

EXECUTIVE SESSION

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FRIDAY, FEBRUARY 3, 1978

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United States Senate,
Committee on Finance,
Washington, D. C.

The Committee met, pursuant to notice, in room 2221,
Dirksen Senate Office Building, Hon. Russell B. Long
(Chairman of the Committee) presiding.

Present: Senators Long, Ribicoff, Byrd, Gravel, Bentsen,
Hathaway, Haskell, Matsunaga, Moynihan, Curtis, Hansen, Dole,
Roth and Danforth.

The Chairman. The Committee will come to order.

The matters that we hope to discuss today, the first
item on the list is the Medicare End-Stage Renal Disease
Program and we sent staff and Senators information on that.

Since Senator Talmadge cannot be here today, he did
leave his proxy, but he did not want the matter disposed of
in his absence if there were substantive amendments to be
considered, and there will be some.

I would move over that item and suggest that we take a
look at the next item, which will be the settlement of
retroactive Social Service claims.

Perhaps you ought to explain that, Mr. Stern, what that is

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1 about.

2 Mr. Stern. Yes, sir.

3 There have been a number of disputes over the amounts
4 owed states under the social services program in the Social
5 Security Act. The Department of Health, Education and
6 Welfare negotiated with the states and they reached a compro-
7 mise agreement on the amounts of the claims that applied to
8 the period before October, 1975.

9 The bill that has been introduced by Senator Moynihan to
10 implement this settlement basically allows about a half a
11 billion dollars in the disputed unpaid claims and it ratifies
12 the previously paid claims. This applies only to the social
13 services program, and only for the period before October, 1975.

14 The legislation authorizes this payment as a settlement
15 for the claims.

16 The staff would make two suggestions. One, there are
17 some purely technical points of drafting that we would like
18 the authority to modify. The other is that the authorization
19 is for fiscal year 1978 and that would subject it to a possi-
20 ble point of order under the Budget Act. Our suggestion would
21 simply be that you make it effective Fiscal Year 1979, and
22 there would be no point of order problem.

23 The Chairman. Without objection, then, those modifica-
24 tions will be made.

25 If there is no further discussion on this measure, I would

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1 suggest that we report it out favorably.

2 Senator Moynihan?

3 Senator Moynihan. Mr. Chairman, I just think we should
4 not let this moment pass without noting that we are bringing
5 to the end here one of the great sagas of uncontrollable
6 Federal spending.

7 The experience with Title XX was just a disgrace to
8 everybody involved. It now has come to an end. This Committee
9 has helped do so. This brings an equitable and fair settle-
10 ment, and I think we can all say, "Thank God."

11 The Chairman. Without objection, we will report this
12 measure, if we can hold it to what it is.

13 Senator Moynihan was very interested in the bill and will
14 be managing it. If we can keep this bill to what it is, we
15 will have no difficulty passing it. What we are going to
16 have to work on is for Senators not to come in for their
17 catch-all amendments that have to do with welfare, Social
18 Security and a lot of other things that any imaginative mind
19 could dream up in this area.

20 Senator Byrd very much wanted to consider the item that
21 has to do with this technical corrections bill, and I will
22 ask consent on Senator Byrd's request that we move to item
23 4, the Technical Corrections Act, and we will come back to
24 item 3, because on a previous occasion Senator Byrd brought
25 out some matters in connection with that.

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1 Mr. Shapiro?

2 Mr. Shapiro. The House passed last year H.R. 6715,
3 which was the Technical Corrections Bill for the Tax Reform
4 Act of 1976. Let me just give you a minute of background on
5 that.

6 After the Tax Reform Act was signed and became law, a
7 number of technical revisions came to the attention of the
8 staff, to the Treasury, to the Internal Revenue Service, and
9 to many members of Congress, both on the House and Senate
10 side.

11 In January of last year, the staff started collecting
12 these technical matters and incorporated them into a bill
13 which was introduced in the House and hearings were held,
14 which was ultimately passed.

15 There were two major areas of the Tax Reform Act: first,
16 the income tax areas and then the estate-gift tax areas.
17 The amendments in that Technical Corrections Bill dealing
18 with the income tax portions are, by and large, generally
19 viewed as technical. There are some which may affect one
20 or two companies specifically, but it was believed in the
21 House that these were technical revisions to the Tax Reform
22 Act and it went through a screening process in the House, in
23 which case it was believed to be correcting a technical error
24 rather than providing a special benefit to any one or two
25 corporations outside of the scope of what was intended by the

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1 Tax Reform Act.

2 In the area of the estate-gift tax bills, however, I
3 think it would be helpful if I give you a little background,
4 because it will be relevant to later discussions this morning.
5 The Ways and Means Committee did not include any of the
6 estate-gift tax provisions in its Tax Reform Bill that it
7 sent to the Senate.

8 In the Tax Reform Bill that was considered in the Finance
9 Committee, it did include several revisions in the estate-
10 gift tax area. A few, for example, increasing the exemption
11 level; a provision on the generation-skipping trust; and
12 some other changes.

13 There was no provision in the Senate bill dealing with
14 carryover basis and there were no hearings at all in the
15 Senate on carry-over basis at this time.

16 While the Senate was dealing with the tax reform bill
17 in 1976, the Ways and Means Committee was considering an
18 estate-gift tax package. They did hold hearings on that
19 package and included a comprehensive revision to the estate-
20 gift tax areas that included all of the areas that the
21 Finance Committee included in this bill, although with
22 different modifications, included those types of changes and,
23 in addition, dealt with some other areas that were not
24 included in the Finance Committee revisions. One specific
25 one was the carry-over basis.

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1 The Ways and Means Committee reported its bill, but
2 it never was considered on the House Floor. It never passed
3 the House and was never sent to the Senate.

4 As a result of this, in the Conference on the Tax
5 Reform Act, there was a significant concern that the estate-
6 gift tax revision was needed at that time, and the procedures
7 worked out in the conference to consider the estate-gift
8 tax revisions in connection with the Tax Reform bill.

9 This was done in the procedures known as technical
10 disagreement where the House voted separately on the estate-
11 gift tax provisions and it came over and had a vote on the
12 conference report and the tax reform bill and the income
13 tax revisions and a separate vote on the estate-gift tax
14 provisions.

15 The majority of the provisions adopted in the Tax
16 Reform bill in the estate-gift tax area were the provisions
17 that were contained in the House Ways and Means proposal,
18 although there were some modifications to take into account
19 the provisions that were in the Senate Finance bill.

20 The fact that the House did not come to the Senate, as
21 is usually the case, because there were a number of revisions
22 that were needed. As you know, when a bill passes the House
23 and comes to the Senate in your hearings you hear testimony,
24 a lot of revisions that are needed. Many of the technical
25 ones, of course, the staff brings to your attention that we

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1 have found out after the House passes the bill and practi-
2 tioners and our staff and others bring to our attention and
3 then in the hearings we hear others.

4 The estate-gift tax provisions did not have that
5 opportunity to go through hearings after it passed the House,
6 and therefore, in the House Technical Corrections bill,
7 there are a number of substantive revisions that are of the
8 type that the staff and others would have brought to the
9 attention of the Committee, that I do want you to know that
10 in the Technical Corrections bill, as passed the House, in
11 the estate-gift tax area there are some substantive revisions
12 that were considered by the Ways and Means Committee to be
13 appropriate and being consistent with the intent that the
14 Committee had.

15 The one issue that was a major one that has been very
16 controversial since the enactment, of course, is the carry-
17 over basis provision. There has been significant concern
18 that there are a number of administrative problems with the
19 revision. That means it does not work well. A number of
20 practitioners have indicated in hearings that have been
21 held since the Tax Reform Act and I know that they have made
22 this concern known to many members of the House as well as
23 the Senate that the administrative problems make it almost
24 unworkable in its present state.

25 There have been a number of bills introduced in both the

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1 House and the Senate to repeal the carry-over basis, to
2 defer or to provide certain modifications to try to make it
3 workable.

4 In the Finance Committee this morning there are proposals
5 to do all of these. Senators have proposals to repeal it,
6 to defer it between two, three or four years, and also
7 several Senators have provisions that would provide for
8 administrative, technical and other changes to that.

9 I thought it would be helpful if I gave you just this
10 brief summary as to where the situation stands in connection
11 with the Technical Corrections bill.

12 The Chairman. Before we go any further, let me make
13 a point that we have a quorum present; so that there cannot
14 be any problem about the first measure, I ask consent that
15 we report the bill that we agreed by unanimous consent to
16 report H.R. 8423. Without objection, agreed.

17 Senator Byrd?

18 Mr. Stern. Mr. Chairman, that was the health-bill, the
19 renal bill. I think you are referring to the second item.

20 The Chairman. That is right. I ask consent that we
21 report S. 2360, not H.R. 8423.

22 Without objection, S. 2360 will be reported. Thank you.

23 Senator Byrd?

24 Senator Byrd. Thank you, Mr. Chairman. I have an
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1 amendment dealing with the carry-over basis provision and
2 I will go into as much detail as any of the members want.
3 I think, however, that most of the members are familiar with
4 the matter.

5 My amendment would strike out the figure 1976, which
6 under the tax act of 1976, December 31, 1976, after that
7 date became the effective date of the carry-over basis
8 provision. I would propose to strike 1976 and insert, in
9 lieu thereof, 1979.

10 If that is approved, it means that the carry-over basis
11 provision of the 1976 Act will not be effective until after
12 December 31, 1979.

13 I offer this amendment on behalf of Senator Dole,
14 Senator Hansen, Senator Zorinsky, Senator Haskell, Senator
15 de Lugo, Senator Tower and Senator Ford. And I have the
16 proxy supporting that amendment of Senator Talmadge and
17 Senator Nelson.

18 There are many who feel that this carry-over basis
19 provision of the 1976 law should be repealed. My proposal is
20 a compromise proposal. I have a letter addressed to the
21 Chairman, of which a copy was directed to me, from Senator
22 Ford who advocates repeal. Many other members of the Senate
23 who have gone into this matter also feel that the provision
24 should be repealed but, as I say, the proposal I am making,
25 namely to change the effective date from December 31, 1976

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1 to December 31, 1979 is a compromise.

2 This carry-over basis proposal which was enacted into
 3 law in 1976 has been proved, if one is to believe the state-
 4 ments of a multitude of lawyers, accountants, executors
 5 of estates throughout our nation, if one is to give credence
 6 to what they say, and I certainly do, that this provision is
 7 a disaster and what we need to do, as I see it, and the
 8 Senator Finance Committee has a great responsibility in this
 9 regard, is to at least defer the effective date so that in
 10 the intervening time -- and it is not too much time, between
 11 now and the end of 1979 -- that the respective parties of
 12 Congress, Treasury Department, the legal profession, the
 13 accounting profession and others will have an opportunity to
 14 get together and try to make this thing workable and fair
 15 and reasonable, or to repeal it.

16 The Subcommittee on Taxation held hearings on this
 17 matter beginning last summer. As a result of those hearings,
 18 and with the help of some eight or ten different lawyers, all
 19 of whom contributed their time, I drew legislation -- or
 20 legislation was drawn -- which I introduced along with
 21 Senator Dole to attempt to bring about some corrections.

22 I felt, however, that it would not be appropriate to
 23 bring this legislation before this Committee without addi-
 24 tional public hearings on it, because it is an immensely
 25 complex subject, even though we have held public hearings on



1 the subject in general; no hearings were held on the bill in
2 particular.

3 I think that it is a reasonably good bill, but I think
4 that the proper approach -- the better approach from the
5 point of view of everyone -- would be to defer the effective
6 date and then, in the intervening time, those interested
7 groups can get together and try to work out some reasonable
8 proposal.

9 I might say that I think it is important that the
10 Committee and the Congress act expeditiously because people
11 are dying every day. We can pas a lot of laws here, but
12 one thing we cannot pass is a law to keep people from dying,
13 and those estates have got to be probated and handled and
14 yet, under the existing law if we can believe the multitude
15 of correspondence that we get, it is just almost impossible
16 to administer.

17 Besides that, the ramifications of the carry-over
18 provision are very, very severe and drastic and far-reaching.
19 So I would hope that the Committee this morning would approve
20 this amendment as an amendment to the Technical Corrections
21 bill to delay for three years -- not for three years, because
22 it is only less than two years now -- the effective date of
23 this proposal until 1979.

24 Senator Curtis. If the distinguished Senator would
25 yield?

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1 Senator Byrd. I yield to the Senator from Nebraska.

2 Senator Curtis. Mr. Chairman, I want to commend the
3 Senator from Virginia for his excellent work and the long
4 time he has spent on this. We cannot let this Act stand
5 as it was passed, neither can we blindly accept what
6 Treasury might suggest to do with it without hearings, and
7 lengthy hearings, and the people back home being appraised
8 of being done and have their chance to have their say in it.

9 This change in the carry-over basis that was made in this
10 Act was made under circumstances that is not the best legis-
11 lative practice. Perhaps all of us must share some of the
12 responsibility for what ultimately was done.

13 You are faced with a very practical situation when you
14 have some things desirable in a bill and you work for months
15 on them and then you come to an impasse in conference and
16 something is proposed and accepted and you do not like it,
17 but it turns out to be more disastrous than you had imagined.

18 Now this change in the carry-over basis is a major
19 change in tax policy or tax philosophy. It is a major
20 change in the economic system of our country. It vitally
21 affects many families. It is just not the idle rich. It
22 vitally effects the productive people who operate farms and
23 businesses and these other things. They have been done an
24 injustice by a major change in tax philosophy, and they have
25 never had a day in court.

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1 Frankly, I think the thing that we ought to do is
2 repeal it and then let those who have a proposal to reconsi-
3 der can present it, they can be cross-examined and explain
4 what it will do and then give the citizens of this land
5 their day in court.

6 I am very unhappy on what we did last time.

7 Now I think that we ought to, if that cannot be done,
8 the least that we can do is change the dates as the distin-
9 guished Senator from Virginia has suggested, but certainly
10 we should not make a decision as to what follows that post-
11 ponement. That is prejudging the case. That is giving
12 people a fair trial and then hanging them afterwards.

13 The Chairman. I am going to recognize Senator Haskell.

14 Senator Haskell: Mr. Chairman, I would like to support
15 Senator Byrd and his deferral. The principle of taxation
16 involved, there can be differences of opinion, but I do not
17 think that there can be much difference of opinion on the
18 fact that the way we structured it two years ago causes huge
19 and unnecessary administrative problems.

20 I have personally gone over a check sheet that one of
21 the banks from Denver puts out and it is three pages long,
22 to try to arrive at apportionment in settlement of an estate.

23 So I support Senator Byrd's proposal to defer, and I
24 would certainly support -- and I am sure the Senator intends
25 to hold additional hearings on various solutions. Would I

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1 be correct in that?

2 Senator Byrd. That is correct, yes.

3 Senator Haskell. I think that is very, very important.

4 With that commitment, I am all in favor of Senator Byrd.

5 The Chairman. Senator Hathaway?

6 Senator Hathaway. Mr. Chairman, I do not support a
7 deferral at all. I think in '76 we corrected an inequity in
8 the law that has remained too long, and I was happy to see
9 that it was corrected. However, I know there have been prob-
10 lems with respect to what we did in '76 and I know the
11 Treasury, although the argument has been made that no hear-
12 ings have been held, I know Treasury has worked with prac-
13 titioners and others interested in changes we have made and
14 I think that the bill that I have introduced answers all of
15 the objections that we know so far as far as the '76 changes
16 that have been made.

17 We are exempting all but 2 percent of the estates in this
18 country by having an expenditure of \$175,000. We put in a
19 formula that would help compute just what the basis would
20 be. We have allowed a \$25,000 exemption for personal
21 property; we have allowed a \$250 a year addition for home
22 repairs in lieu of actual records, and exactly how much
23 repairs have been made; and we have made an awful lot of
24 modifications to the '76 proposal that, as I say, meets with
25 all of the known objections that we have today.

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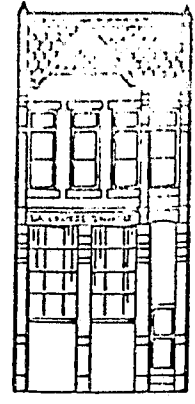
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1 However, I realize that the votes not to have the
2 deferral and to implement the plan that I am suggesting are
3 not here. I would like to suggest a compromise, that we
4 go along with Senator Byrd's suggestion of a postponement,
5 but at the same time enact these amendments to be effective
6 in two years, whatever the time is of the extension, and that
7 way we can hold hearings knowing that this bill is going to
8 go into effect two years from now, so that those who are
9 coming in to testify will have something in front of them,
10 knowing that it is going to go in.

11 If we just defer it, what I am afraid is going to
12 happen, we are going to have hearings for awhile, and when
13 the time comes two or three years from now, there is going
14 to be another move to defer and so on. But if there is
15 something held over the heads of those who are interested in
16 this estate tax revision, if they think it is imminent that
17 the suggestion I have made is going to go into effect two
18 years from now, then I think you are going to get a better
19 reaction from those who are interested in the change in the
20 law.

21 The Chairman. Senator Bentsen?

22 Senator Bentsen. Let me speak in opposition to that.
23 If it is inequitable, it is inequitable to everyone, not
24 just to 98 percent, but to 100 percent. I frankly believe
25 that the problem is not just what the American Bar Association



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Mr. Woods

Administration

Not necessary to keep records then. September 19, 1977

Restructuring is it possible?
How expensive?

The Honorable Gaylord Nelson
221 Russell Office Building
Washington, D. C. 20510

Dear Senator Nelson:

It has come to our attention that the Ways and Means Committee will be considering technical changes in the Estate and Gift Tax area early in the week of September 19th. This seems an appropriate time for us to voice our strong disapproval of the carry over basis law enacted as part of the Tax Reform Act of 1976.

The Tax Reform Act has unquestionably imposed some very complex duties and responsibilities on Executors of estates and probably the most complex lies in the area of carry over basis. Needless to say the officers of our corporation have spent many hours of reading, discussion and listening to lectures in an attempt to understand the full impact of the carry over basis law and how to implement its commands. Few, if any, can honestly say they fully understand the procedure to be followed for compliance. What we do understand is that we are appalled by the complexity and problems created for fiduciaries under carry over basis. We pity the individual executor who will, no doubt, have to pay healthy fees to his attorney for help and advice to comply with carry over basis in an estate that prior to 1976 would not have been that complicated.

The following situations represent some of the problems we have encountered or foresee encountering.

8 No rule
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← Chattels: Stamp collections, coin collections, or works of art create an impossible situation. The cost of each separate item in a collection must be ascertained and each item separately appraised so that the "fresh start" basis can be determined by the time-apportionment formula.

Securities: The problems of securing basis information for securities is mind boggling. The law allows for a step up basis for listed securities. This should seem to simplify, at least for pre 1977, the valuation of stock, but it doesn't. The Executor still must determine original cost basis for purposes of loss. The problem is compounded by the impossible task of proving basis for listed securities of stock splits, stock dividends, gifted securities, and dividend reinvestment programs. In our experience few deceased investors keep

apply fresh start for low as well.

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adequate records of pre 1977 investments to document their original basis. The same problems will occur for deaths after 1977 and will be further complicated by the fact that no step up basis will be afforded in these estates. Actual basis for post 1976 investments will be needed for gain and loss. There is no reason to believe that investors will keep any better records in the future than in the past. The fact is that individual investors are often times unaware of the effect of current law or the burdens it places on their executors and even if aware, very few understand its meaning.

The Closely - Held Stock: Many closely held businesses have little or no cost records to aid the Executor of his estate. *f. e. value of the gain*

Real Estate: Cost basis of real estate may not always be as difficult to discover as are basis for securities, but this does not help us as to values as to additions or improvements. Each addition is, of course, an addition for cost basis purposes. Finding the cost basis on each substantial improvement for purpose of time-apportionment determination of the "fresh start" value may be an impossible task. Even with the minimum basis step up of \$60,000.00, many homeowners in our community, due to the surge of inflation in real estate values, may find themselves with a step up basis situation even with comparatively modest estates.

Cost Basis Information: The Executor is required to provide cost basis information to the IRS and beneficiaries of all items in the gross estate and failure to do so may result in cash penalties. In some cases, the executor may have a nominal probate estate but be subject to penalties for failure to disclose to beneficiaries such data as to non-probate assets, such as joint and survivorship assets.

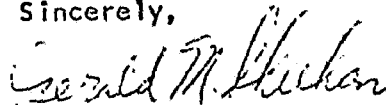
These are only a few objections that we have to the present carry over basis law and they are far from completely discussed in this letter. It is quite evident from our experience and understanding of this law that an estate with numerous holdings of routine assets may require pages of carry over basis adjustments. This paperwork would not even reflect the hours of searching the decedents records for information in order to make these computations. It has been our experience that quite often this information must be found, if it exists at all, within piles of papers spread throughout the decedent's residence. Even when a spouse survives, the spouse knows or remembers little of this information. If the information can not be found easily, must the Executor check every scrap of paper in the residence before he can give up looking? Then where does he turn to find out the basis information?

The amount of record keeping as a result of the new law is incredible. The Executor will have to keep track of up to four different valuation figures (i.e. date of death, 6 months value, original cost basis, step up basis) and each beneficiary at least two (i.e. one for loss, one for gain). If ever a law was passed which, in its practical application, is totally unworkable, this is it.

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We request that you consider this matter carefully and work toward repeal of the carry over basis law as enacted in the Tax Reform Act of 1976.

Sincerely,



Gerald M. Sheehan
Assistant Secretary

GMS:ck

cc: Honorable Al Ullman
U. S. House of Representative
Washington, D. C. 20515

Mr. Robert Beron
American Bankers Assn.
1120 Connecticut Avenue N. W.
Washington, D. C. 20036

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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, D.C. 20510

October 17, 1977

Dear Russell:

During the Committee's consideration of changes in the tax laws, no doubt there will be consideration given to changes in estate and gift taxes.

It has come to my attention that it is almost impossible to determine a decedent's carry-over basis in estates in which the acquisition of the asset was many years in the past. Often there are no records other than the decedents memory and, in addition, it is impossible to determine from other sources what the correct figures are.

Accordingly, I shall be grateful if during the consideration of changes in estate and gift taxes that you consider repealing the present carry-over basis and provide for reversion to the date of death basis. Such a change would alleviate considerably the difficulties in calculating the taxes on many old estates.

If you wish, I would be glad to provide a witness on the subject when hearings are held.

Please accept my kindest regards and best wishes.

Sincerely,


Wendell H. Ford

Honorable Russell B. Long
Chairman
Senate Finance Committee
Room 2227
Dirksen Senate Office Building
Washington, D. C. 20510

1 Real Estate Section says. They say that we believe this
2 legislation is a public disaster. The carry-over basis
3 provisions have created an administrative nightmare, increased
4 complexity, delay, and expense in processing estates.

5 That, I think, is correct. But I think they have gone
6 much farther than that. I want to go to the principle itself,
7 which I think is totally inequitable. People die involuntar-
8 ily the great majority of times. They do not choose to go
9 out there and make that transaction. They should be taxed
10 once instead of being taxed three times. They have a death
11 tax, they are going to have a capital gains tax, and then
12 they are going to have a preference tax, and it gets to a
13 confiscatory point.

14 Let me show you what has happened. You are talking about
15 a 70 percent maximum tax. The capital gains tax can now go
16 to 49.2 percent, then your preference tax, with what we are
17 talking about proposing now in the legislation that has been
18 sent down to us for the further elimination on credit for
19 taxes paid; when you get all through with that, plus the
20 estate taxes, what you have, you have something substantially
21 beyond 70 percent.

22 Now, how does that compare with the rest of the world
23 insofar as the taxes that we see on estates? We seldome
24 see those kinds of points made, but let me show you what it
25 is.

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1 In France, the rates for spouses and children range
2 from 5 to 20 percent. Other recipients, distant relatives,
3 we go from 35 to 60 percent. That is France.

4 Now, let us take Denmark. The rates there for children
5 and spouses, 2 to 32 percent, and if you get into non-rela-
6 tives and so on, it goes up to a much higher figure.

7 Belgium, spouses and children, 3 to 17 percent.

8 Austria, 2 to 60 percent.

9 Germany, 3 to 35 percent, spouses and children. If you
10 get to distant relatives, relatives, those who are not
11 relatives, taxes go up.

12 Great Britain, 75 percent.

13 I think that we ought to learn something about following
14 the tax system of Great Britain. George McGovern, when he
15 was running for President, came out with a limitation on the
16 passing of estates. The next morning he told me, after he
17 had made this great pronouncement that was going to be a
18 part of his Platform in running, the next morning he told me
19 that he was walking through a factory and one of the workers
20 said, Senator, I do not know about this provision of yours,
21 that limitation. He said, I really do not think that is
22 right.

23 He said, then they ran their public opinion polls and
24 found that the public did not think that that was right,
25 either. George says, I do not know what he thought he was

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1 going to do, hit some great national lottery? But never-
2 theless, they did not like it.

3 I do not think that the public supports it. I think it
4 is confiscatory and I frankly think that we ought to have
5 the repeal of it. I will vote for repeal; I will also vote
6 for deferral.

7 Senator Byrd. Mr. Chairman?

8 Senator Hathaway. I just want to make a point. We are
9 really not talking about estate taxes, we are talking about
10 the appreciation on the gain of a person while he is living.
11 The accident or chance that he settles the day before he
12 dies allows him -- not him, but his heirs -- escape a great
13 deal of taxation.

14 Senator Byrd. Mr. Chairman, I do not like to oppose
15 a matter introduced by Senator Hathaway. I know how sincere
16 and conscientious he is. But, Mr. Chairman, if we support
17 this proposal today, we will be doing almost precisely what
18 the conferees did a year or so ago when they accepted a
19 proposal without hearings on it, without knowing the ramifica-
20 tions of it.

21 I do not think anyone -- I ought to change that; there
22 may e some who do. I do not think that many of us know
23 what is in this proposal of Senator Hathaway's. It came to
24 my office on Wednesday and this is Friday morning.

25 Are we going to be asked to vote on an immensely

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1 complicated piece of legislation? Senator Hathaway himself
2 said that there are many modifications in this proposal.
3 We do not know what the modifications are. No hearings have
4 been held on this proposal.

5 I understand that Treasury and some members of the Bar
6 have been working on it. That does not mean that the Bar
7 Association or the individuals in the Bar approve it.

8 I have, before me, a memorandum, an unsigned memorandum,
9 which the Treasury gave at the meeting of the meeting of the
10 staff of individual Senators of this Committee, the Finance
11 staff and the staff from the Joint Committee on Internal
12 Revenue that was in November, 1977. It says this: "In
13 point of fact, the staff and the Bar have worked out a
14 program of simplification which is before the Senate Committee
15 and can be enacted at this time."

16 That was totally incorrect in November of 1977. The
17 fact that the Bar may or may not be for it today is con-
18 jectural. No member of the Bar has communicated with me and
19 said that this proposal is a fine proposal and satisfactory.

20 I can testify that this is an immensely complicated
21 subject. I have held hearings on this right in this room.
22 Attorneys and accountants from all over the United States
23 came here and as hard as I worked on my proposal, as hard as
24 I worked on that, after it was drawn up and introduced, I
25 found a lot of complications with it. The many members of the

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1 Bar and others felt that we were complicating the factors in
2 there.

3 I would like to have my proposal considered. If we are
4 going to try to work out today too many modifications of this
5 very complex piece of legislation, and I want to suggest
6 that this carry-over basis provision dealing with the
7 estate tax laws affects everyone in our country except there
8 who have eternal life. I am not sure that there are very
9 many in that category.

10 The Chairman. I would like to call on Senator Hansen.
11 Senator Hansen. I would be happy to yield to Senator
12 Haskell.

13 Senator Haskell. I would like to ask Senator Byrd a
14 question. In your hearings on this matter, would you hold
15 hearings on the Hathaway bill along with the Byrd-Dole
16 bill?

17 Senator Byrd. Absolutely. By all means. I would not
18 want to hold hearings unless Senator Hathaway's bill was
19 included on the agenda.

20 Senator Ribicoff. If the Senator would yield, why take
21 action now until we have a hearing on both the Hathaway
22 proposal and the present concept? It seems to me that we
23 went through a major reform in 1976. Before you can turn
24 around, we are postponing it for a few years.

25 There was a reason for the reform, and if Senator

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1 Hathaway has a compromise proposal, I think we should have
2 an opportunity for having some testimony on Senator Hathaway's
3 proposal and then we can move immediately to consider whether
4 we want the Byrd proposal or the Hathaway proposal.

5 The Chairman. Senator Hansaen?

6 Senator Hansen. Mr. Chairman, I think that it would not
7 be inappropriate first to recall a story that was told by
8 Max Clealand at the Prayer Breakfast yesterday. He said that
9 the emergency suicide help, 24-hour phone service, received
10 a call from a person and they put him on hold. In a little
11 while they got back. They said, we think that the idea you
12 have to commit suicide is good, and it should be followed
13 through.

14 I say that, because what Senator Byrd has said and
15 what others have said certainly is true -- that people do not
16 have any control over the time that death occurs to most of
17 them.

18 I think that there are several important things to
19 consider. I sat through some of the hearings that were
20 chaired by Senator Byrd last year and, without exception,
21 people from every part of the country, from the east, north-
22 east, west, told exactly the same story, that this law is
23 pure, sheer, unadulterated disaster. There is no way,
24 absolutely no way, that much of the estate that is transferred
25 can be traced back with any degree of accuracy at all to

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1 determine what the value was actually. That is not what
2 the problem is. It is part of the problem. It is a very
3 severe and real problem for lawyers and accountants, but it
4 is also a fact that something else has been happening since
5 that \$60,000 exemption was instituted in 1942.

6 We have had one very enormous amount of inflation. In
7 the report that was prepared by the Joint Committee on Taxa-
8 tion dated December 29, 1976, and I read from it: "The
9 reasons for the change are first: the amount of the estate
10 tax exemption was established in 1942. Since that date, the
11 purchasing power of the dollar has decreased to less than
12 one-third of its value in 1942. To some extent, this effect
13 has been mitigated by the addition of a provision for a
14 reduction in 1948.

15 "Despite this change in 1948, the inflation that has
16 occurred means the estate tax now has a much broader impact
17 than it did originally."

18 The point being this -- that with the taxes that were
19 alluded to in detail by Senator Bentsen, you cannot start
20 to come out anywhere near even with what may happen represen-
21 ted in terms of purchasing power when an estate goes through
22 the estate tax process.

23 I think that there is every reason to repeal the tax.
24 I recognize that there are those who recognize the impor-
25 tance of not acting too hastily, so while I join with Senator

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1 Byrd enthusiastically in saying let us postpone the effective
2 date until December 1, 1979, which I think is good, I really
3 would hope that the whole thing would be repealed, and all
4 of the people that are -- practically every organization,
5 any reputable organization that was here that testified, all
6 have been on record in saying that this just was really a
7 bad law.

8 So I would hope very much, at least, Mr. Chairman, this
9 morning, that we would pass the Byrd proposal to postpone
10 the effective date of this law until December 31, 1979.

11 The Chairman. Senator Hathaway?

12 Senator Hathaway. I just want to say something that
13 Senator Byrd said, that he did not have this until Wednesday
14 and therefore we should not be voting on it Friday. Actually
15 those were just slight amendments to the original bill.
16 The original bill went in last October and the modifications
17 in the bill submitted on Wednesday were very slight.

18 I understand that all of the staffs of all of the
19 members have been briefed by Treasury so everybody knew
20 about it -- at least all of the staffs have known about it --
21 so it has been in existence for several months.

22 What I am afraid of, Mr. Chairman -- I would like to
23 re-iterate what I said before -- that we do not have any
24 bill to take effect in 1979, that there is going to be another
25 move, a very strong move, simply to postpone again at that

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1 time two years from now.

2 If we have this attached to the Byrd suggestion, then
3 everybody will know that, unless we change it, that is
4 going to be the bill from that time forward, and that will
5 prompt more people to come in. I think we will get better
6 testimony and we will get a greater variety of people coming
7 in who are interested in this; knowing full well that it is
8 going to go into effect, they will want to come in and make
9 whatever suggestions they want for modification.

10 I should mention further, I understand from the Chair-
11 man of the Ways and Means Committee that he is adamantly
12 opposed to any extension whatsoever, so when we go to
13 Conference on this matter, we are going to run into a stone
14 wall.

15 I do think he would accept some kind of compromise as
16 I am suggesting.

17 The Chairman. Senator Dole?

18 Senator Dole. I do not want to belabor it. I think
19 it probably has all been stated before I arrived. I think
20 the point that ought to be made is that we have deferred
21 other provisions of the bill, Section 911 and others, that
22 were stuck in at the Conference that we did not have full
23 knowledge of and there have not been any hearings on this
24 until this year, after the fact; after it became a part of
25 the law is when we had the hearings. We did not have any

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1 extensive hearings, and I would only say it ought to be
2 called the Lawyer's Relief Act of 1976. It has done a great
3 deal for the legal profession.

4 I just picked out a few letters from Kansas, Hawaii,
5 North Carolina, Utah, New York State Bar Association Tax
6 Section, where they all criticize the complications and the
7 difficulty that they have had with carry-over basis.

8 It just seems to me that this is another instance where
9 we have a very serious difference of opinion, that it might
10 be the better part of wisdom to defer, as Senator Byrd have
11 suggested and others of us have suggested. Maybe we can
12 figure out some common ground.

13 I agree with Senator Bentsen and others that would vote
14 for repeal, but I think that the middle ground now is defer-
15 ral. It is neither repeal or the Hathaway proposal, but
16 some middle ground, the middle ground is deferral.

17 If we have a three-year deferral, I think we would have
18 enough time to work out --

19 Senator Curtis. It is really just two years.

20 Senator Dole. Two years.

21 The Chairman. We ought to hear the Treasury position
22 on this.

23 Mr. Lubick. Mr. Chairman, I think that Senator Byrd's
24 points are well-taken. There are many, many difficulties
25 with the law passed in 1976. We relaized that early on.

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1 Indeed, Senator Byrd's bill proposed remedies for many of
2 these deficiencies.

3 In our testimony before Senator Byrd we indicated that
4 he had done an excellent job.

5 In that interim since passage, we have been working
6 very, very hard with members of the Bar, with members of
7 the accounting profession, with the professional fiduciaries
8 handling estates. We have worked with the committees of
9 the American Bar Association, the State Bar Association
10 We have been travelling around the country meeting with
11 lawyers and, as a result, we have produced a significant
12 package, the principle elements of which are embodied in
13 Senator Hathaway's bill and many of those indeed are similar
14 to the bills of Senator Byrd and Senator Dole.

15 These provisions, I think we have been informed by the
16 Bar groups, largely take care of the administrative diffi-
17 culties and complications caused by the 1976 act. There
18 are many members of the Bar who, on principle, disagree, as
19 does Senator Bentsen, with the fundamental concept of
20 carry-over basis.

21 Nevertheless, given that concept, I think I have never
22 seen any provision worked over so thoroughly with so much
23 input from the Bar. It is not that we have been waiting for
24 them to come in; we have sought them out. We have gone
25 around the country and I think we have produced what the

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1 members of the organized Bar, as well as individual
2 practitioners, have told us is an administrative solution
3 to the difficult problems.

4 The important thing that the Bar needs now is something
5 to study. If there is to be deferral, there is not any
6 real point in having on the books that which you have
7 labelled a disaster, and indeed, we concur that that should
8 not be on the books.

9 The important thing is that those persons who have
10 estates under \$175,000 who would be releaved under Senator
11 Hathaway's bill, Senator Byrd's bill, Senator Dole's bill
12 should know that they do not have to plan around carry-over
13 basis. It will be taken off completely.

14 Those who are over \$175,000 know that they would have
15 to deal with a simplified version and they will be able to
16 make their plans accordingly. If the Senate, after further
17 study, decides to make some changes, at least they will be
18 operating from a base which is within the realm of reality.

19 I think members of the Bar have told us that they
20 really need Senator Hathaway's bill in order to do their
21 planning.

22 Senator Curtis. If you would yield right there for a
23 question. As late as November the Tax Section of the
24 American Bar Association took action. They had three
25 choices: first, they favored repeal; second, if they could

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1 not have that, the next choice was Senator Byrd's proposal;
2 and then, if none of those things could happen, they would
3 support this proposal of the Treasury which does not deal
4 with the impact of the tax, the tax philosophy or economic
5 philosophy, but merely deals with the mechanics.

6 They did that as late as November.

7 Senator Byrd. Would the Senator yield at that point?

8 Senator Curtis. Yes.

9 Senator Byrd. What the Senator says, as far as I can
10 see, corresponds with the information that I have, with one
11 exception. Every witness who came before the Subcommittee
12 to testify said that they would support a proposal to make
13 the bill more workable and would like to see that done, but
14 there was no way in the world it could be made more workable
15 unless the grandfather clause were included.

16 And the Treasury, as I understand it, opposed
17 grandfather clause, and I will ask Treasury and Senator
18 Hathaway whether the Hathaway proposal includes the grand-
19 father clause.

20 Mr. Lubick. It does not include a grandfather clause as
21 your bill does. We continue grandfathering of all apprecia-
22 tion through 1977 through the fresh start adjustment, but not
23 individual assets.

24 Senator Byrd. Let me ask you a question, if I may, at
25 that point. I do not know how many members of the Committee

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1 have had an opportunity, because it takes time to read a
2 letter that Dean Griswold wrote the Committee. We all know
3 he was Dean of Harvard Law School, he was Solicitor-General
4 of the United States, just a very superior, outstanding
5 individual who has the best interests of the country at
6 heart. I think we can all say that.

7 His entire estate is involved in a stamp collection.
8 He has an invalid wife. He is depending upon, when he dies,
9 the stamp collection to support his widow and he says that
10 it is totally possible -- he wants to obey the law; I think
11 most American citizens want to obey the law -- it is totally
12 impossible for him or for his executors to make an appraisal
13 under this carry-over basis proposal, going back 40 years, 35
14 years, 30 years, 20 years, he has been collecting this over
15 a long period of time.

16 That is just one example. There are many examples of
17 individuals who have accumulated assets over various periods
18 of time for over a long period of time. Unless you grand-
19 father that in, it is going to be virtually impossible, in
20 many cases, to determine what the original basis was.

21 So that I think that you would find -- and I am not
22 sure that you would deny this statement -- I think that you
23 would find that virtually all of these people who discuss
24 this bill, when they say they will accept modifications
25 and would go along with that, also say that they cannot accept

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1 any bill that does not grandfather-in these assets accumulated
2 over a long period of time, for which there are no records.

3 Mr. Lubick. Just yesterday, I spoke orally to the
4 Chairman of the Tax Section of the American Bar, Mr. Canal,
5 and he said that they would find a combination of deferral
6 and the Treasury proposals an acceptable basis for them.

7 I asked them, am I authorized to say that, and he said
8 yes. Indeed we have been talking with lawyers, bankers and
9 generally they have -- obviously, they have some differences
10 among themselves, and there are decisions that have to be
11 made where fiduciaries want to get rid of responsibility and
12 the lawyers want to give discretion.

13 But those are problems that you will never satisfy
14 everybody 100 percent, but I think Senator Hathaway has
15 given great relief, in particular, for the situation about
16 which Senator Bentsen was worried, because this tax adjust-
17 ment, credit is given for the estate tax and this apprecia-
18 tion when the asset is ultimately sold after death at the
19 highest bracket in the estate.

20 The 1976 law gave it only on an average rate, and
21 indeed, that pretty much doubles the relief in the adjustment
22 and it is a very fair way and a theoretically correct way to
23 handle it.

24 I think that Senator Hathaway has given relief by the
25 \$175,000 minimum basis which I think would be very helpful

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1 to Dean Griswold. It is a \$25,000 which he has put in as
2 to personal property, as a provision in there to give
3 liberal relief to residences.

4 I think, by and large, the difficult situations that
5 have come to mind after four or five months of the most inten-
6 sive study have all been taken care of in Senator Hathaway's
7 bill.

8 Senator Hathaway. Mr. Chairman, on the stamp collec-
9 tion problem; the bill takes care of that because you have
10 to evaluate the stamp collection, on any other asset in the
11 estate, you have to come to some value. Then you simply
12 use the formula 6 percent per year, discounted back to
13 December 31, 1976 and if we go along with your postponement,
14 December 31, 1979.

15 There is no problem on evaluation. You only have to --
16 you go back to the time when the asset was purchased if it
17 was after that date.

18 Senator Byrd. Your proposal, Senator, may be the finest
19 proposal that has ever come before the Congress, but, never-
20 theless, we do not know that at this time.

21 Senator Hathaway.. I am answering your particular ques-
22 tion on the particular evaluation of what the stamp collection
23 is worth \$100 when it is a year old, you take 6 percent, so
24 it would be \$94.

25 The Chairman. I feel a little bit like the audience

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1 coming here to see what is going on, because I am a little
2 bit confused about where we do stand with respect to these
3 different proposals. It was not my privilege to be in on
4 the hearing. I recall how this thing got into law; I was
5 there when it happened.

6 I must say, when I go to the average person and talk
7 to them about what we did with the inheritance tax back in
8 1976, they start raising the dickens about it. They cannot
9 believe, they are absolutely shocked when I tell them that
10 all of this happened because the conservative Senator from
11 Nebraska -- a Republican, by the way -- insisted on some-
12 thing to provide some relief from the inheritance tax for
13 rank and file people.

14 He was determined that something had to be done to
15 help the family and the small businessman. The whole thing
16 occurred out of an effort by a dedicated man to try to
17 provide relief for taxpayers.

18 Senator Curtis. Mr. Chairman, I think you should point
19 out, however, that the bill that passed the Senate did not
20 have this carryover basis in it.

21 The Chairman. The point is that people are shocked when
22 they hear that all of this happened because the conservative
23 Republican Senator on the Committee, trying to give some
24 relief to downtrodden taxpayers from some injustices and
25 inequities in the estate tax, insisted on taking the bull

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1 by the horns and just trying to do something about it.

2 Would you mind explaining, Mr. Lubick -- maybe it would
3 be good to put it up on the blackboard -- why you think the
4 situation that you were trying to correct here is a loophole
5 that we try to do something about it, so we can look at
6 what the basic problem is with regard to the argument by
7 them against the conservatives.

8 Mr. Lubick. I think I can give you an illustration of
9 two decedents. Under the prior law, before the 1976 Act, --
10 we can call one of them A, one of them B, and let us
11 assume that each of them owns a share of stock that is
12 worth \$110, and each one paid \$10 for it, and the basis
13 cost was \$10.

14 Let us assume that each one is subject to a capital
15 gains rate of 25 percent and each one is in the 30 percent
16 estate tax bracket.

17 The illustration we gave is a situation where A sells
18 his stock and as he is leaving his broker's office he walks
19 in front of a truck and was run over and killed; and B, at
20 the same time, was in the broker's office and was run over
21 by the same truck.

22 As a result of that double disaster, A's estate, after
23 filing the final tax return, and he had a capital gain of
24 \$100 and he paid \$25, which is subtracted from his \$110.
25 A had a capital gains income tax of \$100, Mike, in your third

1 line, so his tax was \$25.

2 If you pull the \$25 off the \$110, he is left with a net
3 proceeds of \$85, and on that he pays a 30 percent estate
4 tax and that leaves his heirs with \$59.50, 30 percent of
5 \$85 leaves a difference between \$59.50 and \$85. So the
6 net proceeds to the heirs is \$59.50.

7 All right. B, who was on his way into the broker's
8 office but never made it because of the truck now is taxed
9 no capital gains tax at all, pays 30 percent on \$110, the
10 estate tax, 30 percent estate tax, and his heirs are left
11 with \$77.

12 Now, those two gentlemen are in essentially the same
13 situation but, under the prior law, the heirs of B would
14 come out with \$77 and the heirs of A have a little under \$60.

15 That is basically what we were trying to correct.

16 Senator Curtis. If you would yield right there for a
17 question, basically what you are trying to do is something
18 that the Congress and the Committees have never met in the
19 front door and told the people they were doing, was to apply
20 the capital gains tax at death whether the property was
21 sold or not.

22 Mr. Lubick. No, Senator.

23 Senator Curtis. Is that not it?

24 Mr. Lubick. No, sir.

25 Senator Curtis. Is that not the gist of your illustration?

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1 Mr. Lubick. That is the gist of how well the heirs
2 come out, but there is no tax imposed until the sale is
3 actually made by the heirs. The same thing that has been in
4 the law under the gift tax and under income respective to a
5 decedent, Section 691; from time immemorial, we have always
6 applied the same rule for the carryover basis. Income tax
7 consequences are not affected one way or the other by the
8 making of a gift or by the passage of income in respect to
9 the decedent where there has been installment, so, for
10 example, the same principle, on equitable grounds, ought to
11 apply because of death.

12 Senator Curtis. The whole gist of your illustration
13 here, that B ought to pay a capital gains tax --

14 Mr. Lubick. No. What we are talking about here is
15 what is the ultimate effect on A's heirs or B's heirs when
16 they sell the particular item of property, and the fact that
17 B died should not eliminate this liability for income tax
18 that exists in the appreciation which happened to exist at
19 his death.

20 Senator Curtis. That is what I say. What you are trying
21 to do there is impose a capital gains tax at death.

22 Mr. Lubick. Not at death, subsequent to that, when it
23 is sold.

24 Senator Curtis. I know. In most instances, a great
25 deal of property has to be sold at death, especially with all

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1 of this tax.

2 Mr. Lubick. You see, Senator Curtis, under the prior
3 law, the fact was that one was completely relieved of capital
4 gains tax simply by waiting until death led to a very great
5 lock in. Persons would simply hold on to their assets, not
6 sell them --

7 Senator Curtis. What you are arguing for is a capital
8 gains tax at death. Let all of the taxpayers, large and
9 small, come here and have their day in court.

10 Mr. Lubick. What we are suggesting is death should not
11 be a complete relief from capital gains taxation. It is not
12 what we would tax at death. What we are saying is whether
13 a person lives or dies, ultimately when the property is
14 sold and the gain is realized, the tax ought to be paid.

15 Senator Bentsen. Mr. Chairman, may I comment on that?
16 I am trying to figure out how death is such a relief here.

17 Those of us who have practiced a little law in years
18 past and have drawn wills, we never have somebody come in and
19 say, when I die; they always say, if I should die. No one
20 chooses it, except in a really rare situation.

21 Now, you take the situation of this that he cited, and
22 to try to say that there is an inequity there overlooks the
23 other side of the capital gains deal. A sale is made and
24 capital gains are paid and then you have changed your asset.
25 You have taken something that may have been held a long time

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1 and you decide that you want diversification. So all of a
2 sudden you have developed diversification.

3 Maybe you are taking a raw piece of real estate that
4 is not income bearing, and you have sold it and you have paid
5 your capital gain, but then you may put it in a myriad of
6 things. You may put it in income property, or you may put
7 it in a diversified stock portfolio and you may put it into
8 municipal bonds.

9 I can take another situation and say, suppose somebody
10 had been building their estate out of municipal bonds and
11 paying no tax and then they die and there is an estate tax
12 and they escape the income tax?

13 A price is paid for each of these things in a voluntary
14 conversion. So this person who decides to keep something
15 and not sell it and then dies has a locked-in asset but
16 denied diversification; a person on the other side sells it
17 and gets his diversification, so that he has an advantage,
18 he has a plus there.

19 And to say that the inequity results in \$11.50, really
20 does not add up and does not weigh all of the advantages and
21 pluses in converting assets during a person's lifetime.

22 The fact that a person has died, that they could have
23 paid up to 75 percent tax is a substantial payment to the
24 government.

25 The estate taxes in this country are some of the highest

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1 that you see around the world. In effect what they are talking
2 about doing is raising them some more. They are talking
3 about doing it, whether it is a capital gain paid six months
4 later because they have to liquidate to pay the tax, or a
5 year, year and a half, there is another tax; and the preference
6 tax, there is another tax on top of that.

7 I just do not think it is fair.

8 The Chairman. Senator Matsunaga.

9 Senator Matsunaga. Thank you, Mr. Chairman.

10 Are we not forgetting, Mr. Chairman, something which
11 the representative of the Administration forgot to mention
12 in this example is what is good social policy, and that is
13 what we are concerned with here, and the social policy, as
14 we have established it in our tax system, one calls for
15 trying to prevent the accumulation of wealth in the hands of
16 a few.

17 Secondly, to give those who happen to be born of poor
18 parents a better chance along with those who happen to be
19 fortunate to be born of rich parents; and thirdly, on the
20 basis of the income, income tax is based on ability to pay.

21 And I think that the proposal as put forth by the
22 Treasury is something that I can buy, because I think that it
23 complies with these principles of establishing sound, social
24 policy.

25 However, I am a new member of the Committee. I accept

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1 the proposition that we have not had hearings on this. We
2 ought to hold hearings.

3 And I would be willing to compromise what I consider to
4 be based on social policy with the idea of postponing for a
5 couple of years to hold hearings to get a sound basis for
6 a proposal such as that the Treasury proposes, or that
7 Senator Hathaway proposes.

8 I think that in our deliberations we must not forget
9 those basic social policies towards which our entire tax
10 system is directed, and I feel that the Treasury is acting
11 on a sound basis.

12 That is all.

13 Senator Haskell. Mr. Chairman, I would like to associ-
14 ate myself with Senator Matsunaga's remarks. I think he is
15 right on target. I do not think that this is the time to be
16 discussing the merits. I would hope that we could vote on
17 Senator Byrd's proposition; if it loses, we have to go to
18 something else.

19 I think we can talk until the cows come home here, and
20 I am not sure that it is very productive without having had
21 hearings on the bill ahead of time.

22 To do so, I would like to move Senator Byrd's proposition
23 to a vote, Mr. Chairman.

24 The Chairman. Let me just make one suggestion about this
25 matter. I could vote for Senator Byrd's amendment and I could

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1 really, in good conscience, vote either way about the
2 Hathaway amendment and your suggestion.

3 I would assume that Senator Byrd, and everybody who
4 supports the Byrd amendment, wants to get some results. They
5 are not just tilting with windmills here. They want to do
6 something effective.

7 Here is what I suspect is going to happen if we do not
8 agree with this Hathaway amendment. A bill comes out of the
9 Floor, and I really thought that we could have made a more
10 impressive case on tax avoidance on Taxpayer B. I thought you
11 put an illustration on the board which showed that Taxpayer
12 B was paying nothing. Can you show examples like that, paying
13 zero?

14 Mr. Lubick. There is nothing that has been paid on the
15 capital gains. The estate, if you repeal the estate tax, we
16 would have zero, but the capital gain is really a separate
17 tax.

18 The Chairman. The point is, I was fully expecting to
19 see you put an illustration, a far better illustration of
20 your argument on the board.

21 Mr. Lubick. Basically, what you did in the '76 Act
22 with your liberalized marital reduction was to permit a zero
23 tax on an estate of about \$225,000 when you add the \$250,000
24 marital deduction to the \$175,000 basic exemption. So I
25 was taking one simply to illustrate the numbers. In many of

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1 these cases, there may well be no estate tax.

2 The Chairman. That may be, but what I anticipate, if
3 we take the Byrd amendment and we do not take the Hathaway
4 amendment, we go out on the Floor and the liberal forces
5 rally there and they fight against this matter, and so that
6 delays it, and then, let's say eventually we get the matter
7 to a vote sometime between now and when Congress adjourns,
8 and we finally get to the House side, at that point, Mr.
9 Ullmann, who insisted on putting in this thing to begin with,
10 when we were in conference before, will not take the amend-
11 ment and his conferees over there back off onto high ground
12 and refuse to accept it, so nothing happens.

13 Or perhaps the things gets down to the White House. By
14 the time they stop squabbling about the matter, it has
15 attracted enough attention in the press and elsewhere till
16 where it goes down and the Treasury asks the President to veto
17 the bill. Then we have accomplished nothing.

18 On the other hand, if we take the Byrd amendment with the
19 Hathaway amendment you get your postponement up to 1979. We
20 can look at the matter during the course of a tax reform
21 bill. We have the opportunity to study this matter in greater
22 depth. All the tax experts in America can give us their
23 advice, and if the Hathaway proposal is not the best thing
24 to do, it would not be going into effect until 1979 anyway
25 so, by that time, if it looks like, on balance, that it is not

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1 the best thing to do, we do not need to do that, we can do
2 something else.

3 But, meanwhile, the relief that Senator Byrd is proposing,
4 which I think has merit, to postpone, which I think is
5 meritorious would be the law and we would have an opportunity
6 to look at what is going to be the law a couple of years down
7 the road, which Treasury thinks is about the best approach
8 in terms of getting something done.

9 My impression is that if we agree to the Hathaway amend-
10 ment to the Byrd amendment, that we are going to get some-
11 thing done, and if we do not agree to it, my impression is
12 that we are going to make a lot of noise here. We will have
13 a good debate and we will have to go out on the Floor with
14 acrimony and when it is all finished, what happens? Nothing
15 but conversation.

16 For my part, I am finding a lot of appeal with Senator
17 Byrd's amendment. I really think that if I wanted it to
18 become law, I would come near making it law by you, Senator
19 Byrd, by voting for the Hathaway amendment, because that way
20 I think you are going to get your amendment.

21 Senator Byrd. Mr. Chairman, when I went to work 40
22 years ago, the man who employed me said, do not worry about
23 making mistakes, just do a good job. Any honest mistakes,
24 you are not going to get fired for. And I said, by golly,
25 that is great. Thank you very much indeed.

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1 He said, but, I have one admonition. If you make the
2 same mistake twice, you are fired.

3 Now, two years ago I voted for legislation because the
4 experts in the Treasury and the experts on the staff said
5 this was a fine piece of legislation. I did not know what
6 was in it. I would like to know what is in this. I would
7 like to hold hearings on it. I would like to know what the
8 legal community thinks of it. I would like to know what
9 the accountants and certified public accountants and estate
10 people who have to handle that every day, I would like to
11 know what is in there. I do not want to buy a pig in the
12 poke. I do not have the slightest idea what is in that
13 legislation.

14 If we are going to try to correct all of the inequities
15 in the carryover basis provision, it is going to take a long,
16 long time. It is going to take a lot of hearings. In the
17 meantime, people are dying. In the meantime, estates are
18 going to be held up. They have been held up now for some
19 months.

20 It seems to me that this Committee ought to act one way
21 or the other. If they want to keep carryover basis on the
22 books and the Congress does, they have the right to do it.

23 I propose that we postpone the application of it until
24 we have an opportunity to hold hearings on Senator Hathaway's
25 proposal, and to hold hearings on my proposal, which, I think,

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1 is a reasonably good proposal. Others may not think so, but
2 I think so. There are many other proposals that I know that
3 we would like to have be considered.

4 I would urge the Committee to accept Senator Haskell's
5 motion and either vote up or down on my proposal to postpone
6 until the end of 1979 the effective date of carryover basis.

7 Senator Hathaway. As the Chairman has pointed out, as
8 a practical matter, you are not going to get that to happen,
9 because the House is just going to be adamant on it. Assuming
10 that you went on the Floor and it prevails without my amend-
11 ment and it goes to Conference, then either they are going
12 to be adequate and you are going to be stuck with December
13 31, 1976 date. That will be the effective date until it is
14 repealed.

15 I do not think the House will go along with repealing,
16 but I do think they will go along if they know that we have
17 the Treasury's suggestions incorporated. I think they would
18 go along with the extention you propose.

19 Senator Byrd. The House membership has the same consti-
20 tuency that the Senate membership has, the constituency of
21 the Senate membership has made clear to many, many members
22 of the Senate that the carryover basis provision, as it is
23 now written, is a disaster. It is a disaster.

24 I cannot conceive that the House people could view it
25 so totally different from the way many members of the Senate

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1 vote. I do not think we would assume that the House will
2 not pass it.

3 Senator Hathaway. It will not get to that stage,
4 because the House has already passed the Technical Corrections
5 Bill. Now it is before us. The next step is to go to
6 Conference.

7 If the conferees are adamant and will not go along with
8 us, it will never get to the Floor of the House for a vote.

9 Senator Byrd. We have no way of knowing whether the
10 conferees will be adamant or not.

11 Senator Hathaway. I talked to Chairman Ullmann this
12 morning and he told me that he was adamant. I said, what if
13 we take my amendment as opposed to yours, and he said, well,
14 he thinks it would be a pretty good compromise.

15 Senator Byrd. He is a very fine man. I like him very
16 much. He has tremendous power. But he is not the only
17 member that makes up that conference committee.

18 Senator Roth. The Chairman made the valid point of how
19 do we get something done in this area. I would like to raise
20 this question to you, Senator Byrd.

21 Why is this necessarily the best vehicle? If I under-
22 stand what people are saying, that this bill is subject to a
23 veto, would it not be better to put this on the tax cut?

24 Senator Curtis. Or both places.

25 Senator Byrd. I think that this bill is before us now,

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1 the Technical Corrections bill. The longer you put off,
2 the longer this Committee puts off, the longer the Congress
3 puts off doing something about a piece of legislation that
4 almost everybody says is totally unworkable and is a disaster,
5 the greater the disservice we are doing to hundreds of
6 thousands of people all around this country.

7 We can put it off, no problem about that.

8 Senator Roth. Of course, you have two bites of the
9 apple, too. If you do not carry it on this, you can always
10 try again.

11 The Chairman. Are you offering yours as an amendment?

12 Senator Hathaway. Yes.

13 The Chairman. I suggest that we vote on the amendment
14 to the amendment.

15 Senator Hansen. Mr. Chairman, before we vote, if I
16 may say one word about the Hathaway amendment before we vote
17 on it, I know it is awfully easy for members to quote what
18 Chairman Ullmann says or anyone else says. I have been
19 involved with some energy conferences last fall and informal
20 conferences this year, and I just have to say that they do
21 not always succeed in calling every shot exactly right over
22 there. There were all kinds of statements about what kind of
23 bill we were going to have, and we do not have a bill yet.

24 And I am not so sure what the Treasury's position might
25 be insofar as it would be reflected by White House Actions,

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1 and I am not so sure whether Chairman Ullmann may be.

2 Another important and distinguished member of the House,
3 Chairman Moe Udall had some great ideas in revising the mining
4 laws. He changed his whole position. He was asked, what
5 happened?

6 He told the story about Senator Ashurst who had some
7 great ideas about other changes a number of years ago.
8 Someone said to him, did you see the light? He said no, I
9 felt the heat.

10 The Chairman. Let us vote on the Hathaway amendment.

11 Senator Byrd. May I ask Senator Hathaway a question?

12 How would you like to amend your proposal to put a
13 grandfather clause in?

14 Senator Hathaway. Which would do what? All wills
15 drawn up at the present time?

16 Senator Byrd. It would not affect any estates where
17 the person dies before the effective date of enactment.

18 Senator Hathaway. I do not think so at this time. Let
19 me discuss this with you further and maybe we will take it
20 up on the Floor.

21 The Chairman. All in favor of the Hathaway amendment,
22 please raise your hands.

23 (A show of hands.)

24 The Chairman. Those opposed?

25 (A show of hands.)

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The Chairman. The amendment fails to carry.

Senator Byrd. I would like a roll call vote on my amendment.

The Chairman. Call the roll on the Byrd amendment.

Mr. Stern. Mr. Talmadge?

Senator Byrd. Aye, by proxy.

Mr. Stern. Mr. Ribicoff?

Senator Ribicoff. No.

Mr. Stern. Mr. Byrd?

Senator Byrd. Aye.

Mr. Stern. Mr. Nelson?

Senator Byrd. Aye, by proxy.

Mr. Stern. Mr. Gravel?

Senator Gravel. Aye.

Mr. Stern. Mr. Bentsen?

Senator Bentsen. Aye.

Mr. Stern. Mr. Hathaway?

Senator Hathaway. No.

Mr. Stern. Mr. Haskell?

Senator Haskell. Aye.

Mr. Stern. Mr. Matsunaga?

Senator Matsunaga. Aye.

Mr. Stern. Mr. Moynihan?

Senator Moynihan. Aye.

Mr. Stern. Mr. Curtis?



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1 Senator Curtis. Aye.

2 Mr. Stern. Mr. Hansen?

3 Senator Hansen. Aye.

4 Mr. Stern. Mr. Dole?

5 Senator Dole. Aye.

6 Mr. Stern. Mr. Packwood?

7 (No response)

8 Mr. Stern. Mr. Roth?

9 Senator Roth. Aye.

10 Mr. Stern. Mr. Laxalt?

11 (No response)

12 Mr. Stern. Mr. Danforth?

13 Senator Danforth. Aye.

14 Mr. Stern. Mr. Chairman?

15 The Chairman. Aye.

16 Senator Curtis. Laxalt votes aye.

17 The Chairman. The amendment is agreed to.

18 Do the members desire to discuss the other provisions
19 of the bill, or shall we just vote on the bill as amended?

20 Senator Haskell. Mr. Chairman, I have two proposed
21 amendments to the bill that I would like to bring up, if I
22 could.

23 The Chairman. That was fifteen yeas and two nays.

24 Senator Haskell. The first one deals with negligence
25 penalties on tax preparers. Senator Dole and I wrote a

1 letter to the Treasury that the legislation reads, if rules
2 and regulations are ignored or not followed, then there is
3 a negligence penalty imposed.

4 I would like to propose an amendment that excludes from
5 the definition of rules and regulations rulings. I think
6 that it is reasonable for tax preparers to be required to
7 know the regulations; I do not think it is reasonable for
8 them to be required to know all the rulings.

9 Perhaps Mr. Shapiro could comment on this.
10 Mr. Shapiro. The Tax Reform Act included a provision

11 which provided certain penalties for income tax return
12 preparers. One of these provisions, as Senator Haskell
13 indicated, provides a \$100 negligence penalty per return where
14 there was negligence or intentional disregard of rules and
15 regulations of the Internal Revenue Code.

16 The issue is whether, in this case, rules and regulations
17 are to include the rulings. In other words, it would include
18 the Code revisions, regulations under the provisions; in
19 addition to that, there are some rulings that are public
20 that some practitioners do not get to read as closely and
21 thoroughly as they do the regulations.

22 Senator Haskell would like to say that you would not
23 have a penalty in the case where a tax preparer did not
24 observe a ruling.

25 Senator Haskell. That is exactly it, Mr. C

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1 The Chairman. Without objection. Does Treasury agree?

2 Mr. Lubick. Since Senator Haskell wrote his letter,
3 and Senator Dole, we did put out regulations in which I
4 think we have probably taken care of the problem. We have
5 stated that if a preparer, in good faith and with reasonable
6 basis, takes the position that a rule or regulation does
7 not accurately reflect the Code and does not follow it, that
8 he is no longer subject to a negligence penalty.

9 So I think that we have come out with a regulation
10 which does alleviate the problem. If a preparer in good
11 face has a reasonable basis that a ruling is not right -- in
12 fact, we have gone even further and said that this applies
13 to regulations as well.

14 If it does not accurately reflect the Code, then the
15 penalty would not apply.

16 Senator Haskell. I would differ very sharply with
17 Treasury. Clearly, if you state that you disagree, it cannot
18 be a negligent disregard, and that would go to regulations
19 as well as rulings. But what I do not want these people to
20 be responsible for is to know of the existence of rulings
21 in addition to the myriad regulations they have to follow.

22 As Mr. Shapiro said, many practitioners do not have
23 access to rulings, so I would hope that the Committee would
24 adopt my amendment.

25 The Chairman. All in favor, say aye?

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1 (A chorus of ayes.)

2 The Chairman. Opposed, no?

3 (No response)

4 Mr. Haskell. The ayes have it.

5 Senator Hathaway. I would have one further amendment.
6 I would like Mr. Shapiro to comment on this after I
7 briefly state it.

8 In the 1976 provision, we eliminated a portion of the
9 definition of individual relating to personal holding
10 companies. The dead wood provisions were meant to be
11 eliminated, because it did not affect anybody.

12 I am told that there is a company in Colorado that was
13 substantively affected by this particular dead wood provision.
14 Whether it is good or bad is immaterial. As far as I can
15 see, at the moment, in dead wood provisions we did not mean
16 to substantively affect anyone.

17 Therefore, I would suggest that this particular provis-
18 ion should be changed, but I would like for Mr. Shapiro to
19 comment on it.

20 Mr. Shapiro. Senator Haskell is correct. The intent
21 of the dead wood provisions would be to deal with provisions
22 of the Internal Revenue Code which the staff believes were
23 not in use. Subsequent to the enactment of -- let me point
24 out that these had been around for awhile. It was intro-
25 duced, there were descriptions of it, and there were numerous

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1 other cases that were brought to the attention of the staff
2 where there were provisions that were being used and were
3 substantively deleted from the dead wood provision prior
4 to Congress' enactment of these provisions.

5 These have come to the attention of staff. There is
6 a provision at least one company is using, and therefore, I
7 think Senator Haskell is correct. Notwithstanding what the
8 merits may be, it is inappropriate for it to be in the
9 dead wood bill.

10 One suggestion that staff would like to make, there are
11 some provisions in the dead wood bill, when there are only
12 one-company users, instead of leaving it to the Internal
13 Revenue Code for that one company that that particular
14 company or individual knew that they had advantages, it
15 was put in the dead wood bill and continued its effectiveness
16 for that particular situation.

17 What we would like to suggest is to make a provision
18 still available, but still make it in the statutes at large
19 rather than putting it back in the Internal Revenue Code.

20 Senator Haskell. I have no objection to that, Mr.
21 Chairman, at all. No objection to staff's suggestion.

22 The Chairman. If there is no objection, we will agree
23 to that.

24 Let me raise a point. Senator Ribicoff is going to have
25 to leave at 12:00 o'clock and I think most of us can stick

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1 around here and finish action on this bill. Would there be
2 any objection that we turn to this item that Senator Ribicoff
3 is concerned about and we can vote on that, and then come
4 back to this Technical Corrections bill?

5 If there is no objection, Senator Ribicoff is interested
6 in item 3 that we passed over, and he is concerned about
7 Section 911.

8 Senator Ribicoff. That is right.

9 The Chairman. If there is no objection, we will
10 temporarily lay this aside and go to the tax treatment
11 extension act of 1977. It includes Section 911.

12 Senator Ribicoff?

13 Mr. Shapiro. H.R. 9521 was passed by the House of
14 Representatives. It includes a series of provisions that
15 are extended to give Congress more of an opportunity to deal
16 with them.

17 Let me point out that two of the provisions have
18 already been enacted into law and therefore could be deleted
19 from this bill, that is the provision dealing with the
20 Armed Forces health scholarship program and a five-year
21 amortization for low-income housing, Section 127(k).

22 Those two provisions were adopted in the last session
23 of Congress by P.L. 95-171.

24 Other than those two, the other provisions in the bill,
25 there are reasons to extend them, and the House did include



1 them into this bill. The provision that Senator Ribicoff
2 has reference to is on Section 911 which was revised in the
3 Tax Reform Act of 1976 by phasing out the exclusion for
4 U.S. workers abroad.

5 In the Tax Reduction Act earlier this year, there was
6 an extension for that provision for the 1976 year, where
7 in the Tax Reform Act it was repealed retroactively. Since
8 that time there has been a great deal of interest and
9 concern with respect to the treatment of U.S. workers abroad
10 and there has been a significant interest by Senator Ribicoff
11 and the Senate Finance Committee.

12 Earlier last year, the Finance Committee agreed to
13 Senator Ribicoff's proposal which would phase out the \$15,000
14 exclusion over three years and in lieu of that would substi-
15 tute a deduction which takes into account several cost of
16 living allowances.

17 First, there would be a general cost of living allowance,
18 then an educational element to it, and also a housing allow-
19 ance. The Committee has already agreed to that proposal
20 earlier in the last Congress. However, it was not put on a
21 bill. The Committee agreed to it, and it was agreed to be
22 laid aside as to what bill it would be put on and sent to the
23 Senate Floor.

24 The House has sent this bill, which includes a one-year
25 contingent, one-year deferral of the Section 911 to include

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1 1977. I think Senator Ribicoff's interest that this would
2 be the appropriate bill to put what the Committee's earlier
3 action of the permanent solution on to this bill. The
4 Committee may want to decide, however, whether or not it
5 would be appropriate to have an additional one-year exclusion
6 for 1978. As I said, this bill has 1977, because a number
7 of the foreign companies have indicated to us, to the staff,
8 that a permanent solution is desired.

9 Many of them support Senator Ribicoff's proposal, but
10 they need time to deal with some of these changes, and there
11 is some consideration whether or not Senator Ribicoff's
12 proposal is accepted whether it will be effective in 1978
13 or to continue it to 1978 and make his exclusion for 1979.

14 Senator Ribicoff. I have no problem with that, but,
15 you see, there is great uncertainty. I just came back
16 during the recess from Iran and Saudi Arabia where I think
17 the United States citizens are 45,000 employees. What has
18 happened because of the uncertainty, American corporations
19 are hiring Canadians, Englishmen, Frenchmen, Germans and
20 Dutchmen.

21 I visited the ARAMCO compound in Saudi Arabia and the
22 Saudis have set up probably one of the greatest petroleum
23 institutes in the world. It is manned in the factory by
24 almost 100 percent American citizens. There is great
25 competition among these men because they are experts in the



1 field of petroleum, but because of the uncertainty of the
2 tax law, the Dean of the University, which is all American,
3 says he is losing American professors because of the great
4 uncertainties with themselves and their families. And the
5 impact of that is that instead of having the Saudi engineers
6 and the Saudi technicians being influenced by American
7 philosophy, the faculty now is being substituted with
8 Canadians, with English, with West Germans and French.

9 Almost all of the contractors and all of the American
10 businessmen, because of the uncertainty and the requirement
11 to pay such higher wages in competition are getting rid
12 and not hiring Americans, and I think there could be no
13 greater tragedy for American interests abroad, and also the
14 balance of payments, to find that Americans are being
15 substituted by foreigners.

16 Wherever you go abroad American employers and employees
17 feel this as a great shock. I think that those of us who
18 have gone abroad and studied our trade problems recognize
19 that we put Americans at a disadvantage to nationals of
20 every other country, and I would hope that, since the Finance
21 Committee unanimously adopted S. 2115 last year that we
22 would do the same on this proposal and then go to conference
23 with the House to see what the House might, or might not,
24 want to do.

25 The Chairman. I think that Senator Ribicoff has a very

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1 fine suggestion, and I believe that the best way to do it
2 would be -- you see, we started out to extend Section 911.
3 By the time we got through with all the delay, we were going
4 to extend Section 911 for a year, and then after the year,
5 the Ribicoff amendment was going to go into effect.

6 The delay caught us with so many activities and
7 Treasury acted on so many other things from other committees
8 that we did not succeed in extending Section 911. So if we
9 extend Section 911 it will be to apply to the year that has
10 already passed.

11 To follow the same philosophy, it seems to me that we
12 should extend Section 911 through the year we are now in,
13 1978, and then say that after 1978 that the Ribicoff amend-
14 ment would go into effect.

15 Meanwhile, we might want to change some things in the
16 Ribicoff amendment and, if so, we will have a chance to do
17 that during 1978, during the remainder of this Congress, in
18 connection with the Tax Reform Bill.

19 If the Committee would have no objection, we will extend
20 Section 911 at least for two years, because it is through
21 this year, but also from the past year, and then at the end
22 of this year, then the Ribicoff amendment goes into effect,
23 unless we want to change it during this year.

24 Senator Ribicoff. That is a good solution, but it gives
25 a sense of certainty and gives some hope, so that American

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1 can plan and explain this to their employees abroad, because
2 they are losing Americans right now and hiring foreign
3 nationals.

4 Senator Bentsen. Mr. Chairman, I just want to state
5 my very strong support for the Ribicoff amendment and feel
6 that he has done a fine job in trying to work out some of
7 the inequities. The point that he makes is particularly
8 true, I think, in the situation where we are losing American
9 engineers overseas, people who order American products that
10 they are familiar with for those jobs.

11 If you hire German engineers and French, they will order
12 those things that they are familiar with, not American
13 products. It is not only a question of the jobs overseas.

14 Senator Matsunaga. I think that the suggestion offered
15 is a good one. The question I have is if we extend the
16 911, the postponement for two years, we will have time to
17 further amend if we find necessary, the Ribicoff amendment.

18 I am particularly concerned about housing, for instance.
19 This is one of the biggest problems faced by Americans work-
20 ing overseas, and if we can develop something relative to
21 housing.

22 Senator Ribicoff. It is in there. My amendment proposes
23 an allowance for additional housing costs. You get an
24 allowance for education, housing and the high cost of living,
25 so housing is in there. It is one of the elements that is

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1 counted.

2 Senator Matsunaga. If it would be in order, Mr.
3 Chairman, I would propose a motion to adopt the Ribicoff
4 amendment as amended by the extension of 911 for a two-year
5 period.

6 The Chairman. All right. All in favor, say aye.

7 (A chorus of ayes.)

8 The Chairman. Opposed, no?

9 (No response)

10 The Chairman. The ayes have it.

11 Without objection, then, we will report that bill.

12 Mr. Shapiro. I think you can report it with the two
13 provisions to delete enacted last year.

14 The Chairman. Without objection.

15 Senator Curtis. Mr. Chairman, I will wait my turn on
16 my matters, but Senator Packwood could not be here this
17 morning. He has two items that should probably follow this.

18 One is item B on the staff material and the other one
19 is on page 6, one that deals with security loans and the
20 other is an estate-gift tax.

21 Mr. Shapiro, would you tell us what it is?

22 Mr. Shapiro. The item 8 proposed by Senator Packwood
23 was agreed to by the Committee last year, was actually put on
24 as an amendment to a House-passed bill, H.R. 7929, and I
25 think it is appropriate to give the procedure first.

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1 In the last days of the Congress, it was obvious that
2 there would not be a conference and not an opportunity for
3 the House to deal with any Senate-passed bill. I think it
4 might have been at the last minute when the House had
5 already adjourned.

6 In order to have a House-passed bill enacted, Senator
7 Packwood agreed to drop his amendment off, and therefore,
8 the Senate would pass the House-passed bill without amendment
9 and it could go to the White House for signature, so his
10 bill had been passed previously by the Finance Committee,
11 deleted on a procedural basis.

12 I should say that it is not an amendment to the Tax
13 Reform Act, however, and therefore it would not appear to
14 be appropriate for the Technical Corrections bill, but
15 possibly for some other bill, if the intent of the Committee
16 is to limit the Technical Corrections bill only to amendments
17 to the Tax Reform Act of '76.

18 The substantive matter is that there are loans that
19 are fully collateralized in accordance to the Securities and
20 Exchange Commission and there is a requirement that relates
21 to the lending of security with respect to the treatment of
22 invested income and the question is in regard to exempt
23 organizations and regulated investment companies.

24 The Internal Revenue Service has listed a private ruling
25 that allows the tax treatment with respect to exempt

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1 organizations and Senator Packwood's amendment would provide
2 for that same treatment in the case of regulated investment
3 companies that the Internal Revenue Service has already
4 provided by rulings to exempt organizations.

5 The Chairman. Let me ask you, is that amendment within
6 the philosophy -- is that being offered on the tax treatment
7 of 1977?

8 Mr. Shapiro. The list that we distributed, there was
9 no determination as to what bill. It was just a collection
10 of amendments that the Senators had indicated an interest
11 to bring up. It does not relate to the Technical Corrections
12 bill. It could be put on the 9251 or some other bill.

13 The Chairman. It seems to me that it would be best to
14 try to pass 9251 without -- or with a minimum of controversy.
15 If that were the case, I think we would be better off to
16 hold that, to have that offered on the Technical Corrections
17 bill, just the thought being, I was hoping that this Section
18 911 matter, that that would be something that we could pass
19 expeditiously.

20 We are going to have to have some debate with regard to
21 at least the Hathaway amendment and this other bill, the
22 Technical Corrections bill.

23 Mr. Shapiro. Another alternative, the only concern
24 that the Committee may want to consider is if you put
25 amendments not relating to the Tax Reform Act on the Technical

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1 Corrections bill, there may be a situation where it would
2 be a precedent on the Senate Floor to put any tax amendment
3 on the 5715. There have been two bills that passed the
4 House, two tax bills that passed the House last week that
5 are before the Finance Committee. The Ways and Means
6 Committee has already reported twenty others that are coming
7 over.

8 The Committee could agree to some of these other
9 amendments and wait until the House-passed bills come over
10 and pick out certain ones to add some of their Committee
11 amendments to.

12 The Chairman. Why do we not do that? If we start
13 putting -- we have two bills that we think are rather
14 significant bills, but we believe that we can pass them the
15 way they stand now, but if we start putting these other
16 things on them, I am afraid, because of the other amendments,
17 that they would not pass.

18 On the other hand, if we could get some of these things
19 that might go through by unanimous consent if we put it on a
20 bill, that is noncontroversial to begin with, would that
21 be all right with you, Senator? We agree to the amendment
22 and wait for a bill to put it on?

23 Senator Curtis. Yes. I am calling it up for Senator
24 Packwood. Whatever general arrangement, I am sure he would
25 authorize me to comply. If it is the will of the Full Committee,

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1 by the time we finish work on the Technical Corrections
2 Act that we add no amendments, I am sure he would comply.
3 It is probably all right to approve it at this time and
4 decide later what bill to put it on.

5 Mr. Shapiro. You can also reserve Senator Packwood's
6 rights in this regard; if, on the Senate Floor, it is the
7 will of the Senate to add amendments, then he could add it
8 on the Floor as well.

9 Senator Curtis. Just so that he has the same opportu-
10 nity as everybody else.

11 The Chairman. Is this not something that we have
12 discussed before, the amendment we have in mind?

13 Senator Curtis. Yes. Senator Packwood has two; there
14 was another one.


15 Mr. Shapiro. Which one was that?

16 Senator Matsunaga. What proposal number is that?

17 Senator Curtis. One is proposal 8; the other is
18 described on page 6.

19 Senator Bentsen. Is that the historic structures?
20 I know he has that one, too.

21 Mr. Shapiro. Estate and gift tax.



22 Mr. Lubick. May I raise one point about Senator
23 Packwood's bill? We think that it is quite proper, there
24 is one point we would like to make clear, when there is
25 a security loan, we do not have a double dividend, that the

1 lender is not regarded as the owner of the security rather
2 a contractual right, so two persons do not get the same
3 dividend and receive a deduction.

4 Senator Curtis. Staff will take that into regard.

5 The Chairman. As I understand it, I believe that we
6 had agreed that we would report H.R. 9251 as amended. We
7 have agreed to that.

8 Mr. Shapiro. Yes.

9 The Chairman. With regard to the Packwood amendment,
10 I assume that we are talking about discussing it and taking
11 a committee position on the amendment, and then we will try
12 to find one of the appropriate bills to add it to. If we
13 can agree on the amendment.

14 Does Treasury have any objection to the Packwood proposal?

15 Mr. Lubick. As long as that one technical matter is
16 satisfactorily taken care of, I think it will be.

17 The Chairman. Without objection, it will be so modified.
18 Then we will seek to find an appropriate bill to which that
19 amendment can be added. I will ask staff to look at the
20 bills you have available for it and see what an appropriate
21 bill would more likely be.

22 What is the other one?

23 Senator Curtis. Senator Packwood has two.

24 Mr. McConaghy. The next amendment deals with the
25 estate-gift taxes and the consequences of the carryover

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1 provision. It basically deals with the difference between
2 two different ways of protecting a continuation of a
3 business when one of the two principles own it. If there
4 are two different individuals who own 50 percent, for
5 instance, there are two ways to insure that that business
6 be continued.

7 One is the stock redemption plan funded by insurance
8 where the corporation can, in effect, received the proceeds
9 of the insurance and then buys out the deceased boss's share
10 of the stock. The other way is a cross-purchase agreement
11 where the two people who are shareholders have insurance
12 on each other's lives. The proceeds, in that case, are not
13 paid to the company to redeem them, but to the surviving
14 of the two partners and he, in effect, buys out the stock
15 of the deceased boss.

16 You achieve different results for carryover basis
17 under those rules. In one case, you do not get the benefit
18 of any basis adjustment; in the other case you do. It is
19 an unintended result, and this amendment would allow you
20 to convert from a stock redemption plan to a cross-purchase
21 plan within a period of time, in other words, three years
22 is what the amendment is for.

23 Senator Curtis. Do you know any objection to it?
24 Mr. McConaghy. No, I do not.

25 The Chairman. What is the Treasury's position?

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1 Mr. Lubick. This is a part of Senator Hathaway's
2 bill. We actually testified before Senator Byrd that it
3 would be an appropriate amendment. It is a part of this
4 whole package.

5 The Chairman. So that is a part of what Senator
6 Hathaway would offer? I would take it, then, that if the
7 Hathaway amendment is not agreed to, then Senator Packwood
8 might want to offer this amendment as an amendment to the
9 bill. But since we are going to be voting on the Hathaway
10 amendment in any event, will we not, that being the case,
11 we should await a decision on the Hathaway amendment.

12 Senator Curtis. While Treasury is here, I would like
13 to ask him about a matter which I think can be disposed of.
14 I understand that under the new estate tax law, farms can
15 receive a special valuation if the executor makes an
16 election.

17 The law says that the election must be made when filing
18 the return, would be done in such a manner that the Secretary,
19 by regulations, prescribes. The problem is that the tax
20 returns are now due, but the regulations by the IRS have
21 not been published. The election is permanent once it is
22 made, and executors tell me that they are afraid to make the
23 election when they do not know what the IRS is going to
24 require.

25 Is there some way to postpone this election until the

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1 IRS publishes their regulations? Can the Treasury agree to
2 postpone it without legislation?

3 Mr. Lubick. What we did agree was that the election
4 could be made at any time within six months after the
5 regulations have come out, so everyone is protected.

6 Senator Curtis. You can take care of it by regulation?

7 Mr. Lubick. Yes, sir.

8 Senator Curtis. Six months?

9 Mr. Lubick. After the regulation.

10 Senator Curtis. Thank you very much.

11 The Chairman. Senator Danforth.

12 Senator Danforth. I have two amendments to the Technical
13 Corrections bill.

14 In the 1976 Tax Reform Act, deductions for travel
15 abroad to attend certain conventions --

16 Senator Matsunaga. Excuse me. You have a printed
17 proposal. What is your number?

18 Senator Danforth. This is 2.

19 It is my understanding that the reason for that
20 provision in the 1976 Act was to address the situation of
21 the American Bar Association's taking the trip to London.
22 However, inadvertently it also had the effect of disallowing
23 deductions in the case of trips abroad provided by employers
24 as prizes for employees, even though the value of the trip
25 abroad was included in the taxable income of the employee.

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1 The House corrected this provision, this problem, in
2 part by providing that it would be deductible by the employer
3 if the employee included it, if it was includable in an
4 employee's taxes. What the House meant to do in addition,
5 but as I understand, the way it was drafted failed to do,
6 was to provide for a three-party transaction in which, for
7 example, General Motors would offer a prize program for
8 employees of independent dealers who sold X amount of
9 automobiles.

10 In that circumstance, the value of the trip abroad would
11 be included in the income of the employee of the dealer, but
12 as it came out of the House, it would not be deductible by
13 General Motors; and therefore the proposal that I am making
14 now would be to make it clear that that would be allowed
15 as a deduction for the third party conferrer of the gift.

16 Mr. Shapiro. As Senator Danforth indicated, this was
17 a matter that was before the House and is contained in this
18 Technical Corrections Act, as it was discussed in the Ways
19 and Means Committee. As it was brought up, it was intended
20 by the sponsors of the Ways and Means Committee that it
21 refer to what Senator Danforth has referred to -- take the
22 full ramifications on the three sets of parties. The way
23 it was actually drafted did not necessarily conform to the
24 way it was intended and what Senator Danforth is proposing
25 is to go back to the original intent which, in effect, says

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1 that where you have these types of prizes that are given
2 in the three-party situation, for example, where a manufacturer
3 provides for a foreign trip to a dealer, down to a customer,
4 that second or third level, in none of those situations would
5 you have to file a W-2 or -4 or 1099.

6 It is clear in one of those cases where you have a
7 dealer, for example, where a dealer or customer, when there
8 are two parties, the W-2 or 1099 would already be required
9 if it is over \$600 and that is in present law, and there
10 would be a penalty if that were not the case.

11 In the other situation, a form W-2 or 1099 is not
12 required and Senator Danforth is saying, in both of those
13 situations you would not have to require it, because in one
14 case you do not require it and the other case, it is already
15 required, and he just wants to conform to what was originally
16 intended in the House.

17 The Chairman. I would hope that these amendments that
18 are being proposed to this technical corrections bill would
19 be followed in the general category of what we would call
20 the Technical Corrections. And I assume that most of these
21 Technical Corrections you are talking about were corrections
22 that were required because of technicalities that we could
23 not quite master at the time that we had that 1976 Tax
24 Reform law before us.

25 Mr. Shapiro. This particular amendment fits in that

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1 category.

2 The Chairman. If it fits that category and the staff
3 seems nothing wrong with it -- do you think it is all right?

4 Mr. Shapiro. We do not see any problem.

5 The Chairman. What does Treasury think?

6 Mr. Lubick. As has been explained, I think it is
7 correct and we approve it. I want to make sure that nothing
8 relieves anyone of a requirement that he already has to
9 file a W-2 or 1099. I think, as Senator Danforth explained
10 it, I think that the draft language would indicate that.

11 The Chairman. Without objection, it will be agreed
12 to.

13 What is your other one?

14 Senator Danforth. Mr. Chairman, on behalf of my
15 colleague, Senator Eagleton, I would like to offer as an
16 amendment, proposal number 7 relating to depreciation of
17 player contracts by athletic teams and recapture provisions.

18 It is my understanding that the 1976 Act provided
19 special rules for recapture of player contracts on a pooling
20 basis. The issue here is the date on which this pooling
21 concept would be applicable. It is my understanding that,
22 with the effect of the date that was agreed to in the 1976
23 Act, it has a very disastrous result with respect to the
24 Atlanta Braves baseball team, and the staff knows 100 times
25 more about this provision than I do.

1 Mr. Shapiro. Senator, this deals with all sports
2 franchises. It is just this particular case where they
3 would raise the sale at that particular time.

4 The House bill provided a special recapture rule in
5 the case of sports franchisers that only applied to post-
6 1975 appreciation, only after the bill was to be enacted.

7 In the Senate bill, there was a question that came up
8 that developed because the bill itself technically provided
9 that the depreciation capture would apply to 1975 and post
10 1975. The Committee, however, followed the House approach
11 which means only post-1975. That raised questions on the
12 Senate Floor where the Senate bill stood; in Conference the
13 Senate bill approach was agreed to.

14 Subsequent to that time, in working with this provision,
15 a number of problems developed in implementing these rules
16 with depreciation before 1976 and this proposal of Senator
17 Danforth's is to apply the rules under the Tax Reform Act
18 respectively with respect to depreciation taken after 1975.

19 As I understand it, the Treasury Department supports
20 it, and it is generally the type of depreciation rules the
21 Congress passes.

22 The Chairman. This would be appropriate on this
23 particular bill?

24 Mr. Shapiro. Yes, sir.

25 Senator Byrd. In that connection, I do not know whether

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1 this fits in exactly with what Senator Danforth has or not,
2 Tip O'Neill and Senator Brooke are interested in an amend-
3 ment -- I will read the amendment. "Except for the sale or
4 exchange of a franchise after December 31, 1975 and before
5 March 1, 1977, if the person who is the principal stock-
6 holder of the transfer at the time of such sale or exchange
7 was permitted to, and did, prior to December 31, 1975, pur-
8 chase more than 50 percent of the voting stock of the
9 transferor."

10 I understand that that applies to the New England
11 Patriots. I do not know any of the detail on it.

12 The Chairman. Could we dispose of this?

13 Senator Danforth. Amend it first and then come to
14 that one?

15 Senator Byrd. I am just wondering whether the two are
16 related.

17 Mr. Shapiro. They are not related.

18 The Chairman. If there is no objection, and the
19 Treasury knows of no objection to these, without objection,
20 we will agree to that.

21 Now, would you bring up this matter?

22 Senator Byrd. If it would fit within the technical
23 corrections. I do not want to go beyond them.

24 Mr. Shapiro. Let me make a few comments. The Committee
25 would have to make that determination. It does not fit into

1 the typical definition of a technical correction. It moves
2 the date after the bill was announced. It does apply to
3 one case.

4 The Ways and Means Committee, when they considered the
5 Technical Correction Bill, had a screening process to review
6 amendments. This was specifically brought before the Ways
7 and Means Committee and the Committee's judgment, on the
8 screening committee and the full Committee was that this
9 was not a technical amendment and was not included in the
10 Technical Corrections bill.

11 It deals with an effective date change and not a
12 technical revision.

13 Senator Byrd. I assume that under the rules, that
14 the staff and the Chairman and the Committee all would want
15 to follow that this would not be an appropriate vehicle for
16 this particular amendment.

17 The Chairman. I do not believe that it should be
18 offered, that it should be agreed to in the Committee. If
19 someone wants to offer it on the Floor, I assume that they
20 have the right to do that.

21 Senator Byrd. Or we could consider it in another bill.

22 The Chairman. That is right, or consider it in another
23 bill.

24 Senator Curtis. Do I understand that the other bill
25 that number 3 there, the tax treatment extension act --

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1 The Chairman. We are going to have twenty other bills.
2 We have two over here now and we are going to have about
3 18 more they are planning to send us.

4 Senator Curtis. Would it be a time-saving matter if,
5 when these matters are called and we are agreed to them, and
6 then determine what bill they are to be put on later? I do
7 not want to confuse things.

8 The Chairman. That particular item, was that one we
9 debated quite a bit in conference?

10 Mr. Shapiro. Yes, Senator. It was added on the Floor;
11 it was debated extensively in conference. It is not a
12 technical amendment because it was considered in the confer-
13 ence and deleted from the Tax Reform Bill in conference.

14 The Chairman. That was not agreed to, and the Senate
15 had accepted such an amendment, as I recall, on the Senate
16 Floor, and the House was adamant about that.

17 Mr. Shapiro. Let me correct myself. It was not added
18 as a Senate amendment. It was brought up in conference but
19 it was outside the scope of the conference because it was
20 not in either bill, and the conferees decided not to agree
21 to it.

22 Subsequent to that, it was considered on two separate
23 occasions in the Ways and Means Committee, once on its merits
24 and the Committee decided not to agree to it; and the second
25 occasion, it was brought up in connection with the Technical

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1 Corrections bill and was viewed not to be a technical
2 correction.

3 The Chairman. Well, I do not think we ought to try
4 to agree to that today. Of course, a Senator can always
5 offer that amendment. It is going to have some controversy
6 to us.

7 I have Senator Bentsen's name here that he wanted to be
8 recognized, then I have Senator Hathaway, Senator Matsunaga,
9 and Senator Moynihan.

10 Senator Bentsen. Thank you, Mr. Chairman.

11 The first one deals with the '76 Tax Reform Act in
12 providing for bonds issued by higher educational authorities
13 being tax-exempt, and the so-called incentive payments by
14 HEW student loans would not be considered. This is proposal
15 number 22, and as I understand it, that is supported by
16 staff and, I think, by Treasury, and it is a technical
17 amendment, a clarification.

18 Mr. Shapiro. This is a change in the reference to the
19 bill. It is a technical correction.

20 The Chairman. Without objection, and Treasury acquiesces,
21 that will be agreed to.

22 Senator Bentsen. The other is one that I would bring
23 up for Senator Packwood that concerns the long-term lessees
24 on historic structures being able to amortize over five years
25 expenses incurred in rehabilitating historic structures.



1 The question arose whether it applied to just owners
2 or longterm lessees, if they could also be included. I
3 understand that Treasury would support it with certain
4 amendments, and I would bring that up for Senator Packwood
5 at this time, if I might, and that is proposal number 6.

6 The Chairman. All right. That is one that could
7 appropriately fit inside this Technical Corrections Act?

8 Mr. Shapiro. Let me say that it is not clear to me
9 how to respond directly. It is not technical, but yet you
10 can view it as consistent to what the Committee already
11 did.

12 Let me just say, the tax rule provides the provision
13 that the special treatment with respect to rehabilitation
14 of historic structures, that applies to the owners of those
15 structures. What was not considered in the Tax Reform Act,
16 what if the structure were leased? In other words, the
17 lessee had a right to it in making these improvements and
18 would the special provisions provided in the Tax Reform Act
19 apply to lessees as well as owners.

20 What Senator Packwood has offered here is to give the
21 same benefits to the lessee, as long as the property has a
22 useful life, or the improvement to that property has a
23 useful life is as long as the property itself, or at least
24 30 years.

25 I think it was something that was not considered. Maybe

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1 it was a question of whether it was a technical amendment,
2 but it is consistent with giving the same treatment to
3 lessees that is available to owners.

4 Senator Bentsen. Let me leave it up to you and staff.

5 The Chairman. Might I suggest we do that? If no one
6 knows -- does Treasury object to this amendment?

7 Mr. Lubick. We do not object, provided it is limited to
8 historic structures that are owned by governments or exempt
9 organizations, those that are bought because they are
10 listed in the national register, or in a district listed in
11 the national register.

12 We are afraid to open it up.

13 Senator Bentsen. I am not asking for that.

14 The Chairman. Then you would be willing to confine it?

15 Senator Bentsen. I think Senator Packwood would and I
16 would. I agree to that.

17 The Chairman. Without objection, it will be so modified
18 then, and we will add it.

19 Senator Bentsen. The last one is for Senator Nelson and
20 that deals with the Telephone Cooperative Tax Bill and that
21 is a clarification. This one has passed the House by voice
22 vote. The Ways and Means Committee is strongly supportive
23 of it.

24 It is a situation about qualification as a cooperative.
25 You are supposed to get 85 percent of your income from your

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1 subscribers, but you have a problem that the subscribers
2 to another exchange call in to your subscribers and you
3 complete a call to your subscribers and you get some income
4 from that other unit, or that other exchange, because you
5 have rendered this service.

6 The Internal Revenue has questioned this as complying
7 with the 85 percent provision. Ways and Means and the House
8 have passed this by voice vote, saying that that should not
9 negate them to qualify. I would like to bring that up.

10 The Chairman. What I am concerned about is whether that
11 should be on this Technical Corrections Bill.

12 Mr. Shapiro. That is a separate bill. Let me point out
13 that H.R. 7581, the matter to which Senator Bentsen referred
14 to, passed the House last week. It is a bill before the
15 Committee, so you do not need to take that and put it on
16 another bill. You can report that out and add amendments to
17 it. But it is a bill before your Committee, as passed by
18 the House.

19 The Chairman. Why do we not agree, on a tentative
20 basis, if there is no objection to it, then, that we approve
21 the bill, but I think we ought to use this bill -- we
22 ought to use the opportunity to take care of one or two of
23 these amendments that the Senators want to take care of,
24 because that offers us the opportunity to take care of some
25 other matters.

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1 Why do we not tentatively agree to the bill and consider
2 this bill for at least one of the amendments that the Senators
3 would like to add to it?

4 Senator Curtis. Very well.

5 The Chairman. Senator Hathaway?

6 Senator Hathaway. I have two amendments that I think
7 are of a technical nature, numbers 1 and 3. Number one is
8 the withholding on fishermen. Back in '76, we agreed to
9 allow the crew members of shrimp and lobster boats be treated
10 as independent contracts. We did it back to '72, thinking
11 that was sufficient to take care of it.

12 We have found since that the Treasury has gone after
13 returns prior to '72, which we did not anticipate at the
14 time. They are now holding up on any further investigations
15 on that, awaiting for us to amend it back to 1954, because
16 that is the date when the situation first arose with the
17 amendments at that time.

18 I do not think that there are any problems with it. It
19 seems to me that it is technical.

20 Mr. Shapiro. When the Committee considered this matter
21 in connection with the Tax Reform Act, it was intended to
22 cover all of the cases and the effective date was put in
23 there to which we, at that time, would cover every case.
24 Subsequent to that time, we have found that the Internal
25 Revenue Service was going after cases prior to that time. It

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1 was clear that this Committee had intended to cover all
2 the cases.

3 The Chairman. Should this be on the Technical Correc-
4 tions Bill or some other bill?

5 Mr. Shapiro. The Technical Corrections Bill. It does
6 carry out an intent that the Congress had.

7 The Chairman. Treasury?

8 Mr. Lubick. We have testified in favor of this as
9 part of the Technical Corrections.

10 The Chairman. Without objection, the amendment will be
11 agreed to.

12 Senator Bentsen. Mr. Chairman, might I say that I
13 stated awhile ago that I did not know of Senator Packwood'
14 objections to what Treasury asked on historic buildings. I
15 am just advised by staff that there would be objections. I
16 cannot speak for Senator Packwood in that regard.

17 The Chairman. Senator Hathaway?

18 Senator Hathaway. Mr. Chairman, the other one is in
19 regard to accrual accounting for farm corporations. We
20 agreed that the Tax Reform Act of '76, we did make an excep-
21 tion for certain family farms that could remain on the cash
22 basis. Then we amended that later to expand the notion of
23 what was a family farm and allowed the exception to be
24 extended to two families owning 65 percent or three families
25 50 percent, and not put stock in a pension fund, and so forth.



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That expired at the end of 1977. I was simply asking to extend it for another two years. I will agree whether that is technical or not is problematical.

Mr. Shapiro. There is a question as to whether that is technical. Second, that the Administration in the Tax Reform proposals has a provision that is currently before the Ways and Means Committee to delete these exceptions. One way or another, the Administration proposals will be before the Finance Committee, which goes into this whole area.

It may be appropriate, if the Committee does not view this as technical, but substantive, that it could wait and consider this in connection with the Tax Reform/Tax Reduction package that comes over here in connection with the entire matter of the exceptions to this provision.

Senator Hathaway. Would it be appropriate to modify it just to the extent of just one year?
Mr. Shapiro. It is something that clearly the Committee can do. I do think there is a question of whether or not that is technical. It is something that the Committee could do and put on another bill or, if it chooses to consider this bill, it is not the type of technical amendment that is consistent with the others that are being considered.

The Chairman. What is Treasury's position?

Mr. Lubick. We have had difficulties with this each time it has come up. It is contrary to the Administration's

1 position and involves very large corporations with revenues
2 of up to \$100 million a year and we think that they are
3 able to handle the accounting question.

4 The Chairman. I suggest that you hold this matter off
5 for the time being and come back to it on another bill.

6 Senator Hathaway. Yes, Mr. Chairman.

7 The Chairman. Mr. Matsunaga?

8 Senator Matsunaga. I have two technical amendments,
9 Mr. Chairman; the first is proposal number 11 and this
10 merely proposes to redefine the term exempt function income
11 so that homeowners who have organized their associations
12 for the purpose of carrying on recreation, hiring lifeguards
13 at these community swimming pools, et cetera, may, by use
14 of voluntary service, and by sale of contributed items, use
15 the monies realized to pay the lifeguards and so on.

16 And, under existing law, one if it exceeds 40 percent,
17 then they would not be tax exempt, and secondly, the receipts
18 would be taxable because the income realized from voluntary
19 service in the sale of contributed items does not come within
20 the term exempt function income and my proposal would put
21 voluntary or sale of contributed items by voluntary service
22 would be included within the term exempt functioning.

23 The Chairman. What is Treasury's position?

24 Mr. Lubick. In general, we think that it is inappropri-
25 ate. In the case of social clubs, for example, you have

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1 already drawn a line and said where the organization is
2 dealing with its own members, we can have an exception. When
3 it starts dealing with outsiders, it should not.

4 We would recognize that there are some administrative
5 problems and difficulties. We would be willing to have a
6 de minimis exception of, say, \$1,000 per year of income for
7 accounting convenience. If we could agree on something like
8 that, where it would be satisfactory.

9 In general, I think that the principle is not appropri-
10 ate, but we recognize the administrative difficulties.

11 The Chairman. Could you modify that to eliminate
12 \$2,000?

13 Mr. Lubick. These are small efforts where the members
14 get together and they sell their goods. If they get into
15 a large business, I think they would be inappropriate.

16 Senator Matsunaga. In Hawaii, I am thinking about these
17 condominiums and the family, homeowners groups who get
18 together and try to keep their children right within the
19 community, so they have swimming pools and this saves the
20 city and state a lot of money too because they raise them by
21 selling barbecued chicken, bread, sweet bread, and so on.

22 Mr. Lubick. What we do not want to do is have people
23 subsidize their housing by carrying on a self-service
24 business.

25 Senator Matsunaga. It is not a question of subsidizing

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1 their own housing.

2 The Chairman. Why do you not offer it on the Floor?

3 Senator Matsunaga. I could do that. Treasury's
4 proposal would take it out of the technical amendment. It
5 is adding something new, giving a de minimis exemption. If
6 you go up to \$15,000, I might accept it.

7 Mr. Lubick. Maybe we have some room for discussion in
8 between.

9 The Chairman. Why do you not have a negotiation with
10 Treasury on that?

11 Senator Matsunaga. Fine.

12 My second proposal, Mr. Chairman, is proposal number 21,
13 and this, I think, is a simple one, for the reason that it
14 is so unfair that while we allow tax exemption for dependents,
15 tax exemption where a grandparent raises a grandchild, and
16 expends more than 50 percent of the child's care, we do not
17 recognize the child as being supported by a retired person
18 who is receiving Social Security benefits.

19 So that my proposal is to permit the Social Security
20 beneficiary to declare a grandchild whom he or she supports
21 and be allowed a credit up to \$4,000 from earned income.

22 Mr. Shapiro. I think this measure does have merit in
23 principle. There is a question of whether it is a technical
24 one.

25 Let me just say, as you know, the earned income credit

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1 was enacted in 1975 and subsequently extended. In the Tax
2 Reform Act, a revision was made that was considered to be
3 appropriate, that is, to allow the earned income credit to
4 appear, even though the parent would not be entitled to the
5 personal exemption.

6 The purpose of that change was to broaden the availabil-
7 ity of the earned income credit. Subsequent to that time,
8 there have been other cases that have been brought to the
9 attention of various members of Congress that it does not
10 cover other cases where there may be people, children, living
11 with, for example, grandparents, in this case.

12 In this particular one, a grandchild, where they have
13 no personal exemption is not a child, but a grandchild and,
14 consistent with what has been viewed as the intent of
15 Congress to allow the earned income credit where the couple
16 has a child living with them, but the grandchild, this does
17 cost \$20 million, so it is not a purely technical amendment,
18 but the principle does have some merit.

19 It is a question of whether the Committee wants to put
20 it on the Technical Corrections bill, if it wants to have it
21 favorably considered, or how to dispose of it.

22 The Chairman. Senator, I would suggest that if you
23 want to offer the amendment that you offer it on the Floor
24 because -- what is the Treasury view on that?

25 Mr. Lubick. On the principle, on the substance of the



1 amendment, we do not oppose it. Again, we raise the ques-
2 tion as to whether this is the appropriate place. That is
3 for the Committee to decide.

4 The Chairman. Why do we not agree unless someone has
5 objection, that the matter was brought up in Committee and
6 no one on the Committee has any objection to it, but thought
7 that it should be offered as a Floor amendment.

8 Senator Matsunaga. To which bill?

9 The Chairman. You could offer it to the Technical
10 Corrections bill.

11 Senator Matsunaga. If I could have the Committee adopt
12 it and have it added to an appropriate bill --

13 The Chairman. Without objection, that is agreed. We
14 will add this to one of the other bills. You might add it
15 to that bill that we just discussed a few minutes ago.

16 Mr. Shapiro. You could.

17 The Chairman. Without objection, agreed.

18 Mr. Moynihan?

19 Senator Moynihan. Mr. Chairman, I would first like to
20 thank Senator Byrd for his courtesy in allowing me to raise
21 this matter which is of special interest to those of us
22 involved with the commodity exchanges.

23 We have a situation here rather the reverse of the one
24 that you have been talking about, Mr. Chairman. The bill
25 that has come to us has what I think many members of this

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Committee feel to be a substantive provision of very large consequence in a technical corrections act. I believe that Senator Byrd is of this view.

Briefly, the 1976 Act increased the holding period for long-term capital gains to nine and then twelve months, but it included an exemption for commodities and that exemption is now in effect.

The bill that had come to us from the House changes that to an exemption for agricultural commodities, leaving a two-tiered situation. If this were to take effect, Senator Dole and I and others feel quite strongly that this is inappropriate. It is a major change in the markets of the United States.

We will have one set of commodities dealt with in one way and others in another way. It is a big change in the way that futures trading is done. It will move money from one set of commodities to another, and the sort of price stabilizing function that you associated with futures markets will be much diminished, particularly in metals and other such matters.

Our proposal, Mr. Chairman, is simply to delete this provision which would make a distinction between agricultural and non-agricultural commodity futures trading.

Senator Byrd. Mr. Chairman?

The Chairman. Senator Byrd.

1 Senator Byrd. I would like to express support for
2 Senator Moynihan's position. Hearings were held on this
3 by the tax subcommittee and the witnesses, I thought, made
4 a very excellent case for the position just outlined by
5 Senator Moynihan.

6 It occurs to me that it would be inequitable to adopt
7 the legislation in its present form, so I support that
8 position of the Senator from New York.

9 Senator Moynihan. I think, Senator Byrd, for the record
10 I would like to state that before your Committee, the
11 presidents of the New York Commodities Exchange and the
12 Chicago Board of Trade both testified against any distinction
13 between types of commodities.

14 Senator Byrd. Both Chicago and New York are in accord.

15 Mr. Shapiro. If I could point out why this provision
16 got in here, just to show you the House problem that
17 developed. When the House amended the Tax Reform Act of
18 1976 to extend the six-month rule regarding to the holding
19 period of capital gains to one year, an amendment was brought
20 up in the Ways and Means Committee which provided an exemption
21 from that.

22 That means to continue the six-month holding period
23 only for agricultural commodities. That was clearly in the
24 record. In the draft bill of that, the word "agriculture"
25 was left out and it had commodities future contract.

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1 The House Ways and Means Committee report, and I even
2 think the heading on the bill itself, had "Agricultural
3 Futures Contracts," but the statute did not do so.

4 When the matter was before the Finance Committee, you
5 deleted the House provision which extended the holding
6 period so that you did not have a provision in the Finance
7 Committee. You did not even deal with this particular matter
8 when it went to conference.

9 The Ways and Means Committee members made the point
10 that this exemption was only for agricultural commodities
11 but technically it was not in conference because the House
12 bill said "commodities futures contracts" and the Senate
13 provision had nothing and therefore it was not within the
14 scope of the conference.

15 When the Technical Correction bills came up, the members
16 who offered this particular exception only for agricultural
17 commodities. On the House side it was viewed as a technical
18 change because, in their bill, they intended only to go
19 for agriculture. In the House, they view it as a technical
20 change, but as far as the Senate side is concerned, that
21 was never your intent.

22 You may very well view it differently.

23 Senator Curtis. What is proposed now?

24 Mr. Shapiro. The House has sent over to the Senate in
25 the Technical Corrections bill, an amendment to limit the

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1 exception to agricultural commodities futures contracts.

2 The word "agricultural" was added.

3 Senator Curtis. What was Senator Moynihan's proposal?

4 Mr. Shapiro. He would delete the provision in the
5 House-passed bill, which would, in a sense, say that all
6 future contracts, which include silver and all other futures
7 contracts. It would not limit the six-month holding period
8 only to agricultural commodities.

9 Senator Curtis. But it would give them six months?

10 Mr. Shapiro. Six months, all commodities. The House
11 would give it only to agricultural commodities.

12 Senator Curtis. What is proposed here, not to take away
13 from agricultural but to give to the other commodities?

14 Mr. Shapiro. That is correct.

15 Senator Curtis. No objection.

16 The Chairman. As I understand it, the way the law
17 stands now, it does apply to all commodities.

18 Mr. Shapiro. It does apply to all commodities, but
19 there has been a question raised by the Internal Revenue
20 Service because they are looking at the intent that the
21 House had and they are not quite sure how to deal with it
22 because there is one body that had one intent and the Senate
23 did not deal with it, and that is the problem.

24 The Chairman. Basically, what the Senator is doing
25 is proposing to strike the House amendment?

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1 Mr. Shapiro. That is correct.

2 The Chairman. All in favor, say aye?

3 (A chorus of ayes.)

4 The Chairman. Opposed, no?

5 (No response.)

6 The Chairman. The ayes have it.

7 Senator Curtis?

8 Senator Curtis. Mr. Chairman, I have some matters of
9 my own now, and I will be brief on them, to see where they
10 belong.

11 This item that we have dealt with a number of times
12 involving the expenses of state legislators, it is number 17
13 in the staff proposal. Will the staff tell us about that
14 and what we should do?

15 Mr. Shapiro. In the 1976 Act -- this is number 17 --
16 you had a provision which dealt with the problem that the
17 state legislators had that determined where their home would
18 be for purposes of their expenses, whether it was in the
19 district they represented or the state capital.

20 What you did for the period -- and it is a retroactive
21 problem; it goes back to the early 1970's -- you gave them
22 an election to treat as their home either their district or
23 the state capital.

24 As a practical matter, there was a consideration of a
25 permanent solution and a retroactive part. At that time, the

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1 1976 Tax Act, you gave them this election for the psst years
2 and did not make any determination as far as the future.

3 Subsequently, you extended for one year that election
4 in the Tax Reduction and Simplification Act of 1977 to include
5 1976.

6 The question now is what should be the treatment for
7 1977 and the proposal -- because they have to file the
8 returns on April 15th -- and the proposal that Senator
9 Curtis has is to extend that election for one more year to
10 cover this past year, 1977, with the intent that the Congress
11 should meet in this year to try to provide a permanent
12 solution for state legislators, but at least continue the
13 treatment.

14 Senator Curtis. It would continue the problem that
15 they are facing right now in filing their returns.

16 Mr. Shapiro. It may be appropriate to put this amend-
17 ment on the 9251, the extensions bill, because this extends
18 that treatment.

19 Senator Curtis. I ask that it be approved and placed
20 on the bill, as directed by staff.

21 The Chairman. All in favor, say aye.

22 (A chorus of ayes.)

23 The Chairman. Opposed, no?

24 (No response)

25 The Chairman. The ayes have it.

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1 Senator Curtis. Now, Mr. Chairman, there is a matter
2 relating to airlines.

3 In any year, the investment tax credit generally may not
4 exceed \$25,000 plus 50 percent of the tax liability above
5 that amount.

6 Senator Matsunaga. What proposal number?

7 Senator Curtis. Thirteen.

8 Recognizing the financial plight of the airline
9 industry, the Congress included airlines, railroads and
10 public utilities in a temporary release from the percentage
11 of tax limitations. All the common carrier airlines may take
12 investment credit up to 100 percent of tax liability for
13 the taxable year '77-'78 with annual reduction of 10 percent
14 points thereafter until the limitation returns to 50
15 percent in taxable year '82.

16 Unfortunately, those provisions fail to take into account
17 the problem confronting the hardest hit companies in the
18 airlines industry. A firm must use all of its accumulated
19 net operating losses before it can begin to use any of its
20 annual expiring investment credits.

21 Several airlines which were particularly hard-pressed
22 in recent years, will not realize sufficient taxable income
23 in 1977 to absorb all of their accrued net operating losses.

24 This amendment provides that the airline investment tax
25 credit investments which otherwise would expire January 1, '77

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1 could be carried forward for one additional year in the
2 case that the net operating loss had prevented their use
3 this year.

4 I would like to hear from staff on that.

5 Mr. Shapiro. This, I think, will prove to be a contro-
6 versial amendment to some extent. It is not necessarily
7 appropriate for the Technical Corrections bill. It has
8 a revenue cost of about \$15 million. In 1976, the treatment
9 of investment tax credits was revised to put them on a
10 first-in first-out basis. When you expire your credits,
11 investment credits, the earlier ones expired first.

12 The airlines have a ten-year carryforward of investment
13 tax credits and, in addition, also has the 100 percent
14 limitation rather than the 50 percent limitation that you
15 can offset to 100 percent, your tax rates, up to 100 percent
16 of your tax rather than just 50 percent of your tax.

17 The problem that has presented itself to several of the
18 airlines is that in the early 1970's they accrued significant
19 losses and were not able to offset their adjustment invest-
20 ment tax credits because they had net operating losses, or
21 some of the other tax provisions resulting in that they did
22 not have sufficient taxable income to use all of the invest-
23 ment tax credit, and therefore they are requesting an
24 additional year in order to try to use their investment tax
25 credits that were made available to them but, because they did

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1 not have taxable income and enough taxes, they use of them
2 all would expire and be lost to them.


3 Senator Curtis. The sole exception for regulated
4 carriers was to take care of situations where they were hard
5 hit and had no income.

6 Mr. Shapiro. The Congress had provided a 100 percent
7 offset rather than 50 percent to try to help that situation,
8 but the fact that the airlines, some of the airlines, have
9 had some tough times did not have enough taxes, even with
10 that 100 percent limitation and therefore their investment
11 tax credit would expire.

12 Let me point out that, although I said that there would
13 be a \$15 million cost, that may not necessarily be accurate.
14 It would not be fair to the airlines, because it may be that
15 they would use some of their other investment tax credits
16 that would not expire if they did not get this treatment.

17 Senator Bentsen. I understand though, at that point,
18 I think it is one that should be made, because using other
19 tax credits, the revenue loss, as I understand it from
20 staff, could be as low as \$1 million.

21 Mr. Shapiro. That is correct.



22 Senator Bentsen. The airlines that seem to be particularly
23 involved, like Tex International in my own state, some of
24 the airlines had a tough time of it where some of the large
25 ones, like United, have been able to utilize this principle.

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1 The Chairman. This was something, though, that will
2 undoubtedly get us into some controversy if we put it on this
3 bill.

4 Mr. Shapiro. It could be controversial on the Technical
5 Corrections bill.

6 Senator Curtis. Could we not approve it and then let
7 it go on such bill as the staff decides it ought to go on?

8 The Chairman. That would be all right with me.

9 Mr. Lubick. I would like to say, Mr. Chairman, it is
10 very difficult. We already have a ten-year carryover. If
11 we are going to have some limits, everytime somebody comes
12 up to a limit it is difficult to extend it for one group
13 without doing it generally.

14 I think it is somewhat unfair, and sometimes we just
15 have to draw the line and say the carryover expires, because
16 you have not become profitable.

17 If we extend this further, they will have had a period
18 of over 14 years within which to do it, and that, of course,
19 not only causes problems for the service, but in general
20 raises the question as to what you meant in the first place
21 by setting a finite period of time for this.

22 Senator Curtis. Did this Committee approve it once
23 before?

24 Mr. Lubick. No, Senator Curtis. I think the maximum
25 that has been approved has been the ten-year carryover, and

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1 now they have run to the end of the string on that and they
2 are now asking for an eleven-year and I suppose next year
3 somebody else will come in and some will have expired and
4 not gotten the exemption, someone other than the airlines,
5 and we think that the only really sound way to operate in
6 this area is a general basis for everybody, to say that a
7 limit means a limit. At some time, you draw the line.

8 Senator Matsunaga. Is it not true, Mr. Chairman, that
9 about the only industry involved and requesting the extension
10 is the airlines?

11 Mr. Lubick. The airlines are the only ones who have
12 requested it. I would suppose others that might have been
13 affected are not on an industry-wide basis. They are
14 individual businesses, and it is not as broad a problem.

15 But there are individual businesses who will have an
16 expiration date that will not be extended.

17 The Chairman. Why do we not agree, if that be the will
18 of the Committee, we will give it our approval and look for
19 an appropriate vehicle to add this to.

20 All in favor, say aye?

21 (A chorus of ayes.)

22 The Chairman. Opposed, no?

23 (No response)

24 The Chairman. The ayes have it.

25 Senator Curtis. Now, Mr. Chairman, this has to do with

1 what was described to me as an unintended problem. It
2 relates to -- it is not a great amount -- it relates to
3 one situation with one oil company operating in Canada.

4 The Tax Reduction Act of 1975 added Section 904(f)
5 which provides rules for recapture of foreign related losses.
6 It was intended to have prospective application. The effec-
7 tive date was December 31, 1975 rather than December 31,
8 1974, as in the rest of the act.

9 However, it operates retroactively by requiring a
10 taxpayer to recapture losses even though the losses were
11 incurred pursuant to contracts entered into well before the
12 1975 Tax Act.

13 This amendment would provide a deferral-type transition
14 role. It does not eliminate loss recapture in the case of
15 pre-existing contracts, but only extends the time period
16 over which recapture occurs.

17 Specifically, the amendment would provide that foreign
18 oil related losses which are sustained in the taxable year
19 ending before January 1, 1974, need not be recaptured in an
20 amount not exceeding 15 percent of such loss for the first
21 four years after they became subject to recapture and are
22 fully subject to recapture thereafter.

23 I would like to have Mr. Shapiro respond to this
24 problem.

25 Mr. Shapiro. This is not a provision relating to the

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1 Tax Reform Act. As Senator Curtis indicated, it was the
2 Tax Reduction Act of 1975. It deals with a provision where
3 there is a series of contracts, a contract considered that
4 was in the process at the time that the Tax Reduction Act
5 was being considered, and part of that time -- and there
6 was a binding contract for expiration that was agreed to --
7 in the Tax Reduction Act of 1975, there were certain changes
8 that were provided that prevented this particular contract
9 from incurring certain other losses.

10 It was a matter that was dealt with by the Finance
11 Committee in the past. It was agreed to by the Senate Finance
12 Committee in the Tax Reform Act and sent to the Senate
13 Floor.

14 As you will recall, the Senate Finance Committee met
15 subsequent to that time and reviewed a series of special
16 provisions and re-reported, deleted, a number of these
17 provisions when it sent the bill back to the Senate Floor.
18 This is one of those provisions which the Finance Committee
19 deleted when it sent it back to the Senate Floor in connec-
20 tion with the Tax Reform Act.

21 There is a question of whether this particular situation
22 that they were aware the losses that would accrue as a part
23 of the binding contract entered into before the 1975 Act
24 should be allowed for a period of years after that '75 Act
25 was enacted.

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1 Senator Curtis. As I recall, this comes from a
2 transaction where a taxpayer had to do something to comply
3 with Canadian law, and participated in the distribution of
4 the service company.

5 Mr. Shapiro. We are not sure whether this case deals
6 with Canada or somewhere else.

7 Senator Curtis. We have approved it once before.

8 Mr. Shapiro. The Finance Committee has approved it,
9 and subsequently you deleted it.

10 Senator Curtis. Deleted it when we narrowed the bill
11 down in many respects.

12 Mr. Shapiro. That is right.

13 Senator Curtis. I wonder if it could be tentatively
14 approved and staff decide whether or not there is an appropri-
15 ate bill.

16 Mr. Lubick. The problem we have with this, Senator,
17 we are not doing this in the general area of the foreign
18 tax credit. It is a special proposal for one taxpayer.
19 We have been informed if it were adopted it might act adversely
20 for another one.

21 It seems to us that basically the principle that was
22 adopted to the recapture of the losses was a sound one, and
23 there is no particular need for deferral.

24 Senator Curtis. Mr. Chairman, I would like to go on to
25 a matter that Senator Dole has called up. He had to leave and

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1 the staff worked with him on this so they can provide the
2 data. It has to do with food and agriculture assistant
3 payments and what year they constitute income, whether it
4 is the crop year.

5 Will the staff tell us what that is?

6 Mr. Shapiro. Yes, Senator. This is a matter that
7 you indicated Senator Dole was concerned about. Last year
8 there were certain crop disasters and the Food and Agricul-
9 tural Act of 1977 provided that assistance payments would
10 be made available to farmers.

11 Under the tax law, that amount of farm assistance is to
12 be included in income in the year that the funds are
13 actually received. The problem that arises, he may have a
14 doubling up of income, meaning this: the crops were
15 destroyed last year and their income that they would have
16 received last year is received in this year. If they
17 receive it this year, it will be last year's income and this
18 year's income.

19 What they are asking for is to treat the income that
20 related to the disaster for last year as income for last year.
21 So that, in effect, even those receiving this year's could
22 be taxed to those farmers, since it relates to last year's
23 income.

24 Senator Curtis. Ordinarily, if the disaster had not
25 happened, the crop would have been last year. But because of

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1 the time needed for the government to act --

2 Mr. Shapiro. That is correct.

3 Senator Curtis. What is the position of Treasury?

4 Mr. Lubick. Senator Curtis, if it is limited to the
5 crop disaster portion of the government payments, they would
6 have a good case. There was some foul-up in the government
7 processing.

8 Senator Curtis. That is my understanding.

9 Mr. Shapiro. That is true, Senator. There is one ques-
10 tion that Mr. Lubick is referring to that is not clear to
11 us.

12 These payments include two types of payments. One, it
13 could, in some cases -- one is the disaster portion and then
14 it could be an assistance related to a parity.

15 Senator Curtis. A deficiency payment is what we are
16 talking about.

17 Mr. Shapiro. What Mr. Lubick is saying, to the extent
18 that it relates to the disaster, the Treasury has no problem.
19 To the extent that it relates to some additional assistance
20 related to a parity that is provided, then he would say that
21 should be included as income in the year received.

22 Senator Curtis. We had better wait until Senator Dole
23 can present it.

24 Senator Eagleton got in touch with me, and he has an
25 amendment. I understand that, in the 1976 Tax Reform Act, we

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1 put taxes on certain generation-skipping trusts. I am told
2 that these taxes would put on trusts that were created
3 before the 1976 act was signed into law -- in fact, this
4 tax applied to trusts created even before a bill was
5 introduced.

6 Is this essentially correct?

7 What Senator Eagleton is asking for is that the tax be
8 applied to trusts created after October 1, 1976.

9 Mr. Shapiro, Yes. I talked to Senator Eagleton about
10 this matter and I submitted to him a sequence of events
11 with respect to the generation-skipping trust provisions and
12 the effective date.

13 The effective date in the tax reform act in respect
14 to generation-skipping trusts is April 30, 1976. There
15 was no consideration of any bill at that time.

16 However, Chairman Ullman of the Ways and Means Committee
17 had announced, prior to that date, that he was introducing
18 an estate-gift tax bill that would deal with generation-
19 skipping trusts.

20 He actually introduced his bill which was considered
21 by the Committee on Ways and Means subsequent to that date,
22 but he picked up that April 30 date in his bill.

23 The Senate Finance Committee had a provision in the
24 Tax Reform Bill which had an effective date of January 1,
25 1978. When you went to Conference, the conferees agreed to

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1 When you went to conference, the conferees agreed to
2 the House effective date, April 30, 1976. There are some
3 cases that we are aware of where it was brought out to the
4 attention of members of Congress that certain taxpayers
5 and their representatives and attorneys and other advisors
6 were not aware of the changes being considered by the
7 Conference at the time, and feel that they had no idea that
8 this effective date was to take place when they were consider-
9 ing thsir wills.

10 At the same time, I must say that there are other
11 cases where it could be said that, because some people are
12 close to Washington and knew that these changes were to be
13 taken into effect, quickly went out to draft their wills,
14 so there are cases on both sides in that regard.

15 Senator Curtis. On the other hand, Chairman Ullman
16 made his statement in May and then he made it retroactive
17 even to April.

18 Mr. Shapiro. He made the statement before the time and
19 introduced the bill after that time.

20 Senator Curtis. The effective date is even before his
21 statement.

22 Mr. Shapiro. I think that there were statements made
23 before that date, but there was no date made in those
24 statements. The only statement was that he was going to
25 have a bill dealing with generation-skipping trusts. I do

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1 not think he made a statement.

2 Senator Curtis. I think this is a correct statement of
3 the policy that has been followed on this retroactivity.
4 Of course, some people are going to be on either side of the
5 deadline, so Congress has to decide what is fair. There have
6 been times when there was some broad issue and the Chairman
7 of the Finance Committee and the Chairman of the Ways and
8 Means Committee have joined in a statement to give notice to
9 the whole world of certain intent.

10 I think, with the exception of that procedure, we have
11 not made taxes retroactively until at least when the
12 Committee takes action.

13 Mr. Shapiro. There have been times when you have had
14 certain tax shelter arrangements in other situations, 1965,
15 1976, that the Committee has acted on the date not when the
16 Committee completed its action on the bill but when it
17 completed its action on that particular subject.

18 Senator Curtis. This was before that. This is a
19 month before any bill was introduced that the Chairman made
20 a statement.

21 Mr. Shapiro. There may be an argument here. That
22 April 30 date is before any action by either House and that
23 it may be appropriate to consider advancing that date to
24 some extent. Whether or not you go all the way up to the
25 October 4th date when it was enacted is something that the



1 Committee has to decide. However, it may be appropriate
2 to move it up from the April 30th date, because there was
3 no announcement at that time.

4 Senator Curtis. Any date after Ullman took his action,
5 May 24th, June 11th, June 20th, August 2nd -- the House Ways
6 and Means Committee reported the bill.

7 Mr. Lubick. I think, generally speaking, these genera-
8 tion-skipping trusts involve large amounts of money. If
9 they do not, there is an exemption in the bill.

10 Many of the draftsmen, they are pretty well sophisticated
11 people who follow what is going on. You are perfectly right
12 that the April 30th date is not appropriate because there
13 was no bill, but I have a chronology of some of the dates
14 here. Chairman Ullman's bill was introduced on May 24th,

15 1976 and the bill was tentatively approved.
16 Senator Curtis. As the law stands, we made it retro-

17 active before he introduced his bill.
18 Mr. Lubick. That is why I think the May 24th bill is

19 much more appropriate. It was introduced and known by the
20 public and picked up by the tax services and the bill was,
21 a tentative approval of the bill was June 20, 1976. The

22 generation-skipping tax provisions were approved June 15th --
23 Senator Curtis. That bill never passed the House.
24 Mr. Lubick. I understand, but the world --

25 Senator Curtis. He made a proposal and it did not go

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1 anyplace. Now are you taking notice that they intended it
2 to go someplace?

3 Mr. Lubick. The Finance Committee actually approved
4 the generation-skipping on June 11th.

5 Senator Curtis. Did that become law?

6 Mr. Lubick. No, it has not. But, very frequently, in
7 the area of trusts, for example, and foreign trusts where
8 you are trying to deal with an avoidance situation, you do
9 make them retroactive to the date of announcement of
10 consideration by the Ways and Means Committee and the
11 Finance Committee.

12 It seems to me that this is such a situation. There
13 were very few, if any, persons operating in this area. They
14 were not made aware of it.

15 Senator Curtis. I think that an injustice to one tax-
16 payer is too much. The tax burdens are so heavy, the idea
17 of making them retroactive is almost indefensible.

18 Mr. Lubick. Senator, I think this particular provision
19 is not one where you are dealing with heavy tax burdens.
20 These are generation-skipping trusts where you have a
21 person entering into very complex transactions in order to
22 permit trusts to last without estate tax for 50, 60, 70
23 years.

24 Senator Curtis. What is the date you would have?

25 Mr. Lubick. The May 24, '76 date is the most logical,

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1 when Chairman Ullman introduced it. You could take the
2 Finance Committee date of June 11 or the tentative approval
3 by the Ways and Means Committee of June 15th to 17th. I
4 think any of those would have some logic to it.

5 Senator Curtis. I am calling this up for another
6 Senator, Senator Eagleton.

7 Mr. Lubick. Actually, the June Finance one did not
8 have the exception for grandchildren. Ultimately, the law
9 passed was even more liberal, so one could have expected
10 tighter treatment in the framework of June, 1976.

11 Senator Curtis. You say that is when they would expect
12 tighter treatment?

13 Mr. Lubick. Actually, if the Finance Committee version
14 Senator Curtis. Would the Treasury object to June 11,
15 1976?

16 Mr. Lubick. No, Senator.

17 Senator Curtis. I would ask that we approve it to be
18 put on such bill as you desire, with the understanding that
19 if Senator Eagleton is unsatisfied and wants to withdraw the
20 bill, he can, but I promised to call it up for him.

21 The Chairman. Without objection, it will be approved
22 on that basis.

23 Senator Byrd. Mr. Chairman, I have an amendment to
24 present which I understand, I have been told, that the Joint
25 Committee staff believes is, indeed, a technical amendment.

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1 I understand Treasury has no objection. If I am wrong
2 in either assumption, I shall withdraw the amendment.

3 The Tax Reform Act of 1976 cut back on the allowance
4 of certain expenses in connection with the rental of vacation
5 homes. While the 1976 Act provision was never intended to
6 affect principal residences, which for one reason or another
7 was rented for a portion of the taxable year, it appears that,
8 due to the technical problems that arose late in the drafting
9 process, this provision would apply not only to vacation
10 homes, such as beach houses, but also to principal residen-
11 ces.

12 This is true, even though the caption of the 1976 Act
13 provision specifically refers to vacation homes.

14 The amendment is strongly supported by the American
15 Institute of Certified Public Accountants. Unless amended,
16 I am informed that the 1976 Act provision will adversely
17 affect military and other government employees' families
18 that have to move in the middle of the taxable year and put
19 their houses for rent for a portion of the year.

20 I have been informed that the Treasury has no objection.
21 I have been informed that this is a technical correction
22 proposal.

23 Mr. Shapiro. Senator Byrd, that is correct. Subsequent
24 to the enactment of the Tax Reform Act, we found out there
25 were situations where the vacation home rules do not work as

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1 was intended. A simple case where the vacation home rule
2 says you do not get your deductions in excess of the income
3 for more than 14 days or 10 percent of your total rental
4 use.

5 It was intended to say, if you use it for personal
6 purposes, you cannot get any deductions in excess of your
7 income. You have to have it as a complete investment property.
8 It may be a situation where somebody lives in their home
9 and moves to another city. Many times there are people who
10 took government jobs and have that situation, but they kept
11 their homes so that when they moved back to that city -- and
12 during the meantime, they rented it out, and this rule hits
13 such situation, and I think Senator Byrd is correct, that
14 it was not intended to do that, and this does appear to be
15 an appropriate technical correction.

16 Mr. Lubick. Senator Byrd, you ought to know that several
17 members of my staff would benefit from this provision, I
18 think equitably.

19 Senator Byrd. In that case, I move the adoption of the
20 amendment.

21 The Chairman. Without objection, agreed.

22 Without objection, the bill will be ordered reported.

23 Mr. Shapiro. I have two things.

24 Early last year the Finance Committee agreed to an
25 amendment by Senator Talmadge which relates to certain bumpers.

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1 The excise tax, it is an amendment related to the Tax Reform
2 Act. It is appropriate. The Treasury Department approved
3 it and it would be appropriate to add it at this time to this
4 bill. I do not think it was added anywhere.

5 The Chairman. Without objection, the amendment would
6 be added.

7 Mr. Stern. Mr. Chairman, may I reiterate? I think
8 where stand now on H.R. 9251, that is the bill that, among
9 other things, concerns Section 911. We have agreed to a
10 two-year delay of the effective date of the income provisions
11 rather than one year, as the House bill, and you have added
12 the sugstance of Senator Ribicoff's bill, S. 2115, and you
13 have deleted those provisions of H.R. 9251 that were enacted
14 last year and you have added Senator Curtis' provision with
15 regard to the state legislators.

16 That is what you have done to H.R. 9251.

17 H.R. 7851 --

18 The Chairman. State legislators? Did we have it on that
19 bill?

20 Mr. Stern. Yes, sir.

21 The Chairman. Did we agree on that bill, or on another
22 bill?

23 Mr. Stern. Because it is an extension.

24 The bill H.R. 7851. This is the bill that the House has
25 passed and sent over dealing with the telephone cooperatives,

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1 there are three of all of the amendments that you have
2 considered today that do not fit within the technical amend-
3 ment category.

4 One is the one relating to securities lending, Senator
5 Packwood's. Second, Senator Matsunaga relating to the earned
6 income credit. The third is Senator Curtis' relating to the
7 investment tax credit carryovers.

8 You might want to put those three amendments on this
9 bill and then everything else that the Committee has approved
10 today fits into the category of a technical amendment, if that
11 is all right.

12 The Chairman. I think that in regard to the carryover
13 provision that you might -- do we have other bills?

14 Mr. Stern. There are other bills.

15 The Chairman. I think I would save that and put that
16 on one of the other bills, because I think that with the
17 other two amendments it would probably pass on the consent
18 calendar. The amendment on carryover should be called up
19 on some other bill, and called separately.

20 I suggest we hold that amendment and add it on to
21 whatever bill comes along thereafter.

22 Senator Curtis. Do we not have some House-passed bills
23 before us right now?

24 Mr. Stern. Yes, sir.

25 Senator Curtis. Are there any objections to them?

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Mr. Shapiro. There are a couple of bills that we know of. One of them I was aware that there is an interest to add some other amendments to it.

We are aware of two bills that passed last week, one you dealt with today and you added several amendments to; the second one deals with the provision relating to the retirement pay of judges which, I think, there is some interest in adding related amendments by Senator Talmadge or Senator Byrd that may be dealt with later. Senator Curtis. We did approve one of those other bills today.

Mr. Shapiro. Yes, we did.

Senator Curtis. Can we not put this on there?

Mr. Shapiro. Senator Long requested that it not be -- the amendments are noncontroversial and should be on the consent calendar.

Mr. Stern. You do have some tariff bills that the substance of which has become law. H.R. 3790, poppy straws. That has already been assigned.

The Chairman. Without objection, we will add it to the poppy straw bill.

Senator Curtis. The reason I am anxious, several of these I called up to the accommodation of people. I do not like to have them dragging on for weeks and weeks, and we cannot keep track of them. That is why I appreciate getting



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rid of them.

Mr. Stern. That would be the only substantive amendment on H.R. 3190.

Mr. Shapiro. We are aware that there are revisions that need to be done, minor drafting things. We would like for the Committee to give us the authority to take care of, in 6715, any technical or minor drafting changes to make sure that no unintended hardships occur.

The Chairman. Without objection, agreed.

Senator Byrd. Mr. Chairman, I would like to insert in the record two letters, one from Senator Ford and one from Gerald R. Sheehan of LaCross, Wisconsin.

(The material refers to follows:)

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Mr. Lubick. I would like to ask for drafting authority for conforming amendments.

The Chairman. Without objection, the staff will be authorized to make technical drafting of changes.

(Thereupon, at 1:05 p.m. the Committee adjourned, to reconvene subject to the call of the Chair.)

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