1981–82 MISCELLANEOUS TAX BILLS, VII

HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 169, S. 532, S. 721, S. 791, S. 979, AND S. 1382

JUNE 26, 1981

Printed for the use of the Committee on Finance

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1981-82 MISCELLANEOUS TAX BILLS VII

FRIDAY, JUNE 26, 1981

U.S. SENATE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,
COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2221, Dirksen Senate Office Building, Hon. Bob Packwood (chairman) presiding.

Present: Senators Packwood, Heinz, Byrd, and Mitchell.

[The press release anouncing this hearing, the bills S. 169, S. 532, S. 721, S. 791, S. 979, and S. 1382, the Joint Committee on Taxation print, and Senator Dan Quayle's prepared statement follow:]

Press Release No. 81-143

PRESS RELEASE

FOR IMMEDIATE RELEASE
June 12, 1981

COMMITTEE ON FINANCE
UNITED STATES SENATE
Subcommittee on Taxation and
Debt Management
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT SETS HEARING ON MISCELLANEOUS TAX BILLS

Senator Bob Packwood, Chairman of the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance, announced today that the Subcommittee will hold a hearing on Friday, June 26, 1981.

The hearing will begin at 9:30 a.m. in Room 2221 of the Dirksen Senate Office Building.

The following legislative proposals will be considered at the hearing:

S. 721--Introduced by Senator Humphrey. Would prohibit the imposition of any tax by a State on the income derived by any individual from services performed at the Portsmouth Naval Shipyard if the individual is not a resident or domiciliary of the State in which the shipyard is located.

S. 791--Introduced by Senator Mitchell. Would exclude certain service performed on fishing boats from coverage for purposes of unemployment compensation.

S. 532--Introduced by Senator Heflin. Would exclude certain service performed on fishing boats from coverage for purposes of unemployment compensation.

S. 979--Introduced by Senator Lugar. Would clarify the tax exemption for interest on obligations of volunteer fire departments.

S. 169--Introduced by Senator Heinz. Would provide tax-exempt financing to facilities for expenditures which are for pollution control, and would permit expensing of amounts paid or incurred in connection with the construction or erection of pollution control facilities.

Requests to testify.--Witnesses who desire to testify at the hearing must submit a written request to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, to be received no later than the close of business on Friday, June 19, 1981. Witnesses will be notified as soon as practicable thereafter whether it has been possible to schedule them to present oral testimony. If for some reason a witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance. In such a case, a witness should notify the Committee of his inability to appear as soon as possible.

Consolidated testimony.--Senator Packwood urges all witnesses who have a common position or who have the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise

obtain. Senator Packwood urges that all witnesses exert a maximum effort to consolidate and coordinate their statements.

Legislative Reorganization Act.--Senator Packwood stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify should comply with the following rules:

(1) All witnesses must submit written statements of their testimony.

(2) Written statements must be typed on letter-size paper (not legal size) and at least 100 copies must be delivered not later than noon Thursday, June 25, 1981.

(3) All witnesses must include with their written statement a summary of the principal points included in the statement.

(4) Witnesses should not read their written statements to the Subcommittee, but ought instead to confine their oral presentations to a summary of the points included in the statement.

(5) Not more than five minutes will be allowed for the oral summary.

Written statements.--Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. These written statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than Monday, July 3, 1981. On the first page of your written statement please indicate the date and subject of the hearing.

P.R.#81-143

II

97TH CONGRESS
1ST SESSION

S. 169

To amend sections 169 and 103 of the Internal Revenue Code with respect to tax treatment of pollution control facilities.

IN THE SENATE OF THE UNITED STATES

JANUARY 20 (legislative day, JANUARY 5), 1981

Mr. HEINZ (for himself, Mr. RANDOLPH, and Mr. GLENN) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend sections 169 and 103 of the Internal Revenue Code with respect to tax treatment of pollution control facilities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—TAX TREATMENT OF INDUSTRIAL DEVELOPMENT BONDS ISSUED TO FINANCE POLLUTION CONTROL OR WASTE DISPOSAL FACILITIES

SEC. 101. TAX-EXEMPT FINANCING REQUIREMENTS.

(a) IN GENERAL.—Section 103 of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is amended by redesignating subsection (h) as subsection (j), and by inserting after subsection (g) the following new subsections:

"(h) AIR OR WATER POLLUTION CONTROL FACILITIES.—For purposes of this section—

"(1) IN GENERAL.—The term 'air or water pollution control facility' means land or property of a character subject to depreciation under section 167—

"(A) which is acquired, constructed, reconstructed, or erected to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat,

"(B) which is certified by the Federal certifying authority (as defined in section 169(d)(2)) or the State certifying authority (as defined in sec-

tion 169(d)(3)) as meeting or furthering Federal or State requirements for abatement or control of water or atmospheric pollution or contamination, and

"(C) all or a portion of the expenditures for the acquisition, construction, reconstruction, or erection of which would not be made except for the purpose of abating, controlling, or preventing pollution.

"(2) EXEMPT FINANCING TO BE UNAVAILABLE FOR EXPENDITURES FOR PURPOSES OTHER THAN POLLUTION CONTROL.—

"(A) IN GENERAL.—Subsection (b)(4)(F) of this section shall not apply with respect to any issue of obligations (otherwise qualifying under subsection (b)(4)(F)) if the portion of the proceeds of such issue which is used to provide air or water pollution control facilities exceeds (by more than an insubstantial amount) the amount by which—

"(i) the cost of acquiring, constructing, reconstructing, or erecting the facility, exceeds

"(ii) the net profit which may reasonably be expected to be derived through the

recovery of wastes or otherwise in the operation of the facility over its actual useful life.

"(B) NET PROFIT.—For purposes of this paragraph, the term 'net profit' means the present value of benefits (using a discount rate of 12½ percent) to be derived from that portion of such cost properly attributable to the purpose of increasing the output or capacity, or extending the useful life, or reducing the total operating costs of the plant or other property (or any unit thereof) in connection with which such facility is to be operated, reduced by the sum of—

"(i) the total cost incurred to acquire, construct, reconstruct, or erect the property (reduced by its estimated salvage value), and

"(ii) the present value (using a discount rate of 12½ percent of) all expenses reasonably expected to be incurred in the operation and maintenance of the property, including utility and labor costs, Federal, State, and local income taxes, the cost of insurance, and interest expense.

"(C) LIMITATION ON EXPENDITURES UNDER SUBSECTION (b)(4)(F)—

"(i) IN GENERAL.—For purposes of subsection (b)(4)(F), the face amount of obligations issued for such facilities to be installed at any new manufacturing or processing plant shall not exceed the amounts described in clause (ii) of this subparagraph after application of subparagraphs (A) and (B) of this paragraph.

"(ii) INSTALLATIONS AT NEW PLANTS, ETC.—In the case of facilities described in subsection (b)(4)(F) to be installed at new plants (as defined in clause (iii) of this subparagraph), the aggregate authorized face amount of obligations to be issued therefor shall not exceed the sum of 30 percent of the first $100,000,000 of capital expenditures paid or incurred in connection with such plants, 25 percent of the second $100,000,000 of such capital expenditures, 20 percent of the third $100,000,000 of such capital expenditures and 15 percent of such capital expenditures in excess of $300,000,000 plus the costs and expenses incurred in issuing such obligations.

"(iii) NEW PLANT.—For purposes of this subparagraph the term 'new plant' means any plant or identifiable part thereof, or other location that is or could be a source of pollution, placed in service within the 6-year period beginning 3 years before the date of any issue for the facility and ending 3 years after such date of issuance of the obligations described in clause (i). For purposes of clause (ii), all the capital expenditures during the 6-year period shall be aggregated. A major expansion of the capacity of any plant or identifiable part thereof or a major conversion in the use to which any plant (or identifiable part thereof) is devoted, shall be treated as a new plant. For purposes of this paragraph a major expansion of capacity shall mean an increase in capacity of 35 percent, and a major conversion in use shall mean a change affecting 35 percent of the output of the plant. Any plant or identifiable part thereof not described in the preceding three sentences shall be deemed an existing plant.

"(iv) CAPITAL EXPENDITURES TAKEN INTO ACCOUNT.—The capital expenditures taken into account with respect to any new plant or other source of pollution for purposes of this subparagraph are the expenditures which are properly chargeable to capital account and which are either made within 3 years before the date of the issuance of the issue or can reasonably be expected (at the time of the issuance of the issue) to be made within 3 years after the date of such issuance.

"(i) SOLID WASTE DISPOSAL FACILITIES.—For purposes of this section, the term 'hazardous waste or solid waste disposal facilities' includes land and property of a character subject to depreciation under section 167 which is acquired, constructed, reconstructed, or erected for no significant purpose other than to comply with hazardous or solid waste management requirements imposed by the Solid Waste Disposal Act.".

(b) CONFORMING AMENDMENT.—Subparagraph (E) of section 103(b)(4) of such Code is amended by inserting ", hazardous waste," and "sewage".

(c) CLARIFICATION OF REFERENCE.—For purposes of section 103(i) of the Internal Revenue Code of 1954, any

reference to the Solid Waste Disposal Act means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as it is, or may be, amended from time to time by other Acts. No inference shall be drawn from the preceding sentence with respect to the presence or absence of the words "as amended", by themselves or in combination with a reference to another Act, whenever reference is made in any other provision of law to an Act by its short title.

SEC. 102. EFFECTIVE DATE.

The amendments made by subsections (a) and (b) of section 101 shall apply with respect to obligations issued after the date of enactment of this Act and with respect to taxable years ending after that date.

TITLE II—CURRENT EXPENSING OF AMOUNTS PAID OR INCURRED IN CONNECTION WITH THE CONSTRUCTION OR EREC-TION OF POLLUTION CONTROL FACILITIES

SEC. 201. DEDUCTION ALLOWED FOR TAXABLE YEAR IN WHICH EXPENSES ARE PAID OR INCURRED.

(a) IN GENERAL.—So much of section 169 of the Internal Revenue Code of 1954 (relating to amortization of pollu-

tion control facilities) as precedes subsection (d) is amended to read as follows:

"SEC. 169. POLLUTION CONTROL FACILITY EXPENSES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who elects the deduction allowed by this subsection, there shall be allowed as a deduction for the taxable year the sum of the amounts paid or incurred by the taxpayer in connection with the acquisition, construction, or erection of a certified pollution control facility (as defined in subsection (d)), and such amounts shall be treated as items not chargeable to capital account.

"(b) ELECTION.—The election provided by subsection (a) shall be made at such time, in such form, and in such manner as the Secretary may prescribe.

"(c) TERMINATION OF ELECTION.—A taxpayer who has elected under subsection (b) to take the deduction provided by subsection (a) may, at any time after making such election, discontinue the deduction with respect to the remainder of the amounts paid or incurred with respect to the facility. Any such discontinuance shall begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. The depreciation deduction provided by section 167 shall be allowed, beginning with the first month as to which the election under subsection (b) does not apply, and the tax-

payer shall not be entitled to any further deduction under this section with respect to such facility.".

(b) DEDUCTION TO APPLY TO NEW CONSTRUCTION AS WELL AS EXISTING PLANTS AND PROPERTIES.—Paragraph (1) of subsection (d) of such section (relating to definition of certified pollution control facility) is amended by striking out "in operation before January 1, 1976".

(c) CONFORMING AMENDMENTS TO SECTION 169.—

(1) Paragraph (3) of subsection (d) of such section is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(2) Section 169 of such Code is amended—

(A) by striking out subsections (f) and (j),

(B) by redesignating subsections (g) and (i) as subsections (f) and (g), respectively, and

(C) by striking out "which is not the amortizable basis" in subsection (f) (as so redesignated) and inserting in lieu thereof "for which a deduction is not claimed under subsection (a)".

(d) TECHNICAL AND CONFORMING AMENDMENTS TO OTHER CODE PROVISIONS.—

(1) The table of sections for part VI of subchapter B of chapter 1 of such Code is amended by striking out

the item relating to section 169 and inserting in lieu thereof the following:

"Sec. 169. Pollution control facility expenses.".

(2) Paragraph (5) of section 46 of (c) of such Code (relating to applicable percentage in case of certain pollution control facilities) is amended by striking out "constitutes the amortizable basis for purposes of section 169" and inserting in lieu thereof the following: "constitutes the adjusted basis".

(3) Paragraph (1) of section 48(a) of such Code (defining section 38 property) is amended by adding at the end thereof the following new sentence: "In the case of any property with respect to which an election has been made under section 169, such property shall, for purposes of the preceding sentence, be treated as property with respect to which depreciation is allowable.".

(4) Paragraph (4) of section 57(a) of such Code (relating to items of tax preference) is repealed.

(5) Subsection (f) of section 642 of such Code (relating to amortization deductions) is amended—

(A) by striking out "Amortization" in the caption and inserting in lieu thereof "Certain Other", and

(B) by striking out "for amortization" in the text.

(6) Subparagraph (B) of section 1082(a)(2) of such Code (relating to exchanges subject to the provisions of section 1081(b)) is amended by striking out "for amortization".

(7) Subsection (a) of section 1245 of such Code (relating to general rule for determining gain from dispositions of certain depreciable property) is amended—

(A) by striking out "169," in subparagraph (D) of paragraph (2) thereof,

(B) by striking out "169," each place it appears thereafter in paragraph (2), and

(C) by striking out "169," in subparagraph (D) of paragraph (3) thereof.

(8) Paragraph (3) of section 1250(b) of such Code (relating to depreciation adjustments) is amended by striking out "169,".

SEC. 202. EFFECTIVE DATE.

The amendments made by section 201 shall apply with respect to amounts paid or incurred after December 31, 1980.

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II

97TH CONGRESS
1ST SESSION

S. 532

To amend the Internal Revenue Code of 1954 to exclude certain service performed on fishing boats from coverage for purposes of unemployment compensation.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 16), 1981

Mr. HEFLIN introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to exclude certain service performed on fishing boats from coverage for purposes of unemployment compensation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3306(c) of the Internal Revenue Code of 1954 (relating to the definition of employment under the Federal Unemployment Tax Act) is amended—

(1) by striking out "or" at the end of paragraph (17);

(2) by redesignating paragraph (18) as paragraph (19); and

(3) by inserting after paragraph (17) the following new paragraph:

"(18) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

"(A) such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),

"(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

"(C) the amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one

boat) is normally made up of fewer than ten individuals; or".

SEC. 2. The amendments made by this Act shall be effective with respect to taxable years beginning after December 31, 1980.

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II

97TH CONGRESS
1ST SESSION

S. 721

To prohibit the imposition of any tax by a State on the income derived by any individual from services performed at the Portsmouth Naval Shipyard if such individual is not a resident or domiciliary of the State in which such shipyard is located.

IN THE SENATE OF THE UNITED STATES

MARCH 17 (legislative day, FEBRUARY 16), 1981

Mr. HUMPHREY introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To prohibit the imposition of any tax by a State on the income derived by any individual from services performed at the Portsmouth Naval Shipyard if such individual is not a resident or domiciliary of the State in which such shipyard is located.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 106(b) of title 4 of the United States Code is amended to read as follows:

"(b) Subsection (a) shall not apply with respect to income received during any period by any individual from

transactions occurring, or services performed, at the Portsmouth Naval Shipyard if during such period such individual is not a resident or domiciliary of the State in which such shipyard is located.".

(b) The amendment made by subsection (a) shall apply with respect to income received from transactions occurring or services performed after December 31, 1980.

O

II

97TH CONGRESS
1ST SESSION

S. 791

To amend the Internal Revenue Code of 1954 to exclude certain service performed on fishing boats from coverage for purposes of unemployment compensation.

IN THE SENATE OF THE UNITED STATES

MARCH 24 (legislative day, FEBRUARY 16), 1981

Mr. MITCHELL (for himself, Mr. MATHIAS, and Mr. HEFLIN) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to exclude certain service performed on fishing boats from coverage for purposes of unemployment compensation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3306(c) of the Internal Revenue Code of 1954 (relating to the definition of employment under the Federal Unemployment Tax Act) is amended—

(1) by striking out "or" at the end of paragraph (17);

(2) by redesignating paragraph (18) as paragraph (19); and

(3) by inserting after paragraph (17) the following new paragraph:

"(18) service described in section 3121(b)(20); or".

(b) The amendments made by subsection (a) shall be effective with respect to taxable years beginning after December 31, 1980.

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II

97TH CONGRESS
1ST SESSION

S. 979

To amend the Internal Revenue Code of 1954 to clarify the tax exemption for interest on obligations of volunteer fire departments.

IN THE SENATE OF THE UNITED STATES

APRIL 9 (legislative day FEBRUARY 16), 1981

Mr. LUGAR (for himself and Mr. QUAYLE) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to clarify the tax exemption for interest on obligations of volunteer fire departments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 103 of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) OBLIGATIONS OF CERTAIN VOLUNTEER FIRE DEPARTMENTS.—

"(1) IN GENERAL.—An obligation of a volunteer fire department shall be treated as an obligation of a political subdivision of a State if—

"(A) such department is a qualified volunteer fire department with respect to an area within the jurisdiction of such political subdivision, and

"(B) such obligation is issued as part of an issue substantially all of the proceeds of which are to be used for the acquisition, construction, reconstruction, or improvement of qualified firefighting property.

"(2) QUALIFIED VOLUNTEER FIRE DEPARTMENT.—For purposes of this subsection, the term 'qualified volunteer fire department' means, with respect to a political subdivision of a State, any organization—

"(A) which is organized and operated to provide firefighting services for persons in an area (within the jurisdiction of such political subdivision) which is not provided with any other firefighting services,

"(B) which is required (by agreement or otherwise) by the political subdivision to furnish firefighting services in such area,

"(C) which receives over half of the funds for outfitting its members and providing and maintaining its qualified firefighting property from the political subdivision, and

"(D) which makes no charge for its firefighting services.

"(3) QUALIFIED FIREFIGHTING PROPERTY.—For purposes of this subsection, the term 'qualified firefighting property' means property—

"(A) which is of a character subject to the allowance for depreciation, and

"(B)(i) which is used in the training for the performance of, or the performance of, firefighting or ambulance services, or

"(ii) which is used to house the property described in clause (i).

"(4) NO INFERENCE WHERE STANDARDS ARE NOT MET.—In the case of an obligation which does not meet all of the requirements of this subsection, nothing in this subsection shall be construed to infer that interest on such obligation is not exempt from tax under this section."

(b) The amendments made by subsection (a) shall apply to obligations issued after December 31, 1968.

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II

97TH CONGRESS
1ST SESSION

S. 1382

Entitled the "Volunteer Fire Department Equity Act".

IN THE SENATE OF THE UNITED STATES

JUNE 17 (legislative day, JUNE 1), 1981

Mr. D'AMATO introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

Entitled the "Volunteer Fire Department Equity Act".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Fire Department Equity Act".

SEC. 2. TAX EXEMPTION FOR INTEREST ON OBLIGATIONS OF VOLUNTEER FIRE DEPARTMENTS.

(a) Section 103 of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is

amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) OBLIGATIONS OF CERTAIN VOLUNTEER FIRE DEPARTMENTS.—

"(1) IN GENERAL.—An obligation of a volunteer fire department shall be treated as an obligation of a fire department operated by a political subdivision of a State if—

"(A) such department is a qualified volunteer fire department with respect to an area within the jurisdiction of such political subdivision, and

"(B) such obligation is issued as part of an issue substantially all of the proceeds of which are to be used for the acquisition, construction, reconstruction, or improvement of qualified firefighting property.

"(2) QUALIFIED VOLUNTEER FIRE DEPARTMENT.—For purposes of this subsection, the term 'qualified volunteer fire department' means, with respect to a political subdivision of a State, any organization—

"(A) which is organized and operated to provide firefighting services for persons in an area (within the jurisdiction of such political subdivi-

sion) which is not provided with any other organized firefighting services,

"(B) which is required (by agreement, contract, or otherwise) by the political subdivision to furnish firefighting services in such area,

"(C) which receives not less than half of the funds for outfitting its members and providing and maintaining its qualified firefighting property from the political subdivision, and

"(D) which makes no charge for its firefighting services.

"(3) QUALIFIED FIREFIGHTING PROPERTY.—For purposes of this subsection, the term 'qualified firefighting property' means property—

"(A) which is of a character subject to the allowance for depreciation, and

"(B)(i) which is used in the training for the performance of, or the performance of, firefighting or ambulance services, or

"(ii) which is used to house the property described in clause (i).

"(4) NO INTERFERENCE WHERE STANDARDS ARE NOT MET.—In the case of an obligation which does not meet all of the requirements of this subsection, nothing in this subsection shall be construed to

infer that interest on such obligation is not exempt from tax under this section.".

(b) The amendments made by subsection (a) shall apply to oblgations issued after December 31, 1968.

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84-827 O—81——3

DESCRIPTION OF TAX BILLS
(S. 169, S. 532, S. 791, S. 721, S. 979, AND S. 1382)

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

INTRODUCTION

The bills described in this pamphlet have been scheduled for a public hearing on June 26, 1981, by the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance.

There are six bills scheduled for the hearing: S. 169 (relating to tax-exempt financing for pollution control and solid waste disposal facilities, and expensing of amounts paid in connection with the construction of pollution control facilities), S. 532 and S. 791 (relating to the unemployment tax status of certain fishing boat services), S. 721 (relating to the imposition of State income taxes on income derived from services performed at the Portsmouth Naval Shipyard by individuals who are not residents or domiciliaries of the State of Maine), and S. 979 and S. 1382 (relating to the treatment of interest on obligations of certain volunteer fire departments).

The first part of the pamphlet is a summary of the bills. This is followed by a more detailed description of the bills, including present law, issues, explanation of the provisions of the bills, effective dates, and estimated revenue effects.

I. SUMMARY

1. S. 169—Senators Heinz, Randolph, and Glenn

Tax Treatment of Industrial Development Bonds for Pollution Control or Waste Disposal Facilities and Expensing of Pollution Control Facilities

a. Title I. Industrial development bonds for pollution control or waste disposal facilities

Present law allows tax-exempt industrial development bonds to be issued for solid waste disposal facilities and for air or water pollution control facilities (Code sec. 103(b)(4)). Treasury Regulations restrict the exemption to bonds which are issued to finance pollution control facilities that remove, alter, dispose, or store a pollutant. Tax exemption is not available with respect to bonds which are issued to finance a facility which prevents the creation of a pollutant. Furthermore, Treasury Regulations take the position that pollution control does not include facilities used in the handling or disposal of hazardous waste.

The bill would expand the type of facilities for which tax-exempt industrial development bonds could be issued to include facilities which prevent the creation of a pollutant. In general, a facility would be considered a pollution control facility if it were certified by a Federal or State authority as meeting or furthering pollution control requirements. The bill contains special rules to limit the amount of eligible costs to specified dollar amounts in the case of new plants. The bill also would provide that tax-exempt industrial development bonds could be issued for hazardous waste and solid waste disposal facilities that have no significant purpose other than to comply with the Solid Waste Disposal Act.

The bill would apply to obilgations issued after the date of enactment.

b. Title II. Expensing of pollution control facilities

Present law allows special 5-year amortization of pollution control facilities (Code sec. 169). Pollution control facilities for this purpose are facilities, used in connection with property placed in operation prior to January 1, 1976, which control, remove, alter, dispose, store, or prevent the creation of pollutants.

The bill would allow immediate expensing of certified pollution control facilities. Furthermore, there would be no recapture of the amount expensed upon the disposition of a certified pollution control facility.

The bill would apply to amounts paid or incurred after December 31, 1980.

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2. S. 532—Senator Heflin

and

S. 791—Senators Mitchell, Mathias, and Heflin

Unemployment Tax Status of Certain Fishing Boat Services

Under present law, certain crew members of fishing boats are treated as self-employed individuals rather than as employees for purposes of the Federal Insurance Contributions Act (FICA) and income tax withholding. However, services which are not subject to FICA taxes are not exempt for purposes of the Federal Unemployment Tax Act (FUTA) if the services are related to catching halibut or salmon for commercial purposes or if the services are performed on a vessel of more than ten net tons.

The bills would exclude from coverage, for purposes of FUTA, those services of fishing boat crew members which currently are excluded for purposes of FICA and income tax withholding.

The bills would apply to services performed in taxable years beginning after December 31, 1980.

3. S. 721—Senator Humphrey

Imposition of Tax by a State on Income Derived From Services Performed at the Portsmouth Naval Shipyard by Individuals Who Are Not Residents or Domiciliaries of Maine

Under present law, States in which Federal areas are located may impose State income tax on the income derived from services performed in such areas, regardless of the residence or domicile of the individual performing such services.

The bill would prohibit Maine from imposing State income tax on the income derived from services performed in the Portsmouth Naval Shipyard unless the individual performing such services is a resident or domiciliary of Maine during the period services were performed.

The bill would benefit individuals who work at the Portsmouth Naval Shipyard who are not residents or domiciliaries of the State of Maine.

The bill would apply with respect to services performed after December 31, 1980.

4. S. 979—Senators Lugar and Quayle

and

S. 1382—Senator D'Amato

Tax Exemption for Interest on Obligations of Certain Volunteer Fire Departments

In general, present law excludes from gross income interest on obligations of a State or of its political subdivisions (Code sec. 103 (a)(1)). A political subdivision generally includes any division of a

State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.

The bills would treat an obligation of a volunteer fire department as an obligation of a political subdivision of a State if certain conditions are met. In general, these conditions would be as follows: (1) the volunteer fire department is the sole organization providing firefighting services in a particular area; (2) the volunteer fire department is required by the political subdivision, by agreement or otherwise, to provide firefighting services; (3) the volunteer fire department must receive more than one-half of its funds from the political subdivisions; and (4) the volunteer fire department must make no charge for its firefighting services.

The originally intended beneficiaries of S. 979 were the Wayne Township Volunteer Fire Department of Marion County, Indiana, and holders of obligations issued by that department. However, each bill would apply to obligations of any volunteer fire department in the country that satisfies the conditions of the bills.

The bills would apply to obligations issued after December 31, 1968.

II. DESCRIPTION OF BILLS

1. S. 169—Senators Heinz, Randolph, and Glenn

Tax Treatment of Industrial Development Bonds for Pollution Control or Waste Disposal Facilities and Expensing of Pollution Control Facilities

a. Industrial development bonds for pollution control or waste disposal facilities (Title I of the bill)

Present law

Industrial development bonds—In general

In general, interest on State and local government bonds is exempt from Federal income tax (Code sec. 103(a)). However, with certain exceptions, this exemption does not apply to interest on State and local government issues of "industrial development bonds." An obligation constitutes an industrial development bond if (1) all or a major portion of the proceeds of the issue are to be used in any trade or business of a person other than a State or local government or tax-exempt organization, and (2) payment of principal or interest is secured by an interest in, or derived from payments with respect to, property, or borrowed money, used in a trade or business (Code sec. 103(b)(2)).

Under one of the exceptions, industrial development bonds qualify for tax exemption if substantially all of the proceeds of the bonds are used to provide exempt activity facilities. Such facilities include solid waste disposal facilities (Code sec. 103(b)(4)(E)) and air or water pollution control facilities (Code sec. 103(b)(4)(F)).

Solid waste disposal facilities

Under Treasury Regulations, a solid waste disposal facility is defined as any property, or portion thereof, used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste (Treas. Reg. sec. 1.103–8(f)(2)). A facility for collection, storage, or disposal of liquid or gaseous waste does not qualify as a solid waste disposal facility unless functionally related and subordinate to a solid waste disposal facility. The Treasury Regulations provide that "solid waste" has the same meaning for purposes of the provisions relating to tax-exempt industrial development bonds as it has for purposes of the Solid Waste Disposal Act (prior to the amendment of that Act by

P.L. 94–580).[1] However, material will not qualify as solid waste unless, on the date of issue of the obligations issued to provide the solid waste disposal facility, the material is useless, unused, unwanted, or discarded solid material that has no market or other value at the place where it is located. A facility that disposes of solid waste by reconstituting, converting, or otherwise recycling it into material that is not waste qualifies as a solid waste disposal facility if solid waste constitutes at least 65 percent, by weight or volume, of the total materials introduced into the recycling process (Treas. Reg. sec. 1.103–8 (f)(2)(ii)(c)).

Pursuant to Temporary Treasury Regulations, if property has both a solid waste disposal function and a function other than solid waste disposal, then only the portion of the cost of the property allocable to the solid waste disposal function may be taken into account as an expenditure to provide solid waste disposal facilities (Temp. Treas. Reg. sec. 17.1). These regulations provide that a facility that otherwise qualifies as a solid waste disposal facility will not be treated as having a function other than solid waste disposal merely because material or heat that has utility or value is recovered or results from the disposal process. Moreover, if materials or heat are recovered, the waste disposal function includes the processing of such materials or heat that occurs in order to put them into the form in which the materials or heat are in fact sold or used. However, the waste disposal function does not include further processing that converts the materials or heat into other products. Based upon these regulations, the Internal Revenue Service held, in Revenue Ruling 76–222 (1976–1 C.B. 26), that garbage which is recycled into salvageable metal and combustible materials to be used in an adjacent public utility plant for fuel is solid waste. However, the portion of the facility that transported the combustibles to the public utility did not qualify as part of the exempt solid waste facility because, at that point, the combustibles had been converted into a useful and valuable form, in which they would be sold, and were no longer waste.

Present law does not contain a specific tax exemption for industrial development bonds the proceeds of which are used to provide hazardous waste disposal facilities.

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[1] The regulations define solid waste as garbage, refuse, and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but not including solids or dissolved material in domestic sewage or other significant pollutants in water resources such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants (Treas. Reg. sec. 1.103–8(f)(2)(ii)(b)).

The Solid Waste Disposal Act currently defines solid waste as any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but not including solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of Title 33 (Federal Water Pollution Act), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. sec. 6903(27)).

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Air or water pollution control facilities

Treasury Regulations provide that in order for property to qualify as a pollution control facility (1) it must be land or depreciable property and (2) a Federal, State, or local agency must certify that the facility is in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants or water pollution or the facility must be designed to meet or exceed applicable Federal, State, and local requirements for the control of atmospheric contaminants or water pollution in effect at the time the obligations, the proceeds of which are to be used to provide such facilities, are issued (Treas. Reg. sec. 1.103–8(g)(2)(i)).

In 1975, the Treasury Department issued proposed regulations in order to provide additional guidance concerning what facilities constitute pollution control facilities. In general, these proposed regulations consider property to be a pollution control facility if it is a discrete unit that cannot be reduced further in size without losing one of its characteristics which is used, in whole or in part, to abate or control water or atmospheric pollution or contaminants, waste, or heat. Pollutants include only material or heat in such a state or form that its discharge or release would result in water or atmospheric pollution or contamination.

The proposed regulations describe several types of property that do not qualify as pollution control facilities (Prop. Treas. Reg. secs. 1.103–8(g)(2)(ii), (iii) and (iv)). These include property that avoids the creation of pollutants and property that is used solely for the processing or manufacturing of material or heat after such material or heat is no longer a pollutant. Moreover, property, is not considered to be a pollution control facility to the extent that it treats or processes a material in such a manner as to prevent the discharge or release of pollutants when such material is subsequently used. Furthermore, the proposed regulations take the position that property is not used for the control of pollution to the extent that it (1) is designed to prevent the release of pollutants in a major accident; (2) prevents the release of materials or heat which would endanger the employees of the trade or business in which such property is used; (3) is used to control materials or heat that traditionally have been controlled because their release would constitute a nuisance; (4) controls the release of hazardous materials or heat that would cause an immediate risk of substantial damage or injury to property or persons; or (5) controls materials or heat in essentially the same manner as the user of such property has previously controlled such materials or heat as a customary practice for reasons other than compliance with pollution control requirements.

If a pollution control facility has a function other than to abate or control water or atmospheric pollution or contamination, then only the incremental cost of the property may be taken into account as an expenditure to provide an air or water pollution control facility. Such incremental cost is the portion of the cost of the property that is allocable to the control of pollution (Prop. Treas. Reg. sec. 1.103–8(g)(3)). The proposed regulations provide detailed rules for valuing any benefits derived from pollution control facilities. In general, if a

pollution control facility results in an economic benefit, the portion of the cost of the property allocable to the control of pollution is the cost of the property reduced by the amount, if any, determined by multiplying the cost by a fraction the numerator of which is the present value of all estimated economic benefits to be realized over the useful life of the property and the denominator of which is the sum of the present value of payments (other than interest) necessary to acquire ownership of the property plus the present value of all estimated expenses to be paid or incurred in operating or maintaining the property. Present value is computed by use of a discount rate of 12½ percent.

Issues

Title I of the bill raises several issues. These issues include: (1) Whether tax-exempt financing should be available for pollution control facilities that prevent the creation of pollution and, if so, how pollution control facilities could be differentiated from manufacturing facilities; (2) whether there should be an expenditure ceiling on the amount of pollution control facilities that can qualify for tax-exempt financing in the case of new plants and, if so, what limitations would be appropriate; and (3) whether tax-exempt bonds should be allowed for facilities that handle hazardous waste because those facilities are required by the Solid Waste Disposal Act even though the facilities would have been required notwithstanding that Act because they are part of the manufacturing process or would be required under State laws governing nuisances.

Explanation of provision

Air or water pollution control facilities

Title I of the bill would revise the requirements relating to the tax exemption for industrial development bonds that are issued to provide air or water pollution control facilities. Under the bill, an air or water pollution control facility would be land or depreciable property that meets the following requirements:

(1) It is acquired, constructed, reconstructed, or erected to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat;

(2) It must be certified by a Federal or State certifying authority as meeting or furthering Federal or State requirements for abatement or control of water or atmospheric pollution or contamination: [2] and

(3) All or a portion of the expenditures for the acquisition, construction, reconstruction, or erection of the property would not be made except for the purpose of abating, controlling, or preventing pollution.

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[2] A Federal certifying authority is, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health and Human Services (Code sec. 169(d)(3)). A State certifying authority is, in the case of water pollution, the State water pollution control agency as defined in section 13(a) of the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in section 302(b) of the Clean Air Act. A State certifying authority also may be any interstate agency authorized to act in place of a certifying authority of the State (Code sec. 169(d)(2)).

The bill would limit the amount of tax-exempt financing available for pollution control facilities to the extent that portions of the cost of a certified pollution control facility are recoverable in the form of an economic benefit. This would be accomplished by limiting the tax exemption to the cost of acquiring, constructing, reconstructing, or erecting the pollution control facility after reducing that cost by the net profit which may reasonably be expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its actual useful life. For purposes of this calculation, "net profit" would be the present value of benefits (using a discount rate of 12½ percent) to be derived from that portion of the cost which is properly attributable to the purpose of increasing the output or capacity, extending the useful life, or reducing the total operating costs of the plant or other property (or any unit thereof) in connection with which the facility is to be operated, reduced by the sum of (1) the total cost incurred to acquire, construct, reconstruct, or erect the property (reduced by its estimated salvage value) and (2) the present value (using a 12½ percent discount rate) of all expenses reasonably expected to be incurred in the operation and maintenance of the property, including utility and labor costs, Federal, State, and local income taxes, the cost of insurance, and interest expense.

The bill also would limit the amount of tax-exempt financing for pollution control facilities to be installed at any new manufacturing or processing plant. In the case of a new plant, the amount of tax-exempt financing for pollution control facilities, reduced to the extent of any net economic benefit, would be limited to: 30 percent of the first $100 million of capital expenditures for the entire plant or site, 25 percent of the second $100 million, 20 percent of the third $100 million, and 15 percent of expenditures in excess of $300 million. (This would amount to $105 million in the case of a new plant costing $500 million.) Capital expenditures subject to this limitation would be those made within 3 years before and 3 years after the date on which the bonds are issued. For purposes of this limitation, a new plant would be any plant, or identifiable part thereof, or other location that is, or could be, a source of pollution, which is placed in service within the 6-year period beginning 3 years before the date of any issue for the facility and ending 3 years after the date of issuance. A 35-percent expansion of an existing plant or a conversion affecting 35 percent of the output of a plant would cause an existing plant to be treated as a new plant.

Solid waste disposal facilities

Title I of the bill also would revise the requirements relating to the tax exemption for industrial development bonds issued to provide financing for solid waste disposal facilities, and would provide tax exemption for industrial development bonds issued to provide financing for hazardous waste [3] disposal facilities.

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[3] The Solid Waste Disposal Act defines hazardous waste as a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (1) cause, or significantly contribute to, an increase in serious irreversible, or incapacitating reversible, illness; or (2) pose a substantial present, or potential, hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed (42 U.S.C. sec. 6903(5)). The definition of solid waste is at f. n. 1, supra.

Hazardous or solid waste disposal facilities would be land or depreciable property which is acquired, constructed, reconstructed, or erected for no significant purpose other than to comply with hazardous or solid waste management requirements imposed by the Solid Waste Disposal Act. Hazardous waste management is the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.[4] Solid waste management is the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.[5] The Administrator of the Environmental Protection Agency is responsible for issuing guidelines with respect to hazardous waste and solid waste management.

The bill would make clear that, for purposes of the provisions relating to hazardous waste or solid waste disposal facilities, any reference to the Solid Waste Disposal Act means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, and as it may be amended from time to time by other Acts.

Effective date

The provisions of Title I of the bill would apply with respect to obligations issued after the date of enactment and with respect to taxable years ending after that date.

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[4] 42 U.S.C. sec. 6903(7).
[5] 42 U.S.C. sec. 6903(28).

b. Expensing of pollution control facilities (Title II of the bill)

Present law

A taxpayer who installs a certified pollution control facility may elect to amortize the property ratably over a 60-month period (Code sec. 169) and also may be eligible for a 10 percent investment tax credit. If the taxpayer's acquisition of the property is financed with the proceeds from an industrial development bond, the property is eligible for 50 percent of the investment tax credit, i.e., 5 percent.

A certified pollution control facility is a new identifiable treatment facility which is used in connection with property in operation before January 1, 1976, to abate or control water or atmospheric pollution by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat. Certification is required from appropriate Federal and State authorities that the property meets the applicable standards and requirements. In addition, installation of the pollution control facility may not significantly increase the output or capacity, extend the useful life, or reduce the total operating costs of the property (or any unit thereof), or alter the nature of the manufacturing or production process or facility. The Statement of Managers accompanying the Conference Report on the Tax Reform Act of 1976 defined a significant effect on output or costs to mean a change greater than 5 percent.

A new identifiable treatment facility includes only tangible property subject to the allowance for depreciation, which is identifiable as a treatment facility and was completed, or was placed in service as a new facility, after December 31, 1968. An eligible facility does not include a building and its structural components, but a building which is exclusively a treatment facility is eligible for the amortization election.

For a facility with a useful life in excess of 15 years, the basis for amortization is determined as the ratio of 15 to the number of years of useful life of the facility. The useful life is determined as of the first day of the first month for which an amortization deduction is allowable.

Amortization deductions taken for certified pollution control property are subject to recapture under Code sections 1245 and 1250.

Present law imposes an add-on minimum tax on items of tax preference other than the capital gains deduction and adjusted itemized deductions (Code sec. 56). Among the items of preference subject to this tax is the amount by which the deduction allowable under Code section 169 exceeds the depreciation deduction that would otherwise be allowable. The tax applies at a rate of 15 percent on the sum of tax preferences in excess of one-half of regular income taxes paid or, if greater, $10,000.

Legislative background

Section 169 of the Code was enacted as part of the Tax Reform Act of 1969. It was included in that Act in order to provide some additional relief for publicly mandated expenditures in lieu of the investment tax credit that was repealed in the Tax Reform Act of 1969, as of April 18, 1969. Code section 169 was enacted for the period through December 31, 1974, and it was extended for one year through December 31, 1975. The section was made permanent in the Tax Reform Act of 1976, as amended by that Act.

Issues

Title II of the bill presents several issues. Among these are the following:

(1) How would pollution control facilities be differentiated from manufacturing facilities?

(2) Should the capitalizable costs of a certified pollution control facility be expensed or subject to depreciation or amortization but under more favorable terms than comparable equipment not used for pollution control is allowed under present law?

(3) Should accelerated rates of capital writeoff be exempted from classification as a tax preference item subject to the minimum tax?

(4) Should the gain on sale of certified pollution control property continue to be subject to recapture under section 1245 or 1250?

Explanation of provision

Instead of the election to use 60-month amortization for a certified pollution control facility, the bill would allow a taxpayer to elect to expense (instead of charging to capital account) the amounts paid or incurred in connection with the acquisition, construction, or erection of a certified pollution control facility. The taxpayer could terminate this election, at any time, and discontinue the deductions with respect to the remainder of the amounts paid or incurred with respect to the facility. The depreciation deductions allowed under Code section 167 would apply to the remaining amounts.

The proposal would make the expensing deduction available for the costs incurred for installing a certified pollution control facility in a new property or a new plant, as well as in a plant or a property that was in operation before January 1, 1976. This action would repeal the requirement that an eligible facility be placed in a plant that was in existence before January 1, 1976.

The investment tax credit would continue to be available for a pollution control facility, even though it is expensed under this proposal, according to the number of years in its useful life.

The inclusion of amortization for pollution control facilities in excess of straight-line depreciation as a tax preference also would be repealed. The bill does not propose any additions to the list of tax preferences.

In addition, the recapture rules in Code sections 1245 and 1250 would not apply to property that was expressed under the provisions of this bill.

Effective date

The provisions of title II of the bill would apply to amounts paid or incurred after December 31, 1980.

c. Revenue effect

The estimated reductions in calendar year tax liabilities, and in fiscal year budget receipts, for S. 169 are summarized in the following table for 1981–1986:

(Billions of dollars)

	1981	1982	1983	1984	1985	1986
Calendar year liabilities						
Title I	0.0	0.1	0.1	0.2	0.2	0.3
Title II	1.8	1.7	1.6	1.5	1.5	1.5
Total	1.8	1.8	1.7	1.7	1.7	1.8
Fiscal year receipts						
Title I	0.0	0.0	0.1	0.1	0.2	0.2
Title II	0.9	1.7	1.6	1.6	1.5	1.5
Total	0.9	1.7	1.7	1.7	1.7	1.7

Note: It is not known with certainty which additional pollution control facilities would qualify for the preferential tax treatment. The estimates listed above assume that approximately 20 percent of all pollution control expenditures would qualify.

2. S. 532—Senator Heflin

and

S. 791—Senators Mitchell, Mathias, and Heflin

Unemployment Tax Status of Certain Fishing Boat Services

Present law

Under present law (Code sec. 3121(b)(20)), services performed by members of the crew on boats engaged in catching fish or other forms of aquatic animal life are exempt from the tax imposed by the Federal Insurance Contributions Act (FICA) if their remuneration is a share of the boat's catch (or cash proceeds from the sale of a share of the catch) and if the crew of such boat normally is made up of fewer than ten individuals. In the case of a fishing operation involving more than one boat, the exemption applies if the remuneration is a share of the entire fleet's catch or its proceeds, and if the operating crew of each boat in the fleet normally is made up of fewer than ten individuals.

In addition, the remuneration received by those fishing boat crew members whose services are exempt for purposes of FICA is not considered to be "wages" for purposes of income tax withholding (Code sec. 3401(a)(17)) and those individuals are considered to be self-employed for purposes of the Self-Employment Contributions Act (Code sec. 1402(c)(2)(F)). However, the employer of such individuals whose services are exempt for FICA purposes, and whose remuneration is not subject to income tax withholding, is not exempt from tax under the Federal Unemployment Tax Act (FUTA) if the services performed are related to catching halibut or salmon for commercial purposes or if the services are performed on a vessel of more than ten net tons.

Issue

The issue is whether the services of all fishing boat crew members which currently are exempt for purposes of FICA also should be exempt for purposes of FUTA.

Explanation of the bills

The bills would exempt, for purposes of FUTA, the services of fishing boat crew members which currently are exempt for purposes of FICA. Thus, services by members of the crew on boats engaged in catching fish or other forms of aquatic animal life would be exempt for purposes of FUTA if the remuneration for those services is a share of the boat's catch, or of the proceeds of the catch, and if the crew of such boat normally is made up of fewer than ten individuals. In the case of a fishing operation involving more than one boat, services would be exempt for purposes of FUTA if the remuneration for serv-

ices is a share of the entire fleet's catch or its proceeds, and if the operating crew of each boat in the fleet normally is made up of fewer than ten individuals.

Effective date

The provisions of the bills would apply to services performed by fishing boat crew members in taxable years beginning after December 31, 1980.

Revenue effect

It is estimated that either bill would reduce budget receipts by less than $1 million per year.

Prior Congressional action

An identical bill (S. 1194, 96th Cong.) was the subject of hearings in the Subcommittee on Taxation and Debt Management of the Senate Finance Committee during the 96th Congress (February 29 and March 4, 1980).

During the 95th Congress, the Senate Finance Committee, on July 24, 1978, held a hearing on another identical bill (H.R. 3080, 95th Cong.).

No further action was taken on either of these bills.

3. S. 721—Senator Humphrey

Imposition of Tax by a State on Income Derived From Services Performed at the Portsmouth Naval Shipyard by Individuals Who Are Not Residents or Domiciliaries of Maine

Present law

Under present law, income derived from services rendered, or transactions occurring, in a Federal area located within any State generally is subject to State income tax. Any State or its taxing authority has full jurisdiction to levy and collect such tax in Federal areas within the State to the same extent as in non-Federal areas (4 U.S.C. sec. 106).

Issue

The issue is whether income derived by individuals from services rendered, or transactions occurring, in a Federal area should be subject to income taxes imposed by the State in which the Federal area is located if they are not residents or domiciliaries of such State.

Explanation of the bill

Under the bill, income derived from services performed, or transactions occurring, at the Portsmouth Naval Shipyard by individuals who are neither residents nor domiciliaries of the State of Maine during the period that they performed those services would be exempt from income taxes imposed by the State of Maine.

The bill would benefit individuals who work at the Portsmouth Naval Shipyard who are not residents or domiciliaries of the State of Maine.

Effective date

The provisions of the bill would apply with respect to income received from transactions occurring or services performed after December 31, 1980.

Revenue effect

The bill would result in a small increase in Federal revenues (less than $1 million annually) because of the fact that fewer individuals would be claiming an itemized deduction for State income taxes.

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4. S. 979—Senators Lugar and Quayle

and

S. 1382—Senator D'Amato

Tax Exemption for Interest on Obligations of Certain Volunteer Fire Departments

Present law

In general

In general, present law excludes from gross income interest on obligations of a State or of its political subdivisions (Code sec. 103(a)(1)). Under Treasury Regulations, the term "political subdivision" includes any division of a State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit (Treas. Reg. sec. 1.103–1(b)). Three generally acknowledged sovereign powers of States are the power to tax, the power of eminent domain, and the police power.[1]

Present Treasury Regulations treat obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations as the obligations of such a unit (Treas. Reg. sec. 1.103–1(b)). Several requirements must be satisfied in order for an issuer to qualify as a constituted authority of a State or local governmental unit (See Rev. Rul. 57–187, 1957–1 C.B. 65; Rev. Rul. 63–20, 1963–1 C.B. 24; and Prop. Treas. Reg. sec. 1.103–1(c)(2)).[2]

In an early ruling,[3] the Internal Revenue Service ruled that interest received on certificates of indebtedness, known as "fire relief certificates," issued in the State of Minnesota constituted interest on the obligations of a State and, therefore, was not taxable. In another early ruling,[4] the Service held that interest on fire district bonds issued by a political subdivision of a State and assumed by a private corporation (without releasing the municipality from liability) was exempt from taxation.

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[1] See, e.g., *Estate of Alexander J. Shamberg*, 3 T.C. 131, aff'd 144 F. 2d 998 (2d Cir.), cert. den., 323 U.S. 792 (1944).

[2] In general, the Proposed Regulations provide that these requirements are satisfied if: (1) the authority is specifically authorized pursuant to State law to issue obligations to accomplish public purposes of the unit; (2) the unit controls the governing board of the authority; (3) the unit has either organizational control over the authority or supervisory control over the activities of the authority; (4) any net earnings of the authority (beyond that necessary for retirement of the indebtedness or to implement the public purposes or program of the unit) may not inure to the benefit of any person other than the unit: (5) upon dissolution of the authority, title to all property owned by the authority will vest in the unit; and (6) the authority is created and operated solely to accomplish one or more of the public purposes of the unit specified in the authorization for the unit.

[3] O.D. 30, 1 C.B. 83, declared obsolete, Rev. Rul. 69–31, 1969–1 C.B. 307.

[4] S.M. 2670, III–2 C.B. 80, declared obsolete, Rev. Rul. 69–31, 1969–1 C.B. 307.

The U.S. Tax Court has held that certain volunteer fire departments (in Pennsylvania, West Virginia, Delaware, Maryland, and Kentucky) were not political subdivisions of the States in which they were located and, hence, that interest on their obligations was not exempt from tax under Code section 103(a)(1) (*Seagrave Corporation*, 38 T. C. 247 (1962)). The rationale for this holding was that the volunteer fire departments involved were not created by any special statutes and received no delegation of State power.

Bonds for tax-exempt fire departments

The exclusion for interest on State and local government bonds does not apply, with certain exceptions, to interest on State and local government issues of "industrial development bonds." An obligation constitutes an industrial development bond if (1) all or a major portion of the proceeds of the issue are to be used in any trade or business of a person other than a State or local government or an organization which is exempt from tax under Code section 501(c)(3), and (2) payment of principal or interest is secured by an interest in, or derived from payments with respect to, property, or borrowed money, used in a trade or business (Code sec. 103(b)(2)). Thus, an obligation issued by a State or local government the proceeds of which would be used by a volunteer fire department that qualifies for tax exemption under Code section 501(c)(3) would not be an industrial development bond [5] and the interest thereon would be exempt from tax.

Issue

The issue is whether volunteer fire departments which satisfy certain requirements should be treated as political subdivisions and, thus, be permitted to issue obligations the interest on which would be exempt from Federal income tax under Code section 103(a).

Explanation of the bills

Under the bills, an obligation of a volunteer fire department would be treated as an obligation of a political subdivision of a State if the department is a qualified volunteer fire department with respect to an area within the jurisdiction of such political subdivision, and the obligation is issued as part of an issue substantially all the proceeds of which are to be used for the acquisition, construction, reconstruction, or improvement of qualified firefighting property.

To be qualified, the department must be organized and operated to provide firefighting services for persons in an area (within the jurisdiction of a political subdivision of a State) which is not provided with any other firefighting services, and must be required by the political subdivision (by agreement or otherwise) to furnish firefighting services in such area. Furthermore, the fire department must receive more than half of the funds for outfitting its members and providing and maintaining its qualified firefighting property from the political subdivision, and must not charge for its firefighting services.

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[5] Depending on the facts involved, a volunteer fire department may qualify for exemption as a charitable organization under Code sec. 501(c(3) or as a social welfare organization under Code sec. 501(c)(4), or both. Rev. Rul. 74-361, 1974-2 C.B. 159.

Qualified firefighting property, for which a tax-exempt obligation could be issued, would be depreciable property, and property that is used in the performance of (or in training for the performance of) firefighting or ambulance services, or property that is used to house such property.

The bills also would provide that failure of an obligation to meet the requirements of the bills is not to be construed as meaning that interest on such an obligation necessarily is taxable.

The originally intended beneficiaries of S. 979 were the Wayne Township Volunteer Fire Department of Marion County, Indiana, and the holders of obligations issued by that Department.

However, each bill would apply to obligations of any volunteer fire department in the country that satisfies requirements of the bills.

Effective date

The provisions of each bill would apply to obligation issued after December 31, 1968.

Revenue effect

Originally, S. 979 was intended to benefit Wayne Township Volunteer Fire Department of Marion County, Indiana and the holders of bonds issued by the Department. If the definition of a qualified volunteer fire department limits the issuance of tax-exempt bonds to the abovementioned department, the reduction in budget receipts, based upon the amount of interest payable on the known outstanding obligations of the Department, is estimated to be $21,360. However, as mentioned above, other volunteer fire departments could meet the requirements of the bills. If a significant proportion of the more than 20,000 volunteer fire departments meet these restrictions, the estimated reduction in budget receipts would be substantially greater.

STATEMENT BY SENATOR DAN QUAYLE ON BEHALF OF THE WAYNE TOWNSHIP VOLUNTEER FIRE DEPARTMENT

Mr. Chairman, as a cosponsor, with my distinguished colleague from Indiana (Mr. Lugar), of S. 979, a bill to amend the Internal Revenue Code of 1954 to clarify the tax exemption for interest on obligations of volunteer fire departments, I would like to take this opportunity to submit this statement to the hearing record.

I am pleased that the Subcommittee is taking the time to consider this matter as its resolution will have far-reaching implications for one of this country's most vital community service organizations. One does not have to actually experience a fire in their home to fully understand the terrifying destruction and trauma that they incur. This Nation's volunteer fire departments perform an essential role in protecting lives and property in both urban and rural areas throughout the country.

A volunteer fire department's effectiveness depends primarily on its ability to acquire top quality equipment. This equipment is acquired through private loans at municipality rates. Unfortunately, the recent IRS ruling will eliminate the volunteer fire departments' tax-exempt status in relation to interest paid on borrowed funds.

More specifically, the Wayne Township Volunteer Fire Department in Indianapolis, Indiana, will suffer very severe consequences as a result of this ruling. The elimination of their tax-exempt status will mean an interest differential of close to $100,000 in the Department's efforts to replace its 1949 firetruck. In light of the fact that this highly-respected firefighting organization receives substantial funds by agreement with the township trustees and requires no compensation from the community-at-large for its services, the interest tax will impose a substantial burden.

I am very pleased that my fellow Hoosiers, Richard Lamb, Chief of the Wayne Township Fire Department, and Harold Stofer, Wayne Township Trustee, have been given the opportunity to testify here today. I am also pleased to have Mr. Streng, Mr. McCormick and Mr. Greenwald, all who represent various factions of the firefighters of this nation. They are prepared to present, first-hand, the serious financial impact of this IRS position to the effectiveness of volunteer fire departments in Indiana and elsewhere across the nation.

I thank the Chairman and the Committee for considering this bill at this time. I sincerely hope that these hearings will ultimately result in efforts on the part of the 97th Congress to promote the invaluable firefighting services that these men and women provide.

Senator PACKWOOD. The committee will come to order.

We will start our hearing this morning on S. 721, a bill introduced by Senator Humphrey. I see that he is here to testify.

So, Gordon, if you want to start, we are on our way.

STATEMENT OF HON. GORDON J. HUMPHREY, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator HUMPHREY. Thank you, Senator Packwood, for this opportunity to appear as a witness in behalf of S. 721, of which I am principal sponsor and which bill was offered in behalf of the New Hampshire residents who are employees at the Portsmouth Naval Shipyard.

Mr. Chairman, the State of Maine taxes the income of 4,613 New Hampshire residents who work at the Portsmouth Naval Shipyard. Although the yard is named after the city of Portsmouth, N.H., the yard is actually a Federal enclave ceded to Federal Government, by the State of Maine in 1863.

It is located on C. V. and Denitt Islands in the Piscataqua River which separates New Hampshire and Maine, that is the shipyard, a Federal enclave, is located on the border between the States of Maine and New Hampshire.

Maine's legal justification for this tax is the Buck Act, 4 U.S.C. 106, which appears to give States the authority to tax the income of individuals earned by transactions conducted on Federal enclaves within the taxing States.

However, the unique status of New Hampshire as a State which does not impose an income tax on its residents, and the location of the shipyard between New Hampshire and Maine combine to make Maine's tax an unfair and intolerable burden on New Hampshire's citizens who work at the Portsmouth Naval Shipyard.

My legislation, S. 721, corrects this inequity. The bill simply exempts nonresidents who work at the Portsmouth Naval Shipyard from Maine State income tax.

It is my strong belief that this legislation is needed to protect New Hampshire citizens from capricious and unfair tax decisions made by the State of Maine, and to protect them from a tax imposed without these citizens' representation and without any corresponding State benefits to them.

The only State income tax these New Hampshire employees of the shipyard pay is one to Maine, since New Hampshire has no income tax.

Indeed, the average tax bill imposed by the State of Maine on the citizens of New Hampshire was about $507, in 1980. This tax burden is keenly felt as a serious injustice.

The landmark U. S. Supreme Court decision cited as authority for States to impose an income tax on nonresidents is *Shaffer* v. *Carter*. Yet, this case states as justification for the taxation of nonresidents that the taxing State must—

> Assume and perform the duty of preserving and protecting all such persons, property, and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray Governmental expenses.

The undeniable reality is that the New Hampshire citizens who work at the Portsmouth Naval Shipyard received no benefits whatever from the State of Maine.

The shipyard is a U.S. Navy installation located uniquely between two States, and only an accident of history gives Maine its legalistic claim of prior ownership.

The U.S. Government maintains its access roads, provides fire and police protection, and all the services normally performed by the State.

In effect then, the $2,340,946 collected from the incomes of New Hampshire employees at the shipyard in 1980 amounted to a windfall for the treasury of the State of Maine.

The Maine Legislature compounded the problem 2 years ago by amending its tax law to deny nonresidents the full use of their standard deduction and personal exemptions.

Beginning in the 1980 tax year, the standard deduction and personal exemptions are prorated according to the percentage of gross income earned in Maine.

In simple terms, this is a hidden tax on the shipyard employees family income earned in New Hampshire.

This has resulted in a much higher tax burden on the individual whose spouse works in New Hampshire.

Plainly, this is an unfair discrimination against nonresidents.

Why should a New Hampshire citizen working at the Portsmouth Naval Shipyard face a higher income tax bill simply because his or her spouse earns additional income in New Hampshire?

Indeed, this recent tax change points out the need for the Congress to act. There are few restraints on Maine's ability to devise new ways and to increase the burden on nonresidents who have no representation when these changes are considered by the State legislature.

Needed skilled workers may be hard to attract to the shipyard to do the essential work for our Nation's defense at the Navy's finest shipyard.

I fear that these income tax increases may even lead some employees to consider quitting, since these workers could take a hefty pay cut, work in New Hampshire and still come out ahead.

We can redress this injustice by exercising our sovereign control over the Portsmouth Naval Shipyard, Mr. Chairman.

In addition, the Commerce Clause of the Constitution permits Federal regulation of the taxing power of a State, *Arizona Public Service Co.* v. *Snead*, 441, U.S., 1979.

The Congress must act to relieve these hardworking New Hampshire citizens at the shipyard from an unfair tax imposed without their representation.

Again, Mr. Chairman, thank you for the opportunity to appear as a witness. Thank you especially for your willingness to hear this bill on behalf of the committee. Thank you also for inviting and being willing to listen to several witnesses, who I believe are to follow me.

They represent an organization called SCOUT, whose lapel pin I proudly wear this morning. It is an organization of New Hampshire residents, obviously who work at the shipyard and who are fighting what they see as an unjust tax.

They have studied this issue for years and years, Mr. Chairman. They have become constitutional experts in their own right. If one could still become a lawyer through study of the lawbooks, these folks would all qualify, in my opinion.

Thank you, Mr. Chairman.

Senator PACKWOOD. Gordon, let me ask you this, and if you don't know the answer they may, if they studied it that far.

You are not suggesting changing the law generally to say that one State cannot tax the income of people who work in that State, whether they are resident or not?

Senator HUMPHREY. That's correct.

Senator PACKWOOD. This is limited very narrowly to those people who work on Federal property, in another State.

Senator HUMPHREY. That's correct, but especially in the unique circumstances of this particular enclave, Federal enclave, in that it is on the border and in order to reach this enclave, New Hampshire residents do not to any meaningful extent, utilize the services of the State of Maine.

There is a very short distance of a half a mile or something, between the bridge and the gate to the base. The Federal Government provides all the normal services that a State would provide in return for a tax on the income of persons working in that State.

Senator PACKWOOD. But the bill would apply to anyone working in a Federal enclave or is it narrowly drawn for just this enclave?

Senator HUMPHREY. It is just for this particular peculiar instance.

Senator PACKWOOD. In my mind, and I have not decided on the merits of this bill yet, but that doesn't bother me. People say that this is a very narrow, special bill. My answer is, it may or may not be. If the present law is inequitable, then there is no reason that we should keep the present law.

Senator HUMPHREY. Well, that is certainly a valid point. No matter how few citizens there are involved, and it would depend upon how you look at this, several thousand is not a small number, but compared with 220 million it is.

Nevertheless, 4,000 people are entitled to the same consideration as 220 million.

Senator PACKWOOD. We have changed laws that applied to one or two people, if we thought they were unfair. That doesn't bother me at all.

Senator HUMPHREY. I am glad to hear that.

Senator PACKWOOD. If it is called special interest legislation, so be it. It is special interest legislation to remedy an injustice.

Senator HUMPHREY. I am glad to hear that.

Senator PACKWOOD. Gordon, I thank you very much.

Senator HUMPHREY. Thank you.

Senator PACKWOOD. I have no further questions. I will look forward to the witnesses that you have from New Hampshire.

[The statement follows:]

STATEMENT OF SENATOR GORDON J. HUMPHREY IN SUPPORT OF S. 721

Good morning. As this nation prepared to celebrate its 205th birthday, I am reminded that one of the root causes of our rebellion against England was unfair taxation—taxation without representation. That is the issue I want to discuss this morning.

The State of Maine taxes the income of the 4,613 New Hampshire residents who work at the Portsmouth Naval Shipyard. Although the yard is named after the City of Portsmouth, New Hampshire, the shipyard is a federal enclave, ceded to the federal government by Maine in 1863. It is located on Seavey and Dennet Islands in the Piscataqua River which separates New Hampshire and Maine. Maine's legal justification for this tax is the Buck Act, 4 U.S.C. § 106, which appears to give states the authority to tax the income of individuals earned by transactions conducted on federal enclaves within the taxing states. However, the unique status of New Hampshire as a state which does not impose an income tax on its residents and the location of the shipyard between New Hampshire and Maine combine to make Maine's tax an unfair and intolerable burden on New Hampshire citizens who work at the Portsmouth Naval Shipyard. My legislation, S.721, corrects this inequity.

S.721 simply exempts nonresidents who work at the Portsmouth Naval Shipyard from Maine state income tax. It is my strong belief this legislation is needed to protect New Hampshire citizens from capricious and unfair tax decisions made by Maine, and to protect them from a tax imposed without these citizens' representation and without any corresponding state benefit to them.

The only state income tax these New Hampshire employees of the shipyard pay is the one to Maine, since New Hampshire has no income tax. Indeed, the average tax bill imposed by Maine on these citizens of New Hampshire was $507 in 1980. This tax burden is keenly felt as a serious injustice.

The landmark U.S. Supreme Court decision cited as authority for states to impose an income tax on nonresidents is *Shaffer* v. *Carter*, 252 U.S. 37 (1920). Yet this case states as justification for the taxation of nonresidents that the taxing state must: "Assume and perform the duty of preserving and protecting all such persons, property, and business, and, inconsequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray governmental expenses," 252 U.S. at 50.

The undeniable reality is that the New Hampshire citizens who work at the Portsmouth Naval Shipyard received no benefits from the State of Maine. The shipyard is a U.S. Navy installation located uniquely between two states, and only an accident of history gives Maine its legalistic claim of prior ownership. The U.S. government maintains its access roads, provides fire and police protection, and all

the services normally performed by the state. In effect, then, the $2,340,946 collected from the incomes of New Hampshire employees at the shipyard in 1980 amounted to a windfall for the treasury of the State of Maine.

The Maine legislature compounded the problem two years ago by amending its tax law to deny nonresidents the full use of their standard deduction and personal exemptions. Beginning in the 1980 tax year, the standard deduction and personal exemptions are prorated according to the percentage of gross income earned in Maine. In simple terms, this is a hidden tax on the shipyard employee's family income earned in New Hampshire. This has resulted in a much higher tax burden on the individual whose spouse works in New Hampshire. Plainly, this is an unfair discrimination against nonresidents. Why should a New Hampshire citizen working at the Portsmouth Naval Shipyard face a higher income tax bill simply because his or her spouse earns additional income in New Hampshire?

Indeed, this recent tax change points out the need for the Congress to act. There are few restraints on Maine's ability to devise new ways to increase the burden of nonresidents who have no representation when these changes are considered by the state legislature. Needed skilled workers may be hard to attract to the shipyard to do the essential work for our Nation's defense at the Navy's finest shipyard. I fear that these income tax increases may even lead some employees to consider quitting, since these workers could take a hefty pay cut, work in New Hampshire and still come out ahead.

We can redress this injustice by exercising our sovereign control over the Portsmouth Naval Shipyard. In addition the commerce clause of the Constitution permits federal regulation of tha taxing power of a state. *Arizona Public Service Co.* v. *Snead*, 441 U.S. 141 (1979). The Congress must act to relieve these hard-working New Hampshire citizens at the shipyard from an unfair tax, a tax imposed without their representation.

Senator PACKWOOD. Mr. Barney, Ms. Burnette, and Ms. Bonenfant.

STATEMENTS OF BOB BARNEY, HELEN BURNETTE, AND BARBARA BONENFANT, ROCHESTER, N.H., REPRESENTING SHIPYARD COMMITTEE ON UNJUST TAX

Senator PACKWOOD. Thank you very much for coming down.

Ms. BONENFANT. I am Barbara Bonenfant. Good morning and thank you for letting us come here. This is Mr. Robert Barney and this to my right, is Mrs. Helen Burnette. We are here to testify to support Senator Humphrey's bill, S. 721.

Since 1969, the State of Maine has taken $25 million from Portsmouth Naval Shipyard workers who live in New Hampshire, under the guise that Congress, by way of the Buck Act, gave them the unrestrained right to so tax nonresident Federal workers.

The shipyard is located on adjoining islands in the Piscataqua River which provides the boundary between the two States.

It is a self-supported, self-sustained, federally owned, operated, and protected U.S. Government installation, acquired by 28 deeds, in two acts of secession, the last in 1863, when the State of Maine ceded the property and all jurisdiction thereto, to the United States, specifically exempting only that involving civil and criminal processes.

Having neither any lawful dominion over its nonresidents nor over the U.S. Government employing activity, the State of Maine also provides neither nonresidents, nor the shipyard with anything in the way of protections, opportunities, facilities, or services of any kind, such as could be construed as having the required physical relationship to benefit that Maine returns the employing activity or to shipyard workers for tax the State of Maine collects.

To the contrary, the shipyard provides a number of benefits to both States and the area communities to include a lucrative source

of income for their residents, as well as, for example, emergency firefighting assistance, without hesitation or question, whenever called upon to do so.

The Maine tax imposes an unfair burden on New Hampshire residents. During calender year 1980, $2,340,946, an average of $507.47 for each New Hampshire resident was withheld by the shipyard controller and turned over to Maine's treasury.

Be aware, that this is not the total tax paid by many of these people. Many of them pay a lot more. This is only an average withheld per individual.

Each New Hampshire resident held liable for Maine taxes also obligated to share the burden of cost for his own State government through other forms of tax. New Hampshire has one of the highest real estate taxes of anywhere in the Nation. New Hampshire also has some of the highest gas and oil taxes of anywhere in the Nation.

New Hampshire is only one of a very few remaining States without an income tax law.

Therefore, its residents are being forced to share the burden of cost of the operation of two State governments and they are finding it extremely difficult to survive in our present inflated economy.

Maine's tax law discriminates against nonresidents in many other ways. All New Hampshire residents made subject to Maine tax experience a substantially greater financial loss than Maine's own residents.

For example, the supplemental form for nonresidents precludes an equal opportunity for New Hampshire citizens to claim the same tax credits, exemptions, and deductions allowed to Maine residents.

Presently, Maine boasts of a $10.5 million surplus in their treasury for the first 10 months of the current fiscal year. The burden of Maine's tax also extends to New Hampshire's State treasury as well.

Past shipyard layoffs have forced New Hampshire residents to turn to their own State government, not Maine for their unemployment compensation.

Maine residents are also directed to collect their unemployment compensation from New Hampshire.

The distinctions between Maine resident taxpayers and nonresident taxpayers are clear as concerns privileges and benefits for Maine tax collected.

Maine residents enjoy the broad range of State-sponsored protections, facilities, opportunities, and services incident to their domicile within the taxing State. These include, but are not limited to around-the-clock police and fire protection for their person and their real and personal property.

We who represent approximately 4,500 New Hampshire resident shipyard workers cannot agree that Congress ever intended to legislate away any guarantees of protection for Federal employees who are not residents of a taxing State, therefore, we would respectfully urge your positive recommendation for Senator Humphrey's bill, S. 721. We pray that Congress will see fit to remedy the situation by amending the Buck Act.

Thank you.

Senator PACKWOOD. Thank you very much.

I might say to all of the witnesses here today, your entire statements will be placed in the record whether or not you are able to finish them in the time limit.

Mr. BARNEY. We, officers of SCOUT, shipyard committee on unjust taxation, are here in support of the Senate bill S. 721, introduced by the Honorable Gordon J. Humphrey.

We feel that this bill, S. 721, is rightly needed to protect the rights of over 4,600 Federal employees from the State of New Hampshire, working at the Portsmouth Naval Shipyard.

It appears that the State of Maine shows no concern for nonresident taxpayers in respect as to the tax laws the State imposes on them.

The 1980 tax law definitely discriminates against New Hampshire residents by requiring them to prorate their exemptions and deductions according to the amount of percent arrived at from their total income, divided into the Maine income.

This percentage ranges from 50 to 95 percent, depending on the spouse's earnings, military retirement pay, private business earnings, dividend and interest earnings.

This law has given the State of Maine authority to impose and penalize New Hampshire residents because of where he lives or where he or she chooses to work.

The fact remains that a New Hampshire resident is being treated as an outcast and has nothing to say about it since he or she is a nonresident.

Another case of discrimination is the 1978 Homesteaders Tax Relief Act where residents of the State of Maine receive their rebate from the State of Maine's treasury at a surplus amount of dollars. Each resident homeowner received $64 and each resident renter received $32, provided they were resident for the entire year.

In New Hampshire, a nonresident paying the same income tax, contributing to the State's surplus, received nothing.

It is fair to say that a larger number of dollars contributed from the employees of the Portsmouth Naval Shipyard to the State of Maine's treasury was contributed by the residents of New Hampshire.

We believe the original intent of the Buck Act was to reimburse the State of Maryland for benefits received by residents not subject to the State tax.

We feel the State of Maine has misused the authority given by the Buck Act, by imposing the discriminating tax laws on New Hampshire residents employed at the Portsmouth Shipyard.

In closing, we have provided information enforcing our claim, comparison of figures of residents and nonresidents, a sample 1980 income tax form filled out, data showing the 1980 tax change and a copy of the 1978 Homestead Relief Act.

At this time, I would like to have these documents entered into the record.

Senator PACKWOOD. They will be placed into the record.

[The material was subsequently furnished:]

We, Officers of S.C.O.U.T. Shipyard Committee on Unjust Taxation, are here in support of Senate Bill S-721 introduced by the Hon. Gordon J. Humphrey. We feel that this Bill S-721 is rightly needed to protect the rights of over 4,600 Federal

employees from the State of New Hampshire working at the Portsmouth Naval Shipyard.

It appears that the State of Maine shows no concern for nonresident taxpayers in respect as to the Tax Laws the State imposes on them. The 1980 Tax Law definitely discriminates against New Hampshire residents by requiring them to prorate their Exemptions and Deductions according to the amount of percent arrived at from their total income divided into their Maine income. This percentage ranges from 50 percent to 95 percent depending on spouses earnings, military retirement pay, private business earnings dividend and interest earnings. This law has given the State of Maine authority to impose and penalize a New Hampshire resident because of where he lives and where he or she chooses to work. The fact remains that a New Hampshire resident is being treated as an outcast and has nothing to say about it since he or she is a nonresident.

Another case of discrimination is the 1978 Homesteaders Tax Relief Act where residents of the State of Maine received a rebate because the State of Maine's Treasury had a surplus amount of dollars. Each resident homeowner received $64 and each resident Renter received $32 provided they were residents for the entire year. A New Hampshire nonresident paying the same income tax contributing to the State's surplus received nothing. It is fair to say that a larger number of dollars contributed from employees at the Portsmouth Naval Shipyard to the State of Maine's Treasury was contributed by residents of New Hampshire.

We believe the original intent of the Buck Act was to reimburse the State of Maryland for benefits received by persons not subject to the State tax. We feel the State of Maine has misused this authority given by the Buck Act by imposing the Discriminatory Tax Laws on New Hampshire residents employed at the Portsmouth Naval Shipyard.

Enclosed is information enforcing our claim. Comparison figures of residents and nonresidents, a sample 1980 income tax form filled out, data showing the 1980 tax change and a copy of the 1978 Homestead Tax Relief Act.

The enclosed tax form shows an allowable percentage rate of 72.8 percent. The couple filing jointly reveived $62.08 for a return. If 100 percent were allowed on deductions and exemptions the couple would have received $160. Thus the couple paid $97.92 more since his wife worked in New Hampshire and he was employed at a part time employment in New Hampshire.

EXAMPLE NO. 2.—MARRIED COUPLE WITH 2 CHILDREN

	Resident	Nonresident
Wages subject to Maine tax	$20,000	$20,000
Wages earned in New Hampshire		10,000
Deductions and exemptions allowed	4,800	3,200
Income to be taxed	15,000	16,800

Using Tax Tables on page 6 on 1980 Tax Booklet: resident, $240+.06 of $3,200=$432; nonresident, $480+.07 of $800=$536.

A nonresident pays the State of Maine $104 more than a resident.

EXAMPLE NO. 3.—SINGLE INDIVIDUAL OR MARRIED PERSONS FILING A SEPARATE RETURN

	Resident	Nonresident
Wages subject to Maine income tax laws	$20,000	$20,000
Wages earned in New Hampshire		10,000
Exemptions and deductions allowed by Maine tax laws	3,800	2,534
Income to be taxed	16,200	17,466

Using Tax tables of the 1980 Maine Income tax booklet; resident, $780.00 + 9.2 percent of $1,200.00, $780.00 + $110.40 = $890.40; nonresident, $780.00 = 9.2 percent of $2,466.00, $780.00 + $228.00 = $1,006.87.

A nonresident pays $116.47 more than a resident to the State of Maine. Please note that these earnings could be increased if the percentage rate allowed on exemptions and deductions are 50 percent rather than the 66⅔ percent used in examples, thus making Nonresidents pay an even higher tax than a resident pays.

In closing a reminder that New Hampshire residents paid over 2.3 million dollars at an average of approx $500.00 per resident. The State of Maine has truly discriminated against 4,600-plus residents of the State of New Hampshire by imposing this newest Tax law.

Mr. BARNEY. The enclosed tax form shows an allowable percentage rate of 72.8 percent. The couple filing jointly receives $62 for a return. If 100 percent were allowed on deductions and exemptions, the couple would have received $160.

This is just one of the examples.

In closing, a reminder that the New Hampshire residents paid over $2.3 million at an average of approximately $507 per resident.

The State of Maine has truly discriminated against 4,600-plus residents of the State of New Hampshire by imposing this newest tax law.

That is all I have, sir.

Senator PACKWOOD. Thank you very much.

I wonder if I might interrupt your panel a moment. I see Senator D'Amato here and he has another meeting he has to go to.

Do you want to testify now?

Senator D'AMATO. If it is possible.

Senator PACKWOOD. Yes. If you would let me take the Senator and let him testify on the bill that he is concerned with and then we will go back and finish this panel. I have a question or two and I think Senator Mitchell may have some questions.

Ms. BONENFANT. Thank you.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Thank you very much, Mr. Chairman, for the courtesy and perspicacity in chairing this hearing so early in the morning after our late session last evening.

Mr. Chairman, I come before the subcommittee today as a member of a volunteer fire department. I have been an active member for 18 years. A little community where I live called Island Park has about 150 volunteers. Its volunteer fire department protects the lives and homes of more than 10,000 residents of three small island communities; Island Park, Barbum Isle, and Harbor Isle.

I know firsthand that each and every one of those residents believes that this protection is one of the most essential, if not the single most important, public service that is provided to them.

At least 30 percent of our Nation's population, primarily in suburban and rural America, depend upon more than 25,000 volunteer fire departments to do what they can not do as individuals.

Each time a fire department responds, it responds to a possible lifesaving crisis.

We are witnessing a significant expression by a volunteer fire department and its members in terms of significant citizen participation, community spirit, the essence of caring, and the essence of our Nation each time they swing into action.

I am going to ask, Mr. Chairman, if I might have the rest of my remarks included in the record at the end of my testimony as if given in its totality, and get down to the basics of the bill, S. 1382, that I have asked to be able to testify on.

The essence of this bill would give volunteer fire departments the ability and the right to finance the purchase of necessary equipment and rehabilitate their equipment and buildings using interest-free loans and bonds.

This is something that is not now permitted by volunteer fire departments and organizations, although it is allowed in municipal departments.

The difference, for example, in New York, as of today, would be that if you had a credit-worthy volunteer department going to Chemical Bank, they would be quoted a rate of between 19 to 20 percent, 8 to 10 points higher than for municipal financing.

That makes it literally impossible for many volunteer fire departments to go out and make the necessary equipment acquisitions.

A hook and ladder truck today will cost as much as $150,000. At a 20-percent financing cost, we are talking about an interest payment of $30,000 a year.

To say the least, it would be difficult for most. As a factual matter, it is impossible for many of our volunteer fire departments with that kind of heavy financing charge to purchase new equipment, and in some cases, even to make the necessary repairs.

I mention there is a spread of about 9 percent. Today that same volunteer fire department would be able under municipal financing techniques, that is, interest-free financing if it were made available as this bill proposes, to purchase equipment paying an interest rate of approximately 11.75 percent.

Clearly, in many, many cases throughout this country, that would make the difference as to whether the volunteer fire departments will have the ability to continue to provide the same quality service, continue to modernize, continue to keep fleets running, continue to see to it that firehouses are kept in decent, adequate repair, and so forth.

I believe that we have an obligation to see to it that they have every opportunity to continue the great service that they have provided this Nation.

In New York State there are approximately 1,800 volunteer fire departments who would be affected. The bill provides that at least 50 percent of the volunteer fire departments' revenue would have to come by way of municipal payments, so that it could not be construed as some private club, but rather truly, something that benefits the municipality and its residents.

I believe, Mr. Chairman, that the cost implications are minimal in terms of loss of revenue to the Treasury. My office has been unable to get a figure from the Treasury because, to quote them, they have indicated that the loss is insignificant.

So, for all of those reasons, and numerous others that people could cite, I believe it is important that we give to volunteer firemen the opportunity to continue their service.

Senator PACKWOOD. Al, I am very sympathetic to this bill. Oregon, also, has very many volunteer fire departments. Although my most vivid memory of one was when I was in the State legislature, speaking at a small town to the Junior Chamber of Commerce, at noon, about 20 people for lunch, but the volunteer fire department's fire bell rang and 13 of the audience left.

I later discovered only 3 belonged to the fire department and the other 10 took the opportunity to leave my speech. [Laughter.]

But that memory would not cause me to be prejudiced against the bill.

Senator D'AMATO. Mr. Chairman, I am going to be sure to use that story at my next fire department breakfast or whenever the occasion presents itself.

Senator PACKWOOD. Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman. I have no questions.

Senator PACKWOOD. Al, thank you very much for coming.

Senator D'AMATO. Thank you, sir.

Senator PACKWOOD. When we finish the panel and get onto the other testimony, we will get back onto this volunteer fire department bill.

Now we will go on.

STATEMENT OF SENATOR ALFONSE D'AMATO

Mr. Chairman, I come before the subcommittee today as a member of the Island Park Volunteer Fire Department. We are 150 volunteers who protect the lives and homes of more than 10,000 residents of three Long Island communities—Island Park, Barbum Isle, and Harbor Isle. And I know first-hand that each and every one of those residents believes that protection is one of—if not the most important public service provided to them.

At least 30 percent of our Nation's population—the citizens of suburban and rural America—depend on more than 25,000 volunteer departments to do what they cannot do as individuals. Each time a rescue vehicle is dispatched; every time an emergency truck rushes to the scene of an accident; for every life saved by a volunteer's fast action, we are witnessing a significant expression of citizenship and community spirit. It is the essence of caring.

Clearly, these volunteer departments protect their communities as capably as professional firefighters in urban municipalities. In some cases, they battle more adverse conditions, one of those adversities is financing.

Volunteer departments cannot issue tax-free obligations as professional departments may. We have ignored the fact that most volunteer companies are extensions of the local governments they serve. They have written contracts or agreements to protect those communities. Yet they do not enjoy the tax-free status that municipal departments enjoy. It is time we grant the volunteers equity with their professional colleagues.

I have introduced such legislation, S. 1382, entitled the "Volunteer Fire Department Equity Act." This measure would allow volunteer departments, meeting four criteria, to borrow money at lower interest rates. Lenders will offer those lower rates since the interest on such loans would be tax exempt.

Too many departments are struggling with outdated equipment. Replacing or restoring that equipment is just as great a struggle. By lowering the cost of borrowing money, we will not only be saving money for these departments and the taxpayers who help support them, we may also be saving lives.

A firefighting team whether it is professional or volunteer, is only as good as its rescue equipment. Time can save a life. In those precious seconds after an automobile accident; during the life-threatening minutes of a house fire, volunteers must gather from as far away as several miles, ready their equipment and speed to the scene of an accident. If they are slowed by an overworked engine or limited by a less mobile vehicle, lives can be lost—lives that can never be brought back.

Even when emergency teams reach an accident victim in time, they may lack the paramedic equipment needed to sustain life. A large number of volunteer companies purchased paramedic gear in the early 1960's and have used that equipment ever since. They have been unable to afford the high cost of new, life-saving apparatus. Who knows how many lives might have been saved by such equipment? That is a question all of these selfless volunteers do not want to ask themselves. It is a question I don't want them to face ever again.

General James Doolittle once said "One trouble with us Americans is that we're fixers rather than preventers." With the "Volunteer Fire Department Equity Act," we can prove the general wrong.

The act would apply to those departments which are the only organized firefighting service in an area, which provide their services vis-a-vis a contract or agreement, which receive no less than 50 percent of their funding from a government or governments, and which offer their services without charge to their communities.

Earlier I said the work of volunteer departments is the essence of caring. It is also the essence of unselfishness. Not only do volunteers risk their lives and sacrifice their time for training and emergencies, they do so free of charge. They expect nothing either as individuals or as a department. Local governments and their taxpayers are happy to provide partial funding of these departments.

Even a department's fund-raising efforts benefit a community. A chicken barbeque, an ice-cream social, a carnival—these are the unashamedly-corny events that bring a community together. For that is what a community is—a gathering of people who work and live together. It is the same from Maine to California and it is too important—too basic—for us to ignore. Here is legislation that will give these volunteers a badly needed shot in the arm.

This bill will help our citizens to help themselves. It will support a community service vital to thousands of communities across the United States. I and my fellow volunteers of the Island Park Volunteer Fire Department, like volunteers across the country, have earned your support and deserve passage of S. 1382.

Senator PACKWOOD. Now, let's go back to the New Hampshire panel, get them to the table.

Thank you very much for letting Senator D'Amato going on.

Ms. BURNETTE. Thank you, Senator Packwood.

I am Helen Burnette speaking. We have been asked to address the unfairness, the discriminatory aspects and the burdens that this Maine tax has imposed on New Hampshire citizens and on the State.

So, I will add just a bit more to that. New Hampshire residents are denied credit for tax on that part of their Federal income collected for work assignments in far away locations.

Federal authorities in recent years have found it practical and economically feasible to accomplish submarine repair work at remote sites using the skilled craftsmen from the Portsmouth Naval Shipyard.

In addition, these people and other nonresident workers have been denied credit for periods of annual sick and other forms of paid leave when such nonresidents were not physically located within the shipyard nor within the boundaries of Maine.

Virtually hundreds of Maine's nonresidents who work right alongside with other shipyard people, made subject to Maine's tax, are somehow escaping the tax. These include, of course, people from the Postal Service who have an annex at the shipyard and who work out of Portsmouth, NH office. These people are assigned as GS-4's, 5's, and 6's and Portsmouth people would be real hard pressed to find people who would be willing to work at the shipyard at a salary reduced by the amount of Maine tax, where if they work in New Hampshire, they would not have to sustain that loss.

So, these people are not bothered, although they work in the Federal area. Others include Northeast Federal Credit, our credit union, New England Telephone Co., their maintenance and service people, industrial equipment, factory representatives, maintenance workers, sales persons, even the truck drivers do earn part of their income from services performed within the Federal area.

Unlike New Hampshire residents, Maine taxpayers who are residents of Maine do have a voice in Maine's polls. Senator Humphrey

touched on this, but also, we find from our research that it is quite important and still on the books that in order to tax, people, who pay tax, are entitled to say as to how tax taken may be spent. We are denied that.

In other words, through the ballot box, Maine citizens have the means to control the use of their tax dollars, while New Hampshire residents, shipyard workers, who contribute to Maine's coffers, are without such say or control.

Concerning the lawful jurisdiction to levy and collect such tax, you people probably are the lawyers, but we find that what we have learned of a State tax collected from income in any self-supported, self-sustained federally owned, operated, and protected U.S. Government installation, there is nothing in the way of return either to our employing activity or to New Hampshire residents, to allow that income to be earned.

So, there being nothing in return that we can find, and I personally have been trying since 1970 to have somebody tell me what it is that Maine provides in return for the thousands, and thousands of dollars taken; nothing.

So, we hope that you gentlemen will appreciate our situation. We ask you do give a favorable recommendation for Senator Humphrey's bill No. S. 721, and pray that Congress will see fit to remedy this terrible situation.

I thank you.

Senator PACKWOOD. Thank you. I have two questions.

Ms. BURNETTE. Yes, sir.

Senator PACKWOOD. Maybe more. The bill is drawn to apply only to this shipyard.

Ms. BURNETTE. Yes, we understand that.

Senator PACKWOOD. As I understand the theories of your testimony, first you said we have no voice in the Maine legislature. We have no chance to vote on this. We are being taxed without representation.

Ms. BURNETTE. Yes, sir.

Senator PACKWOOD. Wouldn't that argument be true for any nonresident of a State who works in it and pays the income tax in that State, whether they worked on Federal property or not?

Ms. BURNETTE. No, it wouldn't.

Senator PACKWOOD. Why.

Ms. BURNETTE. Because, when they worked for private industry, they do receive some benefits from Maine——

Senator PACKWOOD. Wait. Take the first part of the question, first. The right to vote. The right to have any say on the taxes that would be levied. That would apply to anybody that is a nonresident.

Ms. BURNETTE. Yes, sir.

Senator PACKWOOD. So that if we were to follow your theory on that, States could not levy any taxes on nonresidents regardless of where they worked, because they had no voice in that State's legislature.

Ms. BURNETTE. You are right, Senator.

Senator PACKWOOD. We have very clearly said that States can tax people who work in their State.

So the question comes down to, should we make exceptions in those situations such as yours where the State is really providing no service?

Ms. BURNETTE. Not based on that alone, sir. We were asked to refrain from the legalities of the thing and to concentrate more on the discriminatory aspects and on the burdens the Maine tax imposes on its citizens.

In answer or reply to your rationale that we don't ask for special treatment, just based on that alone, may I add a few words that are essential here? According to what we read in the Constitution of the United States of America annotated, which is the accepted version put out by the Senate, published and I believe it is used as an authority in all courts throughout the land, in order to tax income, a State must have dominion over either the receiver of the income or the property or activity from which that income is derived.

In addition, it must provide the means to render secure the collection of the income.

Now, what this means is, the State of Maine cannot have dominion over its nonresidents. I think we all realize that.

The State of Maine, due to the law of supremacy, of course, cannot have dominion over the U.S. Government or any of its properties or activities.

But, also, besides that dominion, it must provide something in the way of protections, facilities, or services, according to the book, that allows that income to be earned, something in return.

Now, Maine fails the dominion test. It can't have dominion over nonresidents. It can't have dominion over the Portsmouth Naval Shipyard or any of its properties or its activities.

Also, since we cannot find what it is that Maine provides to either render secure the collection of the income, something in the way of protections, facilities, or services, to the Portsmouth Naval Shipyard or the U.S. Government, it being a self-supporting, self-sustaining federally owned, operated, and protected U.S. Government installation——

Senator Packwood, So literally, Maine supplies nothing. You get your water supply from New Hampshire. Your electricity comes from New Hampshire.

Ms. BURNETTE. Yes, you are right. It—the Government—pays dearly for any services that are provided—that it acquires. The Government is self-supporting in that respect.

There is nothing convertible to a dollar value that Maine provides to allow New Hampshire residents to earn their income at the Portsmouth Naval Shipyard, nothing.

Now, with respect to six-tenths of a mile of road. Very intelligent lawyers have asked me, "Well, how do you get back and forth to work?"

According to the "privileges and immunities clause," every U.S. citizen has the right to pass freely from State to State, and therefore, that right cannot be used as a basis for tax. This is as I understand it.

So, lacking the dominion test, lacking supplying the Portsmouth Naval Shipyard, our employment activity, and New Hampshire residents, we who are made to pay over this tax, lacking Maine's

providing any of these protections or facilities or services and in the absence of them, for the life of me, we just can't find anything to justify the collection of their tax.

Therefore, we feel that Senator Humphrey's bill is so important. The courts, in a long string of cases, have examined the Buck Act and for some reason seem to overlook seven little words right at the beginning of the Buck Act that restrict taxing States to those "States having jurisdiction to levy such a tax," words which have been replaced by asterisks or little dots. Nobody seems to want to realize they are there.

We credit Congress with being very astute in including those words, in the first place; and, by their being overlooked, Senator, it simply reverses the whole intent of the Buck Act.

Senator PACKWOOD. Thank you. I think I have your point.

I understand what you are saying.

Ms. BURNETTE. Right.

Senator PACKWOOD. Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

I would like to ask a few questions. I note Senator Humphrey is here and perhaps he might care to respond to some of these if he does.

First, is it not true that there are now 40 States in the Union which impose an income tax?

Ms. BURNETTE. There are more than 40, I think, Senator.

Senator MITCHELL. Over 40?

Ms. BURNETTE. Yes, sir.

Senator MITCHELL. Is it not true that each of those 40 States now possesses the right to impose an income tax upon nonresidents of those States?

Ms. BURNETTE. Yes, sir, so long as the conditions are met; yes.

Senator MITCHELL. Is it not true that in some cases there are cities which impose income tax and do so upon nonresidents?

Ms. BURNETTE. Yes, sir.

Senator MITCHELL. Is it not in fact true that the State of New Hampshire just a few years ago, passed a law imposing an income tax upon nonresidents of New Hampshire who work in that State?

Ms. BURNETTE. Yes, sir.

Senator MITCHELL. Is it not true——

Senator PACKWOOD. May I just ask, nonresidents but not residents? Only nonresidents?

Senator MITCHELL. That's correct. The State of New Hampshire itself passed a law which imposed an income tax on nonresidents who work within that State, but not upon residents of that State.

Ms. BURNETTE. That was not an income tax. That was a commuter tax. It was a tax, we'll concede.

Senator MITCHELL. Certainly the court, which struck down that tax as discriminatory, called it an income tax.

Ms. BURNETTE. We agree.

Senator MITCHELL. Now, is it not also true that this matter has been considered by the U.S. Supreme Court, by the supreme court of the State of New Mexico, by the supreme court of the State of Pennsylvania, by the supreme court of the State of Maine and by the U.S. district court for Pennsylvania, and that in each and every

one of those instances the courts upheld the right, power, and authority of the State involved to impose a tax upon nonresidents?

Ms. BURNETTE. The court did, sir; yes sir.

Senator MITCHELL. And indeed, is it not true, noting the final arguments made, that in the most recent case dealing with the tax imposed by the city of Philadelphia, the situation was virtually identical to this one and the arguments made by the plaintiff in that case were virtually identical to the arguments you have just made regarding the lack of services provided.

Ms. BURNETTE. That was where Chief Justice Maxey dissented and it was ruled in favor of Philadelphia by the weight of just one witness, sir. Go ahead.

Senator MITCHELL. Well, I would like, just because the language, Mr. Chairman is so striking in connection with the argument, I would like to read just a brief summary of the Philadelphia case which is included in a report prepared by the Congressional Research Service of the Library of Congress.

The case was entitled, "Application of Thompson." It is in the U.S. District Court, the Eastern District of Pennsylvania, a 1957 case.

A summary of the case, the facts are and I quote from this report:

> George Thompson, a resident of New Jersey, and employee at the Philadelphia Naval Shipyard, was arrested for failure to pay his Philadelphia City Income Tax.
>
> He petitioned the United States District Court for a Writ of Habeas Corpus, which the court denied. Mr. Thompson contended that the City of Philadelphia had no jurisdiction to tax his income earned at the shipyard.
>
> He contended that his contacts with the city were too few to create a constitutional nexus for imposition of the tax.
>
> He noted that he resided in New Jersey. He used a ferry to cross the Delaware River directly from New Jersey to the shipyard, and he had no contact with other parts of the City of Philadelphia.

Notwithstanding these allegations, the court rejected the writ of habeas corpus on the basis of the analysis of the Pennsylvania Supreme Court, the previous case of *Kiker* v. *City of Philadelphia.*

That is another case in which the Pennsylvania Supreme Court—so, the facts were actually identical. This issue has been litigated over and over and over again, and not one court, not one court, from New Mexico to Maine, including the U.S. Supreme Court has ever ruled other than that States in the position of which Maine is, have the right, the authority and the power to impose that tax.

Is that not correct?

Ms. BURNETTE. You are absolutely correct, sir.

Ms. BONEFANT. That is why we feel that we need this bill to amend the bill, because it has been misconstrued for so many years.

Senator MITCHELL. And indeed——

Ms. BURNETTE. I'll have a chance, I hope, after he finishes, sir; right?

Senator MITCHELL. I beg your pardon.

Ms. BURNETTE. I hope I will have a chance to speak a minute when you get through.

Senator MITCHELL. Oh, you will have a chance to say anything you want.

Indeed, is it not true that the case in New Mexico was also identical in that it involved Texas residents who were employed at a Federal installation in New Mexico.

Ms. BURNETTE. New Mexico, the *White Sands Missile Proving Ground* case.

Senator MITCHELL. Yes, and the arguments advanced were the same arguments advanced here; is that correct?

Ms. BURNETTE. Yes, sir.

Senator MITCHELL. Is that not correct?

Ms. BURNETTE. Yes, sir.

Senator MITCHELL. Now, I would just like to note in Senator Humphrey's statement, he said on two occasions that the shipyard is located between New Hampshire and Maine.

I wonder, Senator Humphrey if you could tell us what basis in fact there is to suggest that the shipyard is located between New Hampshire and Maine?

Senator HUMPHREY. I suspect you have me on that point, Senator Mitchell. I simply was relying upon the research of my staff.

However, in conversing with that staff member, who is an attorney, I have since learned that there is a problem with regard to the border; so I concede the point.

Let me just say that——

Senator MITCHELL. Well, just so we can clarify that point. Yes, the shipyard is located within the State of Maine. That is clear, is it not?

Senator HUMPHREY. Yes, from what I have just recently been told.

Let me just say one last thing. You are citing cases that have been litigated in court. No one can fault what you have said so far, but this procedure is not a trial. We are here seeking relief from what we see as an inequity. We are here seeking—my friends from New Hampshire are here seeking a change in amendment to law.

Senator MITCHELL. Oh, I understand that. But I think it is relevant for this committee, this Senate and this Congress to know that the issue has been raised on many occasions by other persons in identical situations and in each instance, in each instance, the body which considered the arguments now being made, rejected them.

I understand what you are saying that this is not a court of law. But I think it is important for the Senator to know, the chairman here, that it is not a new issue. The arguments are not new. They have been raised over and over and over again, and in each case they have been rejected.

And, of course, for the reason stated in these various cases for which I will not bother, but essentially as the U.S. Supreme Court has said on many occasions, States in such situations have the unquestioned power to impose such taxes.

Ms. BURNETTE. May I speak some more, sir?

Senator PACKWOOD. I think the issue is fairly joined. I don't think they quarrel with the cases. They are simply saying we ought to change the law. Even that might lead to a court suit. The State might say that law is unconstitutional and you cannot take away our right to tax. I don't know.

But they clearly understand that if they are going to get any relief at all, it has to be by statute.

Senator MITCHELL. Well, let me ask a question. Do you feel that it is fair to impose such a limit on the State of Maine and not on the other 39 States which are in similar situations?

Are there not residents of New Hampshire who work in Federal installations in Massachusetts?

Ms. BURNETTE. May I?

Senator MITCHELL. Yes.

Ms. BURNETTE. New Hampshire is but one of a very few States remaining without an income tax law. Its citizens who work at the Portsmouth Naval Shipyard have been and are right now supporting two States, through another form of taxation or other forms of taxation.

It is fact that every case that you cited, sir, incidentally, rested on the Buck Act, an act of Congress that was interpreted by all of these tribunals in every instance as the very reason, the very authority that gave those States, cities, and counties, the right to tax income earned by nonresidents in Federal installations located within those boundaries of whatever taxing authority existed; right?

Now, since the interpretation starting from Kiker; and Kiker was the landmark decision in that particular set of circumstances in which the courts chose to overlook the requirement in the early part of the act. Now, for the people who do not have a copy of the Buck Act in front of them, I will read it.

Section 4, U.S.C. 106(a), states:

> No person shall be relieved from liability for any income tax levied by any State or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

In the interpretations, in every single case you cited sir, those words "having jurisdiction to levy such tax" required for the taxing authority were overlooked. States and other taxing authorities must have jurisdiction to tax, in the first place, before they could be allowed to levy and collect such a tax to the extent that the Buck Act allowed.

Our Congress of 1941 clearly limited the taxing power and authority of States to those "having jurisdiction to levy such a tax" before allowing them a right to tax income collected within Federal areas as though they were not Federal areas. The Buck Act is not without restrictions on taxing States.

So, we must examine the constitutional definition and prerequisites for jurisdiction to tax, found at page 1393 of the latest version of the Constitution of the United States (annotated), wherein it states in part:

> Jurisdiction for a State to tax net income * * * in the case of residents, is founded upon the rights and privileges incident to domicile * * * and, in the case of nonresidents upon dominion over either the receiver of the income or the property or activity from which it is derived, and upon the obligation (for the receiver) to contribute to the support of a government which renders secure the collection of such income.

Senator MITCHELL. This argument was made before every court that has considered it, was it not? This language made in the case that the people from New Hampshire brought before the Maine Supreme Court. The Maine Supreme Court——

Ms. BURNETTE. Exactly, overlooking those words.

Senator MITCHELL. Considered the arguments.

Ms. BURNETTE. But the point is that I don't believe nor do residents of New Hampshire believe that Congress ever intended to grant taxing authorities, taxing States, any more rights than existed before the Buck Act, as concerned tax of nonresidents.

They did not intend to say a State had a right to tax without return. I am certain they didn't. That is why they put those words in there.

Senator MITCHELL. Let us understand what we are saying. Now you say you are certain they didn't, but every court that ever considered it is just as certain that they did.

Ms. BURNETTE. If they intended to do so, sir, those seven words that limited taxing States to those having jurisdiction to tax would not have been included in the Buck Act. I am sorry. They (Congress) would have written it without those seven words, otherwise.

But, nonetheless, it—the interpretation of the Buck Act—has silenced the Constitution, one of the terms having been used so many times, and it, Congress has been blamed for silencing the Constitution as concerns the rights of nonresidents of taxing States who have been employed in Federal areas.

Senator Humphrey recognizes and we do feel there is an obligation on the part of Congress to correct the wrongs that have emerged from the Buck Act as a result of the misinterpretation, the twisting of it.

Thank you.

[The following material was subsequently supplied for the record:]

STATEMENT OF BARBARA BONENFANT, BOB BARNEY, AND HELEN BURNETTE

We, Barbara Bonenfant, Bob Barney, and yours truly, Helen Burnette, officers and members of SCOUT (The Shipyard Committee on Unjust Tax), do sincerely appreciate the opportunity to address the Senate Committee on Finance concerning Senator Humphrey's Bill No. S. 721, designed to remedy a thoroughly abhorrent situation which, since 1969, has festered in the minds and hearts of more than 25,000 New Hampshire and Massachusetts citizens who, during the twelve-year period, comprised the majority of the total civilian workforce of the Portsmouth Naval Shipyard.

Tentacles of the Nonresident Requirement of the Maine Income Tax Law (36 MRSA Section 5101) continue to reach across state boundaries to substantially reduce the take-home pay of approximately 4,600 New Hampshire residents who work at the Shipyard despite repeated protests, petitions, appeals to federal, state, and judicial authorities; and other individual and group efforts in search of relief from this thoroughly-repugnant tax.

We ask your indulgence, since our claim to fame is not public speaking—especially to such an august group.

In harmony with the Constitution of the United States of America, society generally accepts that taxation is merely a way to apportion the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens (71 Amer. Jur. 2d, Section 1, at 342). The Legislative Branch of government and, until recently, the federal judiciary have held that a taxing state is restricted to persons or property within its jurisdiction (Section 2 at 343); that people who pay tax imposed by law are entitled to have a voice in the election of those who pass the law (Section 79 at 403), as well as SAY as to how tax taken may be spent. Most important, however, is the fact there must be some fiscal relation to the protection, opportunities, and benefits given by the state; or, in other words, the

ultimate test being whether the State has given anything for which it can ask return (Section 110 at 428).

Recognized as the leading authority for all legislative and judicial analysis and interpretation of constitutional law is, "The Constitution of the United States of America" (annotated).

This document (No. 92-82) was prepared by the Congressional Research Service of the Library of Congress and published under the auspices of the United States Senate, during the 92d Congress, 2d Session. In the interest of brevity, hereinafter, this authoritative document will be referred to as, "The Constitution".

The Constitution does not allow the automatic and unlimited right to tax all income earned within their geographical boundaries.

Section I, Amendment 14 of the Constitution (See attached copy of page 1393.) states in part: "* * * Jurisdiction for a State to tax net income . . . in the case of RESIDENTS, is founded upon the rights and privileges incident to domicile * * * and, in the case of nonresidents upon dominion over either the receiver of the income or the property or activity from which it is derived, and upon the obligation (for the receiver) to contribute to the support of a government which renders the collection of such income."

Note, particularly, the distinction between residents of taxing states and nonresidents of taxing states. The next page of this same authority (1394) indicates: "The taxing power of a State is restricted to her confines and may not be exercised in respect of subjects beyond them."

In summary of these constitutional provisions for jurisdiction to tax, there is no doubt but what states do have a virtually unlimited right to impose and collect tax on income earned by their residents—that residents of taxing states are indeed lawfully "subject" to such tax; however, it is also clear that a state's right to tax does not and cannot lawfully extend across state boundaries to reach the pocketbooks of nonresidents, until the taxing state demonstrates it has met the constitutional prerequisities to tax—that it has the necessary jurisdiction to tax nonresident income.

The State of Maine fails in all respects to meet constitutional requirements for jurisdiction to tax income collected by nonresidents employed at the Portsmouth Naval Shipyard.

1. The State of Maine does not have dominion over any nonresident "receiver of the income" from whome Maine has been collecting tax. Dominion over citizens cannot be split between two states;

2. The State of Maine does not have dominion over the Portsmouth Naval Shipyard, the "property or activity from which the income is derived." No state can have such dominion due to the "Law of Supremacy" (Article VI, Clause 2).

The Portsmouth Naval Shipyard, an arm of the federal government considered vital to our national defense posture, is located on adjoining islands (Seavey and Dennet) in the Piscataqua River, which provides the boundary between the States of New Hampshire and Maine. Of significance is that the Shipyard, within its natural water boundaries, is a self-supporting, self-sustaining, federally-owned, operated, and protected United States Government installation. It was acquired by twenty-eight deeds and by two acts of cession, the last dated January 10, 1863, when the State of Maine ceded the property and ALL jurisdiction thereto to the United States, specifically excepting only that involving civil and criminal processes; and,

3. The State of Maine provides absolutely nothing to either the federal government employer or to the nonresident employee to allow income from the Portsmouth Naval Shipyard to be earned—nothing in return or to justify Maine's taking of more than $25 million tax dollars from New Hampshire-resident Shipyard workers since 1969; yet,

During calendar-year 1980, $2,340,946.00—an average of $507.47 per person—was withheld by the shipyard comptroller from New Hampshire residents and turned over to the State of Maine! What is the fiscal relationship to all that tax taken? A big fat nothing!

And, nonresidents who travel over Maine's half of the bridges that separate the two states and who travel six-tenths of a mile of Maine road on their way to and from work, do indeed have the right to do so according to the guarantees of the "Privileges and Immunities Clause" (Article IV, Section 2); therefore, use of Maine roadways cannot properly be used as a basis to justify tax on income collected by nonresident Shipyard workers.

Maine has never demonstrated having satisfied the prerequisites to tax income collected by nonresident shipyard workers.

Why, then, is Maine tax arbitrarily withheld from income earned at the Portsmouth Naval Shipyard by nonresidents and turned over to Maine's Treasury? Why, then, have nonresident shipyard workers been made "subject" to Maine tax?

The answers lie in (1) the "Buck Act" (4 U.S.C., Section 106(a)-111); (2) in the overwhelming power and influence of States; and (3) in the vulnerability of the courts at varying levels and their sympathy toward State governments and other taxing authorities.

THE PUBLIC SALARY TAX ACT

On April 12, 1939, Congress enacted "The Public Salary Tax Act" (c. 59 Title I, Section 4, 53 Stat. 575, 5 U.S.C.A., Section 84a), to render employees of the federal government subject to state income tax by the state within which they resided, exempting those domiciled on federal territory and in receipt of income from transactions or services performed in such areas.

Soon after, as the legislative history (by report of the subcommittee of the Committee on Finance) will confirm, Maryland complained of the unfairness of its tax law within those constraints laid down by Congress; e.g., individuals (to include officers of the Naval Academy) exempted from Maryland's tax law and others in receipt of income or receipts from transactions occurring in those areas within those states over which the United States has exclusive (vice concurrent) jurisdiction. Those escaping tax were determined to be privileged with free use of roadways and free state-sponsored protections, facilities, and services without having to share in the burden of cost for same. To overcome the inequities that emerged from such an arrangement—to pave the way for Maryland and other states to collect tax on gasoline and fuel oil purchased within such federal areas and to reach other income collected by their residents in federal areas, on October 9, 1940, Congress saw fit to enact Public Act No. 819, since, commonly referred to as the "Buck Act".

4 U.S.C., Section 106(a) provides that:

"No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having juridiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area."

Note: For explanation to "having jurisdiction to levy such a tax", see the next page.

When our lawmakers—those elected representatives of the people of this great land—enacted the "Buck Act", do you gentlemen believe that Congress ever intended to wipe out all constitutional guarantees of protection for nonresidents of taxing states? According to the legislative history of that Act, the answer to that question is a resounding, "No!"

Out of concern for the constitutional restraints—the limitations within which states and other so-called duly-constituted taxing authorities were (and still are) obliged to operate, it is clearly evident that Congress in its infinite wisdom did exercise a degree of caution to preclude such taxing authorities from overstepping the boundaries of their taxing jurisdiction.

It would be for no other purpose or reason that Congress saw fit to include the words, "having jurisdiction to levy such a tax,"—a provision which should have served to limit any State or other duly—constituted taxing authority to those constitutional prerequisites for jurisdiction to tax income; namely, the provisions which set forth clear distinctions between residents and nonresidents, as well as which delineate the limitations within which taxing States are obliged to operate.

We feel that Congress did truly intend to protect nonresidents of taxing states from the very encroachments of which more than 4,500 New Hampshire and Massachusetts citizens now complain; but Congress was not too careful, nor was Congress clear and explicit enough!

Commencing with the "landmark" decision in *Kiker* v. *City of Philadelphia*, 345 Pa 624, 31A 2d 289, wherein a New Jersey resident, employed at the Philadelphia Naval Shipyard on League Island, appealed to the Pennsylvania judicial system for relief from Philadelphia City Income Tax:

Although Chief Justice Maxey of Pennsylvania's Supreme Judicial Court dissented—nevertheless, in a three to two decision by the weight of but one justice—the Court granted the City of Philadelphia the right to tax New Jersey residents employed at the Philadelphia Naval Shipyard due to a defense the City built around the "Buck Act". Both, the City of Philadelphia and the Court, saw fit to overlook—to totally ignore—those few little words, "having jurisdiction to levy such a tax," which twisted the intent of Congress a full 180 degrees—directly opposite or making the difference between day and night—to make their decision a matter of record that Congress, by its enactment of the "Buck Act", did give the city of Philadelphia

"full jurisdiction and power to levy and collect such tax to the same extent and with the same effect as though such area was not a federal area."

There was no consideration, whatsoever, for the restriction as the beginning of the "Buck Act" that required the City to have the necessary "jurisdiction to levy such a tax" in the first place. It is utterly fantastic, but true, we've yet to find anyone in authoirty within the Executive or Judicial Branches of Government who will either acknowledge or admit to the existence of those seven little words, that so clearly restrict the taxing power of states to their boundaries of jurisdiction; for, as all the ready—references (opinions of record) from judicial examinations of questions concerning this matter indicate, the states and their courts have been unfaltering in their insistence that Congress, by way of the "Buck Act", did "silence the Constitution" and did grant states and other duly-constituted taxing authorities the unlimited right to tax all income, to include that of nonresidents, earned and collected in federal areas located within their boundaries.

Three little dots or three little asterisks to replace the words, "having jurisdiction to levy such a tax," was all that was necessary to wipe out that important clause, intended by Congress to preserve the constitutional guarantees for New Jersey residents and many more thousands of United States citizens to follow!

Since *Kiker,* there have been at least five (perhaps more) unanimous decisions of record to like questions raised by federal workers, similarly circumstanced (to include *Morse* v. *Johnson,* Me. 282A, 2d, 597, in 1971), which served to uphold taxing states and other authorities, thereby allowing them to reach across both, geographical and constitutional boundaries of limitation into the pockets of nonresident federal workers for tax for which, according to the continued misinterpretation of the "Buck Act", there is no need for them to make return.

It is worthy of note that in every one of these cases stemming from *Kiker,* the taxing government relied on and cited the distorted interpretation of the "Buck Act" as the primary authority, which of course was supported and further strengthened by other opinions of record in the interim.

The string of like decisions, all stemming from Kiker, represents an increasingly formidable—perhaps impossible—chance for remedy, even in the hierachy of the judicial system.

To further illustrate the far-reaching and devastating effect of such a terribly-twisted version of the "Buck Act", on April 14, 1981, our Congressman Norm D'Amours questioned the United States Attorney General concerning: (1) whether Maine has the lawful jurisdiction to tax nonresident Shipyard workers; and (2) whether the federal employer's release to Maine of payroll information clearly identifiable to nonresidents was violative of "The Privacy Act of 1974."

His reply from the Tax Division of the Department of Justice, of April 14, 1981, (attached) serves only to reiterate and expound on the same old matters-of-record grounded on the twisted interpretation of the "Buck Act"; thereby again placing responsibility for such encroachments squarely on the shoulders of Congress. In his covering letter, Congressman D'Amours states,

"The Administration takes the position that the Constitution itself is silent on the question of jurisdiction and that the Buck Act authorizes the taxation of nonresidents who work on federal property. I disagree with the Administration's interpretation and regret that it appears to be unwilling to be of assistance in righting this inequity."

A GROSSLY UNFAIR AND INTOLERABLE BURDEN

New Hampshire is only one of a very few states that has no income tax law, as such; however, residents certainly are obligated to share the burden of cost for their own state government through other forms of tax. Being forced to "share" the burden of cost for Maine's state government, as well—notwithstanding the fact our share is devoid of benefit, as well as the end effect of Maine's present income tax law for nonresidents imposes a greater burden (more tax) on nonresidents that on its own residents, violative of the "Equal Protection Clause" (Section 1 of Amendment 14)—cetainly does create a real serious financial hardship for salaried workers of New Hampshire trying so hard to survive in our present inflated economy.

In a recent clipping from the Boston Globe, the Associated Press reports:

"MAINE'S SURPRSE: $10.5M SURPLUS

"AUGUSTA, MAINE.—Maine had $10.5 million more cash on hand than had been projected for the first 10 months of the current fiscal year, Gov. Joseph E. Brennan said yesterday.

"The state treasury had $56.1 million in cash on hand in April alone—4.5 percent more revenues than had been anticipated for that month, Brennan said.

"For the first 10 months of the fiscal year that began last July 1, state revenues totaled $446.1 million. This is 2.3 percent above the anticipated revenues for that period."

It is noted that nonresident contributors to Maine's $20 million surplus of three years ago were barred from any chance to share in any benefit from it, as the surplus was divided only among Maine residents by way of a tax credit—$64 (cash dollars, that was) went to each homeowner and $32 went to each rentor within the State of Maine.

Without any change of policy and, based on that experience, we nonresident Shipyard workers who will have contributed more than $2,341,000., or an average of about $510. apiece, toward the present swelling surplus, cannot anticipate being allowed to recover any part of it, never mind about any "share" of such surplus.

A SIMPLE REMEDY

You, gentlemen, have in your hands the simple solution and power to put an end to such an unwarranted tax burden. Sentor Humphrey's Bill No. S. 721, designed to amend the dastardly "Buck Act" (Title 4, Section 106(b)), appears to be the most logical and foolproof vehicle to accomplish this. Adoption of this bill would serve only to restore the constitutional guarantees that Section 1 of Amendment 14 delineates and that your esteemed predecessors in Congress intended to preserve by their inclusion of those seven little words, "having jurisdiction to levy such a tax."

Since they could not predict the turn of events; i.e., the abhorrent judicial annihilation of what was once considered to be the inalienable rights of citizens nonresident of taxing states, a consequence of their action, it is reasonable to expect that you and our present Congress, sworn to uphold the Constitution, will assume the obligation to remedy this situation—to set the record straight and amend the "Buck Act", Section 106(b) of Title 4 of the United States Code—in the very manner that Senate Bill No. S. 721 is designed and intended.

Toward that end, it may be necessary to remind all encumbents (both sides) that:

The Supreme Court has held that Congress may expand the rights of citizens, but it does not have the power nor the right to legislate them away, as according to several of the lower courts (especially, in Pennsylvania and Maine) has happened in the matter at hand.

Therefore, we respectfully urge your positive recommendation for Senator Humphrey's Bill No. S. 721 and pray for that action necessary to encourage its early passage.

On behalf of the thousands of Shipyard workers of New Hampshire who are following this matter ever so closely, I thank you for your courtesy, attention, and the opportunity to present our case for your consideration and action.

HELEN S. BURNETTE
(For SCOUT Shipyard Committee on Unjust Tax).

Prepared at Portsmouth, N. H., 29 May 1981, for presentation to the Senate Committee on Finance, 97th Congress, 1st Session, on Bill No. S. 721, introduced by the Honorable Gordon J. Humphrey (N.H.)

Additional information concerning this matter is attached.

INDIVIDUAL INCOME TAXES

Consistent with due process of law, a State annually may tax the entire net income of resident individuals from whatever source received,[23] and that portion of a nonresident's net income derived from property owned, and from any business, trade, or profession carried on, by him within its borders.[24] Jurisdiction, in the case of residents, is founded upon the rights and privileges incident to domicile; that is, the protection afforded the recipient of income in his person, in his right to receive the income, and in his enjoyment of it when received, and, in the case of nonresidents, upon dominion over either the receiver of the income or the property or activity from which it is derived and upon the obligation to contribute to the support of a government which renders secure the collection of such income. Accordingly, a State may tax residents on income from rents of land located outside the State and from interest on bonds physically without the State and secured by mortgage upon lands * * *.

This commonly referred to as the "Buck Act"

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[23] *Lawrence* v. *State Tax Comm.*, 286 U.S. 276 (1932).
[24] *Shaffer* v. *Carter*, 252 U.S. 37 (1920); *Travis* v. *Yale & Towne Mfg. Co.*, 252 U.S. 60 (1920).

§ 106. Same; income tax

(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, "having jurisdiction [1] to levy such a tax," by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

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§ 111 [as added by Sec. 2(c), Act of Sept. 6, 1966, P.I. 89-554, 80 Stat. 378]. Same; taxation affecting Federal employees; income tax

The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.

5 U.S.C.:

§ 5517. Withholding State income taxes

(a) When a State statute—

(1) provides for the collection or a tax by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to the State; and

(2) imposes the duty to withhold generally with respect to the pay of employees who are residents of the State;

The Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the State withholding statute in the case of employees of the agency who are "subject" [2] to the tax and whose regular place of Federal employment is within the State with which the agreement is made. The agreement may not apply to pay for service as a member of the armed forces.

Senator MITCHELL. Well, Mr. Chairman, I would simply like to note for the record, the fact is that the island on which the shipyard is established is located within the State of Maine. It was ceded by the State to the U.S. Government in 1863.

In that session, the State reserved jurisdiction for civil and criminal processes within the ceded territory. The State does have jurisdiction over the area.

I won't have any more questions of these witnesses. I have something I would like to place in the record.

Senator PACKWOOD. It will be placed in the record.

[The prepared statement of Senator Mitchell follows:]

STATEMENT BY U.S. SENATOR GEORGE J. MITCHELL

Mr. Chairman, I appreciate the opportunity to comment briefly on S. 791, legislation I have introduced which would solve a problem which fishermen in Maine and other parts of the country are having with the unemployement tax.

The current Federal Unemployment Tax Act (FUTA) recognizes that crew members on many fishing boats cannot easily be classified as "employees" for the purposes of FUTA. FUTA exempts all workers on fishing boats except: Workers on halibut and salmon commercial fishing boats and workers on vessels over 10 net tons. Often, commercial fishing ventures resemble joint ventures more than employer-employee situations. The crews are frequently "pick up" crews or are family members and relatives.

Since the United States adopted the 200-mile limit, many fishermen in Maine and other States have found it more economical to move to larger boats. Some boats

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[1] See preceding enclosure, on "jurisdiction" prerequisites to tax income.

[2] An employee cannot be considered "subject" to tax, unless the taxing State has lawful "jurisdiction" to tax.

have exceeded the 10-ton limit and are consequently facing greater financial and administrative burdens due to the FUTA tax liability, even though the program is not well-suited for their situation. Even though the boat owners are paying the tax, crew members tend not to collect the benefits.

The proposed solution is to exempt crew members from FUTA if they are self-employed, as defined for the social security tax and for income tax withholding purposes. The criteria for self-employment require that the worker receive only a share of the catch or a share of the proceeds from the sale of the catch, and that the crew of the boat be fewer than 10 workers. Under current law, if crew members meet those conditions, boat owners do not have to withhold income or social security taxes. Under the bill, if the crew members met these conditions, the boat owners would not have to pay FUTA taxes. The bill would not repeal the two existing criteria; rather, it would add a new exception to FUTA that fishing vessels could use. This is done to avoid inadvertently denying some other fishing vessels the use of the current exception.

My bill has two advantages. First, it lifts what is clearly an inappropriate unemployment tax burden from the fishing vessel owner or operators in Maine and other States. Second, it promotes uniformity by applying the same criteria for self-employment for FUTA, social security, and income tax withholding.

Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you all very much for coming down.

Senator HUMPHREY. Mr. Chairman, I am not an attorney, nor am I here in that capacity, obviously, but I would like to point out that Congress, it would not be unprecedented for Congress to intervene or amend the law in a case such as this because in the D.C. Home Rule Act, the District of Columbia was prohibited explicitly from imposing a commuter tax in a similar situation.

Ms. BURNETTE. Sir, can I have another word?

Senator MITCHELL. Well, I think there are other Senators here and other matters to be heard.

Senator PACKWOOD. I honestly think we understand the issue.

Ms. BURNETTE. He raised a point I didn't address. It is very important.

Senator PACKWOOD. Take my word for it, we do understand it. I think we understand the law. I think we understand the difference of opinion.

Thank you.

Senator MITCHELL. Thank you, sir.

Senator HUMPHREY. Thank you.

Senator MITCHELL. Mr. Chairman, could I submit to be included in the record, a letter to you from the Commissioner of the Department of Finance Administration, of the State of Maine.

Senator PACKWOOD. It will be a part of the record.

[The letter follows:]

STATE OF MAINE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
Augusta, Maine, June 25, 1981.

HON. BOB PACKWOOD,
Chairman, Subcommittee on Taxation,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I would like to make very clear Maine's strong objection to both the theory and the result contemplated in S. 721 "A BILL To prohibit the imposition of any tax by a State on the income derived by any individual from services performed at the Portsmouth Naval Shipyard if such individual is not a resident or domiciliary of the State in which such shipyard is located." The efforts of a few states to provide special treatment to their nonmilitary residents working in federal installations outside their home states have become a perennial issue in state tax administration. This is troublesome because it requires ongoing attention to insure that the valid objections to this type of legislation are not overlooked.

From our standpoint, this is a well settled issue and state jurisdiction is adequately defined in the United States Code.

The Buck Act, 4 U.S.C. subsections 106–110, provides that:

"No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a federal area or receiving income from transactions occurring on services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any federal area within such State to the same extent as though such area were not a federal area."

The concept of prohibiting the state wherein income is earned from taxing that income is a clear intrusion into the province of States' rights with no rational justification. We feel that federal employees should continue to be treated the same as workers of other employers for state tax purposes.

S. 721 goes one step beyond the usual tax avoidance scheme. It would only prohibit taxation by Maine of nonresident employees of Portsmouth Naval Shipyard. It would ignore factually similar situations in other states. This, at the least, would seem an inequitable treatment, if not unconstitutional. It would reduce Maine revenue by approximately 3 million dollars annually. Maine taxpayers would be penalized by special interest legislation contrary to the Buck Act.

I would direct your attention to *Lung* v. *O'Chesky*, 617 P.2d 1317 (N.M. 1980). In this 1980 decision of the New Mexico Supreme Court, the tax treatment accorded Texans employed at the White Sands Missile Range by New Mexico was upheld. The situation is analogous to Portsmouth. Furthermore, the appeal of this decision to the U.S. Supreme Court was dismissed.

The congressional and judicial history of state taxation of persons working in federal areas is clear. All states have a right to fair and even handed treatment by the federal government. S. 721 would unfairly discriminate against our tax collection process and we urge the defeat of this unjust proposal.

Sincerely,

RODNEY L. SCRIBNER,
Commissioner.

Senator MITCHELL. Also, I would like to submit, I won't take time now to do it orally, I will have my staff submit an identification of each of the court cases which have analyzed this problem in some detail previously.

Senator PACKWOOD. That will also be a part of the record.

[The statements follow:]

This material is excerpted from "Maine Income Taxation of New Hampshire Residents Working at the Portsmouth Naval Shipyard—Legal and Constitutional Questions," by Howard Zaritsky, Congressional Research Service Library of Congress, May 4, 1981.

1. LEGAL ISSUES: THE IMPACT OF THE BUCK ACT ON THE TAXING POWER OF THE STATE OF MAINE. 4 U.S.C. § 106

Article I, Section 8, Clause 17 of the United States Constitution authorizes the Congress to "exercise exclusive Legislation in all Cases whatsoever . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." Furthermore, Article IV, Section 3 of the United States Constitution gives Congress the right to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

The Supreme Court has long held that Congress may acquire State lands with or without the consent of the State legislature.[6] The Portsmouth Naval Shipyard was acquired with the consent of the Maine legislature, as was discussed above. If Congress acquires State land with the State's consent, the State may reserve jurisdiction over certain issues, except for situations in which nothing occurs within the State to give it regulatory authority.[7]

The United States has, through the Buck Act, given all States the authority to tax the income of individuals from transactions conducted on Federal enclaves

[6] *Kohl* v. *United States*, 91 U.S. 367 (1876).

[7] See *Paul* v. *United States*, 371 U.S. 245 (1963); also Laurence H. Tribe, American Constitutional Law p. 255 (New York 1978).

within the taxing States, regardless of the manner in which the property was acquired by the United States. The Buck Act states that:

"No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such areas; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such States to the same extent and with the same effect as though such area was not a Federal area." [8]

The purpose of the Buck Act was to equalize the liability for income tax of officers and employees of the United States residing within Federal areas and those residing outside of Federal areas, and to equalize the position of Federal employees residing on Federal enclaves over which the United States had exclusive taxing jurisdiction and those residing in Federal areas over which States retained jurisdiction to tax.[9]

The issue of Maine's legal authority to tax by New Hampshire residents on their income from the Portsmouth Naval Shipyard can be raised either in Federal courts or in the courts of the State of Maine. While no Federal court has yet decided whether the Buck Act constitutes sufficient legal authority to enable specifically the State of Maine to tax the income of New Hampshire residents who work at the Naval Shipyard in Portsmouth, this issue was addressed by the Supreme Judicial Court of Maine in *Morse* v. *Johnson*.[10]

Jesse S. and Margaret Morse were a husband and wife who resided in New Hampshire and who worked at the Portsmouth Naval Shipyard. The State of Maine attempted to subject their wages from work performed at the Shipyard to the Maine income tax. The Morses contended, in applicable part, that the Buck Act granted taxing jurisdiction only in those cases in which the State in which the Federal enclave was located had expressly retained such jurisdiction as part of the transfer of the property. The Supreme Judicial Court of Maine rejected this contention, stating that it would be "saying that the Buck Act is only effective to grant a right already possessed by the States which had reserved the power to tax when ceding Seavey Island." [11]

The decision of the Supreme Judicial Court of Maine in *Maine* v. *Johnson* appears to construe the Buck Act correctly, and it is entirely consistent with the decision of the Supreme Court of Pennsylvania in *Kiker* v. *City of Philadelphia*.[12] In *Kiker*, the court held that the Philadelphia city income tax was validly imposed on New Jersey commuters who worked at the Philadelphia Naval Yard. The Pennsylvania court held that the Buck Act granted the city the power to levy the tax notwithstanding that no taxing power had been retained when the city ceded the property to the Federal Government. The Pennsylvania Supreme Court said:

"It follows, therefore, that the Commonwealth of Pennsylvania, when it consented to the purchase of League Island by the National Government and ceded jurisdiction over it, could have reserved to itself the right to tax in such area, even though the territory was acquired for use as a dockyard. . . . . There can be no logical objection on constitutional grounds if the same result is accomplished by a recession to the State of the right to tax."[13]

2. CONSTITUTIONALITY OF THE MAINE NONRESIDENT INCOME TAX AS APPLIED TO INCOME DERIVED FROM TRANSACTIONS IN THE PORTSMOUTH NAVAL SHIPYARD

Accepting the Buck Act's surrender of any Federal tax immunity, the question may still be raised whether the State of Maine has the constitutional authority to impose a nonresident income tax on the income of New Hampshire residents derived from activities on the Portsmouth Naval Shipyard. While, of course, a conclusive answer can be given only by the courts, it appears from the existing precedents that the Maine nonresident income tax is valid as imposed upon income of New

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[8] 4 U.S.C. § 106, enacted as Act of July 30, 1947, 61 Stat. 644, and based on Act of Oct. 19, 1940, 54 Stat. 1060.

[9] See S. Rep. No 1625, 76th Congressional, 2d session (1940); also see *United States* v. *Lewisburg Area School District*, 539 F. 2d 301 (3d Cir. 1976); *Kiker* v. *City of Philadelphia*, 346 Pa. 624, 31 A. 2d 389 (1943), cert. denied 320 U.S. 741 (1944); and *Bullock* v. *General Dynamics Corporation*, 533 S.W. 2d 118 (Tex. Civ. App. 1976), aff'd 547 S.W. 2d 255 (1977), cert. denied 434 U.S. 1009 (1978).

[10] *Morse* v. *Johnson*, 282 A. 2d 597 (Me. Sup. Jud. Ct. 1971).

[11] 282 A. 2d at 598.

[12] *Kiker* v. *City of Philadelphia*, 346 Pa. 624, 31 A. 2d 289 (Sup. Ct. Pa. 1943), cert. denied 320 U.S. 741 (1944).

[13] 31 A. 2d at 293-94.

Hampshire residents derived from transactions conducted at the Portsmouth Naval Shipyard.

The United States Supreme Court generally upheld the imposition of nonresident income taxes in 1920. In *Shaffer* v. *Carter*,[14] the Court held that the Constitution did not preclude one State from imposing a tax on persons or objects within its physical boundaries and a second tax on its residents or domiciliaries. In evaluating the arguments raised against the tax, the Court said:

"And we deem it clear, upon principle as well as authority, that just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect upon incomes accruing to non-residents from their property or business within the State, or their occupation carried on therein; enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders."[15]

The justification for a tax on nonresidents earning income within a State is that they enjoy certain protections and privileges for which they may be asked to contribute to the cost of government. The Court said in *Shaffer* v. *Carter* that:

"The very fact that a citizen of one State has the right to hold property or carry on an occupation or business in another is a very reasonable ground for subjecting such non-resident . . . to a duty to pay taxes not more onerous in effect than those imposed under like circumstances upon citizens of the latter State. Section 2 of Art. IV entitles him to the privileges and immunities of a citizen, but no more; not to an entire immunity from taxation, nor to any preferential treatment as compared with resident citizens. It protects him against discriminatory taxation, but gives him no right to be favored by discrimination or exemption."[16]

The principle that one State may tax the nonresidents of another State was reiterated more recently when the Supreme Court struck down a nonresident income tax enacted by the State of New Hampshire. In *Austin* v. *New Hampshire*,[17] the United States Supreme Court invalidated the nonresident income tax imposed by the State of New Hampshire because the State did not also impose an income tax on its own residents. The Court never questioned the ability of a State to impose a nonresident income tax, but found that the imposition of such a tax violated the Privileges and Immunities Clause of the United States Constitution, Article IV, Section 2, Clause 1, when the taxing State did not also tax its own residents.

Two challenges appear conceivable to Maine's taxation of the income of New Hampshire residents earned or derived from transactions on the Federal enclave of the Portsmouth Naval Shipyard. First, it might be contended that the tax was not valid under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution because the State provided no services or protections against which a tax could be levied. Second, it could be contended that the tax was not valid under the Privileges and Immunities Clause of the Constitution because its terms discriminate against nonresidents of the State in favor of residents of the State. While only a court can give a conclusive answer to these contentions, the existing precedents would tend to indicate that the Maine tax is validly imposed.

In *Shaffer* v. *Carter*, the Court upheld a nonresident income tax because the State had a right to be compensated for the protections and privileges it afforded the residents of other States. However, in *Morse* v. *Johnson*, the plaintiffs argued that they derived no benefit from the State of Maine sufficient upon which to base such a tax. The Maine Supreme Judicial Court rejected this contention, quoting from the decision of the Pennsylvania Supreme Court in *Kiker* v. *City of Philadelphia*, that:

"It is clear that in classifying persons for taxation an obligation on the part of the taxing power to make available some benefit to them must exist. We are satisfied . . . that such obligation does exist. . . . Plaintiff may at all times use the streets, bridges and other facilities . . . and also has the benefit of protection of its police and fire departments when engaging in business or pleasure . . . as well as many other advantages. . . ."[18]

This point was also stressed by the United States District Court for the Eastern District of Pennsylvania in *Application of Thompson*.[19] George Thompson, a resi-

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[14] *Shaffer* v. *Carter*, 252 U.S. 37 (1920).
[15] 252 U.S. at 52.
[16] 252 U.S. at 53.
[17] *Austin* v. *New Hampshire*, 420 U.S. 656 (1975).
[18] 282 A. 2d at 600, citing 31 A. 2d at 294-95.
[19] *Application of Thompson*, 157 F. Supp. 93 (E.D.Pa. 1957), aff'd 258 F. 2d 320 (3d Cir. 1958), cert. denied 358 U.S. 931 (1959); See also summary resolution of this issue in *Non-Resident Taxpayers Association* v. *Philadelphia*, 341 F. Supp. 1139 (D.N.J. 1972), aff'd without opinion 406 U.S. 951 (1971).

dent of New Jersey and employee at the Philadelphia Naval Shipyard was arrested for failure to pay his Philadelphia city income tax. He petitioned the United States District Court for a writ of habeas corpus, which the court denied.

Mr. Thompson contended that the City of Philadelphia had no jurisdiction to tax his income earned at the shipyard. He contended that his contacts with the city were too few to create a constitutional nexus for imposition of the tax. He noted that he resided in New Jersey, he used a ferry to cross the Delaware River directly from New Jersey to the shipyard and he had no contacts with other parts of the City of Philadelphia. Notwithstanding these allegations, the court rejected the writ of habeas corpus on the basis of the analysis of the Pennsylvania Supreme Court in *Kiker* v. *City of Philadelphia*, in which that court had stated:

"There is no doubt that after the cession [of the naval shipyard area], Philadelphia was obligated to confer all the usual attributes of government—the same as those possessed by residents and citizens of Philadelphia—upon those deriving income from working on League Island; fire and police protection, the right to use all municipal facilities, etc. This obligation can be called into play at any time the national government refuses or neglects to furnish them. * * * The fact that the Federal Government * * * does not at this time see fit to take full advantage of the obligation of this Commonwealth, or its political subdivision, the City of Philadelphia, to make available protection and benefits to persons and property on the Island, does not justify our invalidation of the income tax question, as far as plaintiff and those in a similar position are concerned."[20]

Therefore, it appears from the existing precedents that the fact that the State of Maine may be required to provide certain services in the event that the Federal Government fails to do so constitutes a sufficient nexus between the State and the New Hampshire residents working at the Federal facility in the State to support Maine taxation of their income. The fact that certain individuals might not receive significant present services from the State of Maine would not be a constitutional infirmity with respect to the tax.

It is clear from the precedents discussed above that the income tax imposed by the State of Maine on New Hampshire residents working at the Portsmouth Naval Shipyard would be unconstitutional under the Privileges and Immunities Clause of the United States Constitution if it discriminated unreasonably against those nonresidents in favor of residents.[21]

The Maine tax does distinguish between residents and nonresidents in several ways. Most recently, the State of Maine amended its laws to deny nonresidents the full use of their itemized deductions. Under the Maine revision, nonresidents may deduct only that ratable portion of their itemized deductions and personal exemptions which bears the same relationship to their total itemized deductions and personal exemptions that their Maine adjusted gross income bears to their total adjusted gross income.[22] Maine also prorates its income tax credits for child care expenses.[23]

These required prorations may cause nonresidents to pay significantly higher income taxes to the State of Maine than had the prior law, but they appear to present no constitutional infirmity. The Equal Protection Clause of the Fourteenth Amendment to the Constitution gives the States wide discretion in the crafting of their tax laws. A State income tax law is unconstitutional only if its distinctions are arbitrary and without reasonable basis.[24] As the Supreme Court said in *Madden* v. *Kentucky*,[25] "in taxation, even more than in other fields, legislatures possess the greatest freedom in classification."

The State of Maine taxes nonresidents only on their income from sources within the State of Maine. It would seem less than patently arbitrary or unreasonable to allocate the deductions afforded such individuals in the same manner as the State allocates gross or adjusted gross income.

Furthermore, the Privileges and Immunities Clause of the Constitution only requires that States tax nonresidents in a fashion which is "not more onerous in effect" than the taxation of residents.[26] The State of Maine appears to be treating residents and nonresidents equally with respect to their Maine income. The alloca-

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[20] 157 F. Supp. at 98, fn. 13.

[21] *Austin* v. *New Hampshire*, 420 U.S. 636 (1975); and *Shaffer* v. *Carter*, 252 U.S. 37 (1920).

[22] 36 Maine Rev. Stat. § 5144-A, 5126.

[23] 36 Maine Rev. Stat. § 5127, 5146.

[24] See *e.g.*, *Walters* v. *City of St. Louis*, 347 U.S. 231 (1954); *Welch* v. *Henry*, 305 U.S. 134 (1938); and *F.S. royster Guano Co.* v. *Virginia*, 253 U.S. 41 (1920).

[25] *Madden* v. *Kentucky*, 309 U.S. 83, 88 (1940); see also *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973).

[26] *Austin* v. *New Hampshire*, *420 U.S. at 666.*

tion of deductions and credits in proportion to the income actually taxed would not appear to create a distinction precluded by the Privileges and Immunities Clause.

Senator PACKWOOD. Next we will hear witnesses on S. 791, introduced by Senator Mitchell and others. I see that Senator Mathias is here to testify. I assume you don't want to make any comments on District of Columbia levying a commuter tax.

Senator MATHIAS. I only want to say the District of Columbia will not levy a commuter tax. I make that statement with renewed confidence as I look at my dear friend, colleague and neighbor, Senator Byrd sitting next to you.

Senator PACKWOOD. Go right ahead, Mac.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MATHIAS. Mr. Chairman, I have a brief statement on the subject of this bill, which I would submit for the record. Then I would like to just add a few words.

Senator PACKWOOD. The statement will be in the record.

Senator MATHIAS. I am here to discuss with the committee, a matter which the Internal Revenue Service has said is a trivial matter. They have said it is trivial and that just infuriates me. It may be trivial to them, but it isn't trivial to those crabbers in Glouster Point, Va., or in Crissfield, Md., or to the lobsterman in Isle au Haut, Maine. It is not trivial to them, it is very real because it constitutes a burden on their ability to earn a living at one of the most traditional occupations in all of American society.

The watermen of the Chesapeake Bay, whether they are in Maryland waters or Virginia waters, or the watermen of Isle au Haut are representative of the finest heritage of American life.

They have a hard occupation. It is not an easy job. It is a job that requires great skill and endurance. That really is the nub of this problem. It is not the kind of a job that can be easily folded in to modern accounting practices or modern industrial organizations. There is a lot of individuality being a crabber or a fisherman or a lobsterman and a lot of independence involved. These people are essentially self-employed.

Now because boats today cost more than boats used to they get together in small groups and they share the catch. The captain of the boat isn't the boss. He doesn't pay them. It is a kind of a joint venture arrangement.

Surely from the point of view of the Internal Revenue it is trivial because there aren't a lot of these people. But from the point of view of those six or eight men who join together to go fishing or crabbing or lobstering, it is a very serious matter.

So, all we are asking is that they be viewed as self-employed, if their joint venture is so small that it falls within the purvue of this bill.

Senator PACKWOOD. Nor, I might add, is it trivial to the fishermen of Astoria or Newport or Charleston, Oreg.

Senator MATHIAS. Of course, Mr. Chairman, I really take great issue with any public servant who calls the concerns, the fundamental concerns of an American citizen trivial. I have great problems with that. That is one of the reasons that there is a dissatisfaction among the American people today with their Government.

They perceive that public officials, public servants if you like, are looking upon their interest as trivial.

That is something we need to turn around and more than just the Internal Revenue Service.

Senator PACKWOOD. Mac, thank you. I have no questions. I agree with the bill.

Senator Mitchell.

Senator MITCHELL. I just want to comment Senator Mathias for his initiative in this area. Mr. Chairman, it is a pleasure to work with him on this. I thank Senator Mathias for his statement and for coming here today.

Senator PACKWOOD. Yes.

Senator MITCHELL. He is a cosponsor, it should be added. But he speaks from knowledge when he talks of Maine because he is a summer resident of our fair State. We hope we will see him up there some time in the coming weeks.

Senator BYRD. How many residences do you have? [Laughter.]

Senator MATHIAS. Mr. Chairman, I will decline to answer the distinguished Senator from Virginia. [Laughter.]

But I think we also ought to note this is a problem that isn't confined to Maine, Maryland or Virginia or Oregon. Our other cosponsor, Senator Heflin, is perceiving the same problems in the warmer waters of Mobile Bay.

Senator MITCHELL. I just want to comment. There is interest in this issue all the way to Alaska. Later today, I will ask the committee's permission to include a statement from a fishing group in Alaska. They are very much concerned. It does span the entire United States.

Senator PACKWOOD. It will be included, also.

CORDOVA DISTRICT FISHERIES UNION,
Cordova, Alaska, April 23, 1981.

Sen. GEORGE MITCHELL,
Russell Senate Office Bldg.
Washington, D.C.

DEAR SENATOR MITCHELL: I understnd through Congressman Don Young's office that you are sponsoring bill which is intended to eliminate or make optional the Federal Unemployment Tax (FUTA) requirement for fishing vessel owners. As chairman of the Cordova District Fisherman's Union (500 members), and president of the United Fishermen of Alaska, a statewide fisherman's organization compose of 17 organizations and 1,500 individual members, please recognize that I lend the full support and sympathies of these organizations behind this bill. However, I must caution that we only support a bill which contains language that will make the decision to pay FUTA, optional for vessel owners.

There are a few fishermen in Alaska (less than 5 percent) who chose to pay both state and federal unemployment tax for their crewmen so that these crewmen can collect unemployment insurance. There are also a limited number of fishermen nationwide who work their boats year round with the same crew. These crewmen should be eligible for unemployment compensation in the event that they are precluded from working because of problems with their vessel or markets for fish.

I have enclosed a letter which I wrote last year and sent to close to 100 fishing organizations nationwide. It further explains my feelings about the FUTA tax.

Sincerely,

BOB BLAKE, *Chairman.*

Enclosure.

CORDOVA AQUATIC MARKETING ASSOCIATION, INC.,
Cordova, Alaska, February 1, 1980.

DEAR VESSEL OWNERS: Two bills having tax advantages for fishing vessel owners have recently been introduced in Congress. The purpose of the bills, HR 5967 and S 1194, is to relieve vessel owners from the requirement of paying Federal Unem-

ployment Tax (FUTA) on the wages of certain self-employed crewmembers. These are crewmen on all vessels in the salmon and halibut fisheries, and crewmen on any vessel over 10 net tons, regardless of the fishery. Self-employed crewmen in fisheries other than salmon and halibut on vessels of 10 net tons or less are already exempted from the unemployment tax requirement.

Crewmen are considered self-employed if they are: (1) paid strictly on a crewshare basis—no wage or salary may be paid in addition to crewshare, and (2) part of a crew of nine or fewer members.

In 1976, Congress established the "self-employed" fishing crewmember classification and exempted vessel owners from Federal income tax withholding and Social Security taxes (FICA) on these individuals. As mentioned above, unemployment tax was also excluded on some self-employed crewmen, but not all. Again. crewmen on salmon and halbut vessels and on any vessel over 10 net tons were singled out, so that owners still must pay FUTA tax. The 1979 FUTA rate is 3.4 percent of the first $6,000 of income. This amounts to $204 per crewman.

In response to the 1976 Federal tax revision, the 1977 Alaska State Legislature gave vessel owners the option of paying or not paying state unemployment tax on all self-employed crewmembers, regardless of the fishery or the size of the boat. Naturally, most owners opted not to pay. What evolved was a situation where in most cases the vessel owner was exempted from paying state unemployment tax, but was still obligated to pay the Federal tax. However, an employee cannot draw unemployment compensation unless both state and Federal unemployment taxes are paid. This means that those owners who pay the required Federal Unemployment Tax only, are paying a tax for which there are no benefits. It's money down the drain.

This may seem unfair to crewmembers who feel the solution should be to require owners to pay state unemployment. But are self-employed crewmen really employees? By definition they are not. Vessel owners no longer must pay Social Security tax (FICA), withhold income tax, or in certain cases as mentioned above, pay unemployment tax on them. You might ask yourself, why should they receive unemployment compensation during the off-season when they intentionally choose to work in a seasonal occupation?

If you support the idea that vessel owners should not have to pay Federal unemployment tax (FUTA) on their self-employed crewmen, or at least should be given the option of paying or not paying as the state of Alaska has done, then send a letter or telegram of support for H.R. 5967 (introduced by Congressman Don Young of Alaska), and S. 1194 (introduced by Sen. Heflin of Alabama), to the House Ways and Means Subcommittee on Public Assistance and Unemployment Compensation. This should be done soon because the subcommittee has scheduled hearings on H.R. 5967 to begin in mid-February.

The subcommittee members are: Hon. James C. Corman, Chairman, Hon. Charles B. Rangel, N.Y., Hon. Fortney H. Stark, Cal., Hon. William M. Brodhead, Mich., Hon. Thomas J. Downey, N.Y., Hon. Wyche Fowler Jr., Ga., Hon. John H. Rousselot, Cal. Hon. L. A. Bafalis, Fla., and Hon. Philip M. Crane, Ill.

At the same time you send a note or telegram to the Public Assistance and Unemployment Compensation Subcommittee, it is important that you send a copy to your Representative(s) and Senators.

If vessel owners are to be relieved from paying unemployment tax on their self-employed crewmen, then we must all seize this opportunity and act now!

Write to: Congress of the United State, House of Representatives, Ways and Means Subcommittee on Public Assistance and Unemployment Compensation, Washington, D.C. 20515.

Sincerely,

BOB BLAKE, *Chairman.*

Senator PACKWOOD. Senator Byrd, do you have any questions?

Senator BYRD. No, I just want to commend Senator Mathias for his expert testimony.

Senator PACKWOOD. Thank you for coming, Mac. Thank you for waiting while we finished the previous panel.

Senator MATHIAS. I am sure Mr. Larry Simms, who had hoped to be here today, the president of the Maryland Watermen Association would be glad to arrange an onsite inspection for the committee if they feel that is necessary or desirable.

Senator PACKWOOD. Thank you.

[The statement follows:]

STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Mr. Chairman. I want to thank you for scheduling this hearing and for allowing me to testify.

The bill, S. 791, which your Subcommittee is considering today would correct a minor anomaly in the Federal Unemployment Tax law which unfairly taxes many commercial fishermen across the country.

Currently, crew members on small fishing boats—those under ten tons—are not required to pay unemployment insurance taxes, nor are they allowed to collect unemployment compensation benefits. This exemption, which was a provision of the original Federal Unemployment Tax Act, recognizes that most small boat fishermen are seasonal workers who routinely move from one job to the next every couple of months. These fishermen are, therefor, unlikely to either meet the qualifications to receive or have the need for unemployment compensation benefits. Further, fishermen are not paid an hourly or weekly wage, but instead receive a percentage of the catch. Under this system, unemployment taxes, which are usually paid by both the employer and employee, are taken directly out of the crew member's percent of the catch, directly reducing their paychecks twice. Since these fishermen are unlikely to collect any benefits, yet must bear the entire tax burden, the need for the current exemption is clear.

The exemption is, however, unfairly limited to fishing vessels weighing less than ten tons. Many commercial fishermen have criticized this threshold figure as arbitrary and unrelated to the realities of the seafood industy. Approximately 40 percent of all small fishing vessels weigh more than ten tons, their crews are subject to the same catch requirements and limitations as the ligher boats, yet they are being unfairly penalized by the unemployment insurance tax.

This year, I have joined my distinguished colleagues, Mr. Mitchell and Mr. Heflin, in sponsoring a bill, S. 791, that solves this problem in a straightforward way. Our bill would simply remove the current weight restriction. In its place, our bill would provide an exemption from unemployment insurance taxation for crew members who qualify as self-employed. To be considered self-employed, as defined by our social security tax and income tax laws, the worker must receive only a share of the catch as payment and the crew of the boat must have less than ten members. Under current law, if crew members meet these conditions, owners are exempt from Social Security or income tax withholding requirements. Our bill would simply extend this exemption to unemployment insurance taxes.

Mr. Chairman, at hearings before this Subcommittee on this bill last year, the Internal Revenue Service criticized this bill as trivial. But to the more then 5,000 crew members, who pay in excess of $700,000 a year in unemployment insurance taxes and will never see one thin dime of that money, it is far from trivial. It is time we make this change on our laws, and I urge the members of this Committee to act favorably on S. 791.

Mr. Chairman, I want to thank you again for allowing me to testify on behalf of this bill, and I urge the members of this committee to lend it their support.

Senator PACKWOOD. Is Mr. Sam Davidson here?

Mr. DAVIDSON. Yes, sir.

Senator PACKWOOD. Come right up. It looks like you will be the sole member of the panel this morning.

STATEMENT OF SAM DAVIDSON, DOWNEAST CONSULTING ASSOCIATES, REPRESENTING MAINE FISHERMEN'S COOPERATIVE ASSOCIATION, PORTLAND, MAINE

Senator PACKWOOD. Before you begin, Mr. Davidson, Senator Mitchell has a statement that he would like to read for the record.

Senator MITCHELL. Thank you, Mr. Chairman.

I have a brief statement which I would like to make.

I appreciate the opportunity to comment on legislation which I have introduced which would solve a problem which fishermen in Maine and other parts of the country are having with the Federal unemployment tax.

The current Federal Unemployment Tax Act (FUTA) recognizes that crewmembers on many fishing boats cannot easily be classified as employees for the purposes of FUTA. FUTA exempts all workers on fishing boats except workers on halibut and salmon commercial fishing boats, and workers on vessels over 10 net tons.

Often commercial fishing ventures resemble joint ventures more than employer-employee situations. The crews are frequently pickup crews or are family members.

Since the United States adopted the 200-mile limit, many fishermen in Maine and other States have found it more economic to move to larger boats. Some boats have exceeded the 10-ton limit and are consequently facing greater financial and administrative burdens due to the FUTA tax liability.

Even though the program is not well suited for their situation, even though the boatowners are paying the tax, most crewmembers tend not to collect the benefits.

The proposed solution is to exempt crewmembers from FUTA if they are self-employed as defined for the social security tax and to the income tax withholding purposes.

The criteria for self-employment require that the worker receive only a share of the catch, or a share of the proceeds from the sale of the catch, and that the crew of the boat be fewer than 10 workers.

Under current law, if the crewmembers meet those conditions, boatowners do not have to withhold income or social security taxes.

Under the bill, if the crewmembers meet these conditions, the boatowners would not have to pay FUTA taxes.

The bill would not repeal the two existing criteria. Rather, it would add a new exception to the FUTA that fishing vessels could use.

This is done to avoid inadvertently denying to some other fishing vessels the use of the current exception.

My legislation has two advantages. First, it lifts what is clearly an inappropriate unemployment tax burden on the fishing vessel owners or operators in Maine and other States.

Second, it promotes uniformity by applying the same criteria for self-employment for FUTA, social security, and income tax withholding.

Mr. Chairman, I have a letter from Mr. Bob Blake which I would like to have entered into the committee's hearing record. Mr. Blake, with some qualification, endorses the concept embodied in this legislation. He is chairman of the 500-member Cordova, Alaska, District Fisheries Union. He also is president of the United Fishermen of Alaska, a statewide fishermen's group composed of 17 organizations, and 1,500 individual members.

Senator PACKWOOD. I might ask, is Mr. Jordon in the audience?

Do you want to come up and take a chair also. He is here also on S. 532, but it is a bill to do essentially the same thing you are doing in moving in the same direction. I would ask him to join the panel. I would like to hear both of you first before we have questions.

Do you want to go ahead, Mr. Davidson?

Mr. DAVIDSON. Thank you very much, Mr. Chairman.

Mr. Chairman, and members of the committee, I am a fisheries consultant and certified public accountant whose client base consists largely of fishing vessels operating along the Maine coast.

Specifically, I consult for approximately 25 vessels ranging in size from 34 feet to 136 feet and operate from the ports of Kennebunkport east to Stonington.

I am also a consultant and certified public accountant to the Maine Fisherman's Cooperative Association which consists of approximately 200 vessel owners.

As well, I provide tax and financial advice to approximately 30 non-vessel owning crewmembers.

My testimony will reflect the sentiment of both my clients and other members of the vessel sector.

We wholeheartedly favor and endorse bill S. 791, as introduced by Senators Mitchell, Mathias, and Heflin and believe it will provide significant advantage to the Maine commercial fishing fleet.

First, it ratifies and enhances the true economic relationship that exists between the crew and vessel; one of partnership or joint venture, where each shares in the proceeds derived from the total fishing effort.

This relationship has been historically built up by time and practice. Vessel owners and crewmembers have developed a very strong relationship based on mutual respect and the need to get the job done.

To redefine or remold this concept into one of employer and employee would be an effort which not only distorts economic reality, but also would drive a wedge into an excellent working relationship between crew and owner.

There is much in evidence to support this partnership concept. The Internal Revenue Service has already accepted this concept for certain Federal income tax withholding and social security tax purposes.

Both the Tax Reform Act of 1976 and the Tax Act of 1978 clarify the concept that crewmembers are deemed to be self-employed within certain operating parameters.

The State of Virginia and to some extent the State of Maine, have accepted this concept as well for State unemployment compensation purposes by recognizing that crewmembers are independent joint partners and not employees.

This has resulted in certain vessels which have a formal joint venture contract with their crews to become exempt from paying the State unemployment tax.

Also, the share or lay system, through which the vessel and its crew share in catch proceeds, manifest the joint venture concept where each party has mutual interests, profit sharing and right to control.

Other industry practices promote this joint venture concept. Repairs and maintenance, net mending and other dockside work are part of a crewmembers job. He is generally not remunerated for this time.

Further, broker or loss trips may be partially or wholly subsidized by the vessel in the interest of keeping a good crew.

Crewmember participation generally takes place on a voyage-to-voyage basis. Crew turnover is extremely high. A typical Maine

vessel may turn over its entire crew, three, four or even five times during the year.

In another industry, a 10-percent turnover may be deemed to be high.

With this degree of turnover and the fact that the fishing effort is subject to so many uncontrollable factors, such as weather and fish migration, it becomes extremely difficult to define such concepts as "lack of work" or other times when conventional situations may justify unemployment compensation.

It also serves to advantage to remember that the share system does, at times, provide extremely lucrative compensation for the amount of time worked.

Hence there are times of high pay, some pay, and no pay. But at the end of the year total compensation can be termed good based on the effort accomplished. It is difficult to rationalize unemployment compensation within the system as it exists today.

Another point of emphasis is that by and large the Maine vessel sector has "grown in" to having to pay the vessel unemployment tax.

Industry growth dynamics have made vessels under 10 net tons economically difficult. Most groundfish and scallop vessels currently operating along the coast exceed 10 net tons.

Taking the Federal unemployment tax exemption away from an obsolete standard and positioning it on a more current standard acknowledges and promotes desirable economic growth within the industry.

There is also advantage in moving to consistency in application of the tax law. Currently, the fishing vessel crewmembers are deemed, under certain circumstances, to be self-employed for Federal withholding and social security tax purposes, deemed to be employees for unemployment compensation, and their status as regards IRA, Keogh, and pension plans is just about anybody's guess.

Any movement toward the application of a single criteria helps owners, crewmembers, and their professional advisers in terms of tax compliance and financial planning.

One other point—the Maine vessel sector is currently struggling under some economic hardship. Added costs and tax would have a significantly adverse marginal impact.

Conversely, cost reduction would have a significant positive impact. Eliminating the Federal unemployment tax for vessels having less than 10 crewmembers would be a positive factor for the Maine vessel sector.

Last—and in good conscience, one must address the issue of potential unemployment compensation——

Senator PACKWOOD. Can I ask you to wrap up and keep within our 5-minute time limit?

Mr. DAVIDSON. Wrap it up?

Senator PACKWOOD. Yes.

Mr. DAVIDSON. Basically, I am saying last here that in terms of unemployment compensation lost by the crewmembers there is very little impact. Most of them do not apply for unemployment benefits.

One, it has been bureaucratically difficult.

Second, they do not perceive of themselves as employees.

I will read the last paragraph. In our view, changing the Federal unemployment tax exemption to apply to fishing vessels taking fewer than 10 crewmembers has very little adverse impact, while at the same time, consistently codifies and enhances certain commercial fishing mores and tax law application, removes an economic burden to the vessel owner and reflects and promotes the necessary growth dynamics within the Maine commercial fishing fleet.

Thank you.

Senator PACKWOOD. Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman.

STATEMENT OF H. ALLEN JORDAN, CERTIFIED PUBLIC ACCOUNTANT, REPRESENTING PARKER AND WHITE, P.C., MOBILE, ALA.

Mr. JORDAN. Thank you, Mr. Chairman.

My name is Allen Jordan. I am also a certified public accountant and a partner in a large South Alabama CPA firm that represents significant commercial fishing interests.

I am also a boatowner and having a financial interest in four Gulf shrimping vessels.

S. 532 and S. 791 offer remedy to a most perplexing and controversial problem for boatowners that has existed since the Tax Reform Act of 1976, changed the employment status for crewmembers of commercial fishing vessels, and created an inequity in the shrimping industry in our case.

Under the Tax Reform Act of 1976, criteria were established under which certain crewmen would not be considered employees of the owner-operator of the boat.

In effect, IRS has declared shrimp boat crews to be self-employed, provided that the crewman does not receive any cash renumeration, the crewmen receive a share of the boat's catch of fish or a share of the proceeds from the sale of the catch, and three, that the amount of the crewmen share depends on the amount of the boat's catch, and four, the operating crew of the boat is normally made up of fewer than 10 individuals.

These criteria were made applicable for purposes of withholding Federal tax and Federal insurance contributions tax and consequently, exempts the employer in this case, the boatowner or the operator.

The inequity to which I refer lies in the IRS Code regarding Federal Unemployment Tax Act. This tax is applicable to employers only.

Shrimp boatowners and operators find themselves paying unemployment taxes on those who under another law are classified as self-employed.

So these are different taxes. There is no reason for the inconsistency in the exemptions. If a person is considered self-employed under the criteria of the one, there is no reason why employers should be required to pay unemployment tax on that self-employed individual.

Exclusion from coverage under FICA should be extended to mean an exclusion from coverage under FUTA. Either a man is self-employed or he is not. It is inconsistent to declare a man self-

employed under one act and claim that the same man is an employee under another act.

Shrimp boat crewmen are definitely independent of boatowners and can be considered truly self-employed. A crewman has no obligations to a boatowner and is free to perform his services for whomever he desires.

In our area, the demand for crewmen is very high. The majority of boatowners operate 12 months of the year, thus eliminating any real unemployment period.

This legislation, S. 532 and S. 791, would simply amend section 3306(c), of the IRS Code of 1954, related to the definition of employment under the FUTA, by using the same criteria to determine self-employment of crewmen for unemployment tax purposes, as used to determine self-employment of the crewmen under the Tax Reform Act of 1976.

Mr. Chairman, this legislation would consequently exclude those boatowners and operators from the excessive burden of paying unemployment tax on these crewmen defined as being self-employed under the Tax Reform Act of 1976, and bring some consistency in the enforcement of and compliance with these two laws.

Thank you very much.

Senator PACKWOOD. Gentlemen, I have no questions.

Senator Heflin wanted to be here today and he is ill and if he has a statement, I will place it in the record. I was a member of this committee when we passed this legislation. It was simply inadvertent on our part. Speaking for myself, I can assure you I will try to rectify it.

Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

I would like to first ask, Mr. Chairman, if the record is going to remain open to permit the Treasury Department to submit its views on this legislation?

Senator PACKWOOD. Oh, yes. They will submit their views in writing on all of the bills we have today.

Senator MITCHELL. Then I wonder if the record could also remain open for individuals, fishermen and other persons who may be interested to submit their views within that time?

Senator PACKWOOD. Yes.

Senator MITCHELL. Is there a particular time period yet for the Treasury?

Senator PACKWOOD. The Treasury will have their views in within the week. We said we would keep the record open 2 weeks after that.

Senator MITCHELL. Two weeks. Fine. Thank you, Mr. Chairman. I know there are other persons in Maine who want to submit views.

I would like to ask just a few questions. First, I would address to both witnesses, the fishermen of Alaska to whom I referred earlier who endorsed the concept of this legislation, did recommend that the language be altered to make the decision to pay the unemployment tax optional for vessel operators.

What do you think of this proposal? May I ask you, Mr. Davidson, to take that first?

Mr. DAVIDSON. Yes, Senator Mitchell. I find that a little bit of a paradox, but I think my overall reaction to that is very good.

Senator MITCHELL. Let me follow up and ask you, if—since the exemption is available to those vessel operators whose crews receive a share of the catch or proceeds from the sale of the catch, if the vessel operator wanted to pay unemployment compensation on his crew, couldn't he simply alter the way he paid them for the work they do and therefore qualify whether or not this—even though it were not optional?

Mr. DAVIDSON. That is very true. That happens many times even today for different reasons. The share or lay system is altered for many reasons. It is not inflexible.

Senator MITCHELL. Mr. Jordan do you have any comment on that?

Mr. JORDAN. Mr. Mitchell, I would not have any problems with that. The only thing I can see is that normally the State unemployment law ties in with the Federal unemployment law and it may have some problem with the State enforcing it, if it is at the option of the boatowner.

I know that in our particular State, in Alabama, the State unemployment people there are wanting a clarification of this law and to give maybe a little bit more ambiguity as far as being optional, may place a burden on them in their enforcement of the State unemployment law.

Senator MITCHELL. Let me ask you, Mr. Davidson, is it not true that many Maine crewmen or sternmen as they are called, are actually partners in the venture even to the extent they must pay for fuel and provisions for voyages that are unsuccessful?

Is that the case in some situations in Maine?

Mr. DAVIDSON. In that case that is absolutely true. The lay system or the settlement process clarifies that. The proceeds are split right off the top and part goes to the crew and part goes to the boat owner. Various expenses are taken out of the crew.

Many times it will come down to nothing; in fact, even deficits.

Senator MITCHELL. Is that true of the shrimping industry?

Mr. JORDAN. Yes, sir, Mr. Mitchell, it certainly is. Normally the expenses are taken from the gross stock, the gross proceeds of the trip. In many cases, the crewmember ends up with very little as a result of the expenses of operating the vessel.

Senator MITCHELL. Thank you, gentlemen. Thank you, Mr. Chairman.

Senator PACKWOOD. Fellows, thank you for coming. I hope we can rectify this.

Mr. DAVIDSON. Thank you.

Mr. JORDAN. Thank you.

Senator PACKWOOD. Thank you.

[The prepared statements of Sam Davidson and H. Allen Jordan follow:]

PREPARED STATEMENT OF SAM DAVIDSON

Mr. Chairman, and members of the committee, I am a fisheries consultant and certified public accountant whose client base consists largely of fishing vessels operating along the Maine coast. Specifically, I consult to approximately 25 vessels, ranging in size from 34 feet to 136 feet, and operate from the ports of Kennebunkport, east to Stonington. I am also consultant and certified public accountant to the Maine Fisherman's Cooperative Association which consists of approximately 200 vessel owners. As well, I provide tax and financial advice to approximately 30 non-vessel owning crewmembers.

My testimony will reflect the sentiment of both my clients and the other members of the vessel sector.

We wholeheartedly favor and endorse bill S. 791 as introduced by Senators Mitchell, Mathias, and Heflin, and believe it will provide significant advantage to the Maine commerical fishing fleet.

First, it ratifies and enhances the true economic relationship that exists between the crew and vessel; one of partership or joint venture, where each shares in the proceeds derived from the total fishing effort. This relationship has been historically built up by time and practice. Vessel owners and crewmembers have developed a very strong relationship based on mutual respect and the need to get the job done. To re-define or re-mold this concept into one of employer and employee would be an effort which not only distorts economic reality, but also would drive a wedge into an excellent working relationship between crew and owner.

There is much in evidence to support this partnership concept. The Internal Revenue Service has already accepted this concept for Federal income tax withholding and social security tax purposes. Both the Tax Reform Act of 1976 and the Tax Act of 1978 clarify the concept that crewmembers are deemed to be self-employed within certain operating parameters. The State of Virginia and to some extent the State of Maine have accepted this concept as well for State unemployment compensation purposes, by recognizing that crewmembers are independent joint partners and not employees. This has resulted in certain vessels which have a formal joint venture contract with their crews, to become exempt from paying the State unemployment tax.

Also the share or lay system, through which the vessel and its crew share in catch proceeds, manifests the joint venture concept, where each party has mutual interest, profit sharing and right to control.

Other industry practices promote this joint venture concept. Repairs and maintenance, net mending and other dockside work are part of a crewmembers job. He is generally not remuncerated for this time. Further, broker or loss trips may be partially or wholly subsidized by the vessel in the interest of keeping a good crew. Crewmember participation generally takes place on a voyage-to-voyage basis. Crew turnover is extremely high. A typical Maine vessel may turn over its entire crew 3, 4, or even 5 times during the year. In another industry a 10-percent turnover may be deemed to be high. With this degree of turnover and the fact that the fishing effort is subject to so many uncontrollable factors, such as weather and fish migration, it becomes extremely difficult to define such concepts as "lack of work" or other times when conventional situations may justify unemployment compensation. It also serves to advantage to remember that the share system does, at times, provide extremely lucrative compensation for the amount of time worked. Hence there are times of high pay, some pay, and no pay. But at the end the year total compensation can be termed good based on the effort accomplished. It is difficult to rationalize unemployment compensation within the system as it exists today.

Another point of emphasis is that, by-and-large, the Maine vessel sector has "grown-in" to having to pay the Federal unemployment tax. Industry growth dynamics have made vessels under ten net tons economically difficult. Most groundfish and scallop vessels currently operating along the coast exceed ten net tons. Taking the Federal unemployment tax exemption away from an obsolete standard and positioning it on a more current standard acknowledges and promotes desirable economic growth within the industry.

There is also advantage in moving to consistency in application of the tax law. Currently, fishing vessel crewmembers are deemed, under certain circumstances, to be self-employed for Federal withholding and social security tax purposes, deemed to be employees for unemployment compensation, and their status as regards IRA, Keogh and pension plans is just about anybody's guess. Any movement toward the application of a single criteria helps owners, crewmembers and their professional advisors in terms of tax compliance and financial planning.

One other point—the Maine vessel sector is currently struggling under some economic hardship. Added costs and tax would have a significantly adverse marginal impact. Conversely, cost reduction would have a significant positive impact. Eliminating the Federal unemployment tax for vessels having less than ten crewmembers would be a positive factor for the Maine vessel sector.

Lastly—and in good conscience, one must address the issue of potential unemployment compensation benefits lost by crewmembers as a result of enactment of this proposed bill. It is my opinion that the magnitude of this loss would be insignificant. Currently very few crewmembers apply for unemployment. There are two reasons for this. One, unemployment compensation has been bureaucratically difficult to obtain. By the time the compensation is applied for an received, the vessel is fishing again or the crewmember has found another site. Two, and more important, the

Maine fisherman does not perceive himself as being an employee or the type of individual who should receive unemployment compensation. He generally views himself as an independent partner, a professional, who knows his job and can perform that job under difficult conditions if need be. To this extent, applications by Maine fishermen for unemployment compensation have been minimal and would continue to be minimal as long as the system perpetrates the joint venture concept. Formal legislative removal of that potential benefit would have very little adverse impact on the crewmember.

In our view, changing the Federal unemployment tax exemption to apply to fishing vessels taking fewer than ten crewmembers has very little adverse impact while at the same time consistently codifies and enhances certain commercial fishing mores and tax law application, removes an economic burden to the vessel owner, and reflects and promotes the necessary growth dynamics within the Maine commerical fishing fleet.

Thank you.

STATEMENT OF H. ALLEN JORDAN

Mr. Chairman and members of the Committee, my name is Allen Jordan. I am a Certified Public Accountant and a partner in a large South Alabama CPA firm which represents significant commercial fishing interests. I am also a boat owner, having an interest in four recently constructed shrimp trawlers.

S. 532 and S. 791 offers remedy to a most perplexing and controversial problem for boat owners that has existed since the Tax Reform Act of 1976 changed the employment status for crew members of commercial fishing vessels and created an inequity in the shrimping industry.

Under the Tax Reform Act of 1976, criteria were established under which certain crewmen would not be considered employees of the owner or operator of the boat. In effect, the Internal Revenue Service has declared shrimp boat crews to be self-employed provided that (1) the crewman does not receive any cash remuneration; (2) the crewman receives a share of the boats' catch of fish or a share of the proceeds from the sale of the catch (3) the amount of the crewman's share depends on the amount of the boats' catch, and (4) the operating crew of the boat is normally made up of fewer than ten individuals. These criteria were made applicable for purposes of withholding Federal tax and Federal Insurance Contributions Act tax; and consequently exempts the employer—in this case, the boat owner or operator.

The inequity to which I referred lies in the IRS Code regarding the Federal Unemployment Tax Act. This tax is applicable to employers only. Shrimp boat owners and operators find themselves paying unemployment taxes on those who, under another law, are classified as self-employed. Though these are different taxes, there is no reason for inconsistency in exemptions. If a person is considered self-employed under the criteria of the one, there is no reason why an employer should be required to pay unemployment tax on that self-employed individual. Exclusion from coverage under FICA should be extended to mean an exclusion from coverage under FUTA. Either a man is self-employed or he is not. It is inconsistent to declare a man self-employed under one Act and claim that same man is an employee under another Act.

Shrimp boat crewmen are definitely independent of boat owners and can be considered truly self-employed. A crewmen has no obligations to a boat owner and is free to perform his services for whomever he desires. In our area, the demand for crewman is very high. The majority of boat owners operate twelve months of the year, thus eliminating any real unemployment period.

This legislation (S. 532 and S. 791) would simply amend Section 3306(c) of the Internal Revenue Code of 1954 (relating to the definition of employment under the Federal Unemployment Tax Act) by using the same criteria to determine self-employment of the crewman for unemployment tax purposes as used to determine self-employment of the crewman under the Tax Reform Act of 1976, namely;

(1) The crewman does not receive any cash remuneration;

(2) The crewman receives a share of the boats' catch of fish or a share of the proceeds from the sale of the catch;

(3) The amount of the crewman's share depends on the amount of the boats' catch; and

(4) The operating crew of the boat is normally made up of fewer than ten individuals.

Mr. Chairman, this legislation would consequently exclude these boat owners and operators from the excessive burden of paying unemployment tax on those crewmen defined as being self-employed under the Tax Reform Act of 1976, and bring some consistency in the enforcement of and compliance with these two laws.

I appreciate very much the opportunity to appear before this Committee and express my thoughts with respect to this legislation.

Senator PACKWOOD. Next we will move on to S. 1382 and S. 789 relating to volunteer fire departments. I see Senator Lugar in the audience.

STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator PACKWOOD. Good morning. I understand that you want to introduce your witnesses.

Senator LUGAR. I would like to have the chairman's permission to have at the table with me in the first panel, Richard Lamb, the chief of the Wayne Township Fire Department, Indianapolis, Ind., and Harold E. Stofer, trustee, Wayne Township, Marion County, Ind.

Senator PACKWOOD. Why don't those two come up while Senator Lugar is here. When he finishes his statement and introduction, we will ask the other members of the panel to join him.

I will place in the record after Senator Lugar's statement, and his introduction, a statement from Senator Quayle, supporting this bill. He could not be here this morning.

Senator LUGAR. Mr. Chairman, I am very grateful to you for scheduling this hearing on S. 979, a bill I introduced, along with my colleague from Indiana, Senator Dan Quayle, to clarify the tax exempt treatment of interest paid on the debt of volunteer fire departments.

This is an important opportunity to express the need for this legislation and to discuss the merits of its various provisions.

I became aware of the problem which S. 979 intends to resolve through discussion with two of the gentlemen who have joined me at the witness table, Wayne Township Volunteer Fire Department chief, Richard Lamb, and Wayne Township trustee, Gene Stofer.

Wayne Township is a political subdivision of Marion County, Ind. Because of the consolidation of the city of Indianapolis and Marion County during my service as mayor, Wayne Township also is a part of the larger consolidated governmental unit.

As mayor, I recognized the enormous public contribution of the Wayne Township Volunteer Fire Department. All of the fire protection for this subdivision of Indianapolis, and Marion County was and continues to be provided by this excellent volunteer fire department.

I would add, Mr. Chairman, parenthically, that this is a subdivision, that is the Wayne Township situation of over 100,000 people.

Also, the township in which my official voting residence is located. So, I have a very considerable interest in that township.

S. 979 goes well beyond the specific troublesome situation now facing both the Wayne Township Volunteer Fire Department and Wayne Township.

As a result of the Internal Revenue Service position regarding the tax exempt status of the interest paid on the debt of the Wayne Township Volunteer Fire Department.

The Advisory Commission of Intergovernmental Relations estimate that there are approximately 28,000 fire departments in the United States.

More than three-fourths of all fire departments are volunteer departments as opposed to municipally owned and operated fire departments.

Each State has volunteer fire departments, and therefore, every Senator should be concerned about this important tax issue.

If the Internal Revenue Service succeeds in its present course of taxing the interest income from debt issued to volunteer fire departments across the country, the increases costs of such firefighting units will lead to either a substantial reduction in firefighting capability or the demise of volunteer fire department systems in the country.

In either event, the increased costs to units of local government will be substantial at a time when their budgets are strained to meet other obligations, much less new ones.

In the Wayne Township instance, the local bank has been lending the necessary funds for the purchase of equipment and facilities for many years. The bank has not included in taxable income the interest income earned on those debts.

The bank did so because it believed the volunteer fire department was delegated the power to fulfill a local governmental responsibility.

Clearly, the protection of citizens and local businesses from fire is a responsibility of local government. Thousands of communities across the country have found it advisable or necessary to turn to volunteer fire departments to fulfill this basic, local service.

Logic would dictate that section 103(a), of the Internal Revenue code and the Treasury regulations issued pursuant thereto should apply to the interest on these obligations.

Internal Revenue Service, in a technical interpretation of the facts and the law, has concluded in the Wayne Township case that the interest on the debt issued through the volunteer fire unit is not tax exempt.

Again, Mr. Chairman, sustaining this position will cause severe damage to local firefighting capability. It makes no sense from a public policy viewpoint.

The Congress must take action to prevent the IRS from going any further than it already has.

Mr. Chairman, S. 979 would enable volunteer fire departments to serve their communities with reliable firefighting equipment. It would insure that no community would be denied adequate fire protection because interest rates, higher than those available, to municipally-paid departments prevent the purchase of necessary equipment.

Under the current economic situation, local communities are already struggling to fulfill their public service commitments. By taxing the interest on loans used or the purpose of essential equipment, we add yet another obstacle to these efforts.

Mr. Chairman, I have circulated S. 979 for comment among various fire department organizations. I have received several comments suggesting modifications of the bill in order to meet its original objective.

I would like to make reference to a few points which have been raised on the particular requirement.

First, there is substantial objection to the requirement that a volunteer fire department receive over half of its outfitting and equipment funds from the political subdivision.

Apparently, funds are often derived from other activities and the 50-percent minimum would exclude many otherwise qualified organizations.

Second, various sources indicate that many volunteer fire departments operate without any contractual agreement with the local unit of government. I find this requirement to be useful in many respects. It represents the best way of doing business even among compatible entities and insures that the fire department holds to its firefighting responsibilities.

Mr. Chairman, I take great pleasure in introducing two gentlemen who have traveled from Indiana to appear before this subcommittee.

Each has devoted a significant portion of his life to fire protection.

Richard Lamb is a member of two of the organizations represented here today, the National Volunteer Fire Council and the International Association of Fire Chiefs.

His dedication to the pursuit of fire protection is evidenced by long service with the Wayne Township Volunteer Fire Department.

He has worked for this department for 11 years, presently serving as its chief.

Gene Stofer shares this unflagging commitment to fire protection. He has worked in some capacity for the Wayne Township Fire Department since 1953, serving as a division chief, secretary-treasurer and currently as a board member.

Like Chief Lamb, he is, himself, an expert firefighter.

I thank you again, Mr. Chairman, for allowing these two gentlemen and the other representatives of firefighting organizations to testify before you here today.

Senator PACKWOOD. Thank you. I said earlier, when Senator D'Amato testified on this bill, I have a very favorable interest in volunteer fire protection also. Oregon is rife with volunteer fire departments. Most of them are operating very successfully. Most of them are operating infinitely cheaper than fully paid, fully tax-supported departments would operate.

That is, in my mind, one of the best examples of volunteerism that we have in this country.

Thank you.

Senator LUGAR. Thank you.

[The prepared statement of Senator Lugar follows:]

STATEMENT OF U.S. SENATOR RICHARD G. LUGAR

Mr. Chairman: I am most grateful to you for scheduling this hearing on S. 979, a bill I introduced along with my colleague from Indiana, Senator Dan Quayle, to clarify the tax-exempt treatment of interest paid on the debt of volunteer fire departments. This is an important opportunity to express the need for this legislation and to discuss the merits of its various provisions.

I became aware of the problem which S. 979 intends to resolve through discussions with two of the gentlemen who join me here at the witness table, Wayne Township Volunteer Fire Department Chief Richard Lamb and Wayne Township Trustee Gene Stofer.

Wayne Township is a political subdivision of Marion County, Indiana. Because of the consolidation of the City of Indianapolis and Marion County during my service as Mayor, Wayne Township also is a part of the larger consolidated governmental

unit. As Mayor, I recognized the enormous public contribution of the Wayne Township Volunteer Fire Department. All of the fire protection for this subdivision of Indianapolis-Marion County was and continues to be provided by this excellent volunteer fire department.

Mr. Chairman, S. 979 goes well beyond the specific, troublesome situation now facing both the Wayne Township Volunteer Fire Department and Wayne Township as a result of the Internal Revenue Service's position regarding the tax-exempt status of the interest paid on the debt of the Wayne Township Volunteer Fire Department. The Advisory Commission of Intergovernmental Relations estimates that there are approximately 28,000 fire departments in the United States. More than three-fourths of all fire departments are volunteer departments as opposed to municipally owned and operated. Every state has volunteer fire departments, and therefore, every Senator should be concerned about this important tax issue.

If the Internal Revenue Service succeeds in its present course of taxing the interest income from debt issued to volunteer fire departments across the country, the increased cost to such fire fighting units will lead to either a substantial reduction in fire fighting capability or the demise of the volunteer fire department system in this country. In either event, the increased cost to units of local government will be substantial at a time when their budgets are strained to meet other obligations, much less new ones.

In the Wayne Township instance, a local bank has been lending the necessary funds for the purchase of equipment and facilities for many years. This bank has not included in taxable income the interest income earned on those debts. The bank did so because it believed that the volunteer fire department was delegated the power to fulfill a local government responsibility. Clearly, the protection of citizens and local businesses from fire is a responsibility of local government. Thousands of communities across the country have found it advisable or necessary to turn to volunteer fire departments to fulfill this basic local service. Logic would dictate that Section 103 (a) of the Internal Revenue Code and the Treasury regulations issued pursuant thereto should apply to the interest on these obligations.

The Internal Revenue Service, in a technical interpretation of the facts and the law, has concluded in the Wayne Township case that the interest on the debt issued to the volunteer fire unit is not tax exempt. Again, Mr. Chairman, sustaining this position will cause severe damage to local fire fighting capability. It makes no sense from a public policy viewpoint. The Congress must take action to prevent the IRS from going any further than it already has.

Mr. Chairman, S. 979 would enable volunteer fire departments to serve their communities with reliable fire fighting equipment. It would ensure that no community be denied adequate fire protection because interest rates, higher than those available to municipally paid departments, prevent the purchase of necessary equipment. Under the current economic situation, local communities are already struggling to fulfill their public service commitments. By taxing the interest on loans used for the purchase of essential equipment we addd yet another obstacle to those efforts.

Mr. Chairman, I have circulated S. 979 for comment among various fire department organizations. I have received several comments suggesting modifications to the bill in order to meet its original objective.

I would like to make reference to a few points which have been raised on the particular requirements of S. 979.

First, there is substantial objection to the requirement that a volunteer fire department receive over half of its outfitting and equipment funds from the political subdivision. Apparently, funds are often derived from other activities and the 50 percent minimum would exclude many otherwise qualified organizations.

Second, various sources indicate that many volunteer fire departments operate without any contractual agreement with the local unit of government. I find this requirement to be useful in many respects. It represents the best way of doing business even among compatible entities and ensures that a fire department holds to its fire fighting responsibilities.

Mr. Chairman, I take great pleasure in introducing two gentlemen who have travelled from Indiana to appear before this Subcommittee. Each has devoted a significant portion of his life to fire protection. Richard Lamb is a member of two of the organizations which are represented here today, the National Volunteer Fire Council and International Association of Fire Chiefs. His dedication to the pursuit of fire protection is evidenced by long service with the Wayne Township Fire Department. He has worked for this fire department for 11 years, presently serving as its Fire Chief.

Gene Stofer shares this unflagging commitment to fire protection. He has worked in some capacity for the Wayne Township Fire Department since 1953, serving as

Division Chief, Secretary-Treasurer and currently as a board member. Like Chief Lamb, he is himself, an expert fire fighter.

Again, I thank you, Mr. Chairman, for allowing these two gentlemen and the other representatives of fire fighting organizations to testify here today.

Senator PACKWOOD. Could we ask the rest of the panel to come up and join those who are there now, Mr. McCormack and Mr. Streng and Mr. Greenwald.

We will go on with the testimony. I will say again to all of the witnesses, all of your testimony will be in the record in its entirety. I would appreciate it if you could hold yourself to the time limits that we set for our witnesses.

STATEMENT OF: RICHARD C. LAMB, WAYNE TOWNSHIP FIRE DEPARTMENT, INDIANAPOLIS, IND.

Senator PACKWOOD. Chief Lamb, do you want to go ahead?

Mr. LAMB. Thank you, Mr. Chairman.

I am Chief Lamb, Chief of Wayne Township Fire Department.

On behalf of the department, I would like to thank you and other members of your subcommittee for giving me the opportunity to present testimony on Senate bill 979.

Using our department as an example, I will try to describe a serious problem now facing many volunteer fire departments throughout the country.

In many ways, a legitimate volunteer fire department is like a business. Much like a business, it is responsible for providing a service and a product. It protects the lives and property of those living in a community.

In our case, we serve some 166,000 residents located on the far west side of Indianapolis. We take this responsibility very seriously. In fact, the department has the contractual agreement with the township trustee, to make certain that it meets its firefighting obligations.

We are not a social club. However, we do, from time to time, have fund raising events, to raise money to help operate the department in order to keep the lowest possible tax rate.

Again, like any other business, we must, from time to time, borrow money to purchase equipment, build new buildings, to meet the demands of an ever-growing urban area.

In the past, our department borrowed money from lending institutions on a tax-free basis. In other words, the lending institution did not have to pay Federal income tax on the interest charged to the fire department.

This meant that the bank could offer our department a better interest rate. For example, if the prime rate today was 19.5 percent, we might pay as low as 11.7 percent.

We are not talking about small potatoes. At the present time, we have loans with one bank in the amount of $885,000.

Because of our presumed, tax-free loan status, the interest on these range from as low as 5 percent to a high of 8.1 percent.

If the IRS has their way, these rates will jump from the 5 percent to 15.5 percent.

To give you the hard facts, if the banks are allowed to claim the tax-free status, Wayne Township Fire Department will pay a total interest in the amount of $304,000, on the $885,000 indebtedness.

However, if we lose this tax-free status, we will have to pay $602,000 in interest, a difference of $298,000.

We have always assumed, going by past treatment, that we have the benefit of the tax-exempt status. Even with the preferred treatment, we are having problems making ends meet.

Like many other States, Indiana has a property tax freeze. There has been some good come out of the tax freeze. It makes we people, in emergency services, better managers of our moneys.

I know in our department, we no long have chrome bumpers on the firetrucks. That is all right. We have no objections to that.

The fact is, we are in real trouble if we are not able to equip our stations under the same terms as we have in the past, and there is nowhere else to turn.

If the Wayne Township Fire Department is unable to obtain assistance in this matter, we will have to start closing fire stations, selling equipment, in order to meet the obligations of the loans.

At that point, the township trustee would have to apply for an excess levy to provide for a paid fire department. If that happens, we are looking at a $2.5 million annual payroll, not counting the cost of buildings and apparatus.

There is a strong possibility that without volunteer fire departments, many communities would not have fire service. Who suffers if this happens? The people in the community.

Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you very much.

Mr. Stofer.

STATEMENT OF HAROLD E. STOFER, TRUSTEE, WAYNE TOWNSHIP, MARION COUNTY, INDIANAPOLIS, IND.

Mr. STOFER. Yes, Mr. Chairman, thank you very much.

I would like to thank you and your committee members for allowing me the time to give testimony in reference to Senate bill 979.

Although I am a fire department member, I am not here today necessarily to represent the Wayne Township Fire Department, but to represent the taxpayers of Wayne Township, of which I am a township trustee, responsible for providing the fire protection.

There is absolutely no way I can raise taxes to offset the amount of moneys needed to settle this dispute with the IRS, nor do I have enough moneys from the Federal revenue sharing since the tax freeze in the State of Indiana and since my Federal revenue sharing funds have been cut.

Every year, I have to take more money from Federal revenue sharing to provide for the poor relief in Wayne Township.

But, before being elected to the office of township trustee, I was the secretary-treasurer of the Wayne Township Fire Department.

I know first hand the trying times the fire department is going through with barely enough moneys to keep their obligations current.

Speaking for the 166,000-plus people I represent in Wayne Township, Wayne Township Fire Department provides a tremendous

service to the community for a fraction of the cost compared to other townships in the State of Indiana.

My advisory board and myself don't want to provide for a paid fire department because of the tremendous costs involved.

However, if the IRS wins this battle, I see no choice but for the fire department to liquidate their assets to pay off their debts.

This would only be a detriment to my taxpayers who are already overburdened with taxes.

According to the State of Indiana statute, I, as township trustee must provide a clothing and car allowance.

However, these volunteer firemen return to the township their allowance, in order to keep the lowest possible tax rate.

I am here today to seek support from you, to help pass Senate bill 979 in order that not only Wayne Township Fire Department can survive this serious crisis, but that volunteer fire departments throughout the United States can survive.

I would like to thank you for your time, and if I can answer any of your questions, please feel free to call on me.

Thank you very much, sir.

Senator PACKWOOD. Thank you very much.

Again, I will say to the witnesses, all of your statements will be placed in the record, in their entirety, so you don't need to read them entirely. You can abbreviate them to stay within the 5 minutes. We would appreciate it.

We will take Mr. McCormack next.

STATEMENT OF EDWARD H. McCORMACK, EXECUTIVE DIRECTOR, INTERNATIONAL SOCIETY OF FIRE SERVICE INSTRUCTORS, HOPKINTON, MASS.

Mr. MCCORMACK. Thank you, Mr. Chairman.

My name is Edward H. McCormack, Jr., executive director of the International Society of Fire Service Instructors, appearing here today representing over 4,000 fire instructors throughout America.

They have deep concerns regarding the volunteer fire service. They have deep concerns on the funding that they have to raise in order to operate humanistic services for the citizens of America.

The testimony is comprehensive and for your study. I will in fact summarize some of our concerns.

We realize that if it were not for the volunteer fire service, inflation in America would already be triple digit.

Volunteer fire service was the first of the voluntary community services, and it continues to operate so that we can keep tax levies at the State, local and national level, at the very, very lowest.

While we are in support of Senator Lugar's proposed legislation, Senate bill No. 979, and also, Senator D'Amato's S. 1382, we feel that whatever legislation is passed is direly needed and should be all inclusive for all voluntary fire services, all volunteer fire departments in America.

This is very important. We have heard here today the problem that Wayne Township is facing. They are contracting with a municipality and do receive partial funding. But there are many, many volunteer fire departments formed and operating out of the very first concept of the fire service, people helping people in time of need, that are not so fortunate as to be formally organized or partially funded by municipalities.

So, we really feel that it must be all inclusive; for everyone. Right here, surrounding the shadows of the Nation's Capitol, are places where you have combination departments, part paid and part volunteers.

As we look at some of the legislation, we sure don't want to see these people excluded. Paid firefighters from the county, manning apparatus and in fire stations that are owned by a private, volunteer fire department.

Sure, some of these are incorporated as 501(c)(3) organizations, but a good many are not.

So, we suggest, Mr. Chairman, that the committee take a very hard look at this and see that it does include all volunteer fire service throughout America.

And the part dealing with change and charge, there are places, for example, in the State of Delaware, where the volunteer fire department operates an ambulance service, and the community citizens pay an insurance of $20 for the year. This insures that they will get service whenever they need it, not only locally, but transporting as far away as to Philadelphia hospitals.

Would the charge portion of this eliminate those from receiving the relief that this legislation is so desperately needed for?

In summary, Mr. Chairman, we have concerns with the existing statutes, but we also have concerns with the proposed relief.

I am sure Senator Lugar has identified those and is well aware of them. We are sure that the committee will act in the best interest of the American fire service.

Senator PACKWOOD. Senator Lugar does something that more of us ought to do. He was very wise to circulate his bill to everybody who might be affected by it. As he noted in his testimony, he has some suggestions for change based upon that.

If more of us did that we would make fewer unintentional mistakes when we pass legislation.

Mr. Streng.

STATEMENT OF PAUL STRENG, NATIONAL VOLUNTEER FIRE COUNCIL, LEWES, DEL.

Mr. STRENG. Thank you, Mr. Chairman.

I am Paul Streng. I am a member of the executive committee of the National Volunteer Fire Council.

I am also the assistant chief of the Howell Volunteer Fire Department in Howell, Mich. I am in fact, a volunteer.

You do have a copy of our prepared statement. I would just like to expand on it a bit. Costs are rising at exponential rates and there are many, many departments in the country that have to do what Wayne Township is doing and that is going to a commercial lending institution.

What we are concerned about is that the Wayne Township situation may be the first of many. There is the possibility that many financial lending institutions are extending the courtesy of the municipal rates to fire departments, unknowingly. As the IRS begins to pick up, we are concerned that there may be many, many other fire departments in the same shape that Wayne Township is in right now.

So, we have great concerns for the potentials that might be the outcome of the Wayne Township concerns at this time.

We have proposed some changes to the Senator's bill. We have discussed it with him and we do appreciate his circulating it. That is very, very helpful for us.

Those changes that we proposed would help eliminate exclusions that has been brought out here in earlier testimony.

We certainly want to make sure that those moneys that are loaned at that lower rate, are used for apparatus, equipment, and facilities that are directly related to those essential services that the fire departments do provide.

I would like to ask if the record will be open for a few days. I know there are several States that have expressed concerns and would like to, including some folks out in your area, in Oregon.

Senator PACKWOOD. We will leave the record open for 2 weeks after we finish the hearing. Anything that is submitted during that time, we will put in.

Mr. STRENG. Thank you very much.

I thank you for the opportunity to let us come before you today.

Senator PACKWOOD. It was a pleasure to have people who provide the service you do, come before us. You are welcome any time.

Mr. STRENG. Thank you.

Senator PACKWOOD. Mr. Greenwald.

Mr. GREENWALD. Thank you, Mr. Chairman.

STATEMENT OF ERNEST GREENWALD, SR., CHAIRMAN, VOLUNTEER COMMITTEE, INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

My name is Chief Ernest J. Greenwald, Sr., chairman of the Volunteer Committee of the International Association of Fire Chiefs.

I am also the vice president of the New Jersey State Firemen's Association, which has a total membership of some 65,000 members.

I am pleased to appear before you today to support Senate bill 979.

My comments will address the needs and concerns of volunteer fire chiefs responsible for providing and directing fire prevention and control activities at the local level.

I want to extend my thanks to Senators Lugar and Quayle and this committee for their efforts to aid financially challenged volunteer fire departments.

Organized in 1873, the International Association of Fire Chiefs has long recognized the contribution of the volunteer fire service.

Approximately 50 percent of our members are volunteer fire chiefs.

Mr. Chairman, I will summarize my remarks and request that the full text be accepted for the record.

It is the opinion of the IAFC that minor changes in the proposed legislation are necessary to achieve the intended results.

We do, however, strongly endorse the intent of this legislation. Given the financial plight of local government, members of the IAFC believe that the proposed legislation will not only encourage financial institutions to lend money to volunteer fire departments by providing an additional tax incentive, but will enable political subdivisions to commit limited bonding authority to other necessary community needs.

We appreciate the recognition given to volunteer fire departments. We are concerned for the agencies that provide a vital emergency service.

Therefore, we encourage the inclusion of volunteer ambulance and rescue squads in the definition of volunteer fire departments.

While there are many volunteer fire departments that provide prehospital emergency medical and rescue service, many communities depend in whole or in part on volunteer ambulance and rescue squads.

While there are numerous examples of this throughout the country, the Metropolitan Washington area has several outstanding examples of volunteer rescue squads that would be excluded as the legislation is now written.

In the brief time remaining, let me point out that most volunteer fire departments receive substantially less than 50 percent of their funds from a political subdivision. Operating and capital moneys are obtained through fundraising efforts, including carnivals, dances, raffles, dinners, donations and other nontax sources, and in the State of New Jersey, I might add, a very large source of income is bingo.

I strongly urge the committee to delete or amend the qualifications calling for the 50-percent funding requirement.

Section 2(d) eliminates a department charging for firefighting services. I am concerned that some may give that a broad interpretation and consider a donation a charge.

I respectfully request that section be deleted.

May I further suggest, Mr. Chairman, that should a determination as to the qualification of a volunteer fire department, ambulance, or rescue squad be required, that the U.S. Fire Administration, an agency of the Federal Emergency Management Agency, not the Internal Revenue Service, be authorized to determine whether or not an agency is a bona fide volunteer fire department, ambulance, or rescue squad.

Mr. Chairman, the emergency volunteer services of this Nation provide a vital service to our communities. The current economical conditions affect them as it does everyone.

The proposed legislation will provide these organizations with the opportunity to continue to provide essential services to their communities.

I would like to thank you for the opportunity of providing testimony. I would be pleased to respond to any questions that you or the members of the committee may have.

Senator PACKWOOD. I have no questions. I am familiar with one of the services in the Washington area. I live in the jurisdiction of the Bethesda-Chevy Chase Rescue Squad. I have gone to their evening fundraising events on occasion, and find them most successful and enjoyable. I am very impressed with the quantity of fundraising efforts they make door to door.

Without fail every year one of their volunteers comes to the door and I have talked with other neighbors in disparate areas in the jurisdiction. Every door has been rapped on. They really do a fine service. I think they should be included.

Mr. GREENWALD. Thank you very much.

Senator PACKWOOD. Gentlemen, Senator, I have no questions. I appreciate very much your bringing this problem to our attention. It was one I was not familiar with until Senator Lugar introduced the bill.

In my mind it is a justifiable cause. I hope we can accommodate you. Thank you for taking the time to come.

Mr. GREENWALD. Thank you, Senator.

Senator LUGAR. Thank you.

Mr. STRENG. Thank you, Senator.

Mr. STOFER. Thank you, sir.

[The statements follow:]

Wayne Township Fire Department, Inc.

Faithfully Serving

6456 West Ohio Street AC - 317-247-8501

Richard C. Lamb, Chief
Stephen J. Ritter, Deputy Chief
Gary Pelset, Deputy Chief
Jack Winkler, Secretary-Treasurer
Dave Dunne, Fire Prevention Chief
Ed O'Farrell, Training Chief
Dr. James Dillon, EMS Services Chief

STATEMENT OF RICHARD C. LAMB

CHIEF OF WAYNE TOWNSHIP FIRE DEPARTMENT

BEFORE THE SUBCOMMITTTEE ON TAXATION AND DEBT MANAGEMENT

JUNE 26,1981

Indianapolis, Indiana 46224

Mr. Chairman, I am Richard Lamb, Chief of the Wayne Township Fire Department. On behalf of the department, I would like to thank you and the other members of your subcommittee for giving me the opportunity to present testimony in regards to S.979.

Using our department as an example, I will try to describe a serious problem now facing many volunteer fire departments throughout the country.

In many ways a legitimate volunteer fire department is like a business. Much like a business, it is responsible for providing a service; it protects the lives and property of those living in the community. In our case, we serve 166,000 residents located in the far west side of Indianapolis. We take this responsibility very seriously. In fact, the department has a contractual agreement with the Township to make certain that it meets its fire-fighting obligations.

So, we are not a social club. When we hold bingo games or arrange social events we do so to raise money to operate the department.

Again, like other businesses we must, from time to time, borrow money to purchase equipment and build new fire stations in order to meet the demands of a growing urban area.

In the past, our department borrowed money from lending institutions on a tax-free basis. In other words, the lending institution did not pay Federal Income Tax on the interest charged to the fire department. This meant the bank could offer our department a better interest rate. For example, if the prime lending rate were set at 19.5%, our department might pay only 11.7%.

We're not talking about small potatoes here. At the present time, we

have loans taken out with just one bank in the amount of $885,000.00. Because of our presumed tax-free loan status, the interest rates on this sum now range from as low as 5% to as high as 8.1%. If the I.R.S has their way though, these rates will range from 5% to 15.05%.

To give you the hard facts, if the banks are allowed to claim the tax-free status, the Wayne Township Fire Department will pay total interest in the amount of$304,709.30 on the $885,000.00 indebtedness. However, if we lose this tax-free status we will have to pay a total of $602,754.56, a difference of almost $300,000.00.

We have always assumed, going by past treatment, that we would have the benefit of the tax-exempt treatment. Even with the preferred treatment we would have trouble making ends meet. Like many other states, Indiana has had a property tax freeze. The good thing that has come out of the tax freeze is that it has made emergency management people better managers of the money available. I know in our department the new fire trucks no longer have chrome bumbers--chrome bumpers do not put out fires. We spend our monies more wisely. The current economic situation and this tax freeze has forced us to tighten our belts--and that's O.K. But we can't tighten them any further.

The fact is that we will be in real trouble if we are not able to equip our station under the same terms we have had in the past, and there's nowhere else to turn. If the Wayne Township Fire Department is unable to obtain assistance in this matter we will have to start closing fire stations and selling fire apparatus in order to meet the obligations of the loan agreements.

At that point the Township Trustee would have to apply for an excess levy tax base to provide for a paid fire department. If that happened we would be looking at a $2.5 million payroll, not counting the cost

for building apparatus. To cover this large rise in cost, our township's tax rate for fire protection would jump to $1.97 per $100.00 assessed valuation. This compares with the present 24 cents per $100.00 assessed valuation, a good buy for the taxpayer.

I know that many other departments are in the same situation. They are the only fire protectors in their communities and they take their jobs seriously. But they too are having problems financing the purchase of new equipment.

There is a strong possibility that without volunteer fire departments many communities would go without fire stations. Who suffers if this happens? We do,because we can not perform what we are well qualified to offer and very much want to do. The community suffers because it loses the economic benefits which come from our sizeable investment. And most of all, the people suffer because they lose important fire protection and emergency service.

HAROLD E. STOFER
Wayne Township Trustee
MARION COUNTY
2422 W. 16TH STREET
INDIANAPOLIS, INDIANA 46222
634-6862

June 23, 1981

The Honorable Bob Packwood
Chairman
Senate Sub-Committee on Finance
2227 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Packwood:

I would like to thank you and your committee members for allowing me the time to give testimony in reference to Senate Bill 979.

I am not here today necessarily to represent the Wayne Township Fire Department, but to represent the tax payers of Wayne Township of which I am the Township Trustee responsible for providing fire protection.

There is absolutely no way I can raise taxes to offset the amount of monies needed to settle this dispute with the IRS. Nor do I have enough monies from the Federal Revenue Sharing since the tax freeze in the State of Indiana, and since my Federal Revenue Sharing Funds have been cut. Every year I have to take more money from Federal Revenue Sharing to provide for poor relief in Wayne Township.

Before being elected to the office of Township Trustee, I was the Secretary-Treasurer of the Wayne Township Fire Department. I know first hand the trying times the Fire Department is going through with barely enough monies to keep their obligation current.

Speaking for the 166,000 plus people I represent, Wayne Township Fire Department provides a tremendous service to the community for a fraction of the cost compared to other townships within the State of Indiana.

My Advisory Board and myself don't want to have to provide a paid Fire Department because of the tremendous cost involved. However, if the IRS wins this battle I see no choice but for the Fire Department to liquidate their assets to pay off their debts. This would only be a detriment to my tax payers who already are over-burdened with taxes.

According to the State of Indiana Statute, I as Township Trustee, must provide a clothing and car allowance. However, these volunteers return to the township budget their allowance in order to keep the lowest possible tax rate.

I am here today to seek support from you to help pass S979 in order that not only Wayne Township Fire Department can survive this serious crisis, but that volunteer fire departments throughout the United States can survive.

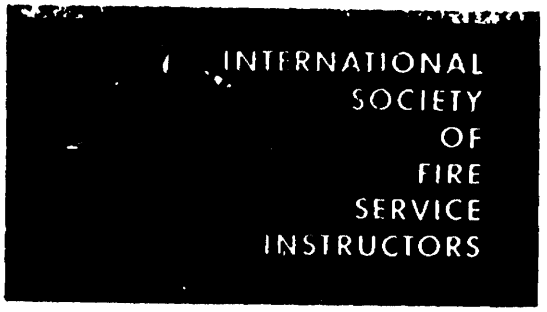
I would like to thank you for your time, and if I can answer any questions, please feel free to call upon me.

Sincerely,

Harold E. Stofer

HES/meb

Harold E. Stofer, Trustee
Wayne Township, Marion County
Indiana



ED McCORMACK, *Secretary*
P.O. BOX 88
HOPKINTON, MA 01748
(617) 435-6921

TESTIMONY
OF
THE
INTERNATIONAL SOCIETY
OF
FIRE SERVICE INSTRUCTORS

BEFORE THE

SENATE COMMITTEE ON FINANCE

FRIDAY, JUNE 26, 1981

Presented by: Ed McCormack, Executive Director

My name is Edward H. McCormack, Jr., of Hopkinton, Massachusetts. I am the former Chief of Fire Training and Director of the Massachusetts Fire Fighting Academy. I submit this testimony as Executive Director of the International Society of Fire Service Instructors, on behalf of its nearly 4,000 members, representing every state in the Union. The Society is an organization dedicated to the professionalization of the Fire Service Instructor. The membership consists of State Directors of Fire Service Training, and instructors in State, Municipal, College, Industrial and Federal programs as well as Volunteer and Public Fire Safety Education instructors. The Society is a member organization of the Joint Council of National Fire Service Organizations and is recognized nationally as the voice of the Fire Service Instructor.

It is indeed an honor and distinct pleasure for the Internationl Society of Fire Service Instructors to have been invited to present testimony in support of S979 before your committee.

Volunteer firefighting in America began when friends and neighbors from all walks of life asembled in time of fire to perform firefighting duties and offer support and relief to those experiencing the devastation of their home and posessions from fire. Volunteerism has continued to be a major part of our American heritage for well over 300 years. Today in America we see an increasing number of volunteer programs such as 'meals on wheels', all of which are aimed at providing and improving community service while conserving and preserving the precious tax dollars already insufficient to adequately provide for even the most essential humanistic services.

While volunteer firefighting, the first of the voluntary community services, continues in America today, it takes the form of a highly technical avocation for those who donate their services to serve and protect others in time of fire.

Since its inception over 300 years ago, drastic changes have taken place in the Volunteer fire services. Changes which were required to cope with advanced technology have also resulted in the formalization of the ways in which volunteer fire protection is provided. Comtemporary times have also seen efforts in many states to highly regulate the formal assembling of people who wish to collectively control fire on a voluntary basis.

There exist today as many types of legislation which regulate the creation and operation of volunteer fire departments as there are states in the nation. There are also as many variations of the types of formal structure, operating procedures, contractural arrangements and degrees of service provided as there are volunteer fire departments within each state.

Before explaining the need for legislation of this nature it is important to first of all identify the sleeping giant and describe the wide range of organizational structures and services under the purview of the volunteer fire service.

While detailed records are not available, it is estimated that 85% of all firefighters in America are volunteers. Opponents of the volunteer fire service say 'that's fine, but paid firefighters protect 80% of America's population'. While accurate and detailed statistics would be most desireable it is safe to project that a large portion of America's ecology and its citizens were protected by Volunteers. This protection is not only in rural America but in major cities and counties. Bloomington, Minnesota and Greensburg, Pennsylvania are but two prime examples of large cities protected entirely by Volunteers. In Delaware, 60 of the 61 Fire Departments in the state are Volunteer. With the tightening of the fiscal belt in states such as California (Prop. 13) and Massachusetts (Prop. 2½), we can easily expect a resurgence of some type of volunteer firefighting services if fire departments are to maintain the level of fire prevention and control

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that the citizens have grown to expect, and in some cases demand.

It should also be noted that the services provided by Volunteer Firefighters who are members of these departments have saved billions of dollars in tax revenue and millions in insurance claims. Were it not for the services of volunteer firefighters the nation's inflation rate would probably already be triple digit, and just imagine what additional financial burdens would be imposed on municipalities.

The many and varied organizational structures under which Volunteer Fire Departments are created or established must be thoroughly examined if all volunteer fire departments are to benefit from the proposed legislation.

As you well know, many volunteer fire departments are already official entities of local government. As such, funds for capital expenditures for equipment, facilities and apparatus are with municipal funds and if borrowing is necessary to consummate these transactions, it's done at a tax free interest rate.

The proposed legislation should be to extend the provisions in existing legislation to those Volunteer Fire Departments which are not official arms of state, county or local government and not just to clarify the specific case in question involving the Wayne Township (Indiana) Volunteer Fire Department

Volunteer Fire Departments which fall into this category are many and varied. While most are organized and operated under state statutes, some currently exist and continue to be organized under common law or 'good faith agreements' developed by groups of citizens in need of fire protection services. These departments need financial relief more than those who currently enjoy the benefits of the existing legislation.

Arrangements referred to here include Volunteer Departments (not private departments such as Scottsdale, Arizona) who contract with municipalities

or tax districts to provide voluntary services; departments whose primary source of funding is donations or fund raising activities, those who receive direct relief from state or county funds or from assessments on fire insurance premiums, or any combination of these.

Many Volunteer Fire Departments are set up in conformance with, and are officially certified as meeting the requirments of 501(c)(3) non-profit organizations, under the existing Internal Revenue Code.

As we have explained, there are a myriad of ways in which Volunteer departments are created. One of the many concerns of the International Society of Fire Service Instructors regarding this legislative package is that regardless of how a Volunteer Fire Department is created or funded it be eligible for low interest or tax free interest loans from either public or private financial institutions.

Expanding eligibility requirements of the proposed legislation causes additional problems which must be considered by your committee. These concerns include 1) the purpose for which organized, 2) the type of protection provided, 3) the purpose for which the money is to be used, 4) the eligibility of departments which have 'paid' or 'paid on call' firefighters, and 5) the application of this legislation to other organizations and agencies which provide rescue and ambulance services.

Let's take a look at each concern in depth.

The purpose for which organized. While most fire departments are organized for the purpose of providing fire protection and control services, some continue to be primarily social organizations. In many parts of the country the Fire Departments are corporations which are governed by state corporate law as well as statutes governing the establishment and operation of Fire Departments. These corporations (Volunteer Fire Departments) frequently have a two tier leadership system. The elected officials run

the business affairs of the corporation (VFD) and another set of either elected or appointed leaders (Chief, etc.) handle fire prevention and control activities. Actual members could be active (firefighting) or social, and in some cases pay dues for the privilege and esteem associated with joining the Volunteer Fire Departments. Frequently all members are required to participate in fund raising activities which support, in whole or in part, the operations of the Department.

Type of protection provided. Many think of Volunteer firefighters as 'water squirters' or 'house wreckers'. Conversely, most volunteer fire departments are full-service organizations with highly trained and proficient technicians capable of handling the devastating effects of any natural or manmade disaster in times of peace or war. These services include, but are not necessarily limited to, rescue and fire suppression in places of habitation, public assembly, transportation vehicles and containers, industrial manufacturing, processing and storage facilities, and of course in natural cover fires such as occurred only 3 days ago in the Napa Valley in California. Emergency care and ambulance service ranging from stabilization by the first responder to transportation by mobile intensive care units; life safety and fire prevention activities such as inspections, public education programs, baby sitting clinics, CPR courses for the public - to name just a few; fire investigation and in some cases arson detection; data collection and information retrieval programs; public service efforts like water and tree removal in time of natural disturbances; and a wide range of community activities, i.e. bicycle registration, youth programs and issuing permits.

Tax should not be applied to interest on money borrowed to finance any of these essential services or for any other equipment or appliances required to assure the safety and well being of all fire service personnel. Relief however, should not be applied to expenditures for the fraternal or social

side of the operation such as the construction and equipping of a pool hall.

Purpose for which money is to be used. The operation of a Volunteer Fire Department is extremely expensive. Pumpers used for fire suppression are costing in the vicinity of $100,000. each with a 20 year life; and ladder trucks primarily used for rescue and ventilation are each costing in excess of $150,000. each. Equipping the apparatus and maintaining the apparatus and equipment is costly; not to mention the cost associated with housing the entire Volunteer Fire Department operation.

The problem which must be addressed is 'where does the business function end and the social side begin?' For example, if a Volunteer Fire Department constructs a large meeting hall which is used in the conduct of business, for training members of the department, is made available at low or no cost for municipal or civic functions and rented for weddings as a fund raiser for fire prevention and control activities, should it be eligible or not for tax free interest. While it is our contention that it should be, we recognize the problems associated with enforcing the utilization of revenues derived from the use of the hall.

Likewise, if a computer is purchased for the dispatching of apparatus, the maintenance of inspection and training records, and the keeping of inventories, should it be 'allowable' if other records such as fund raising mailing lists are generated from the same equipment.

It is our strong belief that IRS monitors the provisions of all its codes in a highly effective manner. There is no doubt that flagrant abuses of this proposed provision, if properly amended and adopted, would be handled in due course by IRS.

When is a Volunteer Fire Department not a Volunteer Fire Department? Webster's definition of a volunteer is hardly adequate to address the

problems which could arise if this issue were not handled in the conceptual stages of this legislation. In fact, if it's not adequately addressed now we will be finding more departments facing litigation similar to the one now present in Wayne Township, Indiana.

While most volunteer fire departments are strictly volunteer (people doing it for no remuneration), others fall under the category of 'combination departments', or 'paid on call' firefighters.

Combination departments are those that have some (regardless of the number) paid full-time firefighters on duty to provide rapid response to fire and emergency calls or to handle minor calls, and are augmented by a cadre of volunteers at large scale fires or simultaneous emergency incidents.

It becomes more difficult to make determinations when the protection is provided under joint ventures established between governmental agencies and Volunteer Fire Departments. Fire protection in the area surrounding the nation's capitol is a vivid example of where such joint ventures exist and a degree of protection is provided by volunteers.

A specific example would be where county governments pay the salaries and fringe benefits for the paid full-time firefighters who work in fire stations owned by Volunteer Fire Departments and operate apparatus which is similarly owned.

'Call' firefighters, while paid in some way or another, are frequently referred to as Volunteers. Arrangements for call firefighters are likewise varied. In some departments members are provided a retainer of $250 or $500 per year for attendance at training sessions and for all services rendered. Under this arrangement, sleeping at the fire station one or two nights per month could be required.

Other call firefighter arrangements are that the individual is paid a minimum of, say 2 hours for each response made, and hourly rates for

anything over the 2-hour minimum. Some departments offer both a retainer and a paid-per-call arrangement.

In any event, call firefighters are not, in the truest sense, volunteers. They are paid for services actually rendered and perform their services only as needed.

Once again it is the contention of ISFSI that all volunteer fire departments (not private) should be eligible for the proposed interest tax relief. Fire Departments which are operated by state, county or local governmental agencies are already afforded relief under existing IRS regulations.

Other related agencies. In the shadow of the nation's capitol, as well as all across this country, are a number of other agencies which perform volunteer emergency services. These most frequently are Rescue Squads or Ambulance Corps.

Rescue Squads may be ancillary to the fire service or separate volunteer organization, formed to provide a wide range of rescue services. Funds are derived from donations or fund raising activities and are used for the purchase of equipment and for the training of personnel.

Ambulance corps like rescue squads, may be ancillary to the fire department or a separate volunteer organization whose purpose is strictly life support services. Ambulance corps are far more abundant than rescue squads and funding arrangements are more varied.

In certain municipalities the Ambulance Service may be operated by the local American Legion Post or other civic or fraternal organization. Under certain funding arrangements citizens are asked to pay a $20. per year 'insurance policy' which guarantees them service whenever required during the year. Under the proposed legislation, it is feared this 'insurance' of $20 per year, whether assessed by an American Legion or Volunteer Fire

Department ambulance service, would be construed as 'charging' for service and prevent them from meeting the eligibility requirements.

ISFSI is once again concerned that the proposed legislation provide the same, equal coverage for all that provide voluntary life support and fire prevention and control services.

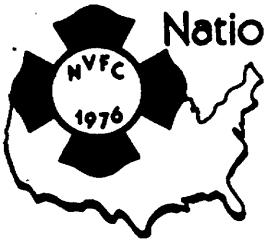
In summary, Mr. Chairman, ISFSI has a difficult time supporting S979 or its companion legislation HR484, as it is currently proposed. It is felt that the current provisions are very restrictive and, in fact, almost self serving.

On the other hand, we do support the intent and purpose of the legislation proposed and would certainly support an amended version of the bill which addresses all the concerns previously set forth.

In capsule form, these concerns are:

1. That any legislation which is passed ensure that all Volunteer Fire Departments (not private departments) are eligible for the same tax free interest rates already available to governmental agencies.
2. That the provisions of this proposed act be limited to the borrowing of money for property, equipment and apparatus to be used in conjunction with fire prevention and control activities.
3. That the provisions of this proposed act be extended to those organizations which provide voluntary rescue or life support activities.
4. That the enforcement of this provision be the charge of the Internal Revenue Service.

Mr. Chairman, it has been our privilege to provide this testimony and I will be happy to respond to any questions.



National Volunteer Fire Council

I come before you today to describe the Volunteer Fire Service, its diverse character, and present some of the financial considerations which are incurred in today's fire fighting unit.

Volunteer fire departments, according to the National Fire Protection Association, (NFPA) number 26,000 of the 28,000 fire departments in this country. The remaining 2,000 departments are full-time or career fire departments. The "volunteer" fire department comes in many shapes and sizes. A volunteer fire department may be entirely operated by a municipality with volunteers who respond at the time of an alarm. There are also volunteer fire departments where the volunteers own the building, apparatus, and all equipment necessary to operate the fire department. Between these two departments runs a continum which mixes these elements - manpower, apparatus, equipment and physical facilities - in a multitude of combinations. The key element that remains constant through out the range of these organizations is the single objective of protecting life and property from the ravages of fire.

I'd like to briefly look at a few capital expenses that face any fire suppression organization. First, apparatus. According to the Public Fire Protection Division of NFPA, apparatus costs go something like this:

<u>Pumpers (engines)</u>

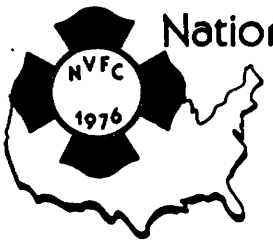
Range $60,000.00 - $125,000.00

Average Cost - $85,000.00

<u>Ladders (trucks)</u>

Range $125,000.00 - $280,000.00

Average Cost $170,000.00



National Volunteer Fire Council

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Squads (rescues)

Range $35,000.00 - $100,000.00

Average Cost $55,000.00

The acquisition and replacement of apparatus is a substantial portion of any volunteer fire departments budget. There is also various equipment needed to outfit appartatus once it is purchased: hoses, nozzles, generators, to name a few.

The fire fighter too must be equiped to face the hazards of his profession. Basic personal protective equipment for the fire fighter would include the following:

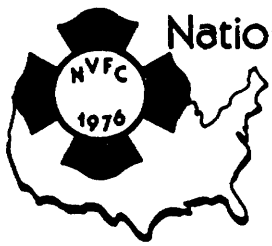
Boots	$ 51.00
Bunker Pants	95.00
Coat	160.00
Gloves	18.00
Self Contained Breathing Apparatus	895.00
Helmet	53.00
	$ 1272.00

Finally we need a structure to house this apparatus and equipment and provide a place for the fire fighters to meet and train.

In checking with an architect that recently completed several "volunteer" fire stations (these stations did not include sleeping quarters), the cost for a basic single story masonary fire station with apparatus bays and training facilities approached $65.00 per square foot.

National Volunteer Fire Council

The cost of providing fire protection,not unlike the costs for everything else, is skyrocketing. The methods for funding these fire protection organizations is as diverse as the organizations themselves. From fully tax dollar supported operations through bake sales and bingo - the members of these volunteer fire departments raise money to repair and replace and grow. Because of the costs involved it is becoming more often necessary for these fire fighting units to turn to commercial lending institutions to secure the necessary funds to purchase capitol equipment and finance facilities. With that background I would like to address the bill before the committee. The National Volunteer Fire Council supports the spirit of S 979. It is our contantion that a legally organized volunteer fire department which provides fire fighting and related services to a specific geographical area should be allowed to borrow funds for apparatus, equipment and facilities and have that organization treated as an obligation or a political subdivision of a state, as provided in S 979. We agree that the funds should be used to purchase "qualified fire fighting property" as specified in Section 3. We would request that Section 2 sub C be dropped. The rational being that according to the United States Fire Administration National Fire Data Center approximately 25% of 18,000 volunteer fire departments sampled directly receive some form of tax dollars. That 25% represents not only local dollars but also state and federal dollars as well. This Section would most likely eliminate many volunteer fire departments from qualifying. Section 2 sub D as well could disqualify a majority of the volunteer departments. Although no hard data could be found it is the consensus of the



National Volunteer Fire Council

National Volunteer Fire Council that many volunteer departments receive some form of compensation/support from the communities they serve and the citizens who utilize their services. Many standard form home owners insurance policies provide for a fee payable to the fire department for services rendered. This type of income helps to somewhat offset operating costs such as fuel.

We would further request clarifying language that would provide the volunteer fire department with the continued ability to offset operating expenses in this manner.

In summary, I would quote the report of the National Commission on Fire Prevention and Control, "America Burning" which stated in 1973 that, "The nations volunteers are rendering a public service worth at least $4.5 billion annually". The volunteer is a true part of our American heritage and is financially the only way many communities can and do affort fire protection. It is a system that provides a specialized essential service that improves the quality of life in the area which it serves. We would respectfully request that you give S 979 your consideration in light of this testimony and help it keep pace with growth of our communities.

On behalf of the 41 member states of the National Volunteer Fire Council, I would like to sincerely thank the committee for allowing us the opportunity to present our views here today. We stand ready to assist in any way we might to help the committee in its deliberations. Thank you.

STATEMENT OF

CHIEF ERNEST J. GREENWALD, SR.

CHAIRMAN, VOLUNTEER COMMITTEE

INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

BEFORE THE

TAXATION AND DEBT MANAGEMENT SUBCOMMITTEE

OF THE

SENATE FINANCE COMMITTEE

ON

SENATE BILL #979

MR. CHAIRMAN:

MY NAME IS CHIEF ERNEST J. GREENWALD, SR., CHAIRMAN OF THE VOLUNTEER COMMITTEE OF THE INTERNATIONAL ASSOCIATION OF FIRE CHIEFS (IAFC) AND VICE PRESIDENT OF THE NEW JERSEY STATE FIREMEN'S ASSOCIATION.

I AM PLEASED TO APPEAR BEFORE YOU TODAY TO SUPPORT SENATE BILL #979. MY COMMENTS WILL ADDRESS THE NEEDS AND CONCERNS OF VOLUNTEER FIRE CHIEFS RESPONSIBLE FOR PROVIDING AND DIRECTING FIRE PREVENTION AND CONTROL ACTIVITIES AT THE LOCAL LEVEL.

I WANT TO EXTEND MY THANKS TO SENATORS LUGAR AND QUAYLE, AND THIS COMMITTEE FOR THEIR EFFORTS TO AID FINANCIALLY CHALLENGED VOLUNTEER FIRE DEPARTMENTS.

ORGANIZED IN 1873, THE INTERNATIONAL ASSOCIATION OF FIRE CHIEFS HAS LONG RECOGNIZED THE CONTRIBUTION OF THE VOLUNTEER FIRE SERVICE. APPROXIMATELY 50% OF OUR MEMBERS ARE VOLUNTEER FIRE CHIEFS.

MR. CHAIRMAN, I WILL SUMMARIZE MY REMARKS AND REQUEST THAT THE FULL TEXT BE ACCEPTED FOR THE RECORD.

IT IS THE OPINION OF THE IAFC THAT MINOR CHANGES IN THE PROPOSED LEGISLATION ARE NECESSARY TO ACHIEVE THE INTENDED RESULTS. WE DO, HOWEVER, STRONGLY ENDORSE THE INTENT OF THIS LEGISLATION.

GIVEN THE FINANCIAL PLIGHT OF LOCAL GOVERNMENT, THE MEMBERS OF THE IAFC BELIEVE THAT THE PROPOSED LEGISLATION WILL NOT ONLY ENCOURAGE FINANCIAL INSTITUTIONS TO LEND MONEY TO VOLUNTEER FIRE DEPARTMENTS BY PROVIDING AN ADDITIONAL TAX INCENTIVE, BUT WILL ENABLE POLITICAL SUBDIVISIONS TO COMMIT LIMITED BONDING AUTHORITY TO OTHER NECESSARY COMMUNITY NEEDS.

WE APPRECIATE THE RECOGNITION GIVEN TO VOLUNTEER FIRE DEPARTMENTS, BUT WE ARE CONCERNED FOR OTHER AGENCIES THAT PROVIDE A VITAL EMERGENCY SERVICE. THEREFORE, WE ENCOURAGE THE INCLUSION OF VOLUNTEER AMBULANCE AND RESCUE SQUADS IN THE DEFINITION OF VOLUNTEER FIRE DEPARTMENTS.

WHILE THERE ARE MANY VOLUNTEER FIRE DEPARTMENTS THAT PROVIDE PRE-HOSPITAL EMERGENCY MEDICAL AND RESCUE SERVICE, MANY COMMUNITIES DEPEND IN WHOLE OR IN PART ON VOLUNTEER AMBULANCE AND RESCUE SQUADS. WHILE THERE ARE NUMEROUS EXAMPLES OF THIS THROUGHOUT THE COUNTRY, THE METROPOLITAN WASHINGTON AREA HAS SEVERAL OUTSTANDING EXAMPLES OF VOLUNTEER RESCUE SQUADS THAT WOULD BE EXCLUDED AS THE LEGISLATION IS NOW WRITTEN.

IN THE BRIEF TIME REMAINING LET ME POINT OUT THAT MOST VOLUNTEER FIRE DEPARTMENTS RECEIVE SUBSTANTIALLY LESS THAN 50% OF THEIR FUNDS FROM A POLITICAL SUBDIVISION. OPERATING AND CAPITAL MONIES ARE OBTAINED THROUGH FUNDRAISING EFFORTS: INCLUDING CARNIVALS, DANCES, RAFFLES, DINNERS, DONATIONS, AND OTHER NON-TAXED SOURCES. I STRONGLY URGE THE COMMITTEE TO DELETE OR AMEND THE QUALIFICATIONS CALLING FOR THE 50% FUNDING REQUIREMENT.

SECTION (2)(D) ELIMINATES A DEPARTMENT CHARGING FOR FIREFIGHTING SERVICES. I AM CONCERNED THAT SOME MAY GIVE THAT A BROAD INTERPRETATION AND CONSIDER A "DONATION A CHARGE". I RESPECTFULLY REQUEST THAT SECTION BE DELETED.

MAY I FURTHER SUGGEST, MR. CHAIRMAN, THAT SHOULD A DETERMINATION AS TO THE QUALIFICATION OF A VOLUNTEER FIRE DEPARTMENT, AMBULANCE OR RESCUE SQUAD BE REQUIRED, THAT THE UNITED STATES FIRE ADMINISTRATION,

AN AGENCY OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NOT THE INTERNAL REVENUE SERVICE, BE AUTHORIZED TO DETERMINE WHETHER OR NOT AN AGENCY IS A BONAFIDE VOLUNTEER FIRE DEPARTMENT, AMBULANCE OR RESCUE SQUAD.

MR. CHAIRMAN, THE EMERGENCY VOLUNTEER SERVICES OF THIS NATION PROVIDE A VITAL SERVICE TO OUR COMMUNITIES. THE CURRENT ECONOMIC CONDITIONS AFFECTS THEM AS IT DOES EVERYONE. THE PROPOSED LEGISLATION WILL PROVIDE THESE ORGANIZATIONS WITH THE OPPORTUNITY TO CONTINUE TO PROVIDE ESSENTIAL SERVICES TO THEIR COMMUNITIES.

THANK YOU FOR THE OPPORTUNITY OF PROVIDING TESTIMONY AND I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS.

SPECIFIC COMMENTS ON S-979
(New wording or changes underlined)

INTRODUCTION

To amend the Internal Revenue Code of 1954 to clarify the tax exemption for interest on obligations of volunteer fire departments, ambulance and rescue squads.

PAGE 1, LINES 7&8

Obligations of certain volunteer fire departments, Ambulance and Rescue Squads.

PAGE 2, LINE 2

fire departments, ambulance and rescue squads.

PAGE 2, LINE 5

fire department, ambulance and rescue squads

PAGE 2, LINES 12&13

Fire department, Ambulance and Rescue Squad

PAGE 2, LINE 14

fire department, ambulance and rescue squad

PAGE 2, LINE 18

firefighting, ambulance or rescue services

PAGE 2, LINES 22,23&24

which is provided (by agreement or otherwise) to the political subdivision firefighting, ambulance or rescue services

PAGE 3, LINE 1

which may or may not receive fanancial support

PAGE 3, LINE 3

qualified firefighting, ambulance or rescue property

PAGE 3, LINES 5&6

Delete

PAGE 3, LINES 13&14

firefighting, ambulance or rescue services

Senator PACKWOOD. We will wait just a moment until we start on S. 169. Senator Heinz wants to be here. He is on his way right now.

[A short recess was taken.]

Senator PACKWOOD. If the panelists could take the table, Mr. Bean, Mr. Holmberg, Mr. Nichols, Mr. Simsonsen, and Mr. Gould.

Senator Heinz is now present. Senator Heinz, go right ahead.

Senator HEINZ. Mr. Chairman, first let me thank you for holding these hearings. I know they started early this morning after a long night last night in which we successfully passed probably the most significant cost reduction bill that the Federal Government has ever seen passed in the Senate or in the House.

Today we are looking at another kind of cost reduction measure—one from which we hope our taxpayers and our environment will get an equally strong kind of benefit—and that is the legislation, S. 169, which provides tax incentives for pollution control, which I believe are absolutely essential if we are going to begin to make the kind of progress we really are capable of making, particularly without the constant battles and confrontations that take place between industry on the one hand and the Federal Government and other regulators on the other.

It is my view, Mr. Chairman, that for years we have made a tremendous mistake in this country in assuming under our present tax laws, that a pollution control investment should be treated like any other kind of investment.

The assumption behind that is, of course, that investments make money. Therefore, they should be subjected to certain provisions of the Tax Code, cost recovery over a period of time, known as depreciation, that that money will be regained because there are profits by which to regain it that are generated by the investment.

It is the rare piece of pollution control equipment, if it is an add-on, particularly, that is a moneymaking operation. Maybe there are a few. I don't happen to know of any offhand. But mostly, these represent additional expenditures that have no incremental profitable revenues to be or that are derived from them.

It is my hope that our panel today of distinguished witnesses will shed a little bit more light on this issue and specifically on the proposals made in S. 169 to try and resolve this problem, in my judgment not only more equitably but more successfully when it comes to the standpoint of improving our environment.

Thank you, Mr. Chairman.

Senator PACKWOOD. Senator Heinz, thank you.

Gentlemen, I have read all of the testimony from those of you who have presented it ahead of time. I am going to another hearing. Senator Heinz will preside over the remainder of the hearing today. I share his sentiments. I think the bill is a good bill.

We don't have any comments from the Treasury yet. They are going to comment in one letter, about all of the bills we have heard.

But I indicated to previous witnesses that the Treasury expects to have their views in this week. I would leave the record open for 2 weeks for any of them who want to comment on Treasury's views on this bill.

Mr. Bean, go right ahead.

STATEMENT OF RONALD BEAN, PRESIDENT, COUNCIL OF POLLUTION CONTROL FINANCING AGENCIES

Mr. BEAN. Thank you, sir.

Mr. Chairman, I am Ronald Bean, executive director of the Illinois Environmental Facility Financing Authority. My testimony is on behalf of that authority and other members of the Council of Pollution Control Financing Agencies which I serve as president.

The State and local agencies who are the voting members of the council have many organizational forums but they share in common the responsibility for authorizing and issuing tax-exempt bonds for pollution control facilities.

The council members have encountered significant problems in attempting to put provisions of the law to work for the full range of pollution control equipment now required.

The proposed regulations of the Internal Revenue Service which established Treasury policy have effectively eliminated equipment which is indisputably for pollution abatement.

The regulations draw false distinctions between pollution control when the words of the statute and prevention.

The result is to limit eligibility for this financing of facilities which act to capture pollutants after their creation.

The policy therefore excludes equipment or process changes which solve the same problem by avoiding the creation of those pollutants.

It is these preventative measures, moreover, which increasingly are required by environmental regulators. The present policy on eligibility therefore becomes a deterrent to the use of processes and facilities which avoid the creation of pollutants altogether or which manage to recycle or neutralize substances which otherwise would result from the industry's operation.

The EPA agreed with this concern and is engaged in discussion with the Treasury over amendments to the regulations. But the dialog unfortunately lapsed and they have not been renewed while the new administration has been engaged in filling policy positions at EPA.

The second major concern with current regulations on financing involve the ineligibility of hazardous waste facilities.

The draft regulations which now constitute Treasury policy were created in 1975 and they follow the definition of the previous Solid Waste Act in defining solid waste as essentially municipal refuse or garbage.

In 1976, however, the Congress enacted the Resource Recovery—Conservation and Recovery Act, RERA, which amended the Solid Waste Act to complete the circle, attempting to cover all substances not covered by the Clean Air and Water Acts.

The 1976 law includes a lengthy section, subtitle C, covering hazardous wastes. It establishes a cradle-to-grave tracking system, sets new standards for handling and disposal and defines hazardous wastes as part of the solid waste covered by the act, even though the waste may be liquid or semisolid as most industrial hazardous wastes are.

Five years later, regulations are finally going into effect which carry out the intent of RERA and State and local governments are faced with having to regulate these wastes.

Our present facilities are inadequate and financing for new ones whether public, private, or quasi-public is difficult to obtain.

Yet, these urgently needed facilities are barred from taxes and financing since the IRS has yet to modify its own policy on eligibility of solid waste disposal facilities.

EPA has also pointed this out to the Treasury but this has not brought any change.

S. 169 introduced by Senator Heinz would make it clear that the Congress does not and did not intend to have this inequitable implementation of section 103 by the Treasury.

We support the following objectives of the bill as just solutions to the problems that I have described.

First, S. 169 clearly establishes the eligibility of preventative facilities and process changes along with the end of the controls to which financing is now restricted.

Second, we support the creation—the certification role of environmental agencies whether the State or Federal level.

In the past, these regulators have had little trouble deciding what equipment they are requiring for pollution control as opposed to the Treasury which persists in arguing for areas of fuzziness which they use to restrict eligibility.

Third, we support the safeguards of Senator Heinz' bill which assure that eligibility is in fact limited to actual pollution control costs, including reductions in financings to reflect the net profits from pollution control devices and overall limits on eligibility of new plant construction.

Finally, we support the definition of solid waste disposal facilities under the Internal Revenue Code which reflects the RERA definition of solid waste.

The council does not have the resources available to investigate the economics of tax-exempt financing, but that is not our principal objective. As State and local agencies, we are trying to harmonize to the greatest extent possible, the public health and environmental goals of governments at all levels with economic health of industries under our jurisdiction.

As a way of assisting industry to meet the environmental demands of pollution control mandates.

Thank you.

Senator HEINZ. Thank you very much, Mr. Bean.

Mr. HOLMBERG.

STATEMENT OF WILLIAM B. HOLMBERG, VICE PRESIDENT, KIDDER, PEABODY & CO.

Mr. HOLMBERG. Senator Heinz, my name is William B. Holmberg. I am vice president in the public finance department of Kidder, Peabody & Co. Inc., an investment banking business founded in 1865. With me today is Larry Fox, of Dawson, Riddell, Fox, Holroyd & Wilson. Kidder, Peabody currently employs approximately 3,500 persons in 57 domestic and 9 international offices. Over the past 10 years, Kidder, Peabody has been the only firm which has consistently ranked within the top five managers of negotiated revenue bond issues. In 1980, Kidder, Peabody participated in over $27.6 billion of municipal financings, approximately 60 percent of the total municipal volume for that year.

POSITION ON S. 169

As the committee knows from prior testimony, Kidder, Peabody does not customarily take the role of an advocate, but prefers to note factors Congress should address when considering legislation. However, in this case, Kidder, Peabody strongly endorses S. 169, introduced by Senators Heinz, Glenn, and Randolph. Our reversal is due to the fact that Kidder, Peabody believes it inappropriate for the IRS to override a statute through its regulations.

S. 169 would force the IRS to abandon its erroneous position that only discrete, end-of-pipe technology qualifies as being for air and water pollution control. S. 169 would also clarify that, in amending the Solid Waste Disposal Act by the Resource Conservation and Recovery Act in 1976, Congress intended that nonnuclear hazardous waste management facilities should also qualify for tax-exempt financing.

POLLUTION CONTROL

Under section 103(b)(4)(F) of the Code, where the proceeds of industrial revenue bonds are used for air and water pollution control, the obligations are granted a tax-exempt status. This is the only major tax incentive in the law specifically for environmental facilities.

REALIZED POLLUTION TEST

Under the realized pollution test currently being employed by the IRS, the fair use of tax-exempt bonds is inappropriately restricted. This test requires that a qualifying facility be separately identifiable, and that it control the pollutant, that is, operate on a continuous stream of pollutants prior to their being vented to the air or to the water.

Although facilities which effect internal process changes, and thereby prevent the creation of pollutants, are recognized both by industry and EPA as more effective (and frequently less costly) than end-of-pipe technology, the IRS holds that the prevention of pollution and the control of pollution are two different activities, and that only the control of pollution through end-of-pipe facilities is financeable under section 103.

Moreover, the realized pollution test states that environmental facilities which are customarily or traditionally used in an industry will not be considered as being for air or water pollution control. Therefore, the IRS interpretation actually penalizes those industries which made significant strides toward the control of pollution before the enactment of Federal and State requirements.

GROSS SAVINGS TEST

Even assuming that a facility meets the realized pollution test, frequently only a portion of its costs may qualify for tax-exempt financing if the facility's operation results in any gross savings to the company.

Under the gross savings test employed by the IRS, a reduction in the amount of tax-exempt bonds is required where the pollution control facility results in any gross income or cost savings to a company, however slight and regardless of the operating expenses of such a facility. Since the gross savings test does not net annual expenses against annual benefits, its use may result in a reduction in the amount of tax-exempt financings permitted—even when the estimated expense of operating a pollution control facility equals or exceeds the estimated benefits from that facility.

That portion of S. 169 concerning section 103 would eliminate the realized pollution test now employed by the IRS. Thus, facilities and processes which prevent the creation of pollution would qualify for tax-exempt financing. This is a desirable result, because such facilities are usually more efficient and frequently less costly.

S. 169 would also amend the gross savings test currently applied by the IRS to reduced tax-exempt financing for a pollution control facility. Under S. 169, tax-exempt bonds could be issued in an amount by which the cost of a facility exceeds the net profit which may reasonably be expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its actual useful life. Unlike the current IRS formula, the formula used by S. 169 to calculate the net profit derived from a facility nets expenses against income, thus producing a realistic estimate of the portion of the facility's costs incurred solely for pollution control. Finally, S. 169 has a ceiling for the cost of pollution control facilities at a new facility. My written testimony discusses how this safeguard needs some modification.

SOLID WASTE DISPOSAL

Section 103(b)(4)(E) of the Internal Revenue Code provides for tax-exempt financing of solid waste disposal facilities. According to the conference committee report explanation of this section, solid waste disposal means the collection, storage, treatment, utilization, processing, or final disposal of solid waste as defined in the Solid Waste Disposal Act * * *.

In 1976, the Solid Waste Disposal Act was amended by the Resource Conservation and Recovery Act which I'll refer to as RCRA which mandated the treatment of hazardous wastes as well as solid wastes. However, the IRS has taken the position that hazardous waste disposal systems mandated by RCRA do not qualify for tax-exempt financings.

The IRS has managed to void the statute by providing in its regulations that only those facilities falling within the Solid Waste Disposal Act on the date of its enactment—1965—qualify as being for solid waste disposal for purposes of section 103(b)(4)(E).

S. 169 makes it clear that, Congress intended that nonnuclear hazardous waste management facilities should also qualify for section 103 tax-exempt financing. This would have a substantial, beneficial impact upon all industries which currently bear an onerous financial burden due to the hazardous wastes disposal requirements of RCRA.

In conclusion, Kidder, Peabody believes passage of the section 103 amendments contained in S. 169 would be appropriate. Passage of S. 169 would aid industry in meeting the financial costs which it must incur to comply with Federal and State pollution laws, without having to make concomitant reductions in work force or production capacity. Moreover, passage is consistent with Congress diminution of the Nation's environmental goals.

Thank you.

Senator HEINZ. Thank you very much, Mr. Holmberg.

Mr. NICHOLS.

STATEMENT OF WAYNE NICHOLS, DIRECTOR, OHIO ENVIRONMENTAL PROTECTION AGENCY

Mr. NICHOLS. Senator Heinz, my name is Wayne Nichols. I am director of the Ohio Environmental Protection Agency.

Ohio is the largest coal burning State in the Nation. We burn over 70 million tons a year. As a result, we are also the largest emitter of sulfur dioxide in the Nation with our 1976 total amounting to 3.2 million tons.

Senator HEINZ. If I may just observe that being downwind of Ohio. [Laughter.]

That those of us in Pennsylvania who are alleged to be at the eye of the acid rainstorm, are ever cognizant of those facts that you have placed before us.

You may please continue. [Laughter.]

Don't take it personally.

Mr. NICHOLS. Upwind from us is Pennsylvania, the second largest emitter in the Nation, sir. [Laughter.]

Senator HEINZ. In spite of the fact we are a heck of a lot larger than Ohio, I might add.

Mr. NICHOLS. Let me go on, sir. [Laughter.]

We also have the best air improvement plans of any State in the Nation, and probably spend more money than any State in the Nation to improve the quality of our air.

We spend billions of dollars in Ohio on air pollution control and it is paying off.

In the last 4 years, our emissions of sulfur dioxide have reduced by 500,000 tons or 16 percent.

I am reasonably certain that no other State in the Nation can report such progress.

However, we have been hurt in Ohio. In many cases we cannot burn our own high-sulfur coal. Ohio is a major coal producing State, but we must now import 55 percent of the coal we burn. At least 10,000 of our miners are out of work in southeastern Ohio and many thousands of others are unemployed.

I say this to you because enactment of S. 169 would do more for the elimination of air pollution and other pollution than anything I can think of.

It increases the availability of the single most important weapon in the fight against air pollution, the means to finance the tremendous cost of pollution control facilities at reasonable rates.

The current regulations permitting tax-exempt financing of pollution control facilities under section 103(b)(4) are far too restrictive and may well be inconsistent with the intent of Congress.

For example, facilities which treat or process coal in order to prevent the release of pollutants as the coal is burned, are not considered pollution control facilities and therefore, cannot qualify for such financing.

In contrast, S. 169 permits qualification of coal washing and other facilities designed to prevent the creation of pollutants in the burning process.

With this amendment, the choice of facilities will depend on the technology available and the environmental needs of the plant and will not be influenced by tax considerations.

Without this change there will continue to be discrimination against new technology in favor of end of the line facilities which may be more costly and less effective in preventing pollution.

Our immediate concern is the problem of controlling sulfur dioxide. S. 169 would do much to solve this problem by providing tax-exempt financing for various new technologies which under Federal tax law are not eligible.

For example, study after study says that coal washing is the most effective way to remove sulfur dioxide. Better yet, coal washing not only removes 25 to 35 percent of the sulfur dioxide, it also reduces the coal's ash content.

In Ohio, we are committed to coal washing. The utilities, coal companies, and other industries are showing great interest in coal washing.

A report of the Betel Laboratories calls for 15 or 20 more coal washing plants in Ohio, to reduce emissions. The typical plant costs many millions of dollars, about $35 million to $45 million.

S. 169 would allow these plants to be built, using tax exempt financing, at reasonable cost.

Another technology that would be eligible for this low-cost financing under S. 169 is the fluidized bed. This type of boiler efficiently removes sulfur and coal before it has a chance to escape to the stack.

Ohio is vigorously pushing a fluidized bed program and there are industries eager to install this system.

Again, this is not cheap. A typical fluidized bed boiler costs $20 million.

These technologies can go a long way in solving our sulfur emission problem, but financing is critical.

I should point out that Ohio has an air quality authority. We have issued over 100 industrial projects. We funded them at a cost of a $1 billion.

In summary, Ohio fully supports this important legislation and urges its passage without delay. It will not only result in a better environment to improve your air in Pennsylvania and certainly

will help Ohio's coal industry, at a lower cost for our utility customers and any other means of financing I can think about.

Thank you very much, sir.

Senator HEINZ. Mr. Nichols, thank you very much.

Mr. Simonsen.

STATEMENT OF BERNARD L. SIMONSEN, CHAIRMAN, INSTITUTE OF CHEMICAL WASTE MANAGEMENT, NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION

Mr. SIMONSEN. Mr. Chairman, Senator Heinz, my name is Bernard Simonsen. I am serving as chairman of the Institute of Chemical Waste Management of the National Solid Waste Management Association, as well as vice president of IT Corp., in California.

Our company operates six facilities in California, hazardous waste facilities in Tennessee, and is in the process of opening new facilities in Texas, Louisiana, and elsewhere.

They are the contractor for the USEPA's environmental emergency response unit in New Jersey.

Other member companies of the Institute of Chemical Waste Management likewise are engaged in providing treatment and disposal services for hazardous wastes generated by American industries.

EPA estimates that it will require between 50 and 125 new facilities to manage the hazardous wastes in the coming years.

We heartily endorse S. 169 and urge this committee, and indeed, the Congress, to enact this useful legislation as quickly as possible.

Specifically, we commend your attention to the portion of the bill which amends section 103 of the Internal Revenue Code pertaining to tax exempt industrial development bonds to allow hazardous waste management expenditures to qualify for section 103 financing.

Passage of S. 169 will conform the IRS definition of solid waste with that of the Solid Waste Disposal Act, as amended, to reflect the broadened interests and intent of Congress.

As has been indicated, the current section 103(b)(4), itemizes specific activities, including solid wastes which are currently slated to the Solid Waste Disposal Act of 1970 which did not include hazardous waste management.

Six years later, Congress substantially amended that definition when it enacted the Research, Conservation, and Recovery Act of 1976 which for the first time included hazardous waste.

In broadening the definition of solid waste to include hazardous waste, Congress recognized the imperative priority of creating a Federal program to manage hazardous industrial wastes under a strong Federal program, encouraging proper engineering and modern technologies.

A key element in the new Federal hazardous waste regulatory program involves the citing and construction of additional new facilities to accommodate the 90 percent of the hazardous industrial wastes which EPA estimates are now going to inadequate disposal alternatives.

Frustrating the intent of Congress to move ahead quickly with a construction of these new facilities, the Department of Treasury has maintained the 1970 definition of solid waste governs eligibility for industrial development bond financing under section 103.

Hence, traditional solid waste facilities qualify for industrial development bond financing, while hazardous waste management

facilities, the Nation's top environmental priority according to the EPA, are denied this beneficial incentive.

The Congress therefore, should enact this amendment, this technical amendment, bringing the IRS code in line with the obvious intent of this committee and the Senate.

Speedy enactment is necessary to overcome marketplace impediments to constructing these new facilities imposed by Federal regulations themselves.

Under RICRA Congress created the short-term grandfather provision called interim status. Under interim status, facilities in existence on or before November 19, 1980, can continue in operation until such time as the EPA has promulgated its final standards for treatment, storage, and disposal facilities.

These facilities were constructed at a time when public acceptance was easier and far less costly to obtain. The implications of availability of tax exempt financing can be demonstrated through our proposed facility being developed near Baton Rouge, La.

This facility will consist of two specially designed rotary kiln incinerators and other units, designed for neutralization, oxidation, and reaction of the waste and a waste water treatment plant.

This project is being sited on a 1000-acre industrial parcel adjacent to the Mississippi River and will have capacity in excess of 200,000 tons per year.

This project will result in disposal fees ranging from $70 to $1,000 per ton, for the waste being received. The costs associated with this facility are substantial.

Approximately $116 million to construct the facility and the operating costs represented by the interest on this facility will vary between 25 and 33 percent of the gross receipts.

Reducing this financing cost from the estimated 18 percent to 14 percent through the use of IDB's, would result in interest costs being reduced to between 19 and 25 percent of gross receipts.

This would both make the facility easier to qualify for financing, as well as to allow greater pricing flexibility to attract wastes to this higher technology facility.

Thank you very much.

Senator HEINZ. Thank you very much, Mr. Simonsen.

Mr. Gould.

STATEMENT OF MATTHEW GOULD, VICE PRESIDENT, INDUSTRIAL SERVICES, ROY F. WESTON, INC., NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. GOULD. Senator Heinz, I am Matthew Gould, vice president, Industrial Services, Roy F. Weston, Inc., appearing today on behalf of the National Association of Manufacturers.

The National Association of Manufacturers is a voluntary organization of more than 12,000 enterprises engaged in manufacturing in the United States.

About 80 percent of the member companies are in the small business category. Through its Associations Department and the National Industrial Council, NAM is affiliated with 158,000 additional companies, the great bulk of which are also small business enterprises.

NAM believes that the environmental quality control efforts are intended to achieve broad social and economic benefits for the general public.

Such efforts are costly to industry since, in most instances, capital and operating costs for abatement facilities do not yield a direct economic return.

Such costs can create serious economic dislocations within our industrial society. Therefore, opportunities for specific financial offsets should be made available to industry, by Government.

These should take the following forms. Firstly, simplify provisions for accelerated amortization up to and including the immediate writeoff of the facility at the option of the taxpayer.

This accelerated amortization should not eliminate any applicable investment credit.

Second, State and local tax exemptions.

Finally, continued tax exempt status for income from industrial revenue bonds used to finance the environmental quality control facilities.

Now there is a narrow definition problem. The report of the National Commission on Air Quality issued in March, 1981, makes the following observation and I quote.

"All but two of the States have authority to issue tax exempt bonds for industrial pollution control facilities. Internal Revenue Service rules that define facilities eligible for such tax exempt financing only allow favorable treatment for the cost of controls on smokestacks rather than for inherently low-polluting manufacturing processes."

For example, a scrubber that controls sulfur dioxide emissions from the smoke stack may be eligible for tax-exempt financing. But a fluidized bed combustion boiler that removes sulfur as part of the combustion process may not be eligible.

Now the amendment to the section 103 of the Internal Revenue Code of 1954, as proposed by S. 169, would cure this narrow definition propblem and lend impetus to pollution prevention efforts which represent the most desirable approach to environmental controls.

NAM also believes that industrial revenue bond financing should be available for hazardous waste disposal facilities. Since disposal of wastes classified as hazardous under the Resource, Conservation and Recovery Act will be a severe problem over the coming years for manufacturers both large and small.

For this reason also, we support the amendments to section 103 proposed by S. 169.

Now the real crunch of our environmental laws may only just be beginning as we enter advanced implementation phases it is inevitable that these burdens are likely to fall heaviest on the smaller companies.

It is difficult to see how many small companies will be able to weather these increasing environmental regulations.

Now, I have included a case history in the record, and in the interest of time, I will just take the bottom line from that where the company states that the control equipment annualized cost is equal to the 1979 annual profit of the company.

Alternative technology is not developed at this time.

This represents a rather grim picture which is undoubtedly illustrative of the problems of many of the small companies located particularly in nonattainment areas.

The amendment to 169 of the Internal Revenue Code of 1954, as proposed by S. 169, would provide much needed relief from any of these problems.

We believe that S. 169 is consistent with the historic position of NAM with respect to the Tax Reform Act of 1969.

Nonrevenue producing—I am sorry, nonrevenue producing pollution control expenditures are often not subject to financing by traditional means, even though they confer benefits on the general public.

Economic dislocations, particularly in the case of smaller companies could be ameliorated by the provisions of S. 169.

We appreciate this opportunity to present our views on behalf of the manufacturing community.

Thank you, sir.

Senator HEINZ. Mr. Gould, thank you very much.

Mr. Holmberg, how can Congress be certain that if it enacts S. 169 that tax exempt IDB's will not be used to finance all or part of the costs of new industrial plants or major expansions in capacity, as opposed to just process changes necessary for pollution control purposes?

Mr. HOLMBERG. Well, I think due to the provisions of S. 169, the fact that there is a qualification test there that effectively limits the amount of facility that can be financed.

You can be assured that that will, I think, very effectively preclude facilities being financed that are not within the intent of S. 169.

Also, the various capacity limitations, the percent of a new facility, 30- 25- 20- and 15-percent limitations I think will act to further preclude that.

But, very importantly, the cost certification process through which one must go through and as contemplated with S. 169 should effectively preclude unnecessary financing.

Senator HEINZ. Mr. Bean, your organization should be the expert on this, the Council of Pollution Control Financing Agencies; would you agree?

Mr. BEAN. Well, I would agree with that. I would also add that in furtherance of certification that is specified in the bill I think would go to that.

I would point out that the certification that is referenced by either a State or a Federal agency is in process now for example, for small business financings, the SBA requires that a certification be provided by a regulatory agency certifying that in fact the process that is being financed is in furtherance of the purposes of controlling or abating pollution.

I think that would be an applicable provision that could work under S. 169.

Senator HEINZ. Mr. Nichols, you are also on the firing line there in Ohio, not just from us in Pennsylvania, but you would be asked under this kind of approach to make some recommendations, decision, here.

Would you generally be in accord?

Mr. NICHOLS. I would be in accord with the previous statement, sir. We considered that matter. Also, I believe as in the case of Illinois, these do become—come before our Air Quality Development Authority. I think there is a great interest in restricting it to air quality or to pollution type equipment.

Senator HEINZ. Mr. Simonsen, do you have any comment on that?

Mr. SIMONSEN. No, sir.

Senator HEINZ. I guess it was Mr. Holmberg who advocated some changes; is that right?

Mr. HOLMBERG. We believe that in certain cases where a company cannot benefit from some of the provisions in S. 169 in terms of the prevention aspects of facilities who are restricted to utilizing and meeting their various tests, the end of pipe technology that those companies should be permitted to finance on the basis they have been financing under the current proposed regulations that they need not necessarily be subject to a size limitation. They should be no further restricted than they are today because of the necessity for financing end of pipe, relatively inefficient technology.

Senator HEINZ. Very well.

Mr. Bean, inasmuch as you support basically the changes in section 103 that are in this bill, and you have comments you make about the costs of those changes.

How much do you suppose what you are advocating, pretty much what we are advocating in S. 169, would cost the Treasury?

Mr. BEAN. Well, I would first refer to the comments that you made in the testimony. The Council itself, nor has my State agency made any detailed study as to what the cost to the Treasury would be.

Counsel here would probably be better able to answer that. But one of the observations we have made is that the Treasury's projections or estimates in the past on revenue loss has not taken into effect the expansion that these constructions make to the economy.

That is, the jobs that are created, increased employment and the purchase of equipment and new construction.

I would let Mr. Fox make any additional comments he would care to on that subject.

Senator HEINZ. Fine.

Mr. FOX. The Joint Committee study on a calendar year basis shows no revenue loss in 1981; $100 million in 1982 and 1983, $200 million in 1984 and 1985, and $300 million in 1986.

One of the interesting factors on revenue loss for purposes of the future, if you look to the effective dates of the Clean Air Act and the Clean Water Act, a tremendous number of industries will be in substantial compliance in 1986 and thereafter.

So that you should have a downward reduction in revenue loss, assuming you do classify industrial development bonds in the category of revenue loss.

Another factor that we have been unhappy with in the past with Treasury estimates is the assumption relating to the bracket of a taxpayer holding tax-exempt obligations in the sense that there is no balance to the fact that conventional financings frequently are purchased by low bracketed or no bracket taxpayers; for example, pension and profit plans that currently purchase conventional finance documents don't pay any taxes on that, even though the bond itself is taxable.

I would like also to address what Mr. Holmberg was talking about, the ceiling contained in S. 169, as you know, was put in this year to address the concern that some had expressed last year when this similar amendment was put into the superfund bill, and that is a concern that an industry might build a new plant and argue if it cost one-half billion dollars, that you could have built the manufacturing prospects for $1, to be silly, and all of the rest was for pollution control.

So that we tried to address that and make it clear that the bill did not have as its intent, a company to finance nonproductive facilities or productive facilities rather with tax-exempt bonds.

The slight problem we have found is one that was raised this morning. Ohio has indicated, for example, that its coal should be washed and therefore, that would be an internal process change or the prevention of pollution which the service denies.

We have discovered only recently that Western coal does not need to be washed. Therefore, they have to engage in the more costly end of pipe technology. There is some concern that if you built a new plant, coal fired, out West, that that ceiling might reduce the amount of financing that they currently enjoy.

That is the only hitch we have found in the statute.

Senator HEINZ. Let me ask Mr. Holmberg, because Kidder, Peabody should be something of an expert on financing and this is relevant to the cost question we were just investigating.

What would be the—if an investor was looking at a tax-exempt industrial development bond, on the one hand, and non-tax-exempt equivalent on the other, what would be that—at present market, the interest rate be, approximately?

Mr. HOLMBERG. The differential between a taxable and a tax-exempt obligation is at an alltime high in today's market. We are seeing some instances where that ranges as high as 450 basis points which equates to 4.5 percent differential between the taxable and the tax-exempt levels.

Senator HEINZ. What would a tax-exempt IDB of reasonable quality be selling for now? I think you had a number in your statement, did you not?

Mr. HOLMBERG. They will range anywhere from, depending on maturity, I am talking long-term bonds in this case, the high 10's, generally 11's, 12 percent.

They do go for lesser credits above 12 percent.

Senator HEINZ. Now you could compare those I suppose to corporate bonds, long-term corporate bonds?

Mr. HOLBERG. Yes, you can.

Senator HEINZ. Which would not be tax-exempt and they are going now for between 14 and 16 percent?

Mr. HOLMBERG. Higher than 16 in many cases.

Senator HEINZ. What? Is it 15?

Mr. HOLMBERG. It is 15 to 16.5.

Senator HEINZ. To 16.5 percent. Now, I suppose the Treasury cost estimates are based on the fact that people in high marginal brackets may find it attractive to invest in tax-exempt IDB's, but there is something very interesting taking place in the Senate Finance Committee and in the Ways and Means Committee, a tax bill, which is at marginal rates which are being cut substantially.

The maxi-tax, as it is called, has been proposed for reduction of both the House and Senate sides from 70 to 50 percent.

The 50 percent maximum on earned income, at least in the Senate finance bill, will decline over the next 33 months and I would expect that would make the relative revenue loss to the Treasury a good deal less.

Among other things, the Treasury is going to have a good deal less revenue compared to what they otherwise would have had anyway.

Is that a reasonable assumption here?

Mr. HOLMBERG. Yes.

Senator HEINZ. Do any of you care to speak?

Mr. BEAN. Yes.

One other thing that has always been an observation of mine is that quite often I get the impression the Treasury assumption is that tax-exempt bonds are the universe of tax shelters. That if this didn't exist that income would become taxable.

I would see that there are other shelters, there are other places that the same dollars could be put, and not affect the income to the Treasury.

Senator HEINZ. I don't mean to pick on or allow Mr. Holmberg to monopolize the conversation, but is there a very heavy strong demand for tax-exempt bonds from purchasers?

Is there a big market for them? A heavy demand? Do they sell in a sense at some kind of a premium?

Mr. HOLMBERG. There is a demand for them. It is a demand that shifts on a regular basis between a retail interest and meaning an individual buyer interest and an institutional interest.

This will change with the dynamics of primarily the institutional market, primary buyers being casualty companies and commercial banks.

At this present time, we are in a retail oriented market.

Senator HEINZ. When the institutions are buying tax-exempt, what are the tax consequences? Is there just a little marginal shift in their tax rates that is not going to result in a great deal lost one way or the other to the Treasury there? They are just shifting at the margin at a relatively modest amount?

Mr. HOLMBERG. That is correct.

The Treasury would not experience any dramatic change in the tax revenues from those institutions, depending upon their participation in or lack of participation in the market.

Senator HEINZ. What proportion of tax-exempt are held by institutions?

Mr. HOLMBERG. An overall proportion, off the top of my head, I can't give you——

Senator HEINZ. Is it more than half or less than half?

Mr. HOLMBERG. I would suspect a little more than half.

Senator HEINZ. I trust that Joint Tax and Treasury would remember, has remembered in the case of the Joint Tax, and will remember in the case of Treasury, those facts. Because those square with my recollections.

I seem to remember that maybe 60 percent of tax exempts are held by institutions and that the tax consequences in terms of revenue loss to the Treasury are just about zero in that case.

Mr. HOLMBERG. Yes.

Senator HEINZ. Why is there an individual interest right now in tax exempts, retail interest?

Mr. HOLMBERG. The interest is one from the high bracket individual, and presumably that will drop if the current tax plan is effectuated. They are not looking for shelter as much as—it is not as if a tax exempt obligation will result in significant sheltering of income as opposed to just avoiding taxes on given income.

Senator HEINZ. Well, one thing that is almost certain to be the case is that with—in terms of the individual investors, there is going to be a good deal less revenue loss here for the Treasury and by a margin of two sevens, because that is the—everyone who is buying these is in the high brackets.

Mr. HOLMBERG. Right.

Senator HEINZ. I doubt that is the case, that everybody is up there. Whatever revenue loss is attributable to there is going to be reduced by a very significant amount, better than one-third, or close to one-third.

So, let me, Mr. Gould, you represent the National Association of Manufacturers here today. What effect would the enactment of S. 169, especially the section 103 provision have on industry support for the Clean Air Act or and or the Clean Water Act and other environmental regulations and controls.

Would that make those acts a little bit more tolerable, easy to live with?

Mr. GOULD. I think it would make them more palitable in terms of the fact that many of the major expenditures for water and for air are now past us.

There will be continuing expenditures in the future as the final provisions of these regulations are implemented out in the field.

However, the area of very significance is the impacts of some newer legislation like RERA and super fund and some costs which may arise from those which at the present time we are not able to get a good handle on.

But the—one of the principal concerns the industry has had in the past is the—many people have just not applied for the benefits under the old code on the basis that it was just too much of a hassle.

IRS made the whole process difficult as possible, despite the fact that you had got state certification. As a result, many people preferred to take the——

Senator HEINZ. The IRS is very good at giving everybody a hassle.

Mr. GOULD. Well——

Senator HEINZ. We hope that—one of the great changes under the Reagan administration is that while they will collect all of the revenue that is duly owed the Government, they will do so without undue setting upon the innocent honest taxpayer.

That is probably a hopelessly ambitious and optimistic ideal for them ever to meet, but nonetheless, we have high hopes. [Laughter.]

Mr. GOULD. That is true.

Senator, I believe that one remark that what Congress giveth, IRS taketh away. [Laughter.]

Senator HEINZ. That is so very true.

Well, it may come as no surprise to some of our witnesses, but there is in fact irrefutable evidence that the inability of industry to finance pollution control, has made it impossible for us to make progress on our Clean Air Act goals we wanted to make.

So much so, that yesterday the Senate passed, I don't know if anybody knows this yet, but the Senate passed the so-called Steel stretchout bill which gives the steel industry 3 additional years in nonattainment areas, to come into compliance with the act.

It shifts that deadline from 1982 to 1985. It is worth noting for the record, that that act was the result of a tripartite agreement between the labor unions, the Steelworkers, management, and the environmentalists.

Even the environmentalists who are advocates, quite properly so, reached the conclusion that the steel industry just could not finance under any circumstances, what was required in the so-called noncontainment areas.

This agreement was worked out and it is, as I said, passed the Senate as a conference report. There is therefore, agreement between the House and the Senate, and for all I know the House has already taken it up and passed it.

So we have ample evidence, including evidence that has been signed off on by the environmentalists, that the lack of adequate financing is clearly hampering our fight to attain cleaner water and air and safer environment, generally.

So, it is my hope that we will find the means, perhaps as a part of this tax bill, to enact at least the section 103 changes that we have noted here today.

The revenue cost over the next 3 years, even accepting the joint tax estimates, are extremely modest, $100 million, the first 2 years; $200 million the third year.

Those, when the other tax changes are taken into account, are going to be lower still. So I don't think the revenue loss should pose a problem.

I think the most important point virtually each of you has made here is that where hazardous wastes are concerned they have kind of been barred from coming in a door that everybody else, at least if you are in air and water pollution is welcome to walk through.

The intent of Congress was not to have that door barred by the IRS. That it is an arbitrary act by the IRS in that regard.

Do any of you have any further comments that you would like to make for the record?

Yes.

Mr. SIMONSEN. On the issue of the revenue loss, although we have no estimates of what might be involved with the offsite hazardous waste facilities, I would like to assure you that our intent is to pay taxes on those facilities.

The revenue loss that might occur through the financing would more than likely be made up to a large degree, if not to actually the benefit of Treasury, through the placing of these facilities in operation earlier and bringing the environmental benefits to the country earlier, resulting in their profitable taxation.

I don't know any estimates that we can give you, but I think that is probably a unique situation you mentioned where environmental facilties would generate profit which would be adequately take care of through the mechanisms to establish what portion could be so financed.

Senator HEINZ. That reminds me that at least in our State, the establishment of any hazardous waste site is intensely controversial.

I suppose what that means is we are going to build a relatively smaller number of them at relatively greater cost per site.

Therefore, financing for those is going to be all the more important. Would that be accurate or inaccurate?

Mr. SIMONSEN. I think that is one of the key items in the statement that I did indicate that we are estimating the financing costs for the facility we are looking at in Louisiana which would be similar to the same basic economics in each of the similar large scale facilities would be interest costs in the order of magnitude of one quarter to one third of gross receipts in the initial years of operation.

The fluctuation of a few points in the interest rate charged on that financing makes a very substantial difference in the overall economics which both is the access to the financing market as well as the ability to encourage generators of waste to use the higher technology facilities as opposed to current practices.

Senator HEINZ. Is it also true, and I think this was inferred in your statement, that those that generate waste in existing forms would, if they had access to this kind of financing, use technology that would reduce the output of waste; is that a correct inference or not?

Mr. SIMONSEN. I think a combination of the increased costs associated with the Research, Conservation Recovery Act both as to administration tracking and disposal, a higher technology and so forth, I think you are going to see a broadening effort to both reduce the amount of waste generated or use it where possible or reduce the form in which it is going to be disposed of either in quantity or risks so that the probability of any future incidence are reduced. The total spectrum will be utilized fully. But I think one component of that is higher technology destruction, stabilization or incineration of the materials.

Senator HEINZ. Are there any further comments?

Mr. GOULD. Senator, I think that is an important point, because it means in effect it will encourage the utilization of more sophisticated technology which is inherently more expensive, and as a result this is a very good outcome of this trend.

Senator HEINZ. Thank you, Mr. Gould.

Mr. Nichols.

Mr. NICHOLS. Senator, as you mentioned, the improvement of technology in my judgment, the boilers we build in the 1990's are going to be fluidized bed boilers because there are about 3 or 4 percent more efficient.

So I think this is really the only hope that we have to reduce electrical rates or at least keep them down a little bit.

I think, in my judgment, that is one of the real reasons for making it easier to bring on fluidized bed technology.

Senator HEINZ. Thank you.

Mr. FOX. One point we didn't raise, Senator, and I know you are very much aware of this problem, because your State, Pennsylvania, is attempting to put together regional facilities either for the treatment of hazardous waste or sewer, under the services existing standard.

If you were to build your own sewer treatment facility, it would qualify totally for financing. But if you joint a regional authority or group only part of the financing is allowable because the cost of your pipes and pumps to carry that dirty water over to the system, the service says that is for the prevention of pollution. You are not controlling it. All you are doing is transporting it.

Therefore, it is not entitled to this exemption. So, what the service does is skew the interest of people, in other words, instead of joining regional authorities and getting rid of this problem, as well as enjoying the economy of scale, many companies have determined it is cheaper for them to do their own financing and to hell with their neighbors.

Finally, you will see the same thing for the future in the treatment of hazardous wastes because of the economies of scale, the small companies are just not going to be able to treat their hazardous wastes.

You have the problem of acquiring the land and the facilities. It means more and more Govenment intervention and since these types of facilities will be used predominantly by taxpayers, they will be industrial development bonds and will not qualify for this tax exemption.

Senator HEINZ. Well, gentlemen, thank you. You have been extremely helpful. I appreciate your being here.

[The prepared statements of the preceding panel follow:]

COUNCIL OF
POLLUTION CONTROL FINANCING AGENCIES

TESTIMONY

OF

RONALD BEAN

PRESIDENT

COUNCIL OF POLLUTION CONTROL FINANCING AGENCIES

BEFORE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

COMMITTEE ON FINANCE

UNITED STATES SENATE

JUNE 26, 1981

1015 18TH STREET, N.W. • SUITE 200 • WASHINGTON, D.C. 20036 • (202) 659-2498

Mr. Chairman, I am Ronald Bean, Executive Director of the Illinois Environmental Facilities Financing Authority, and my testimony is on behalf of that authority and other members of the Council of Pollution Control Financing Agencies, which I serve as President. With me is Ron Linton of the Council's National Office.

The state and local agencies who are the voting members of the Council have many organizational forms, but they share in common the responsibility for authorizing and issuing tax-exempt bonds for pollution control facilities.

In this role, the Council's member agencies operate at the intersection of environmental goals and economic development goals. I want to emphasize that we in no way seek to undercut the environmental programs of the cities and states whom we serve. However, as national and state or local mandates impose new burdens on industry, it is vital that we are able to offer the tax-exempt financing route in order to further the capitalization of the facilities which are being mandated. This was recognized by the Congress when it adopted the provisions of Section 103 of the Internal Revenue Code which are under discussion today.

The Council's members have encountered significant problems in attempting to put this provision of the law to work for the full range of pollution control equipment now required.

The proposed regulations of the Internal Revenue Service which established Treasury policy have effectively eliminated equipment which is indisputably for pollution abatement. The regulations draw a false distinction between "pollution control," the words of the statute, and prevention. The result is to limit eligibility for this financing to facilities which act to capture pollutants after their creation. The policy therefore excludes equipment or

process changes which solve the same problem by avoiding the creation of those pollutants. It is these preventive measures, moreover, which increasingly are required by environmental regulators.

The present policy on eligibility therefore becomes a deterrant to the use of processes and facilities which avoid the creation of pollutants altogether, or which manage to recycle or neutralize substances which otherwise would result from the industry's operation. The Environmental Protection Agency agreed with this concern, and had engaged in a discussion with the Treasury over amendments to the regulations, but that dialogue unfortunately lapsed, and has not been renewed while the new administration has been engaged in filling policy positions at EPA.

The second major concern with current regulations on financing involves the ineligibility of hazardous waste facilities. The draft regulations which now constitute Treasury policy were created in 1975, and they follow the definition of the previous Solid Waste Act in defining solid waste as, essentially, municipal refuse or garbage. In 1976, however, the Congress enacted the Resource Conservation and Recovery Act (RCRA), which amended the Solid Waste Act to complete the circle, attempting to cover all substances not covered by the Clean Air and Clean Water acts. The 1976 law includes a lengthy section, Subtitle C, covering hazardous wastes. It establishes a cradle to grave tracking system, sets new standards for handling and disposal, and defines hazardous wastes as part of the solid wastes covered by the act, even though the wastes may be liquid or semi-solid, as most industrial hazardous wastes are.

Five years later, regulations are finally going into effect which carry out the intent of RCRA, and state and local governments are faced with having to regulate these wastes. Present facilities are inadequate, and financing

for new ones, whether public, private, or quasi-public, is difficult to obtain. Yet, these urgently needed facilities are barred from tax-exempt financing, since the IRS has yet to modify its own policy on eligibility of solid waste disposal facilities. EPA has also pointed this out to the Treasury, but this has not brought about any change.

S. 169, introduced by Senator Heinz, would make it clear that the Congress did not and does not intend to have this inequitable implementation of Section 103 by the Treasury. We support the following objectives of the bill as just solutions to the problems I described. First, S. 169 clearly establishes the eligibility of preventive facilities and process changes along with the end-of-pipe controls to which financing is now restricted. Second we support the certification role of environmental agencies, whether at the state or Federal level. In the past, these regulators have had little trouble deciding what equipment they are requiring for pollution control, as opposed to the Treasury which persists in arguing for areas of fuzziness which they use to restrict eligibility. Third, we support the safeguards of Senator Heinz' bill which assure that eligibility is in fact limited to actual pollution control costs, including reductions in financing to reflect any net profits from pollution control devices and overall limits on eligibility of new plant construction. Finally, we support the definition of solid waste disposal facilities under the Internal Revenue Code which reflects the RCRA definition of solid waste.

With reference to the remaining provision of the bill, for expensing of facilities instead of the present five-year amortization, this is a subject outside the direct sphere of agencies who are Council members, and we therefore do not have a formal position, beyond our basic encouragement of policy which will facilitate industrial compliance with environmental objectives. I note

that other proposals for expensing the full range of capital equipment are now being discussed, and it may be that this provision will be captured in a broader tax code amendment.

I will conclude with two further points. First, we agree with Senator Heinz in his remarks upon introduction of this bill, in which he listed various types of facilities which would be included by the definitions he proposes, and in which he states that this list is not meant to be exclusive. The thrust of this law is to encourage, not discourage, innovation. I am sure that there is an engineer somewhere who is coming up with a device that isn't covered, but which does a better job of preventing pollution than anything being used now. We want to see that device accepted, not excluded, for financing. In communication with Representative James Jones, the EPA discusses the same question and notes that judgment calls are made all the time with regard to the depreciation of equipment, according to procedures which involve detailed engineering and economic judgments. EPA has offered its assistance in carrying out such judgments on an industry by industry basis, and I do not think this is an impossible task.

My second point regards the potential reductions in tax revenues that might result from an expansion of eligible facilities. This committee should understand that even at $100 million per year, the costs of this bill would equal those of a minor EPA program, such as the $100 million proposed for assistance of state water quality officials in managing the wastewater treatment program. The Council believes that this provision will be well worth its cost in the enhancement of the environment which it aids.

However, I want to caution the committee about what is not included in estimates of revenue loss. The Congressional Budget Office and the Treasury have consistently refused to recognize that a company which is able to finance

a pollution control facility on a tax-exempt basis is therefore relieved of interest expenditures amounting to some three percent of the cost of the financing, or $30,000 per $1,000,000 for each year for the life of the financing. This money is of course subject to taxation, and at current rates, the Treasury would increase its revenues by 46 percent of that $30,000, or nearly $14,000 per million, each year, for the life of the financing. The remainder of that $30,000 is put to work by the industry, and presumably generates a profit in later years, which is also taxed. If it is distributed to shareholders, it is also taxed. These are all revenues which do not find their way into calculations of tax expenditures to the Treasury from tax-exempt pollution control financing.

Also, we are distressed to see the assumptions of Treasury revenues on the other side of the equation, from taxable bonds. This ignores the fact that most holdings of taxable bonds are by entities which themselves are tax-exempt or which manage to effectively shield taxable bond holdings from taxation.

The Council does not have the resources to fully investigate the economics of tax-exempt financing, but that is not our principle objective. As state and local agencies, we are trying to harmonize to the greatest extent possible the public health and environmental goals of government at all levels with the economic health of industries under our jurisdiction. As a way of assisting industry in meeting the considerable demands of pollution control mandates, the tax-exempt funding has proven to be a valuable tool where we could use it. I want to add a special note about the importance of this tool for marginal industries and small businesses, who simply could not continue without the access to funds made possible by this tax-exemption. This will become more significant as environmental regulation extends to a growing list of industries under the clean air and water legislation.

None of the changes now proposed in the environmental area will avoid the need to meet new, higher environmental standards. In a period when the nation is concerned about capital formation, we see S. 169 as accomplishing precisely that, through a mechanism which provides for equitable treatment and precise targeting to meet both a significant need of industry and a major national objective of environmental progress. We urge your approve of this bill. I will be glad to answer any questions you may have.

THE TAXATION AND DEBT MANAGEMENT SUBCOMMITTEE
OF THE SENATE COMMITTEE ON FINANCE

HEARINGS ON S. 169

WRITTEN TESTIMONY OF

WILLIAM B. HOLMBERG
VICE PRESIDENT
KIDDER, PEABODY & CO. INCORPORATED

June 26, 1981

SUMMARY OF WRITTEN TESTIMONY BY
WILLIAM B. HOLMBERG, VICE PRESIDENT,
KIDDER, PEABODY & CO. INCORPORATED
REGARDING S. 169

June 26, 1981

Kidder, Peabody strongly endorses S. 169, introduced by Senators Heinz, Glenn and Randolph. As the Committee knows from prior tesimony, Kidder does not customarily take the role of an advocate but prefers to note factors Congress should consider when considering legislation. Our reversal is due to the fact that Kidder believes that it is inappropriate for the IRS to override the statute through regulations.

This bill corrects the IRS' position that devices which abate pollution, but are customarily or traditionally used in the industry, treat with common law nuisance, or prevent the creation of pollutants are not for the "control" of pollution and are therefore not entitled to tax-exempt financing as pollution control facilities under Section 103(b)(4)(F) of the Internal Revenue Code. The IRS' position -- known as the "realized pollution test" -- is inconsistent with the tax statute and environmental policies. For example, facilities which pretreat coal to preclude the creation of pollutants fail to qualify whereas scrubbers which attempt to reduce already created pollutants qualify under the realized pollution test.

That portion of S. 169 concerning Section 103 would have as its principal effect the elimination of the "realized pollution test." Thus, facilities or processes which prevent the creation of pollutants would qualify for tax-exempt financing. This is an economically and environmentally desirable result, for such facilities are usually more effective and frequently less costly than end-of-pipe pollution control technology.

Another problem with the IRS' position -- embodied in its "gross savings test" -- is that any gross economic benefits resulting from the use of pollution control devices reduce the allowable tax-exempt financing. S. 169 would amend the gross savings test to allow tax-exempt bonds to be issued in an amount by which the cost of a facility exceeds the net profit which may reasonably be expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its useful life.

Finally, S. 169 would direct the IRS to abandon its restrictive policy regarding the tax-exempt financing of solid waste disposal facilities.

The Resource Conservation and Recovery Act (RCRA) amended the Solid Waste Disposal Act (the "Act") in 1976 to provide for the mandatory treatment of hazardous waste. Since the treatment of hazardous wastes is within the Act statutorily, facilities which treat hazardous or chemical wastes should qualify for tax-exempt financing. However, the Service voids the statute by providing that only facilities falling within the Act in 1965 (the date of enactment), qualify for tax-exempt financing as solid waste disposal facilities under Section 103(b)(4)(E) of the Code.

S. 169 would clarify that by amending the Act with RCRA, Congress intended that tax-exempt financing be available for non-nucleur hazardous waste management facilities.

In conclusion, the position taken herein is consistent with the views as formally expressed by the Environmental Protection Agency.

INTRODUCTION

I am William B. Holmberg, a Vice President of the investment banking firm of Kidder, Peabody & Co. Incorporated. My main area of professional involvement is public finance. I am the Managing Officer of the Corporate Services Group within Kidder, Peabody's Public Finance Department. In that capacity I am responsible for all tax-exempt financings on behalf of Kidder, Peabody's corporate clients.

Kidder, Peabody & Co. Incorporated was founded in 1865 and was incorporated in 1965. It is currently owned by 283 stockholders, all but one of whom are full-time employees. Kidder, Peabody employs approximately 3,500 persons, including more than 1,000 registered representatives, who staff 57 domestic and 9 international offices.*

In an industry that has been quite volatile, Kidder, Peabody has been consistently profitable for more than 40 years. Its hallmark has been not only its consistent profitablility but also its financial stablility. Today, Kidder, Peabody benefits from a capital base in excess of $110,000,000. This capital consists primarily of equity and is allocated to the fundamental aspects of investment banking, thus giving Kidder, Peabody a strong, high-quality capital base.

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As for public finance experience, Kidder, Peabody, in 1966, was the first major investment banking firm to establish a separate, full service Public Finance Department. Over the past ten years, Kidder, Peabody has been the only firm which has consistently ranked within the top five managers of negotiated revenue bond issues in each year according to published Securities Industry Association and Public Securities Association statistics.

In 1980 Kidder, Peabody participated in $27.6 billion of municipal financings, consisting of 704 different issues. This participation represents approximately 60% of the total municipal volume for 1980. During such year, Kidder, Peabody managed 227 municipal issues, totalling in excess of $7.8 billion. By so doing, Kidder, Peabody ranked fifth in terms of total negotiated revenue bond financings, according to the Institutional Investor bonus-credit-to-lead-manager ranking.

POSITION ON S. 169

Kidder, Peabody strongly endorses S. 169, which, if enacted, clarifies what Congress has always intended -- that tax-exempt financing be available for facilities and processes that prevent the creation of pollution. The bill would force the Internal Revenue Service to abandon its erroneous position that only discrete, end-of-pipe technology qualifies as being

for air or water pollution control. S. 169 would also clarify that, in amending the Solid Waste Disposal Act by the Resource Conservation and Recovery Act in 1976, Congress intended that non-nuclear hazardous waste management facilities should also qualify for tax-exempt financing.

It should be noted that the substantive provisions of S. 169 concerning Sections 103(b)(4)(E) and (F) were a part of the Senate version of the Super Fund Bill. They were deleted solely on procedural grounds. See 126 Cong. Rec. 14984-88 (1980).

Pollution Control

Under current law, industrial development bonds, generally, do not bear tax-exempt interest. However, under Section 103(b)(4)(F) of the Internal Revenue Code, where the proceeds of such bonds are used for air or water pollution control, the obligations are granted a tax-exempt status. This is the only major tax incentive in the law for environmental facilities.

Realized Pollution Test

Under proposed Treasury Regulations § 1.103-8(g), currently being employed by the IRS, a company desiring to fund pollution control facilities for its plant with tax-exempt

bonds finds its options severely limited by a stringent "realized pollution" test. The "realized pollution" test requires that a qualifying facility be separately identifiable and that it "control a pollutant", i.e., operate on a continuous stream of pollutants immediately prior to their being vented to the air or discharged to the water. A "pollutant" may not constitute "any material or heat unless such material or heat is in a state or form such that its discharge or release would result in water or atmospheric pollution or contamination." Moreover, this test in the proposed regulations states that environmental facilities which are customarily or traditionally used in an industry will not be considered as being for air or water pollution control.

Although facilities which effect internal process changes and thereby prevent the creation of pollutants at a later process stage are recognized both by industry and the Environmental Protection Agency as more effective (and frequently less costly) than end-of-pipe technology, the IRS holds that the prevention of pollution and the control of pollution are two different activities and that only the end-of-pipe facility is financeable under Section 103. Therefore, non-end-of-pipe facilities may only be funded with equity or conventional taxable financing. In short, the benefit of tax-exempt financing is available only to those companies

which have a facility that creates a pollutant and then have equipment which operates to control that pollutant, as opposed to a device which prevents the creation of the pollutant in the first instance.

Even assuming that a facility prevents the escape of a pollutant within the Service's restrictive definition, it may still run afoul of the realized pollution test if it recycles heat or other materials that are no longer pollutants, rather than discharging them from the plant. In effect, pollution control facilities that use pollutants (heat or other materials) as a "raw material" do not satisfy the test. Thus, companies may actually be penalized for their efficient elimination of pollutants.

Gross Savings Test

The IRS employs a "gross savings" test which requires a reduction in the amount of tax-exempt bonds where the pollution control facility results in any "gross income" or "cost savings" to a company, however slight and regardless of the expenses of operation of such a facility. Since the "gross savings" test does not net annual expenses against annual benefits, its use may result in a reduction in the amount of tax-exempt financing permitted -- even when the estimated expense of operating a pollution control facility equals or

exceeds the estimated benefits from that facility. No rational investor would judge an investment as economically justified simply by the degree to which it generates economic benefits. He would first net all of his costs against his benefits, and then judge whether the present value of the resulting net cash flow would justify the investment. Thus, a more rational ratio to express the portion of the cost of property allocable to a non-pollution control function, such as that provided by S. 169, is needed.

Note

While the regulations discussed herein are in proposed form, the Service has been applying them since July, 1975 as though they were final. Moreover, EPA, in a letter dated September 23, 1975, to then Commissioner of the Internal Revenue Service, stated that the proposed regulations are arbitrary. EPA noted that they are contrary to the nation's environmental goals. Kidder, Peabody concurs with EPA's assessment.

S. 169

That portion of S. 169 concerning Section 103 would have as its principal effect the elimination of the "realized pollution test" now employed by the IRS in its proposed

regulations. Section 101(a) of the bill defines as an "air or water pollution control facility" land or depreciable property "which is acquired, constructed, reconstructed, or erected to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat . . . ."

S. 169 also amends the gross savings test currently applied by the IRS to reduce tax-exempt financing for a pollution control facility. Under S. 169 tax exempt bonds could be issued in an amount by which the cost of a facility exceeds the net profit which may reasonably be expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its actual useful life. Unlike the current IRS formula, the formula used by S. 169 to calculate the net profit derived from a facility nets expenses against income, thus producing a realistic estimate of the portion of the facility's cost incurred solely for pollution control.

To further ensure that tax-exempt financing is limited to facilities or portions of facilities which are clearly for pollution control, S. 169 imposes two statutory requirements in addition to the economic benefit test. First, in order for a facility to qualify for tax-exempt financing, either EPA or a corresponding state environmental agency would

be required to certify that the facility was being installed to meet or further federal or state requirements for the abatement or control of air or water pollution or contamination. The certifying agency would also have to certify that the portion of the expenditure eligible for tax-exempt financing would not be made but for the purpose of abating, controlling, or preventing pollution. Thus, S. 169 correctly provides that it is for EPA, or its state counterpart, not the IRS, to determine whether a facility's purpose is pollution control.

Second, S. 169 limits the amount of tax-exempt financing which may be attributable to pollution abatement expenditures in the case of construction of new plants or major expansion (35% increase in capacity) of existing facilities. Under this standard, the amount of tax-exempt financing for certified pollution control expenditures, reduced to the extent that a net economic benefit results, is further limited to: 30% of the first $100 million of capital expenditures for the entire plant or site; 25% of the second $100 million; 20% of the third $100 million; and 15% thereafter. Capital expenditures made within 3 years before and 3 years after the date of the bond issue would be subject to the limitation.

The foregoing restrictions should satisfy the Service's legitimate concern that allowable tax-exempt financing be limited to environmental costs and not apply to

production expenditures where the pollution control devices prevent pollution. However, clearly it should not be applied where a company must still utilize high cost end-of-pipe technology. Furthermore, Kidder, Peabody questions the need for such a severe restriction.

The Application of S. 169

The impact of S. 169 can best be illustrated by an examination of its application to the pollution control problems of particular industries.

Utilities

One pollution control problem faced by utilities employing coal-fired boilers is the formation of nitrogen oxide as a result of the combustion process. The formation of nitrogen oxide from combustion can be reduced by combustion modifications which reduce flame temperatures. A portion of the flue gas can be cooled and mixed with the combustion air and returned to the boiler prior to combustion. The inert flue gas absorbs some of the energy released during the combustion process, reduces peak flame temperatures, and thus reduces the formation of nitrogen oxide effect on the boiler's efficiency. Such combustion modifications are precisely the type of process change which the present realized pollution test excludes from

tax-exempt financing. However, the complete cost of the added-on recirculation equipment -- the cooling equipment, pipes, and pumps -- would be eligible for tax-exempt financing under S. 169.

Pulp and Paper

S. 169 would allow members of the paper industry to finance the cost of recovery boilers, which have frequently been installed to eliminate pollution problems associated with the "black liquor recovery" process in kraft pulp mills to eliminate air pollution problems, water pollution problems, and noxious odor problems. While recovery boilers have been utilized in the paper industry for many years as a method of returning spent chemicals to the manufacturing process, the manner in which this was done has been found to be environmentally deficient by most environmental authorities. As a result, many boilers which were performing satisfactorily by engineering standards were and are found to be in violation of environmental standards. Such boilers are required to be replaced with environmentally effective recovery boilers capable of eliminating the odorous gases and particulates and reducing black liquor losses to the water. Until 1975, the regulations under § 103 recognized these facilities when installed for a pollution control purpose to be for the control

of pollution. Moreover, § 169 of the Code was specifically amended in 1976 to make it clear that pollution control facilities under that section included recovery boilers. However, recovery boilers do not meet the realized pollution test of the IRS. S. 169 would rectify that problem.

Brewing

S. 169 would allow members of the brewing industry to finance spent grain liquor evaporators which may be used to abate serious odor problems or to prevent the discharge of spent grain liquor into wastewater so that it will not interfere with a municipality's wastewater treatment works. The IRS position on the tax-exempt financing of such evaporators has been that they prevent rather than contain pollutants and, therefore, do not qualify for § 103 financing.

Coal

Both companies which mine coal and those which use it as a fuel[1] face severe pollution control problems. The precipitators and scrubbers currently employed to deal with the most serious coal pollutants -- precipitants and sulfur -- are

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1 Under the Powerplant and Industrial Fuel Use Act of 1978, most electric utilities and major fuel burning installations are required to convert their fuel use from petroleum or natural gas to coal.

very expensive and highly inefficient. Pretreatment of the coal by methods such as coal washing is more cost-effective for Eastern coal; however, such pretreatment facilities do not qualify for tax-exempt financing as pollution control facilities.

Note, those companies which have relied upon existing rules should not be penalized by the amendments contained in S. 169. For example, Kidder, Peabody believes the Committee should not apply the overall ceiling in S. 169 to those companies burning Western coal since they must continue to use costly end-of-pipe technology at new plants.

S. 169 would permit the tax-exempt financing of coal washing equipment and other pretreatment facilities. In addition, it would extend the definition of "pollution control facility" to water diversion ditches that prevent natural water run-off from mingling with mining operations, becoming contaminated, and exiting as run-off pollution.

Oil

The petroleum industry also experiences severe pollution control problems due to the creation of sulfur as a by-product of drilling and refining operations. However, under current law, many measures taken at oil refineries for the purpose of eliminating such sulfur emissions (i.e., the removal of

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sulfur from gas streams prior to combustion or heating within the refinery) are denied financing under the regulations. S. 169 would permit the tax-exempt financing of such facilities.

Similarly it would cover facilities installed to transport wastewater to regional waste control facilities, currently denied such financing by the IRS on the ground that such facilities do not "remove, alter, dispose, or store" a pollutant.

A final example of a facility which is disqualified at a refinery is a floating roof storage tank, a facility which, as its name implies, has a roof which floats to reduce evaporation losses to the atmosphere. These facilities are substantially more expensive than the standard fixed roof tank and are installed principally to provide compliance with environmental laws in the storage of petroleum products and gases. However, the IRS has ruled that these facilities merely prevent pollution and do not satisfy the realized pollution test.

Solid Waste Disposal

Section 103(b)(4)(E) of the Internal Revenue Code provides for tax-exempt financing of solid waste disposal facilities. According to the Conference Committee Report explanation of Section 103(b)(4)(E), "Solid waste disposal means

the collection, storage, treatment, utilization, processing or final disposal of solid waste (as defined in the Solid Waste Disposal Act . . .)."

In 1976, the Solid Waste Disposal Act was amended by the Resource Conservation and Recovery Act (RCRA) which mandated the treatment of hazardous wastes as well as solid wastes. However, the IRS has taken the position that hazardous waste disposal systems mandated by RCRA do not qualify for tax-exempt financings. The IRS has managed to void the statute by providing in its regulations that only those facilities falling within the Solid Waste Disposal Act on the date of enactment (1965), qualify as being for solid waste disposal for purposes of Section 103(b)(4)(E). This rule improperly disqualifies facilities acquired pursuant to RCRA. It is desirable to qualify RCRA facilities for tax-exempt financing as such projects have obvious social benefit, are similar to currently approved solid waste facilities, and economically are often so marginal that they cannot be undertaken by private industry without the cost reduction brought about by tax-exempt financing. Furthermore, since the treatment of hazardous wastes is within the Solid Waste Disposal Act, facilities which treat hazardous wastes should qualify for tax-exempt financing. We believe the IRS' current interpretation of Section 103(b)(4)(E) is inconsistent with the intent of RCRA and counter-productive to the nation's environmental goals.

S. 169 would make it clear that, in amending the Solid Waste Disposal Act by RCRA, Congress intended that non-nuclear hazardous waste management facilities should also qualify for § 103 tax-exempt financing. Accordingly, S. 169 would have a substantial, beneficial impact upon all industries which currently bear an onerous financial burden due to the hazardous wastes disposal requirements of RCRA. In particular, the chemical industry, which must incur both the costs of Super Fund and RCRA, would benefit.

CONCLUSION

Kidder, Peabody believes passage of the Section 103 amendments contained in S. 169, with the modification discussed herein, would be appropriate. Passage of S. 169 would aid industry in meeting the financial costs which it must incur to comply with federal and state pollution laws, without having to make concomitant reductions in work force or production capacity. Moreover, passage is consistent with Congress' recognition of the need for greater productivity without diminution of the nation's environmental goals. Technological innovation to more effectively deal with serious pollution control problems would be encouraged. Also, in all likelihood, more economically feasible methods of pollution control would be developed. The IRS would be forced to abandon its restrictive definitions of "pollution control" and "solid waste disposal" to comport with the definitions recognized by environmental authorities and comply with Congressional intent.

STATEMENT OF WAYNE NICHOLS

DIRECTOR OF THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

IN SUPPORT OF S. 169

Washington, D. C.
June 26, 1981

SUMMARY OF STATEMENT BY WAYNE NICHOLS OF THE OHIO ENVIRONMENTAL PROTECTION AGENCY ON S. 169-JUNE 26, 1981

1. Ohio is the largest coal burning state in the nation and therefore the largest emitter of sulfur dioxide.
2. S. 169 would do more to help eliminate sulfur dioxide and other forms of air pollution than any other measure. It would enable Ohio to assist its utilities and industries, which are now heavily burdened by the cost of complying with pollution control laws, by increasing the availability of the single most important weapon in the fight against pollution -- financing at reasonable rates.
3. The current regulations permitting tax-exempt financing are far too restrictive. For example, facilities which treat or process coal in order to prevent the release of pollutants as the coal is burned are not considered pollution control facilities and therefore cannot qualify for tax-exempt financing. Under S. 169 coal washing and fluidized bed boilers -- systems that prevent pollution before it's even created -- would receive the favorable tax treatment currently available only for end-of-line pollution control equipment. The systems are critically needed.
4. Ohio also supports the provisions authorizing financing of facilities to dispose of hazardous waste, which is a serious problem in Ohio and nationally.

STATEMENT OF WAYNE NICHOLS, THE OHIO ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and members of the Committee, my name is Wayne Nichols and I am the Director of the Ohio Environmental Protection Agency. Before holding this position, I was Director of the Ohio Department of Energy. I have also served in the Ohio Department of Natural Resources and am a retired General in the Army Corps of Engineers. I believe I am qualified from my many experiences to present Ohio's position on this extremely important piece of legislation.

Ohio is the largest coal burning state in the nation. Last year we burned over seventy million tons of coal. As a result, we are also the largest emitter of sulfur dioxide in the nation, with our 1976 total approximating 3.2 million tons.

We also have one of the best air improvement plans in the nation and are probably spending more money than any other state to improve the quality of our air. We have spent billions of dollars in Ohio on air pollution control and it is paying off. In the last four years our emission of sulfur dioxide has been reduced by 500,000 tons which is almost a 16% reduction. I am reasonably certain that no other state can report such progress.

However, this progress has all been accomplished at a price above and beyond the dollars spent on nonproductive pieces of control equipment. We have been hurt in Ohio. In many cases we cannot burn our own high-sulfur coal. Ohio is one of the major

coal producing states in the nation but we must now import 55% of the coal we burn. At least 10,000 miners are out of work in southeastern Ohio and thousands of others have been idled because of the drop in our coal production.

I say this to you because enactment of S. 169 would do more for the elimination of air and other forms of pollution than anything I can think of. Put another way, this bill would enable the State of Ohio to assist utilities and industries in Ohio, which are now struggling to meet federal pollution control laws, by increasing the availability of the single most important weapon in the fight against pollution, and that is the means to finance the tremendous cost of pollution control facilities at reasonable rates.

The current regulations permitting tax-exempt financing of pollution control facilities under section 103(b)(4) are far too restrictive, and may well be inconsistent with what Congress intended. For example, facilities which treat or process coal in order to prevent the release of pollutants as the coal is burned are not considered pollution control facilities and therefore cannot qualify for such financing. In contrast, S. 169 permits qualification of coal washing and other facilities designed to prevent the creation of pollutants in the burning process. With this amendment the choice

of facilities will depend on the technology available and the environmental needs of the plant, and will not be influenced by tax considerations. Without this change, there will continue to be discrimination against such new technology and in favor of end-of-line facilities, which may be more costly or less efficient in controlling pollution.

As you are well aware, there are many aspects to the problem of pollution control and S. 169 deals with some of the most important ones. For example, the bill addresses the problem of hazardous waste, which is a matter of ever increasing concern both in Ohio and throughout the nation. S. 169 would assist us greatly in meeting this problem. Ohio, therefore, strongly supports the provision which revises the current rules so that tax-exempt financing will be available for facilities that dispose of hazardous waste. This change would be consistent with the Resource, Conservation and Recovery Act and will help reduce the financial burden of complying with new requirements regarding hazardous waste disposal. It will encourage the use of new technology for dealing with hazardous waste, and should be particularly effective when the waste disposal is carried out under a carefully managed state or local program.

Of even greater and perhaps more immediate concern is the problem of controlling sulfur dioxide. Again, S. 169 would do much to solve this problem by providing tax exempt financing for various new technologies which, under present federal tax law, are not eligible for such financing. For example, study after study says that washing coal before it is burned significantly reduces sulfur dioxide emissions. Better yet, coal washing not only removes 25% to 35% of the sulfur dioxide, it also reduces the coal's ash content. In Ohio, we are committed to coal washing. Utilities, coal companies and other industries are showing great interest in coal washing, and a report by Battelle Laboratories calls for 15 to 20 more coal washing plants in Ohio to reduce sulfur emissions. The typical plant costs many millions of dollars and interest rates are sky high. S. 169 would allow these plants to be built using tax-exempt financing at a reasonable cost.

Another technology that would be eligible for this low-cost financing under S. 169 is fluidized bed combustion of coal. This type of boiler efficiently removes the sulfur in coal before it has a chance to escape to the smokestack. Ohio is vigorously pushing a fluidized bed program and there are industries anxious to install this system. Again, this is not a cheap solution to the sulfur dioxide problem.

A typical fluidized bed boiler costs in the neighborhood of $20 million.

These technologies can go a long way in solving our sulfur emissions problems, but financing is critical. It is Ohio's belief that tax exempt financing is the most efficient way of reducing the cost of these nonproductive expenditures. I should point out that Ohio has an air quality development authority and a water development authority which are well established in the financial marketplace and have the capability to provide industry with funding in these critical areas if this bill is passed. Using the current exemption our air quality development authority, the largest air financing authority in the nation, has already funded 100 industrial projects with a total value of one billion dollars. Again, this shows the type of commitment to clear air we have in Ohio.

Other witnesses before you today will talk about the various benefits in this bill and Ohio supports it in total. But I am an environmental regulator in an industrial state constantly being criticized for its air pollution. This bill, S. 169, is an essential tool in helping Ohio eliminate sulfur dioxide emissions. Coal washing and fluidized bed

boilers -- systems that prevent pollution before it's even created -- should certainly receive the same favorable federal tax treatment as is currently available for the end-of-pipe pollution control technologies.

In summary, Ohio fully supports this important legislation and urges its passage without delay. The result will be not only a better environment but also increased employment -- certainly in Ohio's coal industry -- and at a lower cost burden for utilities and other industries and their customers than would be possible without tax-exempt financing.

Statement

before the

Subcommittee on Taxation and Debt Management

of the

Committee on Finance

U.S. Senate

on

S.169

TAX TREATMENT OF POLLUTION CONTROL FACILITIES

Presented by

Bernard L. Simonsen

Chairman, Institute of Chemical Waste Management

National Solid Wastes Management Association

and

Vice President, IT Corporation

June 26, 1981

SUMMARY OF

Statement
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Chairman, Institute of Chemical Waste Management
National Solid Wastes Management Association
and
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June 26, 1981

1. Members of the National Solid Wastes Management Association construct and operate hazardous waste management facilities servicing the vast majority of American industries which do not dispose of their own industrial hazardous wastes on-site.

2. S.169 will conform the IRS Code definition of "solid waste" with that of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, extending eligibility for IDB financing to hazardous waste management facilities as Congress intended. IDB financing is already available for other solid waste management facilities.

3. Broadening the definition of "solid waste" to include hazardous waste will remove a significant marketplace impediment to constructing new hazardous waste management facilities, an impediment imposed by federal regulations themselves.

4. The experience of IT Corporation in planning and constructing a new and modern hazardous waste facility in Louisiana illustrates the beneficial effects which enactment of S.169 would provide.

Mr. Chairman and members of the Committee, my name is Bernard L. Simonsen and I serve as Chairman of the Institute of Chemical Waste Management of the National Solid Wastes Management Association (NSWMA) as well as Vice President of IT Corporation in California, one of the nation's leading hazardous waste service companies. Our company operates six facilities in California, a research laboratory in Knoxville, Tennessee, and is in the process of opening new facilities in Illinois, Texas and Louisiana. We are also the contractor for the U.S. EPA's environmental emergency response unit in New Jersey.

Other member companies of the Institute of Chemical Waste Management likewise are engaged in providing treatment and disposal services for hazardous wastes generated by American industries. As distinct from those industries which generate wastes and manage them themselves on-site, members of the Institute of Chemical Waste Management accept hazardous wastes for treatment and disposal from the vast spectrum of industrial generators, many of whom lack the necessary expertise or suitable facilities for proper management of their own wastes. The growth of the chemical waste service industry has been coincident to implementation of the federal hazardous waste program created by the Resource Conservation and Recovery Act of 1976. The U.S. Environmental Protection Agency estimates that it will require between 50 and 125 new off-site hazardous waste management facilities in the coming several years in order to accommodate the wastes that are presently being disposed of in less satisfactory facilities or diverted from waste management facilities entirely.

The Institute of Chemical Waste Management is an arm of the National Solid Wastes Management Association, the national voice of the waste management industry. Composed of more than 2,000 member waste service firms, NSWMA has actively supported a responsible national program for proper hazardous waste management. We have worked closely with members and staff of the Environment and Public Works Committee of the Senate and its counterpart on the other side and with the U.S. EPA and its state regulatory counterparts.

The waste service companies of America heartily endorse S.169 and urge this Committee and, indeed, the Congress to enact this useful legislation as quickly as possible. Specifically, we commend to your attention that portion of the bill which amends Section 103 of the Internal Revenue Code pertaining to tax-exempt industrial development bonds (IDBs) to allow hazardous waste management expenditures to qualify for Section 103 financing. Passage of S.169 will conform the IRS Code definition of "solid waste" with that of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 to reflect the broadened interests and intent of Congress.

The IRS Code, Section 103(b)(4) itemizes specific activities that can be financed with IDBs, allowing developers to take advantage of the lower interest rates on tax-exempt bonds. When Congress added this section to the IRS Code, the Solid Waste Disposal Act of 1970 was the major federal statute governing waste disposal. Section 203(4) of the Solid Waste Disposal Act provides that:

> "The term 'solid waste' means garbage, refuse, and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or

dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluence, dissolved materials in irrigation return flows or other common water pollutants."

Six years later, Congress substantially amended the definition of "solid waste" when it enacted the Resource Conservation and Recovery Act of 1976. Section 1004(27) of RCRA provides that:

"The term 'solid waste' means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contain gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activites, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923)."

The 1976 Act also defined "solid waste management facility" to include facilities managing hazardous wastes. That definition was further amended in 1978 amendments to RCRA such that the present language of Section 1004(29) reads as follows:

"The term 'solid waste management facility' includes --
(A) any resource recovery system or component thereof,
(B) any system, program, or facility for resource conservation, and
(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise."

In broadening the definition of "solid waste" to include hazardous waste, Congress recognized the imperative priority of creating a federal program to manage hazardous industrial wastes under a strong federal program encouraging proper engineering and modern technologies. A key element in the new federal hazardous waste regulatory program involves the siting and construction of additional new facilities to accommodate

the 90% of hazardous industrial wastes which the EPA estimates are now going to inadequate disposal alternatives.

Frustrating the intent of Congress to move ahead quickly with construction of these new facilities, the Department of the Treasury has maintained that the 1970 definition of "solid waste" governs eligibility for industrial development bond financing under Section 103 of the IRS Code. Reliance on this narrower definition of "solid waste" which excludes eligibility for hazardous waste management facilities, has produced the present incongruous situation where traditional solid waste facilities qualify for IDB financing, while hazardous waste management facilities, the nation's top environmental priority according to EPA, are denied this beneficial incentive. The Congress should, therefore, enact this amendment as a "technical amendment" required to bring the IRS Code in line with the obvious intent of this Committee and the Senate to make IDB financing available for badly needed and, indeed, government-mandated pollution control facilities.

Not only is an amendment to Section 103 required to establish fair, non-discriminatory eligibility standards for IDB financing, but speedy enactment is necessary to overcome marketplace impediments to constructing these new facilities imposed by federal regulations themselves. In order to assure that there would be no "gap" between the phase-out of facilities which presently treat hazardous wastes and dispose of them and the new generation of RCRA-standard of hazardous waste management facilities, Congress created a short-term "grandfather" provision called "interim status." Under "interim status," facilities in existence on or before November 19, 1980, can continue in operation until such time as the EPA has promulgated its final standards for treatment,

storage and disposal facilities and enforced those standards in regard to "interim status" facilities. By its own admission, it will take EPA up to five years to complete the review of the existing hazardous waste facilities. In the interim, many facilities which would not otherwise be able to satisfy final RCRA standards will be able to continue in operation.

These existing facilities were constructed at a time when public acceptance was easier, and far less costly, to obtain. Most employed technologies are less expensive than those which will be required to meet final RCRA standards. A new, properly designed, environmentally sound and RCRA-permittable hazardous waste facility will be very expensive. Some may cost up to $100 million. Competition by such a facility will be difficult in the marketplace with existing marginal or inadequate facilities.

Yet, if the new facilities cannot compete or, because they cannot compete, are not even constructed, then the hazardous wastes produced by American industries will continue to be funneled to the existing facilities which may not satisfy final RCRA standards, utilize modern technology, or satisfy the public expectation that hazardous wastes will be properly managed under the new federal program. Extending eligibility for IDB financing to this new generation of modern hazardous waste management facilities will redress this competitive imbalance created by the federal "grandfather" provision and encourage construction of the new facilities which will be necessary before the existing facilities can be phased out and closed. A major cost of any new facility is the cost of the money necessary to construct it. The use of IDBs to finance such projects would represent a major step forward in holding down the cost of bringing these badly-needed facilities on-line.

The implications of availability of tax-exempt financing can be demonstrated at our proposed facility being developed near Baton Rouge, Louisiana.

The facility will consist of two specially designed rotary kiln incinerators, a pilot or test incinerator, various units for neutralization, oxidation, and reaction, a waste water treatment plant, and a solids stabilization operation.

The project is being sited on a 1,000-acre industrial parcel adjacent to the Mississippi River. The capacity of the facility will be 106,000 tons per year for each incinerator as well as inorganic materials which can be directly treated or stabilized and landfilled.

The facility is expected to cost $116 million to construct, including the cost of land, engineering, and capitalized interest. The land acquisition and most of the engineering have been completed. The facility is expected to take 18 months to construct and get the first incinerator operable. The second incinerator would be on line six months later.

The projected disposal fees would vary from $70 per ton for waste water to $1,000 per ton for specialty wastes requiring custom handling.

Costs associated with financing this scale project are substantial, representing between 25%-33% of gross receipts in the first full year of operation. Since the facility is forced to compete with alternate permitted facilities in the region which were constructed and operate at substantially lower costs, this is a major factor in the economics of the project. Reduction of interest rates from the estimated 18% to just 14% would drop the projected interest costs to 19%-25% of gross receipts.

This would both make financing easier to qualify for as well as allow greater pricing flexibility to attract wastes to the higher technology facility.

On behalf of the waste service industry as represented in NSWMA's Institute of Chemical Waste Management, let me express our appreciation for this opportunity to appear before you today. We hope that you will speed approval of S.169 to direct the Secretary of the Treasury to extend IDB financing eligibility to hazardous waste management projects and, thus, accelerate the pace of bringing these new projects into existence so that existing facilities receiving hazardous industrial wastes can be measured strictly against the yardstick of the new federal hazardous waste management regulations.

I would be pleased to try to respond to any questions which you might have. Thank you.

TESTIMONY

ON BEHALF OF

NATIONAL ASSOCIATION OF MANUFACTURERS

ON S.169

TO AMEND TAX TREATMENT OF POLLUTION CONTROL FACILITIES

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

COMMITTEE ON FINANCE

UNITED STATES SENATE

JUNE 26, 1981

Introduction

I am Matthew Gould, Vice President - Industrial Services, Roy F. Weston, Inc., appearing today on behalf of the National Association of Manufacturers. I am accompanied by Mark Griffiths, Associate Director of Environmental Affairs for NAM.

The National Association of Manufacturers is a voluntary association of more than 12,000 enterprises engaged in manufacturing in the United States. These enterprises account for some 75 per cent of domestic employment in manufacturing industries and produce about 75 per cent of the nation's manufactured goods. About 80 per cent of the member companies are in the small business category. Through its Associations Department and the National Industrial Council, NAM is affiliated with 158,000 additional companies, the great bulk of which are also small business enterprises. The operations of many of these companies are subject to regulations under various environmental laws. Therefore, we greatly appreciate the opportunity to comment on S.169, which would amend the statutory provisions dealing with tax treatment of pollution control facilities.

NAM Policy Position

NAM believes that environmental quality control efforts are intended to achieve broad social and economic benefits for the general public. Such efforts are costly to industry since, in most instances, capital and operating costs for abatement facilities do not yield a direct economic return. Such costs can create serious economic dislocations within our industrial society and, therefore, opportunities for specific financial offsets should be made available to industry by government. These should take the following form:

1. Simplified provisions for accelerated amortization up to and including the immediate write-off of the facility at the option of the taxpayer; but this accelerated amortization should not eliminate any applicable investment credit.
2. State and local tax exemptions.
3. Continued tax-exempt status for income from industrial revenue bonds used to finance environmental quality control facilities.

The Narrow Definition Problem

The Report of the National Commission on Air Quality, issued in March 1981, makes the following observation:

> "All but two of the states have authority to issue tax-exempt bonds for industrial pollution control facilities. Internal Revenue Service Rules that define facilities eligible for such tax-exempt financing only allow favorable treatment for the cost of controls on smokestacks rather than for inherently low-polluting manufacturing processes. For example, a scrubber that controls sulfur dioxide emissions from a smokestack may be eligible for tax-exempt financing, but a fluidized bed combustion boiler that removes sulfur as a part of the combustion process may not be eligible."

The amendment to Section 103 of the Internal Revenue Code of 1954, as proposed by S.169, would cure this narrow definition problem and lend impetus to pollution prevention efforts, which represent the most desirable approach to environmental control.

NAM also believes that industrial development bond financing should be available for hazardous waste disposal facilities, since disposal of wastes classified as "hazardous" under the Resource Conservation and Recovery Act will be a severe problem over coming years for manufacturers, both large and small. For this reason also, we support the amendments to Section 103 proposed by S.169.

The Coming Crunch

The real crunch of our environmental laws may be only just beginning. As we enter advanced implementation phases, it is inevitable that the burdens are likely to fall heaviest on smaller companies. It is difficult to see how many small companies will be able to weather increasing environmental regulation.

In an attempt to gauge the effect of one environmental statute--the Clean Air Act--on our smaller members, NAM is conducting a survey to develop case histories. As one example, we have a response from a packaging company in a nonattainment area in Cleveland, Ohio. The company states that "Expansion of facilities under current regulations appears nearly impossible until alternative technology is developed, since LAER [Lowest Achievable Emission Rate, which is required for new or modified facilities in nonattainment areas] control equipment would increase the cost beyond a commercially acceptable level."

Not only is it economically prohibitive for the company to expand, but it appears that the requirement for RACT (Reasonably Available Control Technology, which is required for retrofit of existing facilities in nonattainment areas) will wipe out the company's annual profit from its existing facilities. As the company explains it, "Regulations require major reduction of VOC emissions from solvents used in inks, adhesives, and coatings. RACT has been defined by EPA as a 60 per cent reduction achievable through solvent recovery or incineration. Solvent recovery is technically unfeasible, and incineration is economically unfeasible since the cost would reduce [company's name] to a zero profit situation. Alternative technology, water reducible inks and adhesives, is being developed, but is not yet a commercial reality." The company summarized, "RACT control equipment annualized cost is equal to the 1979 annual profit of [the company], $300,000+; alternative technology is not developed at this time." This presents a rather grim picture which is undoubtedly illustrative of the problems of many other small companies located in nonattainment areas. The amendment to Section 169 of the Internal Revenue Code of 1954 as proposed by S.169 would provide much needed relief for many of these problems.

The NAM Board of Directors first officially supported "accelerated amortization up to and including the immediate write-off of the facility, at the option of the taxpayer" on May 25, 1966, and has consistently supported such treatment of pollution control capital expenditures ever since. The Congress has also recognized the special nature of such expenditures going as far back as 1966 when the 7 per cent investment tax credit was suspended but pollution control expenditures were exempted, and again when a 5-year accelerated amortization provision was included in the Tax Reform Act of 1969.

We believe that S.169 is consistent with this history. Non-revenue producing pollution control expenditures are often not subject to financing by traditional methods even though they confer benefits on the general public. Economic dislocations, particularly in the case of smaller companies, could be ameliorated by the provisions of S.169.

We appreciate this opportunity to present our views.

[Whereupon, at 12:16 p.m., the hearing adjourned, subject to the call of the Chair.]

[By direction of the chairman the following communications were made a part of the hearing record:]

Received

IDAHO POWER COMPANY

1981 JUN 22 PM 4:17

BOX 70 • BOISE, IDAHO 83707

June 17, 1981

JAMES E. BRUCE
Chairman of the Board and
Chief Executive Officer

The Honorable Robert Packwood
Chairman, Senate Subcommittee on
Taxation and Debt Management
Room 145
Russell Senate Office Building
Washington, D C 20510

Dear Senator Packwood:

This is to advise your Committee of Idaho Power Company's support of Senate Bill S-169 introduced by Senator John Heinz (R-PA) to amend the pollution control provisions of Section 103 of the Internal Revenue Code.

As you know, Idaho Power Company is a 33 1/3% owner with Pacific Power & Light Company of the coal-fired Jim Bridger Power Station in Wyoming and a 10% owner with Portland General Electric Company of the coal-fired Boardman Power Station in Oregon. Pollution control expenditures financed by Idaho Power Company through December 31, 1980 totaled $51.0 million for Jim Bridger and $4.4 million for Boardman. Possible additional pollution control expenditures to be financed in the 1980's total $153.8 million for Jim Bridger and $3.5 million for Boardman.

Idaho Power Company is a 50% owner with Sierra Pacific Power Company of the coal-fired Valmy Power Station in Nevada, for which an estimated $59.3 million of pollution control expenditures must be financed. Under consideration presently is a coal-fired generating plant in Idaho, which might come into production in the late 1980's.

The above participation in coal-fired electric generation plants in Wyoming, Oregon, Nevada and possibly Idaho demonstrates Idaho Power Company's involvement with the financing of pollution control facilities. In our opinion, passage of S-169 would better enable our Company to meet the financial costs incurred to comply with Federal and state pollution laws by, (1) eliminating the realized pollution standard now employed by the Internal Revenue Service, and (2) amending the allocation formula currently used by IRS to reduce tax-exempt financing for a pollution control facility. In addition, S-169 correctly places the responsibility for determining whether a facility's purpose is pollution control in the hands of either EPA or a corresponding state environmental agency rather than IRS.

Electric utilities throughout the country have compiled an excellent record of complying with the pollution control laws passed by Congress. S-169 would substantially increase the availability of low cost, tax-exempt financing for pollution control facilities at a time when electric utilities must finance other facilities at unprecedented capital costs.

Sincerely,

James E Bruce
Chairman of the Board and CEO

RFK:JEB:mlm

cc: R F Klumpp
L E Lanham

(Read)

Flexible Packaging Association

Richard A. Lilliquist
President

June 24,1981

The Honorable Robert Dole
UNITED STATES SENATE
2227 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Dole:

This letter contains the views of the Flexible Packaging Association (FPA) on S. 169, a bill introduced by Senator John Heinz dealing with the tax treatment of pollution control facilities. Because its passage could have a strong positive effect on our industry, we feel it is important to bring our views on S. 169 to your attention.

The Flexible Packaging Industry

Before commenting on S. 169, it may be helpful to briefly describe FPA and the industry it represents. FPA is a trade association of 170 companies which manufacture flexible packaging or which supply materials used in the manufacture of such packaging. Flexible packaging consists of pliable or non-rigid containers made of plastic film, aluminum foil, paper or a combination of such materials. Examples of the thousands of different kinds of flexible packaging products are bread bags, potato chip bags, labels for containers and meat wraps. Over 50% of the items on the shelves of the nation's supermarkets contain some form of flexible packaging. The flexible packaging industry is composed of large, medium-sized and small companies located in virtually all states in the U.S. Flexible packaging materials, although crucial to our country's food and health industries, are relatively inexpensive. For example, 18 billion bread bags a year are sold at an average price of one and a half cents each. Annual flexible packaging sales exceed $4 billion, about 75 percent of which represent sales by members of our Association.

The inks, coatings and adhesives used in the manufacture of flexible packaging contain organic solvents. Emissions from such solvents form volatile organic compounds which contribute to the formation of ozone, one of the pollutants subject to control under the Clean Air Act. Accordingly, the industry is required by that Act to use "reasonably available control technology" to assist in the attainment of the national ambient air quality standard for ozone. In most

cases, the technology used has been some form of incineration equipment. The cost of such equipment and other techniques necessary to comply with the requirements under the Clean Air Act has been quite high. Based on estimates prepared by an EPA consulting firm, the total capital costs for compliance is nearly $1 billion. Annual costs for the operation and maintenance of pollution control equipment are about $500 million.

Views On S. 169

As introduced in January 1981, S. 169 has two major provisions. First, it would expand the tax advantage available for pollution abatement expenditures under section 103 of the Internal Revenue Code by explicitly recognizing that tax-exempt Industrial Development Bonds (IDBs) can be used to finance process changes where those changes would lead to reduced discharge of pollutants. Second, under present law, pollution control facilities may be amortized over a five-year period. The bill would amend section 169 of the Internal Revenue Code and permit a taxpayer to elect to deduct for a taxable year the amount paid or incurred in connection with the acquisition, construction or erection of a certified control facility.

FPA endorses S. 169. We agree that pollution control expenditures should be deductible currently unless they contribute to increased productivity. Pollution control facilities are non-productive expenditures that reduce earnings. Thus, there is a distinct need for tax incentives to offset the loss of earnings due to required pollution control facilities.

During passage of the 1977 Amendments to the Clean Air Act, Congress recognized that there is an economic disadvantage for a firm expending dollars on pollution control facilities when compared to a firm not making similar expenditures. If a domestic firm competes with a foreign enterprise not subject to similar environmental costs, tax-exempt financing and one year amortization may aid the domestic firm's ability to compete.

FPA has a large number of small business members. For these members, the election to amortize the cost of pollution control facilities in the year paid or incurred is particularly appropriate in light of the rapidly-increasing cost of antipollution equipment, and the rise in waste disposal costs created by legislation such as the Resource Conservation and Recovery Act.

As Senator Heinz stated when introducing S. 169, the Internal Revenue Service (IRS) narrowly construed section 103, which provides for tax-exempt IDBs. The IRS position was adopted over the objections of the Environmental Protection Agency (EPA). The dispute centers on whether IDBs may be used to finance that portion of process changes which would prevent or lessen the discharge of pollutants. While EPA and industry recognize the economic efficiency of process changes that prevent or lessen pollution, the IRS has limited financing to discrete end process technology or equipment.

Using process changes for pollution control makes good economic and environmental sense. Permitting tax-exempt IDBs to help finance new, cleaner facilities makes eminent sense and is plainly in the public interest. Moreover, IDBs will help attract capital to finance these new or improved facilities.

While supporting a change in the IRS policy on IDBs and one year amortization for pollution control facilities, FPA strongly endorses a reduction in the maximum corporate tax rate. Such a reduction would provide needed funds for expansion and modernization. Moreover, a general reduction would increase disposable funds and permit optimum use of the funds according to the unique circumstances of each company.

Again, FPA appreciates this opportunity to comment on and support S. 169. We would be happy to discuss this with you or your staff or to participate in future proceedings dealing with the bill.

Cordially yours,

Richard A. Lillquist
President

RAL/rg

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