
		PRESTON,MRS WILLIAM M	LINCOLN	MA	HOMEMAKER	500
		RAPKIN,JOSEPH E	MILWAUKEE	WI	ATTY	500
		RATNER,ALBERT B	CLEV HTS	OH	EXEC VP FOREST CITY MATERIALS	500
		RAVALESE,JOSEPH JR	W HARTFORD	CT	EXEC WOOSTEN EXP	600
		REYNOLDS,EILEEN	HIGHLAND PK	IL	HSWF	1,000
		RICH,ROBERT N	STAMFORD	CT	RL EST DEV	1,000
		RIFKIND,SIMON H	N Y	NY	ATTY PAUL WEISS RIFKIND GARRIS	500
		ROBINSON,D M	PITTSBURGH	PA	BUS CONS	500
		RODGERS,CHARLES M	NEW CANAAN	CT	VP CONDEC CORP	1,000
		ROGOW,LOUIS B	W HARTFORD	CT	EXEC BIRKIN MFG CO	500
		ROSE,DAVID	N Y	NY	RET	1,000
		ROSEN,JOHN N	BUCK COUNTY	PA	PHYSICIAN	500
		ROSENBERG,GERALD	WESTPORT	CT	EXEC VP CONDEC CORP	1,000
		ROSENSTEIN,MR&MRS A J	CANAAN	CT	MGNG DIR CAMDON RLTY	500
		ROSS,DANIEL M	WASH	DC	ATTY	1,000
		RUBENSTEIN,CHARLES	W HARTFORD	CT	METAL SCRAP DLR CNTR MTL CO	500
		RUDIN,HENRY	SCARSDALE	NY	RET	1,000
		RUDIN,SAMUEL	N Y	NY	CH BD RUDIN MGT CO	1,000
		RYAN,MARTIN J	BRIDGEPORT	CT	RET	1,000
		SAGARIN,J DANIEL	WOODBRIDGE	CT	ATTY	[illegible]
		SAGRIN,PHILIP M	BRIDGEPORT	CT	CH VCA GREENWICH	1,200
		SALESKY,CHARLES	E NORWALK	CT	PRES KDCC DIV/HCA	1,100
		SALOMON,EDNA	STAMFORD	CT	HSELF	1,000
		SALOMON,JEAN K	ST LOUIS	MO	HSWF	2,000
		SALOMON,SIDNEY JR	ST LOUIS	MO	INS EXEC	2,000
		SAVITT,A D	NORWALK	CT	LAWYER	1,000
		SCHAFLER,NORMAN I	N Y	NY	PRES CONDEC CORP	2,000
		SCHEUER,S H	N Y	NY	INVEST	2,000
		SCHINE,LEONARD	WESTPORT	CT	ATTY	1,000
		SCHNIER,CHARLES	SIMSBURY	CT	PRES C SCHNIER ENTP	[illegible]
		SEIDEMAN,EMANUEL	JAMAICA EST	NY	SEIDOW INC	[illegible]
		SELTZER,NATHAN R	MELROSE PK	PA	RL EST SELTZER ORG	[illegible]
		SHEKETOFF,LEWIS S	W HARTFORD	CT	PRES A C CORP	2,[illegible]
		SHIPLEY,WILLIAM M	CLEVELAND	OH	CH BD MAIN LINE CLEVELAND INC	1,[illegible]
		SIEGELAUB,DONALD	WESTPORT	CT	PRIVATE INVESTMENTS	[illegible]
		SILVER,JULIUS	BYRAM	CT	ATTY SAPERSTEIN BARNETT SOLOMO	3,000
		SILVER,ROSLYN	BYRAM	CT	HSWF	2,000
		SILVERMAN,HERBERT R	RED BANK	NJ	CH FNC COMM HELMSLEY SPEAR INC	500
		SILVERMAN,LAWRENCE	BETHESDA	MD	RL EST SLS LEWIS&SILVERMAN INC	1,000
		SIMON,JACK L	PLM BCH	FL	RET	500
		SINGER,HERBERT	STAMFORD	CT	ATTY	500
		SLAVITT,A D	NORWALK	CT	LAWYER	1,000
		SMITH,CHARLES E	WASH	DC	CH BD CHAS SMITH BLDG CORP	3,000
		SMITH,ROBERT H	BETHESDA	MD	PRES C SMITH BLDG CORP	3,000
		SOFFER,JOSEPH	BOCA RATON	FL	RL EST	1,000
		SOMMER,SIGMUND	GREAT NECK	NY	INVEST BLDR	5,000

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST	RC	PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
CT	55	DEM	*RIBICOFF,ABRAHAM A	SONNENBERG,BENJAMIN	NEW YORK	NY	RET	500
				SPANIER,MAURY L	HARTSDALE	NY	ATTY	1,000
				STEINBERG,AL A	LONG ISLAND	NY	CONVERTER ACKER & JABLOW INC	1,000
				STERLING,AUDREY M	MALIBU	CA	DIR CORP SEC AQUARIAS TRAVEL	2,000
				STERN,MAX	N Y	NY	EXEC HARTZ MOUNTAIN PET FOODS	2,000
				STICH,IRVING R	W HARTFORD	CT	BUILDER DEVELOPER	2,000
				SUISMAN,EDWARD	W HARTFORD	CT	EXEC SUISMAN & BLUMENTHAL	2,000
				SUISMAN,JOHN R	W HARTFORD	CT	EXEC SUISMAN BLUMENTHAL	1,000
				SUISMAN,MICHAEL	W HARTFORD	CT	PRES SUISMAN & BLUMENTHAL	1,000
				SUISMAN,RICHARD	HARTFORD	CT	EXEC SUISMAN & BLUMENTHAL	1,000
				SULLIVAN,JOHN L	NEW BRITAIN	CT	RETIRED	[illegible]
				SULZBERGER,MRS ARTHUR H	STAMFORD	CT	RETIRED	500
				SWEIG,MORTON	N Y	NY	V CHM NATL KINNEY CORP	[illegible]
				TIMONER,ELI	CORAL GABLE	FL	CH AIR FLORIDA INC	500
				TITLE,MELVIN W	W HARTFORD	CT	INS	500
				TOLL,ALBERT A	BOCA RATON	FL	RL EST	1,000
				UBERMAN,CHAIM M	BETHESDA	MD	PRES NATL SOUVENIR CNTR	1,000
				VAN SINDEREN,ALFRED W	WOODBRIDGE	CT	PRES S N ENG TEL CO	1,000
				WARSHAW,ELMER C	SADDLE RIVER	NJ	EXEC TENNECO	[illegible]
				WASSERMAN,LEW R	BEVERLY HILLS	CA	EXEC MCA	4,000
				WEIL,FRANK A	MT KISCO	NY	CH FIN COM PAINE WEBBER INC	500
				WEINBERG,LAWRENCE	BEVERLY HILLS	CA	CH BD LARWIN GROUP	1,000
				WEISSMAN,GEORGE MRS	RYE	NY	HSEWF	500
				WELLS,JAY	SCARSDALE	NY	PRES WELLS NATL SERV CORP	1,000
				WETZLER,BENJAMIN	N Y	NY	STKBKR HARDY & COE	500
				WIEN,LAWRENCE A	WESTPORT	CT	ATTY	3,000
				WIEN,MAE L	WESTPORT	CT	HSEWF	3,000
				WILLIAMS,HAROLD M	BEVERLY HILLS	CA	DEAN GRAD SCH MGMT UCLA	3,000
				WOLFSON,FRANCES	MIAMI BCH	FL	HSWF	1,000
				WOLFSON,LYNN MRS	MIAMI BEACH	FL	HSWF	500
				YOUMANS,MR&MRS BERTRAM	W HARTFORD	CT	CH BD CONN SPRING CO	[illegible]
				ZIRINSKY,MR&MRS RICHARD	LAWRENCE	NY	OWNER GRACIE SQ HOSP	1,000
TOTAL FOR CANDIDATE ---								244,005

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CONTRIBUTIONS FROM SPECIAL INTEREST GROUPS
CONTRIBUTOR WITHIN CANDIDATE

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ST	AC	PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
CT	55	DEM	RIBICOFF,ABRAHAM A	SAVINGS BANKERS	SAVINGS BANKERS NON-PARTISAN PAC	100
				CNA FINANCIAL CORP	CNA EMPLOYEES CIVIC RESPONSIBILITY COMM	100
SUB-TOTAL FOR ALL BUSINESS COMM.				---		200
				AM NURSING HOME ASSN	AMHEPAC AMERICAN NURSING HOME ED & PAC	500
SUB-TOTAL FOR ALL HEALTH COMM.				---		500
				BRICKLAYERS	BRICKLAYERS ACTION COMM	200
				ELECTRICAL WORKERS (IBEW)	IBEW COPE	1,000
				LABORERS	LABORERS POL LEAGUE	500
				OPERATING ENGINEERS	ENGINEERS PEC	500
				PAINTERS	POLITICAL ACTION TOGETHER POL COM (PAT)	200
				STEELWORKERS (NATL)	UNITED STEELWORKERS OF AMERICA PAF (PA)	2,200
				SERVICE EMPLOYEES	SEIU COPE POL CONTRIBUTIONS COMM	500
				RAILWAY CLERKS	RAILWAY CLERKS POL LEAGUE	2,000
SUB-TOTAL FOR ALL LABOR COMM.				---		7,100
SUB-TOTAL FOR ALL MISCELLANEOUS COMM.				---		0
				NATIONAL CONGRESSIONAL LEVEL	DEMOCRATIC SENATORIAL CAMPAIGN COMM	7,000
SUB-TOTAL FOR ALL DEMOCRATIC COMM.				---		7,000
TOTAL FOR CANDIDATE IS ---						14,800

ELECTION CANDIDATES	NELSON, GAYLORD DEM/INCUMBENT GENERAL ELECTION INFO: WON/OPPOSED 740,700 VOTES (61.8%) PRIMARY ELECTION INFO: WON/UNOPPOSED				PETRI, THOMAS E REP/CHALLENGER GENERAL ELECTION INFO: A-12 LOST/OPPOSED 429,327 VOTES (35.8%) PRIMARY ELECTION INFO: WON/OPPOSED			
	-NMBR-	$-AMOUNT	AVER	--%--	-NMBR-	$-AMOUNT	AVER	--%--
TOTAL FUNDS AVAILABLE		254,702				83,430		
CASH ON HAND - BEGINNING		38,746				0		
INDIVIDUAL CONTRIBUTIONS-$500 AND OVER:	25	15,995	640	6.3	20	18,151	906	21.8
IN STATE	17	11,000	647	4.3	9	9,132	1,015	10.9
OUT OF STATE	8	4,995	624	2.0	11	9,019	820	10.8
COMMITTEE CONTRIBUTIONS:	51	73,622	1,444	28.9	3	5,570	1,857	6.7
INTEREST COMMITTEES	50	65,372	1,307	25.7	3	5,570	1,857	6.7
POLITICAL PARTY COMMITTEES	1	8,250	8,250	3.2	0	0	0	.0
LOANS RECEIVED	0	0	0	.0	0	0	0	.0
LOANS REPAID	0	0	0	.0	0	0	0	.0
NET LOANS OUTSTANDING	0	0	0	.0	0	0	0	.0
TOTAL EXPENDITURES		247,551				80,590		
CASH ON HAND - ENDING		7,150				3,569		

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT T
WI 55 DEM	*NELSON,GAYLORD	BARTELL,GERALD A	MADISON	WI	EXEC AM MED BLDG	500
		BERNSTEIN,JOSEPH M	MILWAUKEE	WI	ATTY	500
		BLOCK,ROBERT S	MILWAUKEE	WI	EXEC R S BLOCK ADV INC	500
		BRENNAN,ROBERT	CHICAGO	IL	VP CHICAGO & NW RAILROAD	500
		BROGAN,GISELA H	GREEN BAY	WI	TRAVEL AGT KELLOGG TRAVEL AGCY	1,000
		BROGAN,JOHN	GREEN BAY	WI	EXEC CITIZENS SECURITIES	1,000
		CARLEY,DAVID	MADISON	WI	EXEC INLAND STEEL	500
		COLBURN,GERALD	MILWAUKEE	WI	PRES JAK-PAK CO	500
		FERGUSON,FRANCIS E	MILWAUKEE	WI	PRES NORTHWESTERN MUTUAL LIFE	500
		FERRY,CAROL B	SCARSDALE	NY	PHILANTHR	500
		FERRY,W H	SCARSDALE	NY	FOUNDATION DIR WB FOUNDATION	1,000
		GECHT,DAVID	MILWAUKEE	WI	PROP WHITE MANOR LIQUOR STORE	1,000
		HANSON,J LOUIS	MELLEN	WI	PT HOME SECY U S SENATE	500
		HOVING,JOHN	CINCINNATI	OH	EXEC FEDERATED DEPT STORES	500
		KARL,MAX	MILWAUKEE	WI	EXEC MGIC	1,000
		KOHL,HERBERT H	MILWAUKEE	WI	PRES KOHL FOOD STORES	500
		KOPS,FLOYD	WASH	DC	ATTY	995
		LEPPIN,RICHARD D	MILWAUKEE	WI	EXEC LEPPIN ELECTRIC CO	500
		MARK,WILLIAM B	WAUSAU	WI	WILLIAM B MARK & ASSOC	1,000
		MURPHY,CHARLES H JR	EL DORADO	AR	PRES MURPHY OIL CO	500
		NASH,HAROLD	MILWAUKEE	WI	ATTY	500
		PUTZER,RAYMOND	RACINE	WI	EXEC PRECISION FLEXMOLD INC	500
		WERNER,A MATT	SHEBOYGAN	WI	PUBLISHER SHEBOYGAN PRESS	500
		WILLIAMS,J D	WASH	DC	ATTY	500
		WINDHAM,JAMES C	MACON	MS	EXEC PABST BREWING CO	500
TOTAL FOR CANDIDATE ---						15,995

ST AC PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
WI 55 SEN	NELSON,GAYLORD	CALIFORNIA AGRICULTURE	COMM ON AGRICULTURAL POLICY (CA)	1,150
	SUB-TOTAL FOR ALL AGRICULTURAL COMM.	---		1,150
		CREDIT UNION NATL ASSN (CUNA)	CREDIT UNION LEGISLATIVE ACTION COUNCIL	450
		MORTGAGE BANKERS	MORPAC (MORTGAGE BANKERS PAC)	800
		CANNING INDUSTRY	CANNERS PUBLIC AFFAIRS COMM	100
		KRAUSE MILLING COMPANY	EAST WISCONSIN CLUB (MILWAUKEE)	500
		BURLINGTON NORTHERN INC -RR	BURLINGTON NORTHERN OFF VOL GOOD GOVT	500
		CHICAGO & NORTHWESTERN RR CO	NORTH WESTERN OFFICERS TRUST ACCOUNT	1,500
		CHICAGO, MILWAUK & ST PAUL RR	MILWAUKEE OFFICERS TRUST ACCOUNT	250
		BOATING INFORMATION COUNCIL	BOATING INFORMATION COUNCIL PAC	500
		TOBACCO PRODUCTS MFRS	TOBACCO PEOPLES PUBLIC AFFAIRS COMM	500
	SUB-TOTAL FOR ALL BUSINESS COMM.	---		5,100
		AM MEDICAL ASSN-DC EXEC	PHYSICIANS COMM FOR GOOD GOVT (DC)	100
		AM MEDICAL ASSN WISCONSIN	WISCONSIN PHYSICIANS PAC (WISPAC)	700
		AM OPTOMETRIC ASSN	OPTOMETRIC PAC	500
		AM PHYSICAL THERAPY ASSN	AMERICAN PHYS THERAPY CONG ACTION COMM	100
		AM PODIATRY ASSN	PODIATRY PAC	1,500
	SUB-TOTAL FOR ALL HEALTH COMM.	---		2,900
		AFL CIO (NATL)	AFL CIO COPE POL CONTRIBUTIONS COMM	10,000-
		AFL CIO WISCONSIN	WISCONSIN STATE AFL CIO COPE	6,722
		BUILDING & CONSTRUCTION DEPT	PEF OF THE BUILDING & CONSTRUCTION TRAD	900
		CARPENTERS	CARPENTERS LEGISLATIVE IMPROVEMENT COMM	1,000
		ELECTRICAL WORKERS (IBEW)	IBEW COPE	2,000
		LABORERS	LABORERS POL LEAGUE	2,000
		OPERATING ENGINEERS	ENGINEERS PEC	900
		POSTAL WORKERS	POLITICAL FUND COMM OF AM POSTAL WORKER	100
		STATE COUNTY & MUN EMPLOYEES	PEOPLE (PUBLIC EMPLOYEES ORGANIZED)	1,000
		CLOTHING WORKERS (NATL)	AMALGAMATED POLITICAL EDUCATION COMM	2,000-
		GARMENT WORKERS LADIES	ILGWU CAMPAIGN COMM	550
		MACHINISTS	MACHINISTS NON PARTISAN POL LEAGUE(MNPL	3,000-
		STEELWORKERS (NATL)	UNITED STEELWORKERS OF AMERICA PAF (PA)	3,000
		UNITED AUTO WORKERS IND	UAW V-CAP	7,100
		HOTEL & RESTAURANT EMPLOYEES	H & RE & BIU COPE	1,000
		MEATCUTTERS	AMCOPE	1,000
		RETAIL CLERKS	ACTIVE BALLOT CLUB	4,000
		SERVICE EMPLOYEES	SEIU COPE POL CONTRIBUTIONS COMM	900
		RAILWAY CLERKS	RAILWAY CLERKS POL LEAGUE	2,500
		RAILWAY LABOR EXECUTIVES ASSN	RAILWAY LABOR EXECUTIVES ASSN POL LEAGU	200
		[illegible] PORTATION UNION (UTU)	TRANSPORTATION POL EDUC LEAGUE	4,000
		TEAMSTERS INDEPENDENT UNION	DRIVE (DEMOCRATIC REPUBLICAN INDEPEND)	2,000
		COMMUNICATION WORKERS	CWA COPE	200-
		GRAPHIC ARTS UNION	GRAPHIC ARTS INTL UNION COPE	900
	SUB-TOTAL FOR ALL LABOR COMM.	---		55,472
		NATL RURAL ELECTR COOP ASSN	ACRE(ACTION COMM FOR RURAL ELECTRIFICAT)	750
		NATL RURAL ELECTR COOP WISC	WISCONSIN ACRE	100
	SUB-TOTAL FOR ALL MISCELLANEOUS COMM.	---		850
		NATIONAL CONGRESSIONAL LEVEL	DEMOCRATIC SENATORIAL CAMPAIGN COMM	8,250
	SUB-TOTAL FOR ALL DEMOCRATIC COMM.	---		8,250
	TOTAL FOR CANDIDATE IS ---			73,622

ELECTION CANDIDATES	GRAVEL,MIKE DEM/INCUMBENT GENERAL ELECTION INFO: WON/OPPOSED 54,361 VOTES (58.3%) PRIMARY ELECTION INFO: WON/OPPOSED				LEWIS,C R REP/CHALLENGER GENERAL ELECTION INFO: LOST/OPPOSED 38,914 VOTES (41.7%) PRIMARY ELECTION INFO: WON/OPPOSED			
	-NMBR-	$-AMOUNT	AVER	--%--	-NMBR-	$-AMOUNT	AVER	--%--
TOTAL FUNDS AVAILABLE		485,441				310,274		
CASH ON HAND - BEGINNING		2,806				0		
INDIVIDUAL CONTRIBUTIONS-$500 AND OVER:	122	157,996	1,295	32.5	86	133,295	1,550	43.0
IN STATE	19	24,616	1,296	5.1	48	80,065	1,668	25.8
OUT OF STATE	103	133,380	1,295	27.5	38	53,230	1,401	17.2
COMMITTEE CONTRIBUTIONS:	74	152,624	2,062	31.4	17	61,560	3,622	19.8
INTEREST COMMITTEES	73	147,524	2,021	30.4	13	26,560	2,045	8.6
POLITICAL PARTY COMMITTEES	1	5,100	5,100	1.1	4	35,000	8,750	11.3
LOANS RECEIVED	1	1,000	1,000	.2	3	6,900	2,300	2.2
LOANS REPAID	0	0	0	.0	1	1,400	1,400	.5
NET LOANS OUTSTANDING	1	1,000	1,000	.2	2	5,500	2,750	1.8
TOTAL EXPENDITURES		469,300				353,701		
CASH ON HAND - ENDING		33,000				525		

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT	T
AK 55 DEM	*GRAVEL,MIKE	ARNOLD,JAMES R	LA JOLLA	CA	PROF UNIV OF CALIF	[illegible]	
		BALDWIN,BOB	HOUSTON	TX	CH BD ALASKA INTERSTATE	2,[illegible]	
		BAMBIE,EUGENE A	LOS ANGELES	CA	ATTY	500	
		BASS,PERRY R	FT WORTH	TX	OIL OPER	3,000	
		BECK,KENNETH	SEATTLE	WA	PRES CENTRAL CONST CO	1,000	
		BELFER,ARTHUR B	NEW YORK	NY	CH BD BELCO PETRO CORP	1,000	
		BERGER,LEO V	OLD WESTBURY	NY		[illegible],000	
		BERGT,NEIL	FAIRBANKS	AK	PRES ALASKA INTL AIRLINES	500	
		BERNSTEIN,JOSEPH M	PROVIDENCE	RI	ADVERTISING EXEC	1,000	
		BIRCH,EVERETT B	ST THOMAS	VI	ATTY BIRCH DE JONGH & FARRELLY	9,[illegible]	
		BOND,ROLAND	DALLAS	TX	INDEP OPER	500	
		BURNS,RICHARD L	SN BERNARDINO	CA	INDEP OPER	2,000	
		CARSON JR,PAUL	HINSDALE	IL	EXEC ADV CONST CO	500	
		CLIFFORD,PATRICK J	NEW YORK	NY	BANKER	500	
		DANE,MAXWELL	NY	NY	RET	500	
		DAVIS,LOUIS F	LA	CA	EXEC ARCO	1,[illegible]	
		DOWNS,J A	DOWNERS GROVE	IL	PRES GREAT LAKES DREDG & DOCK	[illegible]	
		EKNESS,CHALMERS O	SEATTLE	WA	DUDLEY & EKNESS ARCHIT CTS	1,000	2
		ELLIS,ELI	NEW YORK	NY		3,000	
		ERICSON,GALORIS A	SCOTTSDALE	AZ	RL EST	500	
		FERRY,W H	SCARSDALE	NY	EXEC DIR DJB FOUNDATION	[illegible]	
		FISCHER,RICHARD	ANCHORAGE	AK	CO OWNER R/E	[illegible]	
		FISCHER,RICHARD W	ANCHORAGE	AK	OWNER DICK FISCHER SREA	1,[illegible]	
		FLEMING,BOB	ANCHORAGE	AK	EXEC VP KYAK RADIO	500	
		FOSTER,WILLIAM C	WASH	DC	PATTON BOGGS & BLOW,ATTYS	2,000	
		FULLER,M C	BEND	OR	RET	500	
		GAGE,COKE L	DECATUR	TX	INDEP OPER	1,000	
		GAUTREAUX,O M	METAIRIE	LA	PRES WILLIAMS MC WILLIAMS	500	
		GEZON,DAVID H	GRAND RAPIDS	MI	AUTO DEALER	500	
		GLASSELL,ALFRED C JR	HOUSTON	TX	PTNR GLASSELL PRODUCING CO	6,[illegible]	
		GOTTSTEIN,BARNEY J	ANCHORAGE	AK	J B GOTTSTEIN & CO	1,000	
		GRIFFIN,W A	HOUSTON	TX	PRES DANIEL INDUSTRIES	[illegible]	
		GROSSMAN,SAM	PHOENIX	AZ	PRES THE GROSSMAN CO	500	
		GUFFEY,ROY	DALLAS	TX	EXEC DRILLIN[illegible]	500	
		GUNDERSON,LESLIE R	FAIRBANKS	AK	OWNER POLAR [illegible]ST	3,000	
		HAINES,ROBERT E	GARY	IN	EXEC J M F[illegible] INC	500	
		HAMON,JAKE L	DALLAS	TX	INDEP OPER	3,000	
		HARDESTY,C HOWARD	GREENWICH	CT	EXEC VP OIL CO CONTNL OIL	500	
		HEARIN,ROBERT M	JACKSON	MS	CH CO EXEC 1ST NATL BK	3,000	
		HENNELLY,EDMUND P	MANHASSET	NY	ATTY MOBILE OIL CO	500	
		HESS,LEON	NEW YORK	NY	PRES HESS OIL CO	9,000	
		HEYSER,ESTILL JR	DALLAS	TX	INDEP OPER	500	
		HINCHEY,KEN	ANCHORAGE	AK	MGR ALASKA AGGREGATE CO	500	
		HITCHCOCK,ALFRED	LOS ANGELES	CA	MOTION PICTURE PROD	500	
		HUMPHREY,JOE A	DALLAS	TX	INDEP OPER	500	
		IVIE,ROBERT M	SAN FRANCISCO	CA	PRES GUILD WINERIES & DIST	500	
		JANSEN,HENRY	LYNDEN	WA	PRES LYNDEN TRANSPORT CO INC	500	
		JONES,A V	ALBANY	TX	INDEP OPER	500	

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
AK SS DEM	*GRAVEL,MIKE	KAZIS,EARL	NY	NY	EARL KAZIS ASSOC	[illegible]
		KENNY,JOHN E	NORTHBROOK	IL	CONTR KENNY CONST CO	[illegible]
		KRAMER,CLARENCE F	SITKA	AK	EXEC AK LUMBER & PULP	500
		LOITZ,LAWRENCE	GRANT PK	IL	EXEC LOITZ BROS CONST CO	500
		LUCAS,PHILIP B	HOUSTON	TX		[illegible]
		LYNCH,JOSEPH A	LIVONIA	MI	EXEC J D CONTR INC	[illegible]
		MAGUIRE,CARY	DALLAS	TX	PRES MAGUIRE OIL CO	500
		MARR,M H	DALLAS	TX	INDEP OPER MARR CO	[illegible]
		MARTIN,ALVIN R MRSMRS	HOUSTON	TX	CORP EXEC	[illegible]
		MCCOLLUM,M W	HOUSTON	TX	VP TENNECO	[illegible]
		MCEACHERN,ROBERT D	SEATTLE	WA	PRES GENERAL CONST CO	[illegible]
		MCKAY,ROY	ANCHORAGE	AK	OWNERS MERCHANT	[illegible]
		MERRIGAN,EDWARD L	WASH	DC	ATTY SMATHERS MERRIGAN & HERLO	[illegible]
		MIKLAUTSCH,THOMAS J	FAIRBANKS	AK	PHARMACIST & LAND DEV	[illegible]
		MITCHELL,GEORGE P	HOUSTON	TX	PRES MITCHELL ENERGY & DEV COR	[illegible]
		MITCHELL,JOHNNY	HOUSTON	TX	PRES OIL&GAS INVESTMENTS INC	500
		MONCRIEF,W A	FT WORTH	TX	INDEP OPER	[illegible]
		MOORE,POLLY L	DALLAS	TX	INDEP OPER	[illegible]
		MURRELL,JOHN	DALLAS	TX	INDEP OPER	[illegible]
		PARKS,NEIL	HOUSTON	TX	INDEP OPER	[illegible]
		PARTEN,J R	HOUSTON	TX	OIL OPERATOR	[illegible]
		PASCHEN,JACK H	NORTHBROOK	IL	EXEC PASCHEN CONTR	[illegible]
		PAULEY,EDWIN W	LA	CA	PRES PAULEY PETR CO	500
		PAULUCCI,JENO F	DULUTH	MN	CH BD JENO INC	[illegible]
		PEROT,H R	DALLAS	TX	CHMN ELECTRONIC DATA SYSTEMS	[illegible]
		PICKENS,JOHN T	DALLAS	TX	INDEP OPER	[illegible]
		PICKENS,R H	DALLAS	TX	INDEP OPER	[illegible]
		PICKENS,W C	DALLAS	TX	INDEP OPER	[illegible]
		PICKENS,W L	DALLAS	TX	INDEP OPER	[illegible]
		PITTS,L FRANK	DALLAS	TX	INDEP OPER/PITTS ENERGY	[illegible]
		PITTS,SHELBY D	DALLAS	TX	INDEP OPER	[illegible]
		POLLARD,ERIC W	NEW YORK	NY	CONSULT	[illegible]
		PONTARELLI,MICHAEL E	GLENVIEW	IL	CONTR PONTARELLI & SONS INC	[illegible]
		RAGAN,WILLIAM F	POTOMAC	MD	ATTY RAGAN & MASON	[illegible]
		RAYMOND,DAN	HOLLAND	IL	CONTR DAN RAYMOND CONST CO	[illegible]
		RIFE,M D	FT WORTH	TX	INDEP OPER	[illegible]
		ROSEN,ROBERT A	JAMAICA EST	NY	INVEST	[illegible]
		ROSS,LEONARD	LOS ANGELES	CA	PRES ROSSCO INC	[illegible]
		ROSSETTI,ANTHONY J	NORTHBROOK	IL	CONTR ROSSETTI CONTRACTING CO	[illegible]
		RUDIN,LEWIS	N Y	NY	VP RUDIN MNG	1,000
		RUDMAN,M B	DALLAS	TX	INDEP OPER	[illegible]
		RUSSELL,MADELINE	S FRAN	CA	HWF	[illegible]
		SANTUCCI,CARLO V	NORTHFIELD	IL	EXEC SANTUCCI CONST CO	500
		SCHLENSKER,JOHN A	RICHARDSON	TX	DRILLING CONTRACTOR	500
		SCHNITZER,KENNETH	HOUSTON	TX	PRES CENTARY DEV CO	[illegible]
		SHEINBAUM,STANLEY K	LOS ANGELES	CA	INVEST BROKER	[illegible]
		SHUSHAN,LOUIS G	NEW ORLEANS	LA	ATTY SHUSHAN MEYER JACOBSON	500
		SINTON,ROBERT	SAN FRANCISCO	CA	STOCKBROKER DEAN WITTER CO	500

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT T
AK 55 DEM	*GRAVEL,MIKE	SLAYMAKER,RONALD	ANCHORAGE	AK	CONTRACTOR V&R GEN CONTR	1,2[illegible]0
		SMITH,FELIX T	PALO ALTO	CA		[illegible]50
		STAIR,RICHARD	ANCHORAGE	AK	PACIFIC INC	700
		STEPHENS,JOHN A	SANTA BARBARA	CA	PRES EXCEL MINERAL CORP	1,[illegible]
		SWANK,RUSSELL	ANCHORAGE	AK	OWNER TOPPERS OIL CORP	1,[illegible]
		TAMPKE,FRED	ANCHORAGE	AK	VP MODERN CONSTR	[illegible]
		THOMAS,E C	ELSA	TX	RANCHER	2,[illegible]0
		THOMAS,MAX L	DALLAS	TX	INDEP OPER OIL	1,[illegible]
		TOWNSEND,CHARLES W	FAIRBANKS	AK	PHYSICIAN	[illegible]
		VANCE DAVIES & ROBERTS	SEATTLE	WA	ATTYS AT LAW	[illegible]
		VANCE,J DUANE	SEATTLE	WA	ATTY DAVIES & ROBERTS	500
		WAKEFIELD,GRAY MR&MRS	HOUSTON	TX	ACCTS	[illegible]
		WALLACE,WALLY D	JUNEAU	AK	SWITZER CRK MOBILE HOMES	[illegible]0
		WALLERSTEIN,GEORGE	SEATTLE	WA		[illegible]
		WARD,DELBERT	HOUSTON	TX	SR VP BROWN & ROOT	[illegible]
		WARD,JERRY J	ANCHORAGE	AK	PRES K & W CO	6,[illegible]
		WASSERMAN,LEW R	BEVERLY HILLS	CA	CH BD MCA UNIVERSAL CITY	1,[illegible]
		WEBSTER,WM C	ANCHORAGE	AK	WM WEBSTER INC	[illegible]
		WEINBERG,LAWRENCE	BEVERLY HILLS	CA	CH LARWIN REALTY	1,[illegible]
		WEINGARTEN,JOAN	HOUSTON	TX	HSWF	2,[illegible]
		WERBY,DONALD	HILLSBOROUGH	CA	WERBER REALTY	[illegible]
		WHITE,JOHN S	WASH	DC	ATTY	[illegible]
		WHITMORE,RALPH E JR	ANCHORAGE	AK	BANKER AK STATE BANK	[illegible]
		WILENTZ,DAVID T	PERTH AMBOY	NJ	PRTNR WILENTZ GOLDMAN SPITZER	4,[illegible]
		WILLIAMS,J D	WASHINGTON	DC	ATTY,WILLIAMS & KING	1,[illegible]
		YARMOLINSKY,MICHAEL	PARIS FRANCE		BIOLOGIST	[illegible]
		ZEIR,D J	DOWNERS GROVE	IL	CONTR S A HEALY CO	[illegible]
TOTAL FOR CANDIDATE ---						158,[illegible]6

CONTRIBUTIONS FROM SPECIAL INTEREST GROUPS
CONTRIBUTOR WITHIN CANDIDATE

ST	RC	PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
AK	55	DEM	*GRAVEL,MIKE	ASSOC MILK PRODUCERS INC	TAPE (COMM FOR THOROUGH AGRI POL EDUC)	100
			SUB-TOTAL FOR ALL AGRICULTURAL COMM.	---		100
				KENNECOTT COPPER CORP	KENNECOTT EXECUTIVES CITIZENSHIP ASSN	500
				CONSOLIDATED NATURAL GAS (WV)	CONSOLIDATED EXEC VOL NON-PART POL FUND	100
				EAST OHIO GAS CO	EAST OHIO GAS EMP VOL GOOD GOVT ASSN	100
				HOUSTON NATURAL GAS CORP	POLITICAL SUPPORT ASSN (TX)	750
				NATURAL GAS RETAILERS	GAS EMPLOYEES PEC	400
				N A OF BROADCASTERS	NATL CONFERENCE FOR SUPPORT OF FREE BRO	700
				N A OF HOME BUILDERS	BUILDERS POL CAMPAIGN COMM	300
				GENERAL ELECTRIC CO	NON PARTISAN POL COMM (NEW YORK)	500
				SEATTLE FIRST NATL BANK	FIRST ASSOCIATES NATIONAL (WASHINGTON)	400
				SAVINGS & LOAN LEAGUE	SAVINGS ASSN POL ELECTIONS COMM (SAPEC)	5,100
				SAVINGS & LOAN LEAGUE CALIF	CENTURY CLUB (PASADENA)	250
				MORTGAGE BANKERS	MORPAC (MORTGAGE BANKERS PAC)	500
				SAVINGS BANKERS	SAVINGS BANKERS NON-PARTISAN PAC	250
				SECURITIES INDUSTRY	SECURTIES INDUSTRY CAMPAIGN COMM	3,000
				PAINE WEBBER	PAINE WEBBER FUND FOR BETTER GOVT	100
				CANNING INDUSTRY	CANNERS PUBLIC AFFAIRS COMM	100
				DEL MONTE CORP	DEL MONTE VOL NON-PART GOOD GOVT COMM	500
				FOOD INDUSTRY	FOOD INDUSTRY GOOD GOVT COMM	500
				FOREST PRODUCTS INDUSTRY	FOREST PRODUCTS POL COMM	1,700
				WEYERHAEUSER CO INTERESTS	HANSON FUND	2,500
				N A OF LIFE UNDERWRITERS	LIFE UNDERWRITERS PAC (LUPAC)	1,000
				BURLINGTON NORTHERN INC -RR	BURLINGTON NORTHERN CFF VOL GOOD GOVT	200
				SOUTHERN RAILWAY SYSTEM	SOUTHERN RAILWAY GOOD GOVT FUND	600
				SOUTHERN RAILWAY SYSTEM	SOUTHERN RAILWAY TAX ELIGIBLE GGF	1,000
				N A OF REALTORS	REAL ESTATE PAC	2,000
				TRUCKING INDUSTRY	TRUCK OPERATORS NON-PARTISAN COMM	5,000
				BOATING INFORMATION COUNCIL	BOATING INFORMATION COUNCIL PAC	150
			SUB-TOTAL FOR ALL BUSINESS COMM.	---		28,200
				AM MEDICAL ASSN-CC EXEC	PHYSICIANS COMM FOR GOOD GOVT (DC)	100
				AM NURSING HOME ASSN	AMHEPAC AMERICAN NURSING HOME ED & PAC	500
				AM OPTOMETRIC ASSN	OPTOMETRIC PAC	250
				AM PHYSICAL THERAPY ASSN	AMERICAN PHYS THERAPY CONG ACTION COMM	100
				AM PODIATRY ASSN	PODIATRY PAC	500
				FEDERATION OF AM HOSPITALS	FED PAC	750
			SUB-TOTAL FOR ALL HEALTH COMM.	---		2,200
				AFL CIO (NATL)	AFL CIO COPE POL CONTRIBUTIONS COMM	12,200
				AFL CIO WASHINGTON	WASHINGTON STATE COPE	200
				BOILERMAKERS	LEGISLATIVE EDUC ACTION PROGRAM (LEAP)	2,000
				BUILDING & CONSTRUCTION DEPT	PEF OF THE BUILDING & CONSTRUCTION TRAD	1,000
				CARPENTERS	CARPENTERS LEGISLATIVE IMPROVEMENT COMM	1,000
				ELECTRICAL WORKERS (IBEW)	IBEW COPE	1,000
				IRON WORKERS	IRON WORKERS POL ACTION LEAGUE	1,000
				LABORERS	LABORERS POL LEAGUE	2,500
				OPERATING ENGINEERS	ENGINEERS PEC	1,000
				OPERATING ENGINEERS WASH	LOCAL 302 VOL POL FUND (SEATTLE)	2,500

CONTRIBUTIONS FROM SPECIAL INTEREST GROUPS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
AK 55 DEM	*GRAVEL,MIKE	PAINTERS	POLITICAL ACTION TOGETHER POL COM (PAT)	350
		PLUMBERS & PIPEFITTERS	U A POLITICAL EDUCATION COMM	1,000
		FIRE FIGHTERS	FIRE FIGHTERS COPE	100
		GOVERNMENT EMPLOYEES (AFGE)	COMM ON FEDERAL EMPLOYEE POL EDUCATION	200
		POSTAL WORKERS	POLITICAL FUND COMM OF AM POSTAL WORKER	400
		STATE COUNTY & MUN EMPLOYEES	PEOPLE (PUBLIC EMPLOYEES ORGANIZED)	1,000
		GARMENT WORKERS LADIES	ILGWU CAMPAIGN COMM	500
		MACHINISTS	MACHINISTS NON PARTISAN POL LEAGUE(MNPL	16,700
		PULP & PAPERMILL WORKERS	UNITED PAPER WORKERS INTL UNION	174
		SHEET METAL WORKERS	POLITICAL ACTION LEAGUE SHEET METAL	400
		STEELWORKERS (NATL)	UNITED STEELWORKERS OF AMERICA PAF (PA)	8,000
		UNITED AUTO WORKERS IND	UAW V-CAP	6,200
		MARINE ENGINEERS	MEBA POL ACTION FUND	31,000
		SEAFARERS	SEAFARERS POL ACTIVITY DONATION	15,500
		HOTEL & RESTAURANT EMPLOYEES	H & RE & BIU COPE	2,000
		MEATCUTTERS	AMCOPE	700
		RETAIL CLERKS	ACTIVE BALLOT CLUB	15,000
		FIREMEN & OILERS	FIREMEN & OILER POL LEAGUE	200
		MAINTENANCE OF WAY EMPLOYEES	MAINTENANCE OF WAY POL LEAGUE	200
		RAILWAY CLERKS	RAILWAY CLERKS POL LEAGUE	4,000
		TRANSPORT WORKERS (TWU)	TRANSPORT WORKERS UNION POL CONTRIB COM	700
		TRANSPORTATION UNION (UTU)	TRANSPORTATION POL EDUC LEAGUE	1,000
		TEAMSTERS INDEPENDENT UNION	DRIVE (DEMOCRATIC REPUBLICAN INDEPEND)	2,000
		TEAMSTERS IND ALASKA	ALASKA DRIVE VOLUNTARY COMM	9,100
		COMMUNICATION WORKERS	CWA COPE	1,900
		GRAPHIC ARTS UNION	GRAPHIC ARTS INTL UNION COPE	500
SUB-TOTAL FOR ALL LABOR COMM.		---		142,324
		NATL EDUCATION ASSN	NATL EDUCATION ASSN PAC (NEA PAC)	3,200
		NATL RURAL ELECTR COOP ASSN	ACRE(ACTION COMM FOR RURAL ELECTRIFICAT)	2,000
			PATTON BOGGS & BLOW (LAWYERS)NNNNNNNNNN	1,000
SUB-TOTAL FOR ALL MISCELLANEOUS COMM. ---				6,200
		NATIONAL CONGRESSIONAL LEVEL	DEMOCRATIC SENATORIAL CAMPAIGN COMM	5,100
SUB-TOTAL FOR ALL DEMOCRATIC COMM.		---		5,100
TOTAL FOR CANDIDATE IS ---				184,124

ELECTION CANDIDATES	ROY, WILLIAM R DEM/CHALLENGER GENERAL ELECTION INFO: LOST/OPPOSED 390,451 VOTES (49.1%) PRIMARY ELECTION INFO: WON/OPPOSED				DOLE, BOB REP/INCUMBENT GENERAL ELECTION INFO: WON/OPPOSED 403,983 VOTES (50.9%) PRIMARY ELECTION INFO: WON/UNOPPOSED			
	-NMBR-	$-AMOUNT	AVER	--%--	-NMBR-	$-AMOUNT	AVER	--%--
TOTAL FUNDS AVAILABLE		789,534				1,104,672		
CASH ON HAND - BEGINNING		0				110,846		
INDIVIDUAL CONTRIBUTIONS-$500 AND OVER:	125	143,329	1,147	18.2	264	258,214	989	22.6
IN STATE	104	126,029	1,212	16.0	172	175,078	1,024	15.5
OUT OF STATE	21	17,300	824	2.2	92	83,136	919	7.1
COMMITTEE CONTRIBUTIONS:	76	158,914	2,085	19.9	91	152,655	1,612	13.3
INTEREST COMMITTEES	75	143,914	1,919	18.2	88	82,555	870	6.9
POLITICAL PARTY COMMITTEES	1	15,000	15,000	1.9	3	70,100	23,372	6.3
LOANS RECEIVED	1	110,000	10,000	13.9	1	10,000	10,000	.9
LOANS REPAID	0	0	0	.0	1	10,000	10,000	.9
NET LOANS OUTSTANDING	1	110,000	10,000	13.9	0	0	0	.0
TOTAL EXPENDITURES		836,527				1,110,024		
CASH ON HAND - ENDING		10,754				0		

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS	OCCUPATION	AMOUNT
KS 55 REP	*DOLE,BOB	ABERCROMBIE,A L	WICHITA KS	A L ABERCROMBIE INC	500
		ABLAH,GEORGE J	WICHITA KS	OWNER REALTOR	1,500
		ADAIR,JOHN A	ATCHISON KS	PRES XCHANGE NATL BK & TST CO	750
		ADAMS,DR ANDREW S	ARLINGTON VA	DEPUTY DIR EDUC & REHAB SER VA	500
		ADAMS,DR&MRS C C	MCLEAN VA	OWNER ILIFF NURSING HOME	750
		ADAMS,EDWARD C	TOPEKA KS	CO OWNER ADAMS BUSINESS FORMS	500
		ADAMS,JOHN P	TOPEKA KS	CO OWNER ADAMS BUSINESS FORMS	500
		ADDIS,ICER	WICHITA KS	OIL PRODUCER	500
		ANDERSEN,RONALD C	TOPEKA KS	CONTRACTOR B B ANDERSON CO	500
		ANSCHUTZ,PHILIP F	DENVER CO	PRES THE ANSCHUTZ CORP	500
		ANTONELLI,D F JR	WASHINGTON DC	PRES PARKING MGMT INC	500
		ARBUTHNOT,MR&MRS JAMES C	BELLEVILLE KS	OWNERS ARBUTHNOT DRUG CO	600
		ATHA,MARVIN E	SHAWNEE MISS KS	RET	500
		AUSTIN,MR&MRS IRA W	ESKRIDGE KS	OWNER AUSTIN FUNERAL HOME	500
		BABBITT,J F JOS & HELEN	TULSA OK	AGNEW CHEMICAL	500
		BALES,DANE	LOGAN KS	MGR HANSEN TRUST FUND	1,500

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CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT T
KS 35 REP	*DOLE,BOB	BARCUS,GRANT	KANSAS CITY	KS	PARTNER LG BARCUSAND SONS	1,000
		BARRINGER,L T	MEMPHIS	TN	PRES L T BARRINGER & CO	500
		BAUER,MRSMRS LYLE	HARPER	KS	FARMER	500
		BEACH,MARIANNA	HAYS	KS	HOUSEWIFE	1,000
		BEACH,ROSS	HAYS	KS	PRES PRODUCERS GAS EQUITIES	1,000
		BEACHNER,JERRY	ST PAUL	KS	PRTNR NEOSHO VLY ELECTRIC CO	500
		BEARDMORE,HEBER JR	WICHITA	KS	INV	500
		BECKER,LAVERN	RUSSELL	KS	FARMER	625
		BEECH,MRS OLIVE A	WICHITA	KS	CHMN BRD BEECH AIRCRAFT CORP	1,500
		BELL,S W	KANSAS CITY	MO	COMPTRLR RISS INTERNL CORP	1,000
		BENES,HELEN	BERWYN	IL		500
		BEREN,ROBERT M	WICHITA	KS	PRTNR OKMAR OIL CO	1,500
		BERRY,LOREN M	DAYTON	OH	V CHM L M BERRY & CO	500
		BICKNELL,GENE	PITTSBURG	KS	SELF EMPLOYED	500
		BIGLER,DRSMRS F CALVIN	GARDEN CITY	KS	PHYSICIAN	500
		BLAKEMORE,MILTON H	LIBERAL	KS	PRES 1ST NATL BANK	1,000
		BLOCK,HENRY W	KANSAS CITY	MO	PRES H & R BLOCK	1,000
		BLODGETT,JOHN W JR	GRAND RAPIDS	MI	RET	500
		BOYD,FRANK JR	MORAN	KS	FARMER	600
		BOYD,MCGILL	PHILLIPSBURG	KS	PUBLISHER	1,510
		BOYER,MRSMRS EUGENE	TOPEKA	KS	CONSULTANT QUALITY OIL CO	500
		BRAMLAGE,FRED	JUNCTION CITY	KS	INVESTS JUNCTION CITY	500
		BRANDT,MRSMRS LLOYD C	PRAIRIE VLGE	KS	VP YELLOW FREIGHT SYSTEMS INC	500
		BROWN,GARY L MRSMRS	SALINA	KS	CONTRACTOR	500
		BROWN,THOMAS C	KANSAS CITY	MO	GEN COUN MAURICE L BROWN TRUST	1,000
		BRUCE,GEORGE M	WICHITA	KS	PRES ALADDIN PETROLEUM CO	1,400
		BUBB,HENRY A	TOPEKA	KS	CH BD CAPITOL FED SAVINGS&LOAN	500
		BURDEN,I TOWNSEND	WASHINGTON	DC	VP CAPCO INC	1,000
		BURTON,CECIL	GREAT BEND	KS	OIL PRODUCER PICKRELL DRILLING	500
		BUTCHER,HOWARD III	PHILADELPHIA	PA	INVESTOR BUTCHER & SINGER	500
		BUTCHER,W W KEEN	PHILADELPHIA	PA	INVESTOR BUTCHER & SINGER	500
		CADY,MRSMRS WINSLOW	SHAWNEE MISS	KS	PRES WIND STATIONS INC	500
		CAMP,JOHN C	LAKE CHARLES	LA	ATTY	500
		CARLSON,LEROY T	EVANSTON	IL	PRES TEL & DATA SYS INC	500
		CARPENTER,EDMUND N	WILMINGTON	DE	ATTY	1,000
		CARSON,DAVID W	KANSAS CITY	KS	ATTY	500
		CASSON,DAN L	TOPEKA	KS	SEC TREAS CASSON CONST CO INC	500
		CLARK,CHARLEY K	OVERLAND PARK	KS	MGR COMMER DEPT OWEN REALTY CO	500
		CLARK,PRESTON M MRS	WICHITA	KS	HSWF	500
		CLEVENGER,THOMAS R	TOPEKA	KS	PRES 1ST NATL BK OF TOPEKA	600
		CLINTON,ELEANOR F	WICHITA	KS	HSWF	2,000
		CLINTON,R P	WICHITA	KS	OIL OPER SUTTON PL	1,000
		COFFEY,JOHN M	ALEXANDRIA	VA	ATT HALL,ESTILL,HARDWICK,ETAL	700
		COHEN,RICHARD S	ROCKVILLE	MD	PRES WILLCO	500
		COLE,EVERETT S	WICHITA	KS	V CH BRD UNION NATL BANK	2,400
		COLEMAN,CLARENCE	WICHITA	KS	V CHMN BD UNION NATL BANK	2,000
		COLEMAN,SHELDON	WICHITA	KS	CHRMN OF BRD COLEMAN CO	1,000
		COLLET,JOHN C	BLUE SPRINGS	MO	PRES RUPERT MFG CO	500

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
KS 55 REP	*DOLE,BOB	COLMERY,HARRY W	TOPEKA	KS	LAWYER COLMERY MCCLURE FUNK	500
		COWHERD,CARSON E	KANSAS CTY	MO	REALTOR	500
		CRAWFORD,HOWARD E	ATCHISON	KS	RET	500
		CRAY,CLOUD L	ATCHISON	KS	CH BD MIDWEST SOLVENTS CO	500
		CRAY,CLOUD L JR	ATCHISON	KS	PRES MIDWST SOLVENTS CO	500
		CULP,C M	MEMPHIS	TN	MGR FERT MKTG W R GRACE & CO	500
		CUSHING,NED	DOWNS	KS	OWNER CUSHING INS AGENCY	1,000
		DARBY,HARRY	KANSAS CITY	KS	CH BD THE DARBY CORP	1,000
		DAY,JOHN F	SHAWNEE MISS	KS	SALESMAN THRIFTWAY MARKETS	500
		DIBBLE,STEPHEN	TOPEKA	KS	REALTOR	1,200
		DUPONT,REYNOLDS	WILMINGTON	DE	EXEC DUPONT INDUST	500
		EBY,MARTIN K JR	WICHITA	KS	PRES M K EBY CONST CO INC	600
		EDMISTON,MR&MRS E K	WICHITA	KS	OWNER E K EDMISTON OIL CO	500
		EISELE,JOHN C	OVERLAND PK	KS	LAWYER	1,000
		ELLSWORTH,ROBERT F	NEW YORK	NY	INVEST BKR GEN PARTNER	500
		EVANS,S DEAN SR	SALINA	KS	OWNER EVANS GRAIN CO	4,[illegible]
		EVERLY,JOE R	WINFIELD	KS	EVERLY CO INC	500
		FAIR,DALE JR	WICHITA	KS	ATTY MARTIN,PRINGLE,SCHALL&FAI	500
		FAIR,F DOYLE	WICHITA	KS	PETROLEUM ENG	500
		FAIRLEIGH,FLOYD L	SCOTT CITY	KS	OWNER & FARMER FAIRLEIGH FEED	600
		FALLEY,MR&MRS L C	TOPEKA	KS	CH BD FALLEYS INC	500
		FALSTAD,WILLIAM	FREDONIA	KS	PRES KANSAS BK NOTE CO INC	500
		FARHA,S JIM MD	WICHITA	KS	PHYSICIAN	500
		FASKE,PAUL	MIAMI	FL	EXEC BONDING CORP OF AMER	500
		FEGAN,ROBERT J	JUNCTION CITY	KS	RET	700
		FERRELL,JAMES E	PLATTE CITY	MO	PRES FERRELLGAS INC	500
		FINK,MR&MRS H BERNARD	TOPEKA	KS	CH BD C G F GRAIN CO INC	1,000
		FIRST NATIONAL BANK	SHAWNEE MSSN	OK		10,000 2
		FIRST NATIONAL BANK	SHAWNEE MSSN	OK		10,000- 3
		FOGARTY,JOSEPH F JR	MIAMI	FL	INSURANCE	1,000
		FRANK,R W	KANSAS CITY	KS	PRES CUMMINS MID AMER INC	1,000
		FREE,BENJAMIN J	MILWAUKEE	WI	PRES BADGER BY-PRODUCT	500
		FRIDOVICH,MARTIN	FT LAUDERDALE	FL	OWNER FRIDOVICH INVESTMENT CO	500
		FRISBIE,GEORGE L	GYPSUM	KS	PRES FRISBIE CONST CO	1,000
		FYFE,ERNEST R	CONCORDIA	KS	OWNER FYFE SAND & GRAVEL	500
		GARVEY,MR&MRS JAMES S	FORT WORTH	TX	FARMER RANCHER GRAIN	1,000
		GARVEY,OLIVE W MRS	WICHITA	KS	CHMN BRD GARVEY PROPERTIES	3,[illegible]2
		GARVEY,WILLIAM W	WICHITA	KS	CHMN OF BRD GARVEY INC	500
		GILPIN,GLEN	EMPORIA	KS	OWNER BLACKTOP CONSTR CO	500
		GORE,THEODORE	WICHITA	KS	OIL PROD OWNER	1,000
		GOULD,G JAMES	WICHITA	KS	PRES BARNETT OIL CO INC	955
		GRAHAM,KENNETH L	LEAVENWORTH	KS	MD PHYSICIAN	500
		GRANT,WILLIAM D	KANSAS CITY	MO	CH BD BUSINESS MENS ASSURANCE	1,000
		GRAVES,JOHN C	EL DORADO	KS	PRES GRAVES DRLG CO	500
		GRAVES,WILLIAM H	SALINA	KS	EXEC NELSON TRUCK LINE INC	600
		HAGMAN,WILLIAM R	PITTSBURG	KS	PRES HAGMANS INC	500
		HAINES,JORDAN L	WICHITA	KS	PRES THE FOURTH NATL BK&TRST	500
		HALE,M D	LEAWOOD	KS	PRES ADM MILLING CO	500

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
KS 55 REP	*DOLE,BOB	HAM,J R	GARDEN CITY	KS	MGR MASTER FEEDERS NO 2 INC	1,000
		HAMPTON,E S	SALINA	KS	ATTY HAMPTON ROYCE ENGLEMAN	500
		HAMPTON,TOM W	SALINA	KS	ATTY HAMPTON ROYCE ENGLEMAN	500
		HANKAMER,JOHN L	TOPEKA	KS	HANKAMER READY MIX OWNER	500
		HARDAGE,SAMUEL A	WICHITA	KS	PRES US COMMUNITIES INC	1,000
		HAUSSERMANN,C L JR	OAK BROOK	IL	SALESMAN DARLING & CO	500
		HENDEL,MURRAY M	OVERLAND PK	KS	VP FELD LEASING CO INC	500
		HILL,AL G	DALLAS	TX	OIL PRODUCER	500
		HOLLAND,GEORGE W	RUSSELL	KS	CATTLE RANCHER	500
		HOOVER,V RICHARD	WICHITA	KS	PRES CHIEF DRILLING CO	1,200
		HOUGLAND,WM	WICHITA	KS	V PRES KOCH OIL CO	2,000
		HOUSTON,W M III	MEMPHIS	TN	PRES OWNER W M HOUSTONGSON	500
		HSU,DR&MRS F RICHARD	WESTFIELD	NJ	PRES CHINA INST AMER	2,000
		HUDSON,CALE & LARRY	THAYER	KS	HUDSON BROTHERS	700
		HUTTON,WILLIAM W	LENEXA	KS	MNGR ASSOCIATED GNRL CONTRCTRS	1,000
		INGRAM,ROBERT P	KANSAS CITY	MO	PRES KBEA BROADCASTING CO	2,000
		JACOBSON,JOHN	LIBERAL	KS	PRES NATL BEEF PACKING CC	2,000
		JOHNSON,DONALD E	FLINT	MI	RET	500
		JOHNSON,E R FENIMORE	ARDMORE	PA		1,000
		JOHNSON,SAMUEL C	RACINE	WI	CHMN JOHNSON WAX CORP	500
		JOHNSTON,PROF FRANCIS A	ITHACA	NY	RET	500
		KALIVAS,WILLIAM	KANSAS CITY	MO	BUILDER DEVELOPER	500
		KATZ,MARVIN	ROELAND PARK	KS	MGR BUDDY FOODS	500
		KAUFFMAN,EWING M	SHAWNEE MISSI	KS	PRES MARION LABRATORIES INC	1,200
		KECK,ELIZABETH A	LOS ANGELES	CA	HOUSEWIFE	1,000
		KECK,H B	LOS ANGELES	CA	PRES SUPERIOR OIL CO	1,000
		KEMPER JR,R CROSBY	KANSAS CTY	MO	CH BD UNITED MISSOURI BANK	500
		LAUHOFF,HOWARD J	DANVILLE	IL	PRES LAUHOFF GRAIN CO	2,000
		LAW,E B	WICHITA	KS	PRES THE LAW CC INC	700
		LEVENS,VREM D	PRAIRIE VLG	KS	PARTNER LORI ENTERPRISES	500
		LIGHTNER,ROBERT S	WICHITA	KS	HOLIDAY INN PLZ	1,000
		LITWIN,HARRY	WICHITA	KS	PRIVATE INVESTOR	1,000
		LOCKE,MRS ROBERT W	OVERLAND PARK	KS	HSWF	500
		LOCKTON,JOHN T III	PRAIRIE VILL	KS	LOCKTON INS AGCY	1,376
		LUNDBERG,K F	TULSA	OK	CH BD AGRICO CHEMICAL CO	500
		MAGUIRE,CARY M	DALLAS	TX	OWNER MAGUIRE OIL CO	700
		MARCUS,S H	WICHITA	KS	CH BD KANSAS BEEF INDUSTRIES	500
		MARGUA,M T	INDEPENDENCE	MO	PRES CARLAND LEASING INC	500
		MARTIN,ROBERT	WICHITA	KS	ATTY MARTIN,PRINGLE,SCHELL,FAI	1,200
		MAXFIELD,MORGAN	KANSAS CITY	MO	PRES GREAT MIDWT CORP	500
		MCGLYNN,L D	GREAT FALLS	MT	HOUSEWIFE	500
		MCKEVITT,JAMES D	WASHINGTON	DC	ATTY OCONNOR & HANNAN	500
		MCMORRIS,DONALD L	LEAWOOD	KS	YELLOW FREIGHT SYS LINES	500
		MELCHER,HAROLD S	SHAWNEE MSSN	KS	PRES TRENTON FOODS INC	700
		MICHAELIS,W A JR	WICHITA	KS	PRES GRAHAM MICHAELIS DRILLING	1,210
		MILLAND,FRANCES	MCPHERSON	KS	PRES M-E PETRO CO INC	1,025
		MILLER,KENNETH E MR&MRS	WESTWOOD	NJ	ACCT UNITED MARITIME	1,000
		MILLIKEN,ROGER	SPARTANBURG	SC	PRES DEERING MILLIKEN	1,000

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST	RC	PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT T
KS	55	REP	*DOLE,BOB	MOORHEAD,MR&MRS THOMAS A	ATCHISON	KS	SELF EMPLOYED	500
				MORRISON,LLOYD	SALINA	KS	PRTNR MORRISON GRAIN CO	2,000
				MORRISON,MILTON L	SALINA	KS	PRES MORRISON GRAIN CO INC	2,035
				MOSS,ROBERT W MR&MRS	SALINA	KS	VP COCO DISTRIBUTING INC	500
				MUDRICK,STEVEN N	MISSION	KS	ARMY CORP OF ENGINEERS	500
				MULL,J A JR	WICHITA	KS	PRES MULL DRILLING CO INC	3,000
				MYERS,RICHARD G	SHAWNEE MSN	KS	EXEC VP SEABD ALLIED MILLING	500
				NETTELS JR,GEORGE E	PITTSBURGH	KS	CH BD MCNALLY PITTSBURGH CO	1,000
				NIELSEN,ARTHUR C SR	WINNETKA	IL	CH & CHF EXEC OFF NIELSON CO	3,000
				NORMENT,ELIZABETH D	PALM BCH	FL	HSWF	500
				ODONNELL,PETER JR	DALLAS	TX	OWNER PETER ODONNELL JR INVTMT	1,000
				OLIN,JOHN M	ST LOUIS	MO	RETIRED	2,000
				OLIVER,WILLIAM L JR MRS	WICHITA	KS	HSWF	500
				OWEN,DAVE	FAIRWAY	KS	PRES 1ST NATL BANK	1,200
				PACKARD,DAVID	PALO ALTO	CA	CHMN BD HEWLETT PACKARD CO	500
				PERELMAN,EM PEL	CARMEL	IN	PHYSICIAN	500
				PEROT,H ROSS	DALLAS	TX	CH ELEC DATA SYS	5,000
				PETERS,MR&MRS RICHARD C	LAWRENCE	KS	ARCH ROBERTSON,PETERS,WILLIAMS	500
				PETTY,J L	MEMPHIS	TN	SLSMN MID CENTRAL MILLING CO	500
				PHILLIPS,L E JR	WICHITA	KS	LEE PHILLIPS OIL CO	750
				PHILLIPS,L E MR&MRS	WICHITA	KS	OIL OPER LEE PHILLIPS OIL CO	1,900
				PINNICK,MR&MRS FLOYD V	ULYSSES	KS	PRES GRANT CNTY STATE BK	1,000
				POISY,JOHN J	CLYDE	OH	PARTNER FORMULATED FEEDS	500
				POLLOCK,R W	FT SCOTT	KS	PRES KEY INDUSTRIES INC	9,500
				POPEJOY,DONALD	ULYSSES	KS	GNRL MNGR POPEJOY CONSTR CO IN	500
				PORTER,LOUIS	TULSA	OK	VP DALCO PETROLEUM INC	1,217
				QUINN,ARTHUR L	WASH	DC	ATTY DAWSON,QUINN,RIDDELL	500
				RAGAN,WILLIAM F	WASHINGTON	DC	ATTY RAGAN & MASON	500
				RAINS,MR&MRS WILSON	WICHITA	KS	OWNER RAINS & WILLIAMSON OIL	750
				RANSON,JACK	WICHITA	KS	INVESTOR	750
				REID,ROYAL D	GOODLAND	KS	REID GRAIN INC OWNER	1,000
				RICE,W RAY	WICHITA	KS	PRES BELTONE HEARING AID SERV	500
				RICHARDSON,JACK MR&MRS	LAWRENCE	KS	U S MARSHAL	500
				RITCHIE,R D	WICHITA	KS	OWNER VP RITCHIE ENTERPRISES	600
				ROEMER,ALAN	TEANECK	NJ	OWNER ROEMER TRADING CO	500
				ROSKAM,MR&MRS DEL	WICHITA	KS	PRES CESSNA AIRCRAFT CO	500
				ROSS,DON C	WICHITA	KS	OIL INVESTOR	500
				ROUNDS,RALPH C	WICHITA	KS	PRES ROUNDS & PORTER CO	1,500
				RUPPENTHAL,L H	MCPHERSON	KS	LAWYER	500
				SALISBURY,PHYLLIS F	KANSAS CITY	MO	KS FARM OWNER HSEWF	500
				SAMARRAI,S M	MANHATTAN	KS	REAL EST SALESMAN	500
				SANDERS,W C	KANSAS CTY	MO	PRES SANDERS CO	500
				SCAIFE,RICHARD M	PITTSBURGH	PA	BKG	4,000
				SCOTT,JEROME H JR	SHAWNEE MSN	KS	BANKER UNITED MO BK OF KS	500
				SEBITS,CARL W	CHENEY	KS	PRTNR PICKRELL DRILLING CO	2,000
				SHARP,BAYARD	WILMINGTON	DE	PRIV INVESTOR	1,000
				SHARP,C E	KANSAS CTY	MO	PRES SHARP BROS CONST CO	2,750
				SHAWVER,E B	WICHITA	KS	OWNER CH BD STELBAR OIL CORP	2,500

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ST	RC	PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
KS	55	REP	*DOLE,BOB	SHEARS,WILL H JR	HUTCHINSON	KS	CONTRACTOR	500
				SHEPARD,RAY	PORT SCOTT	KS	RAY SHEPARD MOTORS	613
				SHULTZ,MR&MRS REYNOLDS	LAWRENCE	KS	FARMER	500
				SIEBERT,MR&MRS RONALD C	NESS CITY	KS	PRES SIEBERT SAND CO INC	1,000
				SIMPSON,JOHN M	SALINA	KS	ATTY	500
				SLAWSON,CHARLES J	WICHITA	KS	INVESTOR OIL INVESTMENTS	2,200
				SLAWSON,DONALD C	WICHITA	KS	PRES SLAWSON DRILLING CO INC	2,400
				SMITH,B ALDEN	SHAWNEE MISS	KS	MFG ALDCOMP INC	1,000
				SOSLAND,SAMUEL	KANSAS CITY	MO	MGRING EDITOR SOSLAND PRESS	500
				STEWART,JOHN F III	WELLINGTON	KS	CH WELCO AEROSPACE CORP	2,000
				STOUT,WILLIS E	GOODLAND	KS	PRES 1ST NAT BANK	1,025
				SUNDERLAND,JAMES P	LEAWOOD	KS	PRES ASH GROVE CEMENT CO	1,000
				SUTHERLAND,DWIGHT D	KANSAS CITY	MO	OWNER SUTHERLAND LUMBER CO	1,030
				TAYLOR,THOMAS F	SALINA	KS	PHYSICIAN	700
				TIMKEN,W R	CANTON	OH	THE TIMKEN CO	500
				TODD,C H	WICHITA	KS	PRES INV R W RINE DRILLING CO	500
				TOMLINSON,WARREN E	WICHITA	KS	OIL PRODUCER TOMLINSON OIL CO	500
				TRAVIS,JOHN W DR&MRS	TOPEKA	KS	PHYSICIAN	500
				TURNER,COL COURTNEY S	ATCHISON	KS	RET	500
				UHL,MR&MRS PERRY	TOPEKA	KS	RETIRED	500
				UHLMANN,R HUGH	SHAWNEE MISS	KS	PRES STANDARD MILLING CO	2,000
				VAN HANFORD,JOHN JR	CHARLOTTE	NC	WHOLESALE FLORIST	500
				VANDEGRIFT,FRANK B	SHAWNEE MSN	KS	PRES HUDSON VAN OIL CO	3,000
				VANDEGRIFT,FRANK B MRS	SHAWNEE MSN	KS	OWNER HUDSON OIL CO	3,000
				VANIER,JOHN J	SALINA	KS	OWNER STAR GRAIN & INV INC	500
				VARNER,S V	WICHITA	KS	V PRES KOCH IND INC	3,000
				VICKERS,ROBERT F	WICHITA	KS	ADM INV MGR VICKERS TRUST	600
				WAGSTAFF,ROBERT W	SHAWNEE MSN	KS	HSEWF	500
				WALKER, LOUIS	TULSA	OK	VP DALCO PETROL INC	1,217
				WALKER,C A	PITTSBURG	KS	PRES VINYLPLEX INC	500
				WALKER,DAVID	TULSA	OK	PRES DALCO PETROLEUM INC	1,217
				WALKER,RALPH D	SHARON SPRING	KS	FARMER	[illegible]
				WALLACE,DWANE L	WICHITA	KS	CH BD CESSNA AIRCRAFT CO	2,000
				WALTON,HANK	OLATHE	KS	PRTNR MIDWEST CATTLE CO	1,[illegible]7
				WARD,LOUIS L	KANSAS CITY	MO	PRES CHMN RUSSELL STOVER CANDY	2,000
				WEARY,ROBERT K	JUNCTION CITY	KS	ATTY AT LAW	500
				WEIR,GLENN A	ARLINGTON	VA	ASSOC ADM AG STABCONSERV SERV	500
				WHEELER,EDWIN F	CHEVY CHASE	MD	PRES THE FERTILIZER INC	500
				WILKINS,C HOWARD JR	WICHITA	KS	PRES PIZZA CORP OF AMER	2,100
				WILLIAMS,J D	WASHINGTON	DC	ATTY WILLIAMS & JENSEN	2,000
				WILLIAMS,JAMES D JR	WASHINGTON	DC	ATTY	1,000
				WILLIAMS,R C	RUSSELL	KS	OWNER R C WILLIAMS INC	1,000
				WILSON,DAVID K	NASHVILLE	TN	CHEROKEE EQUITY CORP PRES	1,000
				WINSOR,CURTIN JR	WASHINGTON	DC	BKR CHASE MANHATTAN BANK	1,000
				YEAGER,R W	NORTON	KS	PRES SHARP CONST CO INC	500
				YOST,LYLE E	HESSTON	KS	PRES HESSTON MANUFACT	500

CONTRIBUTIONS FROM SPECIAL INTEREST GROUPS
CONTRIBUTOR WITHIN CANDIDATE

ST KC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
KS 55 REP	DOLE,BOB	ANSCHUTZ,FRED	DENVER	CO	OWNER, ANSCHULTZ CORP	[illegible]
		BLANCHARD,HENRY	S. MISSION	KA	CHM COM'L NATIONAL BANK	500
		CHAFFEE,TOM	NORTH TOPEKA	KS	FARMER	1,000
		ELLIS,D	FT. SCOTT	KS	OWNER, TRUCKING OPERATION	1,100
		GARABEDIAN,JOHN	FRESNO	CA	FARMER	500
		GOLDEN,JOHN H	GOODLAND	KS	FARMER	500
		HUSSEY,ED	GOSHEN	IN	PRES, LIBERTY HOMES INC	500
		MAYOR,H A	WICHITA	KS	PRES, SOUTHWEST GREASE&OIL CO	1,000
		NELSON,ROLLAND	WEST DESMOINES	IA	PRES, KEMIN INDUSTRIES, INC	500
		PENN, ETHEL	BRYN MAWR	PA	RETIRED	2,000
		RUAN, JOHN	DESMOINES	IA	PRES, RUAN TRANSPORT CORP	500
		UIHLEIN, J	GRAFTON	WI	CHM, TAMARACK PETROLEUM CO, INC	500
TOTAL FOR CANDIDATE---						258,214

ST RC PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
KS 55 REP	*DOLE,BOB			
		NATL MILK PRODUCERS INC	AGRICULTURAL COOPERATIVE TRUST (ACT)	100
		AM NATL CATTLEMEN'S ASSN	CATTLEMENS ACTION LEGISLATIVE FUND(CALF)	400
		AM RICE GROWERS COOP ASSN	RICE PRODUCERS PEC LAKE CHARLES LA	500
		CALIFORNIA AGRICULTURE	COMM ON AGRICULTURAL POLICY (CA)	200
		FLORIDA AGRICULTURE	FLORIDA AGRICULTURAL EDUCATION COMM	900
		NATL COUNCIL OF FARMER COOPS	PACE (POL ACTION FOR COOP EFFECTIVENESS	750
SUB-TOTAL FOR ALL AGRICULTURAL COMM.		---		2,850
		HUGHES AIRCRAFT CO	HUGHES ACTIVE CITIZENSHIP FUND	1,150
		LTV CORP LTV AEROSPACE CORP	LTV CORP ACTIVE CITIZENSHIP CAMP FUND	100
		AM APPAREL MFRS ASSN	AMERICAN APPAREL MFRS ASSN PAC	200
		N A OF MANUFACTURERS (NAM)	BUSINESS INDUSTRY PAC (BIPAC)	2,500
		KENNECOTT COPPER CORP	KENNECOTT EXECUTIVES CITIZENSHIP ASSN	1,000
		OLIN CORP	OLIN EXECUTIVES VOL NON-PART POL FUND	100
		BITUMINOUS COAL INDUSTRY	COMM ON AMERICAN LEADERSHIP (COAL)	500
		CONSOLIDATED NATURAL GAS (PA)	CONPAC (PA)	400
		CONSOLIDATED NATURAL GAS (WV)	CONSOLIDATED EXEC VOL NON-PART POL FUND	100
		EAST OHIO GAS CO	EAST OHIO GAS EMP VOL GOOD GOVT ASSN	100
		NATURAL GAS RETAILERS	GAS EMPLOYEES PEC	200
		UNION OIL CO OF CALIFORNIA	POLITICAL AWARENESS FUND	1,000
		N A OF BROADCASTERS	NATL CONFERENCE FOR SUPPORT OF FREE BRD	1,500
		NATL CABLE TELEVISION ASSN	NATL CABLE TELEVISION ASSN PAC	500
		NATL TELEPHONE CO-OP ASSN	TELEPHONE EDUCATION COMM ORGANIZATION	200
		US INDEPENDENT TELEPHONE ASSN	COMPAC (COMMUNICATIONS PAC)	800
		ASSOC GENERAL CONTRACTORS	COMM FOR ACTION (BELLEVUE WASH)	2,000
		BLACK & VEATCH	BLACK & VEATCH GOOD GOVT FUND	800
		CONSTRUCTION EQUIPMENT INDUS	CONSTRUCTION EQUIPMENT PAC	300
		HOME BUILDERS MISSOURI	HOME BUILDERS BAG FOR POL ED (HOPE)	200
		SMCAC CONTRACTORS ASSN	SMACPAC (SHEET METAL & AIR CONDITIONI)	500
		GENERAL ELECTRIC CO	NON PARTISAN POL COMM (NEW YORK)	500
		AMERICAN BANKING	BANKPAC (BANKING PROFESSION PAC)	1,200
		KANSAS BANKERS	KANSAS BANKERS PAC	100
		FIRST NATL BANK OF TOPEKA	CITIZENS FOR GOOD GOVT (KANSAS)	100
		SAVINGS & LOAN LEAGUE	SAVINGS ASSN POL ELECTIONS COMM (SAPEC)	2,100
		MORTGAGE BANKERS	MORPAC (MORTGAGE BANKERS PAC)	500
		SECURITIES INDUSTRY	SECURTIES INDUSTRY CAMPAIGN COMM	1,100
		AM FROZEN FOOD INSTITUTE	FREEZERS PAC	100
		CANNING INDUSTRY	CANNERS PUBLIC AFFAIRS COMM	1,000
		COCA COLA COMPANY	NON-PARTISAN COMM FOR GOOD GOVT (GA)	550
		DEL MONTE CORP	DEL MONTE VOL NON-PART GOOD GOVT COMM	350
		FOOD INDUSTRY	FOOD INDUSTRY GOOD GOVT COMM	1,000
		NATL CONFECTIONERS ASSN OF US	GOVT IMPROVEMENT GROUP	1,000
		WILSON & CO INC (SUB OF LTV)	WILSON & CO ACTIVE CITIZENSHIP CAMPAIGN	105
		FOREST PRODUCTS INDUSTRY	FOREST PRODUCTS POL COMM	1,000
		GEORGIA-PACIFIC CORP	G-P EMPLOYEES FUND (OREGON)	500
		WEYERHAEUSER CO	TACOMA FUND	500
		NATL RESTAURANT ASSN	RESTAURATEURS PAC	1,750

CONTRIBUTIONS FROM SPECIAL INTEREST GROUPS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
KS 55 REP	*DOLE,BOB	INDEPENDENT INSURANCE AGENTS	AMERICAN INSURANCE MENS PAC (AIMPAC)	400
		N A OF LIFE UNDERWRITERS	LIFE UNDERWRITERS PAC (LUPAC)	2,650
		KEMPER INSURANCE CO	KEMPER MANAGEMENT CAMPAIGN FUND	500
		PHARMACEUTICAL MFRS ASSN	PHARMACEUTICAL RS ASSN BETTER GOVT COM	100
		MARION LABORATORIES INC	MID-AMERICA COMM FOR SOUND GOVT	400
		SMITH KLINE & FRENCH	SKF VOLUNTARY NON-PARTISON POL FUND	300
		ATCHISON, TOPEKA & SANTA FE	CIVIC TRUST BU SANTA FE EMP FR GOOD GOV	200
		BURLINGTON NORTHERN INC -RR	BURLINGTON NORTHERN EMP VOL GOOD GOVT	650
		SOUTHERN RAILWAY SYSTEM	SOUTHERN RAILWAY TAX ELIGIBLE GGF	600
		UNION PACIFIC CORP	FUND FOR EFFECTIVE GOVT (NEW YORK)	700
		SAINT LOUIS SAN FRANCISCO RR	FRISCO EMPLOYEES COMM FOR GOOD GOVT	1,150
		N A OF REALTORS	REAL ESTATE PAC	3,200
		N A OF REALTORS-MINNESOTA	MINNESOTA REAL ESTATE PAC	200
		AM IMPORTED AUTO DEALERS ASSN	AIADA PAC	500
		N A OF MOTOR BUS OWNERS	BUS INDUSTRY PUBLIC AFFAIRS COMM BUSPAC	100
		NATL AUTO DEALERS ASSN	COMM OF AUTO RETAILERS (CAR)	400
		TRUCKING INDUSTRY	TRUCK OPERATORS NON-PARTISAN COMM	2,500
		AM ASSN OF NURSERYMAN	NURSERY INDUSTRY PAC	100
		AM COTTON SHIPPERS ASSN	COMM ORGANIZED FOR TRADING OF COTTON	400
		AM SOCIETY OF EXECUTIVES	EFFECTIVE GOVT GROUP (WASHINGTON DC)	250
		BOATING INFORMATION COUNCIL	BOATING INFORMATION COUNCIL PAC	250
		COTTON WAREHOUSE ASSN OF AM	COMM OF ONE HUNDRED (MEMPHIS)	100
		GENERAL AVIATION MFRS ASSN	GENERAL AVIATION PUB AFF COMM (GENAVPAC)	500
		TOBACCO PRODUCTS MFRS	TOBACCO PEOPLES PUBLIC AFFAIRS COMM	650
	SUB-TOTAL FOR ALL BUSINESS COMM.	---		44,205
		AM DENTAL ASSN (NATL)	AMERICAN DENTAL PAC (ADPAC)	5,000
		AM MEDICAL ASSN (NATL)	AMERICAN MEDICAL PAC (AMPAC)	10,000
		AM MEDICAL ASSN-DC DIST	PHYSICIANS COMM FOR GOOD GOVT (DC)	100
		AM MEDICAL ASSN KANSAS	KANSAS MEDICAL PAC (KAMPAC)	3,000
		AM NURSING HOME ASSN	ANHEPAC AMERICAN NURSING HOME ED & PAC	1,200
		AM OPTOMETRIC ASSN	OPTOMETRIC PAC	3,000
		AM PHYSICAL THERAPY ASSN	AMERICAN PHYS THERAPY CONG ACTION COMM	100
		AM PODIATRY ASSN	PODIATRY PAC	2,000
		AM SOCIETY OF ORAL SURGEONS	ORAL SURGERY PAC (OSPAC)	5,000
		FEDERATION OF AM HOSPITALS	FED PAC	2,000
		OPTICIANS ASSN OF AM	OPTICIANS COMM ON POL EDUCATION	700
	SUB-TOTAL FOR ALL HEALTH COMM.	---		32,100
		GOVERNMENT EMPLOYEES (AFGE)	COMM ON FEDERAL EMPLOYEE POL EDUCATION	600
	SUB-TOTAL FOR ALL LABOR COMM.	---		600
		NATL EDUCATION ASSN LOUSIANA	LOUISIANA EDUCATIONAL GROUP	300
		NATL RURAL ELECTR COOP ASSN	ACRE(ACTION COMM FOR RURAL ELECTRIFICATI	500
		NATL RURAL ELECTR COOP KS	KANSAS ACRE	1,000
	SUB-TOTAL FOR ALL MISCELLANEOUS COMM.	---		1,800
		YOUNG AMERICANS FOR FREEDOM	CONSERVATIVE GROUP	1,000
	SUB-TOTAL FOR ALL IDEOLOGICAL COMM.	---		1,000
		NATIONAL CONGRESSIONAL LEVEL	NATL REPUBLICAN SENATORIAL COMM	60,100
		NATIONAL CONGRESSIONAL LEVEL	REPUBLICAN CAMPAIGN COMM	10,000
	SUB-TOTAL FOR ALL REPUBLICAN COMM.	---		70,100
	TOTAL FOR CANDIDATE IS ---			198,655

ELECTION CANDIDATES	ROBERTS, BETTY DEM/CHALLENGER GENERAL ELECTION INFO: LOST/OPPOSED 338,591 VOTES (44.2%) PRIMARY ELECTION INFO: /OTHER				PACKWOOD, ROBERT W REP/INCUMBENT GENERAL ELECTION INFO: WON/OPPOSED 420,984 VOTES (54.9%) PRIMARY ELECTION INFO: WON/UNOPPOSED			
	-NMBR-	$-AMOUNT	AVER	--%--	-NMBR-	$-AMOUNT	AVER	--%--
TOTAL FUNDS AVAILABLE		82,403				345,485		
CASH ON HAND - BEGINNING		0				21,276		
INDIVIDUAL CONTRIBUTIONS-$500 AND OVER:	4	8,413	2,103	10.2	68	56,800	835	16.4
IN STATE	1	3,813	3,813	4.6	37	28,300	765	8.2
OUT OF STATE	3	4,600	1,533	5.6	31	28,500	919	8.2
COMMITTEE CONTRIBUTIONS:	28	50,027	1,787	60.7	63	99,032	1,572	28.7
INTEREST COMMITTEES	27	42,527	1,575	51.6	62	68,032	1,097	19.7
POLITICAL PARTY COMMITTEES	1	7,500	7,500	9.1	1	31,000	31,000	9.0
LOANS RECEIVED	0	0	0	.0	0	0	0	.0
LOANS REPAID	0	0	0	.0	0	0	0	.0
NET LOANS OUTSTANDING	0	0	0	.0	0	0	0	.0
TOTAL EXPENDITURES		80,193				333,004		
CASH ON HAND - ENDING		2,210				12,480		

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
OR 55 REP	*PACKWOOD,ROBERT W	ADAMS,CHARLES F	PORTLAND	OR	RET	500
		BENNING,A E	OGDEN	UT	PRES AMALGAMATED SUGAR CO	500
		BEYENS,ANNA	PHILMATH	OR	SAMUEL OPERATOR	500
		BONEBRAKE,A C	VANCOUVER	WA	RET	1,000
		COLLINS,MARIBETH W	PORTLAND	OR	RET	500
		COUGLIN,ROBERT A	COOS BAY	OR	SAWMILL OPERATOR	1,000
		DUPONT,REYNOLDS	WILMINGTON	DE	CONSULTANT DUPONT INDUST	500
		ELLIS,DON A	PORTLAND	OR	TREAS TEKTRONIX INC STOCK	500
		FAUST,JOHN R JR	PORTLAND	OR	ATTY	500
		FINKELSTEIN,JAMES	NEW YORK	NY	NY LAW JOURNAL	[illegible]
		FOGELSON,JAMES H	N Y	NY	ATTY WACHTELL,LIPTON,ROSENKAT	500
		FORD,BENSON	DEARBORN	MI	CHM DLR POLICY CO FORD MTR CO	500
		FORD,HENRY II	DEARBORN	MI	CHM BD FORD MOTOR CO	[illegible]
		FRONK,WILLIAM J	PORTLAND	OR	EXEC HYSTER CO	500
		GILMORE,ROBERT W	NEW YORK	NY	PRES CNTR FOR WAR-PEACE STUDIE	1,000
		GRAY,JOHN D	PORTLAND	OR	EXEC OMARK IND	1,000
		HAWES,PEYTON	PORTLAND	OR	EXEC PAYLESS DRUG CO	[illegible]
		HAYES,EDMUND	PORTLAND	OR	RET	500
		HELLER,HAROLD W	MCMINNVILLE	OR	REGIONAL REP OF AAU	750
		HILL,PHILIP S	LAKE OSWAGO	OR	EXEC HYSTER CO	[illegible]
		HOFFMAN,C W	LA GRANDE	OR	SAWMILL OPERATOR	500
		HOFFMAN,[illegible] BURNS	PORTLAND	OR	EXEC FOREST SAND CO	1,000
		HULT,NILS	EUGENE	OR	PROPERTY EVELOPMENT	500
		HUNT,WM F	PORTLAND	OR	CH BD LA PACIF CORP	500
		JACOBS,ELI S	N Y	NY	PRI INV	500
		JOHNSON,EVERETT P	RIDDLE	OR	OWNER C & D LUMBER CO	500
		JOHNSON,R LEE	PORTLAND	OR	ATTY GENL ST OF OREGON	[illegible]
		JOHNSON,SAMUEL S	REDMOND	OR	LUMBERMAN	1,000
		KELLER,IRA C	PORTLAND	OR	CH [illegible] WESTERN SALES CO	1,000
		KILKENNY,WILLIAM H	PORTLAND	OR	EXEC HYSTER CO	500
		KOGOD,ROBERT P	WASH	DC	RL EST EXEC	[illegible]
		LUFKIN,DAN W	PRAIRIE CITY	OR	CHM DONALDSON LUFKIN JENRETTE	1,000
		MALARKEY,HERBERT	PORTLAND	OR	LUMBER BUS OWNER	[illegible]
		MAYER,JANET C	SEATTLE	WA	HSWF	[illegible]
		MCCALL,[illegible] C	PORTLAND	OR	CHMN MCCALL OIL CO	500
		MCCLINTOCK,BEATRICE	LONG ISLAND	NY		500
		MCDONALD JR,ELLICE	GREENVLE	DE	RET PERSONAL INVESTMENTS	3,000
		MCDONALD,ROSA H	GREENVLE	DE	RET PERSONAL INVESTMENTS	3,000
		MCGAW,FOSTER G	EVANSTON	IL	HON CHMN AMER HOSP SUPP CORP	[illegible]
		MINDICH,BERNARD	BRONX	NY	ATTY WACHTELL,LIPTON,ROSENKAT	[illegible]
		MONETTE,V H	SMITHFIELD	VA	V H MONETTE CO	1,000
		[illegible],WADE	PORTLAND	OR	PRES R [illegible] WADE & CO	[illegible]
		[illegible]	ST LOUIS	MO	RET EXEC	[illegible]
		PEROT,H ROSS	DALLAS	TX	CH BD ELECTRONIC DATA SYSTEMS	[illegible]
		POLLACK,LESTER	NEW YORK	NY	VP LOEWS CORP	500
		RABB,MAXWELL M	N Y	NY	ATTY	500
		ROCKEFELLER,DAVID MRS	N Y	NY	HSEWF	500
		ROCKEFELLER,JOHN D III	NEW YORK CITY	NY	INVESTOR	1,000

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
OR SS REP	*PACKWOOD,ROBERT W	SELIGSON,CHARLES	NEW YORK	NY		500
		SMITH,CHARLES E	WASH	DC	RL EST EXEC C E SMITH CO	1,000
		SMITH,DELFORD M	MCMINNVILLE	OR	REAL ESTATE	1,000
		SMITH,ROBERT H	WASH	DC	RL EST EXEC	500
		SOHN,FRED	ROSEBURG	OR	SAWMILL OPERATOR	1,000
		SOUTHER,CALVIN N	PORTLAND	OR	ATTY	1,000
		SOUTHER,SPAULDING,KINSEY	PORTLAND	OR	ATTY FIRM	1,500
		STONE,DONALD C & LASKER	NEW YORK	NY	NY STOCK EXCH STOCK BROKER	1,000
		SWIGERT,CHRISTINE	PORTLAND	OR	HSWF	500
		SWIGERT,ERNEST G	PORTLAND	OR	CH BD HYSTER CO	1,000
		TANKERSLEY,BEZY	TUSCON	AZ	HSWF	500
		THIEDE,CLIFFORD S	LK OSWEGO	OR	CORP PERS MGR WSTRN KRAFT CORP	500
		TISCH,LAURENCE A	N Y	NY	PRES LOEWS CORP	500
		TISCH,PRESTON R	N Y	NY	CH BD LOEWS CORP	500
		VINCENT,DAVE	PHILOMATH	OR	LUMBER CO	500
		WALKER,CYRUS	PORTLAND	OR	ADVISOR POPE & TALBOT CORP	1,000
		WALKER,GEORGE	NORTH BEND	OR	LOGGING CONTRACTOR	1,000
		WALLACE,DEWITT	MT KISCO	NY	RET PUB	500
		WEYERHAEUSER,FRED K	ST PAUL	MN	RET	1,000
		WILEY,STAN	PORTLAND	OR	REALTOR	500
		WILLIAMS,RALPH E	PORTLAND	OR	INVESTMENTS	500
TOTAL FOR CANDIDATE ---						57,100

CONTRIBUTIONS FROM SPECIAL INTEREST GROUPS
CONTRIBUTOR WITHIN CANDIDATE

ST NC PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
OR 55 REP	*PACKWOOD,ROBERT W	MID AMERICA DAIRYMEN INC	ADEPT (AGRI & DAIRY EDUC POL TRUST)	200
		AM NATL CATTLEMEN'S ASSN	CATTLEMENS ACTION LEGISLATIVE FUND(CALF)	100
		NATL COUNCIL OF FARMER COOPS	PACE (POL ACTION FOR COOP EFFECTIVENESS	500
	SUB-TOTAL FOR ALL AGRICULTURAL COMM.	---		800
		HUGHES AIRCRAFT CO	HUGHES ACTIVE CITIZENSHIP FUND	220
		N A OF MANUFACTURERS (NAM)	BUSINESS INDUSTRY PAC (BIPAC)	3,500
		KENNECOTT COPPER CORP	KENNECOTT EXECUTIVES CITIZENSHIP ASSN	750
		OLIN CORP	OLIN EXECUTIVES VOL NON-PART POL FUND	500
		NATURAL GAS RETAILERS	GAS EMPLOYEES PAC	200
		N A OF BROADCASTERS	NATL CONFERENCE FOR SUPPORT OF FREE BRO	500
		NATL CABLE TELEVISION ASSN	NATL CABLE TELEVISION ASSN PAC	100
		US INDEPENDENT TELEPHONE ASSN	CO-PAC (COMMUNICATIONS PAC)	400
		ASSOC GENERAL CONTRACTORS	COMM FOR ACTION EFFECTIVE WASH	1,000
		CONSTRUCTION EQUIPMENT INDUS	CONSTRUCTION EQUIPMENT PAC	300
		N A OF HOME BUILDERS	BUILDERS POL CAMPAIGN COMM	200
		UTAH INTERNATIONAL INC	1976 COMM FOR RESPONSIBLE GOVT (NON-PAR)	500
		GENERAL ELECTRIC CO	NON PARTISAN POL COMM (NEW YORK)	500
		AMERICAN BANKING	BANKPAC (BANKING PROFESSIONAL PAC)	2,000
		SAVINGS & LOAN LEAGUE	SAVINGS ASSN POL ELECTIONS COMM (SAPEC)	5,000
		N LGE OF INSURED SAVINGS ASSN	NATL LEAGUE PAC	100
		MORTGAGE BANKERS	MORPAC (MORTGAGE BANKERS PAC)	500
		SAVINGS BANKERS	SAVINGS BANKERS NON-PARTISAN PAC	200
		MERRILL LYNCH	EFFECTIVE GOVT ASSN	250
		CANNING INDUSTRY	CANNERS PUBLIC AFFAIRS COMM	100
		COCA COLA COMPANY	NON-PARTISAN COMM FOR GOOD GOVT (GA)	350
		DEL MONTE CORP	DEL MONTE VOL NON-PART GOOD GOVT COMM	500
		FOOD INDUSTRY	FOOD INDUSTRY GOOD GOVT COMM	500
		ROSARIO FUND	FOREST PRODUCTS	50
		FOREST PRODUCTS INDUSTRY	FOREST PRODUCTS POL COMM	200
		GEORGIA-PACIFIC CORP	G-P EMPLOYEES FUND (OREGON)	800
		MOUNTAIN FIR LUMBER CO	MOUNTAIN FIR POL COMM	1,500
		WEYERHAEUSER CO INTERESTS	HANSON FUND	1,700
		AM HOTEL & MOTEL ASSN	AMERICAN HOTEL MOTEL PAC (AHMPAC)	500
		NATL RESTAURANT ASSN	RESTAURATEURS PAC	1,000
		INDEPENDENT INSURANCE AGENTS	AMERICAN INSURANCE MENS PAC (AIMPAC)	100
		N A OF LIFE UNDERWRITERS	LIFE UNDERWRITERS PAC (LUPAC)	200
		SMITH KLINE & FRENCH	SKF VOLUNTARY NON-PARTISON POL FUND	100
		BURLINGTON NORTHERN INC -RR	BURLINGTON NORTHERN OFF VOL GOOD GOVT	500
		SOUTHERN PACIFIC CO	SUNSET ACTION COMM	400
		SOUTHERN RAILWAY SYSTEM	SOUTHERN RAILWAY TAX ELIGIBLE GGF	100
		UNION PACIFIC CORP	FUND FOR EFFECTIVE GOVT (NEW YORK)	300
		N A OF REALTORS	REAL ESTATE PAC	1,000
		NATL AUTO DEALERS ASSN	COMM OF AUTO RETAILERS (CAR)	100
		TRUCKING INDUSTRY	TRUCK OPERATORS NON-PARTISAN COMM	100
		AM COTTON SHIPPERS ASSN	COMM ORGANIZED FOR TRADING OF COTTON	100
		AM SOCIETY OF EXECUTIVES	EFFECTIVE GOVT GROUP (WASHINGTON DC)	250
		TOBACCO PRODUCTS MFRS	TOBACCO PEOPLES PUBLIC AFFAIRS COMM	200
	SUB-TOTAL FOR ALL BUSINESS COMM.	---		26,975

CONTRIBUTIONS FROM SPECIAL INTEREST GROUPS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
OR 55 REP	*PACKWOOD,ROBERT W	AM DENTAL ASSN (NATL)	AMERICAN DENTAL PAC (ADPAC)	2,500
		AM MEDICAL ASSN (NATL)	AMERICAN MEDICAL PAC (AMPAC)	8,000
		AM MEDICAL ASSN-CC EXEC	PHYSICIANS COMM FOR GOOD GOVT (DC)	100
		AM MEDICAL ASSN OREGON	OREGON MEDICAL PAC	437
		AM NURSING HOME ASSN	ANHEPAC AMERICAN NURSING HOME ED & PAC	500
		AM OPTOMETRIC ASSN	OPTOMETRIC PAC	500
		AM PHYSICAL THERAPY ASSN	AMERICAN PHYS THERAPY CONG ACTION COMM	100
		AM PODIATRY ASSN	PODIATRY PAC	5,000
		AM SOCIETY OF ORAL SURGEONS	ORAL SURGERY PAC (OSPAC)	5,000
		FEDERATION OF AM HOSPITALS	FED PAC	2,100
		OPTICIANS ASSN OF AM	OPTICIANS COMM ON POL EDUCATION	500
	SUB-TOTAL FOR ALL HEALTH COMM.	---		24,737
		OPERATING ENGINEERS	ENGINEERS PEC	1,325
		MARINE ENGINEERS	MEBA POL ACTION FUND	10,000
		SEAFARERS	SEAFARERS POL ACTIVITY DONATION	3,000
	SUB-TOTAL FOR ALL LABOR COMM.	---		14,325
		NATL EDUCATION ASSN OREGON	PEOPLE FOR IMPROVEMENT OF EDUCATION(PIE)	200
		ENVIRONMENTAL/CONSERVATION	LEAGUE OF CONSERVATION VOTERS	1,000
	SUB-TOTAL FOR ALL MISCELLANEOUS COMM.	---		1,200
		NATIONAL CONGRESSIONAL LEVEL	NATL REPUBLICAN SENATORIAL COMM	31,000
	SUB-TOTAL FOR ALL REPUBLICAN COMM.	---		31,000
	TOTAL FOR CANDIDATE IS ---			99,032

ELECTION CANDIDATES	LONG, RUSSELL B DEM/INCUMBENT GENERAL ELECTION INFO: WON/UNOPPOSED 434,643 VOTES (55.5%) PRIMARY ELECTION INFO: WON/OPPOSED			
	-NMBR-	$-AMOUNT	AVER	--%--
TOTAL FUNDS AVAILABLE		556,661		
CASH ON HAND - BEGINNING		60,587		
INDIVIDUAL CONTRIBUTIONS-$500 AND OVER:	90	91,024	1,011	16.4
IN STATE	69	70,599	1,023	12.7
OUT OF STATE	21	20,425	973	3.7
COMMITTEE CONTRIBUTIONS:	49	75,900	1,549	13.6
INTEREST COMMITTEES	46	70,900	1,477	12.7
POLITICAL PARTY COMMITTEES	1	5,000	5,000	.9
LOANS RECEIVED	1	75,000	75,000	13.5
LOANS REPAID	1	75,000	75,000	13.5
NET LOANS OUTSTANDING	0	0	0	.0
TOTAL EXPENDITURES		498,774		
CASH ON HAND - ENDING		57,886		

CONTRIBUTIONS FROM INDIVIDUAL CONTRIBUTORS
CONTRIBUTOR WITHIN CANDIDATE

ST	RC	PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT	T
LA	55	DEM	*LONG,RUSSELL B	ALBRITTON,WM LOUIS	BATON ROUGE	LA	RETIRED-ATTY	500	
				AMER BANK & TRUST CO	BATON ROUGE	LA	BANK	75,000	2
				AMER BK & TRST CO	BATON ROUGE	LA		75,000-	A
				ANDERSON,MRS G M	SHREVEPORT	LA	ANDERSON OIL & GAS	700	
				ASH,HARRY A	SURFSIDE	FL	ATTY	1,000	
				ASHY,M N	EUNICE	LA	PRESIDENT	500	
				BARTON,CHARLES A SR	LAFAYETTE	LA	OIL & GAS OPERATOR	500	
				BLAKEMORE WILLIAM B II	MIDLAND	TX	INDEPENDENT OIL OPERATOR	1,000	
				BOLES,WILLIAM R	RAYVILLE	LA	ATTY&BKR HOLES POUNGER MALLACK	1,000	
				BOSSIER,ALBERT L JR	METAIRIE	LA	AVONDALE SHIPYARDS INC	500	
				BRADY,PATRICK W	HOUSTON	TX	BRADCO OIL & GAS CO	1,000	
				BROWN,GEORGE R	HOUSTON	TX	CH BD BROWN & ROOT INC	500	
				BURKHALTER,D F JR	MONROE	LA	INDEP CONSULTING ENGR	500	
				BUTCHER,ROBERT K	SHREVEPORT	LA	PRES R K BUTCHER &*ASSOC INC	500	
				CAMP,JOHN C	LAKE CHARLES	LA	ATTY	1,000	
				CANDIES,OTTO	DES ALLEMANDS	LA	OTTO CANDIES INC	1,000	
				CANIZARO,JOSEPH C	METAIRIE	LA	JOS CANIZARO INTEREST	2,000	
				CANN,W DERWOOD JR	MONROE	LA	EXEC VP BANCROFT BAG CO	1,000	
				CORCORAN,THOMAS G	WASHINGTON	DC	ATTY	1,000	
				CUSIMANO,CHARLES V	METAIRIE	LA	EQUITABLE PETRO CORP	500	
				DANGELO,SALVATORE J	METAIRIE	LA	ALBERT & WEGMANN INC F-25	2,000	
				DAVIS,CHARLES W	WINNETKA	IL	ATTY HOPKINS,SUTTER,OWEN,MULRO	1,000	
				DAY,DR JAMES D	NEW ORLEANS	LA	MD	500	
				DELANEY,J B III	NEW ORLEANS	LA	J B DELANEY CO INC	500	
				DENTON,B J	BATON ROUGE	LA	DIV COMPT SOUTHLAND CORP	750	
				DIEFENTHAL,EDWARD L	NEW ORLEANS	LA	VP SOUTHERN SCRAP MATERIAL	500	
				DIEFENTHAL,JAMES R	NEW ORLEANS	LA	SOUTHERN SCRAP MATERIAL	500	
				DUFRENE,BRANDT J	METAIRIE	LA	CONSULTANT	500	
				EATON,L W JR	BATON ROUGE	LA	PRES L W EATON CO	500	
				FERGUSON,J V II	NEW ORLEANS	LA	ATTY	1,000	
				FORT,CHARLES F	BATON ROUGE	LA	SIEGEN DEVEL INC PRES	1,000	
				FOURNET,MARILYN R	MORGAN CITY	LA	HOUSEWIFE	500	
				FOWLER,J E JR	SHREVEPORT	LA	PRES FALCO INC	500	
				FRANKS,JOHN	SHREVEPORT	LA	PRES FRANKS PETROLEUM CO	500	
				FREEMAN,R W SR	NEW ORLEANS	LA	CH BD LA COCA COLA BOTTLING CO	500	
				FRENSLEY,HERBERT J	HOUSTON	TX	PRES BROWN & ROOT INC	500	
				GAUTREAUX,C M	METAIRIE	LA	PRES WILLIAMS MCWILLIAMS CO	1,000	
				GUZZINO,GERALD	MORGAN CITY	LA	AGENT NY LIFE INSURANCE CO	1,000	
				HARTZMAN,EDWIN	NEW ORLEANS	LA	AVONDALE SHIPYARDS INC	500	
				HENDRY,WILLIAM D	CHICAGO	IL	SR VP HOUSEHOLD FINANCE CORP	1,000	
				JAMES,T D	RUSTON	LA	VP T L JAMES & CO	1,000	
				JOHNSEN,E F	NEW ORLEANS	LA	PRES CENTRAL GULF LINES INC	500	
				JONES,JAMES H	NEW ORLEANS	LA	1ST NATL BK OF COMMERCE	1,000	
				JONES,THEODORE L	BATON ROUGE	LA	ATTY	1,000	
				KYLE,J E	BERWICK	LA	J E KYLE JR & ASSOC	1,000	
				LA VIGNE,KIRK R	SHREVEPORT	LA	KLM CORP	500	
				LANDRY,JULES F	BATON ROUGE	LA	ATTY	1,000	
				LAWTON,J E	SULPHUR	LA	FARMER & RANCHER	700	

BEST COPY AVAILABLE

ST RC PTY	CANDIDATE	CONTRIBUTOR	ADDRESS		OCCUPATION	AMOUNT
LA 55 DEM	*LONG,RUSSELL B	LAWTON,W E	SULPHUR	LA	FARMER & RANCHER	700
		LEBLANC,JULES B III	BATON ROUGE	LA	ATTY CORPORATE ONE	5,200
		LEBLANC,ROGER J	BATON ROUGE	LA	ATTY	5,200
		LEHLEITNER,GEO H	COVINGTON	LA	RETIRED	500
		LEVY,ARTHUR SR	METAIRIE	LA	PRES ARTHUR LEVY BOAT SERV INC	1,200
		LLOYD,W A JR	HOUSTON	TX	OIL & GAS REAL ESTATE	1,000
		LONG,MEREDITH J	HOUSTON	TX	INVESTMENTS	1,000
		LONG,RUSSELL B	BATON ROUGE	LA	U S SENATOR	500
		MARSH,JOHN D	GAINESVILLE	VA	LIVESTOCK BREEDER RL EST	500
		MENDOZA,RAY	BERWICK	LA	J E KYLE JR & ASSOC	1,000
		MERRIGAN,EDWARD L	CHEVY CHASE	MD	ATTY	2,000
		MERRIGAN,LAWRENCE A	NEW ORLEANS	LA	BK OF NEW ORLEANS & TRUST CO	1,000
		MIJALIS,GUS S	SHREVEPORT	LA	FARMERS SEAFOOD	1,000
		MOSES,WARREN G	NEW ORLEANS	LA	CONS ENG & OWNER W G MOSES&CO	75
		NOLAND,WILLIS A	LK CHARLES	LA	VP POWELL LUMBER CO	1,000
		OURSO,J CLIFFORD	BATON ROUGE	LA	PRES & CH BD AMER BKGT UST CO	1,000
		PATOUT,CHARLES A	LAFAYETTE	LA	GULF COAST BANK CH BD	1,000
		PELTIER,HARVEY	THIBODAUX	LA	ATTY	1,000
		PENNIMAN,G ALLEN JR	BATON ROUGE	LA	DIV MGR SOUTHLAND CORP	700
		PEREZ,AUGUST JR	NEW ORLEANS	LA	ARCHITECT	1,000
		PEROT,H R	DALLAS	TX	ELECTRONIC DATA SYSTEMS CORP	1,000
		PITTMAN,CHARLES R	NEW ORLEANS	LA	PITTMAN CONST CO	700
		PLAISANCE,KIP	GOLDEN MEADOW	LA	KIP PLAISANCE CONTRACTORS	500
		POWELL,THOMAS E	EUNICE	LA	PRES POWELL OIL CO	1,000
		RAGAN,WILLIAM F	POTOMAC	MD	RAGAN & MASON ATTY	1,000
		RAULT,JOSEPH M JR	NEW ORLEANS	LA	PRES & OWNER RAULT CENTER	1,200
		REID,JOSEPH E	HOUSTON	TX	THE SUPERIOR OIL CO	1,000
		ROBERTSON,AUSTIN G	SHREVEPORT	LA	SEC TREAS CROW INDUSTRIES	500
		ROBERTSON,CORBIN J	HOUSTON	TX	QUINTANA PETRO CO	1,000
		ROUSSEL,LOUIS J	NEW ORLEANS	LA	REP PETRO CORP	1,700
		SAIA,FRANK T	BATON ROUGE	LA	EXEC ELECTRICAL CONT CO	1,700
		SCHWARTZ,CARL J	HOUSTON	TX	TEXACO OIL CO	1,000
		SEHRT,C TRICON	NEW ORLEANS	LA	ATTY	500
		SIBLEY,W HUGH	GREENSBURG	LA	ATTY	1,000
		STONE,JAMES H	CINCINNATI	OH	PRES STONE OIL CORP	1,125
		STREAM,HAROLD H	LAKE CHARLES	LA	GRAY ESTATE	500
		STREAM,MRS H G	NEW ORLEANS	LA	OWNR MATHILDA STREAM INTER INC	500
		THERIOT,NOLTY J	GOLDEN MEADOW	LA	NOLTY J THERIOT INC	1,000
		THOMPSON,W M JR	HOUSTON	TX	PRES&CH EXEC BURMAN OIL&GAS CO	600
		WALKER,M W	ALEXANDRIA	LA	WALKER ROEMER DAIRIES	600
		WALSH,ALBERT A	YONKERS	NY	NATL RLTY COMM INC	1,000
		WESTBROOK,D D	MONROE	LA	OWNER STANDARD ENTERP INC	700
		WHITEHEAD,JOHN C	ESSEX FELLS	NJ	GOLDMAN SACHS & CO	1,000
		WOODS,VERNON W	METAIRIE	LA	MID-LA GAS CO	1,000
TOTAL FOR CANDIDATE ---						91,024

CONTRIBUTIONS FROM SPECIAL INTEREST GROUPS
CONTRIBUTOR WITHIN CANDIDATE

ST RC PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
LA 55 DEM	*LONG,RUSSELL B	NATL COUNCIL OF FARMER COOPS	PACE (POL ACTION FOR COOP EFFECTIVENESS	500
SUB-TOTAL FOR ALL AGRICULTURAL COMM.		---		500
		OLIN CORP	OLIN EXECUTIVES VOL NON-PART POL FUND	1,200
		NATURAL GAS RETAILERS	GAS EMPLOYEES PEC	200
		N A OF BROADCASTERS	NATL CONFERENCE FOR SUPPORT OF FREE BRO	1,500
		NATL CABLE TELEVISION ASSN	NATL CABLE TELEVISION ASSN PAC	100
		N A OF HOME BUILDERS	BUILDERS POL CAMPAIGN COMM	500
		GENERAL ELECTRIC CO	NON PARTISAN POL COMM (NEW YORK)	1,000
		AMERICAN BANKING	BANKPAC (BANKING PROFESSION PAC)	1,000
		SAVINGS & LOAN LEAGUE	SAVINGS ASSN POL ELECTIONS COMM (SAPEC)	1,000
		MORTGAGE BANKERS	MORPAC (MORTGAGE BANKERS PAC)	500
		SECURITIES INDUSTRY	SECURITIES INDUSTRY CAMPAIGN COMM	1,000
		PAINE WEBBER	PAINE WEBBER FUND FOR BETTER GOVT	200
		COCA COLA COMPANY	NON-PARTISAN COMM FOR GOOD GOVT (GA)	1,000
		FOREST PRODUCTS INDUSTRY	FOREST PRODUCTS POL COMM	1,000
		GEORGIA-PACIFIC CORP	G-P EMPLOYEES FUND (OREGON)	1,000
		AM HOTEL & MOTEL ASSN	AMERICAN HOTEL MOTEL PAC (AMHMPAC)	5,000
		NATL RESTAURANT ASSN	RESTAURATEURS PAC	1,000
		N A OF LIFE UNDERWRITERS	LIFE UNDERWRITERS PAC (LUPAC)	1,000
		NACSAPAC (CASUALTY & SURETY A	N A OF CASUALTY & SURETY AGNT	200
		ATCHISON, TOPEKA & SANTA FE	CIVIC TRUST BU SANTA FE EMP FR GOOD GOV	100
		BURLINGTON NORTHERN INC -RR	BURLINGTON NORTHERN OFF VOL GOOD GOVT	[illegible]
		SEABOARD COASTLINE RR	SPECIAL PROJECTS GROUP	200
		SOUTHERN PACIFIC CO	SUNSET ACTION COMM	200
		SOUTHERN RAILWAY SYSTEM	SOUTHERN RAILWAY GOOD GOVT FUND	2,000
		UNION PACIFIC CORP	FUND FOR EFFECTIVE GOVT (NEW YORK)	600
		N A OF REALTORS	REAL ESTATE PAC	2,000
		AM WATERWAYS OPERATORS INC	BARGE & TOWING COMM FOR POLITICAL ACTION	100
		NATL AUTO DEALERS ASSN	COMM OF AUTO RETAILERS (CAR)	1,000
		TRUCKING INDUSTRY	TRUCK OPERATORS NON-PARTISAN COMM	3,000
		AM SOCIETY OF EXECUTIVES	EFFECTIVE GOVT GROUP (WASHINGTON DC)	500
		BOATING INFORMATION COUNCIL	BOATING INFORMATION COUNCIL PAC	500
		TOBACCO PRODUCTS MFRS	TOBACCO PEOPLES PUBLIC AFFAIRS COMM	500
SUB-TOTAL FOR ALL BUSINESS COMM.		---		29,700
		AM DENTAL ASSN (NATL)	AMERICAN DENTAL PAC (ADPAC)	2,000
		AM MEDICAL ASSN-DC EXEC	PHYSICIANS COMM FOR GOOD GOVT (DC)	300
		AM NURSING HOME ASSN	ANHEPAC AMERICAN NURSING HOME ED & PAC	200
		AM PHYSICAL THERAPY ASSN	AMERICAN PHYS THERAPY CONG ACTION COMM	100
		AM SOCIETY OF ORAL SURGEONS	ORAL SURGERY PAC (OSPAC)	5,000
		FEDERATION OF AM HOSPITALS	FED PAC	2,000
		OPTICIANS ASSN OF AM	OPTICIANS COMM ON POL EDUCATION	500
SUB-TOTAL FOR ALL HEALTH COMM.		---		10,100
		LABORERS	LABORERS POL LEAGUE	3,000
		SHEET METAL WORKERS	POLITICAL ACTION LEAGUE SHEET METAL	800
		MARINE ENGINEERS	MEBA POL ACTION FUND	12,000
		SEAFARERS	SEAFARERS POL ACTIVITY DONATION	10,000
		MEATCUTTERS	AMCOPE	500

ST RC PTY	CANDIDATE	AFFILIATION/INTEREST	REGISTERED NAME	AMOUNT
LA 55 DEM	*LONG,RUSSELL B	TRANSPORTATION UNION (UTU)	TRANSPORTATION POL EDUC LEAGUE	2,000
	SUB-TOTAL FOR ALL LABOR COMM.	---		28,300
		NATL EDUCATION ASSN LOUSIANA	LOUISIANA EDUCATIONAL GROUP	1,000
		NATL RURAL ELECTR COOP ASSN	ACRE(ACTION COMM FOR RURAL ELECTRIFICAT)	500
			PATTON BOGGS & BLOW (LAWYERS)NNNNNNNNNNN	600
	SUB-TOTAL FOR ALL MISCELLANEOUS COMM.	---		2,100
		NATIONAL CONGRESSIONAL LEVEL	DEMOCRATIC SENATORIAL CAMPAIGN COMM	5,000
	SUB-TOTAL FOR ALL DEMOCRATIC COMM.	---		5,000
	TOTAL FOR CANDIDATE IS ---			75,900

TAXATION WITH REPRESENTATION
AND THE TAX ACTION CAMPAIGN
A Public Interest Taxpayers' Lobby
Suite 201, 732 Seventeenth St., N.W.
Washington, D.C. 20006
(202) 337-5530

July 20, 1976

MISCELLANEOUS TAX PROVISIONS
IN TAX REFORM BILL, H.R. 10612

Testimony by

THOMAS J. REESE
Legislative Director
Taxation with Representation

before the

Senate Finance Committee

Mr. Chairman and Members of the Committee,

My name is Thomas J. Reese, and I am legislative director of Taxation with Representation, a public interest taxpayers' lobby with more than 14,000 members throughout the United States. My testimony will be organized around four points:

1. Obstacles to public interest testimony at hearings.

2. The need for analysis of narrow interest provisions by the staffs of the Treasury and the Joint Committee on Internal Revenue Taxation which would include public disclosure of the beneficiaries and the dollar amount which the provision is worth to the intended beneficiary.

3. The need for revenue raising reforms to balance the revenue loss of the provisions, and

4. An analysis of some of the provisions.

<u>Obstacles to Public Interest Testimony</u>

One of Taxation with Representation's principal purposes is to sponsor public interest testimony regarding pending tax legislation. Public interest testimony is inherently more difficult to produce than is special interest testimony. Special interests in many cases are the actual draftsmen of the bills or amendments on which the Committee is holding hearings, so those special interests are intimately familiar with every nuance of the proposed legislation, long before hearings are announced.

In contrast, public interest groups face a series of obstacles in preparing themselves to present helpful testimony to the tax writing committees of Congress. First, public interest witnesses are forced to play detective in ferreting out the special interest measures that are buried in the technical language of a tax bill. These measures are hidden in narrowly defined exemptions, exceptions, changes in effective dates, transition periods and overrulings of IRS and Tax Court decisions.

The job of preparing public interest testimony also includes obtaining copies of the pertinent legislation, committee reports, Treasury bill reports, and other documents; locating competent experts who are willing to speak out in the public interest; contacting them by mail or phone; and subsequently printing and distributing their testimony. All of these steps are time consuming.

In addition, since public interest groups must rely primarily on unpaid experts, the witnesses testifying under their auspices must set aside time from teaching or other duties to do the research needed to present testimony that is professionally sound. Again, time is needed, since the demands of one's normal job cannot always be set aside on short notice.

For all these reasons, the time schedule set forth in the committee's July 9th press announcement is completely unrealistic, at least as far as public interest groups are concerned. Only the special interests already familiar with their own proposals can prepare testimony on such short notice. These hearings must necessarily be viewed as a one-sided opportunity -- which grants special interests a further opportunity to rehearse prepared arguments without granting a realistic hearing to individuals and groups seeking to represent the public interest.

The need for ample time for the preparation of testimony is especially important when large numbers of provisions are considered simultaneously. It is simply unrealistic to expect professional public interest testimony to be forthcoming on short notice with respect to 62 amendments. Under these circumstances, public interest groups will be justified in regarding the Committee's announcement of July 9th as simply "window dressing."

Need for Analysis by the Joint Committee and Treasury

The obstacles to public interest testimony require the adoption of procedures similar to those adopted by the Ways and Means Committee for dealing with miscellaneous bills. (See Ways and Means Committee Public Hearing on Miscellaneous Minor Tax Bills, December 10, 1975.) An important part of the Ways and Means procedure is an analysis of the miscellaneous tax bills by the staff of the Joint Committee on Internal Revenue Taxation. This analysis described current law, the problem the bill was trying to solve, an explanation of the bill, the effective date, the revenue effect, the beneficiaries, and the position of the executive departments.

The Joint Committee pamphlets analyzing the miscellaneous bills were made available prior to the public hearings. The Treasury Department analysis of similar provisions should also be made available prior to the hearings. Unless such analysis by the Treasury and the Joint Committee is available prior to the public hearings, there is no way that serious public interest testimony can be offered. Public interest groups are forced to spend most of their time trying to find the special interest provisions in the tax bill rather than in preparing testimony. Under such circumstances we are sometimes forced to oppose narrow interest provisions because sufficient evidence is not available to show that they are benign. Even now we suspect that we have not uncovered half of the special interest provisions in H.R. 10612.

Besides providing Joint Committee analysis of the legislation prior to the hearings, I also urge the committee to give serious consideration to adoption of the practice of the Judiciary Committee in naming in the title of the bill the person or firm being granted relief. Casting special relief in this form would also promote simplification of the Internal Revenue Code, since it would no longer be necessary to disguise special relief bills as amendments to that Code. There are enough special interest provisions in this tax bill to make it necessary for Congress 10 years from now to pass another deadwood bill.

Revenue Gains to Balance Revenue Losses

Most of the provisions before the committee lose revenue. That loss will have to be made up by ordinary taxpayers unless the committee recommends reforms which will raise an equal amount of money. In keeping with the spirit of the budget resolution, the committee should recommend revenue raising reforms to balance the revenue losses from these provisions. Unless there is tax reform to offset the revenue loss of narrow interest legislation, it is difficult to justify such legislation to the American taxpayer whose taxes will be higher, because he must pick up the tab for benefits given to a few.

Recommended Procedures

Earlier this year the Ways and Means Committee adopted procedures for dealing with miscellaneous bills. The bills submitted by members of the committee were reviewed by a special screening committee of committee members in order to determine whether the bills met the criteria of being technical or minor bills. The criteria used by the screening committee in determining whether a bill should be included in the special hearing on miscellaneous bills were:

"1. The bill must not involve a significant revenue loss (generally, not more than $5 million full year effect; outside limit would be $15 to $20 million).

2. The bill must not involve a broad structural or major administrative change in the tax laws.

3. The bill must not have been included as a provision in the Tax Reform Bill (H.R. 10612).

4. The bill must not have been referred to a study committee during the consideration of the Tax Reform Bill (H.R. 10612).

5. The bill must not deal with an area specifically listed for consideration in phase II.

In connection with the hearing, the staff of the Joint Committee on Internal Revenue Taxation was directed to prepare a description of the bills, to indicate whether any of the bills are retroactive, and to name any particular taxpayer to which the bill might be directed to the extent of the staff's information." (Ways and Means Committee Public Hearing on Miscellaneous Minor Tax Bills, December 10, 1975, page vii.)

I strongly recommend that the Finance Committee adopt similar procedures for dealing with miscellaneous and technical tax matters. In addition, revenue raising measures should be adopted simultaneously so that the cost is not borne by the average taxpayer, nor cause an increase in the deficit. These tax matters should not be included in a tax reform bill. They should be dealt with separately when there is time to give them the attention they deserve.

Furthermore, many of the provisions under consideration today do not become effective until after December 31, 1976. There is no reason to enact these measures now. If such procedures are adopted by the Finance Committee, it will protect itself from being accused of slipping through tax provisions without adequate consideration.

Analysis of Provisions

Refundable Investment Credits

Beginning in 1984, the Treasury Department will pay companies an amount equal to the value of unused investment credits. Unused credits are those which cannot be exhausted under the current provision for carrying them three years backward or seven years forward. The provision, which has general applicability, was sought mainly by the airlines and the utilities. The amendment will cost between $300 million and $500 million in 1984. We oppose this provision unless the revenue loss is recouped by reducing the investment tax credit or by closing some corporate tax loopholes. (Section 802 of the bill; page 177 of the report)

Expiring Credits

Investment and foreign tax credits which would otherwise expire at the end of 1976 would be extended for another two years. The amendment, sponsored by Vance Hartke, D-Ind., would aid the airline industry (investment tax credits) and Chrysler Corp. (foreign tax credits). The Treasury Department opposes the amendment, on the ground it disproportionately favors transportation. The provision would cost $14 million in fiscal 1977 and $30 million in fiscal 1978. (Section 803 of the bill; page 196 of the report). Currently the investment credit can be carried backward three years or carried forward seven years. If a company canot make enough profits during this time to use its credits, it is not the responsibility of the Federal government to bail them out.

Shipbuilding Credit

This amendment, added at the request of Finance Committee Chairman Russell B. Long, D-La., would permit the investment tax credit for spending on ships built with tax-deferred funds. The Treasury Department, which opposes the amendment, estimates that the tax deferral currently available is equivalent to an investment tax credit of 17% and the 10% investment tax credit would be added to that. The revenue loss is estimated at $21 million in fiscal 1977, rising to $45 million by 1981.

Among the beneficiaries would be oil companies, which have extensive shipping fleets; banks, which can build ships and lease them; and steel companies, which use the ships for the movement of ore on the Great Lakes. In the case of the oil companies and the steel firms, the cabotage laws already require that American-built ships be used on the principal routes involved, so the additional incentive of the investment tax credit is totally unnecessary as a spur to ship construction. Furthermore, the provision would, in effect, grant the investment credit for the investment of tax money owed to the U.S. government. (Section 806 of the bill;

page 196 of the report). For more information see testimony of Thomas F. Field on this issue which follows my testimony.

Investments in U.S. Property

Under present law, when a United States corporation reinvests the earnings of a foreign subsidiary in property located in the U.S., this is considered a repatriation of foreign earnings and triggers the U.S. corporate income tax. The bill redefines what will be considered investment in U.S. property to allow a special retroactive exception for Superior Oil Co., which invested earnings in an oil rig on the U.S. continental shelf. Congress in 1969 had defined U.S. investment to include the continental shelf. In addition, there is another special exemption designed to aid Pyramid Ventures Corp. of Louisiana. (Section 1021 of the bill; page 225 of the report). We see no reason to make it easier to defer paying taxes on earnings of foreign subsidiaries.

Shipping Profits

The Finance Committee tightened up the taxation of shipping profits but made four exclusions: two would aid the Hall Corp. Shipping Ltd., owned by the Frank A. Augsbury Jr. family of Ogdensburg, N.Y.

The first exception to aid Hall would exempt from the tightening provision income from shipping between two or more points within the country in which a foreign shipping subsidiary is incorporated and registered. The second exception favoring Hall is that, if a company has virtually all its assets in foreign shipping operations, repayments of unsecured loans would be treated as reinvestment in shipping operations and, thus, exempt from taxation.

Another exception is for two unidentified small corporations from Louisiana and Texas that registered their oil rig servicing vessels under the Panamanian flag. The Tax Reduction Act of 1975 would tax such operations.

A final exception is for the Diefenthal Corp., a Louisiana scrap company, which ships scrap to Japan and uses a Panamanian charter to avoid U.S. taxes. The exception includes a corporation which owns no vessel and doesn't manufacture, grow or mine any commodity. (Section 1025 of the bill; page 230 of the report). Since we do not support deferral, we see no reason to allow it in these special cases.

Agricultural Products

The provision would exclude from the tax haven rules income from all farm products grown outside the U.S. This would give such goods a competitive price advantage and benefits such major agricultural exporters as Continental Grain, Bunge, Cook, Garnac and Louis Dreyfus. The revenue loss is estimated at $17 million in fiscal 1977 and $15 million a year after that. (Section 1205 of the bill; page 232 of the report). Again, since we do not support deferral, we see no reason to allow it in these cases.

Per Country Repeal Exemption

The Finance Committee agreed with the House to repeal the per country limitation and place all taxpayers on the overall method of calculating the foreign tax credit. The effective date was for all tax years beginning after December 31, 1975. The committee approved a three-year transition rule that specifically benefits, among others, Freeport Sulphur Corp.

A similar postponement of per country limitation repeal and new loss recapture rules was included at the request of PPG Industries, though the amendment was tighter than the House version. The House bill also had the Freeport Sulphur provision. (Section 1031 of the bill; page 238 of the report). We prefer putting all taxpayers on the per country method of calculating the foreign tax credit but if Congress wants everyone on the overall basis, then it should apply to everyone without exception.

Foreign Oil and Gas Income

The bill provided a special carryback rule to permit oil companies to use excess foreign tax credits that could not be used because of limitations contained in the Tax Reduction Act of 1975. The proposal included in the House bill, was designed to benefit Natomas Corp., a San Francisco-based oil company, and would cost an estimated $8 million in fiscal 1977 and $10 million in fiscal 1978. (Section 1035 (a) of the bill; page 246 of the report). There is no justification for these excess foreign tax credits in the first place and therefore no need to allow a carryback.

The bill also provided a special transitional rule for recapture of losses to benefit the Sun Oil Co. This will cost $21 million in fiscal 1977 and $6 million in fiscal 1978. The tax money would be recouped in later years. (Section 1035(b) of the bill; page 247 of the report). There is no reason to give Sun Oil a special break unavailable to others.

Oil Related Income

Special definitions of oil-related income were approved to benefit Tenneco, Inc., in its liquidation of a Canadian subsidiary and I. U. International, a Philadelphia conglomerate which apparently wants to consolidate certain gas utility income with its non-oil income so that foreign tax credits may be applied to such income. The cost would be about $5 million or less in each case.

(Section 1035 (c) of the bill; page 250 of the report). This will allow Tenneco to use excess oil tax credits to shelter from taxes income from non oil sources and I.U. International.

Iranian Consortium

An amendment by Sen. Clifford P. Hansen, R-Wyo., at the request of Mobil Oil Corp., would grant a blanket 10-year exemption to Mobil and other members of the Iranian consortium from the provisions of the law which bar the use of the foreign tax credit on income from oil properties in which the companies do not have an "economic interest." The amendment, opposed by Treasury, would cost an estimated $40 million a year or a total of $400 million over the entire period of the exemption. (For discussion of the question, see testimony by Michael McIntyre.) (Section 1035 (e) of the bill; page 251 of the report). The payments to foreign countries are really royalties not income taxes. They should therefore be deductible not creditable.

Oil Production Sharing

An amendment by Sen. Lloyd Bentsen, D-Texas, would reverse for five years an Internal Revenue Service ruling (Rev. Rul. 76-215) which denied the foreign tax credit in the case of certain production sharing agreements. The amendment, designed to benefit primarily Natomas Co., a San Francisco-based oil firm, would cost about $25 million a year for five years. (For analysis of the issue, see testimony by Michale McIntyre.) (Section 1035 (f) of the bill; page 253 of the report)

The oil firms have been busy trying to persuade Indonesia, the principal oil producing country making use of production sharing agreements, to renegotiate them in a form that would pass muster with the IRS. The Service July 14 issued a press release setting the criteria that would have to be met in order to qualify for the foreign tax credit when the foreign government owns the minerals being extracted. The IRS has determined that these payments do not qualify for foreign tax credits. There is no reason to overrule the IRS determination.

H. H. Robertson Co.

The Finance Committee approved an amendment by Sen. Vance Hartke, D-Ind., to reverse a Tax Court decision (59 T.C. 53) against H. H. Robertson Co., a Pittsburgh-based multinational building products firm with a plant in Indiana. The amendment would change the law for all taxpayers but it provides retroactive relief for Robertson. At issue in the Robertson case is whether or not the company owes tax on about $1.5 million of income. (Section 1042(c)(3) of the bill; page 270 of the report)

The Robertson amendment is a private relief bill because it is intentionally designed to retroactively change the tax effect of a liquidating dividend received by H. H. Robertson Co. in 1965. The bill would also change the method of computing earnings and profits for other companies in subsequent years.

Whether the correct method of computing earnings and profits ought to be changed is a complex tax question. Under current law, a dividend of appreciated property from a foreign subsidiary is taxable in full to the recipient, but it reduces the earnings and profits of the foreign corporation by the company's basis in the assets. This rule is generally necessary to prevent repatriation of corporate profits tax-free or at capital gains rates.

The alleged defect in the rule -- the subject of the Robertson amendment -- occurs when a company which has paid a dividend in appreciated property subsequently liquidates. On liquidation, the domestic parent company is taxable on the fair market value of the liquidating dividend, to the extent of the earnings and profits of the company. Since the earnings and profits account was not reduced by the fair market value of the prior dividend, the sum of the portion of the liquidating distribution treated as a dividend and the prior dividend can exceed the historical earnings and profits of the foreign subsidiary.

That is what happened to Robertson. Its U.K. subsidiary paid a dividend in 1964 of appreciated property valued at $1.9 million and then liquidated in 1965. The subsidiary's cost basis in the distributed stock was relatively small ($250,000), making for only a small reduction in historical earnings and profits.

The liquidating distribution was held taxable by IRS up to the balance in the earnings and profits account ($2.9 million). That determination was upheld by the Tax Court (59 T.C. 53) and the U.S. Court of Appeals for the Third Circuit. Robertson was thus taxed on all of its subsidiary's earnings and profits plus an increment representing unrealized capital appreciation. This total, nevertheless, was less than the fair market value of the distributions.

Counsel for Robertson characterizes the above treatment as "double taxation." That characterization is misleading, since Robertson was taxed only once on the receipt of property from its subsidiary. All that occurred was that Robertson was denied the privilege of deferring tax on its unrealized gains.

The best argument for changing the current computation of earnings and profits is that the Robertson-type situation is unusual. In most situations, the sum of the distributions treated as a dividend will not exceed the sum of the historical earnings and profits. However, the Robertson treatment is correct in theory, and if the law is to be changed, it should be done so as to make the Robertson result the general rule. Since the objective of the Robertson amendment is to provide special relief to a single company, however, it

seems proper to focus on the retroactive aspects of the bill and not become enmeshed in the merits or demerits of particular methods of computing earnings and profits.

Canadian Mining Subsidiaries

The Finance Committee approved an amendment permitting consolidation of Western Hemisphere Trade Corporations with non-WHTCs, a move prohibited by the new foreign tax credit rules in the bill. The amendment was designed specifically to aid the Hanna Mining Co. in merging two Canadian mining subsidiaries. Such a merger would be permitted only if 95% of the gross income is derived from mining in a country contiguous to the United States. (Section 1052(b) of the bill; page 284 of the report). Such exceptions to the general tax credit rules are unjustified.

Political Party Debts

The Finance Committee narrowed an amendment contained in the House version which permits business deductions for bona fide bad debts to political parties. The committee version is effective for debts incurred after December 31, 1975, whereas the House version permitted deductions for bad debts incurred after January 1, 1975, and for years before that for which either an assessment or refund would still be possible. The Finance Committee version would eliminate the individual who sought the change in the first place, Charles Guggenheim, who incurred bad debts during some recent Democratic campaigns. It would benefit a major Republican campaign official, Henry Deirdorf. (Section 1304 of the bill; page 401 of the report). Since in general we do not support retroactive relief, we support the Finance Committee changes.

Prepublication Costs

The Finance Committee approved an amendment in the House version which would reverse an Internal Revenue Service ruling (Rev. Rul. 73-395) that required publishers to capitalize over the life of a book the expenses relating to research. The publishers have been seeking to deduct the expenses over one year. Treasury opposes the amendment, which was designed primarily to benefit Encyclopaedia Britannica, which incurs most of its revision costs in research. (Section 1305 of the bill; page 403 of the report) We support the Treasury in opposing this provision. Exceptions should not be made to general accounting principles.

Face Amount Certificates

The Finance Committee approved an amendment by Sen. Walter F. Mondale, D-Minn., to aid Minnesota-based Investors Diversified Services. The amendment would specify that, contrary to Internal Revenue Service regulations, it is not required that holders of face amount certificates include in their gross income the value of the

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discount on a ratable basis over the life of the certificate. An identical measure was defeated by the House Ways and Means Committee in March. The amendment, opposed by the Treasury, would cost about $5 million annually in lost revenue. (Section 1307 of the bill; page 407 of the report). Tax deferral is the main advantage of face amount certificates. Investment decisions should be guided by the market and not tax gimicks.

Coca Cola Franchise

An amendment by Sen. Herman E. Talmadge, D-Ga., would exempt income from a Coca Cola franchise from being treated as personal holding company income. This means it will be taxed at the 48% corporate rate instead of 70%. The amendment is retroactive to 1964. (Section 1308 of the bill; page 409 of the report). There is no good reason for such an exemption.

Texas Optical Company

The Finance Committee approved a retroactive transitional rule to permit capital gains treatment in the case of the transfer of a professional practice. The amendment, offered on behalf of the Texas Optical Co., is an exception to the committee's action extending the general rule denying capital gains treatment to the transfer of a franchise to situations involving a partnership. (Section 1311 or the bill; page 414 of the report). There is no legitimate reason for this retroactive exemption.

Tip Income

The Finance Committee approved an amendment by Sen. Paul J. Fannin, R-Ariz., to ease reporting requirements for tip income. The amendment was sought by American Express, Marriott Corp. and restaurant workers unions. The change would cost less than $5 million annually in lost taxes due to unreported income. (Section 1312 of the bill; page 416 of the report). We support the IRS in opposing this amendment.

Percentage Depletion

The Finance Committee approved several changes in the rules relating to repeal of percentage depletion on oil and gas, enacted in the Tax Reduction Act of 1975. The basic amendment was offered by Sen. Bob Dole, R-Kans. The committee restored the percentage depletion allowance for integrated companies if their retail sales are $5 million a year or less. Another provision restored the allowance for an independent oil producer who owns six gas stations in Israel. Another provision would retain percentage depletion in the case of certain trusts. The amendment would cost $18 million in fiscal 1977. (Section 1317 of the bill; page 424 of the report). Since we support complete repeal of percentage depletion on oil and gas, we see no reason to make it easier for companies to retain it.

State Barge Taxation

The Finance Committee approved an amendment by Chairman Russell B. Long, D-La., that would reverse a Louisiana district court decision and prohibit the state to levy an ad valorem property tax on vessels using navigable waters in interstate commerce. The Supreme Court of both Louisiana and the United States refused to review the case. The amendment was introduced at the request of Sen. James Eastland, D-Miss. A major campaign contributor of Eastland owns a shipping company in Greenville, Miss., that would benefit from the amendment. Some experts believe the Louisiana action to tax the out-of-state vessels is illegal under federal law. (section 1321 of the bill; page 433 of the report). [illegible] we have no position on this amendment.

Utilities Charge

The Finance Committee approved an amendment by Sen. Mike Gravel, D-Alaska, that would reverse an Internal Revenue Service ruling (Rev. Rul. 75-557) and permit sewer and water utilities to exclude from gross income payments in cash or material made by customers in return for utility hookups. An earlier version would have included all utilities and we fear that these taxpayers will lobby in the future to widen the scope of the amendment. The amendment would cost $13 million in fiscal 1977 and could rise to $100 million if all utilities are included. Treasury is opposed to the change. (Section 1322 of the bill; page [illegible] of the report). This provision would be a bad precedent and provide a way of making payments to utilities that would not be taxed.

Life and Casualty Consolidation

A Finance Committee amendment to permit consolidated returns for life and casualty operations has sparked considerable controversy among technical experts. The amendment will permit tax savings from a property company's losses to be taken into account earlier by the affiliated group in computing its statutory surplus and this should increase the capacity of those companies to write insurance.

Proponents, including the Treasury Department, believe it will give uniform treatment to life and non-life companies who have casualty affiliates. They argue that the amendment preserves the procedures for determining taxable income used by each type of insurance company but permits life insurance companies to enjoy the same loss offset advantages enjoyed by non-life parents of casualty companies. Since the amount of loss which can be taken into account in any one year is limited to the lesser of 30% of the taxable income of the life company or 50% of the sum of losses for the current year and prior years, there will be little opportunity for excessive tax reductions.

Opponents, including the American Mutual Insurance Alliance, a trade association of more than 100 mutual fire and casualty

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insurers, contend the change will further reduce life insurers' taxable income which, under current law, is only 50% of actual taxable income. That taxable income is still usually greater than 50% of the casualty losses, so under the limitations, life companies will most probably be limited to deducting 50% of the casualty losses. This limitation, opponents claim, will not limit a life company's advantage, however, because a carryover provision in the amendment would, in effect, allow absorption of 97% of the casualty company's losses at the end of five years. They argue that the change will hurt independent casualty insurers who don't have large parents to absorb their losses. The provision will cost $25 million in fiscal 1978, and $40 million by 1981. (Section 1508 of the bill; page 454 of the report). Since the provision will not be effective until 1978, there is no reason to rush it through without more study.

Pollution Control Equipment

Sen. Clifford P. Hansen, R-Wyo., sponsored an amendment to make new pollution control equipment installed in facilities eligible for five-year amortization. In addition, it will be eligible for two-thirds of the 10% investment tax credit. This amendment continues a trend toward more generous treatment of companies forced by federal laws and regulations to install pollution control equipment, particularly in the extraction and paper industries. There is no reason why taxpayers should subsidize polluters. The cost of pollution control should be born by the polluters and those who buy their products. (Section 1313 in the bill, page 417 in the Committee Report)

Private Hospital Bonds

Sen. Lloyd Bentsen, D-Texas, sponsored a provision to raise the small issue exemption on industrial revenue bonds to $20 million from $5 million if the bonds are issued by state or local governments for the construction of hospitals. Generally, revenue bonds are prohibited by the tax laws, but there are exemptions for certain purposes (not including hospitals) and for issues of less than $5 million. The amendment was sought by the Federation of American Hospitals which includes the Humana Corp. of Louisville, Ky., owner of 60 hospitals throughout the United States. We oppose industrial development bonds because they compete with municipalities in the tax exempt market and because they provide a method of escaping taxes for the very rich.

Amortization of Track Accounts

Currently, original track and ties are capitalized and no depreciation is allowed. When the original track and ties are replaced with track and ties of like quality, the cost (material and labor) can be deducted as current expense. If the replacement is made with material of a higher quality, for example cement ties, the increased value (betterment) must be capitalized.

The House version of the Tax Reform Act permitted current expensing of all replacements of existing ties (not track). The Finance Committee voted to retain current treatment of ties but to make track replacement eligible for 10-year amortization, compared with a normal life of about 40 years. We oppose both the House and Senate provisions giving further tax breaks to railroads. (Section 1701 of the bill, page 480-485 of the Committee Report)

Subchapter S Corporations

An amendment offered by Sen. Harry F. Byrd, D-Ind-Va., would encourage regular corporations to become Subchapter S corporations to secure substantial tax savings for their shareholders.

Under present law, all corporations are allowed accelerated depreciation deductions. But, cash distributions in excess of the corporation's taxable income may result in ordinary income treatment to the shareholders because a double benefit of accelerated depreciation is disallowed. The Byrd proposal would mean that if a Subchapter S Corporation has a reserve of previously taxed income, certain cash distributions that exceed taxable income would be tax free.

The proposed amendment would encourage regular corporations which have a deficit of accumulated earnings and profits and which have large amounts of accelerated depreciation, to become Subchapter S Corporations. The Subchapter S corporations would then make cash distributions in their first year of operation which would be tax free to the shareholders. We oppose this amendment.

Effective Date on New Grantor Trust Rule

People presently put their investments in foreign trusts because such trusts do not pay any United States income taxes. The bill would remedy this by taxing the grantor on the income of the trust. The effective date of the House bill is May 21, 1974, in order to catch eleventh hour tax avoiders who rushed to set up such trusts once they heard that the House Ways and Means Committee was considering this provsion. The Senate Committee changed the effective date to May 29, 1974, despite the fact that the Ways and Means Committee decision was made during an open hearing. There is no reason to allow this loophole to exist one hour more than necessary. (Section 1013 of the bill, page 215 of the Committee Report)

Tax-haven Insurance Earnings

The American International Group Inc , a U.S. insurance corporation sought this exclusion for its Bermuda operation. Cost: $11 million in fiscal year 1977; $10 million yearly thereafter. The excluded earnings are those which must be set aside and reinvested to meet capital and legal reserve requirements as if (hypothetically)

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the more stringent U.S. requirements applied in the foreign country. We do not support any exceptions to tax haven rules since we support complete elimination of deferral. (Section 1023 of the bill, page 229 of the Committee Report)

Portfolio Investments in U.S. of Foreigners

General principles of international taxation give the first right to tax to the country where the income is generated. American investments abroad are taxed, foreign investments in the U.S. should also be taxed unless treaty agreements provide otherwise. (Section 1041, page 258 of the Committee Report). (See testimony of Professor Peggy Musgrave attached).

Contiguous Country Branches of Domestic Insurance Companies

Under present law a domestic mutual life insurance company pays taxes on its worldwide taxable income, receiving a credit for foreign taxes paid. Because taxes imposed by the United States exceed those of Canada, the insurance industry has tried to get a special exception for their Canadian branches. This amendment frees profits of Canadian branches from United States taxes, as long as the profits are not repatriated to the United States. Mutual insurance companies use the separate branch accounting system whereby premiums and policyholder dividend rates are based upon the separate mortality and earnings experience of the Canadian branch. Therefore, these specially treated profits benefit only Canadian policyholders and may not be used to provide benefits for U.S. policyholders. The major insurance companies requested this tax preference. The revenue losses will be $4 million in 1977 and $8 million annually thereafter. (Section 1043 of the bill and page 271 of the Committee Report). Since we do not support deferral, we do not support this provision making it easier for a company to defer its taxes.

Amortization of Railroad Grading and Tunnel Bores

Railroads since 1969 have been allowed to amortize railroad grading and tunnel bores. They now want to be allowed to writeoff pre 1969 investments. This is retroactive legislation which will have no incentive effect. Railroads have received almost every conceivable tax break and Congress should not give them another which will not solve the fundamental problems of the railroads.

Energy-Related Provisions

I testified earlier on the energy bill, H.R. 6860, from which some of the energy-related provisions were taken. I have attached to my testimony a copy of my earlier statement. In general we opposed all of the energy related provisions. A tax reform bill is not a place for new inefficient and ineffective subsidies. In connection with these provisions, we suggest more reliance on the

free market mechanism and less government interference in the form of price controls, quotas, and tax gimmicks. We strongly support the testimony of Environmental Action in opposing the recycling tax credit. We also strongly oppose the residential insulation credit which will cost $320 million per year and only save about 6.38 million barrels of oil a year.

Swap Funds

Taxation with Representation supports repeal of the swap fund loophole, but we oppose grandfathering in any existing funds. Those who go out of their way to find loopholes in the Tax Code should not be protected from remedial legislation. (See my testimony before the Ways and Means Committee, March 29, 1976, attached.)

Other Provisions

In the time available to prepare testimony for this hearing, it was impossible to analyze all the provisions. Nor could we do an adequate job on those we did analyze, especially with the limited information available. While the bill language and the bill report were available for most of the provisions, they frequently hid rather than revealed what was happenning and who would benefit. For the amendments adopted on June 4 and June 11 there was no bill report or language. As a result, the analysis given in this testimony is not definitive. It is subject to modification when additional information becomes available.

Additional Material For the Record

Mr. Chairman, I also request that the following material be printed following my statement in the record:

1) Testimony by Thomas F. Field on Untaxed Maritime Construction Funds and the Investment Credit.

2) Testimony of Thomas J. Reese on Exchange Funds, H.R. 11920.

3) Letter of Thomas J. Reese of June 9, 1976 on Withholding Tax on Foreign Investors together with testimony of Professor Musgrave.

4) Statement by Taxation with Representation on Provisions Which Should Be Deleted from the Tax Reform Bill, H.R. 10612.

5) Statement of Thomas J. Reese on the Energy Bill, H.R. 6860

6) Statement by Michael J. McIntyre on Taxing International Oil Profits.

Summary of Testimony of
K. MARTIN WORTHY
Hamel, Park, McCabe & Saunders
Before The Committee on Finance,
United States Senate
July 20, 1976

The provision in section 1013(a) to tax a U.S. grantor of a foreign situs trust having any other U.S. person as a beneficiary on all the income of the trust -- irrespective of whether the grantor has retained any dominion, control or possible interest in the trust -- is patently unconstitutional. To require her to pay tax on another's (the trust's) income would deprive her of her property without due process of law.

Retroactive application of this provision to irrevocable trusts created before this Congress convened and before this bill was reported is most unfair and inequitable. Taxpayers, faced with a complicated tax law, have a right to rely on the law as written. They should not have to read and follow legislative proposals the outcome of which no one can predict.

Absent the objectionable provision, the remaining foreign trust provisions completely do away with the foreign trust tax avoidance device. The provision in question is surplusage.

The provision objected to should be eliminated or, alternatively, its retroactive application should be cut off.

STATEMENT OF

K. MARTIN WORTHY

Before the Committee on Finance,
United States Senate
July 20, 1976

My name is K. Martin Worthy, I am a member of the law firm of Hamel, Park, McCabe and Saunders of Washington, D. C.

I appear here today on behalf of Freda R. Caspersen in opposition to part of the foreign trust provisions (Sections 1013-1015) of H.R. 10612.

These provisions would basically do two things: (1) They would eliminate an advantage now enjoyed by U.S. beneficiaries of foreign trusts over beneficiaries of domestic trusts with respect to capital gains, and, by adding an interest charge to the tax imposed under the throwback rules, eliminate any advantage that such beneficiaries may presently enjoy from any deferral of tax on accumulated income of a foreign trust. We have no objection to these changes in existing law. (2) In addition, as a substitute for a tax on the beneficiaries, the bill would tax every United States grantor hereafter on the income of any foreign situs trust having any United States beneficiary, even though the grantor has retained no dominion, control or possible interest in the trust. It is to this latter proposal, and specifically the effective date thereof, that we take strong exception.

Under present law, as described in the Committee report, if property is transferred into trust (foreign or domestic), the grantor will continue to be taxed on the income of such trust if -- but only if -- he has retained some income or reversionary interest, some degree of control, or some power of revocation over the trust.

Section 1013(a) would, however, as previously noted, tax every United States grantor on the income of a foreign situs trust having any United States beneficiary, even though the settlor has retained no such dominion, control or possible interest in the trust. It would tax the grantor on any income earned after December 31, 1976, by such a foreign trust created at any time after May 29, 1974. May 29, 1974, is the date in the 93d Congress on which the House Ways and Means Committee announced that the Committee had arrived at a "tentative decision" to make a similar change in the law. A recommendation to that effect was subsequently made by the Committee, but no action was taken thereon thereafter by either House of such 93d Congress.

More than eighteen months ago, in December 1974, Mrs. Caspersen made an irrevocable transfer of what had been her property to a foreign situs trust with United States beneficiaries. Under that trust she transferred such property for all time, beyond recall, reserving to herself no control, dominion, or right of direction whatsoever, and retaining no interest, present or future, vested or contingent, in the property transferred or in the income therefrom.

A significant U.S. Gift Tax was paid in 1974 on account of such transfer and a 30% withholding tax on dividends paid to the trust by U.S. corporations is currently being withheld.

I believe that the attempt in Section 1013(a) to tax income earned in the future from property in which the grantor has retained no interest or control whatever is patently unconstitutional.

In Hoeper v. Tax Commission of Wisconsin, 284 U.S. 206, 52 S. Ct. 120, 76 L. ed. 248 (1931), the State of Wisconsin attempted to fix the rate of tax on a husband by reference to the separate income of his wife. In overturning such tax, the United States Supreme Court stated the legal principle involved very succinctly:

> We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the 14th Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income.

The Supreme Court later said that what is prohibited to the State by the Fourteenth Amendment is prohibited to the Federal Government by the Fifth Amendment. In overturning a Federal tax on property which had formerly belonged to a decedent, in Heiner v. Donnan, 285 U.S. 312, 52 S. Ct. 358, 76 L. ed. 772 (1932), the Court said (at page 327):

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> ... there is imposed the burden of a tax, measured in part by property which comprises no part of the estate, to which the estate is in no way related, and from which the estate derives no benefit of any description. Plainly, this is to measure the tax on A's property by imputing to it in part the value of the property of B, a result which both the Schlesinger and Hoeper Cases condemn as arbitrary and a denial of due process of law. Such an exaction is not taxation but spoliation. "It is not taxation that government should take from one the profits and gains of another. That is taxation which compels one to pay for the support of the government from his own gains and of his own property." United States v. Baltimore & O. R. Co. 17 Wall. 322, 326, 21 L. ed. 597, 599.

Mrs. Caspersen is now powerless either to revoke the trust or to require that any of the trust income be used to discharge the tax liability which would be imposed on her under Section 1013(a). The trust property and income are forever beyond her reach. She has no way of even compelling the trustee to provide her with information as to the amount of the income on which Section 1013(a) would require her to pay tax.

The revenue whould in any event be fully protected by the provisions of the Bill, to which I have previously referred, in Sections 1013(c) and 1014 requiring the United States Income Tax ultimately be paid, together with interest, by the beneficiaries on the full amount of income of a foreign trust. And by applying such provisions of Sections 1013(c) and 1014 instead of 1013(a), the burden of the tax would then be borne by those who receive the benefit of such income and not by one who has completely deprived herself of any interest or control therein.

It seems to me to be fundamental that every citizen in arranging his affairs should be able to rely on the law as it exists at the time and not on what some few members of Congress, however able or well intentioned, believe the law should be. See Note, 84 Harvard Law Review 436 (1970) at p. 443, and New York State Bar Association, Report of the Committee on Tax Policy and Retroactivity of Tax Legislation (July 31, 1975) at p. 10. Congress sometimes makes a tax "retroactive" to the beginning of the year (see Cooper v. U.S., 280 U.S. 409, 50 S.Ct. 164, 74 L.ed. 516 (1929)), but rarely if ever does it make a tax retroactive to a prior Congress. Even when it makes a tax retroactive to the beginning of the year, I know of no instance where it has successfully made a tax applicable to someone other than the taxpayer who earned the income subject to the tax. As said by Judge Learned Hand in Frew v. Bowers, 12 F. 2d 625 (2d Cir 1926), and repeated by the Supreme Court in the Donnan case "Such a law [would be] far more capricious than merely retroactive taxes. Those do indeed impose unexpected burdens, but at least they distribute them in accordance with the taxpayer's wealth. But this section distributes them in accordance with another's wealth; that is a far more grievous injustice."

If a tax can be imposed now on income earned in 1977 and later years from property completely given away by the taxpayer in 1974, then there is no reason why a tax cannot be imposed for the first time in 1976 or 1977 on the income of property which a taxpayer transferred to a grandchild in 1964, gave to a sick brother for his support in 1944, or even donated to charity in 1924. I find that unthinkable, and surely not only the constitutional principles to which I have referred but the basic sense of fairness of the Congress will prevent it from doing so.

I submit that §1013(a) should be eliminated, or that, at the very least, it should be made inapplicable to income from property transferred into trust long before the current legislation.

SUMMARY OF PRINCIPAL POINTS
IN THE

STATEMENT OF ROBERT C. LEE

PRESIDENT OF BELLEFONTE INSURANCE COMPANY

BEFORE

THE SENATE FINANCE COMMITTEE

JULY 20, 1976

1. The proposed change in the source of underwriting income (Bill Section 1036) would have far reaching effects that were not previously contemplated.

2. If the proposed source rules are adopted, it could result in double taxation of a sizeable portion of Bellefonte Insurance Company's business.

3. The location of specific risks can be difficult to determine, particularly in the case of marine, aviation and reinsurance business.

4. Bill Section 1036 should be eliminated from the pending Tax Reform Act and deferred until such time that it can be studied by a larger cross-section of the industry.

Bellefonte Insurance Company

Statement relating to Source of Underwriting Income (page 257 of Committee Report)

Bellefonte Insurance Company is a corporation chartered in the State of Kentucky licensed to underwrite multiple lines of insurance and reinsurance in that state as well as various other states. It is a wholly-owned subsidiary of Armco Steel Corporation with principal offices in Middletown, Ohio.

Bellefonte is opposed to the amendments to Sec. 1036 UNDERWRITING INCOME which amend sections 861 (a) and 862 (a) relating to the source of income rules. These amendments would change an established position of the Internal Revenue Service that the source of income is to be determined on the basis of where the incidents of the transaction which produce the income occur, and substitute therefore a new provision which would determine the source of income on the basis of whether it was derived from the insurance of U.S. risks or non-U.S. risks.

The statement of the Reasons for change outlined in the Senate Committee report refer to a limited situation in which such an amendment may be desirable. However, the amendment would have other, more far-reaching effects which were apparently not contemplated in the formulation of the amendment.

In the case of Bellefonte Insurance Company, it would impose double taxation on a sizeable portion of its business. This is because Bellefonte is, in addition to its operations in the United States, licensed to operate in the United Kingdom, Belgium, Holland, Spain and Greece. In the case of its underwriting operations in London, which are primarily reinsurance, it writes a sizeable volume of business in which about 65% of the premiums are paid in U.S. dollars and 35% in non-U.S. dollars.

This branch operation, which permits Bellefonte to participate in the large international insurance and reinsurance market centered in London, is conducted entirely in London where the incidents of the transaction which produce the income occur. Under these circumstances, Bellefonte's operations in London are subject to United Kingdom income tax. While Bellefonte, as a U.S. corporation is also subject to U.S. taxation on the whole of its operation, as respects that portion of its business carried on in London which is considered by the Internal Revenue Service to be foreign source income, it can take credit against its U.S. tax liability for the taxes paid to the United Kingdom (up to a maximum of 48%).

If the source of income rule is amended, Bellefonte would then be denied credit for the taxes it must pay to the United Kingdom with the result that it would pay 100% tax on this business (52% to the United Kingdom and 48% t the United States), which would destroy the branch operation in London.

The amendment would also provide a perplexing problem in that it is often difficult, if not impossible, to identify where the specific risk is located, particularly in the cases of marine and aviation business or whole account reinsurance of a company's total book of business.

Because of the necessity of spreading the huge risks associated with commerce and catastrophes among as broad cross-section of insurers or reinsurers as possible, insurance is an international business. Even the eastern countries find it necessary to participate in the international reinsurance market. It is a complex business that has been developing for a large number of years with much tradition attached to it. Under these circumstances, Bellefonte urges that any amendment to the source of income rule as affects underwriting be eliminated from this current legislation and considered for future legislation at a date when it can be considered in more detail and with participation of larger cross-section of the industry.

RCL/vt

4-16

Testimony of

Aluminum Recycling Association

by

Daniel M. Moenich, President

on H.R. 10612

Before

The Senate Committee on Finance

July 20, 1976

Testimony of the Aluminum Recycling Association
Before the Senate Committee on Finance
July 20, 1976

Executive Summary

The proposed recycling tax credit does not expand the aluminum recycling industry's market for its product and, therefore, does not expand the need for additional aluminum scrap.

There is excess aluminum recycling capacity to produce to meet the demand for product.

There is capacity to process all aluminum scrap generated by municipal waste systems.

Should the proposed aluminum recycling tax credit induce primary aluminum producers to enter the recycling industry, they would have the dual advantage of the tax credit and depletion allowances thereby defeating one of the bill's major objectives, i.e., to equalize the benefits to primary and secondary industries.

In the fourth year of the tax credit - after the base period phase out - the aluminum recycling industry at present levels of scrap consumption and average scrap prices would receive a tax credit equal to 7% of its gross annual sales dollars.

Primary aluminum alloy is neither the equivalent of, nor substitutable for, nor interchangable with recycled aluminum alloy.

Current demand for aluminum scrap by primary, recycling and fabricating (self-recyclers) plants applies the greatest possible pressure upon scrap collectors and brokers to bring available scrap back into the industrial stream.

The demand of the aluminum recyclers' customers - the casting industry - dictates the amount of aluminum scrap required by our industry each year. Monies made available through a tax credit result only in enabling aluminum recyclers to bid increasingly higher prices for scrap thereby inflating the price of recycled ingot.

The aluminum recycling industry has demonstrated a constant capability, willingness and motivation to expand scrap producing capacity without government incentive. Within the past eight months, aluminum recycling production capacity has increased 8% including the entrance of twelve new companies into the industry.

For all the foregoing reasons, the proposed recycling tax credit will not result in either the use of more aluminum scrap or the development of additional net scrap recycling capacity.

My name is Daniel M. Moenich. I am President of Apex International Alloys, Inc., Des Plaines, Illinois and I am President of the Aluminum Recycling Association.

By its title and by its long history of operation in recycling aluminum, obviously ARA is strongly in favor of the concept of recycling. We are, however, opposed to the application of a recycling tax credit to our industry as proposed in H.R. 10612 and therefore support Amendment No. 1931 of Senator Taft to exclude aluminum base scrap from the tax credit.

In a finite world concerned about steadily diminishing mineral reserves, there is great value in prolonging the useful life of materials. Minerals, and much of the energy used to refine them, can often ve preserved for reuse by recycling. This process, thc major concern of the member companies of the Aluminum Recycling Association, has been practiced by some of them for over seventy years.

Aluminum is too useful and too valuable not to be kept in use. Aluminum recycling today is an international industry, with metal and scrap traded daily in world markets. Recycled aluminum produced by U. S. firms to strict specifications for the castings processes goes into automobiles, heavy equipment, photo and optical equipment, electrical devices, major home appliances, and hundreds of other products for consumer or industrial use.

The first company to recycle aluminum was founded in 1904, a scant 16 years after the first commercial production of primary aluminum in 1888. Today there are almost 100 aluminum recycling plants spread through the country in virtually every industrial center dedicated to reusing aluminum scrap in producing metal for further use in commercial, industrial and consumer products.

Annual sales of the industry are between $600,000,000 and $700,000,000. Aluminum recycling is recognized as an important source of metal and metal technology separate and distinct from the primary aluminum industry. The aluminum recycling industry has steadily increased capacity and production since it began.

To emphasize the long history of the industry we have attached as Exhibit A a year-by-year list of aluminum recycled from scrap from 1913 (the year records were first kept for our industry) through 1975. In those 62 years, more than 42 billion six hundred ninety thousand pounds of recycled aluminum have been produced from scrap.

Our industry was begun 71 years ago by men of vision who found a market for a product made from aluminum scrap.

Over the past seven decades, the aluminum recycling industry has become highly sophisticated in its production processes and in the methods by which it has utilized scrap purchased from primary producers, other fabricating processes, and from scrap yards and brokers. During all these many years we have provided specification aluminum alloy for the castings industry. With very minor exceptions, primary aluminum producers do not provide alloy for the castings industry. Indeed aluminum alloy is not substitutable for nor interchangable with recycled aluminum alloy because primary alloy is not made to meet castings specifications. There is little product or market competition between the primary and the recycling aluminum industries. Therefore, the proposed amendment cannot provide tax equity between the two industries.

It has been stated that a goal of the recycling tax credit is to "create a situation of equity between virgin natural resources and recyclable material" by granting users of recyclable material a tax credit equal to one half of the percentage of depletion allowances given to competing virgin natural resources. We find a great fallacy and a great contradiction in this proposition as it applies to aluminum base scrap because it would enable primary producers who today use increasing amounts of scrap for their operations to avail themselves not only of depletion allowances but also of a recycling tax credit.

It has been said by the President's Council on Environmental Quality in its 1975 report to Congress at page 93: "In the long run, increased recycling will depend upon a committment by the major firms in the paper industry, for example, to use wastepaper day to day rather than only when virgin fiber is unavailable. For them to do so, a fundamental shift in the economics of recycling is necessary."

Mr. Chairman, members of the Senate Finance Committee, this may well be true for the paper industry and we have no base of knowledge from which to challenge it, nor do we wish to challenge it. However, it is not true of aluminum recycling. The existing fundamentals in the economics of recycling aluminum for the past seven decades has resulted in a strong, healthy and growing recycling industry that provides over 20% of this country's aluminum each year.

If it is the intent of the tax credit to encourage recycling and conserve energy and natural resources, as applied to aluminum it is simply throwing tax money at a problem that does not exist in our industry. It is a costly and misdirected approach.

The demand for aluminum scrap for our industry is based entirely upon demand placed upon us by the casting industry for specification alloy to produce consumer components. The casting industry in turn responds to demand from the automobile, heavy equipment, home appliance, photo and electrical and many other industries.

When the economy is strong, this demand is high and so are our requirements for scrap. When the economy weakens, the reverse is true and we use less scrap. Unwanted monies freed by tax credits are a disruptive intrusion into the economics of an established industry. We believe government should not force an industry to deal with an external infusion of money it neither wants nor can readily absorb within the framework of its demand-supply cycles.

For example, at our current rate of production and scrap usage and using current average scrap prices, the recycling tax credit for our industry in the year following phase out of the base period could amount to $49,500,000. (Over 7% of the industry's gross sales income) Pumping this kind of money into the scrap stream, demand for which is defined by customer needs, can result only in increased prices for scrap as recycling companies bid against each other to obtain scrap for their furnaces.

Within the past 18 months the capacity of our industry to recycle aluminum has grown from an annual capability of 1.9 billion pounds to over 2.25 billion pounds. This has come about without a tax incentive and because of the strength of the economics of our industry. And from our knowledge of the industry, there are companies today expanding capacity of existing plants and planning to construct plants as new entrants to the industry. This is a natural, normal and thoroughly acceptable phenomenon of our competitive industrial society.

It has been said: "The cities and States must find ready stable markets for all the recyclable metals, paper and glass they will be recovering from garbage." With this we agree and we are a part of that stable market for aluminum base scrap today, and we need no tax incentive readily and economically to process such scrap. Perhaps it is the requirement of cities and States to be helped to generate usable scrap or perhaps it is the need of the scrap gatherers and distributors for an incentive to obtain more scrap. It is not our need and without reservation we reject a recycling tax credit as misplaced in its application to recycling companies that produce specification aluminum ingot from aluminum base scrap and alloying materials.

Mr. Chairman, members of the Committee, our Association represents over 80% of this country's capacity to produce recycled ingot sold in the marketplace. We do not beg the questions either of the conservation of increasingly scarce raw materials nor the conservation of diminishing energy. We have practiced the conservation and reuse of commodities and energy since the beginning of this century. We have heard no arguments, seen no figures, no mathematical nor economic formula that convinces us that a recycling tax credit as it is proposed in H.R. 10612 either will expand the amount of aluminum base scrap available or increase the use of aluminum base scrap and we strongly urge the Senate Finance Committee and the Senate to exempt aluminum base scrap from the proposed tax credit by supporting Mr. Taft's amendment.

Thank you for this opportunity to present our arguments.

RECYCLED ALUMINUM
(From Scrap)

Exhibit A

Testimony of the
Aluminum Recycling Association
Before the
Senate Finance Committee
On H.R. 10612
July 20, 1976

Year	Pounds
1913	9,308,000
1914	9,044,000
1915	17,000,000
1916	30,600,000
1917	32,200,000
1918	30,100,000
1919	37,382,000
1920	31,000,000
1921	17,800,000
1922	32,580,000
1923	42,600,000
1924	54,000,000
1925	88,000,000
1926	88,400,000
1927	92,400,000
1928	95,600,000
1929	98,800,000
1930	77,200,000
1931	60,600,000
1932	48,000,000
1933	67,000,000
1934	92,800,000
1935	102,800,000
1936	103,000,000
1937	125,120,000
1938	77,600,000
1939	107,894,000
1940	160,724,000
1941	213,714,000
1942	392,000,000
1943	628,000,000
1944	650,000,000
1945	596,000,000
1946	556,000,000
1947	690,000,000
1948	574,000,000
1949	362,000,000
1950	486,000,000
1951	594,000,000
1952	608,000,000
1953	736,000,000
1954	626,000,000
1955	828,000,000
1956	856,000,000
1957	880,000,000
1958	708,000,000
1959	898,000,000
1960	876,000,000
1961	970,000,000
1962	1,164,000,000
1963	1,308,000,000
1964	1,414,000,000
1965	1,658,000,000

Sources: Secondary Aluminum, R. J. Anderson (1931)
Bureau of Mines
Aluminum Association
BDC, Dept. of Commerce

RECYCLED ALUMINUM
(From Scrap)

Year	Pounds
1966	1,774,000,000
1967	1,756,000,000
1968	1,944,000,000
1969	2,300,000,000
1970	2,000,000,000
1971	2,100,000,000
1972	2,252,000,000
1973	2,470,000,000
1974	2,564,000,000
1975	2,364,000,000
Total	42,692,466,000

nojc

Statement of the
National Oil Jobbers Council
Before the
Senate Committee on Finance
Commenting on
H.R. 10612
The Tax Reform Act of 1975
(Heat Pump Tax Credit)
July 20, 1976

NOJC

The National Oil Jobbers Council is a federation of 42 state and regional trade associations representing thousands of independent small business petroleum marketers. Members include gasoline and diesel fuel wholesalers, commissioned distributors of gasoline, gasoline reseller-retailers and a large number of retail fuel oil dealers. Members also wholesale or retail many other petroleum products, including kerosene, LP gas, aviation fuels and motor oils as well as residual fuel oil. Together our members market approximately 75 percent of the home heating oils and 25 percent of the gasoline sold in America under either their own private brand or the trademark of their supplier.

The Tax Reform Act of 1975 (H.R. 10612) contains a provision for a refundable tax credit on a portion of the cost of installing a Heat Pump in existing residences. NOJC believes that this provision will not only fail to encourage energy conservation, it will actually become an incentive for much greater energy demand. For this reason and those listed below, we therefore respectfully request that this provision be stricken from the Act.

The Heat Pump mandates the use of air conditioning since it is an inherent capability of the equipment. This provision, therefore, instead of its avowed purpose, conservation, is actually promoting the additional use of energy for cooling.

An incentive already exists for the Heat Pump since it is less expensive than a combined air-conditioning and oil or gas heat system. The heat pump is not a new or inovative device and since they are being sold at an annual rate of 175,000 units, a tax incentive is superfluous.

The high losses (frequently acknowledged by Edison Electric Institute) inherent in the generation, transmission and distribution of electricity more than use up the energy conserved by the claimed efficiencies of the Heat Pump. Consequently only when compared to electric resistance heat, can a Heat Pump be a viable conservation alternative. But, when compared to oil or gas heat, a heat pump uses more of our resource energy.

The promotion of a system with cooling capability will add to electric utilities' summer load. Since most electric utilities now have a summer peak, additional generating capacity will be required. Once installed, the utility has an economic necessity to promote the use of the added capacity; i.e., more energy consumed, not conserved.

The result of this provision not only increases demands on our energy resources, but also increases the electric utilities' capital requirements with which they already have problems.

The Heat Pump tax refund represents an appreciable revenue loss to the Federal Treasury. It was reported by the Bureau of National Affairs (BNA) that the staff of the Joint Committee on Internal Revenue Taxation has estimated this to be $70 million the first year and ultimately $200 million annually. An analysis accompanying our written statement indicates that the most conservative estimate would be $19 million the first year. We find it, therefore, difficult to understand why the Committee report only anticipates a $3 million revenue loss the first year.

(over)

By subsidizing the installation of the Heat Pump, the consumer is ill-advisedly being encouraged to invest in a system which has historically high operating and maintenance costs and unproven reliability. Both the National Bureau of Standards and the Oak Ridge National Laboratory have issued reports supporting this reservation. Actual experience indicates that the problems encountered increase energy use to a startling degree.

The benefits of this provision do not accrue to low-income tax-payers. The installation cost of a Heat Pump dictates that even with the tax incentive, only high-middle income taxpayers can afford to consider such an installation.

The provision is discriminatory since it subsidizes the installation of Heat Pumps to the exclusion of presently available competing heating systems or equipment with greater conservation potential. This appears to be a return to the all-electric economy, a Project Independence philosophy which has been examined and found wanting.

Thank you for the opportunity to offer this statement to the Committee.

Attachments

TAX REFORM ACT 1975 - H.R. 10512

ANALYSIS OF HEAT PUMP REVENUE LOSS

REPLACEMENT MARKET

(NOFI)*	400,000	Oil fired residential furnaces
(AGA)*	500,000	Gas fired residential furnaces
(Clark)*	250,000	Electric fired residential furnaces
	1,150,000	TOTAL residential furnaces

HEAT PUMP REPLACEMENT INSTALLATION COST

$2,130.00	Minimum
$6,400.00	Maximum

TAX CREDIT = 20% X $1,000 + 12.5% X $1,130 = $341.00

$3 million (Committee Report) ÷ $341.00 = 8,797 units. A market penetration of less than 1% which is patently ridiculous with a tax credit incentive.

Also, the 8,797 units represents only 5% of the 175,000 Heat Pumps which were installed in 1975 without a tax credit.

If penetration were only 5% of replacement market it would prepresent a revenue loss of $19 + million (@ $341.00/unit) in 1977 alone.

If penetration reaches 50% the revenue loss would reach $175 million annually, and with a tax credit, 50% penetration is not unlikely in the second or third year.

If the above "maximum" cost is used, a revenue loss as high as $503 million could be reached.

*NOFI - National Oil Fuel Institute

*AGA - American Gas Association

*Clark - Authored article, "Heat Pumps . . ." March 1976, Air-conditioning and Refrigeration Business, Page 34.

TAX REFORM: INCREASE INSURANCE OF DEPOSITS, REDUCE INCENTIVES FOR DEBT FINANCING, WALLICH SAYS

Tax legislation should try to remove the tax bias toward debt and against equity, Federal Reserve Board Member Henry C. Wallich told a conference in New York City last week.

Another needed reform is a substantial increase in deposit insurance, Wallich told the "Conference on Financial Crises" of the Salomon Brothers Center for the Study of Financial Institutions of New York University.

Interest should be taxed at the same rate as dividends, and the total revenue from the corporate income tax should be held steady, he said.

Insurance of deposits should be increased, probably not to 100 percent, but far beyond the present $40,000 limit, he also said.

"The historical loss experience, even including U. S. National Bank in San Diego and Franklin (National Bank), indicates that it would cost little to raise the level of insurance even up to 100 percent," Wallich said. "Doing so, in addition to providing insurance, would also help to minimize liquidity problems such as arose in the case of the Franklin National Bank, where a rapid runoff of CDs forced the Federal Reserve to substitute its credit for that of large depositors."

Wallich added that full deposit insurance could eliminate the discipline now exerted over banks by the market place. He said insurance should not substitute for a continued effort by banks to improve their capital positions.

- 0 -

TAX REFORM: SENATE FINANCE VOTES $225 TAX CREDIT FOR INSULATING HOMES

The Senate Finance Committee voted today to give taxpayers a tax credit of up to $225 for the cost of insulating their homes.

It also agreed to provide a tax break on purchases of a host of energy-related equipment, including solar and geothermal units and heat pumps installed in homes. In addition, the panel voted to repeal the excise tax on buses and bus parts -- a levy which now raises $12 million a year for the Highway Trust Fund.

The proposals, which would cost the Treasury about $410 million next year and increasingly more thereafter, were added to a House-passed tax reform bill (HR 10612) which the committee is rewriting. They were previously approved by Finance during considerations of a now-obsolete energy tax bill (HR 6860).

The committee rejected, almost without debate, provisions of the House tax revision bill to change treatment of gains from the sale of stock and other capital investments. These would have permitted an individual to deduct more capital losses against ordinary income, but doubled the period an asset must be held to qualify for long-term capital gains treatment. Chairman Russell B. Long (D-La) suggested that the proposals be dropped to give the Senate more "bargaining chips" in a later conference with the House.

The panel agreed to a $10 million House plan to give mutual funds the three-year carryback, five-year carryforward now allowed corporations. Regulated investment companies are not currently permitted any carryback.

It added a provision to give businesses the option of an eight-year carryforward in lieu of the present three-year carryback and five-year carryforward. There would be no revenue loss to the Treasury until 1982, when staff estimates a $175 million decline.

In other action, the committee agreed to give utilities a 12-percent investment tax credit provided they pass on the extra tax benefits to workers. The plan, pushed by Long, would allow a 2-percent investment credit in addition to the 10-percent write-off normally permitted on purchases of plant and equipment if a utility makes certain contributions to an Employee Stock Ownership Plan (ESOP).

The panel voted last week to make an 11-percent investment tax credit available to any firm which contributes an amount equal to the extra percentage point to an ESOP period. The special break for utilities would bring to $280 million the cost next year of using a bigger investment credit to entice corporations to set up ESOPs--Long's pet project.

Also adopted was an amendment by Sen. Harry Byrd (I-Va) to deny foreign tax breaks to corporations which bribe foreign officials.

Insulation Tax Credit: A homeowner would be allowed a 30-percent tax credit on the first $750 he spends to insulate his home. To help persons too poor to owe any income tax, the credit would be refundable. Staff estimates this would reduce tax revenues $300 million a year.

Businesses would be provided a 10-percent investment credit on insulation installed in existing structures at an annual cost to the Treasury of $20-$25 million.

The House, in its energy tax bill, approved a 30-percent credit on up to $500 in home insulating expenses. But this break would be reduced by the cost of any insulation improvements made by a prior owner.

Energy: The committee agreed to a refundable credit for solar and geothermal energy equipment and heat pumps installed in a residence. The credit for solar and geothermal units would be 40 percent of the first $1,000, plus 25 percent of the next $6,400 of expenditures. The tax credit for heat pumps would be half that amount. Staff estimates the cost, almost all of which is associated with heat pumps, at $70 million next year, gradually rising to $200 million annually.

As another incentive to geothermal energy, the panel voted to make development costs eligible for the intangible drilling write-off and percentage depletion allowance now provided for oil and gas. Staff estimates the revenue loss at $15 million. In addition, a 20-percent investment credit would be allowed on solar and geothermal equipment through 1980, and a 10-percent break through 1985.

Also voted by the panel was a 12-percent investment credit for energy-related equipment, most of which is involved in coal mining. This would cost $30 million next year, but increase to $100 million annually.

Utility ESOPs: Under present law, which the committee already voted to make permanent, any firm can take an extra 1 percent tax credit provided it contributes an amount equal to the additional benefits to an ESOP. The committee agreed today to provide another 1 percentage point credit to an electric utility or local gas distribution firm if the company and its workers each agree to contribute additional amounts equal to the 1 percent.

The extra 1-percent tax credit for utilities would cost the Treasury $80 million next year and $270 million after five years.

The additional two percentage points of credit would not be subject to the 50-percent-of-income-tax limit of the investment credit, but the total 12-percent credit could not exceed 100 percent of income tax.

July 19, 1976

SUBJECT: Heat Pump

RE: The Tax Reform Act 1975 (H.R. 10612)

The attached contains a discription of the heat pump and how it operates in simple terms.

More importantly — beginning on Page 3 it points out the reservations, cautions, and special service considerations which the owner/operators have found necessary to produce in a manual for their industry.

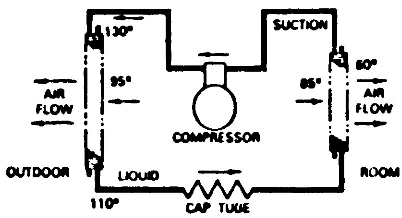
REAL ESTATE MANAGEMENT
Operating Techniques & Products
Charles Carlee, Editor

HEATING
BULLETIN
281
MAR / 1973

HEAT PUMP PERFORMANCE

Over the past several years much discussion has surrounded the use of the heat pump. Its promotion and use has had its ups and downs as witnessed by the actions of major manufacturers, utility companies, and builders. The following analysis treats the development of the heat pump, its operation and associated problems, maintenance tips, and what the property manager should look for when assuming properties that utilize heat pumps.

FIG. 1. AIR CONDITIONER



THE HEAT PUMP – AN OVERVIEW

A heat pump provides both heating and cooling from one basic machine. It has been called a "reverse-cycle" air conditioner in that the flow of refrigerant is reversed in winter to add heat to the room, instead of extracting heat as is done in summer. The key advantage is that it transfers some of the heat instead of generating it, thereby reducing the cost of energy required during the winter. For summer operation it operates similarly to an ordinary direct-expansion (DX) air conditioner.

The most common type of heat pump is the "air-to-air," in which the refrigerant in a heat exchanger absorbs heat from one body of air and, after being processed through the system, ejects it to another body of air. (Less common types use water as a heat-transfer medium instead of air, but these are restricted geographically by the availability of suitable well water or are used in very large, specially designed systems.) A brief review of the air conditioning cycle (Fig. 1) and an explanation of the "reverse cycle" follows.

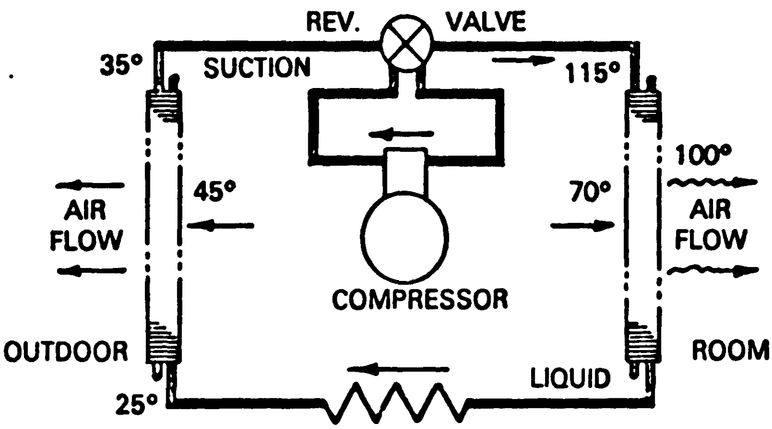
When a liquid refrigerant changes to a gas (evaporates), it must absorb heat from the air, and this is what happens in the room coil of an air conditioner. Liquid refrigerant passes through a thin capillary tube (or an expansion valve) into the room coil; in entering this larger area a sharp reduction of pressure permits the liquid to expand quickly, thereby evaporating into a gas. As it does, it requires heat, and that heat is taken from the room air which is passing over the outside of the coil.

The compressor creates suction, drawing in the warmed gas; at this point pressure is added to help the refrigerant continue on its cycle. The compressed gas, containing heat from the room and from the compressor, goes through the outdoor coil where it is chilled by the outside air and condenses again into a liquid.

Heat Pump Operation

During the summer the heat pump operates like an air conditioner, but in winter, by reversing the flow of refrigerant, heat can be absorbed from outdoors and sent into the occupied space (Fig. 2). The essential concept is that the refrigerant evaporating in the outdoor coil can

FIG. 2. HEAT PUMP — WINTER CYCLE



absorb heat from the cold outside air, if the refrigerant is colder than the air. The amount of heat the refrigerant can absorb will depend of course on the temperature difference while it is being evaporated in the outdoor coil. That heat, plus the heat added by the compressor, is then sent to the indoor coil where it is picked up by the room air.

A basic measure of operating economy is the amount of watts required to produce the necessary Btu's of heating or cooling, called the "energy efficiency ratio." During the summer a heat pump has a slightly lower EER than its equivalent air conditioner because of the additional components involved, but there can be appreciable savings during the winter if a substantial amount of heat can be picked up from outdoors. It is for this reason that standard output ratings of the Air-Conditioning and Refrigeration Institute are based on 45-degree outside air temperature.

A random check of 60 unitary heat pumps, both self-contained and "split" types, shows coefficients of performance for winter ranging from 1.7 to 3.1, with most of them in the 2.2 to 2.6 range. This indicates that a heat pump will provide about 2½ Btu's of heat for each Btu of electricity purchased, or about 8½ Btu's for each watt, at 45 degrees outside temperature. This compares with 3.4 Btu's per watt obtained with ordinary electric resistance heating. Electric utility companies are often eager to promote heat pumps in order to avoid complaints of high heating bills during winter.

This advantage in efficiency can best be appreciated by examining the table below, abstracted from a report of the Western Massachusetts Electric Company.

Type of Electric Heating System (Residential & Small Commercial)	Utilization Efficiency*
Electric Heat Pumps	148% - 158%
Electric Resistance Baseboard	90% - 100%
Electric Furnace	74% - 84%
Electric Glass Panels	68% - 79%
Ceiling Heating Wires	79% - 90%

*These efficiency factors are being applied by several utility companies in estimating operating costs, and the accuracy of their equation has been reported to be within 3%.

"Applications" Ratings

Since the 45-degree base is not widely applicable, the manufacturers of heat pumps are permitted to list reduced output ratings down to 20 degrees outside temperature. However, this shows a disproportionate drop in operating efficiency, the coefficient of performance dropping as low as 1.1, and the modal value dropping from 2.5 at 45 degrees to 1.4 at 20 degrees. Thus, for one unit having a standard heating rating of 48,000 Btu's, the "applications" rating at 20 degrees drops down to 27,000. This reduction of efficiency is by no means a constant, varying with the manufacturer and model.

The essential disadvantage of the heat pump in winter is its inverse output to the heating requirements: the colder the outside temperature and the more heating required, the lower the capability and efficiency of the heat pump. To overcome this deficiency heat pumps with an auxiliary electric resistance coil (strip heater) can be provided to operate at predetermined outside temperatures and provide the necessary additional heat. This, however, defeats part of the advantage of the heat pump cycle and increases the cost of operation. It is therefore advisable for the specifier to determine the output of the refrigerant cycle at the winter temperature for the area, to ensure that at least 60% of the design requirements will be met without the operation of the strip heater.

Reliability

Much excitement was generated by the introduction in the early 1950's of the heat pump, and it seemed to be the answer for low-cost electric heat. In fact, in 1960 a key utility company spokesman announced at a national convention that "The electric utilities are committed to heat pumps." Yet it was just the previous year, in September 1959, that the United States Air Force announced it was halting purchases of heat pumps for government-owned housing. This decision was based on the excessive failures encountered with 9,000 heat pumps installed in homes at three bases in Mississippi, Arkansas, and North Carolina. In addition to finding that operating costs for energy were excessively high (in one area exactly double the cost predicted by the utility company) it was found that compressors were failing and being replaced at the rate of 2,500 per year, with each replacement costing the government $200 to $400.

With similar difficulties arising in Navy housing as well, the U.S. Department of Defense in March 1965 banned such equipment and issued the following directive: "Packaged air-to-air heat pumps shall not be used in any personnel living space, and no heat pump of any type shall be used in family quarters." When pressured by industry representatives about this order, Defense officials assured them it was intended as a "moratorium" until the industry had eliminated the problems.

The essential problem was that the equipment required excessive maintenance – "almost could not be maintained" – and suitable training programs for service men were not available. Manufacturers reported that maintenance costs should normally not exceed $12 per year per unit; however, when bids were requested for such service, the lowest bid was $85.

Failure Causes

Compressor failures were repeatedly cited, and knowledgeable engineers felt the compressor was being assigned a function for which it was not suited. One of the serious causes of compressor failure is the lack of lubrication occurring when slugs of liquid refrigerant return to the compressor and "degrease" its moving parts. This can happen in winter when the outdoor evaporator coil is unable to extract sufficient heat from the air to effect full evaporation of the refrigerant.

A recent solution is the use of oversized "cans" which house the hermetic compressor. This would permit excess refrigerant to be stored, with little chance for the liquid to reach the suction outlet at the top. It is claimed that this design would eliminate the need for "crankcase heaters" which many other manufacturers now feel are essential.

Another problem, which may have been solved, is that of the high-temperature cut-off for the compressor motor. Instead of depending on one surface-mounted thermostat, there is a trend

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towards more positive motor protection by increasing the number of internal thermostats and applying them at critical locations.

Another problem aspect is the defrost cycle. During winter the low temperatures at the outdoor evaporator coil cause frost to form which reduces its capacity or actually prevents the unit from functioning. After a review of field tests of 400 heat pumps for at least three years, a report in April 1972 stated that "a dependable defrosting system is vital to heat pump operation."

To overcome this problem, it is essential that the unit be defrosted automatically several times each day, but this in itself creates a shock to the system. Not only does the reversing valve turn around, but most of the components suddenly change their function from hot to cold and vice versa, setting up temperature and pressure stresses which are not easily avoidable in moderate-cost equipment.

The defrost controller itself is sometimes at fault, both in accuracy of performance and in reliability. A timer is usually incorporated for this purpose, recycling the equipment at preset intervals. But considering the varying indoor and outdoor conditions which the equipment must satisfy, there is now some sentiment in the industry in favor of devices reacting to the actual surface temperatures of the outdoor coil. Putting such a thermostat in series with the timer can prevent unnecessary recycling, while putting it in parallel will ensure defrosting should the thermostat element or location prove unreliable.

Working Under Stress

Diagrammatically the heat pump may resemble an ordinary room air conditioner, but the operation of the former is much more demanding. The ASHRAE Guide (handbook for comfort engineers) points out that heat pumps operate up to five times more hours than an air conditioner and urges engineers to take special care in selecting the proper components. Proper installation also plays a major role in system reliability.

In addition to the stresses of the defrosting cycle and the additional burden of longer operation, there are further stress problems related to climate conditions. One study found that the stresses on the heat pump in northern climates were seven times as great as those in southern areas. However, there is a converse to the problem when outdoor temperatures exceed 65 degrees and some heating is desired (such as in motels). Having excessive capacity under this condition, the compressor pumps the refrigerant at a much higher rate, thereby increasing the stresses on the motor. Other factors which normally cause high stress conditions are contaminants in the refrigerant, voltage fluctuations, and cold starts of equipment when outdoor temperatures are low.

Supplementary Heaters

It is generally felt that the heat pump cycle should satisfy at least 60% of the design winter load with the remaining 40% provided by supplementary strip heaters. However, the division point is necessarily determined by the temperature zone. For colder areas the Electric Comfort Conditioning Journal recommends that strip heaters be sized for 100% of the heating load plus a 15% safety factor, as a precaution against heat pump failure. This can, however, result in excessive operating costs. Unless reliable indoor-outdoor thermostats are used, with a manually adjustable two-stage indoor control, straight resistance heating is being used too frequently with resultant higher costs. In some instances, the refrigeration cycle had cut out on safety control and all heat was being furnished by the resistance heaters, which no one was aware of until the electric bills came in.

The outdoor thermostat should be set to cut out above 35 degrees to prevent the strip heater from operating unnecessarily, except during the defrost cycle. (During defrost, while hot refrigerant goes to the outdoor coil, the strip heater must take over to provide room heating.) A high limit device for sensing the outlet supply air to the duct system should be set at less than 200 degrees. Mechanical clock sequencers have been employed in some makes to perform these functions, but it is now felt they should only be used in conjunction with thermostats. It is possible that new solid-state controls will overcome the reliability gap.

Installation and Maintenance

Accurate sizing of equipment and ducts can be critical in a heat pump installation. Insufficient return of room air can put a heavier burden on the equipment and detract from its performance. Oversizing the cooling capacity in order to provide additional heating capacity will result in short cycling during summer, causing inadequate humidity control and spotty cooling temperatures; it will also result in discomfort and higher operating costs.

Even the location of the air ducts in the house can have a major effect on operating costs. In six identical houses adjacent to each other, it was found that three with ducts in the attic used 37% more electricity than the three with ducts in the crawl space.

Routine maintenance and trouble-shooting become more complicated with this type of equipment, and recharging the refrigerant can be critical. While recharging of ordinary air conditioners can be controlled through use of pressure gauges, the amount of refrigerant used in a heat pump must be carefully weighed. Otherwise the accumulator can be over-filled and will almost certainly send a slug of liquid refrigerant to the compressor.

Accurate control of temperature in all phases of operation is essential. all controls should be checked out before physically installing the heat pump. In one instance, an engineer discovered a motel installation in which controls were uniformly erratic from room to room, indicating a basic factory fault rather than mishandling by guests.

Service Training

Utility companies have strongly urged increased training for installers and service men. Poor system layout or installation often results in continuing service problems. Installers have been urged to provide five-year service contracts. Such service contracts can be beneficial to the owner, especially if priced at the time installation bids are being made.

The installing contractor should visit the customer after the installation has been completed and explain all phases of the heat pump's operation. Unfortunately, such communication often does not get down to the operating personnel and does not take the place of specially trained service mechanics who understand the nature of heat pumps.

Operating Costs

Many users of heat pumps are well pleased with their performance, both in comfort and cost. An installing contractor in Georgia, who specializes in this work and services his installations, has found that service costs for residential and small commercial equipment between two and five years old average about $47 per unit per year. Equipment over five years old shows an average service cost of $170 per unit annually, with some units running as high as $226.

Although such increases in service problems should be expected as the unit becomes older, it may be surprising that the energy usage also increases as the years go by. This was highlighted in a study made by a consulting engineer who for ten years carefully observed and recorded the performance of the heat pump in his own home in Gainesville, Florida. He is favorable towards the use of heat pumps. but the accurate metering he performed on his own unit revealed a 50% increase in electrical usage as indicated by the historical comparison below:

Kilowatt Hours/sq.ft./1000 degree days		
1960-1961	-	2.69 Kwh
1969-1970	-	3.90 Kwh

Maintenance costs have averaged $100 per year during this ten-year period in addition to initial warranty service. Three compressors, the fan motor, and a variety of controls and accessories have had to be replaced.

New Improvements

The Edison Electric Institute, representing the major electric utility companies, felt that the heat pump represented a major potential outlet for electric heat at moderate cost. However, when it became aware of the multitudinous problems, it commissioned two leading manufacturers to develop a more reliable product. In

Complete

1963 Westinghouse initiated work to develop a three-ton prototype for residential use, which was successfully completed in 1966.

Two hundred of the "second generation" heat pumps have been field-tested in 57 utility territories, thoroughly observed and instrumented, and by the end of 1971 the operating statistics were published. These statistics indicated significant gains had been made in reliability and performance.

Much knowledge has been gained concerning the causes of earlier failures, and many improvements have been incorporated in the new designs. However, the inherent problems of internal stress related to high or low outdoor temperature still have not been thoroughly satisfied, according to the Better Heating-Cooling Council. Typical air conditioners are designed to work within a low-stress range of internal pressure ratios, but this has not yet been fully worked out for the heat pump.

A recent innovation, the use of a different refrigerant, seems to have ameliorated some of the problems, and a favorable report has been issued concerning its advantages in reducing compressor failures. However, among those who cooperated in the study, there are differences of opinion as to the benefits of the refrigerant (R-502).

Builder's Experience

Based on the testimony of builders it appears that problems with the heat pump cannot be limited only to the north.

Statistics from the Dallas area tend to confirm this specific re ction. During the ten-year period of 1957-1966 heat pumps accounted for 60% of the electr h sales in that area according to the electric utility company. They now report that heat pumps accounted for less than 1% of their sales in 1971.

It is also interesting to compare that local trend with the national picture, as revealed by data of the Edison Electric Institute which are based on reports from utility companies on apartment house installations. There were 175 electric heat installations in apartment houses nationwide during the 1966-1968 interval and only 12 or about 7% of these projects used heat pumps. These data seem to indicate a greater reluctance on the part of apartment house builders to use heat pumps as opposed to builders of single family units.

MAINTENANCE TIPS FOR HEAT PUMP SYSTEMS

When contract servicing is required, qualifications and references must be carefully checked. When staff mechanics are used, they should be given specialized training for the particular brand. Service manuals should be obtained for all new mechanics, and they should be specifically cautioned about potential damages.

Trouble-shooting and repairs should follow procedures outlined by the Refrigeration Service Engineers Society. When motor burnout occurs, the procedures listed in the ASHRAE Guide should be followed scrupulously.

Air Flow

Reduced flow of the inside air over the coil in winter increases system operating pressure and temperature and may lead to burnout of the compressor.

Reduced flow of air over the outside coil in winter will increase frequency of defrost cycles. Reduced flow of inside air in summer can cause the humidity from the room to freeze on the surfaces of the cooling coil, quickly accelerating further freeze-up and eventually causing damage to the compressor.

Tip: Coils should be inspected frequently to ensure they are not clogged with lint or dirt. Air filters should be cleaned or replaced at regular intervals to provide protection for the coils.

Stress and Vibration

A quick stop-start operation can cause great stress internally, particularly during repeated defrost cycles several times a day. It can also create excessive intermittent vibration of the compressor, straining the tubing connections.

Tip: A 3-to-5 minute time delay control should be installed after consultation with the manufacturer. Supporting mounts and springs can be replaced with stronger ones if necessary.

Moisture in System

Slight amounts of water vapor entrained in the refrigerant can freeze up at certain critical points, causing blockage throughout the system and severe, permanent damage. As little as 25 parts per million of moisture in the refrigerant can cause trouble.

Tip: Use "super-sensitive" moisture indicators for testing heat pumps. Repairs to refrigerant tubing should be made only with sealed tubing, preferably filled with nitrogen. Dessicant driers, usually combined with the line filter, should be replaced every time the tubing is opened. In addition to normal dehydration procedures, it is good practice, after several weeks of operation, to replace the drier with a new one to ensure moisture-free operation.

Overheated Motors

Excessive temperatures in the motor windings may not harm the motor immediately, but frequently they can cause a chemical breakdown of refrigerant and oil, creating sludge and acids. These in turn gum up and corrode the compressor's pistons and valves.

Tip: A variety of operating conditions can cause the motor to overheat. It is therefore essential that thermostat cutouts, preferably placed in the motor windings and other sensitive spots, be included in the hermetically-sealed unit. Check with the manufacturer to determine if such protection has been installed.

ROLE OF THE PROPERTY MANAGER

A review of the efficiency advantages of heat pumps, and an evaluation of their potential operating problems would indicate to the property manager that special attention should be devoted to such equipment when taking over a new property. A factual, above-board discussion should be held with the manufacturer's engineer to determine the specifics of potential service problems. The manufacturer should recommend suitable local service organizations, and bids should be taken for full service. This should initially be arranged for a one-year period until conclusions can be drawn on the competence of the service people, after which a five-year contract may perhaps be in order.

Arrangements should be made with the product manufacturer for a planned training program with operating personnel, covering normal operation and minor trouble-shooting, with particular emphasis on detecting abnormal conditions. In addition, accurate records should be kept on service calls and costs relating to individual units, and any substantial drains in cash flow should be brought to the attention of owners.

ACKNOWLEDGMENTS

Robert E. Ross
Manager, Commercial & Industrial Marketing
Better Heating-Cooling Council
35 Russo Place
Berkeley Heights, New Jersey 07922

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Institute of Real Estate Management
155 East Superior Street
Chicago, Illinois, 60611
(312) 664-9700

COMMITTEE ON FINANCE
UNITED STATES SENATE

SUMMARY OF

STATEMENT OF THE LINEN SUPPLY ASSOCIATION OF AMERICA IN OPPOSITION TO THE SHARED SERVICES FOR HOSPITALS AMENDMENT TO H.R. 10612

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1. The proposed amendment was rejected by the Senate before because less expensive commercial services were available. These services are still available.
2. Members of Linen Supply Association of America presently serve more than 10% of hospitals.
3. Entities serving tax exempt institutions do not themselves necessarily deserve tax exempt status.
4. Clear benefits accrue from central laundry services as provided by commercial linen suppliers:
   - A. No Federal funding
   - B. No long term contracts
   - C. Hospitals may change suppliers if needs not fulfilled
   - D. Linen suppliers pay taxes--hospitals do not
   - E. Prices lower than most central hospital laundries
5. Proposed amendment would delete tax revenue and increase health care costs.

COMMITTEE ON FINANCE
UNITED STATES SENATE

STATEMENT OF THE LINEN SUPPLY ASSOCIATION OF AMERICA IN OPPOSITION TO THE SHARED SERVICES FOR HOSPITALS AMENDMENT TO H.R. 10612

JULY 16, 1976

The Linen Supply Association of America strongly opposes the shared services for hospitals amendment reported by the Senate Finance Committee to H.R. 10612 as this amendment applies to laundry services. The proposed amendment will permit hospitals to obtain tax exempt status for cooperative laundries. This amendment sponsored by the American Hospital Association was rejected by the Senate the last time this issue was raised on the basis of clear and substantial evidence indicating that commercial textile laundry services provided cheaper and more efficient services than can be obtained from cooperative laundries and that commercial services are available in all areas of the country.

The Linen Supply Association of America is a trade association consisting of over 1,000 plants in the United States. It is estimated that members of LSAA account for a sales volume of over $1 billion annually and employ over 60,000 persons. At the present time according to the 1975 "Special Survey on Selected Hospital Topics" prepared by the American Hospital Association, over 10% of the hospitals reported are served by linen rental service.

The American Hospital Association wishes to establish tax exempt status for shared services as applied to cooperative hospital laundries. It has long been a well established principle that entities providing services to tax exempt organizations do not therefore necessarily qualify as tax exempt. The amendment concerning shared services of hospital laundries is a case of a special interest group asking for a tax preference when none is justified. As consumers the members of the Linen Supply Association of America are well aware of the fact that hospital and health care costs are rising and we are more than sympathetic to any argument that justifies the needs to keep these costs down. However, in the case of the amendment with which we are concerned, we can show that an increase in the number of cooperative hospital laundries will increase the cost of health care to our nation by not only increasing the cost of laundry services but by also depriving the government of the taxes paid by linen supply companies and their employees. Cooperative hospital laundries will require federal capital funding. Private linen supply companies provide their own capital funding.

The American Hospital Association recognizes the concept of the efficiencies of large laundry facilities serving more than one institution. In its statement to the Committee on Finance, the American Hospital Association said "The benefits health care institutions derive from an efficiently managed central laundry include the avoidance of capital expenditures for unnecessary duplication of facilities, the freeing of space for other use in each hospital that does not have to maintain its own laundry, reduced operating costs through the greater efficiency of a large laundry as compared to smaller individual hospital laundries, and improved sanitation and quality control. Relieving hospital officials from responsibility for operation of a laundry, which is a job more appropriate to business trained personnel that large central laundries can afford to employ also leave hospital officials more time to devote to patient care."

Although the above quotation was offered in support of the shared services concept for central laundries, it applies even more aptly to the type of service that members of LSAA can offer and do offer to such hospitals. We offer the exact same benefits that cooperative hospital laundries do, and at the same time provide our own capital for investment. We permit hospitals to leave and switch services from one supplier to another in the event service does not meet their needs. We pay taxes but hospitals do not Last and perhaps most significant, we offer all this at a price that is substantially below the price at which most central hospital laundries have been able to provide service in the past.

We have provided the Committee with full details as to cost as included in our position paper of June 17, 1976,a copy of which is attached.

The last time the Senate considered this issue, it was decided not to include laundry services under the shared services for hospitals concept. To change position now, in light of the evidence presented by LSAA and without the opportunity for a full hearing on this issue is a travesty on justice. As our federal budget continues to increase and the costs of health care servi. s become astronomical, it is the job of the Congress to avoid unwarranted and unjustified deletions from the tax base and to avoid further increasing hospital costs. We have clearly shown that the proposed amendment is unwarranted a.'

unjustified on both the above bases. We ask that the shared service amendment as applying to laundry services and on textile rental services be deleted from the all-inclusive Committee amendments.

John J. Contney
Executive Director
Linen Supply Association
of America

Law Offices
Counihan, Casey & Loomis
1000 Connecticut Avenue
Washington, D. C. 20036
202 296-5680

John E. Loomis
Stephen F. Caven, Jr.
Steven John Fellman
Francis T. Coleman
William H. Howe
Gerald A. Jacobs
John R. Erickson
Frank B. Reilly, Jr.
Louis J. Sparling

Donald M. Counihan
1907-1969
E. Riley Casey
1923-1971

J. R. Pat Gorman
Elmer F. Bennett
Counsel

LINEN SUPPLY ASSOCIATION OF AMERICA

POSITION PAPER IN OPPOSITION TO
SENATE FINANCE COMMITTEE

Committee Amendment to the Tax Reform Act (H.R. 10612) relating to tax treatment of laundry services by hospitals under Section 501(e) of the Internal Revenue Code.

In 1968 Congress enacted legislation that gave tax exempt status to certain cooperative hospital service organizations. This concept was incorporated into the Internal Revenue Code as Section 501(e). At that time, the Congress specifically determined that it was in the best interests of the nation to exclude cooperative laundry ventures from the 501(e) exemption. (Conference Committee Report No. 1533, 90th Congress, 2nd Session, Section 109 (1968)).

The Senate Finance Committee has reported a Committee Amendment, which would now include laundry services under Section 501(e). This amendment covers an issue which was publicly debated in 1968 and has not been raised publicly at any time in the consideration of the present tax legislation.

The attached position paper clearly shows that there is no justification in changing Section 501(e) with regard to laundry services. It is inconceivable that the Senate would determine to reverse its previous opinion without giving interested parties an opportunity to present testimony at a hearing open to the public. The amendment contained in the Senate Finance Committee Committee Amendments is the direct result of lobbying activities of the American Hospital Association which provided the Committee incorrect factual data. We urge that you oppose the amendments to broaden Section 501(e) with regard to laundry services.

For more information contact Ellen Saenger, Legal Assistant, Counihan, Casey & Loomis, or Steven J. Fellman, Counihan, Casey & Loomis, 1000 Connecticut Avenue, Washington, D. C. 20036. (202) 296-5680.

June 17, 1976

JOHN J. CONTNEY
Executive Director

LINEN SUPPLY ASSOCIATION OF AMERICA

P O Box 402427
975 Arthur Godfrey Road
Miami Beach, Florida 33140
phone 532 6371 area code 305

Address Replies To
ELLEN SAENGER
LSAA—Washington Office
1000 Connecticut Avenue
Washington D C 20036
phone 296-5680 area code 202

LINEN SUPPLY ASSOCIATION OF AMERICA
POSITION
ON
TAX REFORM ACT OF 1976
SUPPLEMENTAL COMMITTEE AMENDMENTS

The Linen Supply Association of America is opposed to the Senate Finance Committee amendment to the Tax Reform Act of 1976 (HR 10612) which would allow hospital laundries to be considered "shared services" and exempt from payment of income taxes under Section 501(e) of the Internal Revenue Code.

WHY has Congress not invited the linen supply and laundry industries to appear at public hearings and present testimony on the joint hospital laundry issue? Why does Congress now consider an issue twice before defeated without holding hearings? With hospital cost rising, WHY does Congress want to create joint hospital laundries, constructed from Federal funds and operated with tax exempt dollars when utilization of linen supply or commercial laundry services would be more economical?

We ask the Senate to delete this amendment in the bill as passed by the Senate Finance Committee. This same solution was adopted by the Senate Committee on Labor and Public Welfare in rejecting a similar proposed amendment to the Partnership for Health Amendments of 1967 Senate Report No. 724, 90th Congress, First Session, p. 9; November 4, 1967) and again in the Revenue and Expenditure Control Act of 1968.

Our specific reasons for requesting the deletion of the proposed amendment follow:

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Page 2

1. Existing cooperative laundry services have been shown to be more expensive when compared with the cost of outside-the-hospital laundry and linen services provided by linen supply companies.

2. The intent of the Congress should not be to continue to sponsor these institutions whose activities result in higher costs for hospital care when the same services can be provided at less cost by tax-paying, for-profit commercial companies.

3. The hospital community itself recognizes this and criticizes hospital management in general to be inadequate as regards productivity when compared to private industry. They also criticize hospital cooperative laundries, in particular, for poor service and high costs, especially the high cost of debt service because of high central laundry construction costs.

4. For-profit linen supply companies who pay taxes offer lower total per patient day costs for laundry and linen services than existing central hospital cooperative laundry establishments.

5. Linen supply companies and other outside-the-hospital commercial laundries have served a substantial percentage of hospitals economically and well for many years in a very stable customer/supplier relationship.

6. Combined use of linen supply services when compared with existing hospital central cooperative laundry establishments could save hospitals and their health care customers an estimated additional 5 to 10% of their present laundry/linen service costs, resulting in an annual savings of from $42,500,000 to $85,000,000 per year in medical expenses.

Look At These Facts:

1. Existing cooperative laundry services have been shown to be more expensive when compared with the cost of outside-the-hospital laundry and linen services provided by linen supply companies.

A survey conducted in 1975 of sixteen hospital laundry cooperatives by Michael Broadbent, a hospital laundry consultant, revealed that linen service costs per patient day in these cooperatives ranged up to $4.45 and averaged $2.91. The same survey noted that linen suppliers majoring in hospital rental averaged a per patient day linen service cost of $2.13. More significantly, the costliest linen supplier was $2.28 per patient day, a far cry from the high $4.45 cost of one cooperative laundry.

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Page 3

2. The intent of the Congress should not be to continue to sponsor these institutions whose activities result in higher costs for hospital care when the same services can be provided at less cost by taxpaying, for-profit commercial companies.

The proposed Senate bill which would exempt hospital cooperatives from federal taxes is inimical to both hospitals and linen suppliers of the United States. It would act contrary to the very purpose for which the bill is intended--that of reducing the cost per patient day which is so necessary for the health care industry in the United States.

The Linen Supply Association of America and its member companies feel that the proposed tax exemption will allow an unfair advantage to accrue to cooperative laundries and severely hamper the efforts of linen suppliers to provide a more efficient and economical alternative linen service.

3. The hospital community itself recognizes and criticizes hospital management in general to be inadequate as regards productivity when compared to private industry. They also criticize hospital cooperative laundries, in particular, for poor service and high costs, especially the high cost of debt service because of high central laundry construction costs.

Mr. Allen G. Herkimer, Jr., Co-Chairman of the Hospital Financial Management Panel in its 1973 report to the National Commission on Productivity said that the first external problem of hospitals is the "general lack of competitive, risk-oriented atmosphere created by the marketplace." The statistical devices for measuring hospital productivity are not always adequate, as the Hospital Financial Management Panel noted. Yet it is essential that this vital industry knows what results it is producing and continually seeks ways to improve its productivity. But to further reduce the competition by encouraging the use of hospital laundry cooperatives which have not proved to lessen costs would be a severe blow to the attempt to increase hospital productivity in this most vital area.

Although there has been a certain trend towards creating or joining central laundries, there has been a parallel growth of complaints and dissatisfaction with their operations and service. Hospital administrators wavering on laundry decisions are justifiably concerned. According to Wilbur Stevens, Director of Central Services, Mercy Hospital, Pittsburgh, Pennsylvania, writing in the December 1975 issue of Hospital Financial Management:

> "The tendency to consider and document laundry and linen service as one function and the resulting tendency to blame all problems relating to linen on the laundry are at the root of the dissatisfaction with central laundries ... these ideas tend to obscure the real problem--usage."

This is the heart of the real problem with cooperative laundries. It is the internal savings effected by proper use of textiles which is the second half of the laundry system providing lower costs per patient day.

Linen suppliers, constantly pressured by the free enterprise system of competition and cost savings requirements, have developed and refined the system in order to provide the most economical laundry processing and linen service costs to hospitals throughout the United States.

It is the position of the Linen Supply Association of America that the growth of the central or cooperative laundry has also been slowed by its inability to provide this dual service--linen service as well as laundry service. The processing of laundry is relatively routine, while the management of the linen service within the hospital is a more complex and sophisticated affair.

The hospital served by a linen supplier has, in effect, an additional expert on the hospital staff. The linen supplier has a vested interest in assisting the hospital administrator to effect internal savings.

A typical central laundry makes the mistake of contracting with member hospitals to provide a specified quantity of linen at a specified price per pound. Central laundries, however, only control the cost of processing. The cost of replacing linen is out of their control. This results in inadequate budgets to replace linen, complaints and general dissatisfaction. According to Mr. Stevens and, again, quoting from the December 1975 issue of Hospital Financial Management:

> "The central laundry has no control over how linen is used in a hospital. It may provide linen service as well as laundry service. It may have the responsibility for purchasing linen in volume for its members. But it can do nothing to control how that linen is used (or abused) after it is delivered to the member institution."

Another major item of significance contributing to the sky-rocketing cost of cooperative laundries is the cost of debt service. In an address before the American Hospital Association Convention in August of 1975, another well-known hospital consultant, David Giancola, reported that "a major cost of centrals is debt service, which in some centrals can run as high as 6 to 8¢ a pound. At this rate it actually exceeds labor costs."

Clearly, the central hospital cooperative laundry concept has not proven to be cost effective. Rather, it is extremely costly when compared with the same or better service provided by tax-paying, private enterprise linen supply companies.

In an article entitled, "Priorities for a National Health Policy," written in the May 29, 1976 issue of the National Journal, Nelson A. Rockefeller, Vice President of the United States wrote:

> "A major contributor to the rising cost of health care has been the construction of unnecessary facilities, and the purchase of expensive equipment which duplicates that already available in a community. I recommend strict application of the provisions of the Health Planning Act, aimed at reducing the construction of unnecessary health facilities and the duplication of expensive equipment."

Extending tax exempt status to hospital laundry operations would further encourage unnecessary and uneconomical hospital laundry construction under the mistaken belief that they would save money. In fact, this construction would duplicate existing commercial laundry and linen supply facilities available in the community.

4. For-profit linen supply companies who pay taxes offer lower total per patient day costs for laundry and linen services than existing central hospital cooperative laundry establishments.

The Broadbent survey previously mentioned sampled linen suppliers as well as the sixteen hospital cooperative laundries and reported significantly lower per patient day costs when compared with those same hospital cooperative laundries.

LSAA surveyed member companies in 1975 to determine among other facts, cost per patient day. All costs reported range from 55¢ to $3.30 per patient day. The middle 50% of members reporting reported costs ranging from $1.23 to $2.64 per patient day with a median of $1.75 per patient day.

In contrast, a recent survey of hospital cooperative laundries conducted for Community Hospital Services by Ken Davis in May, 1975, of 27 central laundries, showed a cost per pound range of from 10.21¢ to 26.40¢. At an average usage of from 12.27 to 17.09 pounds per patient day (as reported by the American Hospital Association in its 1975 survey of 1,831 hospitals), per patient day costs of the reporting hospitals served by these cooperative laundries could range from $1.25 to $4.51 per patient day. The middle 50% of the hospital cooperative laundries' reported costs are from 15.50¢ to 19.41¢ per pound. Again, at an average usage of 12.27 to 17.09 pounds, costs to serve member hospitals could range for $1.90 to $3.32 per patient day. With an average cost of 17.59 per pound and an average usage of 14.68 pounds per patient day, estimated average costs to hospitals served by cooperative laundries could be $2.58 per patient day compared with a median cost of $1.75 per patient day for linen supply.

5. Linen supply companies and other outside-the-hospital commercial laundries have served a substantial percentage of hospitals economically and well for many years in a very stable customer/supplier relationship.

At the present time, according to the American Hospital Association 1975 survey of hospitals in the United States, only 10% of 6,223 hospitals reporting were served by laundry cooperatives while 40.6% were served by outside-the-hospital commercial and linen supply sources. The balance of hospitals were served by hospital in-house laundries or a combination of the above services.

A removal of taxable status from the 10% of cooperatives and the ability to solicit and serve other facilities, many of whom may be present customers of linen suppliers, would be a substantial detriment to our industry. More than 200 of the plants operated by members of the Linen Supply Association of America are in hospital rental and many have been engaged in this field for forty years or more. They have had remarkably stable relationships with their hospital customers over the years because of the fine service and the lower costs offered to these hospital customers.

6. Combined use of linen supply services when compared with existing hospital central cooperative laundry establishments could save hospitals and their health care customers an estimated additional 5 to 10% of their present laundry/linen service costs, resulting in an annual savings of from $42,500,000 to $85,000,000 per year in medical expenses.

According to the American Hospital Association 1975 edition of Hospital Statistics, hospital expenditures in 1974 totaled $41,406,000,000 or 2.96% of the Gross National Product. In 1974, the 7,174 hospitals in the United States had 1,513,000 beds with an average daily census of $1,167,000 patients. Using a conservative figure of $2 a day for laundry and linen expense, the annual cost of laundry and linen expense for all hospitals in 1974 was $851,000,000.

Studies have been made of the cost of laundry and linen per patient day in central laundries as compared to linen rental. It appears that a savings of 5 to 10% of the $851,000,000 can be achieved annually where linen rental is used. This is a savings of $42,500,000 to $85,000,000 a year--a major item of significance, especially at a time of soaring medical costs.

For lowest possible patient costs, it is essential that laundries for hospital linen services function in a free enterprise environment. It is only in that competitive environment that internal barriers to low productivity will be dissolved and that pressures for profit and performance will result in the best patient care at the most reasonable per patient day cost.

BACKGROUND

As background, the Linen Supply Association of America is a voluntary trade association with 1,053 member plants in the United States.

According to the U.S. Census of Business in 1972, the linen supply industry consisted of 1,314 establishments, employing 65,622 people.

Members of our association account for more than 90% of the one billion-plus dollars annual sales of our industry; and employ over 60,000 persons. In 1975, linen suppliers had an estimated sales volume of over one billion dollars, processed over 4 billion pounds of textiles, paid employees about $480 million in wages, used about $44 million in laundering supplies, purchased about $250 million of new textiles, spent about $37 million on machinery, equipment, and buildings, supplied customers with over 7 billion pieces of linen and operated over 22,000 vehicles. All segments of the textile rental industry have a total sales volume of about 1.9 billion dollars a year.

Member companies rent hygienically cleaned textile items to millions of customers in commerce, industry and the professions. Hospitals, nursing homes, doctors' and dentists' offices, medical and dental clinics, schools and other important human needs institutions as well as restaurants, hotels, food processing companies, retail stores, etc., are major customers of most linen supply companies.

The Linen Supply industry (SIC 7213):

- has great value to the economy as is clearly evidenced by its record of continuous growth.

- recycles its products thereby helping to maintain a proper ecological balance.

- is energy efficient. Use of our industry's services helps reduce our nation's energy expenditures.

For further information please contact:

Ellen C. Saenger
202 - 296-5680

or

Steven John Fellman
202 - 296-5680

June 17, 1976

STATEMENT OF THOMAS A. MELFE
ON BEHALF OF THE AMERICAN BANKERS
ASSOCIATION BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ON GENERATION-SKIPPING TRUSTS

July 20, 1976

Mr. Chairman and Members of the Committee:

My name is Thomas A. Melfe. I am the Chairman of the Taxation Committee of the Trust Division of the American Bankers Association and an Executive Vice President of United States Trust Company of New York. I am accompanied by J. H. Butala, Jr., Senior Vice President of Cleveland Trust Company, a former Chairman of the Taxation Committee.

The American Bankers Association is an association composed of about 14,000 banks or some 96% of the banks in the country. Approximately 4,000 of the banks exercise fiduciary powers serving their customers as trustees and executors. Thus, the Association is keenly interested in any changes in the tax laws affecting trusts and estates.

The list of the subjects to be considered at these hearings includes generation-skipping trusts. The ABA believes the treatment of generation-skipping trusts cannot be considered separately from the treatment of generation-skipping transfers which are not in trust. This point is most important in developing an approach to the taxation of trusts which is sensible and does not encourage unnatural estate plans for reasons which will be discussed. The action which your

Committee has taken on generation-skipping deals only with generation-skipping trusts.

The taxation of trusts is a technical and complex matter and generation-skipping is the most difficult of all trust subjects. The ABA, in its 1973 testimony before the House Committee on Ways and Means, suggested what was then a new approach to the problem of generation-skipping transfers. During the hearings before the same Committee earlier this year, the ABA renewed its earlier recommendation which is discussed at pages 19-22 and 28 in a Commentary on Proposed Tax Reform Affecting Trusts and Estates filed with this statement. The theory underlying the ABA approach is that it is not necessary to determine at the time of a transfer to a trust that a particular generation may be skipped. It is only necessary to apply the tax when the generation is actually skipped. This approach is desirable because it does not conflict with the trend towards flexible trust dispositions.

On May 24, 1976, Al Ullman, Chairman of the Committee on Ways and Means, introduced H.R. 13966 titled the "Estate and Gift Tax Reform Act of 1976" and shortly thereafter the Committee commenced mark-up on this bill. Section 7 of the bill would add a new Chapter 13 captioned "Tax on Certain Generation-Skipping Transfers" to the 1954 Code. The Chapter 13 tax is patterned after the approach suggested by the ABA, but with two important exceptions - transfers from trusts to grandchildren of the grantor or persons in the same generation as such grandchildren would be subject to tax and, after a ten year period, the tax would be applicable to "pre-existing" trusts, trusts created prior to April 30, 1976. These two changes are highly controversial. Section 7 contains other controversial provisions. For example, if a trust were created for a grandchild of the grantor and the grantor's attorney who was 13 years younger than the grantor acted as trustee and had discretionary powers over either income or principal, the trust property would be subjected to tax when the attorney ceased to act as trustee. This result goes far beyond what is commonly considered as a generation-skipping transfer.

On June 11, 1976 your Committee, with little discussion, decided to recommend an amendment to H.R. 10612 adopting the policy embodied in section 7 of the Ullman bill. The ABA believes that this action was ill-advised. Highly controversial and complex subjects should not be dealt with in this manner without adequate hearings.

Since the Finance Committee decision, the Committee on Ways and Means has modified and restricted section 7 in significant respects. The two most important changes have been to exclude from the application of Chapter 13 (1) transfers to grandchildren of the grantor and (2) trusts created before April 30, 1976. Why should a transfer to a grandchild be exempt from the Chapter 13 tax? Because the law should not interfere with normal patterns of disposing of property among a person's "family" which have developed. These patterns include the use of a family trust or trusts which provide flexibility and enable the disposition of property to be altered to accomodate changes in circumstances. A trust is no more than a single fund in which beneficiaries have interests which relate to their requirements. It is unwise to penalize a trust disposition to a person's "family" in the form of a Chapter 13 tax when outright dispositions to the "family" escape this tax.

To aid your Committee in reviewing its action we have prepared a memorandum analyzing section 7 of the Ullman bill, with particular attention to the policy issues and technical problems which it presents. A copy of the memorandum is filed with this statement.

The major policy decisions discussed in the memorandum are:

1. Should the Chapter 13 tax have a more significant impact on the moderately wealthy than it does on the very wealthy and should it encourage unnatural estate plans to avoid the tax?

2. Should Chapter 13 apply to "pre-existing" trusts?

3. Should the Chapter 13 tax create a "penalty" for a trust disposition in the sense that property taxed under that Chapter is treated unfavorably for basis, estate tax deductions and other purposes when compared with property subjected to the estate tax?

4. Should Chapter 13 impose a tax upon the death of a trustee who happens to be in a generation below the grantor and has no beneficial interest in the trust?

5. Should Chapter 13 apply to "transfers" by non-resident aliens, thus discouraging the use of U.S. trustees?

6. Should Chapter 13 apply when there is an unusual order of deaths, viz., a child predeceases a parent or a grandchild predeceases a child?

7. Should the amount of the Chapter 13 tax have no relationship to the extent of a beneficiary's interest in the trust?

8. Should the purchase of an annuity for a child be made more advantageous than the creation of a trust for a child in terms of the Chapter 13 tax?

Section 7 answers each of these questions in the affirmative. We believe each should be answered in the negative.

We feel confident that after you have read the memorandum your Committee will agree that it cannot support section 7 of the Ullman bill in the form it was in at the time you decided to approve it. We also believe that after careful consideration your Committee will not agree with the manner in which major policy issues are resolved in the section.

The ABA urges your Committee to modify its approval of section 7 of the Ullman bill. As previously mentioned, we suggested a generation-skipping approach to the Committee on Ways and Means. This approach reflected more than five years of careful consideration of a complex subject. Our approach is preferable to any other one that has been suggested. Its impact would not be so broad as section

7 of the Ullman bill, but would be broader than the approach recommended by the American Law Institute after years of study by a group headed by Professor A. James Casner of Harvard Law School, who acted as reporter. There are those who say that the impact of our proposal is not substantial. We disagree. Where the wealth involved is considerable, the impact will not be minor. The effect of the ABA approach, in the context of a trust for descendants of the grantor, would be to shorten the period during which trust property may be kept outside of the transfer tax base from as much as 100 years to a period not to exceed the life or lives of children of the grantor.

One of the concerns expressed by interested individuals and groups is that the complexity of the proposed legislation is such that it will not be understood or be able to be applied by general practitioners. We have revised our draft statute in an effort to shorten the language and simplify the concepts. In doing so, we have adopted material from section 7 of the Ullman bill. The revision of our "estate tax" generation-skipping provision to be inserted in Chapter 11 is filed with this statement. The result is a draft statute with the operative provisions expressed in only 5 pages. The revision is much easier to understand than section 7 of the Ullman bill. Simplicity is a virtue. The "gift tax" generation-skipping provision to be inserted in Chapter 12 is essentially the same as our estate tax provision, except for a reference to taxable distributions as well as to taxable terminations. The location of these provisions in

Chapters 11 and 12 rather than in a new Chapter 13 eliminates many of the problems of section 7.

In conclusion, we recommend to your Committee the approach contained in the revision of our "estate tax" generation-skipping provision filed with this statement. If your Committee does not approve this approach, we urge changes be made in section 7 of the Ullman Bill which would (1) create an exception for a distribution to a grandchild of the grantor, (2) make Chapter 13 inapplicable to all pre-existing trusts and (3) change other parts of section 7 as suggested in our memorandum to reverse its policy and cure its technical defects. If your Committee rejects the ABA approach and modification of section 7 in the manner indicated, we believe the section should be eliminated from your Committee's amendments because the problems involved with it are serious and make its enactment undesirable.

American Bankers Association

July 16, 1976

MEMORANDUM REGARDING TAX ON GENERATION-SKIPPING TRANSFERS UNDER SECTION 7 OF H.R. 14115

Introduction

On June 11, 1976 the Senate Finance Committee decided to recommend an amendment to H.R. 10612 adopting the policy embodied in section 7 of H.R. 14115 introduced by Al Ullman, Chairman of the Committee on Ways and Means of the House of Representatives. This section would add to the 1954 Code a new Chapter 13 captioned "Tax on Certain Generation-Skipping Transfers", which would be a part of Subtitle B relating to estate taxes (chapter 11) and gift taxes (chapter 12). A summary prepared by the staff of the Joint Committee on Internal Revenue Taxation described the effect of Chapter 13 in the following manner:

> "The bill would impose a tax in the case of generation-skipping transfers under a trust or similar arrangement on the distribution of the trust assets to a generation-skipping heir (for example, a grandchild of the transferor) or upon the termination of an intervening interest in the trust (for example, the termination of an interest of the transferor's child).
>
> "The tax would be substantially equivalent to the estate tax which would have been imposed if the property had been actually transferred outright to each successive generation. Generally, the tax would be paid out of the proceeds of the trust property."

Since the Finance Committee decision, the Committee on Ways and Means had modified and restricted in significant respects the scope of proposed

Chapter 13.* The purpose of this memorandum is to describe Chapter 13 as proposed by Chairman Ullman, and as modified by the Committee on Ways and Means, and to discuss policy issues and technical problems presented by the Chairman's proposal.

Summary of Scope of Chapter 13

The use of the word "certain" in the title to Chapter 13 is significant. The tax is not imposed on all transfers which skip a generation. The most significant omission is the failure to tax outright transfers which skip one or more generations. To illustrate, property transferred outright by will to the decedent's grandchildren would not be subject to a Chapter 13 tax. The Chapter 13 tax is directed solely at the splitting of benefits in a fund of property, usually a trust, among beneficiaries in different generation levels below the grantor. In determining the amount subjected to tax, the nature of a younger generation beneficiary's interest is not significant. The entire value of the trust property is subjected to tax upon the termination of a child's interest. Whether the interest is wholly discretionary with a trustee, is limited by a fixed and ascertainable standard or is absolute, viz., a right to receive the entire income, and the duration of the interest - whether one day, one month, one year or fifty years - is irrelevant.

Operation of Chapter 13

Chapter 13 contains an elaborate network of eleven defined

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* The Committee Print containing the tentative policy decisions of the Committee on Ways and Means is H.R. 14571.

terms, many of which are interrelated. These terms are:

1. Generation-skipping transfer - §2611(a)
2. Deemed transferor - §2612
3. Generation-skipping trust - §2611(b)
4. Generation-skipping trust equivalent - §2611(d)
5. Taxable distribution - §2613(a)(1)
6. Taxable termination - §2613(b)(1)
7. Younger generation beneficiary - §2613(c)(1)
8. Beneficiary - §2613(c)(3)
9. Interest - §2613(d)(1)
10. Power - §2613(d)(2)
11. Ascertainment of Generation - §2611(c)

In order to understand the application of Chapter 13, one must master the definitions in the same way that the definitional provisions in the trust income tax throwback rules of sections 665 through 669 must be mastered. If this is not done, incorrect decisions regarding the application of Chapter 13 will almost certainly follow.

Chapter 13 imposes a tax on any generation-skipping transfer, which is defined to mean "any taxable distribution or taxable termination with respect to a generation-skipping trust or trust equivalent". A "generation-skipping trust" is a trust having "younger generation beneficiaries" who are assigned to more than one generation. A "younger generation beneficiary" is "any beneficiary who is assigned to a generation younger than the grantor's generation". A "beneficiary" is any person "who has an interest or power in the trust".* A person

* This definition has been changed in H.R. 14571 to substitute the words "a present or future" for "an".

is deemed to have an "interest" in a trust if he or she has a right to receive income or corpus or is a permissible recipient of income or corpus. The term "power" refers to "any power to establish or alter beneficial enjoyment of the corpus or income of the trust". Thus, a person may be deemed to possess a power, and therefore be a "beneficiary", even though he cannot exercise the power for his own benefit.

The terms "taxable distribution" and "taxable termination" are the key definitional provisions in Chapter 13 in the sense that these two events cause the imposition of a tax. In general, the words "distribution" and "termination" are given their normal meanings. A "taxable distribution" is "any distribution which is not out of distributable net income from a generation-skipping trust to any younger generation beneficiary who is assigned to a generation younger than the generation assignment of any other person who is a younger generation beneficiary".* This definition is relatively straightforward and should not present serious problems of interpretation. If any part of the Chapter 13 tax on a taxable distribution is paid from the remaining trust property, the payment is deemed to be a taxable distribution. This "gross-up" rule produces a parity with a transfer subjected to estate tax in the sense that the amount of the tax itself is subjected to tax, but is inconsistent with the result for a transfer subjected to gift tax where the amount taxed is the value of what the donee receives.

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* The words "the income of the trust (within the meaning of section 643(b))" have been substituted for "distributable net income" in H.R. 14571. The reference to income within the meaning of section 643(b) refers to income determined under applicable state law. If distributions of income and principal are made in the same taxable year, a special rule, discussed on page 20, restricts the income exception.

A "taxable termination" is defined as

> "the termination (by death, lapse of time, exercise or non-exercise or otherwise) of the interest or power in a generation-skipping trust of any younger generation beneficiary who is assigned to any generation older than the generation assignment of any person who is a younger generation beneficiary of that trust."*

This general rule is subject to two special rules, each of which is itself subject to an unlimited and unascertainable exception to be set forth in regulations. First, if two or more younger generation beneficiaries are in the same generation, the transfer constituting the termination with respect to each such beneficiary shall be deemed to occur "when the last such termination occurs".** To illustrate, assume that A creates a trust for his descendants and gives the trustee the discretionary power to pay income or principal to such descendants living from time to time and the trust is to terminate upon the death of the survivor of A's three children B, C and D at which time the trust property is to be distributed to A's issue then living, <u>per stirpes</u>. The deaths of the first two children will not result in taxable terminations at those times, but rather they will be "suspended" until the death of the third child, when each child will be the "deemed transferor" of the trust property distributable to his or her issue. Second, if a younger generation beneficiary has more than one interest or power,

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* A new sentence has been added in H.R. 14571 saying "Such term does not include a termination of the interest or power of any person who at no time has had anything other than a future interest or future power (or both) in the trust." This sentence is required because the term "beneficiary", as amended, encompasses a person who has a present <u>or future</u> interest in the trust.

** The quoted words present some construction problems. See pages 31-32.

the termination with respect to each such interest or power shall be deemed to occur when the last termination occurs. To illustrate, if A creates a trust for his son S and directs that S shall receive the entire income of the trust and shall have an annual non-cumulative power to withdraw 5% of the trust principal, any taxable termination resulting from the lapse of the power in a year through non-exercise is "suspended" until the death of S. The taxable termination concept is tricky in operation and, as subsequently discussed, produces both uncertain and undesirable results.

The amount of the Chapter 13 tax is based upon the trust property being transferred by a "deemed transferor". This term is defined as the parent of the "transferee of the property who is more closely related to the grantor than the other parent of such transferee (or if neither parent is related to such grantor, the parent having a closer affinity to the grantor)" or if the parent is not a younger generation beneficiary but an ancestor of the transferee is a younger generation beneficiary related by blood or adoption to the grantor, the youngest of such ancestors.* In most cases the deemed transferor will be (or will have been) a beneficiary of the trust. The deemed transferor will, however, not always be (or have been) a beneficiary of the trust. The soundness of treating a person who has no interest in the trust as the deemed transferor is open to question.

In the case of a taxable distribution, the transferee will be the person receiving the property. In the case of a taxable

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* The factual determination of which parent has a "closer affinity to the grantor" would be troublesome.

termination, the transferee may not be known because the property may not be indefeasibly vested at the terminating event. When "it is not clear who will be the transferee of any portion of the property transferred" such portion is deemed to have been transferred pro rata to all trust beneficiaries on a <u>per stirpes</u> basis. While this rule provides an answer when the disposition of the entire trust property is subject to the exercise of discretionary powers by a trustee, it leaves uncertain the determination of who is the transferee in other cases.* To illustrate, assume that at the time of a taxable termination A has an income interest for life and upon A's death the property is to be distributed to A's then living issue, <u>per stirpes</u>. Is A to be deemed to be the transferee to the extent of the actuarial value of his income interest? Are A's issue, <u>per stirpes</u>, determined as of the time of the taxable termination to be deemed to be the transferees to the extent of the actuarial value of the remainder interest? What effect would a discretionary power to pay principal to A have upon the transferee determination? What effect would an annual non-cumulative power of withdrawal in A have upon this determination? Chapter 13 does not provide clear answers to these questions. The word "transferee" should be a defined term.

The Chapter 13 tax is determined by applying the single unified rate schedule to the fair market value of the property transferred, after reflecting <u>for rate purposes</u> all prior Chapter 13 transfers of the deemed transferor, the taxable gifts of the deemed transferor prior to the Chapter 13 transfer and the taxable

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* If the "transferee" is uncertain, the "deemed transferor" may be uncertain.

estate of the deemed transferor if he has died. On the other hand, if the deemed transferor is alive, the Chapter 13 transfers will not be taken into account under the single unified rate schedule in computing his gift or estate tax on any subsequent transfers. The reason for not fully coordinating Chapter 13 transfers with gift and estate tax transfers of the deemed transferor is that he may have no control over transfers subject to the Chapter 13 tax, and a constitutional problem might be presented by having his gift or estate tax rates affected by Chapter 13 transfers.

Since the Finance Committee amendment does not provide a single unified rate schedule, the method of determining the Chapter 13 tax must be modified. Under a dual rate structure, the proper approach would be to treat Chapter 13 transfers taking place during the life of the deemed transferor as being subject to gift tax rates and Chapter 13 transfers taking place upon or after the death of the deemed transferor as being subject to estate tax rates.

Policy Problems of Chapter 13

1. Upside Down Impact of Proposal

As previously noted, Chapter 13 does not apply to all generation-skipping transfers, but only to those which split benefits between different generations below the grantor. Accordingly, the Chapter would have only a minimum impact on the very wealthy. With competent advice, such persons would leave only a part of their disposable property to or in trust for their children and leave most of their property to their more remote descendants, thereby avoiding the imposition of an estate tax or Chapter 13 tax at the death of a child on the property left to the remote descendants.

Example (6) prepared by the Staff of the Joint Committee on Internal Revenue Taxation, which was a part of material explaining H.R. 14115 (see Congressional Record, May 25, 1976, H4924) creates a false impression as to the significance of Chapter 13. It uses a widower with $100 million and says he creates an inter vivos trust of $40 million for his son with remainder to his granddaughter and at his death adds his remaining estate to the trust. A much more likely disposition would be a trust of only a small part of the $100 million for the son with the balance of the estate going to grandchildren and more remote descendants. A disposition of no more than $10 million in trust for the son would seem much more probable.

On the other hand, a person having considerably less wealth, say $500,000, but still impacted by the estate tax will not usually be able to "by-pass" his children as to more than a small part of his estate and still provide desired protection for them. Chapter 13 would have a proportionately larger impact on such a person than on a very wealthy person. This result is objectionable in terms of sound tax policy. It certainly cannot be justified, as some suggest, by the fact that Chapter 13 is significant to only a small percentage of all decedents. Rather, the appropriate test is whether, in terms of all affected decedents, Chapter 13 operates equitably as between persons with different amounts of wealth. The answer is that it does not do so. In order to do so the Chapter would have to apply to all generation-skipping transfers, without regard to a splitting of benefits theory.

The Landrum amendment, which was approved by the Committee on Ways and Means on June 30, 1976, provides that distributions or terminations in favor of a grandchild of the grantor will not be subject to the Chapter 13 tax. This change eliminates the "upside down" impact of the generation-skipping proposal in the context of transfers to children and grandchildren of the grantor. The Landrum amendment reduces substantially the long term revenue to be derived from the Chapter 13 tax. No significant revenue would, however, be realized by the Chapter 13 tax, as originally proposed, during the first 10-15 years of its application because the tax would not be payable until the death of a person who is at least one generation below the grantor. Thus, unless the tax is to apply to pre-existing trusts (see 3 below), two events would have to occur before a tax would be due - a trust must be created and a younger generation beneficiary's interest must terminate (usually by death).

2. Induces Unnatural Estate Plans

Another objection to the policy of Chapter 13 is that it would encourage unnatural estate plans, viz., the by-passing of children in order to avoid a second tax, and the creation of property dispositions for children which avoid the tax but which are not as desirable as a trust disposition in terms of being able to meet family needs. For example, the application of Chapter 13 could be avoided by a decedent directing in his will that his executor buy an annuity for his child to produce an annual income of a desired amount and that the balance of his estate pass to his grandchildren. Why is an annuity more desirable than a trust in terms of tax policy?

3. Application to Existing Trusts

As originally proposed Chapter 13 would apply after April 30, 1986 to trusts created prior to April 30, 1976. "Retroactive" application is very controversial and was eliminated by the Committee on Ways and Means. In H.R. 14571 the Chapter 13 tax will not apply to any trust created prior to April 30, 1976 and in the case of decedents alive on that date but dying before January 1, 1982, will not apply to a trust created under a will or revocable trust in effect on April 30, 1976 and not thereafter amended or "revoked". The reference to "revoked" is erroneous. A revocable trust may be partially revoked by a withdrawal of principal. There is no reason to "taint" the remaining trust principal by any withdrawal.

The desirability of exempting future trusts from the Chapter 13 tax only if the will or revocable trust creating the trust was in effect on April 30, 1976 and was not thereafter amended is questionable. In many cases a change in the will or trust will be advisable but such changes will not be made because it would cause the loss of exemption from the tax. The tax law should not encourage the continuation of "obsolete" wills and revocable trusts. A more desirable approach would be to exempt from the application of the Chapter 13 tax trusts created by wills and revocable trusts operative at the grantor's death, regardless of when executed, of all persons who die prior to January 1, 1980, thus shortening the "grandfather" period by two years. All irrevocable inter vivos trusts created after April 30, 1976 should be subject to any change in the law.

4. Creation of Tax "Penalties" for Trust Dispositions

Persons advocating enactment of the policy of Chapter 13 say that the objective is to treat the trust property in the same manner as if it had been owned by the deceased beneficiary at his death. It is asserted that in this way the estate tax law would be neutral as between leaving property outright to or in trust for beneficiaries. Chapter 13, as originally proposed, was defective in many respects in achieving tax neutrality, with the result that a trust disposition would incur substantial tax penalties. These include

1. In the case of a taxable termination caused by the death of a beneficiary, the failure to treat the trust property as a part of the decedent-beneficiary's gross estate for purposes of

a. Determining the income tax basis of the trust property. See section 1014.

b. Determining the marital deduction. See section 2056.

c. Determining the allowance of deductions for expenses relating to the trust property and losses. See sections 2053 and 2054.

d. Permitting an alternate valuation date election in all cases. See section 2032.

e. Permitting a deduction for the tax attributable to income in respect of a decedent. See section 691.

f. Determining the state death tax credit. See section 2011.

g. Determining the foreign death tax credit. See section 2014.

h. Determining the allowance of a partial consideration offset. See section 2043.

i. Permitting a deferral of the payment of tax attributable to a closely held business. See section 6166.

j. Permitting a deferral of the payment of tax for undue hardship (reasonable cause). See section 6161(a)(2).

k. Permitting a deferral of the payment of tax on a remainder interest in another trust. See section 6163.

2. In the case of a taxable termination not caused by the death of a beneficiary or in the case of a taxable distribution, the failure to allow the tax paid to increase the income tax basis of the trust property. See section 1015(d).

Some of these "penalties" were eliminated in H.R. 14571, but others still exist. We are uncertain how many of the "penalties" referred to will be eliminated in the Finance Committee version of section 7 of H.R. 14115 because this version has not been made available to the public. We would point out that if the provisions of section 1014 are not changed to include property acquired in a Chapter 13 transfer, the aggregate Chapter 13 tax and income tax may exceed 100% on appreciation taxed under that Chapter.*

Tax neutrality between trust and outright dispositions may be achieved by moving Chapter 13 into Chapters 11 (the estate tax) and 12 (the gift tax). If the deemed transferor is alive the tax on the transfer would be imposed under Chapter 12 and if the deemed transferor is dead the tax on the transfer would be imposed under Chapter 11. Any exceptions to the application of other gifts or estate tax provision, and a few might be needed, would be specifically stated.

5. Non-resident Alien Deemed Transferor.

Section 2614(c) of H.R. 14115 provides that if the deemed transferor is a non-resident alien of the United States, there shall be taken into account for the purposes of the Chapter 13 tax only property which would be taken into account for purposes of the gift tax if the deemed transferor is alive or for purposes of the estate tax if the deemed transferor has died. This provision assumes that the imposition of a Chapter 13 tax is appropriate where there are non-resident alien beneficiaries. The assumption is questionable, particularly as to trusts created by non-resident aliens. No well-informed non-resident alien would ever create a trust subject to Chapter 13 with a United States person as trustee because a tax would be imposed which could be

* H.R. 14571 includes a change in section 1014.

avoided (evaded) by using a foreign trustee. Our tax laws should encourage rather than discourage the use of United States trustees by non-resident aliens. Also, in the unlikely event a United States person is acting as trustee the tax may be avoided by selling all United States assets described in section 2104 shortly before the death of the non-resident alien deemed transferor. Any provision which has the tax result turn on such an act is unsound.

There is some question as to the desirability of having a Chapter 13 tax imposed where the deemed transferor is a non-resident alien and the trust is created by a United States citizen or resident. The reasoning here is much the same as it is in the case of a trust created by a non-resident alien - at the time of the creation of the trust the grantor will be unlikely to use a United States person as trustee if there is a possibility of a deemed transferor being a non-resident alien because the tax could be avoided (evaded) by having the trust assets held outside the United States by a foreign trustee. Finally, the intentional use of a non-resident alien deemed transferor opens up some tax minimization possibilities through the use of the lower non-resident alien rate schedule when combined with the application of section 2613(b)(5)(B).

6. Failure to Handle the Untoward Order of Deaths Case Properly

In some cases family members will die out of sequence - children will predecease their parents and grandchildren will predecease children. Chapter 13 handles these cases in an inappropriate manner to produce a tax where the child or grandchild has been a beneficiary prior to his death.* Three fact patterns will illustrate the problem.

Case 1 - A creates a trust for his family by his will and authorizes the trustee to pay income or principal to his widow W or his descendants living from time to time and directs that upon the death of W the trust property is to be distributed to his issue then living, per stirpes. A has one child C who has issue and dies after A but before W leaving surviving issue who receive the trust property at W's death. Result - the entire trust property is taxed at the death of C. If, however, A had three children C, D and E and only C died after A and before W, no tax would be imposed at C's death and at W's subsequent death only the value of property passing to C's issue would be taxed as a taxable distribution.

Case 2 - A creates a trust by his will for his son S and his family and authorizes the trustee to pay income or principal to S or his descendants living from time to time and directs that upon S's death the trust property is to be distributed to S's issue who survive him per stirpes. A grandchild G is born to S when he is 45 but G dies from a birth defect when he is two weeks old. Result - the entire trust property is taxed at the death of G. If, however, at the time of G's death there was at least one other grandchild of A then living no tax would be imposed at G's death.

Case 3 - A creates a trust by his will for his son S and

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* The discussion that follows ignores the Landrum amendment referred to on page 10.

his family and authorizes the trustee to pay income to S or his descendants living from time to time and directs that upon S's death the trust property is to be distributed as S appoints pursuant to a general power of appointment. S has a child (a grandchild of A) G who dies prior to S's death. Result - the entire trust property is taxed at the death of G, even though the transfer is a non-generation-skipping transfer in the sense that the trust property will be subjected to estate tax under section 2041 as a part of S's gross estate at his death and any distribution of income to G would not be a taxable distribution.

No rational theory supports the results in Cases 1, 2 and 3. Within the context of a non-generation-skipping policy, the untoward order of deaths case should be resolved in favor of the taxpayer. The result in Case 1 may be avoided by providing that all of the trust income during the widow's life must be paid to her instead of giving the trustee discretion to pay the income to her or to descendants. Similarly, in Cases 2 and 3 the imposition of a Chapter 13 tax may be avoided by eliminating any present interest in the grandchildren until the child's death. Such restrictions are, however, undesirable and contrary to the desirable trend of flexibility in trust dispositions and would limit the ability of a trust to provide for the needs of a family. Finally, the taxable distribution concept makes impossible the avoidance of a Chapter 13 tax at a later time when trust property actually does pass in a generation-skipping transfer. Bearing this in mind, the definition of a taxable termination should be revised to exclude terminations where immediately thereafter there is a beneficiary of the trust who is assigned to a generation older than the generation of the beneficiary whose interest just terminated.

7. Irrelevancy of Nature of Younger Generation Beneficiary's Interest

Chapter 13 will subject to tax the full value of the trust property in cases where a child has only a slight beneficial interest in a trust. To illustrate, if A creates a trust of $200,000 by his will with $1,000 per year to be paid to his son S for life and the balance of the income to be paid to his grandchild G the entire trust property will be subjected to tax at S's death even though his interest in the trust is only in a part of the income.

The statement that the nature of a younger generation beneficiary's interest in a trust is irrelevant in determining the amount of the Chapter 13 tax is subject to one qualification. Section 2622 grants authority to prescribe regulations including specifically the extent to which "substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts".* In a case where a fixed percentage of trust income is payable to a child and the balance of the income is payable to grandchildren of the grantor, the application of the separate share rule would limit the imposition of the Chapter 13 tax to that percentage of the trust principal from which the child shall receive income unless payments of principal could be

* This language is taken from section 663(c), which establishes a separate share rule for the purpose of determining the amount of distributable net income of different beneficiaries of a trust. This rule is described in detail in Treas. Reg. §1.663(c)-1 through 4.

made to the child or grandchildren without thereafter affecting a proportionate reduction in the share of income payable to the person receiving the discretionary principal distribution. The separate share rule would, however, not apply in a case where a beneficiary is entitled to receive a fixed amount of income from the trust property.

Chapter 13 may also subject the full value of trust property to tax upon the death of a person who had no beneficial interest in the trust. This result occurs because a person who has a power to affect the beneficial enjoyment of income or principal, viz., a trustee possessing discretionary powers, is treated as a beneficiary of the trust. To illustrate, if a trust is created by A for his grandchild B and his son S is named as trustee of the trust and given discretionary powers to pay income or principal to B, a Chapter 13 tax would become payable when S ceases to act as trustee. The result would be the same if A's lawyer (who happens to be more than 12 1/2 years younger than A) were the trustee instead of S. In this respect, Chapter 13 has the effect of amending section 2041 concerning the taxation of property subject to a power of appointment. Under this section, trust property is not included in a decedent's gross estate as a result of his possessing a power to alter the enjoyment of trust property unless he may exercise the power for his or her own benefit.

The application of Chapter 13 in cases where a person is given the right to receive the property from the trust only when such person does not have sufficient funds for his maintenance and support after taking into account his own resources is uncertain. Does such a person have an "interest", viz., "a right to receive income or corpus", in the trust in cases where he or she has more than enough resources to provide for his or her maintenance and support and a trustee would violate his fiduciary obligations if funds were made available to such person from the trust? If so, is such a tenuous right a sound basis on which to tax the entire trust property under Chapter 13?

The application of the Chapter 13 tax in the manner indicated in this section casts serious doubt upon the soundness of the results obtained.

Technical Problems

Chapter 13 presents other technical problems that have not been mentioned above. These are not discussed in order of their importance.

1. Section 2613(a)(1) states that a distribution of trust income will not be treated as a taxable distribution. Section 2613(a)(2) creates an exception when distributions of income and principal are made in the same taxable year to younger generation beneficiaries in different generation levels so that any distributions to beneficiaries in the youngest generation level will be deemed to be distributions of principal (and be subject to the Chapter 13 tax) rather than distributions of income. Thus, in any case where

distributions of principal may be made it may not be known whether a distribution of income to a grandchild of the grantor is a taxable distribution until the end of the taxable year in which the distribution is made because a later distribution of principal to a child may "taint" the income distribution. The Chapter 13 tax is payable nine months after the distribution is made. Since the trust's taxable year may close more than nine months after a distribution from the trust, it will be uncertain in some cases whether a taxable distribution has been made at the time a Chapter 13 tax return must be filed if such a taxable distribution occurred. This problem must be solved.

In H.R. 14115 section 2613(a)(2) refers to "distributions out of distributable net income and out of other amounts". As previously noted, these words were revised in H.R. 14571 to substitute "the income of the trust (within the meaning of section 643(b))" for "distributable net income". The words "other amounts" are taken from section 661(a)(2). If these words are given their section 661(a)(2) meaning the quoted language is, in either form, ambiguous because a payment may be made out of income (as so defined) or out of distributable net income and still be an "other amount" payment. This would occur when any discretionary income payment is made. The word "corpus" should be substituted for "other amounts".

2. Section 2613(c)(1) states that a person is a younger generation beneficiary of a trust "with respect to a transfer <u>only if</u>

such person was a younger generation beneficiary of the trust immediately before the transfer" (emphasis added). A "beneficiary" was originally defined as a person who has an "interest or power in the trust". Such a definition, when taken in connection with section 2613(c)(1), suggested that if a child of the grantor was the sole income beneficiary of the trust and no person in a generation younger than the child had any interest in the trust prior to the child's death a Chapter 13 tax would not be incurred at the child's death. This unintended result was negated by modifying the definition of beneficiary in H.R. 14571 to include a person having a present or future interest or power in the trust. The change renders section 2613(c)(1) meaningless and it should be eliminated.

3. As noted in 2 above, the definition of "beneficiary" has been modified to refer specifically to a person having a "present or future interest" in a trust. The word "future" is not defined. Its meaning is not significant in terms of a taxable termination because of the new sentence added to section 2613(b)(1) stating that a termination of the interest of a person who has only a future interest is not a taxable termination. There is, however, no corresponding provision in the definition of a "taxable distribution", with the result that if the term "future interest" is interpreted broadly a taxable distribution may arguably occur as a result of the death of a person who is a possible appointee pursuant to the exercise of a power of appointment or who has a remote contingent interest in

the trust. To illustrate, assume a trust is created by A for his grandchild G, who is given a broad tax-free special power of appointment over the trust property at his death. Since G may exercise this power in favor of anyone in the world other than himself (including a person in the generation below the grantor and above G), does any distribution of principal to G result in a taxable distribution? Is the result different when the interest in the older generation is created by the specific terms of the trust, as would occur when in the case posed the trust property would pass to a child of A in the event of the death of G without issue and without having exercised the power of appointment?

4. Section 2613(a)(3) states that if any portion of the Chapter 13 tax is paid from the income or corpus of the trust an amount equal to such portion is deemed to be a Chapter 13 transfer. Although subsection (a) of section 2613 is captioned "Taxable Distribution", paragraph (3) is not so limited and literally applies to a taxable termination, where the tax will always be paid from the trust. In order to avoid the application of section 2613(a)(3), the words "taxable distribution" should be substituted for the word "transfer" when first used.

5. Section 2602(a)(1)(D), relating to the computation of the Chapter 13 tax, takes the deemed transferor's taxable estate into account if he died "before" the Chapter 13 transfer. In many cases this transfer will occur as a result of the death of the deemed transferor. In order to avoid any ambiguity of meaning, (D) should be

revised to add the words "or on the same date as" after the word "before". Also, the words "at the same time" in section 2602(b) should be changed to "on the same date" to avoid any possible interpretation that "time" is more restrictive than "date".

6. The opening paragraph of section 2611(c), relating to the ascertainment of generations, excludes the grantor from its scope. This exclusion has caused confusion as to whether paragraph (2), involving an individual married to a lineal descendant of a grandparent of the grantor, would apply to the grantor's spouse. A strict reading supports this conclusion, with the result that a spouse of the grantor who is more than 12 1/2 years younger than the grantor would be considered to be in a generation younger than the grantor. The problem may be solved by adding the words "or to the grantor" after "paragraph (1)" in paragraph (2).

7. Section 2614(b) permits a deduction "against" the income tax in an amount equal to the Chapter 13 tax on "any amount distributed out of a generation-skipping trust or trust equivalent [that] is included in the gross income of the transferee".* The purpose of this provision is to prevent imposition of an income tax and a Chapter 13 tax on the same gross amount. It is patterned after section 691(c), which allows a deduction in an amount equal to the estate tax on income in respect of a decedent. Section 2614(b) would apply in two situations - where the trust has undistributed net income at the time of the Chapter 13 transfer and a throwback (accumulation) distribution is thereafter

* The word "against" should be changed to "in computing" to avoid any contention that a credit against tax is created.

made and where the trust includes income in respect of a decedent at the time of the Chapter 13 transfer and this income is distributed by the trust. It does not, however, cover the case where the income in respect of a decedent is accumulated in the trust in the year received. When this occurs, the trust itself should be entitled to the deduction for the Chapter 13 tax attributable to such income.

8. Section 2602(c)(3) of H.R. 14115 provides that the section 2013 previously taxed property credit shall be allowed against the Chapter 13 tax.* The credit is, however, under current law based upon the actuarial value of the decedent's interest in the trust rather than the entire value of the trust property in which the interest exists. See Treas. Reg. §20.2013-4; Rev. Rul. 59-9, 1959-1 Cum. Bull. 232. In fact, if the interest is dependent upon the exercise of a discretionary power, there is no credit because the value of the interest is unascertainable. See Rev. Rul. 67-53, 1967-1 Cum. Bull. 265. Since the Chapter 13 tax is based upon the value of the underlying trust property and not the value of the decedent's interest in the property, section 2013 should be amended to provide that the credit should also be based upon the entire value of the trust property determined in the prior transferor's estate.

In most cases the deemed transferor for purposes of Chapter 13 will have an interest in the trust, but as noted above on page 6 such person will occasionally have no such interest. In order to be sure that a section 2013 credit is available in such cases, section 2013 should be amended to provide in effect that a deemed transferor under

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* This provision was moved to section 2602(c)(4) in H.R. 14571.

Chapter 13 will be considered as a decedent for purposes of that section.

9. Section 2622 grants general regulatory authority to the Secretary or his delegate to carry out the purposes of the Chapter 13 tax. Specific regulatory authority is also given to create exceptions to two substantive rules on when a taxable termination takes place in section 2613(b)(2)(A) and (B). The specific grants suggest uncertainty as to the substantive rules. They should be eliminated and the two statutory provisions should be amended to enumerate the exceptions intended. It is undesirable to enact statutes which may be modified substantively by regulation. One exception needed in section 2613(b)(2)(B), stating that if a beneficiary has more than one interest or power the termination with respect to each interest or power will be deemed to occur at the time the last termination occurs, is that an interest or power which may vest in possession only after the termination of all other interests or powers in individuals in the same generation will not be treated as an interest or power for purposes of section 2613(b)(2)(B). This would eliminate the possibility that the imposition of the Chapter 13 tax could be postponed by creating remote contingent interests in children which follow the interests of grandchildren.

10. Section 2613(b)(1) in defining a "taxable termination" refers to the termination of an interest "by death". Where "death" causes the termination, the estate of the deceased beneficiary will often be entitled to accrued or collected but undistributed income.

For purposes of Chapter 13, does the deceased beneficiary's interest terminate at death or when the payment is made of the remaining income to which his estate is entitled? Section 2613(b)(1) should be clarified to answer this question.

11. The disclaimer provisions of Chapter 13 in section 2614(a) of H.R. 14115 are inadequate in not permitting a disclaimer of an interest in a trust created before April 30, 1976 because of the requirements imposed to effectuate a disclaimer and in subjecting the value of the property interest disclaimed to gift tax. H.R. 14571 modifies the disclaimer provisions but is deficient in failing to permit a disclaimer for interests in a trust created after April 30, 1976 and before January 1, 1977. Also, the reference in proposed section 2518(b)(2) to the day on which "the transfer creating the interest" is made is troublesome in connection with revocable trusts. If these words are given their normal meaning, the interest would be created when the trust is established, thus necessitating a disclaimer at a time when the interest may be changed by the grantor. In the case of a revocable trust, the reference point to start the nine month period should be to the date of death of the person creating the trust.

12. Section 2611(c)(7) states that if any beneficiary of a trust is "an estate or a trust, partnership, corporation, or other entity * * * each individual having a beneficial interest in such entity shall be treated as a beneficiary of the trust". This language

is too broad and will produce unwarranted results in certain cases, particularly in view of the fact that the Chapter 13 tax bears no relationship to the nature of a younger generation beneficiary's interest in a trust. To illustrate, assume A creates a trust for his four grandchildren with the income payable to such of them as shall be living from time to time. Upon the death of the first grandchild, his share of the accrued and collected but undistributed net income is payable to his estate. If the grandchild's parent through A is a beneficiary of the estate, Chapter 13 will apply, whether or not the parent has any beneficial interest in the accrued income. The same problem would arise in any case where a grantor creates a short-term trust (see section 673) for a descendant and dies during the trust term. If any possible beneficiary of the estate is two generations younger than the grantor a Chapter 13 tax is imposed upon the termination of the trust. These results are wrong.

At a minimum, proposed section 2611(c)(7) should be restricted so that a beneficiary of the other entity will be treated as a beneficiary of the trust only if he or she can benefit from any payment from the trust and then only to the extent of any possible benefit. Also, the meaning of the words "beneficial interest" are not clear. Presumably, these words are more limited in scope than the definition of the word "interest" in section 2613(d)(1). One specific question is how the words "beneficial interest" will be applied in connection with property subject to powers of appointment.

13. Section 2613(b)(2)(A) uses the words "the transfer constituting the termination with respect to each such beneficiary". The meaning of these words is uncertain when considered in connection with the deemed transferor rule of proposed section 2612. Assume that there were three children A, B and C who were the measuring lives, that C was the last surviving child and that upon C's death A's share of the trust property passes in part to his children and in part to his grandchildren. Is A the deemed transferor for purposes of all property passing to his children and grandchildren or only with respect to the property passing to his children? The language of section 2613(b)(2)(A) suggests that A may be the deemed transferor of his entire share although under proposed section 2612 A's children would be deemed the transferors of the property passing to their children.

14. Section 2613(b)(5)(B) is a complicated provision which is difficult to understand.* Its purpose would appear to be to prevent a second tax (i) on a distribution made from the trust to a person who is no more than one generation below the deemed transferor for an earlier Chapter 13 transfer or (ii) in a termination where the beneficiary whose interest terminates is in the same generation as the deemed transferor in the prior transfer. If this is the purpose, a simpler and more desirable approach would be to define the term "grantor" and to have this definition include any person who is a deemed transferor with respect to a taxable termination to the extent of the portion of the trust transferred in such taxable termination.

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* This is attributable in part of the uncertain meaning of the word "transferee" when a taxable termination is involved. See page 7.

15. Chapter 13 is deficient in failing to state who is obligated to file the tax return covering the transfer.* A transfer tax return is usually prepared by the person making the transfer or by the transferor's executor if he has died. It would appear that Chapter 13 does not intend to have the return filed by the deemed transferor or his personal representative. See section 2603 dealing with the personal liability of a trustee or distributee of property. The intent apparently is for the return to be filed by the person receiving the property in the case of a taxable distribution and by the trustee in the case of a taxable termination. Chapter 13 should so state.

16. The Chapter 13 tax is, under section 2602(a)(1)(A), based upon "the fair market value of the property transferred". In the case of a taxable distribution, the meaning of the quoted words should present no proble In the case of a taxable termination, problems may arise because what is "transferred" is not isolated. To illustrate, assume that a decedent creates a trust for his widow W and his descendants and directs that the trustee shall pay an annuity of $10,000 per year to W and that any income in excess of this amount may be paid to his descendants living from time to time. If the decedent has one son S and two grandchildren and S predeceased W, thus causing a taxable termination, what is the value of the property "transferred" by S, the deemed transferor? Is it the full value of the trust property or that amount reduced by the value of W's annuity

* In fact, it is not entirely clear who is obligated to pay the tax.

determined at S's death? What would the result be if W had an annual non-cumulative right to withdraw 3% of the trust principal or a right to receive one-half of the trust income instead of an annuity?

17. Section 2612(a), relating to the deemed transferor, refers in paragraph (2) to a younger generation beneficiary related by blood or adoption. This provision should be revised to include a reference to a younger generation beneficiary related by marriage if there is no younger generation beneficiary related by blood or adoption. Such a change would bring the provision more in line with section 2612(b) which states that a parent related to the grantor by blood or adoption is more closely related than a parent related by marriage.

18. Section 2613(b)(2)(A) provides that when two or more younger generation beneficiaries are assigned to the same generation the transfer constituting a taxable termination with respect to each such beneficiary will be treated as occurring "at the time when the last such termination occurs". In some cases the interest of a beneficiary will not terminate but rather will vest in possession. The meaning of "last such termination" in such a case is uncertain. To illustrate, assume A creates a trust for his three children B, C and D and directs that upon each child attaining age 50 he or she will receive one-third of the trust principal and if a child dies prior to attaining that age the child's share will continue in trust for his or her children and will be distributed when the youngest child attains age 21. Assume further that B dies before attaining

50 and is survived by children and that two and four years later C and D receive their shares of the trust property outright upon attaining that age. When does the "last such termination" occur in this case? Also, if there is no taxable termination, is the distribution of principal to B's children when the youngest attains age 21 a taxable distribution? In answering this question it would appear significant that after the distributions to C and D there is no younger generation beneficiary who is assigned to a generation older than B's children.

19. Trust property may consist of contributions made by persons in two generation levels. Chapter 13 gives no guidance as to how it will be applied in such a case. This issue should be answered in the statute.

20. A beneficiary may assign one or more of his interests in a trust to a person who is in a different generation level, either higher or lower or to a corporation or other entity. It is uncertain whether the assignment would be treated as a termination of the assignee's interest in determining whether a taxable termination has occurred. Chapter 13 should contain a rule that the assignee is considered to be the assignor for purposes of determining the application of its provisions.

Conclusion

The foregoing comments concerning Chapter 13 as proposed in Section 7 of H.R. 14115 demonstrate beyond question the need for the Senate Finance Committee to modify its previous action in approving this section.

AMERICAN BANKERS ASSOCIATION

AMERICAN BANKERS ASSOCIATION

"ESTATE TAX" GENERATION - SKIPPING PROVISIONS

SECTION CERTAIN TRUST TRANSFERS

(a) Chapter 11 (relating to the estate tax) is amended by adding the following new section:

"SECTION 2045. CERTAIN TRANSFERS BY A BENEFICIARY OF A TRUST OR A TRUST EQUIVALENT.

"(a) GENERAL RULE.--Except to the extent that a taxable termination (as defined in subsection (c)(2)) is otherwise treated as a transfer under this chapter and to the extent such taxable termination is not an excluded transfer (as defined in subsection (b)), if the decedent was a beneficiary of a trust and the death of the decedent caused a taxable termination the value of the gross estate shall include the value of the property constituting the trust.

"(b) EXCLUDED TRANSFERS.--This section shall not apply to a taxable termination if immediately before and after such termination one or more

(1) individuals assigned to the same generation as the grantor or to an older generation than the grantor or

(2) individuals assigned to the first generation younger than the grantor

is a beneficiary or to a taxable termination occurring at the death of the survivor of such individuals who is a beneficiary to the extent that at such time the property must be distributed to individuals who are assigned to a generation no younger than the second generation younger than the grantor. For purposes of the preceding sentence, if property continues in a trust after the expiration of the period described for the sole benefit of an individual assigned to the second generation younger than the grantor and is vested in such individual for purposes of chapters 11 and 12, such property shall be deemed to be distributed to such individual.

"(c) DEFINITIONS.--For purposes of this section--

(1) ASCERTAINMENT OF GENERATION.-- The generation to which any individual (other than the grantor) belongs shall be determined in accordance with the following rules:

(A) an individual who is a lineal descendant of a grandparent of the grantor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the grantor,

(B) an individual who has been at any time married to a person described in paragraph (A) or to the grantor shall be assigned to the generation of such person.

(C) a relationship by the half blood shall be treated as a relationship by the whole blood,

(D) a relationship by legal adoption shall be treated as a relationship by blood,

(E) an individual who is not assigned to a generation by reason of the foregoing paragraphs shall be assigned to a generation on the basis of the date of such individual's birth, with --

(i) an individual born not more than 12 1/2 years after the date of the birth of the grantor assigned to grantor's generation.

(ii) an individual born more than 12 1/2 years but not more than 37 1/2 years after the date of the birth of the grantor assigned to the first generation younger than the grantor, and

(iii) similar rules for a new generation every 25 years,

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(F) an individual who, but for this paragraph, would be assigned to more than one generation shall be assigned to the younger such generation.

(2) TAXABLE TERMINATION.--The term 'taxable termination' means the termination of an individual's status as a beneficiary of a trust.

(3) BENEFICIARY.--The term 'beneficiary' means any individual, who directly or indirectly through another estate, trust, corporation or partnership is or may be entitled to income determined by sections 652, 662 or 678 during the term of the trust.

(4) GRANTOR.--The term 'grantor' means any individual who contributes property to a trust to the extent of the property so contributed. Any individual who is deemed to have transferred trust property under this section or under section 2518 shall thereafter be deemed a grantor of the trust for purposes of the later application of this section to the extent of the property so transferred.

(5) TRUST.--The term 'trust' shall include any arrangement which, although not a trust, has substantially the same effect as a trust.

"(d) COMPUTATION AND PAYMENT OF TAX.--Unless the decedent shall provide otherwise by will which contains a specific reference to this section and notwithstanding the provisions of any state apportionment statute which does not refer to this section, the tax payable under this section shall be paid out of the property subject to the tax. Such tax shall be an amount equal to the excess of the tax over the tax computed without including such transfer in the gross transfers under this chapter.

"(e) REGULATIONS.--The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section.

"(f) CROSS REFERENCES.--For adjustment of undistributed net income, see section 665(h)."

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( ) TECHNICAL, CLERICAL AND CONFORMING CHANGES. --

(1) CREDIT FOR TAX ON PRIOR TRANSFERS. -- Section 2013 (relating to credit for a tax on prior transfers) is amended by adding at the end thereof the following new subsection:

"(t) TREATMENT OF TAX IMPOSED ON CERTAIN TRANSFERS BY SECTION 2045.--Any transfer included in the gross estate of a beneficiary under section 2045 shall be deemed to have passed to the decedent from the transferor."

**STATEMENT OF ARTHUR PETER, JR.
ON BEHALF OF
THE AMERICAN COLLEGE OF PROBATE COUNSEL
BEFORE THE COMMITTEE ON FINANCE
UNITED STATES SENATE
ON THE SUBJECT OF A TRANSFER TAX ON GENERATION-SKIPPING TRUSTS
JULY 20, 1976**

This Statement has been prepared by a duly constituted Committee* of the American College of Probate Counsel, a group of more than 1,700 probate lawyers from all over the United States, and is being made under the direction of its President (William P. Cantwell, Esquire) and its President-Elect (J. Nicholas Shriver, Esquire).

There is appended to this Statement copies of pages 30-37 of the technical commentary on H.R. 13966 (the Ullman bill revising estate and gift tax laws) which this Committee of the American College of Probate Counsel submitted to Dr. Laurence N. Woodworth and Mr. John M. Martin by letter dated June 1, 1976. Such pages contain our Committee's comments on Section 7 of H.R. 13966, providing for a tax on generation-skipping trusts.

Summary of Principal Points in Statement

1. Many in the American College of Probate Counsel are opposed to a transfer tax on generation-skipping trusts

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* The Committee members are listed on the last page of this Statement.

on the ground that the avowed abuse requiring such legislation, namely, the avoidance of a transfer tax for a hundred years or more by means of a long-term trust extending over many generations, does not in fact occur frequently enough to justify burdening the Internal Revenue Code with the necessarily extremely complicated legislation required to impose such a tax.

2. If there is to be a transfer tax on generation-skipping trusts, a substantial majority of the American College of Probate Counsel strongly believe there should be:

(a) an exception for a distribution from such a trust to a grandchild of the Grantor, so that this normal type of family trust disposition, providing for life estates for the children and remainder to the grandchildren of the Grantor, is not discouraged.

(b) the holder of only a "naked" (non-beneficial) power to control the disposition of trust income or corpus should not come within the definition of a "beneficiary", for the effect of such a provision is to repeal that portion of Sections 2041 and 2514 exempting such powers of appointment from estate and gift tax, and to treat most powers as taxable general powers of appointment.

(c) The effective date provisions should:

(i) except all irrevocable trusts, whether _inter vivos_ or testamentary, in existence on April 30, 1976, but only to the extent the transfer is not made out of corpus added to the trust after that date;

(ii) except revocable trusts and wills in existence on April 30, 1976, in the case of a decedent dying before January 1, 1982, where there has been no subsequent revocation or amendment affecting the generation-skipping trusts; and

(iii) in the case of a decedent who was under a mental disability to change the disposition of his property on April 30, 1976, except any revocable trust or will executed by him on or before such date for a period of 2 years after the date on which he first regains his mental competency.

General Discussion of Principal Points

1. Many in the American College of Probate Counsel are opposed to a transfer tax on generation-skipping trusts on the ground that the avowed abuse requiring such legislation, namely the avoidance of a transfer tax for a hundred years or more by means of a long-term trust extending over many generations, does not in fact occur frequently enough to justify burdening the Internal Revenue Code with the necessarily extremely complicated legislation required to impose such a tax.

It has been the experience of most lawyers in the American College of Probate Counsel that their clients are very seldom interested in providing for an *inter vivos* or testamentary trust extending beyond their grandchildren even after they have been made aware of estate tax benefits arising from the extension of the period of the trust to the outer limits allowed by the Rule Against Perpetuities. Many of us feel that the proponents of a generation-skipping transfer tax have the burden of establishing the substantial usage of long-term trusts to avoid estate tax in order to justify insertion of the extremely complicated generation-skipping tax legislation into the Code, and that this burden has not been met. We note in this connection that the favorable estate tax treatment of generation-skipping trusts has been part of the fabric of our estate and gift tax laws for many years, and a reversal of such favorable treatment should not be undertaken in the absence of clear proof of abuse of such provisions.

2. If there is to be a transfer tax on generation-skipping trusts, a substantial majority of the American College of Probate Counsel strongly believe that there should be an exception for a distribution from a trust to a grandchild of the Grantor, so that the normal type of family trust disposition, providing for life estates for the children and remainder to the grandchildren of the Grantor, is not discouraged.

In this connection, it is significant that both the American Law Institute and the American Bankers Association are on record in support of either the same or a more liberal exception to the imposition of a tax on a generation-skipping trust. Thus, the 1968 recommendation of the American Law Institute states that no such tax should be imposed on a transfer under which final distribution by the trust is required to be made no later than the death of a person or persons one generation below the transferor, or in the same generation or in a higher generation than the transferor. This recommendation is more liberal than the 1972 American Bankers Association proposal, excepting trust distributions to grandchildren, which the American College of Probate Counsel here supports, since it would permit a distribution to be made to generations below the grandchildren of a Grantor or outside of the Grantor's family. Thus the three nationwide professional groups most clearly identified with the establishment and operation of trusts have unanimously supported this exception.

Two other reasons for supporting such an exception for trust distributions to grandchildren should be noted. It would seem grossly unfair to tax such a distribution so long as outright distributions to granchildren are not subjected to a generation-skipping tax, and we are not aware that any major professional group has supported a transfer tax in the latter instance. Furthermore, it is notable that generation-skipping tax legislation which does not provide an exception for trust distributions to grandchildren in effect favors the family of more affluent Grantors who can afford to skip their children as life beneficiaries of a trust for their grandchildren or to provide a separate trust for each generation as compared with the less wealthy families whose Grantor must provide some financial support for his children, as well as his grandchildren, in the same trust.

Finally, it is notable that while H.R. 13966, the Ullman bill, did not provide for an exception for a trust distribution to a grandchild, yet in its final mark-up session on such bill, the House Ways and Means Committee voted favorably on an amendment providing such an exception.

3. If there is to be a transfer tax on generation-skipping trusts, a substantial majority of the American College of Probate Counsel strongly believe that the holder of only a "naked" (non-beneficial) power to control the disposition of trust income or corpus should not come within the definition of a "beneficiary", for the effect of such a provision is to repeal that portion of Sections 2041 and 2514 exempting such powers of appointment from estate and gift tax, and to treat most powers as taxable general powers of appointment.

Pursuant to Section 2613(c)(3) and Section 2613(d) of H.R. 13966, a person who received no beneficial interest in the trust would be treated as a "beneficiary" for purposes of a generation-skipping tax if he had any control over the disposition of income or corpus. The effect of this "naked power" provision is that a generation-skipping tax would be imposed where a Grantor sets up a trust for his grandchildren and names one of his sons as trustees either in the event that the son should die while the trust is in existence or the trust terminates while such son is acting as trustee. Such a "naked power" provision would obviously discourage a Grantor from appointing members of his family as trustees of trusts for his descendants, and the American College of Probate Counsel feels that this would be a most unfortunate result.

We are glad to note that the House Ways and Means Committee adopted an amendment eliminating the "naked power" concept from H.R. 13966.

4. If there is to be a transfer tax on generation-skipping trusts, a clear majority of the American College of Probate Counsel believe that the effective date provisions should except all irrevocable trusts, whether inter vivos or testamentary, in existence on April 30, 1976, but only to the extent the transfer is not made out of corpus added to the trust after that date. It is too obvious to require extended

discussion that it would be most inequitable to impose this tax on trusts which were established in the past without having to take into account such a tax and which are now incapable of amendment. While Section 7 of H.R. 13966 provided only a limited moratorium from the generation-skipping tax for such an irrevocable trust, the Ways and Means Committee has voted favorably on an amendment to such bill incorporating the effective date provision for irrevocable trusts which the American College supports.

5. The American College of Probate Counsel further believes that the effective date provision for a tax on generation-skipping trusts should make an exception for revocable trusts and wills in existence on April 30, 1976, in the case of a decedent dying before January 1, 1982, where there has been no subsequent revocation or amendment affecting the generation-skipping trusts. Thus, we feel that it is imperative that such an exception permit mere procedural "housekeeping" modifications in wills and trusts such as may be required for the substitution of executors or trustees caused by the death of an individual or the failure of a bank or the merger of a bank named as fiduciaries in the original trust instrument. It should also permit substantive amendments of such a will which do not affect the generation-skipping trusts. Unfortunately, the House Ways and Means Committee amendment of H.R. 13966, while containing most of the provisions desired by the American College of

Probate Counsel with respect to revocable trusts and wills existing on April 30, 1976, does not permit any kind of modification in such trust instrument, and such failure will lead to most unfortunate results in some instances. It would be hoped that this glaring omission could be rectified either in Committee or on the floor of the House or Senate in the event that a tax on generation-skipping trusts is enacted into law.

6. The American College of Probate Counsel further favored an effective date provision which would make an exception for a revocable trust or will in existence on April 30, 1976 in the event that the decedent was under a mental disability to change the disposition of his property on such date. Fortunately, the House Ways and Means Committee amendment of H.R. 13966 does provide for such an exception for a period of two years after the date on which such a decedent first regains his mental competency.

The American College of Probate Counsel appreciates the opportunity to appear before the Senate Finance Committee and make known its views on the taxation of generation-skipping trusts, and it offers its services in any way it may be helpful to such Committee.

The Estate and Gift Tax Peform Committee of the American College of Probate Counsel consists of the following lawyers:

Frank S. Berall, Chairman, of Hartford, Connecticut; Luther J. Avery, of San Francisco, California; Joseph Kartiganer, of New York, New York; Arthur Peter, Jr., of Washington, D. C.; Raymond A. Reister, of Minneapolis, Minnesota; and E. Frederick Velikanje, of Yakima, Washington.

Tax on Certain Generation-Skipping Transfers

Section 2602(c)(2), page 97

The exception for the unused portion of basic credit refers just to the unified credit under section 2010(a)(1) which is only allowable against the estate tax. The exception must be expanded to provide the credit under section 2505(a) against the gift tax in the case of an *inter vivos* transfer.

Section 2603(a)(1)(A), page 98

The statutory language states in part "the trustee shall be personally liable for such tax."

Such language leaves it ambiguous as to whether a trustee in office before or after the taxable transfer would be personally liable for the tax even though it is presumably intended only that the trustee in office at the time of the taxable transfer be personally liable for the tax.

While such ambiguity could be cured by the Regulations, it would be better to modify the statutory language to read "each trustee in office at the time of the transfer shall be personally liable for such tax.'

There would seem to be no counterpart to a "trustee" which could be inserted in the statutory language to cover personal liability in the situation of a "generation-skipping trust equivalent".

Section 2603(a)(2), page 98

While this subparagraph provides for the Secretary or his delegate to supply rates of tax to the trustee, there are no statutory provisions with respect to the mechanics of obtaining such information. While such mechanics can certainly be worked out under the Regulations, there may be a real virtue in providing by statute both a procedure and a time frame for the Secretary or his delegate to supply such rates to the trustee rather than leaving this entirely to the Regulations. Section 2204 provides a good precedent for setting forth such procedure and time frame by statutory language.

Section 2603(b), page 99

This paragraph which provides a lien on transferred property for the amount of the Section 2601 tax, should be enlarged to provide for the divestment of such lien in the case of a purchaser or holder of a security interest. See Section 6324(a)(2) of the Code.

Section 2611(c), pages 99-101

Under the statutory language it would appear that a person who is a successor to a lineal descendant by virtue of the assignment to him of such a descendant's interest would fall under subparagraph (5). It would seem desirable to insert a new subparagraph prior to (5) to assign to such a person the generation of the lineal descendant from whom he received his interest.

Subparagraph (7) provides in substance that if "another entity" is a beneficiary of the trust, then each individual having a beneficial interest in such other entity is to be treated as a beneficiary of the trust. Such a far-reaching provision adds a great deal of complexity and uncertainty to the record-keeping of the trustee, since the individuals holding these indirect beneficial interests in the trust will be constantly changing.

Section 2612(a), page 102

Paragraph (a) deals with the "deemed transferor" with respect to a transfer to "any individual". It is unclear who would be the "deemed transferor" with respect to a transfer to a trust, partnership, corporation or other entity, unless it is intended that the word "individual" include an individual having a beneficial interest in such entity at the time of transfers. The meaning of the term "individual" for the purposes of Section 2612(a) should be clarified by the statute to avoid confusion.

Subparagraph (1) refers to a parent having a closer "affinity" to the grantor. The word "affinity" is so broad and amorphous that in many instances each parent may be said to have a closer affinity to the grantor than the other parent depending on the criteria which are used. This term needs further refinement.

Subparagraph (2) provides that under a specified circumstance the youngest of the ancestors of the transferee is to be treated as the "deemed transferor". It would seem more logical to refer to the eldest of such ancestors.

Section 2613(a)(1), page 103

This statutory provision refers to "distributable net income". Since such term is indigenous to a trust, it makes it uncertain what comparable term should be applied for purposes of a generation-skipping trust equivalent. Therefore it would be better to use a general accounting term such as "current income" which may be applied to both trusts and other entities. In any event, the phrase "of that trust" should be inserted at the close of Section 2613(a)(1), as was done in Section 2613(b)(1).

Section 2613(b)(4), page 105

This subparagraph provides in substance that on the termination of a power the property transferred is to be determined immediately before the termination of the power even though this date may be many years before the date when the termination of several powers is deemed to occur pursuant to paragraph (2), and on the latter date it may be difficult to determine and value the assets which were held immediately prior to the termination of each power. Under these circumstances it may be far more practical to have the determination of both the property subject to the power and the time of the termination of the power on the same date (when the last termination occurs) where paragraph (2) is applicable.

It may be advisable to insert a new subparagraph after subparagraph (5), to provide that the value of property passing on a taxable termination is to be reduced by an amount equal to the value of any consideration received by the beneficiary by reason of any assignment causing the termination. This is to take care of the situation where a beneficiary sells his income interest for cash. There should also be a reduction for the value at time of termination of any income interest then outstanding in such property of any person other than the descendant of the beneficiary. The American Bankers Association proposal contains both of these provisions.

Section 2613(c)(3), page 107

This provision defines "beneficiary" to mean any person who has an interest or power in the trust. It would appear desirable to exclude from such definition a person who is a successor to a beneficiary by means of an assignment, whether for a consideration or not. This point was also made in the American Bankers Association proposal.

Section 2614(a), page 108

This provision in substance allows a disclaimer of an interest or a power in a trust 12 months after the date the trust becomes irrevocable where there has been no distribution from the trust or the exercise of a power. It would appear essential to also allow a disclaimer by beneficiaries of irrevocable trusts which were in existence on the date when

H.R. 13966 becomes law if such disclaimer is made within 12 months after the issuance of final Regulations under H.R. 13966. An extended period of time will be necessary since our experience with the Tax Reform Act of 1969 provisions relating to charitable remainder trusts shows that it takes a long time for word of the new law to become known and for state legislatures and courts to act once the Regulations are issued which may take several years.

Section 2621(a)(1), page 109

This subparagraph in effect provides that if the deemed transferor is dead, then all provisions of the Code applicable to the estate tax except Section 6166 and Section 2032 A are applicable to the tax under Section 2601. This "blanket application" of provisions to Chapter 13 and Section 2601 appears far too broad. Thus, for example, it is notable that this would seem to allow an extension of time to pay this tax under Section 6161 where there is undue hardship (reasonable cause under H.R. 13966). Such provision would presumably also allow for an election by the executor to obtain a quick audit of the estate tax return and a discharge from personal liability under Section 2204 since such Section relates to the tax under Section 2001. Accordingly, Section 2621(a)(1) should be amended to make clear that Chapter 11 is applicable except to the extent inconsistent with the provisions of Chapter 13.

Section 2621(a)(2) presumably faces the same kind of problem.

Section 7(c)(2), page 112

A very strong argument can be made that the Section 2601 tax should not be applied to any transfer from the pre-May 1, 1976 corpus of any irrevocable trust existing on that date. (The Tax Reform Act of 1969 provides a precedent for including in the definition of an "irrevocable trust" either a revocable inter vivos trust or a trust under a will where the grantor is mentally incompetent.) At a minimum, the 10 year moratorium in subparagraph (2) of the bill should be extended to 25 years, constituting one generation, for such a transfer.

In view of our experience under the Tax Reform Act of 1969 as to charitable trusts, the effective date for application of the generation-skipping provisions of H.R. 13966 to all transfers should be deferred for at least two years to allow time for the amendment of outstanding wills and revocable trusts, and there should be a 10 year moratorium for transfers from trusts under such wills and trusts where the grantor died during the two year period.

In any event, there should be a liberalization of the bill's exception in the case of a decedent dying before January 1, 1977 with respect to a will or revocable trust in existence on May 1, 1976, which was not amended or revoked at any time after that date. A codicil to the will or an amendment to the revocable trust which merely changes the fiduciaries (as, for instance, required by death or merger) or makes some minor clerical change should be permitted. Therefore, we suggest that the statutory language be changed to provide "and was not amended by a dispositive provision or revoked at any time after that date."

It is very difficult to know what exceptions to the April 30, 1976 effective date in paragraph (c) are intended to apply in the case of a trust equivalent pursuant to the statutory language in the last paragraph of (c) on page 112 of the bill, but it probably is very difficult to draft meaningful language. This is another reason to exempt all pre-existing arrangements from the Section 2601 tax.

The above technical comments with respect to Chapter 13 are not to be considered as an approval of its provisions by the American College of Probate Counsel. The College is opposed to generation-skipping trust legislation because the remedy is far worse than the problem, and it takes the position that if there is such legislation, then it should except a transfer in trust which vests absolutely in a grandchild of the grantor no later than the death of his last living child. Such an exception would permit the usual type of family trust to continue to exist without the penalty of a generation-skipping tax.

GENERATION SKIPPING TRANSFERS

Testimony of Peter L. Faber,
Chairman, Tax Section,
New York State Bar Association,
Before the Senate Finance Committee
July 20, 1976

Summary of Principal Points

1. Estate and gift tax reform, including the taxation of generation skipping transfers, is too important and too complex to be dealt with as part of a 1500 page omnibus tax bill. Separate hearings should be held on estate and gift tax reform.

2. Drafting a statute that taxes generation skipping transfers efficiently and fairly without undesirable side effects is difficult. Congress would benefit from the technical comments of professional groups. Examples of apparent technical defects in H.R. 14115 are given.

3. Imposing a tax on generation skipping transfers involves major policy decisions which should be carefully considered. Examples are given.

4. The Senate should not enact estate and gift tax reform legislation until it has an opportunity to study specific statutory language. Professional groups, the Internal Revenue Service, and private citizens should also be given time to study and comment on proposed legislation.

GENERATION SKIPPING TRANSFERS

Testimony of Peter L. Faber,
Chairman, Tax Section,
New York State Bar Association,
Before the Senate Finance Committee
July 20, 1976

My name is Peter L. Faber and I am a partner in the law firm of Harter, Secrest & Emery in Rochester, New York. I am the Chairman of the Tax Section of the New York State Bar Association and appear before you today on behalf of the Section. The Section has over 1900 members, all of whom are lawyers with a special interest in taxation. They include practicing lawyers, teachers, corporate counsel, and employees of government agencies, including the Internal Revenue Service.

The Senate now has before it a tax reform bill reported out by the Committee on Finance that is some 1,536 pages long. The Committee has approved other provisions that would make the bill even longer and more complex. Some of these proposals, which have not to the best of my knowledge been reduced to statutory language, would substantially revise the estate and gift tax laws. One of them, which would impose a tax on generation skipping transfers, is on the list of subjects to be dealt with at these hearings, and I would like to address myself to it today.

Let me begin by stating the Tax Section's strong objection to the Committee's failure to place the other estate and gift tax proposals on the agenda of these hearings. The proposals would drastically restructure the estate and gift tax system. They would combine the gift and estate taxes into a single transfer tax, provide for a credit in place of the present statutory exemption, increase the marital deduction, and tax unrealized capital gains at death, in addition to taxing generation skipping transfers. This legislation would have a revolutionary impact on the process by which property is transferred from generation to generation and would have economic and social implications going far beyond those of most tax bills. The suggestion that it is less deserving of the Committee's limited time available for public hearings than the proposal to allow an investment credit for solar-powered windmills boggles the mind.

The Section is deeply concerned that the Senate may act on the generation skipping tranfer proposal without having an adequate opportunity to consider its policy implications and study specific statutory language. The concepts involved in generation skipping are complex and the language in which they must necessarily be expressed is more complex still. For the Senate to enact legislation on this important subject without studying it carefully beforehand would be irresponsible and unworthy of such a distinguished body.

Unfortunately, you do not have a generation skipping bill before you at the present time. Let me, therefore, illustrate some of the problems in this area by referring to

H.R. 14115, §7, as originally presented to the House Committee on Ways and Means (recognizing that it has been substantially altered in the mark-up process).

Although we have not had as much time to study H.R. 14115 as we would like, our review has disclosed serious technical problems. While it is not my purpose today to present a comprehensive technical analysis of the bill, let me point out a few of its difficulties to illustrate my point that the generation skipping thicket has many brambles and that drafting legislation in this area is a formidable undertaking.

(1) The bill nowhere states who pays the generation skipping tax and who signs the tax return (or, for that matter, what kind of tax return is called for). A possible interpretation is that the parent of the second generation beneficiary may have to pay the tax out of his own assets, <u>even though he is not a beneficiary of the trust</u>. The trustee may be personally liable for the tax in some cases but may lack access to the information necessary to compute it.

(2) The bill's application is unclear where the second generation beneficiary's interest is a life estate or term of years. Is his personal liability limited to actual distributions from the interest, or is it based on its commuted fair market value at its inception?

(3) The bill provides that, if any portion of the generation skipping tax is paid from the trust, that tax is itself a taxable general skipping transfer. Although intended as a "grossing up" device, this provision appears to require a series of separate tax returns extending into the indefinite future, since each tax payment will itself be an additional transfer giving rise to an additional tax liability.

(4) In a trust in which the trustee has discretion to distribute corpus to the children and grandchildren of the grantor, a distribution to the grandchildren will impose a tax with respect to the children, even if they never benefit from the trust.

There are more problems that we in the Tax Section have detected and, undoubtedly, many more that we have not. Although our members bring many years of estate planning experience and recognized expertise to bear on the problems, H.R. 14115 contains new concepts and terminology that are not easily mastered. Expressions like "deemed transferor," "taxable termination," and "younger generation beneficiary" are as unfamiliar to us as they will be to you when this legislation first crosses your desks. The points referred to above cannot be dismissed as mere technicalities. They give rise to a basic concern as to whether the legislation will work. Will it do what it intends to do? If it does, will it have undesirable side effects? We don't know the answers to these questions. Do you? Will you have time to find out?

In addition to technical obstacles, the generation skipping area is fraught with important policy decisions which require careful study and analysis.

Here again, we fear that Congress, in the rush to enact tax reform legislation, may not give these questions the consideration they deserve. Let me suggest a few of the problems that trouble us, and that we hope will trouble you.

(1) Is it fair to tax generation skipping transfers in trust but to ignore outright gifts? The very wealthy could avoid the tax under H.R. 14115 with ease by having successive generations make outright generation skipping gifts.

(2) Will alternatives to trusts be devised in order to avoid generation skipping taxes and, if so, will they be less socially useful than trusts? The use of annuity contracts (for the first generation) and personal holding companies with several classes of stock come to mind. Remember that generation skipping trusts were not invented by devious tax lawyers; they served useful family planning functions for centuries before anyone dreamed of an estate tax.

(3) Is it fair to commit a family to the payment of a transfer tax many years in the future when the family's ability to pay the tax at the time (and, for that matter, the applicable tax rate) cannot be predicted accurately?

(4) Is it desirable to exempt certain types of transfers (e.g. invasions of trust corpus for the benefit of second generation beneficiaries because of medical emergencies)?

We don't have answers to these questions. Do you? If you don't, can you in good conscience act on legislation that affects them?

The Tax Section has always stood in the forefront of movements to improve the tax laws, but we feel strongly that tax reform must be accomplished deliberately and responsibly. Estate and gift tax reform will affect millions of people throughout the country. It should not be enacted, and you should not vote on it, until bar associations, other professional groups, the Internal Revenue Service, private citizens, and you yourselves have a chance to study it and consider its implications. Estate and gift reform is too important and too complex to become part of a grab bag of tax trinkets including residental heat pump credits and the tax treatment of billboards. It should be dealt with separately and carefully. Those of us who have spent countless hours wrestling with the inconsistencies and drafting errors of ERISA are not anxious to repeat the experience in the estate and gift tax area. We applaud your desire to improve the law, but let's do the job right.

The organized bar and government agencies that administer the tax laws have a wealth of technical knowledge and practical experience in working with estate and gift taxes and estate planning. We can help you in developing legislation that will be fair, simple, and workable if you will just give us a chance. We share the same objectives. Let's work toward them together, intelligently and carefully.

NEW YORK STATE BAR ASSOCIATION

Statement of Tax Section to the Senate Finance
Committee concerning Generation-Skipping Trusts

This Statement is submitted to the Senate Finance Committee pursuant to the opportunity afforded in its Press Release dated July 8, 1976.

On June 11, 1976, the Senate Finance Committee tentatively approved a proposal to tax certain so-called generation-skipping trust transfers. The announcement of the proposal described it only in very general terms. It appears to be consistent with Section 7 of H.R.14115, introduced on June 1, 1976 by Hon. Al Ullman, Chairman of the House Ways and Means Committee ("Ullman Bill"). Since June 11, however, the Ullman Bill has been extensively and fundamentally revised in mark-up sessions by the Ways and Means Committee.

Because the text of a Senate Finance Committee bill on generation-skipping is not available, this Statement cannot deal with specific, concrete problems thereunder. On the other hand, we see no useful purpose in discussing provision by provision the text of Ways and Means Committee Print dated June 26, 1976, which, with the addition of the so-called Landrum amendment exempting transfers to grandchildren from the tax, purports to contain all the mark-up session amendments. We feel that the fundamental revisions made by the mark-up changes necessitate rethinking of the Ullman Bill's entire approach to generation-skipping and that the Bill must be rewritten rather than simply marked up.

We respectfully urge the Senate Finance Committee in the strongest terms to do the necessary rethinking, to come to grips with the difficult and competing policy problems involved, and to define carefully the objectives it would seek to attain through generation-skipping tax legislation. The following specific questions need answering:

1. Should the generation-skipping tax be limited in application to skipping through trusts and like arrangements?

2. Should generation-skipping to grandchildren through trusts and like arrangements be permitted without tax?

3. Do the complexities involved warrant imposition of the tax at the skipped generation level?

We find the complexity of the Ullman Bill to be its most distressing feature. We members of this Subcommittee who have assumed primary responsibility for preparing this Statement have spent many hours separately and in concert studying the Ullman Bill's generation-skipping provisions. We have scores of years of combined experience dealing with trust, estate and tax matters. Despite our long experience and diligent study, we can only say that we think the language of the Bill accomplishes most of what we think its draftsmen intended, but we are not sure.

The terms used in the Bill are unfamiliar in trust and tax law and stand for concepts that are highly complex and difficult to grasp fully. A "deemed transferor" need have no interest whatever in the trust property. Yet the trust property will be subjected to tax as if he had complete dominion of it. The "transfer" to be taxed as if the deemed transferor transferred the trust property is usually not a transfer at all but a termination of some interest or power (which may be insignificant) in the trust property of a person who may be unrelated to the creator of the trust, the deemed transferor or the ultimate transferee. Some terminations are taxable, some are not, and some of the taxable ones are deemed to occur at other times than they actually do occur. There are also deemed transfers and deemed transferees. The term "transferee" is, in fact, nowhere defined. Understanding these concepts and how they would operate in a myriad of possible trust settings requires a thorough and detailed familiarity with trust and property law, particularly future interests, and an unusual degree of expertise in gift and estate taxation and the income taxation of trusts.

While we admire the erudition, ingenuity and drafting skill of the writers of the Ullman Bill, we are appalled by the amount of study that would be required of the bar throughout the United States and of the Internal Revenue Service to comprehend it. Indeed, so complex and intricate is the Bill that we doubt

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whether it could generally be understood and enforced, if enacted. Experience since 1948 and 1969 with the far simpler marital deduction and charitable remainder provisions demonstrates the injustices and administrative difficulties that result from legislating above the heads of the average testator and his counsel.

The undue specificity of the mark-up exceptions to the general application of the generation-skipping tax provisions of the Ullman Bill is also most disturbing. The underscored words in the two following provisions are pure tax traps:

> "Section 2613. ... (b) ... (1) ... Such term ['taxable termination'] does not include a termination of the interest or power of any person who <u>at no time has had anything other than</u> a future interest or future power (or <u>both</u>) in the trust...."

> "Section 2613. ... (e) Limited Power to Appoint Among Lineal Descendants of Grantor Not Taken Into Account in Certain Cases. -- For purposes of this chapter, if any individual--
>
> "(1) does not have <u>any</u> present or future interest in the trust, and
>
> "(2) does not have <u>any</u> present or future power in the trust <u>other</u> 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,
>
> then such individual shall be treated as not having any power in the trust."

The entire exception contained in Section 2613(b)(7) is far too narrowly drawn. Its purpose is to exempt from tax the death of a child of the grantor before the grantor's widow's death, but the draft touches only a handful of such cases:

> "(7) Certain discretionary trusts to distribute income to spouse and children of grantor. -- The term 'taxable termination' does not include the termination of an interest of a child of the grantor where--
>
> "(A) the only interest of the child in the trust is as a permissible recipient of income under a power exercisable by an unrelated party,
>
> "(B) the spouse of the grantor of the trust is a permissible recipient of income under the same power,
>
> "(C) during the life of the grantor's spouse and children, only these individuals are permissible recipients of income from the trust, and
>
> "(D) all children of the grantor who were permissible recipients of income under the power predeceased the grantor's spouse."

The specificity or the mark-up exceptions makes them inoperative if powers exercisable in favor of charity are present.

The "qualified disclaimer" concept in Section 2518 is also so limited as to be entirely inadequate. It requires that the disclaimer be made within nine months after the day on which the transfer creating the interest in the disclaiming person is created. It thereby requires that interests be disclaimed while they are remotely and improbably contingent. It does not even provide for lack of knowledge of the transfer in question by the person entitled to disclaim or for his infancy or incompetency. Current case law holding that a reasonable time for disclaiming starts to run when prior interests terminate is practical and fair and should be retained. We see no justification for a "qualified disclaimer" definition in the Bill.

The failure of the Bill after mark-up sessions to specify what property is to bear the burden of the new tax must be rectified. We believe that many existing wills contain allocation provisions that might cause the proposed tax to be paid from the testator's personal estate rather than from the trust property.

On the positive side, we particularly commend the removal in the mark-up sessions of all retroactive features of the Ullman Bill's generation-skipping tax provisions. Applying this new tax to existing dispositions which may not now be changed would contravene basic principles of fairness.

Relationship of this Statement to House of Delegates' Resolution Calling for Reasonable Time to Study and Report Back to Congress concerning Generation-Skipping Provisions

On June 19, 1976, the House of Delegates of the New York State Bar Association, representing its 23,000 members, unanimously urged the Congress to take no final action respecting the Ullman Bill, and particularly its generation-skipping provisions, without affording to the organized bar of the United States, and in particular, the New York State Bar Association and its Sections having special competence in the fields of law affected thereby, reasonable time to study and report back to the Congress concerning them. (Copy of Resolution annexed). The House of Delegates is justly concerned that the impact of this complex and revolutionary legislation on New York property dispositions, for which the New York bar is responsible, be made clear and precise.

This Statement has necessarily been prepared in great haste. It is not exhaustive but summary in nature, and has not had the benefit of the detailed study, consideration and endorsement normally given by the entire 50 member Executive Committee of the Tax Section to its work products. Not only for this reason, but also and particularly because the text of a Senate Finance Committee bill is not yet available, the opportunity to submit this Statement should not be deemed to satisfy the House of Delegates' request for reasonable time to study and report back concerning the entire subject matter of the Ullman Bill prior to final action thereon.

Respectfully submitted,

Hewitt A. Conway, Chairman
Mary-Katherine Bell
Christine Beshar
Paul Meaders
Allan Metrick
Nathaniel Winthrop

Generation-Skipping Subcommittee
of Committee on Estate and
Gift Taxes

July 20, 1976

New York State Bar Association

NEW YORK STATE BAR ASSOCIATION

RESOLUTION ADOPTED UNANIMOUSLY BY HOUSE OF DELEGATES, JUNE 19, 1976

WHEREAS, "The Estate and Gift Tax Reform Bill of 1976" (H.R. 13966) was introduced in the House of Representatives by Chairman Al Ullman of the Ways and Means Committee on May 24, 1976; and

WHEREAS, (1) the provisions of H.R. 13966 are detailed and complex; (2) they would effect revolutionary changes in the estate and gift tax law, treating of such diverse subjects as a unified transfer tax system, unrealized appreciation at death and new taxes on generation-skipping transfers; and (3) they make the new generation-skipping taxes applicable at progressive rates reaching 70% not only to existing wills and future transfers but also to many thousands of presently effective property dispositions governed by the laws of the State of New York; and

WHEREAS, the New York bar is responsible to the public for the proper preparation of wills and other instruments disposing of property under New York law and is justly concerned that the impact on New York property dispositions of federal tax legislation having such far-reaching effects as H.R. 13966 be clear and precise; and

WHEREAS, the text of H.R. 13966 did not become generally available for study by members of this Association until early in June 1976, and the Sections of this Association having particular competence in the areas of law affected by it have not had sufficient time to study its provisions in depth and consider and report their conclusions and recommendations to the Congress; and

WHEREAS, this House of Delegates, representing the 25,000 members of the New York State Bar Association, is deeply concerned at the precipitous and unwarranted haste with which H.R. 13966 is being considered by Congress, and by the failure of either the House Ways and Means Committee or the Senate Finance Committee to hold public hearings with respect to its provisions or otherwise afford the public an opportunity to be heard concerning them;

BE IT RESOLVED, THEREFORE, that the New York State Bar Association hereby calls upon the House of Representatives and the Senate to take no final action approving H.R. 13966, and particularly the so-called generation-skipping tax provisions contained in section 7 thereof, without due deliberation after affording to the organized bar of the United States, and this Association and its Sections in particular, and other segments of the public affected thereby, reasonable time to study and report back to the Congress concerning it; and

BE IT FURTHER RESOLVED, that the Executive Director of this Association is hereby directed to send a copy of this Resolution to each member of the Congress of the United States.

NYSBA

One Elk Street Albany, New York 12207 518-445-1211

TESTIMONY OF GEORGE C. HATCH, VICE-PRESIDENT, THE STANDARD CORPORATION, OGDEN, UTAH, SENATE FINANCE COMMITTEE HEARINGS JULY 20, 1976.

My name is George C. Hatch. I am Vice-President of The Standard Corporation of Ogden, Utah, which has operated the Ogden Standard Examiner newspaper since 1892, and KUTV television station, Salt Lake City, Utah, since 1956.

The Standard Corporation was founded by my wife's grandfather, and, today, the stock of the corporation is owned entirely by lineal descendants of the founder. The stock is owned by or for the benefit of twelve grandchildren of the founder (the third generation) and some thirty-five great-grandchildren (the fourth generation). Of the voting stock, 43% is owned by individuals and 57% is owned by irrevocable trusts -- some under wills and some created during life for the benefit of the third and subsequent generations. These trusts bear dates such as 1953, 1954, 1955, 1963, 1965, etc. — all the way to 1976. These trusts were created for the purpose of preserving the local family ownership of the newspaper and broadcasting station and preventing diffusion of control as succeeding generations increase in numbers. The family desired to preserve the local editorial voice of the newspaper and television station and prevent their sale to a national chain with overwhelming emphasis on a bottom-line net income and bland editorial policy.

I am here today to express deep concern that the worthy objectives of preservation of family farms and businesses in other sections of the bill may be defeated by the provisions proposed for a tax on generation-skipping transfers. The trusts that hold a majority of the stock in our family corporations, like many others across the country, made no provision for accumulating income to pay a transfer tax when a beneficiary's interest terminates. The beneficiaries of the income from the trusts are not the ultimate beneficiaries in the distribution of the corpus.

I understand that the House Ways & Means Committee has reconsidered the original provisions of HR-13966 and voted to exempt from its provisions previously-created irrevocable trusts. I strongly urge this exemption that would preserve the purposes of trusts previously established. If the transfer tax were passed in its original form, a trustee of an established trust directed by the grantor to preserve the family business and stock, and instructed to distribute all income as earned, would be in a hopeless dilemma. He would have to seek relief from his state legislature to change the law of trusts of his state; or he would have to seek relief from Congress, to repeal the tax you are now considering enacting.

In addition to supporting the amendment to exempt prior established trusts, I would support the proposal of the Ways & Means Committee to provide a one-generation exemption in future irrevocable trusts to permit a grantor giving a spouse or children lifetime income and to exempt the application of the transfer tax in the distribution of the corpus to the grandchildren. This proposal would permit the founding grantor to provide for the payment of gift or estate tax on the family farm or business and to leave the property to his grandchildren intact. If the trust transfer tax is not so amended, a family business or farm would be subject in a trust to a transfer tax on the death of the children of the grantor, and this would require the sale of the family business or farm in one generation.

There is a strong increase in the percentage of newspapers and television stations owned by national chains directly attributable to the inability of founders of these local communications media to pass on local ownership to their heirs, and still pay large estate taxes. The family trust is the last means of preservation of such local ownership and control.

Either the legislation should be amended with a one generation-skipping exemption, as proposed by the House Ways & Means Committee, or an exemption from a tax on generation-skipping transfers should be made for family farms and family corporations that will preserve local ownership. These are the categories that you recognize as worthy of consideration for relief in the proposal for favorable valuation, additional credit against the estate tax, and extensions of time for payment of estate tax. My suggestion for an exemption from a tax on generation-skipping transfers for trusts that own family farms and family operating businesses recognizes that the trusts holding these assets have a non-tax social purpose that trusts holding diversified liquid assets do not. Strengthening of antitrust laws and regulation of large national and international conglomerates will be of no avail if family enterprises cannot afford transfer taxes without the sale of family businesses and farms to such large corporations. Concentration of economic power is a serious long-range problem in our society.

At the very least, in considering radical changes in estate and gift tax laws, the effective date should be well in advance of the date of enactment, so that the professional people and businessmen who must deal with the new law have time to adjust to it. For example, millions of wills drafted over the last twenty years will require review and amendment if some of the proposed changes become law.

There is presently a trend in state legislatures for streamlining probate procedures through adoption of the Uniform Probate Code. The trend has been promoted by consumer groups. Utah enacted the Uniform Probate Code in early 1975, but used an effective date of July 1, 1977. By this means, the people who deal with the new law -- lawyers, accountants, trust officers, businessmen -- have time to adjust to the new procedures in an orderly fashion. Another example of advance effective dates and time to adjust was the adoption by forty-nine states of the Uniform Commercial Code, which provided for various advance effective dates from about six months to about two years.

I contrast this to what has been proposed here in the Congress -- radical changes in the estate and gift tax laws with retroactive effective dates in some important instances. I contrast also the gains in simplification and savings in cost that the Uniform Probate Code is designed to accomplish with the losses in simplification and increased costs that the proposed legislation, if not designed to invoke, will inevitably cause.

If, ultimately, you decide that a tax on generation-skipping transfers serves a valid prupose and is worth the complexity, costs, and delay in administering estates that will accompany it, I would, in summary, urge consideration of two limitations:

1. The proposed transfer tax should not be retroactive. Application of the tax to presently-existing irrevocable trusts would upset bona fide plans long ago embarked on, and would encourage the concentration of property in large publicly-traded corporations. Certainly, the tax laws of the nation should not encourage bigness when the antitrust laws discourage it.

2. As to future generation-skipping trusts, I would propose permitting the skipping of one generation or, in the alternative, exempting those trusts which hold as their principal asset family farms and family-held operating businesses. Without such an exemption in the generation-skipping trust transfer tax legislation, the relief given to farmers and closely-held businesses in one area of the new legislation is dissipated in another area.

I thank you for the opportunity to testify.

APPENDIX

ADMINISTRATION POSITION

Hearings on

Certain Provisions of the Tax Reform Bill
(H.R. 10612)

before

Senate Committee on Finance

July 20, 1976

ADMINISTRATION POSITION

Hearings on
Certain Provisions of the Tax Reform Bill
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SECTION 210(d)

DEDUCTIBLE LOSSES OF LIMITED PARTNER CANNOT EXCEED INVESTMENT

Description

Under a floor amendment to section 210 of the Bill, a limited partner's share of partnership liabilities cannot exceed the difference between his actual contribution credited to him by the partnership and the total contribution which he is obligated to make under the partnership agreement. The limitation applies to partnerships formed after June 30, 1976. However, if the partnership is involved in the construction or rehabilitation of low income housing (within the meaning of section 1039(b)), the limitation applies only to partnerships formed after December 31, 1981.

Revenue Estimates

Calendar year liabilities are estimated to increase by $4 million in 1976 and 1977 and to increase by $141 million by 1981. The revenue estimates assume that all other tax shelter provisions of the Senate bill are enacted. Thus, substantially all the revenue increase results from the impact of the amendment on real estate, which is not subject to the general "at risk" limitation of the Senate Finance Committee Bill as adopted by the Senate.

Analysis

"At risk" limitation

The Senate floor amendment denies an increase in a limited partner's basis in his partnership interest for his share of the nonrecourse liabilities of the partnership. The amendment repeals section 1.752-1(e) of the regulations and would conform the basis adjustment rule for nonrecourse liability in the case of limited partners to that of subchapter S corporation shareholders.

We are opposed to the amendment for the following reasons:

-- The amendment would draw a distinction between limited partners and general partners of a partnership which has no basis in economic reality. There is no economic distinction between general and limited partners with respect to nonrecourse financing. If the property cannot produce sufficient income to service the loan, the general partners will be no more willing to continue servicing the loan than the limited partners.

-- The amendment restricts only the basis of limited partners of a partnership. It does not purport to eliminate the long-standing general rule based on Crane v. United States, 331 U.S. 1 (1947) that nonrecourse financing is included in the cost, and thus the basis, of property. Thus, general partnerships, proprietorships, grantor trusts and other business arrangements may be used to circumvent the limitation. While these entities are not presently used as tax shelter vehicles, their use is certain to increase after the amendment becomes effective.

-- The amendment leaves unanswered the issue of the proper allocation to the various partners of the basis attributable to nonrecourse liabilities. The entire basis, including that attributable to nonrecourse indebtedness, could be allocated to the general partners. However, as indicated above, there is no economic basis to distinguish between general partners and limited partners. On the other hand, the basis may be allocated to both the general partners and the limited partners and the limited partners' share of the basis attributable to nonrecourse indebtedness suspended until such time as the principal is repaid. However, the subsequent increases in basis resulting from such a suspense account would raise serious administrative problems for the Internal Revenue Service which must enforce the limitation on deductions. This "shifting basis" can also result in distortions of income. The limited partners may control the timing of their deductions by simply postponing payment of principal until such time as they can receive the maximum tax benefit from the deductions. It should be noted that the Supreme Court based its decision in the Crane case largely on the "shifting basis" problems which would result from the rule proposed by the amendment.

-- The Senate has already voted to adopt an "at risk" limitation, which would be applicable not only to limited partners, but also to individuals, trust and estates, general partners and shareholders of subchapter S corporations. This rule applies to farming, oil and gas, equipment leasing and movies. The Senate Finance Committee specifically chose not to apply this "at risk" limitation to real estate. Thus, the impact of the limited partner limitation will be mainly on the real estate industry. We oppose the application of any "at risk" limitation to real estate since such property generally has an established value against which the bona fides of the nonrecourse liability may be established.

-- The limitation will affect many bona fide business transactions which are clearly not tax shelters. For example, the typical arrangements involving money limited partners and service general partners will be severely curtailed by this limitation, finally eliminating a source of capital for many small businesses.

Effective Dates

General Rule

The limitation would apply to partnerships formed after June 30, 1976. Neither the amendment nor the discussion on the Senate floor explains the scope of the term "formed". The Treasury Department foresees serious problems in administering the effective date provision in its present form. For example, does the mere formation of a partnership before June 30, 1976 suffice to forever grandfather the entity, without regard to the date on which property is contributed to the partnership or the date on which the limited partners become members of the partnership?

Since the amendment modified long-es' .blished partnership rules, we recommend that if the pro' ision is adopted, the amendment grandfather partnerships formed no later than the 90th day following passage of the Tax Reform Act, but only with resepct to the property contributed to the partnership and the partners who become members of the partnership by such date.

Low Income Housing

The limitation would not apply to partnerships formed on or before December 31, 1981, if "substantially all of the activities . . . involve the construction or rehabilitation of low-income housing (within the meaning of section 1039(b))." Section 1039(b) includes only low-income housing "with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act." This definition does not include dwelling units eligible for subsidies under section 8 of the United States Housing Act of 1937, which is one of the Department of Housing and Urban Development's major pending programs. It also does not include housing with respect to which a loan is made or insured under title V of the Housing Act of 1941, the Farmers' Home Administration program. Therefore, if the provision is adopted, we recommend that the definition be expanded to include these segments of the low-income housing program. This may be accomplished by amending the limitation to read "low-income housing (within the meaning of section 1250 (a)(1)(C))."

Administration Position

For the reasons stated above, the Administration is opposed to this provision of the bill. We continue to believe that LAL presents the most acceptable solution to the problems presented by tax shelters, including those involving real estate.

SECTION 802

REFUND OF EXPIRING INVESTMENT TAX CREDIT

Description

The bill provides that investment tax credits which cannot be used during the three-year carryback and seven-year carryforward periods are to be refundable at the expiration of the carryforward period. This rule applies only to investment tax credits earned with respect to property which becomes eligible for the investment credit after December 31, 1975. Thus, the first year in which refunds will be made will be 1984.

Revenue Estimate

It is estimated that in 1984 this provision will result in a reduction of $300-$500 million in revenues.

Analysis

The purpose of the provision is to increase the effectiveness of the investment tax credit as an incentive for new investment. While the level of investment is improving, there are many taxpayers who in the past several years have experienced either losses or periods of low net income who will need to continue or increase their levels of investment in order to remain competitive. Because of the particular pattern of their losses or low income, the present limitation on carrybacks and carryovers of unused credit may result in failure to fully utilize the credits, i.e., a loss of the tax benefit of the incentive. Making the investment credit refundable at the end of the carryover period will assure all investors in qualified property that they will ultimately be able to obtain the benefit of the investment credit.

Administration Position

For the reasons stated above, the Administration supports this section of the bill.

SECTION 803

EXTENSION OF EXPIRING INVESTMENT AND FOREIGN TAX CREDITS

Description

This section provides a two-year extension for certain expiring investment and foreign tax credits. Under this section, any investment tax credit or foreign tax credit which would expire in 1976, but only those expiring in 1976, may be carried forward for two additional years to reduce tax liability in those years.

Revenue Estimate

The provision will decrease receipts $14 million in fiscal 1977 and $30 million in fiscal 1978.

Analysis

The section benefits taxpayers who happen to have tax credit carryovers expiring in 1976 and who anticipate that current year's operations will not produce sufficient tax liability to absorb them. Section 803 applies retroactively to events which occurred many years earlier and aids a limited number of taxpayers, mostly airlines, who, having found that present rules do not work to their advantage, wish to change them. These taxpayers have already had a period of 10 years in which to use up their investment credits and in some cases 12 to 13 years.

Section 803 would be a bad tax precedent. The section provides a bailout for a handful of companies, and it is predictable that the same companies, or others, will be back again in subsequent years seeking a similar retroactive bailout. If this precedent were established, it may eventually be extended to validate expiring net operating losses as well.

If it is thought that transportation generally, or airlines specifically, require further government assistance, the effective way to do so is to provide on-budget appropriations. In this manner, recipients could be targeted with greater care than through the tax system, where the benefit will depend on the fortuitous distribution of unused credits.

Administration Position

The Administration is, therefore, opposed to this provision.

SECTION 806

INVESTMENT CREDIT IN THE CASE OF CERTAIN SHIPS

Description

This section extends the investment tax credit to ships constructed with amounts withdrawn from capital construction funds established under the 1970 Merchant Marine Act. Deposits from shipping income into these accounts are deducted in calculating the taxable income of shipowners. Withdrawals from the fund are not subject to tax if they are used for ship construction. Under present law, since the deposit has already been deducted from income, the portion of any vessel acquired with the deposit is regarded as having a zero basis for tax purposes. Accordingly, the taxpayer is not entitled to depreciation deductions or to an investment tax credit, since each of these provisions is predicated on the existence of a tax basis for the asset.

Revenue Estimate

Revenues will be reduced $21 million in fiscal 1977, $23 million in fiscal 1978 and $45 million in fiscal 1981. The other tax benefits provided under the Merchant Marine Act will rise to $190 million in the next few years.

Analysis

Section 806 benefits a single industry which already is the recipient of substantial tax incentives. Furthermore, the provision selectively overturns the fundamental concepts of "basis" and "depreciable property," which have served our tax system well over the years. Even without the additional tax advantage provided by this section, shipowners presently receive the equivalent of a 17 percent investment tax credit through the device of capital construction funds. This is already 7 percent higher than the tax credit available to qualified investment generally. At this time, there is no clear and convincing evidence of a serious economic problem in the shipbuilding industry which might justify adding to the already substantial tax advantages accorded the industry.

Administration Position

The Administration opposes this provision

SECTION 1013(f)

FOREIGN TRUSTS HAVING ONE OR MORE UNITED STATES BENEFICIARIES TO BE TAXED CURRENTLY TO GRANTOR

Description

In general, this amendment would currently tax the income of the grantor of a foreign trust having U.S. beneficiaries. Under the House bill the provision would have been effective for taxable years ending after December 31, 1975 but only for trusts created after May 21, 1974, and transfers of property to foreign trusts after May 21, 1974. Under the Finance Committee amendment the provisions would be effective for taxable years ending after December 31, 1976, but only for trusts created after May 29, 1974, and transfers of property to foreign trusts after May 29, 1974. Thus, the provision would not apply to trusts created between May 21, 1974 and May 29, 1974.

Revenue Estimate

The change in effective date would have a negligible revenue effect.

Analysis

These provisions were initially introduced as part of the proposed "Energy Tax and Individual Relief Act of 1974." That bill was reported out of the Ways and Means Committee but was never considered by the full House. At the end of 1974, when it became apparent that there would be no legislation in 1974, many individuals established foreign trusts hoping that future legislation would not apply retroactively. However, when the trust proposal was adopted, almost verbatim, by the House as part of the current Tax Reform Act, it was made applicable to trusts created after the date on which the provision had originally been approved May 21, 1974 (the taxation of these trusts would not begin until after 1976). Thus, the trusts set up at the end of 1974 to avoid future legislation were caught. It has come to our attention that while the provision was announced in the May 21, 1974 press release of the Ways and Means Committee, it was not generally reported by the press until May 29, 1974, when it appeared in the Daily Tax Report published by the Bureau of National

Affairs and therefore taxpayers may have acted in the period between May 21, 1974 and May 29, 1974 to their detriment because they were unaware of the proposed legislation.

Administration Position

The Administration strongly supports the changes in the taxation of grantors of foreign trusts. As to the effective date, the Administration sees no reason for deviation from the long standing practice of Congress which has made "loop-hole" closing provisions effective from the date of announcement in order to prevent taxpayers from planning to avoid them. The Administration therefore opposes the later effective date.

SECTION 1021

AMENDMENT OF PROVISION RELATING TO INVESTMENT IN UNITED STATES PROPERTY BY CONTROLLING FOREIGN CORPORATIONS

Description

This provision would redefine those investments considered to be investments in U.S. property for purposes of determining when a controlled foreign corporation has made a constructive dividend to its U.S. shareholders. It would allow controlled foreign corporations to make portfolio investments in U.S. debt obligations and shares. Under present law, such investments can often be made through the intermediation of foreign banks and other financial institutions, but they cannot be made directly. Thus, present law mainly acts as a trap for firms which have not been adequately advised. In addition, the use of a drilling rig on the continental shelf of the U.S. by a controlled foreign corporation would not be an investment in U.S. property.

Two retroactive special relief rules are contained in the Committee amendment.

1. Under the first special rule, a portion of the new amendment is made retroactive to May 22, 1974 to exclude from treatment as an investment in U.S. property amounts invested in stock or debt obligations of U.S. corporations which are not related to the foreign corporation.

2. The second special rule would exclude from constructive dividend treatment, on a retroactive basis, amounts invested in property situated on the continental shelf of the U.S. or in securities of a U.S. corporation substantially all of the assets of which consist of such property. In the case of stock or obligations of a domestic corporation, this second exception would apply only to amounts invested between the effective date of the Tax Reform Act of 1969 and the effective date of this section.

Revenue Estimate

The special provisions have a negligible revenue effect.

Analysis

The basic provision removes legal barriers which obstruct but do not prevent the investment of portfolio funds in the United States.

These special amendments would grant retroactive relief to taxpayers who received deemed dividends because their controlled foreign corporation made investments in the U.S.

1. The basic amendment which would permit investments in unrelated U.S. corporations was included in the proposed Energy Tax and Individual Relief Act of 1974. The Administration supported the amendment at that time and had hoped Congress would adopt it so as to encourage controlled foreign corporations to invest their profits in the U.S. rather than abroad. However, the law was clear that any investment in stock or securities of a U.S. corporation was an investment in U.S. property resulting in a constructive dividend to the U.S. shareholders.

2. The exception for investments on the continental shelf is a narrow special interest provision which would provide special relief of limited scope for one, or at most, a small group of taxpayers who have invested in property (generally drilling rigs) on the continental shelf at some point in the past five years. These investments have clearly constituted investments in U.S. property at least since 1969 and Congress has not seen fit to change this treatment for the future.

Administration Position

The Administration supports the basic provision as more appropriately defining investments in U.S. property as investments which may fairly be considered to be constructive dividends and as eliminating traps for unwary controlled foreign corporations which place funds in the United States. However, the Administration opposes both of the retroactive special relief provisions. Retroactive relief should be granted only for the most compelling reasons, and we do not find those in either of these cases. It cannot be justified where proper actions on the part of the taxpayer could have avoided the result which the taxpayer petitions Congress to changes. Nor can it be justified where, as here, the law worked as intended by Congress although to the fiscal detriment of some taxpayers. To accept such provisions undermines the integrity of the laws which Congress enacted.

While we have supported legislation which would enable controlled foreign corporations to invest in the securities of unrelated U.S. corporations, we believe that the law was clear that such investments did result in constructive dividends to the U.S. shareholders. To provide retroactive relief would discriminate against those who chose not to invest in the U.S. because they correctly applied the law, at times to their detriment.

The provision for relief for investments on the continental shelf is particularly objectionable because it would give retroactive relief even in cases where the Committee has not seen fit to give prospective relief.

SECTION 1023

EXCLUSION FROM SUBPART F OF CERTAIN EARNINGS OF INSURANCE COMPANIES

Description

This Committee amendment would exclude from subpart F treatment income from stock or security investments by a foreign subsidiary of a U.S. insurance company of an amount of its assets equal to one-third of its premiums earned on insurance contracts.

Revenue Estimate

Decrease in tax liabilities of $10 million per year.

Analysis

The foreign personal holding company provisions of subpart F contain an exception for income of a foreign insurance company from its unearned premiums or reserves which are ordinary or necessary for the proper conduct of its business. The instant amendment would provide a similar exception for amounts invested to meet certain U.S. state and foreign jurisdiction solvency requirements. Foreign companies must meet these requirements in order to participate in a reinsurance pool composed principally of companies doing business in the U.S. and in order to write insurance abroad.

Administration Position

The Administration does not object to this amendment. It is similar to the present exception from the foreign personal holding company provisions for unearned premiums and reserves and would serve the same purpose.

SECTION 1024

SHIPPING PROFITS OF FOREIGN CORPORATIONS

Description

The amendment would provide four changes in the provisions of subpart F which tax to the U.S. shareholders of a controlled foreign corporation the foreign base company shipping income of that corporation. These provisions are: (1) an exclusion for income derived from shipping between two points within the foreign country in which the foreign corporation is created or organized and the aircraft or vessel is registered; (2) an exclusion for income derived from the transportation of men and supplies from a point in a foreign country to a point on the continental shelf of that country or an adjacent continental shelf; (3) an exclusion which would allow a foreign corporation to time charter a vessel from an unrelated person and voyage charter the vessel to a related person; (4) an amendment to make clear that in the case of a corporation substantially all of the property of which consists of qualified investments, the repayment of an unsecured liability which is in writing will be a qualified investment.

Revenue Estimate

It is estimated that these provisions will decrease receipts by less than $5 million on an annual basis.

Analysis

The foreign base company shipping income provision was intended to tax those companies which have located their shipping operations in tax havens. An exception is provided if the earnings are invested in the shipping business. The entire provision is complicated and tends to favor those larger companies (such as oil companies) which are constantly expanding their shipping operation, and thus have ample opportunity to make investments. It discriminates against companies who are not expanding and these tend to be the smaller companies.

The amendment would exclude certain income from subpart F. The first exclusion (for income derived from operations in a single country) would conform the treatment of shipping income to the treatment of foreign base company sales and service income, which excludes income earned solely within the country of incorporation of the foreign corporation.

The other provisions bear little or no analogy to existing provisions of subpart F. The second and third exceptions would exclude from subpart F income which is traditional base company income because it is earned in a country in which little of the real economic activity need be carried on. The second exception would effectively exclude from taxation under subpart F, income earned by a small number of U.S. controlled companies located in tax havens. These companies own drilling rig supply vessels which rarely have any commercial contact with the tax haven. Rather, the vessels operate throughout the world between a port in a third country and drilling rigs located on the continental shelf of that country. The vessels can, and do, move from country to country. This is exactly the situation the foreign base company shipping income provisions were intended to reach. In addition, the exclusion would permit foreign supply vessels to service rigs located on the continental shelf of the U.S. without paying U.S. tax. Likewise, the third exception would permit profits to be siphoned offshore.

Administration Position

The Administration supports the first provision which excludes from subpart F the income from shipping operations conducted in a single country. This is in accord with the base company concept.

The Administration opposes the second exclusion for the reasons stated above. The Administration would not oppose a provision which was limited to activities on the continental shelf of the country in which the owner of the vessel is organized and the vessel is registered. Such an exception would be consistent with base company concepts.

The Administration opposes the third exclusion because its impact is to permit profits to be siphoned offshore and because it appears to apply to very few companies, perhaps only one. It further appears that the activities could be carried on in the U.S. and should be taxed.

The Administration objects to the fourth provision relating to unsecured liabilities because it is unnecessary; the same result would be reached under current law.

SECTION 1025

LIMITATION ON DEFINITION OF FOREIGN BASE COMPANY SALES INCOME IN THE CASE OF CERTAIN AGRICULTURAL PRODUCTS

Description

There would be excluded from tax under subpart F, income from the sale of agricultural products grown or produced outside of the United States if sold outside of the United States.

Revenue Estimate

Decrease in tax liabilities of $15 million per year.

Analysis

The Tax Reduction Act of 1975 amended subpart F to exclude from foreign base company sales income the income from sales of agricultural products which are not grown in the United States in commercially marketable quantities. The House version of the bill would amend this provision to exclude agricultural products which differ in grade or type from agricultural products grown in the U.S.

There does not appear to be any reason to distinguish between agricultural products and other products. The base company provisions apply only if the goods are sold through third countries which can be, although are not necessarily, tax havens. If the goods are sold from the country in which they are produced or grown directly to the country of consumption no subpart F income arises. In addition, current law contains an exclusion from subpart F if it can be shown that the foreign corporation receiving the income was not formed or used to avoid tax. Thus, agriculture would not be taxed if there was not at least some tax avoidance motive for establishing the third-country sales corporation.

The agricultural exclusion provided by the Tax Reduction Act of 1975 is difficult to apply and will almost certainly lead to long disputes between taxpayers and the Internal Revenue Service. The House version is no better. The Committee amendment has the advantage of being clear and administrable.

Administration Position

The Administration believes that it would be better not to provide a special exception for agriculture. However, the Administration finds the Committee amendment preferable on administrative grounds to present law or to the provision in the House bill.

SECTION 1031

REQUIREMENT THAT FOREIGN TAX CREDIT BE DETERMINED ON OVERALL BASIS

Description

The Committee amendment would repeal the per-country limitation on the foreign tax credit. However, the per-country limitation would remain available through 1978 to certain hard mineral companies which have an existing commitment to expand. The per-country limitation would also remain available for three years for income from U.S. possessions.

Revenue Estimate

Decrease in tax liabilities of $15 million in each of the three years in which the special provisions will apply.

Analysis

These provisions provide special relief for certain mining companies and for companies doing business in the possessions. In general, their effect would be to continue to isolate losses in a single country for the next three years. Thus, those losses will not reduce the foreign tax credit limitation, and thus the allowable foreign tax credit, with respect to taxes paid to other foreign countries. Also, the foreign loss recapture provision would work so that losses would be recaptured only from income earned in a single country. The exception relating to mining companies is narrow special interest legislation which would appeal to benefit one, or only a few mining companies.

Administration Position

The Administration does not object to the elimination of the per-country limitation.

The Administration opposes the special exception from the overall limitation for certain mining companies. There is no reason to single out a narrow group of taxpayers for special relief.

The Administration does not oppose the transition rule for income from the possessions. It is a reasonable rule applying generally to a large class of taxpayers who may have made investment decisions based on being able to isolate losses from a particular country or possession.

SECTION 1032

RECAPTURE OF FOREIGN LOSSES

Description

Foreign losses incurred in one year would be recaptured in later years through a reduction in the foreign tax credit limitation. Special rules are provided so that the provision does not apply to losses from the sale of securities issued before May 14, 1976 by a foreign government for the acquisition of property located in that country or for stock or indebtedness of a corporation of that country. Also excluded are losses from stock or indebtedness of a corporation in which the taxpayer owned at least 10 percent of the voting stock if the corporation had been incurring losses, and if it terminates operations before January 1, 1977, by a disposition of the assets of the corporation.

Revenue Estimate

The exceptions are estimated to cost under $5 million annually.

Analysis

Loss on government securities. This provision is analogous to the exception from loss recapture for expropriation losses which is contained in proposed section 904(f)(2)(B). In effect, there was an economic loss at the time the government obligations were received because there is no certainty the obligations will be paid, and there is no regular market for these kinds of obligations.

Loss on stock of 10 percent owned corporations. This provision would make the loss recapture inapplicable to securities which, for all practical purposes, were worthless prior to the effective date of the provision. All that was missing was a realization of the loss or the facts necessary to justify a finding that the security was worthless prior to that date.

Administration Position

The Administration does not object to these provisions as reasonable transition exceptions to the loss recapture provision, which was proposed by the Administration. Both exceptions recognize that a loss has, in reality, already occurred.

SECTION 1035(a)

FOREIGN OIL AND GAS EXTRACTION INCOME TRANSITIONAL RULE FOR FOREIGN TAX CREDIT LIMIT

Description

The Committee amendment would allow a special carryback to any taxable year ending in 1975, 1976 or 1977. The carryback is computed under the normal foreign tax credit carryback rules, and the taxes may only be carried back against extraction income from the country to which the extraction taxes were paid. The amount which may be carried back is the amount of the taxes paid to the foreign country reduced by the amount of taxes which are allowed under the oil and gas foreign tax credit limitation as a credit against U.S. tax in that year.

Revenue Estimate

Decrease in tax liabilities of $30 million between 1976 and 1979.

Analysis

This provision deals with the problem which may arise during the transitional period following the enactment of the oil and gas foreign tax credit limitation of the Tax Reduction Act of 1975, because of distortions in computing the limitation on the credit for foreign oil and gas extraction income which arise due to the difference in computing taxable income under U.S. standards and taxable income in a foreign country. If a foreign country, because of its accounting rules, imposes a tax which is lower than the U.S. tax in early years and higher than the U.S. tax in later years, then the excess credits in the later years would be lost under the oil and gas limitation, but additional U.S. tax would have been paid in the early years.

Administration Position

The Administration opposes this provision because of its retroactive nature. However, we recognize that the oil provisions of the Tax Reduction Act of 1975 did not receive adequate consideration by the Finance Committee and therefore, in certain cases appropriate transition rules were not provided. This might have been a reasonable transition rule if enacted at the time of the Tax Reduction Act.

SECTION 1035(b)

FOREIGN OIL AND GAS EXTRACTION INCOME
TRANSITIONAL RULE FOR RECAPTURE OF FOREIGN OIL RELATED LOSSES

Description

The recapture of foreign oil related losses sustained in a taxable year ending before January 1, 1979, would be limited to 15 percent of the loss for the first four taxable years for which the taxpayer elects to claim a credit for foreign taxes on foreign oil and gas extraction income. This transition rule would only apply to losses incurred with respect to a contract to explore or develop an oil or gas property if the contract was binding on July 1, 1974. The recapture prevision was introduced by the Tax Reduction Act of 1975.

Revenue Estimate

Decrease in tax liabilities of $40 million through 1973 with an offsetting increase in the tax liabilities between 1978 and 1982. The reduction in those years will be recaptured by increased receipts in the following years.

Analysis

This provision would spread out the period over which the losses incurred would have to be recaptured. It would only apply in those cases in which the taxpayer was committed to the losses before the loss recapture provision was actually adopted.

Administration Position

The Administration opposes this provision because of its retroactive nature. However, we recognize that the oil provisions of the Tax Reduction Act of 1975 did not receive adequate consideration by the Finance Committee and, therefore, in certain cases appropriate transition rules were not provided. This might have been a reasonable transition rule if enacted at the time of the Tax Reduction Act.

SECTIONS 1035(c)(1) and (2)(A)

FOREIGN OIL AND GAS EXTRACTION INCOME DEFINITION OF OIL RELATED INCOME

Description

This amendment would include in the definition of foreign oil related income certain interest from a domestic corporation which is treated under the source rules as income from sources without the United States.

Revenue Estimate

Decrease in tax liabilities of $90 million per year.

Analysis

The amendment would broaden the categories of income considered to be foreign oil related income. By doing so, it would make available more income on which the U.S. tax may be reduced by foreign taxes paid with respect to oil and gas extraction income. Present law already includes in the definition of foreign oil or gas income dividends from a domestic corporation which are treated as income from sources without the United States. It is hard to distinguish interest from dividends because both represent a return on the investment.

Administration Position

These special exceptions emphasize the difficulties inherent in creating an equitable and logical "oil basket" and the merit of the Administration's 1974 proposal to limit foreign tax credits for taxes paid with respect to foreign oil and gas income to 48 percent. However, the Administration does not object to this amendment because the inclusion of interest is consistent with the inclusion in foreign oil or gas income of dividends from a domestic corporation which are treated as income from foreign sources.

SECTION 1035(c)(1)(B)

FOREIGN OIL AND GAS EXTRACTION INCOME
DEFINITION OF OIL RELATED INCOME -- GAIN FROM THE SALE OF STOCK

Description

Foreign oil or gas extraction income would be expanded to include gain from the sale or exchange of stock of a foreign corporation which holds oil related assets, if the corporation is a contiguous country corporation which is a member of an affiliated group. However, the amount of gain included would be only that gain attributable to oil or gas related assets.

Revenue Estimate

Decrease in tax liabilities of $5 million.

Analysis

Foreign oil related income already includes gain from the sale or exchange of assets used in the oil business. In addition, income from a corporation to which this amendment applies would be included in determining the foreign oil related or foreign oil and gas extraction income of the group. It is, therefore, logical to include in those categories of income gain from the disposition of the stock of the corporation to the extent the assets were used in the production of the oil related income.

Administration Position

The Administration opposes this amendment because of its narrow scope. The Administration believes that this provision emphasizes the difficulties inherent in arriving at a reasonable and equitable "oil basket" and the merit of the Administration's 1974 proposal to limit foreign tax credits for taxes paid with respect to foreign oil and gas income to 48 percent. However, the Administration would not object to a provision which treated as foreign oil or gas income gain from the sale or exchange of stock of any foreign corporation which holds oil related assets.

SECTION 1035(c)(3)

FOREIGN OIL AND GAS EXTRACTION INCOME CERTAIN PUBLIC UTILITY INCOME

Description

The provision would exclude from the definition of foreign oil related income from the transportation and distribution of natural gas by a regulated public utility if the gas is to be used within the utility's own operations within the country in which it is incorporated and in which the utility is located.

Revenue Estimate

Decrease in tax liabilities of less than $5 million per year.

Analysis

Section 907 was intended to limit the excess credits from taxes paid to a country with respect to oil extraction income from being available in unlimited quantities to offset U.S. tax on other foreign income. However, it was decided that a reasonable amount of excess credits should be available to offset U.S. tax on activities related to the extraction of oil and gas. The transportation and distribution of natural gas is related to the oil or gas business and, therefore, belongs in the so-called "oil basket."

Administration Position

The Administration opposes this provision. There are many hardships inherent in the concept of isolating oil or gas income in a separate basket. It would be far better to eliminate the "oil basket" and limit taxes paid with respect to foreign oil and gas extraction income to 48 percent.

SECTION 1035(d)

FOREIGN OIL AND GAS EXTRACTION INCOME
FOREIGN OIL RELATED INCOME EARNED BY INDIVIDUALS

Description

The amendment would provide that the allowable foreign tax credit on foreign oil and gas extraction income of an individual is equal to the average U.S. effective rate of tax on that income. This is accomplished by applying a separate overall foreign tax credit limitation for foreign oil and gas extraction income.

Revenue Estimate

Decrease in tax liabilities of less than $5 million per year.

Analysis

Under present law, individuals and corporations are subject to the same percentage limitation with respect to taxes paid on oil and gas extraction income. The percentage is based upon corporate tax rates. This rule can penalize some taxpayers while providing a windfall for others. A high-bracket taxpayer who pays high foreign taxes on extraction income may be taxed again in the United States on that income, while a low-bracket taxpayer (who may be a low-bracket taxpayer because of tax shelters) may have excess credits to use against other foreign oil related income The Committee amendment would correct this problem by allowing taxpayers to eliminate U.S. tax on their foreign oil and gas extraction income (if foreign taxes are high enough) and by eliminating any available excess credits to be used against other U.S. tax on foreign oil related income.

Administration Position

The Administration supports this provision as being a rational solution to the problem discussed above. The Administration would like to see a similar rule applied to corporations and proposed in 1974 that the credit to be allowed against U.S. tax on foreign oil and gas extraction income be limited to 48 percent, but without any carryovers.

SECTION 1035(e)

FOREIGN OIL AND GAS EXTRACTION INCOME CERTAIN PAYMENTS NOT TO BE CONSIDERED TAXES

Description

The Committee amendment would make inapplicable section 901(f) of the Code, which denies a foreign tax credit for certain amounts paid with respect to income from the purchase and sale of oil or gas extracted in a country, if the taxpayer has no economic interest in the oil or gas and either the purchase or sale is at a price which differs from the fair market value for such oil or gas. Under the amendment, section 901(f) is not to apply with respect to a purchase and sale from a field if the taxpayer has had an economic interest in that field at any time and if, on March 29, 1975, the taxpayer has made an investment with respect to the field.

Revenue Estimate

Decrease in tax liabilities of $40 million per year.

Analysis

Section 901(f) was added by the Tax Reduction Act of 1975 principally to prevent a potential abuse that could arise with the increase of participation by foreign countries in their own concessions. With the increase in government participation, the oil companies will lose ownership rights to the oil and will acquire the oil from the host country by purchase and then resell it to affiliates. The principal potential abuse is that the companies might purchase the oil (known as "buy-back" oil) at an artificially low price and resell it at an artificially high price with the difference being taxed by the host country. The result is that part of the "take" of the host country is converted from a purchase price to a creditable tax. This, in effect, shifts part of the burden for such "take" from the oil companies to the U.S. Treasury. This potential abuse could have been limited under prior law. However, section 901(f) adds a more objective limitation.

Section 1035(e) of the bill would, in effect, make section 901(f) inapplicable (until 1986) to the purchase and sale of oil and gas produced from a field in which the taxpayer once had an economic interest and made an investment on or before March 29, 1975, but which was completely taken over by the host country. The taxpayer could purchase the oil or gas from that field at a substantial discount from the market price which bears no relation to prior investments and, under the provision of section 1035(e) of the bill, section 901(f) could not be applied. However, if the taxpayer enters into a new agreement with the host country in a new field under which the host country retains ownership in all the oil, section 901(f) would continue to apply to the purchase and sale of oil from that field.

This amendment would discriminate in favor of the old fields. The same potential abuse, i.e., disguising a purchase price as a creditable tax and shifting the burden to the U.S. Treasury, exists in the case of both the old and the new fields since each field produces "buy-back" oil. Moreover, the amendment provides no limit to the extent to which departures from arm's length prices would be acceptable. Accordingly, the Administration opposes section 1035(e) of the bill as it is presently drafted.

Administration Position

For the reasons stated above, the Administration opposes this amendment as drafted. However, the Administration would support an amendment limited to five years applying to cases where the price of the oil or gas differs from the fair market value by no more than 20 percent and the concessional price was part of the compensation for an economic interest which the taxpayer had in the field.

SECTION 1035(f)

FOREIGN OIL AND GAS EXTRACTION INCOME

Description

Amounts designated as taxes by a foreign country with respect to certain production sharing contracts for the extraction of oil or gas would be treated as creditable taxes. The provision would apply to contracts entered into before April 8, 1976, if amounts designated or accrued with respect to the foreign government for taxable years beginning before June 30, 1976, will not be disallowed as taxes.

Revenue Estimate

Decrease in tax liabilities of $50 million in 1977 only.

Analysis

This provision would overrule a recent ruling of the Internal Revenue Service and continue, for the next five years, to allow a foreign tax credit for amounts claimed as taxes paid with respect to production sharing contracts. The apparent reason for this provision is that investments have been made with the assumption that creditable taxes were being paid, and that time is necessary to renegotiate the contracts to provide for payments which would be creditable taxes under U.S. law. Nothing, however, has been brought to our attention which distinguishes this case from others in which taxpayers have misinterpreted current law.

Administration Position

The Administration opposes this amendment. There is no reason peculiar to this case which justifies the special treatment accorded. Taxpayers have received reasonable relief because the ruling of the IRS holding these amounts not creditable was prospective only. There is no reason for an additional five-year grace period.

SECTION 1036

UNDERWRITING INCOME

Description

The source of underwriting income would depend upon the situs of the property being insured.

Revenue Estimate

Decrease in tax liabilities of less than $5 million per year.

Analysis

Under present law the source of income from underwriting is uncertain. It is possible that contracts negotiated in the U.S. covering foreign risks may be considered U.S. source but be subject to foreign taxes. In such a case the foreign tax credit for such taxes may be lost.

Administration Position

The Administration supports this provision. The amendment would create certainty and represents a reasonable source rule.

SECTION 1041

PORTFOLIO DEBT INVESTMENTS IN UNITED STATES OF NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Description

This provision contains two amendments. The first would exclude from the 30 percent withholding tax portfolio interest received by a nonresident alien individual or a foreign corporation. The second provision would make permanent the current exclusion from the withholding tax of interest on bank deposits paid to nonresident alien individuals or foreign corporations.

Revenue Estimate

Decrease in tax liabilities of $130 million in 1977 ($110 million on bank account interest and $20 million on portfolio interest), rising to $190 million in 1981 ($150 million on bank account interest and $40 million on portfolio interest).

Analysis

Under current law, nonresident alien individuals and foreign corporations are subject to a tax of 30 percent of the gross amount of interest received from sources within the United States. This tax may be reduced or eliminated by treaty. An exception from withholding is provided in the case of interest paid before 1977 on amounts deposited with a U.S. bank. This exception will automatically expire at the end of 1976.

The exclusion for debt interest is important to enable U.S. companies to compete successfully in the world capital markets. Many other countries do not impose any withholding tax on interest paid by their debtors and the Eurodollar market, with which American corporations must compete, is generally free of tax.

The continuation of the bank account exclusion is vital if U.S. banks are to retain the $9 billion of foreign investor deposits already invested in the U.S. and presently exempt from tax on interest payments. It is also vital if U.S. banks are to continue to compete successfully for deposits by nonresident alien individuals and foreign corporations. This amendment merely represents a permanent extension of a provision which has been in the law since 1921.

Administration Position

The Administration strongly supports both amendments.

SECTION 1042

CHANGES IN RULING REQUIREMENTS UNDER SECTION 367; CERTAIN CHANGES IN SECTION 1248

Description

This provision would eliminate the advance ruling requirement of present law for certain reorganizations involving foreign corporations and would close certain loopholes currently present in the provisions which tax as ordinary income, certain gains from the sale or exchange of stock in a foreign corporation. A special provision is contained in section 1042(c)(3) of the Committee amendment which would reverse a decision of the Tax Court* (affirmed on appeal) by directing the Secretary of the Treasury to refund retroactively tax paid by the shareholders of a foreign corporation which was previously liquidated.

Revenue Estimate

Decrease in tax liabilities of less than $5 million.

Analysis

Under present law, a distribution of property by a foreign corporation to a U.S. shareholder is included in the gross income of the shareholder at an amount equal to the fair market value of the property distributed. However, the earnings and profits of the distributing corporation are reduced by the adjusted basis of the property, not by the fair market value. The same rule applies in the case of a distribution by a U.S. corporation to its individual shareholders. This rule has been in the tax law for some time and is clearly understood.

The special provision noted above would cover a particular U.S. corporation that liquidated a U.K. subsidiary and as a condition of receiving a favorable section 367 ruling agreed to take into income as a dividend the earnings and profits of the U.K. subsidiary. These earnings and profits turned out to be greater than expected because a prior year's distribution by the U.K. subsidiary of the stock of a South African subsidiary reduced earnings and profits of the U.K. subsidiary by the adjusted basis of that stock which was lower than its fair market value. The taxpayer challenged the determination of the Commissioner in the Tax Court but lost, and then lost again on appeal.

* H. H. Robertson Company v. Commissioner, 59 T.C. 53; aff'd, without opinion, CA-3 7/24/74.

The effect of this special provision would be to give a refund of tax to a taxpayer whose case has been considered by the courts and who has lost. Such retroactive relief cannot be justified. Retroactive relief can be justified only in the most compelling circumstances. It cannot be justified where, as here, the law worked as Congress intended it to work although to the disadvantage of certain taxpayers. To grant such relief undercuts the integrity of the laws which Congress has enacted, and acts as an inducement to taxpayers to correct their mistakes in the Congress.

A claim has been made that there has been double taxation of the U.K. subsidiary's earnings and profits in an amount equal to the excess of the South African stock's fair market value over its adjusted basis. However, any double taxation is clearly provided for in the Code and would result even if the appreciated property were distributed by U.S. corporations to individual shareholders. There is no reason to treat a foreign corporation more favorably than a U.S. corporation would be treated in the same situation. In addition, it must be kept in mind that the U.S. shareholders get a stepped up basis in the stock of the South African subsidiary and, therefore, there would be no income upon a future disposition of that stock at its fair market value.

The theory of the present rules for the computation of the reduction in earnings and profits is that on the distribution of appreciated property there should be a realization and increase in earnings and profits equal to the appreciation of the property followed by a subtraction of such increase. Congress legislated the result by simply providing for treating the fair market value as the amount of the dividend and reducing the earnings and profits of the distributing corporation merely by the adjusted basis. If that rule is to be reviewed the review should be thorough and general. To retroactively except a particular foreign corporation or small group of foreign corporations from a rule which affects all foreign corporations is inequitable and is not a proper approach.

Administration Position

The Administration strongly supports the changes in the advance ruling requirement of section 367 and the closing of loopholes in section 1248. However, the Administration strongly opposes the special relief which would be granted by section 1042(c)(3) in the case of certain past liquidations.

SECTION 1043

CONTIGUOUS COUNTRY BRANCHES OF DOMESTIC LIFE INSURANCE COMPANIES

Description

Domestic mutual life insurance companies which have a branch in a contiguous foreign country would be permitted to elect to treat that branch as if it were a separate foreign corporation. Domestic stock life insurance companies would be permitted to elect to transfer the assets of such a branch to a foreign corporation organized under the laws of the contiguous foreign country without the application of provisions which would tax any transfers to that foriegn corporation.

Revenue Estimate

Decrease in tax liabilities of $8 million per year.

Analysis

Under present law, a branch of a U.S. corporation is subject to full U.S. taxation on its income. It has been alleged that this created a hardship in the case of certain life insurance companies doing business in Canada. U.S. tax law imposes tax at a rate which is higher than that imposed by Canada. Because of the way in which the insurance business is conducted, a Canadian branch of a U.S. company is operated almost as a separate entity. That is, the investments are kept primarily separate and the dividends paid to Canadian shareholders are determined by the income of the Canadian branch. The extra tax paid to the United States on these amounts, therefore, falls on the Canadian policyholders, which makes U.S. companies less competitive with their Canadian counterparts.

Administration Position

The Administration does not object to this proposal. However, the provision should not be regarded as precedent for other companies.

SECTION 1044

TRANSITIONAL RULE FOR BOND, ETC., LOSSES OF FOREIGN BANKS

Description

Corporations which would be banks except for the fact that they are foreign corporations would be permitted to treat net gains from the sale or exchange of bonds, debentures, notes or other evidences of indebtedness as capital gains to the extent of any capital loss carryover to the taxable year which is attributable to the same type of sales or exchanges in taxable years beginning before July 12, 1969.

Revenue Estimate

Decrease in tax liabilities of less than $5 million in 1976 only.

Analysis

Prior to the Tax Reform Act of 1969 (P.L. 91-172) financial institutions were allowed to treat net gains from certain transactions involving corporate and government bonds and other evidences of indebtedness as capital gains and to deduct losses as ordinary losses. The 1969 Act provided parallel treatment for such net gains and net losses, treating them as ordinary income and ordinary loss, respectively. This treatment was also extended to corporations which would be considered banks but for the fact they are foreign corporations. Prior to the 1969 Act these corporations treated the above transactions as resulting in either capital gains or capital losses.

The change in the law made by the 1969 Act created a hardship for some of these foreign corporations. These corporations had capital loss carryovers which predated the 1969 Act that could not be applied against gains arising after the 1969 Act from the same type of transactions because any post-69 gains are accorded ordinary income treatment.

Administration Position

The Administration does not object to this amendment. Although the Administration generally opposes retroactive relief for particular taxpayers, the Administration recognizes that Congress inadvertently failed to provide the proper rule in this case. No action by the taxpayer could have prevented the hardship.

SECTION 1052

WESTERN HEMISPHERE TRADE CORPORATIONS

Description

The amendment would permit a foreign corporation which is organized in a contiguous country, is treated as being a domestic corporation for purposes of filing a consolidated return, and is a Western Hemisphere Trade Corporation (WHTC) to average its foreign taxes with other domestic corporations in the affiliated group of which it is a member if each of the corporations derives 95 percent or more of its gross income from sources within that contiguous foreign country and if both companies are primarily engaged in mining (or related transportation) business in that contiguous country.

Revenue Estimate

Decrease in tax liabilities of less than $5 million per year.

Analysis

In general, a Western Hemisphere Trade Corporation which computes its foreign tax credit limitation on an overall basis may not average its foreign taxes and income with income and foreign taxes of non-WHTC's of the same group. A limited exception is provided for certain public utilities. Under present law, however, an affiliated group that includes a WHTC and uses the per-country limitation is permitted to average the WHTC's foreign taxes and income with non-WHTCs in the same group if all income is derived from the same country. This bill would repeal the per-country limitation immediately and phase out the special deduction for WHTCs over a four-year period. Because of the repeal of the per-country limitation, no averaging of foreign taxes would be permitted. The proposed amendment would continue to allow the averaging of WHTC income and taxes and non-WHTC income and taxes in those situations where it is allowed under present law for certain taxpayers.

Administration Position

The Administration supports the repeal of the special deduction for WHTCs. The Administration opposes the special transitional rule because it would grant special relief to a narrow class of taxpayers. However, the administration would not oppose a more general transitional rule which would treat all all similarly situated taxpayers equally.

SECTION 1207

TREATMENT OF CERTAIN INDIVIDUALS EMPLOYED IN FISHING AS SELF-EMPLOYED INDIVIDUALS

Description

The section amends present law to treat individuals employed on fishing boats as self-employed rather than employees subject to withholding and for whom employers must pay employment taxes. The section is limited to boats with crews of fewer than six, where the crewman is employed on a substantially intermittent basis and receives a share of the catch (rather than cash wages). However, a Committee amendment would increase the number of crewmen to ten. Reporting requirements would be imposed on the boat owner to assist the Internal Revenue Service in collecting the required taxes from the crewmen.

Revenue Estimate

With the Committee amendment, this provision would decrease budget receipts by an aggregate of $65 million over the next five fiscal years.

Analysis

This provision is intended to deal with the situation where a fisherman who owns his own boat hires crewmen on an intermittent basis and shares the catch with the crewmen. This evokes the picture of a lobsterman who goes out with his brother one trip, a nephew another, or a neighbor and actually physically divides the catch. Withholding of taxes in such a case would present practical difficulties and could be administratively burdensome. However, the provision is not limited to such cases and, with the Committee amendment, would extend to substantial business enterprises.

Administration Position

The Administration opposes the Committee amendment and recommends that the provision be amended to limit the number of crewmen to one (which would cover the lobster boat case).

SECTION 1303

TAX TREATMENT OF CERTAIN 1972 DISASTER LOANS

Description

Provides for interest-free installment payments over three years of income tax deficiencies assessed because of excessive claims for casualty loss deductions arising from disasters in 1972.

Under present law, an individual may claim an itemized deduction for casualty losses in excess of $100. However, the amount of the deductible loss is reduced by any insurance proceeds or other compensation received by the taxpayer. Some taxpayers who suffered casualty losses in 1972 as a result of Hurricane Agnes or the Buffalo Creek disaster failed to reduce their casualty loss deduction by the amount of loan forgiveness received under federal government disaster relief programs or, in the case of the Buffalo Creek disaster, compensation received from the owner of the dam.

The amendment would provide that the amount of increased tax liability resulting from including such loan forgiveness or compensation in income in the year received could not exceed the amount of reduced liability that resulted from the casualty loss deduction. In addition, such increased tax liability may be paid without interest in three equal annual installments beginning on April 16, 1977. Both benefits are limited to the amount of tax attributable to a maximum of $5,000 of loan forgiveness or compensation, and the $5,000 limit is phased out dollar for dollar to the extent the taxpayer's adjusted gross income for the taxable year for which the loss deduction was taken (either 1971 or 1972) exceeds $15,000 ($7,500 in the case of a married individual filing a separate return).

Revenue Loss

This provision is estimated to reduce revenues by $45 million in the transitional quarter and by $15 million in each of the three following fiscal years.

Analysis

The casualty loss deduction recognizes that taxpayers who incur large unexpected losses have a reduced capacity to bear the burden of the income tax. However, the casualty loss deduction must be reduced by the amount of insurance proceeds or other compensation received, since to that extent the taxpayer has not incurred an actual loss.

In general, a taxpayer is required when he computes his casualty loss deduction to take into account any expected recovery through insurance or otherwise, and it can be argued that a failure to comply with this requirement should be treated the same as any other error by the taxpayer--that is, the taxpayer would be liable for the additional tax plus interest. However, it is asserted that in many cases taxpayers involved in the Buffalo Creek and Hurricane Agnes disasters were not aware of this requirement. Moreover, present law contains a "quickie-refund" provision under which a taxpayer may elect to file an amended return for the year preceding a disaster loss and treat such loss as occurring in such preceding year in order to obtain an immediate tax benefit without waiting for the close of the taxable year in which the loss actually occurred. Because of the need for immediate cash to repair the damage caused by the disaster, taxpayers may understandably have filed for "quickie refunds" without adequate advice regarding all of the applicable tax rules. Moreover, some taxpayers are said to have spent both the loan forgiveness or compensation received and the amount of the tax refund before learning of their potential increased tax liability. Under such circumstances the Congress may justifiably consider it appropriate to waive the interest on the additional tax liability and to provide a three year period for payment as a measure of additional disaster relief. Moreover, it should be noted that this legislation will not provide a significant precedent for the future, since the federal disaster relief loan forgiveness programs have been largely eliminated. Finally, the provision is limited by the income requirement to low and moderate income taxpayers.

Administration Position

The Administration has no objection to this amendment.

SECTION 1304

TAX TREATMENT OF CERTAIN DEBTS OWED BY POLITICAL PARTIES TO ACCRUAL BASIS TAXPAYERS

Description

Amends section 271 of the Internal Revenue Code, which bars any deduction for a worthless debt owed by a political party (including a political campaign organization), to permit such a deduction by firms whose business consists in substantial part of providing goods or services to political parties. Under the amendment, section 271 would not apply to a debt which accrued as a receivable on a bona fide sale of goods and services in the ordinary course of a taxpayer's trade or business if (1) for the taxable year more than 30 percent of all receivables of the taxpayer accruing in the ordinary course of the trades and businesses of the taxpayer were due from political parties and (2) the taxpayer made substantial continuing efforts to collect on the debt.

Revenue Loss

This provision is estimated to reduce revenues by less than $5,000,000 annually.

Analysis

The provision disallowing a deduction for worthless debts of a political party was originally enacted to prevent tax deductions for concealed campaign contributions (e.g. for a loan which was not intended or expected to be repaid). Since the enactment of that provision, however, a number of firms have become engaged in the business of providing goods and services to political parties. Where such businesses are on an accrual method of accounting, the sale of goods or services to political parties gives rise to taxable income, but they are denied under present law any deduction if the receivables generated by such transactions become worthless because of the inability of the political party to pay its debts.

Administration Position

The Administration supports the amendment. The denial of a deduction to firms engaged in the business of providing goods and services to political parties and political campaign organizations is inequitable and was not intended when the legislation was originally enacted.

It should be noted that this amendment would be effective for taxable years after December 31, 1975. The similar provision in the House bill would be retroactive for prior years, where the statute of limitations has not already run. The Treasury Department would oppose such a retroactive application of the provision, which could operate inequitably as between taxpayers who have not claimed a deduction in view of the provisions of present law (and who have, thus, not kept their tax years open) and other taxpayers who claimed a deduction although a deduction is clearly not allowable under present law.

SECTION 1305

REGULATIONS RELATING TO TAX TREATMENT OF CERTAIN PREPUBLICATION EXPENDITURES OF AUTHORS AND PUBLISHERS

Description

Provides that until new regulations are issued, book publishers and authors may continue to deduct prepublication expenses, if that was the particular firm or individual's prior consistent practice. Future regulations dealing with the deductibility of prepublication expenses could be given only a prospective effect. A similar provision in the House bill was limited to publishers.

Revenue Loss

This provision is estimated to reduce revenues by less than $5,000,000 annually.

Analysis

The government and the publishing industry are in disagreement regarding the tax treatment of prepublication expenditures (expenses paid or incurred for the writing, editing, compiling, illustrating, designing, or other development or improvement of a book, teaching aid, or similar product). The industry argues that such expenses are research or experimental expenditures, which under section 174 of the Internal Revenue Code may be deducted currently or, at the election of the taxpayer, amortized ratably over a period of not less than 60 months. However, the regulations under section 174 provide that the term "research or experimental expenditures" does not include "expenditures paid or incurred for research in connection with literary, historical, or similar projects." In Revenue Ruling 73-395, the IRS ruled that section 174 did not permit the current deductibility of editorial, design and illustrative expenses. Revenue ruling 73-395 also held that expenditures that were specifically identifiable and allocated to a textbook or visual aid project were not inventoriable or deductible under 162 but were required to be capitalized pursuant to section 263 of the Code. In Information Release 1575, issued on March 17, 1976, the Internal Revenue Service noted that Revenue Ruling 73-395 did not adequately explain the application to prepublication expenses of the general provisions on deductibility of trade or business expenses, the treatment of capital expenditures, and the establishment of inventories. The information release indicated that a project had been opened to focus on the application of these provisions to the various types of prepublication costs within the different segments of the industry, that it was expected that this project would result in the publication of regulations and/or additional revenue rulings (including the modification, clarification or supersession of Revenue Ruling 73-395), and that in the interim, IRS would suspend audit and appellate activity with respect to cases in which the deductibility of prepublication expenses is an issue.

The Treasury Department has indicated that it will take into account the extent to which the publication industry may have consistently deducted prepublication expenditures in determining the extent to which any new regulations or revenue rulings should be given retroactive effect or be applied prospectively only. This provision of the bill, however, would validate the individual taxpayer's past practice whether or not it was consistent with industry practice and whether or not the taxpayer's situation was such that its treatment of prepublication expenses clearly distorted its reporting of income for tax purposes. For example, the current deduction of prepublication expenses may be more appropriate in the case of a publisher of topical books having a short publishing life than the publisher of major research works, such as dictionaries or encyclopedias.

Administration Position

The Administration opposes this provision. The tax treatment of prepublication expenses should not depend upon the particular past practice of an individual publisher but should be based on sound tax rules of general application.

SECTION 1307

INTEREST OF ORIGINAL ISSUE DISCOUNT ON CERTAIN OBLIGATIONS

Description

The proposed amendment of section 1232 would delay the inclusion in income of original issue discount on a face-amount certificate until the maturity of the certificate (as opposed to including the discount in income ratably over the term of the certificate).

Revenue Estimate

It is estimated that enactment of this provision will reduce budget receipts by less than $5 million per year.

Analysis

In general, section 1232 provides that the difference between the original purchase price of a corporate certificate of indebtedness and the amount the corporation is required to pay the holder upon maturity of the indebtedness, constitutes ordinary income. Further, since 1969, holders of such certificates of indebtedness have been required to take this discount into income ratably over the term of the indebtedness, rather than taking it into income at maturity when the cash is actually received. The legislative history surrounding the enactment of section 1232 in 1954 and its amendment in 1969 indicates that Congress regarded face-amount certificates as subject to the provisions of section 1232.

Requiring ratable inclusion in income of orginal issue discount on face-amount certificates is consistent with the tax treatment afforded other comparable corporate obligations such as certificates of deposit issued by financial institutions. Furthermore, such treatment is appropriate since the companies which issue face-amount certificates are presently allowed to deduct such discount ratably over the life of the certificate; a fundamental purpose of section 1232 is to require the holder of the certificate of indebtedness to include original issue discount in income at the same time that the issuer of such certificate is allowed to deduct such discount.

Accordingly, the Administration believes it is inappropriate to single out face-amount certificates for tax treatment different from that afforded other forms of corporate indebtedness.

Administration Position

The Administration is therefore opposed to this section of the bill.

SECTION 1308

PERSONAL HOLDING COMPANY INCOME AMENDMENTS

Description

This section of the Bill would modify the personal holding company provisions to provide generally that royalties do not constitute personal holding company income if received from an individual owning 25 percent or more of the stock of the personal holding company.

Revenue Estimate

Negligible (i.e., less than $5 million).

Analysis

Under present law, a corporation which is a personal holding company is taxed on its undistributed personal holding company income at a rate of 70 percent. Royalties (other than mineral, oil, or gas royalties or copyright royalties) always constitute personal holding company income. Rents constitute personal holding company income unless certain requirements, designed to exclude rents received by bona fide real estate operating corporations, are met. These requirements are somewhat more stringent where the rent is received from a person who owns 25 percent or more of the stock of the personal holding company.

Under section 1308 of the Bill royalties received from an individual who owns 25 percent or more of the stock of the personal holding company would be subject to the same rules that now apply to rents received from such an individual, thereby allowing royalties in certain situations to escape characterization as personal holding company income. The policy underlying the rental income rules, that rents received by bona fide real estate operating corporations should not be subject to the personal holding company tax, is generally inapplicable in the case of passive income such as royalties. Accordingly, section 1308 would create an unwarranted technique for circumventing the personal holding company provisions. In addition, section 1308 contains a 1964 effective date, thereby providing a windfall for affected taxpayers.

Furthermore, section 1308 would create an anomalous situation in which royalties received from the owner of the personal holding company would receive more favorable treatment than royalties received from third parties. For example, assume an individual formed a corporation, transferred to it a franchise, and paid royalties to the corporation for the continued use of the franchise in his trade or business (other than the corporation). Under the proposed amendment the corporation would escape the personal holding company tax. If, however, instead of receiving royalties from its shareholder, the corporation received the royalties from an unrelated third party, it would be subject to the personal holding company tax. The special interest of the proposal is evidenced by the fact that self dealings receive more favorable treatment than arms length transactions.

It appears that the provision is intended to provide relief where individuals transfer ownership of intangible property utilized in their trade or business to a corporation they own in order to protect the property by reason of the perpetual life of the corporation, and then pay a royalty to the corporation for the right to continue to use such property in their trade or business. In such a situation, however, the corporation under present law could avoid the personal holding company tax by distributing the royalty income to its shareholders. Since the income is attributable to the individuals' business, we believe it is inappropriate to permit the individuals to accumulate the income within the corporation and thereby be subject to taxes at the corporate rates instead of the generally higher individual rates.

Administration Position

The Administration is therefore opposed to this section of the Bill.

SECTION 1310

REPEAL OF EXCISE TAX ON LIGHT-DUTY TRUCK PARTS

Description

Section 1310 provides that the manufacturer or importer of truck parts may obtain credit or refund of the 8 percent tax after such parts have been sold on or in connection with the first retail sale of a light-duty truck (not over 10,000 pounds gross vehicle weight).

Revenue Estimate

Loss of about $3 million per year which would be reflected in receipts of the Highway Trust Fund.

Analysis

As a result of repeal of the taxes on passenger cars and light-duty trucks in 1971, truck and bus parts and accessories sold by the vehicle manufacturer as part of a light-duty truck or bus are not subject to tax. However, if a truck parts manufacturer sells parts separately from the light-duty trucks and the installation of these parts by a retail truck dealer technically is not "further manufacture" of the trucks (as is the case with bumpers), then the manufacturer's excise tax of 8 percent applies. Independent producers of bumpers in particular have claimed that the 1971 change placed them at a competitive disadvantage, as it is to the customer's advantage to order a bumper from the truck manufacturer along with the truck, rather than have the dealer install a bumper made by an independent manufacturer.

Administration Position

The Administration supports the proposed change as an equity measure. It should be noted, however, that the proposed change will not cover the case of the manufacturer of air conditioning units who claims that purchasers of light-duty trucks buy his units for installation by specialized dealers immediately after they accept delivery of the truck. Such transactions would not qualify for credit or refund of tax because they do not meet the requirement of the amendment of being "sold on or in connection with the first retail sale of a light-duty truck."

SECTION 1311

FRANCHISE TRANSFERS

Description

Section 1253 of the Code was enacted by the Tax Reform Act of 1969, in order to clarify the tax treatment of transfers of franchises, trademarks, and trade names. Prior to that time, the case law was divided as to (1) whether a transfer constituted a sale or exchange, on the one hand, or a license on the other, and (2) whether the transferred franchise was, in the hands of the transferor, a capital asset or an asset held for sale to customers in the ordinary course of the transferor's trade or business. Section 1253 makes clear that a transferor will not receive capital gain treatment if he retains any of various enumerated powers, rights, or interests, or to the extent he receives contingent payments. Section 1253 also provides that in the cases where the transferor receives ordinary income treatment, the transferee may deduct the amounts so paid as ordinary and necessary business expenses. Section 1253 applies to all transfers after December 31, 1969.

Section 1311 of the Bill contains two essentially unrelated provisions. Section 1311(a) would add franchises, etc., covered by section 1253 to the list of unrelated receivables whose presence in a partnership causes a sale of a partnership interest to produce, pro tanto, ordinary income.

Section 1311(b) provides that section 1253 will not apply if (1) the contract to transfer was in existence prior to January 1, 1970; (2) the contract relates to a professional practice; and (3) the transferee is a former employee or partner of the transferor. The accompanying Committee Report states that the contract need not have been binding. According to Senator Proxmire (Cong. Rec. S10813, S10815), the amendment reflected in section 1311(b) was offered on behalf of Texas Optical Co. The Committee Report does not directly confirm this; but it gives an example of how the second criteria applies in the case of a combined transfer of an optometrist's and an optician's business.

Revenue Estimate

The effect on revenues is negligible (i.e., less than $5 million).

Analysis

Section 1311(a) eliminates a potential avenue of abuse: possibly, under present law, while a transfer of a franchise would under section 1253 give rise to ordinary income, a transfer to a partnership followed by a sale of the partnership interest could receive capital gain treatment.

Section 1311(b) is totally unwarranted. Section 1253 was intended to provide certainty in an area where some taxpayers were treated one way and other taxpayers another way, depending on which U.S. Court of Appeals had jurisdiction. In other words, all taxpayers are supposed to be treated alike. In view of this, a grandfather provision is clearly appropriate. Furthermore, section 1311(b) cannot be justified even on the ground that the taxpayers it affects were locked into a preexisting agreement, for it does not require the preexisting contracts to have been binding.

Section 1311(b) will reinstate the vagaries of prior law for both Texas Optical and its transferees. If the transfers are held, under prior law, to be sales or exchanges, Texas Optical would receive capital gain treatment on franchise payments, but these payments would not be deductible by its transferees. As to amounts deducted by transferees in taxable years now closed, the Government may be whipsawed.

Administration Position

The Administration, therefore, supports section 1311(a) and opposes section 1311(b).

SECTION 1312

CLARIFICATION OF AN EMPLOYER'S DUTY TO KEEP RECORDS AND TO REPORT TIPS

Description

The section of the bill overrides Rev. Rul. 76-231 which requires employers to report to the IRS the amount of tips shown on a charge ticket attributable to each employee. Under the bill employers need only report to the Service the amount of tips which the employees themselves report to employers.

Revenue Estimate

While the Joint Committee Staff estimates the revenue loss to be less than $5 million, the Administration believes that the loss may be far more substantial.

Analysis

The committee justifies this provision on the ground that it would be overly burdensome for employers to isolate the amounts each employee receives in tips on charge tickets. Since employers are required to turn over such tips to employees this explanation is not persuasive. Tip income reporting has presented the Service with a chronic compliance problem despite special efforts to detect and take corrective enforcement actions to improve compliance with tip reporting requirements. As a partial step to reducing the problem, the Service published Rev. Rul. 75-400 which requires employers to report to the Service those charged tips for which the employer has a record, and which the employee did not report, as required, to the employer. Responding to industry criticism, Rev. Rul. 75-400 was modified by Rev. Rul. 76-231 to accommodate the concerns of both the restaurant owner and operator and the employee, spell out clearly the reporting procedure to be followed, and provide for a delayed effective date (January 1, 1977) to allow a sufficient amount of time to make the necessary arrangements for the minor bookkeeping procedures required by the ruling. The Finance Committee's action would obviate a sound attempt by the Service at alleviating a difficult enforcement problem.

Administration Position

The Administration is therefore opposed to this provision of the bill.

SECTION 1314

QUALIFICATION OF FISHING ORGANIZATION AS TAX EXEMPT AGRICULTURAL ORGANIZATION

Description

Fishing organizations may qualify as tax-exempt business leagues but not as tax-exempt agricultural organizations. While this has no tax implications, it means these organizations are currently unable to obtain favorable postal rates.

Revenue Estimate

No revenue impact.

Analysis

The practical impact of this provision would be to allow fishing organizations to obtain favorable postal rates.

Administration Position

The Administration defers to the Postal Service on this provision.

SECTION 1317

AMENDMENTS TO RULES RELATING TO LIMITATION ON PERCENTAGE DEPLETION IN CASE OF OIL AND GAS WELLS

Description

This section of the Bill contains a number of technical amendments to section 613A.

1. would exclude from classification as a retailer taxpayers whose annual combined gross receipts from sales of hydrocarbon products does not exceed 5 million dollars.

2. provide that a taxpayer is not a retailer merely because he makes sales of hydrocarbon products outside the United States, if no domestic production of the taxpayer or a related person is exported during the taxable year or the immediately preceding taxable year.

3. would amend the transfer rule to provide that no transfer takes place in the case of a change of beneficiaries of a trust by reason of the death, birth, or adoption of any beneficiary if the transferee was a beneficiary of the trust or is a lineal descendent of the grantor or any other beneficiary of the trust.

4. provide that in computing the 65 percent of taxable income limitation in the case of a trust, the trust's taxable income will not be decreased by any distributions to its beneficiaries.

Revenue Estimate

All the provisions under this section of the Bill will reduce revenues by $18 million in fiscal year 1977, $10 million in 1978, and $10 million in 1981.

Analysis

1. Retailer Classification

The purpose of the original retailer and refiner exclusions under the amendments made by the Tax Reduction Act of 1975 was to deny the major integrated oil companies any continued percentage depletion. A *de minimis* rule in the application of these provisions is both consistent with that original purpose and appropriate.

2. Effect of Foreign Retail Sales on Retailer Exception

Although this amendment is broad enough to encompass other similarly situated taxpayers, its only known beneficiary is Belco Petroleum Company which has several retail outlets in Isreal but none in the United States and nonetheless, the thrust of the amendment is consistent with the original intent of the retailer and refiner rules and may be viewed as correcting a legislative oversight.

3. Trust Transfer Rule

This amendment will have its principal effect after an oil or gas property has been distributed by a trust. Taxpayers who became beneficiaries after the creation of the trust will not be considered to be transferees merely because their interests vested after the creation of the trust. They will therefore be in the same position as any of the original beneficiaries. This is a reasonable rule since there is no reason to treat post-establishment beneficiaries of a trust any differently from the original beneficiaries of the trust.

4. Taxable Income Limitation in the Case of Trusts

If for purposes of computation of the 65 percent of taxable income limitation a trust's taxable income were reduced by distributions to beneficiaries, then in the normal case of a trust that distributes all or most of its income no percentage depletion would be allowed either to the trust or to its beneficiaries since the beneficiaries may only take their allocable share of the percentage depletion allowance computed at the trust level. The Administration does not believe that it was the intention of the Tax Reduction Act of 1975 to deny percentage depletion to the vast majority of trusts and their beneficiaries.

Administration Position

The Administration does not object to either the de minimis rule or foreign retail sales exception. Both rules appear reasonable in light of the legislative intent at the time of enactment of the Tax Reform Act of 1975. The Administration supports the two changes related to the computation and limitation of the percentage depletion as applied to trusts since the principal thrust of these rules is to treat trusts in a manner similar to the treatment of taxpayers other than trusts.

SECTION 1320

TREATMENT OF GAIN OR LOSS ON SALES OR EXCHANGES IN CONNECTION WITH SIMULTANEOUS LIQUIDATIONS OF A PARENT AND SUBSIDIARY CORPORATION

Description

Section 1320 of the Bill would make the nonrecognition of gain rule of section 337(a) applicable to a controlled subsidiary which sells an asset and then liquidates, provided that all corporations in the direct line of ownership above the level of the selling subsidiary also liquidate.

Revenue Estimate

It is estimated that the provision will not have any significant effect on tax revenues (i.e., less than $5 million).

Analysis

Section 337 was enacted in 1954 to assure that where a corporation is completely liquidated and in connection therewith an asset of the corporation is sold, the tax consequences will be the same regardless of whether the corporation sells the asset and then liquidates, or the corporation liquidates and its shareholders then sell the asset. Section 337 fails to achieve this result where an 80 percent or more owned subsidiary distributes all of its assets in complete liquidation to its parent which takes a carry-over basis in the assets of the subsidiary, and then the parent itself distributes all of its assets in complete liquidation to its individual shareholders. In that case a sale of the asset by the subsidiary will result in recognizable gain or loss, whereas no such gain or loss would be recognized if the asset instead had been sold either by the parent or its individual shareholders. Over the past 20 years various commentators, including the tax section of ABA, have criticized this trap for the unwary. The proposed amendment eliminates this flaw in section 337 by providing for nonrecognition of gain or loss by the subsidiary on the sale of its asset in the situation described above.

Administration Position

The Administration does not object to this section of the Bill.

SECTION 1321

TAXATION OF CERTAIN BARGES PROHIBITED

Description

A State or its political subdivision would be prohibited from imposing taxes on barges or other vessels engaged in interstate commerce on the navigable waters of the United States except as such barges or vessels are incorporated under the laws of the State; owned by individuals, partnerships, or corporations domiciled in, or residents of, the State; or have their home port in the State.

Revenue Estimate

This provision would have no effect on Federal revenues.

Analysis

The Federal government has, over the years, imposed relatively few constraints on the power of States to impose taxes. The fact that current State tax practices impose record keeping and financial burdens upon barge operators is not a sufficient reason for the Federal government to prevent the States from imposing taxes on this form of transportation. Similar taxes are imposed on other forms of transportation.

Administration Position

The Administration is therefore opposed to this provision.

SECTION 1322

CONTRIBUTIONS IN AID OF CONSTRUCTION FOR CERTAIN UTILITIES

Description

This section provides generally that money or other property received by a regulated public utility providing water or sewage disposal services as a contribution in aid of construction shall be excluded from the utility's income. This rule applies regardless of whether the party making the contribution is a shareholder of the utility.

Revenue Estimate

For water and sewerage only, $13 million in FY 1977, and $11 million in FY 1978. If the tax treatment provided by the amendment were made available to other utilities, the estimate would be increased by $120 million.

Analysis

Relying on a 1973 Supreme Court decision, the Service recently revoked an earlier ruling which dealt with the tax treatment of certain payments by property owners to water companies. Under the new ruling, effective February 1, 1976, payments of connection fees, including charges for installing a service line and water meter, paid to a water company by property owners in order to obtain water service are includible in the gross income of the water company. By treating these payments as "contributions to capital in aid of construction" the bill would exclude the payments from the utility's income tax base (which is, of course, equivalent to current deduction of the cost of new investment). The effect would be that the services of water companies, to the extent these services were made possible by investment in facilities thus "financed", would be provided by customers on a tax-exempt basis.

By legislating the tax-exemption of payments designated as "contributions to capital" the bill would establish a precedent for similar designations of all manner of payments to telephone companies and electric and gas utilities, all of which invest extensively in facilities installed on or near customers' premises. Indeed, the Supreme Court decision

Court decision and the aforementioned ruling currently apply to far more transactions in non-water service areas than to water service. The potential for removing private utility company capital from the tax system and thereby artificially shrinking the tax base as a result of this superficially innocuous proposal is staggering.

Administration Position

The Administration opposes this statutory attempt to reopen the issues and muddy the waters concerning the tax treatment of payments for utility company services. However, in recognition of the impact of the recent ruling on particular utility companies, suppliers of water and sewerage services and others, the Administration would support an amendment which affirms the general principle that payments for services rendered, or to be rendered, are gross income and which provides for a 5-year phase-in of the application of this principle in the cases of public utilities which relied on the prior IRS position and consistently excluded such payments from gross income. Under this transitional rule, in the case of such a contribution to capital in aid of construction made in a taxable year beginning in 1976, 20% of the contribution would be included in the utility's gross income; in each succeeding year, the inclusion percentage would rise by 20 points; and for taxable years beginning in 1980 and thereafter, all contributions in aid of construction would be included in the utility's gross income.

SECTION 1323

PROHIBITION OF DISCRIMINATORY STATE TAXES ON GENERATION OF ELECTRICITY

Description

Public Law 86-272, which established certain standards for State taxation of out-of-state businesses, would be amended to prevent States or their political subdivisions from imposing taxes on the generation or transmission of electricity that result in a higher tax in interstate commerce than in intrastate commerce.

Revenue Estimate

This provision would have no effect on Federal revenues.

Analysis

This provision is in response to a current situation where one state imposes a tax on electricity generated within its borders that can be taken as a credit against that state's gross receipts tax. Out-of-state consumers are generally not subject to the gross receipts tax and therefore effectively pay the tax whereas instate consumers can generally avoid it.

Administration Position

The Administration does not object to this provision as a reasonable extention of Federal standards for State taxation of interstate business.

SECTION 1505

TAX-EXEMPT ANNUITY CONTRACTS IN CLOSED-END MUTUAL FUNDS

Description

Section 403(b)(7) currently provides that amounts contributed by the employer for the purchase of stock of an open-end mutual fund to provide retirement benefits can be treated as amounts paid for a purchase of a qualified annuity under section 403. The amendment would extend such treatment to amounts contributed for the purchase of stock of a closed-end mutual fund

Revenue Estimate

Negligible (i.e., less than $5 million)

Analysis

There appears to be no basis for not allowing closed-end funds to provide such retirement benefits. They are subject to the same regulations as open-end funds and can offer a stock disposition arrangement for providing retirement benefits that is similar to the stock redemption arrangement offered by certain open-end funds.

Administration Position

The Administration does not object to this provision.

SECTION 1506

PENSION FUND INVESTMENT IN SEGREGATED ASSET ACCOUNTS OF LIFE INSURANCE COMPANIES

Description

This amendment would eliminate the requirement that a life insurance company maintaining segregated asset accounts for the investment of funds of qualified pension plans must guarantee the rates at which annuity contracts may be purchased for retiring employees.

Revenue Estimate

Negligible (i.e., less than $5 million).

Analysis

Under current law, segregated asset accounts for both qualified plans and for all other contractholders must provide an annuity benefit (or the right to purchase an annuity benefit at guaranteed rates), in order for the investment income in the account to be exempt from the tax on the life insurance company's income. For the accounts of qualified plans (but not for other accounts) the exemption extends to long-term capital gains earned in the accounts.

Life insurance companies would like to be able to provide investment management services to qualified plans in the same way that a bank or mutual fund can, i.e., without having to charge the plan for a guaranteed benefit that the plan may not want to obtain from the company. The annuity requirement is necessary for segregated asset accounts of persons other than qualified plans, in order to justify the exemption of the investment income earned thereon. But in the case of qualified plans, there is no need for the annuity requirement to justify such an exemption, since the exemption of the plan itself would justify this exemption. Therefore, the annuity requirement should be eliminated for qualified plan accounts, since it puts life insurance companies at a competitive disadvantage vis-a-vis banks and mutual funds.

Administration Position

The Administration does not object to this section of the bill.

and the aforementioned ruling currently apply to far more transactions in non-water service areas than to water service. The potential for removing private utility company capital from the tax system and thereby artificially shrinking the tax base as a result of this superficially innocuous proposal is staggering.

Administration Position

The Administration opposes this statutory attempt to reopen the issues and muddy the waters concerning the tax treatment of payments for utility company services. However, in recognition of the impact of the recent ruling on particular utility companies, suppliers of water and sewerage services and others, the Administration would support an amendment which affirms the general principle that payments for services rendered, or to be rendered, are gross income and which provides for a 5-year phase-in of the application of this principle in the cases of public utilities which relied on the prior IRS position and consistently excluded such payments from gross income. Under this transitional rule, in the case of such a contribution to capital in aid of construction made in a taxable year beginning in 1976, 20% of the contribution would be included in the utility's gross income; in each succeeding year, the inclusion percentage would rise by 20 points; and for taxable years beginning in 1980 and thereafter, all contributions in aid of construction would be included in the utility's gross income.

SECTION 1507

STUDY OF SALARY REDUCTION PENSION PLANS

Description

Section 2006 of the Employee Retirement Income Security Act of 1974 (ERISA) temporarily precludes the finalization of the proposed regulations on salary reduction arrangements with regard to qualified plans, cash and deferred profit sharing plans, and "cafeteria" plans in existence on June 27, 1974. Section 2006 of ERISA provides, *inter alia*, that those regulations cannot be made final prior to Janury 1, 1977 and that any such final regulations shall not apply for income tax purposes before that date. Section 1507 of the bill would extend the end of the period of the freeze on salary reduction regulations from January 1, 1977 to January 1, 1979.

Revenue Estimate

No impact (based on assumption that the mere extension of section 2006 of ERISA does not represent a change from present law).

Analysis

The original date for ending the freeze (January 1, 1977) was imposed in order to allow time for Congressional study of the issues raised by those regulations. While the Administration recognizes that more time may be needed to complete that study, it does not believe that a two-year extension is warranted. The tax issues involved in salary reduction plans are significant and merit a prompt resolution. A three-year period (1975-77) should provide ample time to complete the study.

Administration Position

Accordingly, the Administration recommends that the period of the freeze not extend beyond January 1, 1978.

SECTION 1508

CONSOLIDATED RETURNS FOR LIFE AND MUTUAL INSURANCE COMPANIES

Description

This section of the bill would allow life insurance companies (both stock and mutual) and other mutual insurance companies to file, on an elective basis, consolidated income tax returns with other companies (e.g., property-liability companies) effective January 1, 1978. However, the offset of other companies' losses against a life insurance company affiliate's income would be limited to 50 percent of such income or losses, whichever is less. The unused loss would be available as a carryforward.

Revenue Estimate

The Joint Committee Staff estimates revenue losses of $25 million in fiscal year 1978, $55 million in fiscal year 1979, $49 million in fiscal year 1980 and $40 million in fiscal year 1981. The Treasury Department's revenue estimates reflect revenue losses approximately twice as high as those estimates.

Analysis

Prior to 1959, the exclusion of certain insurance companies from filing consolidated returns could be justified on the grounds that insurance companies were basically taxable only on their investment income. Under current law all insurance companies are subject to some tax on all of their income, although the formulas for computing the amount of tax in the case of life insurance companies (under section 802) and most nonlife mutual insurance companies (under section 821) differ from each other and from the formula for the income tax on stock property-liability companies (under section 831). However, only stock property-liability companies are allowed to file consolidated returns with other companies; life companies may file consolidated returns only with other life companies, and nonlife mutual companies are effectively precluded from filing consolidated returns.

Differences in rules for computing taxable incomes of the several corporate units of a commonly controlled enterprise are not sufficient reason for prohibiting consolidation. Once the taxable incomes of each of the separate units are computed by the pertinent rules, each of the incomes is individually subject to the same schedule of tax rates. Thus, all of the consolidated units with positive incomes pay a consolidated tax which is equal to the sum of the individual tax liabilities; and if some of the consolidated units have negative incomes for the year, the refunds generated by these "net operating losses" (NOLs) are the same whether the NOLs are carried back or forward by the individual units (provided the NOLs can be used within the present law carryback and carryforward periods), or offset against other consolidated units' positive taxable incomes.

The 50 percent limitation on the offset against a life insurance company's income can be justified to some extent by the fact that certain other deductions of a life company are limited to prevent them from sheltering all of the company's investment income.

Administration Position

Given the 50 percent limitation, and the postponement of the effective date to 1978 which reduce the revenue impact of this amendment, the Administration does not object to this section of the bill.

SECTION 1701(a) and (c)

CERTAIN PROVISIONS RELATING TO RAILROADS

Description

Section 1701(a) of the bill restructures, for railroads only, the sequence in which investment tax credits are applied to reduce current tax liability. This is important because investment tax credits may generally be utilized only against 50 percent of a taxpayer's tax liability (100 percent of the first $25,000 of tax liability), and unused credits expire at the end of a seven year carryover period. Railroads would be allowed in the current taxable year to apply unused credits from the earliest prior year first, and to follow this procedure until all unused credits earned in prior years have been applied to reduce tax liability. Only after such unused credits had been fully used would the railroad apply the investment credit earned in the current year against its current tax liability. All other taxpayers would be required to follow present law under which credit earned in the current year is the first credit applied to reduce current tax liability.

Section 1701(c) provides for railroads a temporary increase in the present limitation on the amount of investment tax credit which may be used in the current year. This permits railroads to apply investment tax credits against 100% of their tax liability in 1977 and 1978. The limitation decreases by 10 percentage points in each of the subsequent five years until the limitations revert to the present law 50% limit. This provision is similar to the increase in the investment credit limit enacted for public utility property in the Tax Reduction Act of 1975.

Revenue Estimate

Taken together these provisions reduce receipts by $29 million in fiscal year 1977, $66 million in fiscal year 1978, and $41 million in fiscal year 1981.

Analysis

Proponents contend that changing the sequence for use of investment tax credits is necessary because the earnings of railroads have been relatively small in recent years as compared with the amount of capital investment they have made. It is argued that railroads will continue to lose unused investment credits at the end of the present 7-year carryforward period, unless the change is made. However, the problems of the railroads are fundamental and are not amenable to relief through tax policy. Long-standing regulatory policies imposed by Congress have created the situation in which a few railroads are profitable but many are chronically unprofitable. It is these regulatory policies which must be changed, rather than the basic investment credit rules, in order to provide meaningful long-term assistance to the unprofitable railroads. Moreover, a separate section of the bill (section 802) provides for the refundability, at the end of the carryover period, of unused and expiring investment credits generated by new investments. Thus, the primary effect of section 1701(a) is to change the rules for old investment credits retroactively in order to reduce the extent to which such credits will expire without being utilized.

In the case of electric utilities, the Administration supported the temporary increase in the investment credit tax liability limitation. The change was designed to help relieve cash flow deficiencies in the electric utility industry pending action by individual regulatory commissions to shorten the "lag time" in prescribing adequate rates. The situation with railroads is <u>not</u> comparable to the electric utility situation, and therefore a parallel provision for the railroads is not appropriate.

If either of these provisions is enacted, it will merely serve as an incentive to the airlines or other ailing industries to seek parallel tax relief. This will merely compound the problem.

<u>Administration Position</u>

The Administration is therefore opposed to these provisions of the bill.

SECTION 1701(b)

CERTAIN PROVISIONS RELATING TO RAILROADS

Description

Section 1701(b) (page 1003, line 20) deals with railroads using the retirement-replacement method of accounting for depreciation of track. It provides that expenditures for acquiring and installing replacement ties which are not made of wood shall be chargeable to capital account to the extent such expenditures exceed the fair market value of wood replacement ties. The effect of the bill would be to permit the replacement cost of the wood ties to be expensed.

Revenue Estimate

The provision will result in a decrease in budget receipts of less than $5 million annually.

Analysis

Under present law, when existing wood railroad ties are replaced with concrete ties, the Internal Revenue Service had held that such replacement constitutes a retirement and substitution. The entire cost for the new concrete ties is, therefore, capitalized; while the historic cost of the old wood ties is removed from the asset account and expensed for tax purposes.

In contrast, the replacement of railroad rail with a better grade of rail (e.g., 100 pound rail for 80 pound rail) is considered a "betterment," and the railroad is permitted to expense the replacement cost of the replaced rail (80 pound rail) and is required to capitalize only the additional cost of the higher grade of rail (the excess of the cost of 100 pound rail over 80 pound rail). Thus, the difference between classification as a retirement and substitution or as a betterment is that the railroad expenses the historic cost of the replaced rail in the first case and its replacement cost in the second.

Administration Position

The Administration is not opposed to this section of the bill. Treating the replacement of wood ties with concrete ties as a betterment is an appropriate application of the retirement-replacement method of accounting.

SECTION 1701(b) [Should be (c), etc.]

CERTAIN PROVISIONS RELATING TO RAILROADS (CONT'D.)

Description

This section permits railroads to amortize over a 10-year period certain outlays for track account assets (rail, ties, balast, etc.) which presently must be capitalized and may be recovered only when replaced. In effect, this provision will permit a 10-year write-off of depreciable assets which are part of newly constructed rail lines.

Revenue Estimate

This section would reduce budget receipts by $4 million in fiscal 1977, $10 million in fiscal 1978, and $28 million in fiscal 1981. (Note: These estimates do not include losses due to construction of new railroad lines.)

Analysis

It is argued that railroads must finance extensions and improvements of their roadway in order to handle a larger volume of traffic and, thus, to achieve greater energy efficiency in the U.S. transportation system. This argument ignores the fact that the present tax treatment of this investment by railroads is already highly preferred. The actual outlay for "replacements" can be deducted currently under the depreciation method used by railroads. Only "betterments", which are usually no more than 10% of the cost of replacing old track with heavier materials, and "additions" are required to be capitalized. For these capitalized expenditures, no cost recovery is allowed until the future date when the betterment or addition is replaced.

Despite the present highly preferred tax treatment, many railroads have not prospered and their roadways are in poor condition. This indicates that there is something fundamentally wrong with the industry which prevents it from generating sufficient cash flow to maintain the system. If the existing tax provisions cannot prevent deterioration of many lines, a further tax advantage will not help. Indeed, in providing an increase in deductions, the bill is of no benefit to ailing railroads which pay no tax presently and whose roadways are in most need of improvement.

The real solution to the difficulties of railroads is revision of current regulatory rules to permit them to charge competitive rates based on cost of service. This will permit them to regain the traffic they have lost to other transport modes. If this is not done, any additional tax benefits will be absorbed just as inefficiently as the present benefits have been.

Administration Position

The Administration is therefore opposed to this section of the bill.

SECTION 1702

AMORTIZATION OF RAILROAD GRADING AND TUNNEL BORES

Description

This section of the bill permits the election of 50-year amortization for railroad grading and tunnel bores placed in service before January 1, 1969.

Revenue Estimate

It is estimated that this provision will decrease budget receipts by $21 million in Fiscal 1977 and $18 million annually thereafter.

Analysis

Until 1969, no depreciation or amortization deduction was allowed for railroad grading and tunnel bores. Since 1969, 50-year amortization has been allowed on such property placed in service after 1968. It seems reasonable to provide for an election by the railroads to amortize their current bases in such property regardless of the year placed in service.

Administration Position

The Administration, therefore, supports this section of the bill.

SECTION 2001

INSULATION OF RESIDENCE

Description

This section would provide a refundable tax credit for individuals equal to 30 percent of a taxpayer's qualified insulation expenditures during the taxable year with respect to any residence, but not to exceed $750 (for a maximum credit of $225) over the 2-1/2 year life of the credit. Qualified insulation expenditures are defined as those for any insulation, storm (or thermal) window or door, or any similar item, including a clock thermostat, purchased and installed after June 30, 1976, and before January 1, 1979. The credit is allowable for any residence used by the taxpayer which was in existence on May 25, 1976, i.e. for used residences only.

Revenue Estimate

It is estimated that this section of the Bill will result in a revenue loss of $192 million in fiscal 1977 and $320 million in 1978.

Analysis

As reported by the Finance Committee, the amount of expenditures available for credit would not be reduced by prior owners' or renters' insulation expenditures; the credit would only be available for expenditures made after June 30, 1976, rather than after March 17, 1975; the credit would be available for all residences of a taxpayer and not just his principal residence; and only those prior expenditures on which a credit is claimed will count toward the maximum expenditure limit. These amendments to the House proposal make the credit easier to administer and materially broaden and strengthen the incentive to make these energy saving expenditures while not providing a windfall to anyone.

However, the Finance Committee also changed the provisions of the House proposal by increasing by 50 percent the amount of expenditures available for the credit -- from $500 to $750 --, and by making the credit refundable. This increase in the amount of expenditures available for the credit will substantially increase the revenue impact without resulting in any substantial incremental increase in these energy saving expenditures.

A further source of controversy over this provision appears to be the inclusion of clock thermostats within the credit. Such devices may save energy, and may therefore be within the general purpose of the original proposal. However, if they are cost effective, individuals should not need any tax incentives to install them since their cost is relatively small. It would appear, therefore, that this will simply result in a windfall to those individuals who would be installing these devices in any case.

Administration Position

The Administration supports the technical changes made by the Finance Committee with the exception of increasing the amount of the purchases available for the credit, and making it refundable. The Administration's 1975 proposal contemplated a 15 percent, nonrefundable credit on qualified expenditures up to $1,000 (maximum credit $150).

The Administration is opposed to the clock thermostat provision because we question the need for such a credit.

SECTION 2002

RESIDENTIAL SOLAR AND GEOTHERMAL ENERGY EQUIPMENT

Description

This section of the Bill would provide a refundable tax credit of a maximum of $2,000 ($1,000 for heat pumps) for a percentage of the costs of solar or geothermal energy equipment, and heat pumps, installed on an individual's personal residence. The expenditures for solar or geothermal energy must take place before January 1, 1981, and may be incurred in installation on new or existing residences. The heap pump expenditure must take place before January 1, 1979, and must be incurred in installations on an existing residence.

Revenue Estimate

The estimated revenue loss for the solar and geothermal energy equipment credit is negligible in the initial years (i.e., less than $5 million) and up to $13 million in fiscal year 1981. For the heat pump credit, the estimated revenue loss is $3 million in fiscal year 1977, $5 million in 1978, and $6 million in 1979.

Analysis

Although the estimated revenue loss from these additional credits appears to be relatively small, they are opposed by the Administration because they make no economic sense. Solar and geothermal energy equipment has not failed to be used for residential purposes because of the lack of tax advantages; their nonuse arises from the fact that they are simply uneconomical. At this early stage of their development, this equipment is available and useful to only a few taxpayers for whom such credits would be a windfall. Therefore, little, if any, additional use of such equipment will result from these credits at this time.

On the other hand, the heat pump is technologically advanced and is generally available. It is chiefly used in areas which do not experience low temperatures. In these areas, heat pumps air condition in summer, heat in winter (in place of electric-residence installations). However, where the installation of a heat pump is economical, no tax incentive should be necessary. Moreover, it appears that this tax credit for heat pumps may be extensively taken by taxpayers who even without the credit would be installing this equipment. Consequently, the revenue loss may be considerably larger than estimated, and not attributable to any incremental increase in installation which the section purports to encourage. Moreover, it is as likely heat pump installations will <u>increase</u> energy consumption as reduce it.

<u>Administration Position</u>

The Administration is therefore opposed to this section of the Bill.

SECTION 2003

INVESTMENT TAX CREDIT CHANGES RELATING TO ENERGY CONSERVATION AND PRODUCTION

Description

This section of the Bill would establish an investment tax credit for insulation, solar and geothermal energy equipment, heat pumps, and certain waste conversion, railroad, coal mining and processing, and shale oil conversion equipment. The credit would be available generally for expenditures incurred prior to January 1, 1987, and will vary from a 20 percent rate for pre-1982 solar and geothermal energy equipment, to 12 percent for most of the rest of the equipment, and 10 percent for the insulation and post-1981 solar and geothermal energy equipment. An additional 2 percent is provided for businesses which establish ESOP's.

Revenue Estimate

It is estimated that the increases over the present investment credit provisions that are available for many of these types of expenditures will result in a revenue loss of $29 million in fiscal 1977, $76 million in 1978, and $100 million in 1981.

Analysis

In many cases the necessary technology is lacking for the widespread use of this equipment. Therefore, an investment tax credit will not increase its use. In the cases where the equipment is presently usable, these credits will not result in any increase in the utilization of the equipment, for business firms will rationally minimize costs. Consequently, these tax benefits represent windfalls to taxpayers who would otherwise have been making these purchases. Only when the prices of alternative energy sources (chiefly oil and gas) are freed from artificial governmental restraints and set by the free market, or when some breakthrough in technology takes place, will such equipment be extensively used in energy production. An investment credit such as this will have no substantial effect on their use at this time.

Administration Position

The Administration is therefore opposed to this section of the Bill.

SECTION 2004

BUSINESS DEDUCTION WITH REGARD TO GEOTHERMAL ENERGY PRODUCTION

Description

This section of the Bill would extend to geothermal energy production the benefits of both a deduction of a percentage of gross income from geothermal energy production computed in a manner similar to the depletion allowance, and the deduction for intangible drilling and development costs.

Revenue Estimate

It is estimated that this section will result in a revenue loss of $7 million in fiscal 1977, $15 million in 1978, and $21 million in 1981.

Analysis

The proponents of this measure argue that it is necessary to put geothermal energy production on the same footing as its competitors, chiefly the oil and gas industry. This line of reasoning is based on an implicit assumption, which is incorrect: that the preferential tax treatment of investment in oil and gas reserves, if any. causes the prices of these fuels in the United States to be lower than they otherwise would be and that, as a consequence, investment in geothermal resources is discouraged. But the United States is an importer of oil, and this means that domestic prices of oil, with which geothermal energy must compete, are determined in the world market (though currently modified by price controls). To the extent there are tax preferences for investment in oil -- and it will be an overall 70-75 percent -- this means only that more of U.S. consumption of oil is domestically produced, not that the price is lower. In the case of gas shipped interstate, price controls have effectively shut-off access to supplies by potential industrial users. Again, tax preferences, if any, for investment in gas reserves merely allow more homes to be heated with gas than otherwise would be the case, not that the potential demand for geothermal energy is diverted to low priced gas.

The fact of the matter in geothermal energy is that there is only one known field which produces super-heated steam: the Geysers field in California which is already exploited and in use. Geologists believe there may be one other such field in the United States, but the most likely form of geothermal energy will be underground water heated by rocks which, in turn, have been heated by the earth's core. Such sources of geothermal energy are known to exist, but the technology for dealing with dissolved solids and gases is not yet developed To provide the permanent tax incentives proposed in the bill would thus assure a windfall to present operators of the Geysers and an uncertain benefit for the research and developmental work yet to be completed in the more likely areas of geothermal potential.

Ironically, while the bill would attempt to limit shelters in oil and gas syndications, it opens up a wholly new area of predictable tax abuse by sanctioning expensing of capital outlays in geothermal resource investment and by exempting from tax 22 percent of the gross income from such investments.

Administration Position

The Administration is opposed to the enactment of this provision. Since this industry is in the largely research and experimental state of its development, the appropriate tax treatment of its drilling and pre-commercial development expenditures is for a limited period to treat them as research and experimental expenditures that are subject to the present option under section 174 of the Code to be immediately deductible or amortizable over the 60-month period after taxpayer begins to realize benefit from the expenditure.

SECTION 2006

CREDIT FOR PURCHASES OF MATTER WHICH CAN BE RECYCLED

Description

This section of the Bill would provide an investment tax credit for the purchase of recyclable ferrous or nonferrous metals, textile and paper waste, glass, and plastic. The amount of credit available is both limited to purchases in excess of a base amount (which in general is 75 percent of the taxpayer's purchases for the years 1973, 1974, and 1975, or his first three years of business), and is phased in over a 2-year period beginning in 1977.

Revenue Estimate

It is estimated that this provision will result in revenue loss of $9 million in fiscal 1977, $39 million in 1978, and $345 million in 1981.

Analysis

A tax credit for purchases of recycled material would be extremely costly in terms of lost revenue -- over $340 million per year when it is fully effective. The question is not whether it is desirable to make careful and efficient use of our natural resources and to reduce waste and pollution; rather, it is whether this tax credit will significantly increase the amount of materials recycled. The Administration has studied this question and has found that most scrap or waste that can be economically used is already collected. The cost of substantially expanding collection is prohibitive. Therefore, an increase in recycling is not prevented by any tax incentive-induced reduction in the sales price of competitive virgin materials, but by the costs of collection. No credit would be large enough to overcome that barrier to a substantial increase in recycling. The credit would only have the effect of driving up the price of the amount of scrap being used now, and would therefore result in a windfall for present collectors.

Administration Position

The Administration is therefore opposed to this section of the Bill.

SECTION 2007

REPEAL OF EXCISE TAX ON BUSES AND BUS PARTS

Description

Section 2007 would exempt all buses from the 10 percent manufacturers excise tax. Currently exempt are: 1) local transit buses; and 2) school buses. Buses now taxable are largely intercity buses, charter and sightseeing buses, buses used by churches and industrial firms, and purchases by the U.S. Government (other than for school use). But parts and accessories would be exempted from the 8 percent tax on truck and bus parts and accessories. According to the Committee Report, the parts exemption would cover "parts designed and ordinarily used for buses." This would follow the approach of present law which exempts any part or accessory "which is suitable for use (and ordinarily is used) on or in connection with, or as a component part of" a passenger automobile. However, the exemption for bus parts in the bill does not contain the reference to "designed and ordinarily used," and these words create some difficulty because the bill language plus present regulations would exempt parts "primarily designed" for use with buses.

Revenue Estimate

Loss of $19 million in fiscal 1977 and $20 million in fiscal 1978. Of the total, about $3 million is attributable to the parts exemption. The revenue loss would all be reflected in the Highway Trust Fund.

Analysis

The House energy bill (H.R. 6860) would have exempted intercity buses; that is, buses used predominantly in public passenger transportation. The stated purpose of the proposed exemption was to encourage the use of intercity bus transportation rather than automobiles and to remove the tax distinction between local transit buses and intercity buses. The Senate Finance Committee report repeats the energy saving aspect of bus transportation. It also argues that complete exemption of all buses will remove tax discrimination between types of buses and avoid the administrative problems in distinguishing between buses used "predominantly" in local transit service in urban areas and buses used "exclusively" for school transportation.

The competitive efficiency of bus transportation versus the automobile would not be improved by the proposed exemptions. The exemption from the tax on buses would reduce intercity bus costs by only 0.045 cents per passenger mile. To argue that the exemption would help save energy is deceptive. Furthermore, the bus companies, especially the intercity lines, benefit greatly from the road construction financed by the highway user charges and should continue to pay their share.

The present exemption for school buses (which was opposed by the Treasury) arises from the fact that private school bus operators had to compete with the exemption that was available for purchases by school districts. Private local transit companies also were discriminated against, since publicly owned companies could buy all equipment and fuel free of excise tax. These exemptions were, thus, intended to rectify genuine discriminatory situations. There is not, however, any effective discrimination against intercity buses and little with respect to charter buses, even though some "local transit" bus operations granted exemption have been for operations between two urban areas.

Administration Position

For the reasons stated, the Administration opposes this provision.

SECTION 2009

NONHIGHWAY USE OF SPECIAL MOTOR FUELS

Description

Special motor fuels (principally propane and butane, commonly known as liquified petroleum gas) are taxed at 4 cents a gallon when sold for use, or used, in a motor vehicle. If sold for use, or used, in a motor vehicle which is not registered, or required to be registered, for highway use, the tax is 2 cents per gallon. Section 2009 would exempt from the 2 cents per gallon tax fuel sold for use, or used, in a motor vehicle, which is not registered, or required to be registered, for highway use. Exemption would be achieved by means of credit or refund to the purchaser.

Revenue Estimate

Probably very small. All the revenue loss would be reflected in the Highway Trust Fund.

Analysis

The tax on special motor fuels affects fuels for a greater variety of vehicles than the tax on diesel fuel, since the former applies to fuel for motor vehicles while the latter is applicable only to fuel for diesel powered highway vehicles. Thus, in the case of a fork lift truck, for example, there is no fuel tax if the truck is powered by a diesel engine or by electricity, but there is a tax of 2 cents a gallon if the truck is powered by liquified petroleum gas. The proposed amendment would equalize the treatment of special motor fuels with that of diesel fuel.

Administration Position

The Administration has no objection to this provision.

SECTION 2010

DUTY-FREE EXCHANGE OF CRUDE OIL

Description

This amendment exempts from import duties (Part 10 of Schedule 4 of the Tariff Schedules of the United States, 19 U.S.C. 1202) crude petroleum imported from Canada under certain company-to-company oil swap arrangements between Canadian and United States refiners.

Revenue Estimate

Negligible (i.e., less than $5 million).

Analysis

The structure of both the United States and the Canadian oil distribution networks has developed in reliance on the ability of United States and Canadian refiners to exchange sources of crude oil. Thus, a United States refinery located in North Dakota may find it more efficient to import crude oil from a Canadian province than to construct a transportation system from a Texas oil field or from an Eastern or West Coast port. A Canadian refinery might find it equally more advantageous to import crude oil from the United States rather than rely exclusively on national oil sources and distribution systems.

Notwithstanding an announced policy of the Canadian government of gradually reducing crude oil exports to the United States to zero by the early 1980's, the governments of the United States and Canada have agreed to permit company-to-company exchanges between Canadian and United States refiners and to remove governmental obstacles to such arrangements.

Administration Position

Since this provision is consistent with the U.S.-Canadian agreement to promote oil swaps between refiners and since such arrangements tend to increase efficiency which hopefully will benefit consumers, the Administration does not object to the amendment from an overall policy point of view. However, the Administration opposes the amendment because it could violate our trade agreements. It appears that a "free" import duty granted exclusively to imports of crude oil from Canada would violate our Most-Favored-Nation agreements with other countries.

A preferable approach would be to amend the "drawback" provisions of our tariff rules. Generally, under the drawback rules, a company is refunded duties paid on imported goods if an equal amount of the same goods or goods incorporating the imported goods are exported by the company. Thus, the net effect of the application of the drawback rules to company-to-company oil swaps would be the same as an exemption from import duties.

SECTION 2101

MODIFICATION OF TRANSITIONAL RULE FOR SALES OF PROPERTY BY PRIVATE FOUNDATIONS

Description

This provision would allow a private foundation leasing property to a disqualified person under a lease that meets the requirements of a transition rule of the 1969 Act (§ 101(l)(2)(C)) to sell, exchange or otherwise dispose of the property to a disqualified person if the transfer occurs before 1978 and the foundation receives at least fair market value for the property.

Revenue Estimate

Negligible.

Analysis

This provision is analogous to a transition rule in the Employee Retirement Income Security Act (ERISA) (section 2003 (c)(2)(C)) that would allow the sale of property by a qualified plan to a disqualified person under similar conditions. In addition, such a transition rule may allow the foundation to get the maximum amount for such property, since the disqualified person leasing it may be the only person who is really interested in paying full value for it. That would be especially true in the case of buildings that had been designed or altered to the specifications of the disqualified person.

Administration Position

The Administration has no objection to this provision.

SECTION 2104

EXTENSION OF TIME TO CONFORM CHARITABLE REMAINDER TRUSTS FOR ESTATE TAX PURPOSES

Description

Section 2055(e)(3) currently allows the governing instrument of a transfer under a will executed by September 1, 1974, or a trust created by such date, to be amended to meet the charitable remainder trust requirements of section 664, provided that such amendment is effected (or judicial proceedings to effect it have started) by December 31, 1975. The amendment would extend the transition rule by two years, to December 31, 1977, and allow wills executed, and trusts created, by such date to qualify for this reformation procedure.

Revenue Estimate

This provision would reduce federal revenues by less than $5 million during fiscal years 1977 and 1978.

Analysis

It is asserted that the proposed regulations under section 2055(e)(3) were not published until late in 1975 and did not really give estates sufficient time to implement the necessary proceedings. The purpose of the two-year extension is to provide such time, and to allow the Service to conduct a heavy publicity campaign, emphasizing the need for compliance with section 664 and the fact that this is the last extension that Congress is going to provide in this area.

Administration Position

The Administration has no objection to this provision.

SECTION 2106

INCOME FROM FAIRS, EXPOSITIONS AND TRADE SHOWS

Description

Excludes from the unrelated business income tax the income of certain exempt organizations from the conduct of public entertainment activities (including horse-racing) at fairs and expositions and of income from trade shows (including fees charged to exhibitions). The fairs and expositions provision is retroactive to taxable years beginning after 12/31/62 while the trade shows provision is retroactive to taxable years beginning after 12/31/69.

Revenue Estimate

The committee report states that the revenue impact will be relatively small. However, one case presently pending in Los Angeles and involving only fair income involves $6 million. A more conservative estimate would be $50 million for the retroactive feature and $5 million per year thereafter.

Analysis

The committee explanation for these exemptions from the tax is that these are activities where exempt organizations are not in competition with taxable organizations. However, while there may be no direct competition, to the extent that these organizations promote public entertainment activities at state fairs, and in the case of certain trade shows, they are competing for the entertainment dollar with taxpaying organizations. It should be noted that, as drafted in the bill, income from horse-racing would be exempt even if not associated with the conduct of a fair. Moreover, this section would change the exempt organization definitions by providing that an exemption could not be denied solely on the ground that the organization conducted a trade show or public entertainment activities at a state fair.

Administration Position

The Administration would have no objection to an exemption for trade shows that did not change the qualification requirements for exempt organizations. However, given the retroactive effective date and the overly broad provisions of the bill as drafted, the Administration is opposed to this section of the bill.

JUNE 4 COMMITTEE ACTION

PRIVATE OPERATING FOUNDATIONS; IMPUTED INTEREST

Description

This provision would (1) reduce the minimum expenditure requirement for a private operating foundation under section 4942, from two-thirds of the minimum payout percentage to 3% of its noncharitable assets, (2) exempt libraries and museums from the section 4940 tax on their net investment income, ("the audit fee tax"), provided that they elect to meet a higher (5%) minimum expenditure requirement than other operating foundations, and (3) exclude imputed interest from installment sales made in pre-1970 taxable years from the income of private foundations that must be distributed annually under section 4942.

Revenue Estimate

Loss of less than $5 million annually.

Analysis

The reduction of the minimum expenditure requirement for private operating foundations to a flat 3% is consistent with the bill's reduction of the minimum payout percentage for other private foundations to a flat 5% (2/3 x 5% = 3.33%).

However, the exemption for libraries and museums from the audit fee tax represents a significant "chipping away" from the private foundations provisions, and one for which there is no real justification. It also complicates the private foundation provisions further, by creating another species of foundations, and one that is especially difficult to define.

The theory of the audit fee tax is that private foundations should pay the cost of the Service auditing them. There is no reason to suppose that libraries and museums that are private foundations are less susceptible of abuse because they elect to spend more for "charitable" purposes. For example, art museums could satisfy this requirement by simply buying more paintings. It is true that some libraries and museums pay a higher audit fee tax than others because they have large endowments that generate large amounts of investment income (and cause them to fail the public support test for public charities). But other operating foundations have the same problem and they would not be exempted by this provision. Nor would the exemption be limited to libraries and museums that are no longer controlled by substantial contributors or their families, an approach that has been recommended by the Commission on Private Philanthropy and Public Needs (Filer Commission). Finally, there is the problem of defining the terms "libraries" and "museums". Conceivably, the term "museums" could cover arboretums and many other private foundations that allow the public to see some of their assets.

With respect to imputed interest from pre-1969 Act installment sales, there is no particular reason to require a private foundation to distribute these amounts to charity, as long as it otherwise meets the minimum payout requirements.

Administration Position

The Administration has no objection to this provision, except for the exemption of libraries and museums from the section 4940 tax.

JUNE 4 COMMITTEE ACTION

INTEREST ON CERTAIN GOVERNMENTAL OBLIGATIONS FOR HOSPITAL CONSTRUCTION

Description

This amendment would permit a state or political subdivision to issue up to $20 million of tax-exempt industrial development bonds if substantially all the bond proceeds are used to provide one or more private hospital facilities. The appropriate state health agency must certify that the facilities are "necessary".

Revenue Estimate

It is not certain how many private hospital facilities might ultimately be financed under this section. In 1975, the volume of tax-exempt bonds issued to finance hospitals was $2.6 billion. However, the great bulk of that financing was for public and charitable hospitals.

Analysis

Under current law industrial development bonds may be issued to finance certain exempt activities. In addition, a "small issue" exemption permits the issuance of up to $5 million of industrial development bonds to finance land or depreciable property for a user or related parties in any county.

The amendment is thus a selective expansion of the present industrial development bond limitations. Furthermore, the only standard provided--that state agencies determine that the hospital is "necessary"--is all but meaningless. Any new hospital is necessary in the sense that it will be appropriate or helpful in providing health care.

Hospitals operated by a governmental unit or a charitable organization can be financed today with tax-exempt municipal bonds without dollar limitation. But private hospital facilities cannot, because the use of the bond proceeds would directly and substantially benefit private investors.

The provision is a bad precedent. If it were approved, there are many other operations conducted by private parties which might arguably provide some public benefit warranting similar tax-exempt financing. These would include nursing homes, dentist's offices, etc. There is no reason to extend tax-exempt financing to such nongovernmental activities.

The proliferation of tax-exempt bonds issued for private purposes has a substantial impact on the tax-exempt market. It drives up the costs of financing for public schools, recreation facilities, and other municipal projects. In recent months representatives of state and local governments have strongly opposed the increasing use of industrial development bonds and many have requested that Congress limit this trend. In light of this, the amendment is clearly a step in the wrong direction.

Administration Position

The Administration is opposed to this amendment.

JUNE 4 COMMITTEE ACTION

PREPAID LEGAL INSURANCE

Description

This provision adds a new section 120 to the Code, under which an employee, his spouse, and his dependents may exclude from gross income employer contributions to a qualified group legal services plan and the value of legal services provided under the plan. The plan must provide personal legal services (rather than business services), and it may not discriminate in favor of employees who are officers, shareholders, self-employed individuals, or highly compensated. The anti-discrimination provisions extend both to eligibility for participation and to employer contributions. Contributions may be made only to one or a combination of the following: (1) insurance companies; (2) exempt trusts described in a new section 501(c)(20) added by this section of the bill; or (3) as prepayments to providers of legal services. The provision is effective for taxable years beginning after December 31, 1973.

Revenue Estimate

It is estimated that this Committee Amendment will generate revenue losses of $5 million for fiscal 1977, $8 million for fiscal 1978, $33 million for fiscal 1981, and significant increases thereafter.

Analysis

The provision does not affect deductions by employers for contributions to such plans. The current rules governing the availability of such deductions will not be changed, whether or not a group legal services plan meets the requirements of new section 120. With regard to the tax treatment of employees, spouses and dependents, the problem is whether. aside from revenue considerations, there should be incentives in the Internal Revenue Code for a social program with the potential magnitude of tax-favored group legal services plans Such plans will result in partial government financing of the cost of personal services which are provided at no cost to the individual. This is generally contrary to the well-established policy embodied in the Code which denies a deduction for personal expenses.

Administration Position

The Administration is therefore opposed to this Committee Amendment.

JUNE 11 COMMITTEE ACTION

FEDERAL GIFT TAX APPLICABLE TO COUPLES RESIDING IN COMMUNITY PROPERTY STATES

Description

Amends the gift tax provisions regarding the treatment of survivor benefits in a qualified pension plan. In the case of a couple living in a community property state, present law provides that where such benefits are payable to someone other than the employee's spouse (who survives the employee), the act of the nonemployee surviving spouse in waiving community property rights to the benefits is considered a gift of one-half of such benefits. The amendment would provide an exclusion from the gift tax to the extent that the value of the benefits is attributable to contributions by the employer to the qualified pension plan.

Revenue Estimate

Negligible (i.e., less than $5 million).

Analysis

Present law provides that the value of an annuity or other payment from a qualified pension plan to a survivor of an employee is generally includible in the estate of the employee to the extent such value is attributable to contributions made by the employee. For this purpose, however, contributions by an employer to the qualified pension plan are not considered to be made by the employee. Thus, if the plan is funded entirely by employer contributions, the value of the survivor benefit will be entirely excluded from the employee's estate.

Similar rules apply under the gift tax provisions in cases where an employee makes an irrevocable gift of a survivor benefit by, for example, electing a joint and survivor annuity.

Under these estate and gift provisions, a problem arose in community property states. In such a state, the nonemployee spouse would be considered the owner of a half interest in the annuity rights under the pension plan, but the qualified plan exclusion for the value attributable to employer contributions has been held inapplicable (the spouse not being an employee).

Public Law 92-580, enacted October 27, 1972, amended the estate tax provisions to provide the same exclusion for the nonemployee spouse in a community property state as is provided for the employee spouse. Through oversight, no amendment was made to the gift tax provisions (it is relatively rare for the surviving spouse not to be the designated beneficiary, and the gift tax problem arises only in that event).

Administration Position

The Administration supports this amendment, which cures a drafting oversight and provides more equal treatment under the gift tax for couples living in separate property and community property states.

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JUNE 11 COMMITTEE ACTION

CERTAIN GENERATION-SKIPPING TRANSFERS

Description

Would impose an additional tax on generation-skipping trust transfers. A generation-skipping trust transfer would occur (and the tax would be imposed) upon a distribution of trust assets to a generation more than one generation below the trust grantor (for example, a distribution to a grandchild of the grantor of the trust) or upon a termination of the interest in the trust of a member of the skipped generation (for example, the termination of an interest of the grantor's child). The tax would be imposed at the estate tax rates applicable to the individual in the skipped generation, who is the "deemed transferor" of the trust assets, and would generally be payable out of the trust corpus. The objective would be to make the total taxes (the tax on the original creation of the trust plus the additional tax on generation-skipping transfers) substantially equivalent to the total estate taxes that would have been imposed if the property had been transferred outright to each succeeding generation.

Revenue Estimate

This provision is not expected to have any significant impact on the revenue for a number of years. The impact would eventually be positive.

Analysis

The question of whether to impose an additional tax on generation-skipping transfers has been considered one of the major issues of estate and gift tax reform for at least a decade and a half. The concern has been expressed that present law permits an individual to utilize the trust mechanism to avoid the imposition of estate tax for one or several generations, even though successive generations of that individual's heirs have substantial rights in the trust (for example, the right to receive the trust income and various limited powers to invade the trust corpus). However, legitimate family financial planning objectives may cause the creation of trusts in a great variety of situations for non-tax reasons. For example, a trust may be used to provide for a disabled relative, to provide for the financial security of a spendthrift child, to protect the inheritance of a daughter from the importunities of her husband, or to provide a life income for a surviving spouse while ensuring that the inheritance will ultimately pass to the grantor's heirs. Moreover, the trust mechanism is extremely flexible, and the possible combinations of trust powers and discretionary payment provisions is virtually limitless.

Proposals to impose an additional tax on generation-skipping trust transfers have proven to be extremely complex and very difficult from a technical standpoint to draft. Without full and careful deliberation, there is a great danger that provisions will be adopted that will disrupt family financial planning and trust arrangements in unintended and undesirable ways. Moreover, there are a number of important issues to be resolved in designing such a tax including, for example, whether to apply the tax to existing trusts and whether to apply the tax to trusts that skip only one generation.

The Finance Committee amendment recognizes these concerns by postponing the effective date of the generation-skipping trust tax in order to permit further consideration by the Committee. Thus, in the case of irrevocable trusts created before May 1, 1977, the new tax would not apply to any generation-skipping transfer before May 1, 1987; and in the case of other trusts the new tax would not apply to any generation-skipping transfer made before May 1, 1977.

Administration Position

The Administration recommends that this provision be deleted from the bill. It has serious doubts whether, given the legislative calendar of the Congress, the many issues respecting a generation-skipping trust tax can be fully resolved before May 1, 1977. Deletion of the provision from the bill would give the tax committees an opportunity to develop a sound and responsible approach to the problem of generation-skipping trust transfers.

JUNE 11 COMMITTEE ACTION

CONTRIBUTIONS OF INVENTORY TO CHARITABLE ORGANIZATIONS

Description

Under present law, a taxpayer who makes a charitable contribution of inventory must reduce the amount of deduction by the amount of ordinary gain he would have realized had he sold the property. Under this provision a corporate taxpayer would be allowed to deduct half of the appreciation as a charitable deduction but could in no event deduct more than twice its basis in the property.

Revenue Estimate

The revenue loss from this provision would be $16 million in fiscal year 1977, $22 million in fiscal year 1978, and $24 million in fiscal year 1981.

Analysis

The present rules were enacted in 1969 to prevent the abuse which gave rise to an after-tax profit when appreciated ordinary income property was contributed to charities. Medical missionary and relief groups assert, however, that the 1969 changes have greatly decreased contributions of drugs and medical supplies, even where manufacturers have surplus stocks. By simply discarding surpluses, the manufactures may obtain a deduction for their inventory cost. In contrast, a charitable contribution often requires additional expenditures for repackaging, transportation, etc. Although such additional costs would be tax deductible, the manufacturer would still be out of pocket for part of the expenses. The tax law, thus, tends to disfavor charitable contributions.

Administration Position

This Administration does not object to this provision. The limitation of the maximum deduction to twice the manufacturer's basis for the property ensures that a company cannot profit by manufacturing solely to make charitable contributions.

JUNE 11 COMMITTEE ACTION

SWAP FUNDS

Description

The Committee amendment makes taxable the transfer of appreciated stock or securities (as well as other property) to a partnership if, as a result, the transferor's investment interest is diversified, thus conforming the partnership tax rules to those for corporations in the case of exchange funds. It also amends the trust rules to tax gain where appreciated stock or securities are transferred to a trust if the effect is to diversify the transferor's interest similar to that of an exchange fund in corporate or partnership form. Further, the amendment makes mergers and other corporate reorganizations (other than "E" reorganizations) taxable where a publicly held mutual fund or other investment company acquires a corporation which owns a relatively undiversified investment portfolio of stock or securities.

The exchange fund and merger provisions of the amendment would apply to transfers made after February 17, 1976, the date on which the bill was introduced in the House. However, grandfather rules provide for continuation of the present tax-free treatment where either a ruling was requested on the tax-free nature of the transfer or a registration statement was filed with the SEC on or before March 26, 1976. The amendments to the trust rules are effective for transfers made on or after April 8, 1976.

Revenue Estimate

Less than $10 million annually.

Analysis

The Administration supports the amendments making the tax treatment of transfers to exchange funds in partnership or trust form generally conform to the tax treatment to transfers to such funds in corporate form and also the limits on the use of personal holding companies to achieve diversification without the payment of tax through mergers with investment companies.

The major difference between the House bill and the Committee amendment is the extent of the grandfather clause. The House bill would grandfather only those five funds which had either requested a ruling or filed a registration statement with the SEC on or before February 17, 1976, the date the House bill was introduced. The Committee amendment, however, would grandfather funds where either a ruling was requested or a registration statement filed on or before March 26, 1976. This change in effective date allows the grandfathering of three additional funds.

We oppose the broadening of the grandfather clause in the Committee amendment. In the March 29 testimony before the Ways and Means Committee by Deputy Assistant Secretary William M. Goldstein, Treasury suggested the grandfather clause subsequently adopted by the House since the general February 17 effective date "would be unfair to taxpayers . . . which have expended considerable amounts of time and money in organizing and preparing to market swap funds but have not yet effected the actual exchange of securities." Treasury also noted that the five exchange funds grandfathered by the House bill had completed "all of the work in connection with the ruling requests and the SEC filings . . . by December, 1975, well before the first date on which the February 17, 1976 cut-off was suggested." The additional funds grandfathered by the Committee amendment do not merit grandfather treatment. They did not expend the funds and the marketing efforts of a magnitude equal to that of the five funds grandfathered by the House bill. Two of the funds grandfathered by the Committee amendment did not even file ruling requests on the tax treatment of the transfers to the exchange fund partnership until March 26, 1976, more than a month after the House bill was introduced.

A further difference between the House bill and the Committee amendment is the special exception in the Committee amendment for certain family partnerships. Under this provision no gain would be recognized on the transfer of property to a general partnership, if more than 95 percent of the total interest in partnership capital and profits is owned by members of the same family and the partnership agreement expressly allocates the portion of the gain on the sale of any property equal to the appreciation in value of such property on the date contributed to the partnership to the person who contributed such property to the partnership. We believe that a special exception for certain family partnerships is not merited. The purpose of the House bill is to prevent taxpayers who own appreciated securities from diversifying their investment portfolios without paying tax on the capital gain. If the special rule were enacted, certain taxpayers could continue to utilize family partnerships to achieve diversification of their investments and avoid payment of capital gain tax on their appreciation at the time they contributed the property to the partnership. Also, there is no similar exception in the rules governing transfers to family corporations. Thus, the special rule would frustrate a major objective of the bill to conform the rules governing transfers of appreciated property to partnerships with those governing transfers to corporations.

Administration Position

The Administration therefore generally supports the amendment but is opposed to the family partnership exception and the Committee modification of the grandfather clause.

JUNE 11 COMMITTEE ACTION

SHARED SERVICE OF HOSPITALS AND ADDITION OF LAUNDRIES TO COOPERATIVE SERVICES

Description

Under present law (section 501(e)), a cooperative service organization is exempt as a charity. It may perform certain services for charitable hospitals but may not perform laundry and clinical services. The proposal would add laundry and clinical services to the list of permissible activities. In addition, exempt hospitals which provide services to other hospitals having less than 100 inpatients would not be subject to the unrelated business income tax. The first provision is effective for taxable years ending after 1976, and the second would apply to all open years.

Revenue Estimate

Negligible (i.e., less than $5 million).

Analysis

The first amendment is justified on the ground that laundry and clinical services are essential to the operation of hospitals and that cooperative operation permits savings in operating costs. The second provision is an attempt to avoid the limitation of section 501(e), which requires the exempt services to be operated on a cooperative basis so that all participants may share in the cost savings. The second provision is unjustified particularly since no savings will be passed on to the small hospitals who will be charged more than cost for the services provided. It will allow certain hospitals to engage in the business of selling services to other hospitals in competition with commercial operators.

Administration Position

The Administration has no objection to the first amendment, but is opposed to the second amendment.

JUNE 11 COMMITTEE ACTION

LEVEL PREMIUM PLANS COVERING OWNER-EMPLOYEES (H.R. 10 PLANS)

Description

This Committee Amendment retroactively amends section 415 of the Code such that an H.R. 10 plan can provide for annual contributions on behalf of an owner-employee in excess of the 25 percent-of-compensation limitation of section 415(c)(1)(B), provided the contributions are used to pay level premiums for annuity or other contracts, as described in section 401(e). This exception to section 415 (c)(1)(B) will apply only if the owner-employee is not an active participant during the year in any other type of qualified plan maintained by the employer, although the exception will apply to two or more H.R. 10 plans each of which is funded by level premium annuity or other contracts.

Revenue Estimate

Negligible (i.e., less than $5 million annually).

Analysis

The issue is similar to that involved in the "jockey" provision in that contributions to an H.R. 10 plan permitted elsewhere in the Code are precluded by the percentage-of-compensation limitation for contributions to defined contribution plans under section 415(c)(1)(B). Section 401(e), as modified by the Employee Retirement Income Security Act of 1974, allows an employer contribution on behalf of an owner-employee in excess of the amount deductible, provided the plan is funded by level premium annuity, etc. contracts and the other requirements of section 401(e) are satisfied. However, an employer contribution within the limits of section 401(e) will disqualify the plan under section 415 if it results in an allocation in excess of 25 percent of the owner-employee's earned income.

Administration Position

The Administration does not oppose this amendment of the Code. Section 401(e) was intended to allow contributions to H.R. 10 plans funded exclusively by level premium annuity or other contracts without regard to minor fluctuations in the earned income of participating owner-employees. However, the 25 percent ceiling on allocations under defined contribution plans limits the utilization of the exception provided by section 401(e). This amendment will allow the full use of that exception.

JUNE 11 COMMITTEE ACTION

ACQUISITION INDEBTEDNESS

Description

Under present law tax-exempt organizations are required to pay an unrelated business income tax on income which arises from property which is debt-financed and is not used for an exempt purpose. Thus, property acquired subject to a mortgage or other lien is generally considered to be debt financed. The Treasury regulations provide an exception to the general rule where State law provides that a tax lien attaches to property prior to the time such lien becomes due and payable. In such a case, the lien does not become acquisition indebtedness until the organization must pay the tax. The amendment would extend the exception to State or local government special assessments to finance improvements. The provision is retroactive to taxable years beginning after December 31, 1969.

Revenue Estimate

Negligible (i.e., less than $5 million).

Analysis

This provision is intended to resolve a problem that has arisen where an exempt organization leases property and a special assessment lien is imposed on the property because of the failure of a tenant to pay the assessment when due. Under present law it appears that an exempt organization may have debt-financed income in such a case, even though it may have no knowledge of the nonpayment of the assessment.

Administration Position

The Administration has no objection to this provision. However, it believes it would be desirable to make technical revisions in the provision to ensure that it applies only to special assessments of a type normally made by a State or local governmental unit or instrumentality and cannot be utilized as a device for financing improvements to an exempt organization's property.

JUNE 11 COMMITTEE ACTION

EXTENSION OF SELF-DEALING TRANSITION RULES FOR PRIVATE FOUNDATION

Description

This amendment provides an extension to December 31, 1976, of the transition rule in the 1969 Act (§ 101(1)(2)(B)) that allows a private foundation to dispose of certain of its pre-1969 Act excess business holdings to a disqualified person, without subjecting him to the self-dealing tax under section 4941.

Revenue Estimate

Negligible (i.e., less than $5 million).

Analysis

Section 4943 basically limits the holdings of a private foundation in a business enterprise to 20% of the equity interest, less the interests held by all disqualified persons. Under a grandfather rule for pre-1969 Act holdings of a private foundation, section 4943 substitutes a 50% limit (following a transition period allowing foundations to meet the requirement) for the 20% limit. Section 101(1)(2)(B) provides an indefinite transition rule (as an exception from the self-dealing prohibitions) allowing a private foundation to dispose of the excess over the 50% limit to a disqualified person, so as to avoid the section 4943 tax on such excess. The transition rule also provided that prior to January 1, 1975, a foundation could transfer to a disqualified person any pre-1969 Act holdings that fell between the 20% and 50% limits, even though the foundation might never be subject to tax on such amounts. In either case, the foundation must receive at least fair market value for the holdings that it transfers to the disqualified person. One reason for the transition rule is that a disqualified person (e.g., the corporation whose stock is held by the foundation) is often the person who is most interested in acquiring the foundation's excess holdings and is willing to pay full value for them.

The amendment would provide an additional period in which private foundations could reduce their holdings to the 20% limit by transferring the excess to a disqualified person. A number of foundations are right around the 50% limit, and do not want to risk being disqualified from the indefinite transition rule because of a valuation dispute with the Service, in which they are deemed to fail the 50% test. To the extent they fail this test, the measure of the self-dealing tax is the full value of the property transferred (that was not above the 50% limit), not the difference between that value and the amount the disqualified person pays to the foundation for such property.

Administration Position

The Administration has no objection to this provision.

JUNE 11 COMMITTEE ACTION

CERTAIN EQUIPMENT LEASES
EQUIPMENT LEASING - EFFECTIVE DATE

Description

The Committee amendment provides that the "at risk" limitation would not apply to losses attributable to amounts paid or incurred after December 31, 1975 in connection with section 1245 property for which the lease was in effect on December 31, 1975.

Revenue Estimate

It is estimated that this amendment will reduce the revenue raised by the "at risk" limitation by approximately $1 million.

Analysis

Pursuant to the amendment the "at risk" limitation of section 202 of the Senate bill would apply only to equipment lease transactions entered into after December 31, 1975. The amendment modifies the initial Finance Committee decision (adopted by the Senate on June 22) under which the "at risk" limitation would apply to losses attributable to amounts paid or incurred after December 31, 1975, without regard to the date on which the underlying lease transaction was entered. Thus, the "at risk" limitation would apply to post-1975 losses, even if the lease was in effect prior to January 1, 1976.

In computing the yield on an equipment leasing transaction, the tax benefits are an important consideration. Taxpayers who entered into binding lease transactions prior to 1976 would have relied on the tax laws then in effect to determine their overall economic return. Such taxpayers would have made their investment decision based on the reasonable expectation that tax benefits such as accelerated depreciation would not be curtailed during the life of their transactions. Their rate of return could be severely limited by the subsequent adoption and application of the "at risk" limitation. Such a retroactive change in the tax law may make taxpayers reluctant to enter into long-term arrangements involving tax incentives and undermine well-planned investment decisions. The amendment corrects this defect by applying the "at risk" limitation prospectively to only post-1975 lease transactions.

Administration Position

The Administration supports the amendment since it provides an equitable rule by applying the "at risk" limitation to only post-1975 equipment leasing transactions.

JUNE 11 COMMITTEE ACTION

TAX TREATMENT OF ADVERTISING DISPLAYS

Description

This section would permit a taxpayer to elect to treat outdoor advertising displays, such as billboards, as real property, only if the taxpayer had not previously treated them as personal property eligible for the investment tax credit or for additional first-year depreciation.

Revenue Estimate

Negligible (less than $5 million).

Analysis

Under section 1033 of the Code, which defers recognition of gain on involuntarily converted property when the proceeds of the conversion are reinvested, the criteria for permissible reinvestment are more liberal for real property than for other property. For years taxpayers and the Service treated billboards, etc., as real property which would qualify for this favored treatment. A number of recent court cases, however, have held that for purposes of the investment tax credit, billboards are tangible personal property.

The Committee amendment would permit taxpayers who have treated their billboards as real property to continue to do so. It is intended to benefit taxpayers whose billboards have been condemned under Federal or state highway beautification acts and who find themselves caught by the Service's change in position. The general relief provisions of section 1033 are inadequate because the very cause of their billboards' condemnation -- highway beautification legislation -- prevents them from reinvesting in qualifying replacement property. The Committee Amendment will in effect allow such taxpayers to retain the more liberal provision in section 1033 applicable to real property.

Administration Position

The Administration does not object to this Committee amendment.

JUNE 11 COMMITTEE ACTION

SOLAR INVESTMENT CREDIT FOR WINDMILLS

Description

This amendment would add "wind-related energy equipment", i.e., windmills, to the types of equipment that are eligible under section 2002 of the Bill for the refundable tax credit, and under section 2003 of the Bill for the special investment tax credit, for solar and geothermal energy equipment. In the case of the refundable tax credit, the amount of credit would be limited in the same manner as heat pumps.

This equipment must be used to heat or cool a building or provide hot water, presumably through production of electricity.

Revenue Estimate

It is estimated that this amendment will result in no more than $5 million of additional revenue loss under each of the sections amended.

Analysis

It is unlikely that any substantial amount of such equipment is going to be installed in the near future. Therefore, this provision will merely result in a windfall to those few taxpayers who due to unusual circumstances, or perhaps personal ideosyncracies, happen to install such equipment.

Administration Position

The Administration is therefore opposed to this Committee amendment.

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