

1 OPEN EXECUTIVE SESSION TO CONSIDER AN ORIGINAL BILL  
2 RELATING TO ACCESS AND ADMINISTRATION OF THE U.S. TAX  
3 COURT; AN ORIGINAL BILL TO REMOVE ALCOHOL BONDING  
4 REQUIREMENTS FOR CERTAIN TAXPAYERS; AN ORIGINAL BILL  
5 RELATING TO MODIFICATIONS TO ALTERNATIVE TAX FOR CERTAIN  
6 SMALL INSURANCE COMPANIES; AN ORIGINAL BILL TO MODIFY THE  
7 EXCISE TAX ON CIDER; AN ORIGINAL BILL TO TRUNCATE THE  
8 COLLECTION PERIOD FOR TAXPAYERS HOSPITALIZED FOR COMBAT  
9 ZONE INJURIES; AN ORIGINAL BILL TO PROVIDE SPECIAL RULES  
10 CONCERNING CHARITABLE CONTRIBUTIONS TO, AND PUBLIC  
11 CHARITY STATUS OF, AGRICULTURAL RESEARCH ORGANIZATIONS;  
12 AN ORIGINAL BILL TO PROVIDE AN EXCEPTION TO THE PRIVATE  
13 FOUNDATION EXCESS BUSINESS HOLDINGS RULES FOR CERTAIN  
14 PHILANTHROPIC BUSINESS HOLDINGS; AN ORIGINAL BILL TO  
15 CLARIFY A SPECIAL RULE FOR CERTAIN GOVERNMENTAL PLANS; AN  
16 ORIGINAL BILL TO MODIFY THE TREATMENT OF INCOME RECEIVED  
17 UNDER STUDENT WORK-LEARNING-SERVICE PROGRAMS; AN ORIGINAL  
18 BILL FOR A WASTE-HEAT-TO-POWER INVESTMENT TAX CREDIT; AN  
19 ORIGINAL BILL TO ALLOW ENROLLED AGENTS WHO MEET CERTAIN  
20 REQUIREMENTS TO USE SPECIFIED DESIGNATIONS; AN ORIGINAL  
21 BILL RELATING TO REAL ESTATE INVESTMENT TRUSTS (REITs),  
22 REGULATED INVESTMENT COMPANIES (RICs), AND THE FOREIGN  
23 INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA); AN ORIGINAL  
24 BILL TO EXCLUDE FROM GROSS INCOME CERTAIN COMPENSATION  
25 RECEIVED BY PUBLIC SAFETY OFFICERS AND THEIR DEPENDENTS;

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1 AN ORIGINAL BILL TO CONVERT THE TAX ON LIQUEFIED NATURAL  
2 GAS AND LIQUEFIED PETROLEUM GAS TO AN ENERGY EQUIVALENT  
3 BASIS; AN ORIGINAL BILL TO REQUIRE THE INTERNAL REVENUE  
4 SERVICE TO NOTIFY EXEMPT ORGANIZATIONS BEFORE REVOKING  
5 EXEMPT STATUS FOR FAILING TO FILE INFORMATION RETURNS; AN  
6 ORIGINAL BILL TO EXCLUDE FROM GROSS INCOME CERTAIN CLEAN  
7 COAL POWER GRANTS; AND AN ORIGINAL BILL TO CREATE A  
8 MILITARY SPOUSE JOB CONTINUITY CREDIT

9 WEDNESDAY, FEBRUARY 11, 2015

10 U.S. Senate,  
11 Committee on Finance,  
12 Washington, DC.

13 The hearing was convened, pursuant to notice, at  
14 10:10 a.m., in room 215, Dirksen Senate Office Building,  
15 Hon. Orrin G. Hatch (chairman of the committee)  
16 presiding.

17 Present: Senators Grassley, Crapo, Roberts, Cornyn,  
18 Thune, Isakson, Portman, Toomey, Coats, Heller, Scott,  
19 Wyden, Schumer, Stabenow, Cantwell, Nelson, Menendez,  
20 Carper, Cardin, Bennet, and Casey.

21 Also present: Republican Staff: Chris Campbell,  
22 Staff Director; Tony Coughlan, Tax Counsel; Mark Prater,  
23 Deputy Staff Director and Chief Tax Counsel; Preston  
24 Rutledge, Tax Counsel; and Caleb Wiley, Professional  
25 Staff Member. Democratic Staff: Ryan Abraham, Senior Tax

1       and Energy Counsel; Michael Evans, General Counsel;  
2       Jocelyn Moore, Deputy Staff Director; and Joshua  
3       Sheinkman, Staff Director.

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1       OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR  
2       FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE

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4             The Chairman.    The Committee will come to order.  
5       Today the Committee has before it the Chairman's mark  
6       that contains 17 tax bills.

7             I want to welcome members of the Committee to this  
8       Executive Business Meeting.  This is an important meeting  
9       today and it is a meeting on various pieces of tax  
10      legislation.  This markup is in many ways a continuation  
11      of a process, as Senator Wyden suggested last year.

12            For the first time in the modern era of the Senate  
13      Finance Committee, we are meeting to act on miscellaneous  
14      tax bills.  As far as I am concerned, no -- as far as I  
15      am aware, really, no current member of this Committee has  
16      been present for this kind of business meeting.  In other  
17      words, we will all be learning as we go.

18            While this may be the first markup of this kind, it  
19      should not be the last.  Indeed, Senator Wyden and I plan  
20      to hold other markups like this in the near future, and I  
21      hope that today's meeting can serve as a good template  
22      for how these markups will proceed going forward.

23            At the time we announced this meeting, Senator Wyden  
24      and I laid out several criteria for bills to be  
25      considered.  First, we said that the bills had to fall

1 squarely within the jurisdiction of the Finance  
2 Committee. Second, the bills had to have bipartisan  
3 support and be noncontroversial on both sides.

4 Third, they had to have little or no budgetary  
5 impact and any bills scored as losing revenue had to have  
6 an acceptable offset. Fourth, the bills had to address  
7 thoroughly reviewed subject matter. Fifth, they could  
8 not be actively opposed by either the Senate leadership  
9 or the White House. Finally, they could not be  
10 considered a limited tax benefit under Senate Rule 44.

11 Now, with these criteria in mind, we combed through  
12 a number of bills submitted by members of the Committee  
13 and came up with the ones included in the Chairman's mark  
14 today. Members from both sides submitted bills that  
15 would modify certain tax extenders. However, in each of  
16 those cases, the underlying laws had already expired. So  
17 we asked those members to defer their submissions until  
18 the time the Committee takes up the extenders.

19 Likewise, there were a number of pension-related  
20 proposals submitted by members on both sides and though  
21 those proposals likely have merit, they are going to  
22 require more work. That being the case, we asked those  
23 members to wait until we held a meeting to specifically  
24 address pension issues.

25 So after going through that process, we have before

1 us 17 separate pieces of tax legislation to consider.  
2 Once again, these are noncontroversial and we should be  
3 able to move them through quickly, at least that is what  
4 I believe.

5 I want to thank our colleagues here for their  
6 attendance today. I look forward to others getting here,  
7 and I look forward to working through each of these  
8 bills.

9 Let me now recognize Senator Wyden for his opening  
10 remarks. And I hope that as we go through the opening  
11 remarks, we can keep them as short as we can. I am not  
12 necessarily talking to you, Senator Wyden, but for all of  
13 us, to try and keep them as short as we can.

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1 OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM  
2 OREGON

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4 Senator Wyden. Thank you, Mr. Chairman. And I  
5 intend to be brief, as well.

6 Colleagues, today marks the third time in less than  
7 a year that the Finance Committee has debated bipartisan  
8 legislation to improve the American Tax Code. That has  
9 been a welcome change of pace.

10 In fact, the Committee had gone nearly 2 full years  
11 without a markup when we passed the EXPIRE Act last  
12 spring to extend a number of expiring tax provisions.  
13 Next up after the EXPIRE Act was the PATH Act, which  
14 dealt with funding for highway infrastructure. And last  
15 fall we began the process of developing and assembling  
16 the bills that are before the Finance Committee today.

17 This legislation is obviously not a comprehensive  
18 overhaul of the Tax Code, but it makes a number of  
19 targeted improvements that will benefit the American  
20 economy, workers and families. For example, it gives  
21 teachers, transit employees and firefighters, including  
22 many in my home State of Oregon, more control over their  
23 savings for health care.

24 It is going to promote American competitiveness by  
25 leveling the playing field and cutting red tape for

1 producers of craft beer, cider, wine and distilled  
2 spirits.

3 This legislation will encourage foreign investment  
4 in our country and it will promote agricultural research.  
5 And it is going to be a relief to military spouses whose  
6 wallets take a hit every single time they have to  
7 relocate.

8 Each of the changes that are being proposed today is  
9 going to be made without adding to the deficit.

10 Now, some may describe all of this as a collection  
11 of low-hanging fruit. They are just plain wrong. The  
12 fact of the matter is when it comes to the American Tax  
13 Code, each decision and each change has consequences.  
14 What this markup does show is that members of the Finance  
15 Committee are steadfast on continuing our efforts to  
16 improve the American Tax Code on a bipartisan basis.

17 Obviously, there is going to be lot of work to do in  
18 the days ahead. The package of stop-and-go tax extenders  
19 expired once again on January 1. Those policies need to  
20 be addressed sooner rather than later. And the push  
21 toward comprehensive tax reform is going to continue in  
22 the months ahead.

23 So the point of today is to keep this effort, this  
24 effort to keep the ball rolling, moving apace. And I  
25 thank you, Chairman Hatch, and I thank you for the

1 cooperation that we have been able to enjoy as we put  
2 this together.

3 The Chairman. I thank you, as well. At this  
4 point, Senator Wyden and I would like to engage in a  
5 brief colloquy about further consideration of the bills  
6 that we will vote to report today.

7 Senator Wyden and I have worked with all Committee  
8 members to put together a bipartisan set of bills for the  
9 Committee's consideration and we hope to take a similar  
10 approach on the Senate floor.

11 While the management of the Senate calendar and the  
12 Senate floor is in the prerogative of the Majority and  
13 Minority Leaders, I am committed to working with Senator  
14 Wyden and our respective leaders to assure that these  
15 bills are considered on the Senate floor in a way that is  
16 balanced and bipartisan.

17 I think that is what we want to do.

18 Senator Wyden. Mr. Chairman, if I could just  
19 respond briefly. I appreciate the approach that you have  
20 just described and I join you in pushing for a bipartisan  
21 process.

22 My preference is that the bills be considered on the  
23 floor together as a package, but at a minimum, they ought  
24 to be considered in a way that reflects both Democratic  
25 and Republican priorities.

1           Mr. Chairman, I think it might be helpful for the  
2 two of us to send a letter to Senators McConnell and Reid  
3 explaining that we would like to work with them to assure  
4 the bipartisan consideration of these bills on the floor.

5           Mr. Chairman, is that acceptable for you for the two  
6 of us to send a letter along those lines?

7           The Chairman. Yes, it is acceptable.

8           I will now recognize Senators who want to make  
9 opening statements. I would ask that any Senator wishing  
10 to make remarks keep them brief, limiting them to no more  
11 than 4 minutes and less, if you can.

12           So we will turn it over to the Senators. Senator  
13 Grassley?

14           Senator Grassley. I will put a statement in the  
15 record.

16           My provision in this bill deals with what the trade  
17 association calls farm mutuals. In Iowa, we call them  
18 county mutuals. The last time that the threshold that we  
19 increase in my legislation was 29 years ago. As a  
20 result, many of these small mutuals are purging their  
21 current 1.2 million limit. Both they and their customers  
22 will be adversely impacted if this is not raised.

23           I wanted to make clear, because Senator Harkin has  
24 retired, I wanted to recognize his efforts in the last  
25 couple of Congresses. He and I worked together to bring

1 this legislation up and obviously it did not get up.

2 So we are going to raise the 1.2 million limit to  
3 2.2 million and index it for inflation going forward.

4 So I will put a complete statement in the record.

5 [The prepared statement of Senator Grassley appears  
6 at the end of the transcript.]

7 The Chairman. That would be great.

8 Senator Schumer?

9 Senator Schumer. Thank you, Mr. Chairman. I just  
10 want to take a moment to express my thanks to you and  
11 Ranking Member Wyden and your staffs for working to  
12 process and include the CIDER Act in the package of  
13 proposals we will be voting out today.

14 You could say the CIDER Act is moving. How about  
15 them apples? But seriously --

16 The Chairman. Only in New York.

17 [Laughter.]

18 Senator Schumer. That cider has a real effect on  
19 everybody.

20 But seriously, I am very appreciative, because this  
21 policy change is going to provide real relief not just to  
22 the fledging cider industry and their customers, but to  
23 the more than 650 apple farms spread across my State that  
24 harvest more than 29 million bushels of apples annually.

25 The proposal will very simply ensure that all cider,

1 hard cider is taxed at the intended excise rate for hard  
2 cider.

3 For those not familiar with the issue, let me just  
4 quickly explain. Beer is currently taxed at \$0.23 a  
5 gallon. Hard cider is also taxed at that rate. That is  
6 fair. However, the definition of hard cider is drafted  
7 so narrowly that many hard cider products are bumped into  
8 a different category for excise taxes.

9 Specifically, if the sugar content fluctuates and  
10 the alcohol level exceeds 7 percent, then the cider is  
11 then taxed at the wine category of \$1.07 per gallon. And  
12 if the carbonation levels are too high, it is hit with a  
13 luxury tax as if it is champagne, \$3.30 a gallon.

14 So all we want to do is update our cider definition  
15 to assure the common carbonation and alcohol levels  
16 associated with traditional ciders are reflected in the  
17 excise tax.

18 Added benefit, the clarification confirms our  
19 definition with that used by the European market. So  
20 that will allow our folks to send their cider overseas,  
21 export and compete.

22 So this is a win for everybody and, again, I thank  
23 Chairman Hatch and Ranking Member Wyden for their putting  
24 it on the agenda and my colleagues for their support.

25 The Chairman. Thank you, Senator Schumer.

1 Senator Cantwell, you are next.

2 Senator Cantwell. I will submit my statement for  
3 the record. Thank you.

4 [The prepared statement of Senator Cantwell appears  
5 at the end of the transcript - **PLEASE PROVIDE.**]

6 The Chairman. Thank you so much.

7 Senator Roberts?

8 Senator Roberts. Thank you, Mr. Chairman. And I  
9 want to thank the Senator from New York for his  
10 elucidating comments on cider.

11 Perhaps the Senator could bring samples of cider  
12 here for the Committee.

13 Senator Schumer. Indeed.

14 Senator Roberts. And under the circumstances, we  
15 could achieve regular order.

16 [Laughter.]

17 Senator Roberts. Mr. Chairman, I thank you and  
18 Ranking Member Wyden for moving quickly on tax  
19 legislation. My dear friend, Senator Cardin, is not here  
20 and I am going around Robin Hood's barn with what the  
21 plans were. He was going to have a colloquy with me, but  
22 I am going to go ahead and make the statement and get it  
23 out of the way so we can get going.

24 The markup this morning shows the strength of the  
25 Finance Committee, its bipartisan approach to the issues

1 facing our economy.

2 I want to raise an attention, along with my  
3 distinguished colleague from Maryland, to a proposal  
4 which unfortunately did not make it into the package we  
5 consider today, legislation to increase employee  
6 ownership of companies across the country.

7 I am extremely proud to work with my colleague from  
8 Maryland, Senator Cardin, to champion the S ESOP model in  
9 the Senate so more businesses and their employees can  
10 achieve the American dream of work.

11 Last year we introduced the Promotion and Expansion  
12 of Private Employee Ownership Act because I believe more  
13 American workers should have access to the benefits of  
14 employee ownership.

15 This legislation has broad bipartisan support. I  
16 would have considered this a great candidate for today's  
17 markup. I understand that our proposal is complex or at  
18 least staff has informed me that it is complex. I do not  
19 think it is complex, but obviously we yield to staff.  
20 And so it was held out of the markup.

21 I understand that there is a belief among staff that  
22 this has an implication with regard to pension funds.  
23 Obviously, it does. Most workers prefer ESOPs. ESOPs  
24 are not any kind of trouble. Pension funds are in  
25 trouble everywhere you look. So I do not see the problem

1 here.

2 But I hope that as we move forward with additional  
3 bipartisan markups, we will consider the S Corporation  
4 ESOP proposal. I look forward to working with you to  
5 bring this measure before the Committee, and thank you  
6 again.

7 The Chairman. Senator Cornyn?

8 Senator Cornyn. Thank you, Mr. Chairman. I want  
9 to express my gratitude to you and the Ranking Member for  
10 this markup today. I will brief, but I want to say a few  
11 words about one of the bills we will be considering that  
12 protects our men and women in uniform.

13 Last Congress, I introduced the Wounded Warrior Tax  
14 Equity Act that was cosponsored by my friend from  
15 Pennsylvania, Senator Casey. This bipartisan legislation  
16 is based on a recommendation by the National Taxpayer  
17 Advocate and is supported by the Veterans of Foreign  
18 Wars, the Association of the United States Army, the  
19 Fleet Reserve Association, and the Reserve Officers  
20 Association.

21 In a nutshell, this legislation will help protect  
22 our men and women in uniform while serving in a combat  
23 zone from an unnecessary extension of IRS collection  
24 activity when they are hospitalized. And according to  
25 the National Taxpayer Advocate, this proposal treats the

1 statutory period for tax collection of our hospitalized  
2 combat troops consistently with those of civilian  
3 taxpayers who are similarly situated.

4 So I want to say thanks to the Chairman and the  
5 Ranking Member and I look forward to working with you on  
6 this important issue, as well as the others before us.

7 The Chairman. Thank you, Senator.

8 Next in line would be Senator Portman.

9 Senator Portman. Thank you, Mr. Chairman.

10 I think we have just heard some of the reasons this  
11 is such an important markup. Thank you and the Ranking  
12 Member for moving forward on these bills, some of which  
13 have been languishing for a long time.

14 We also heard from Pat Roberts about one we wish  
15 were in here, the S-ESOP bill, which I also strongly  
16 support. I have also got some pension provisions, as you  
17 know, Mr. Chairman, that you have chosen to put off to a  
18 pension mark. But I do think there is some other good  
19 legislation we can move forward on that is bipartisan and  
20 has the opportunity to get passed not just in the Senate,  
21 but also in the House.

22 I want to mention a couple here quickly. Continuing  
23 on the alcohol theme from Senator Schumer, there is also  
24 a provision that Senator Wyden has in that is very  
25 important to small brewers in Ohio that I want to commend

1 him for on alcohol bonding, particularly helpful, again,  
2 to small brewers.

3 Then there is an enrolled agents bill that I have  
4 been working on for several years that is kind of  
5 noncontroversial and very sensible and finally we are  
6 getting it done, and I appreciate your doing that.

7 There is a concern, as you know, about taxpayer  
8 fraud that has not hit the IRS Dirty Dozen list of tax  
9 scams. It is tax preparer fraud. And it is a time that  
10 we should be holding up those who have good credentials  
11 to be able to help folks with their taxes.

12 One such group is the enrolled agents. They do a  
13 terrific job out there, and yet even though they have to  
14 go through a considerable process to become an enrolled  
15 agent -- there are 47,000 of them -- they have got to  
16 pass a 3-part comprehensive IRS exam or gain experience  
17 as a former IRS employee. They also have to do  
18 continuing education classes to stay current on tax law  
19 changes.

20 Unbelievably, there are a bunch of States that do  
21 not allow them to advertise the fact that they are  
22 enrolled agents. And so this legislation simply says --  
23 no cost, no known opposition, by the way -- let them show  
24 off these credentials they have got from the IRS. No  
25 reason to prohibit them from advertising who they are.

1           This helps taxpayers, helps the tax system, and it  
2           is an example, Mr. Chairman, of the kind of bills that we  
3           are doing here today and I appreciate your letting us  
4           have the chance to mark it up.

5           By the way, it has also been supported in the House  
6           by a number of members and, in fact, was introduced just  
7           a couple of days ago by a House sponsor. So this has  
8           companion legislation and I think it has a very good  
9           chance of becoming law and I thank you for including it  
10          in the mark.

11          The Chairman. Thank you, Senator.

12          Senator Heller, you are next.

13          Senator Heller. Mr. Chairman, thank you and thank  
14          you for this hearing, to both of you, you and the Ranking  
15          Member.

16          What I would like to do is just submit my opening  
17          remarks for the record, but make one quick note. There  
18          are two pieces of legislation I really would have liked  
19          in this markup, the Mobile Mammography Promotion Act and  
20          the Hearing Aid Assistance Tax Credit Act.

21          I have been given assurance and I have confidence in  
22          your leadership that it will be part of future markups,  
23          and for that I am appreciative.

24          Thank you, Mr. Chairman.

25          [The prepared statement Senator Heller appears at

1 the end of the transcript.]

2 The Chairman. Thank you, Senator. I appreciate it  
3 very much.

4 Senator Coats, you are next.

5 Senator Coats. Mr. Chairman, when the IRS  
6 Commissioner was here, we talked about understaffed and  
7 overworked. And I mentioned to him the tens of thousands  
8 of cases which they have waiting for reinstallation  
9 simply because some paperwork was not filed on a timely  
10 basis.

11 The IRS right now has no obligation and no means of  
12 automatically sending out notices to these 501(c)(3)s,  
13 many of them just small mom-and-pop, church, soup  
14 kitchen. Wonderful attempts by people who do not have  
15 lawyers in the backroom and do not have accountants in  
16 the backroom who do not say you forgot to file your  
17 paperwork on time.

18 This simply provides an opportunity for the IRS to  
19 put in a system that automatically will notify before  
20 termination of tax exempt status. It will save them from  
21 having to process tens of thousands of individual cases  
22 through all the paperwork. In this digital age, it is  
23 easy to set this up through software.

24 Senator Cardin has joined me in this effort. I know  
25 he is not here, so I just wanted to mention that.

1 I thank the Chairman and Vice Chairman for their  
2 help in getting this as part of the package.

3 The Chairman. Thank you.

4 Senator Menendez, I think you are next.

5 Senator Menendez. Thank you, Mr. Chairman. I want  
6 thank you and the Ranking Member for including two  
7 provisions here, one that I have worked with Senator  
8 Thune, which is the Philanthropic Enterprise Act, which  
9 basically encourages and fosters more entrepreneurship  
10 and charitable giving in the spirit of what the late Paul  
11 Newman did with Newman's Own by enabling the creation and  
12 development of new businesses that enhance philanthropic  
13 donations to the charitable sector and makes sure that  
14 the code allows that to happen in an effective way. So I  
15 appreciate that.

16 Second, I would like to use the time here maybe, if  
17 it is appropriate, Mr. Chairman, on FIRPTA, to have a  
18 colloquy with some of my colleagues who are here now. I  
19 appreciate you and the Ranking Member including an  
20 element of FIRPTA reform.

21 It is something that many of us have been pursuing  
22 on a bipartisan basis for some time. And I certainly  
23 appreciate an element of FIRPTA reform that is being  
24 included in this markup.

25 I certainly intend, as I am sure my colleagues do,

1 to seek comprehensive relief from the obstacles for  
2 investment in the United States.

3 The piece of Senator Enzi and my legislation, along  
4 with Senator Schumer and Senator Isakson and others, is  
5 to increase the amount that a foreign investor can hold  
6 in a U.S. publicly-traded real estate investment trust  
7 without triggering FIRPTA taxes and applies a provision  
8 to certain collective investment vehicles.

9 It is an important reform measure that will infuse  
10 additional investments into the United States,  
11 incentivizing construction, creating jobs and economic  
12 growth. And while I strongly believe we need to  
13 comprehensively deal with this antiquated tax,  
14 particularly by exempting foreign pensions, I understand  
15 and respect the limitations the Chairman has put on this  
16 particular markup.

17 I want to make clear that the exclusion of the  
18 pension provision in this markup does not mean, in my  
19 view, that it is controversial or partisan in any way.  
20 Indeed, there is broad bipartisan support for this  
21 provision in both chambers and has also been included in  
22 the President's budget.

23 There is also overwhelming consensus that the  
24 current form of FIRPTA discourages foreign investment and  
25 that reforming these laws will create jobs and

1 investment.

2 So taken together, the Real Estate Investment Jobs  
3 Act, which I am reintroducing with Senator Enzi and  
4 others, will implement efficient and meaningful reform of  
5 FIRPTA tax rules to encourage more equity investment in  
6 the U.S. real estate market.

7 It increases investment in commercial real estate.  
8 Reform will jumpstart construction and real estate  
9 modernization projects and generate a need to build up  
10 surrounding infrastructure.

11 I appreciate my colleagues, in particular, Senator  
12 Enzi, who is our lead on this; Senator Schumer has been  
13 on this for quite some time, since I got to the Senate;  
14 Senator Isakson, Senator Warner, Senator Roberts, and  
15 Ranking Member Wyden to work with us.

16 If it is appropriate at this time to dispose of  
17 this, Mr. Chairman, with your concurrence or whatever you  
18 think is the appropriate time, I know that Senator  
19 Isakson and Senator Schumer want to make some remarks as  
20 it relates to this.

21 The Chairman. I think some others have some  
22 remarks, as well.

23 Senator Isakson?

24 Senator Isakson. Thank you, Mr. Chairman.

25 I want to thank Senator Menendez, Senator Schumer,

1 Senator Wyden, Senator Roberts and Senator Enzi for their  
2 focus on FIRPTA.

3 For everybody's edification, FIRPTA was a  
4 Congressional reaction to a *Time Magazine* cover that  
5 declared Japan, Inc. the new owner of American real  
6 estate and Congress put prohibitions on foreign ownership  
7 for fear that Japan would own most of American real  
8 estate by the time year 2000 came.

9 Well, obviously, that did not happen. But the  
10 restrictions of FIRPTA cut out a flow of capital into the  
11 United States, into the real estate industry and, in  
12 particular, into real estate investment trusts.

13 It is only appropriate that we raise that cap, which  
14 is now 5 percent, to 10 percent in the bill that Mr.  
15 Menendez has proposed.

16 And I further support his total reform, which I  
17 think this will be a beginning of, to allow foreign  
18 pension investment into real estate in the United States,  
19 as well.

20 We have the best real estate investments in the  
21 world. We are the safest economy in the world. We are a  
22 safe haven for people to bring their dollars and to have  
23 a prohibition against investment in something that you  
24 cannot move and there is not going to be anymore of,  
25 meaning real estate, is really shortsighted.

1           So we did it as a reaction to a *Time Magazine* cover  
2 which ended up being wrong. I am glad that Senator  
3 Menendez is leading us in the right direction and I  
4 appreciate him allowing me to have a few minutes to join  
5 this colloquy.

6           The Chairman.    Senator Schumer?

7           Senator Schumer.   First, I want to thank Senators  
8 Menendez and Isakson, as well as my other colleagues on  
9 this bill, Senators Enzi, Warner, Roberts, Jackson, but  
10 particularly Menendez and Isakson for their leadership  
11 here.

12           New York City is the gold standard for commercial  
13 real estate, but actually the proposal may be more  
14 important to my Upstate communities, which are having a  
15 harder time attracting investment and need it.

16           Many colleagues already know towns and cities all  
17 over America need more investment in real estate  
18 infrastructure, and the package of FIRPTA reforms we have  
19 been working to develop not only in Committee, but with  
20 our colleagues over on the House side, on Ways and Means,  
21 over the past year achieved these objectives, does so in  
22 a bipartisan way.

23           So I, too, am very pleased with the progress we have  
24 made and thank the Chairman for putting the safe harbor  
25 provision on the Committee today.

1           But I want to strongly emphasize that there is more  
2 work to be done before this package is ready to be signed  
3 into law. We have a history of bipartisan, bicameral  
4 support for the provision to treat foreign pension fund  
5 investments the same as U.S. pension funds and that makes  
6 imminent sense to make this change so that pension fund  
7 investments that are currently going abroad can be here.

8           They want to send their money here, we tell them no,  
9 and they invest it somewhere else. And just as Johnny  
10 said, it is real estate. This is not creating jobs  
11 overseas. This is not something that can be taken away.  
12 When the Japanese bought Rockefeller Center, it increased  
13 the value and then when they sold it, it increased the  
14 value more, just to use one little example, without any  
15 harm, with actually an increase to American wealth and  
16 American jobs.

17           So I hope that we can move forward on the pension  
18 fund investment between now and the floor. I have  
19 already talked to the Chairman and Ranking Member about  
20 trying to work with them, of course, under Senator  
21 Menendez's and Senator Isakson's leadership, so we can  
22 get the whole FIRPTA done.

23           Thank you, Mr. Chairman.

24           The Chairman. Thank you.

25           Do you want to comment?

1           Senator Wyden.     Please, if I could, Mr. Chairman.

2           Colleagues, I especially appreciate Senator Menendez  
3 and Senator Enzi having prosecuted this cause for a  
4 number of years, because since I got on the Committee, I  
5 thought one area that had always gotten short shrift is  
6 the effort to attract private capital to American  
7 infrastructure and American real estate.

8           The fact of the matter is what Senator Menendez and  
9 Senator Enzi have done is created a path that allows us  
10 to tap the potential of hundreds of billions of dollars  
11 for investment in American real estate and  
12 infrastructure.

13           So I think this is a strong start to tapping that  
14 potential. But as colleagues have noted, there is still  
15 far more to do. The fact of the matter is this Committee  
16 can tear down another significant obstacle to foreign  
17 investment by allowing tax exempt foreign pension funds  
18 to invest in the United States without tax consequences.

19           So let us move this bill forward and then let us  
20 continue the march so that we tap every possible  
21 opportunity to get private capital to real estate and  
22 infrastructure. It is something that has gotten short  
23 shrift for years.

24           The importance of this legislation is that it is  
25 another step to the evolution of a policy that allows us

1 to secure and wring out all the potential for investment  
2 in American real estate and infrastructure.

3 Thank you, Mr. Chairman.

4 The Chairman. Well, I hope we can resolve these  
5 matters.

6 I would ask unanimous consent to insert Senator  
7 Enzi's portion of this colloquy into the record.

8 Without objection.

9 [Senator Enzi's statement appears at the end of the  
10 transcript.]

11 The Chairman. Second, I appreciate everyone's  
12 comments on this issue and I want to say that I am  
13 willing to consider the proposal in the future.

14 However, as has been the past practice, a condition  
15 of considering this proposal would be that the proposal  
16 is paid for by suitable offsets that affect the  
17 industries that would benefit from the proposal. So that  
18 is where we are now.

19 Any other comment on FIRPTA?

20 Senator Menendez. One final comment, Mr. Chairman.

21 The Chairman. Senator Menendez?

22 Senator Menendez. I appreciate what you just said  
23 and we are more than willing to work with the Chair to  
24 devise the pay-fors. I think we can get there.

25 The Chairman. Sure.

1           Senator Menendez.    There is very broad bipartisan  
2 support.  I look forward to working with you and the  
3 Ranking Member to achieve that goal and the fulfillment  
4 of all of the FIRPTA.

5           The Chairman.    Thank you.

6           Senator Cardin?

7           Senator Cardin.    Thank you very much, Chairman.  
8 And I very much appreciate the way in which you and  
9 Ranking Member Wyden have put together noncontroversial  
10 bills so that we can move them along.

11           I am pleased that the Propane Excise Tax  
12 Equalization is in this bill and I thank you for  
13 including that.  I want to thank you also for including  
14 the Waste-Heat-to-Energy, for which Senator Carper has  
15 taken the lead, and I know you have had the exchange  
16 already with Senator Menendez on his provisions and I am  
17 pleased that at least we were able to make some progress.

18           I was disappointed that we did not go further, as  
19 has already been pointed out.

20           I also want to thank Senator Roberts for his  
21 statements on the S-ESOP.  I totally agree with you on  
22 that.  It seems to me that that should have been included  
23 in this list.  That is noncontroversial.  And I was  
24 hopeful that the process that the Chair has used to move  
25 noncontroversial provisions that do not have to wait for

1 a major tax reform bill, the same thing would be true  
2 with noncontroversial provisions for the S-ESOPs.

3 This, to me, is not something that we could not have  
4 resolved right now and I am disappointed that that is not  
5 included. The S-ESOPs are a tremendous asset to us  
6 through good times and bad times and help employees not  
7 only deal with the management of their company, but also  
8 to deal with their security.

9 I also was disappointed that the Church Plan  
10 Clarification Act was not included. That is another  
11 noncontroversial issue that I heard is being held back it  
12 falls under so-called the pension provisions.

13 I would like to have just one moment, if I might. I  
14 had planned to offer an amendment to deal with the BREW  
15 Act, but have been told that it is non-germane.

16 We filed the amendment. Our intent for doing this  
17 was to reduce the burden on the craft brewers. This is a  
18 jobs bill, a small business bill. If you have been to a  
19 craft brewery, you know you are talking about a small  
20 business and a creative business, where they are finding  
21 new ways to innovate and create jobs.

22 The excise tax was really never intended, I think,  
23 for this type of a business, quite frankly. And the  
24 dollars that are earned through this do not mean much to  
25 the Treasury, but mean everything to the craft brewers if

1 they are going to be able to invest and expand and create  
2 jobs.

3 So I understand that it would be ruled non-germane  
4 and I will respect the Chairman's view on that and I hope  
5 we can find a vehicle to move this forward sometime early  
6 during this Congress.

7 But I did want to ask, if I might, a question to Mr.  
8 Mazur on that issue. And there is a provision that is  
9 included in here, the bond exemption, and I am very much  
10 in support of that and I thank you very much for  
11 including that. That helps small breweries.

12 I would like you to explain the bond exemption as  
13 set forth in the Federal Registry and how it differs from  
14 the purpose of changes to the excise tax itself. If you  
15 could review that for us, I would appreciate it.

16 Mr. Mazur. Sure. Thank you, Mr. Cardin.

17 The bill being considered would reduce the bond  
18 requirements in a way that is consistent with promoting  
19 quarterly filing on the part of small brewers. This  
20 should reduce the burdens on very small producers,  
21 without having a negative effect on compliance.

22 So the target are the smallest of the small in a way  
23 that reduces their paperwork burden, but does not affect  
24 the overall compliance with the law.

25 In contrast, the Small Brew Act has a different

1 focus. It is really focused on promoting the production  
2 by craft or regional brewers. So they are quite  
3 different in that sense.

4 Senator Cardin. Thank you. Thank you, Mr.  
5 Chairman.

6 The Chairman. Thank you.

7 Senator Thune, I think you are next.

8 Senator Thune. Thank you, Mr. Chairman. I want to  
9 start by thanking you and the Ranking Member for holding  
10 the markup today. I hope that this markup will be the  
11 first in a series of bipartisan markups at this  
12 Committee.

13 I especially want to commend the Chairman and the  
14 Ranking Member for including three provisions I have  
15 championed in the past that I believe have great merit.  
16 First, today we are going to consider legislation to  
17 allow for the creation of agricultural research  
18 organizations, which would be a new type of public-  
19 private partnership between agricultural producers and  
20 universities.

21 The measure is modeled on the Charitable  
22 Agricultural Research Act that Senator Stabenow and I  
23 introduced last Congress.

24 Under this bill, agricultural producers could  
25 partner on new areas of research with land grant

1 universities, such as South Dakota State University in my  
2 home State, as well as colleges of agriculture, in a more  
3 flexible and cost-effective manner.

4 I have with me a support letter from the American  
5 Farm Bureau Federation that notes that global demand for  
6 food is projected to grow by at least 70 percent by 2050.  
7 The letter states, and I want to quote, "The importance  
8 of investing in agricultural research is imperative.  
9 Public funding for agricultural research must continue,  
10 but legislation to provide a new way to raise funds for  
11 research efforts is critical to the future of our  
12 industry."

13 Mr. Chairman, I would ask unanimous consent to  
14 include that in the record.

15 The Chairman. Without objection.

16 [The letter appears at the end of the transcript.]

17 Senator Thune. Another bill we will consider today  
18 reflects legislation that Senator Menendez and I  
19 introduced last year, the Philanthropic Enterprise Act.  
20 Our legislation recognizes and encourages a new type of  
21 philanthropy that combines private sector  
22 entrepreneurship with charitable giving.

23 This model of charitable giving was invented by the  
24 late Paul Newman when he founded Newman's Own in 1982.  
25 Since then, Newman's Own has donated \$430 million in

1 after-tax profits to a wide range of charities, including  
2 Cooking on the Rez, which is a program in South Dakota  
3 and other States that encourages healthy eating habits of  
4 teenagers living on our Indian reservations.

5 New philanthropic enterprises range from For the  
6 Troops, a Florida company that donates its sales of hot  
7 sauce and salsa to charities supporting veterans, to the  
8 Oregon Public House, which is a Portland pub that donates  
9 its profits to local charities, to Finnegan's, a  
10 Minneapolis brewery that donates to food programs serving  
11 the hungry in South Dakota, as well as in Minnesota,  
12 Wisconsin and North Dakota.

13 Mr. Chairman, I believe we should encourage startup  
14 businesses that want to dedicate all of their after-tax  
15 profits to charity.

16 I am pleased that our legislation that to remove a  
17 tax hurdle to this model will be considered by this  
18 Committee.

19 Finally, today we are consider a proposal modeled on  
20 legislation by Senators Burr and Bennet to tax liquefied  
21 natural gas on an energy content basis rather than a  
22 volume basis, and I am pleased that this proposal will  
23 include an energy tax parity for propane, which is an  
24 important source of energy in my home State of South  
25 Dakota.

1           Propane, as a transportation fuel, not only enhances  
2 American energy security, it also displaces petroleum  
3 imported from abroad, supporting jobs here at home.

4           So, Mr. Chairman, I want to thank you and the  
5 Ranking Member. I want to thank you both for holding  
6 this markup today and I hope that we can move these  
7 noncontroversial, common sense measures through the  
8 Senate and House as quickly as possible.

9           With that, I yield back, Mr. Chairman.

10          The Chairman. Thank you, Senator Thune.

11          Senator Bennet, you are up.

12          Senator Bennet. Thank you, Mr. Chairman, and thank  
13 you to the Ranking Member, for holding today's markup and  
14 considering this bill.

15          I want to thank Senator Burr for working with me, as  
16 well, and Senator Thune, too.

17          I will be very brief as this bill has already passed  
18 the Finance Committee and the full Senate last year as  
19 part of the Senate's transportation bill. Our  
20 legislation adjusts the Federal highway excise tax levied  
21 on liquefied natural gas and liquefied petroleum gas to  
22 put them on equal footing with their competitor, diesel  
23 fuel.

24          As this panel knows, LNG is a clean-burning and  
25 domestically produced fuel that is a substitute for

1 diesel. In fact, we produce a lot of natural gas in  
2 Colorado and our producers are interested in new markets  
3 for this American product, including the transportation  
4 fuel market.

5 However, because LNG's energy content is lower than  
6 that of diesel, users of the fuel are paying more per  
7 gallon in highway excise taxes. In fact, they are paying  
8 170 percent more, a significant disincentive for fleet  
9 operators and others to switch to this innovative and  
10 cleaner fuel.

11 Our bill simply corrects this inequity and allows  
12 all of these fuels to compete on a level playing field.

13 Again, I thank the Chairman and Senator Wyden for  
14 working with us on this. Thank you, and I will yield  
15 back the remainder of my time.

16 The Chairman. Thank you, Senator Bennet.

17 Senator Carper?

18 Senator Carper. Thanks, Mr. Chairman. I, too,  
19 would like to thank you and I would like to thank our  
20 Ranking Member for scheduling this markup and allowing us  
21 to consider a number of issues, including one that I am  
22 especially interested in involving Waste-Heat-to-Power  
23 technology. How do we capture the waste-heat that is  
24 being generated and turn that into powering technology,  
25 and that is the focus of an amendment I will be offering.

1           I want to thank especially Senator Heller, Senator  
2 Cardin, Senator Warner for their outspoken support for  
3 this legislation over the past years.

4           Waste-Heat-to-Power technology captures industrial  
5 waste-heat that would otherwise be released into the  
6 atmosphere. It uses that captured heat to generate  
7 electricity. Transforming wasted heat to power reduces  
8 emissions, it conserves energy, and it saves industry  
9 money in the long run. It is a win-win-win situation.

10           In 2008, Congress added language to the extenders  
11 package allowing combined heat and power technology to  
12 collect a 10 percent investment tax credit.

13           At the time, it was assumed that waste-heat-to-power  
14 technology would also qualify for this investment tax  
15 credit, but due to a drafting error, the IRS has not come  
16 to that same conclusion. As a result, waste-heat-to-  
17 power technology does not qualify for an investment tax  
18 credit.

19           The language before us is simple. It clarifies the  
20 law by adding waste-heat-to-power technology as eligible  
21 for the 10 percent investment tax credits provided under  
22 Section 48 of the Tax Code. The new credits expire at  
23 the same time as the combined heat and power credits  
24 expire in January of 2017.

25           The costs are small, \$19 million over 10 years, and

1 we provide an offset for that cost that the Committee has  
2 already supported.

3 With that, I would ask my colleagues to join us in  
4 supporting this legislation.

5 Thank you so much.

6 The Chairman. Thank you, Senator.

7 We have 14 here, so I think we will proceed.

8 The Committee has before it the Chairman's mark on  
9 the miscellaneous tax bills, along with my modification  
10 to the mark.

11 The mark is so modified and the modification is  
12 deemed incorporated into the Chairman's mark.

13 The next order of business is to walk through the  
14 mark and the modifications to it and to answer any  
15 questions that may arise.

16 As is our usual practice, I recognize the Chief of  
17 Staff of the Joint Committee on Taxation, Tom Barthold,  
18 to do so.

19 Mr. Barthold, could you briefly describe each of the  
20 bills included in the modified mark?

21 Mr. Barthold. Thank you, Chairman Hatch, members  
22 of the Committee. I will try to quickly run through the  
23 17 bills in the mark. You have 19 documents from my  
24 colleague before you that describe the legislation.

25 The first one, JCX-19, describes the provisions

1 related to the tax court. This is actually one of the  
2 more involved ones. There are several provisions. It  
3 permits tax court review of denial of requests for  
4 abatement of interest in certain circumstances.

5 It permits the application of small tax case  
6 procedures related to interest abatement cases. It  
7 provides for spousal relief and debt due process  
8 collection appeals to U.S. Court of Appeals for the  
9 circuit, which is the legal residence of the taxpayer.

10 It provides for taxpayers in bankruptcy certain  
11 relief in terms of collection periods. It contains  
12 procedural and evidentiary rules. It provides the tax  
13 court with the same general management, administrative  
14 and expenditure authority available to Article III  
15 courts. And it clarifies that the tax court is not  
16 within the Executive Branch.

17 JSX-20 describes the alcohol bonding requirement  
18 changes. Taxpayers with small excise tax liabilities  
19 could file and pay quarterly and taxpayers with what I  
20 will call very small tax liabilities could file and pay  
21 annually. In addition, each such taxpayer would be  
22 exempt from requirements to post bond.

23 Documents JCX-21 and X-24 describe the small  
24 insurance provision. Small property and casualty  
25 companies may elect to be taxed only on their taxable

1 investment income. The proposal before you would  
2 increase the definition of small from \$1.2 million of net  
3 written or direct premiums to \$2.2 million, and it  
4 indexes those amounts for the future.

5 JCX-22 describes the modifications to the definition  
6 of cider subject to alcohol excise taxes. It permits  
7 pear juice to be included in cider, increases the  
8 permitted alcohol levels, and increases permitted  
9 carbonation levels.

10 JCX-23 relates to the wounded warrior provision. It  
11 does not permit the Service to extend the collection  
12 period for the amount of time an individual is  
13 hospitalized for combat zone-related injuries.

14 JCX-24 describes the agricultural organization  
15 provision. The proposal provides that agricultural  
16 research organizations are not private foundations and,  
17 therefore, not subject to the private foundation excise  
18 tax and other operational rules and that these  
19 organizations qualify for the more favorable charitable  
20 contribution percentage limitations.

21 JCX-25 relates to philanthropic businesses. Under  
22 present law, private foundation excess holding rules  
23 allow only a limited percentage interest in a business  
24 entity. The proposal creates an exception to this  
25 restriction for philanthropic business holdings,

1 generally a business that pays all of its after-tax  
2 profits to the private foundation and satisfies certain  
3 other requirements.

4 JCX-26 relates to certain governmental health plans.  
5 Generally, reimbursements of medical care under  
6 qualifying government accident or health plans are  
7 excluded from income. Also, generally, the mere fact  
8 that a plan may provide reimbursements to a beneficiary  
9 other than a spouse or a child can disqualify the entire  
10 plan with a consequence that no reimbursements are  
11 excluded from income.

12 The provision before you preserves the exclusion,  
13 but does not apply it to non-spouse and non-child  
14 beneficiaries.

15 JCX-27 describes as provision that exempts from  
16 income subject to tax payments from programs at work  
17 colleges for qualifying comprehensive student work-  
18 learning-service programs.

19 JCX-28 relates to the waste-heat-to-power provision.

20 This proposal provides a 10 percent investment credit  
21 for qualified waste-to-power property placed in service  
22 before 2017. Qualified waste-heat consists of exhaust  
23 heat from industrial processes that does not have as its  
24 primary purpose the production of electricity. Only  
25 incremental costs qualify for the investment tax credit

1 and there is a size limitation imposed on the investment,  
2 as well.

3 JCX-29 describes the provision related to enrolled  
4 agents. The proposal permits the Secretary to promulgate  
5 regulations relating to the conduct of enrolled agents in  
6 their practice before the IRS and that the persons  
7 meeting those qualifications may use the designation of  
8 enrolled agent or EA in advertising their services.

9 JCX-30, as modified by JCX-37, there is a little bit  
10 more involved than some of the other ones. This relates  
11 to the proposal that affects REITs, RICs and FIRPTA. The  
12 Foreign Investment and Real Property Tax Act generally  
13 treats a foreign person's gain or loss from disposition  
14 of U.S. real property interest as income effectively  
15 connected to a U.S. business and thus subject to tax in  
16 the U.S., including tax on net capital gain.

17 U.S. real property interests include shares in  
18 domestic corporations if they hold substantial real  
19 estate. It can include, of course, shares in REITs and  
20 RICs and FIRPTA, thus, would apply in many cases to  
21 distributions from those entities, although exceptions  
22 are provided for public shareholders of no more than 5  
23 percent of the shares of the RIC or REIT.

24 Under the proposal for REIT stock, it increases that  
25 5 percent shareholder exception that I just mentioned to

1 10 percent. It increases present law FIRPTA withholding  
2 tax on disposition of real property interests from 10  
3 percent to 15 percent.

4 It provides that in the case of a disposition of  
5 publicly-traded stock of a U.S. real property holding  
6 company that involves a broker in the disposition, the  
7 broker shall withhold 15 percent of the gross proceeds of  
8 the disposition.

9 It further requires corporations that are U.S. real  
10 property holding companies to disclose that status in  
11 annual reports, Websites, and on Forms 1099 sent to their  
12 shareholders.

13 It also makes modifications to present law  
14 attribution rules or so-called cleansing rules for RICs  
15 and REITs and provides that for the purpose of the  
16 dividends received deduction, RICs and REITs are not  
17 treated as domestic corporations.

18 JCX-37 describes a proposal that provides an  
19 exemption from gross income for amounts paid under the  
20 Department of Justice's Bureau of Justice Assistance  
21 programs as a public safety officer's survivor's benefit  
22 or disability benefit and provides a like exemption under  
23 a State program that provides compensation for surviving  
24 dependents of a public safety officer who has died in the  
25 line of duty.

1           JCX-32 relates to the taxation of liquid natural gas  
2 and liquid propane gas. Liquid propane gas, it converts  
3 the present law 18.3 cents per gallon tax to a Btu  
4 equivalent of approximately 13.2 cents per gallon for  
5 liquid natural gas. It converts the present law 24.3  
6 cent per gallon tax on liquefied natural gas to a diesel  
7 gallon energy equivalent of approximately 14.1 cents per  
8 gallon.

9           JCX-33 relates to what has been introduced in the  
10 Senate in the past as the Notice Act. The Pension  
11 Protection Act provided for automatic revocation of the  
12 exempt status of an organization that fails to file the  
13 990 series of returns for 3 consecutive years and  
14 requires a reapplication procedure.

15           This proposal requires the IRS to notify the  
16 organization within 300 days of its second failure. An  
17 organization that has been revoked for failure to file  
18 can regain instatement without a formal reapplication  
19 under the proposal.

20           JCX-34 describes a provision related to clean coal  
21 energy grants under the Energy Policy Act of 2005.  
22 Businesses that receive clean coal grants under the  
23 Energy Policy Act of 2005 --

24           Senator Carper. Mr. Chairman, I would note that  
25 there is no order here. I am trying to listen to him

1 read.

2 The Chairman. I was thinking that, but I did not  
3 want to interrupt.

4 Senator Carper. This is rude.

5 The Chairman. The Committee will be in order. I  
6 am glad you brought that up.

7 Senator Cantwell. Mr. Chairman, what is the  
8 schedule for those of us who have other hearings? And we  
9 appreciate the --

10 The Chairman. We are just about through. If we  
11 can just hang in there for a little bit longer.

12 Mr. Barthold. Less than 2 minutes, I hope. Clean  
13 coal, the proposal permits non-corporate businesses that  
14 make an upfront payment equal to 1.18 percent of the  
15 grant to exclude the grant from gross income for both  
16 regular income tax and AMT purposes.

17 The last proposal before you provides a credit of up  
18 to \$500 for expenses incurred by a military spouse for  
19 professional relicensing expenses arising by reason of a  
20 permanent change of duty station of a military service  
21 member.

22 Lastly, I need to note that a number of the  
23 provisions of themselves led to losses in revenue. The  
24 Chairman's mark provides for a change in levy procedures.  
25 Under the Federal payment levy program, levy is generally

1 permitted up to an amount of 30 percent of payments to  
2 Medicare providers for payments made after June 17th of  
3 2015.

4 The Chairman's mark would increase that limitation  
5 by an amount necessary to offset the revenue losses of  
6 the proposals before the Committee today.

7 And with that, I apologize for the length, but  
8 conclude my walk-through and would be happy to answer any  
9 questions that the members may have.

10 The Chairman. You did a very good job. I am  
11 pleased that the Committee is considering these proposals  
12 to address many facets of the tax court that have long  
13 needed to be updated and clarified.

14 For example, regarding access to the tax court, one  
15 of the proposals would ensure that tax court proceedings  
16 are subject to the rules of evidence that apply to  
17 proceedings in Federal district courts located where the  
18 tax court proceeding is being held instead of the rules  
19 of evidence that apply in Federal District Court in the  
20 District of Columbia, as provided by current law.

21 Regarding administration of tax court, another  
22 proposal would authorize the tax court to prescribe  
23 procedures for filing of complaints with respect to the  
24 conduct or disability of any tax court judge and for the  
25 investigation and resolution of such complaints.

1           Finally, one of the proposals would clarify that the  
2 tax court is not within the Executive Branch, an  
3 important clarification in light of a recent opinion of  
4 the Court of Appeals for the D.C. Circuit calling into  
5 question the tax court's independence from the Executive  
6 Branch.

7           So I encourage all of my colleagues to support these  
8 proposals.

9           Now, an Administration official is here, as well.  
10 Mark Mazur is the Assistant Secretary for Tax Policy at  
11 the U.S. Treasury.

12           We certainly want to welcome you, Mr. Mazur.

13           Do Senators have any questions regarding the mark or  
14 modification?

15           Senator Grassley.   Mr. Chairman, 30 seconds for Mr.  
16 Mazur.

17           The Chairman.   I would be happy to give him that.

18           Senator Grassley.   On the provision I referred to  
19 was county mutual, I think you know what I am talking  
20 about.   Secretary Mazur, I understand that the IRS has  
21 had concerns about so-called captive insurance companies  
22 taking advantage of the special tax treatment for small  
23 mutuals for estate planning purposes rather than  
24 legitimate business needs.

25           First of all, I just wondered if you were aware of

1 that concern.

2 Mr. Mazur. Yes, we aware of that. There are  
3 certain tax shelter transactions that are marketed that  
4 use these insurance companies.

5 Senator Grassley. Well, then because of that  
6 concern, to fix it, we originally included narrowing the  
7 definition intended to get at the problem, but I  
8 understand that this causes problems for certain States,  
9 so we dropped that.

10 So my request of you -- would the Treasury  
11 Department be willing to perform a study on the abuses of  
12 captive insurance for estate planning purposes so  
13 Congress can get a better understanding of the scope of  
14 this problem and whether legislation is necessary to  
15 address it?

16 Mr. Mazur. Sure. We are very supportive of the  
17 provisions you had to narrow the use of these, and so we  
18 would be happy to do a study to explain that.

19 Senator Grassley. Thank you, Mr. Mazur.

20 The Chairman. Thank you.

21 Any questions from any other members of the  
22 Committee?

23 Senator Stabenow?

24 Senator Stabenow. Thank you, Mr. Chairman.

25 I do have a question for Mr. Barthold on the waste-

1 heat-to-power bill. I am glad we are able to consider  
2 legislation to promote waste-heat-to-power.

3 Recently GM installed a large system at the Cadillac  
4 manufacturing plant in Lansing, and Michigan has a lot of  
5 potential to generate electricity from these sources.

6 So my question is, do municipal waste-to-energy  
7 facilities qualify for an investment tax credit under the  
8 legislation we are considering today?

9 Mr. Barthold. Thank you, Senator Stabenow. The  
10 proposal, as I described, is that exhaust heat is from an  
11 industrial process that does not have as its primary  
12 purpose the production of electricity, so waste-heat.

13 Our general view of present law is that municipal  
14 solid waste facilities do not qualify because their  
15 primary purpose consists of the production of electricity  
16 as opposed to the elimination of municipal solid waste.

17 Senator Stabenow. Thank you very much.

18 Mr. Chairman, I do have a couple of comments on a  
19 couple of the bills, but I can do it now or later if you  
20 are going to be entertaining comments later.

21 The Chairman. If you can put the remarks later, it  
22 would be much appreciated.

23 Senator Stabenow. Sure.

24 The Chairman. Senator Wyden, do you have any  
25 comments?

1           Senator Wyden.    First of all, colleagues, I hope  
2 everyone will support this package.  It is truly a  
3 bipartisan package.

4           I am going to take just a couple of seconds apropos  
5 of Senator Cantwell's point.  One of the important  
6 provisions in this legislation provides real relief to  
7 beer, wine and distilled spirits producers across the  
8 country and many of you have these small producers in  
9 your States.

10          The reality is the law has not kept up with the  
11 times.  So what we have done in this legislation in a  
12 bipartisan way is we have streamlined their filing  
13 requirements.  We have given them relief from some of the  
14 onerous burdens associated with bonding.

15          It is bipartisan.  I appreciate all the colleagues  
16 who participated in it, but I can literally go down both  
17 sides of the dais, because there are many States that  
18 have these small producers.  And by the way, these small  
19 producers are 90 percent of those who are producing and  
20 are growing across the country.

21          Mr. Chairman, I would only ask, in addition, that  
22 we, by unanimous consent, for the letter supporting the  
23 legislation from the Brewers Association be made part of  
24 the record, as well.

25          The Chairman.    Thank you, Senator.

1 [The letter appears at the end of the transcript.]

2 The Chairman. Senator Casey, you have some  
3 comments.

4 Senator Casey. Very brief, very brief. I want to  
5 just comment on two of the matters we are dealing with.

6 The Wounded Warriors Tax Equity Act, I know that  
7 Senator Cornyn, among others, have addressed this, but we  
8 know that there is an inherent disadvantage for wounded  
9 warriors.

10 Where civilian taxpayers can defer tax collection  
11 during hospitalization, the same opportunity is not  
12 available to wounded warriors. This bipartisan  
13 legislation would make the tax collection period for  
14 injured combat troops consistent with that for civilian  
15 taxpayers. A very good piece of legislation.

16 Secondly, the Military Spouse Job Continuity Act of  
17 this year, making it possible for those spouses who  
18 sacrifice so much for the defense of our country because  
19 of what their spouse is doing in combat have a very  
20 difficult time when they have to make changes or move  
21 and, therefore, to have to work to retain their  
22 professional employment or to gain new employment.

23 This \$500 tax credit helps those spouses. It is the  
24 right thing to do.

25 I appreciate the Committee's work on this.

1           The Chairman.    Thank you, Senator.

2           Senator Stabenow, you will be last.

3           Senator Stabenow.    Thank you very much, Mr.  
4 Chairman.

5           First, I want to thank you for including legislation  
6 that Senator Thune and I have worked on now for a number  
7 of years on agricultural research.  During the Farm Bill  
8 this last year, as you know, we set up a new agricultural  
9 research foundation to focus on the long-term on issues,  
10 but this bill is going to allow our universities and  
11 others to be able to fully benefit from the charitable  
12 tax code on research, and it models the medical research  
13 organizations tax provision.

14           So we thank you for that.

15           Then, finally, just a comment.  We have in front of  
16 us a bill equalizing fuel excise taxes on LNG and  
17 propane.  I think it is good policy, but I would  
18 encourage us as we go ahead and as we look at funding  
19 transportation that we equalize all fuel taxes on the  
20 same idea.

21           We have fuels with different energy content and it  
22 makes sense to bring those together to expand the policy  
23 so we are using the same standards for all fuels, and I  
24 would hope we would do that going forward.

25           Thank you.

1           The Chairman.    Thank you, Senator.

2           If there is no further debate, I would entertain a  
3 motion that the Committee order all bills to be reported  
4 with the Chairman's mark.

5           Senator Wyden.    Mr. Chairman, I would urge that we  
6 pass all 17 bills en blanc, and I would so move.

7           The Chairman.    Does any Senator require a vote, a  
8 recorded vote?

9           [No Response.]

10          The Chairman.    If not, all those in favor will say  
11 aye.

12          [A Chorus of Ayes.]

13          The Chairman.    All those opposed will say no.

14          [No Response.]

15          The Chairman.    The ayes have it and the resolution  
16 is ordered reported.

17          I would like to note for the record that Senator  
18 Toomey would like to be recorded as a no vote for item  
19 10, the waste-heat-to-power investment tax credit.

20          I ask consent that staff be granted authority to  
21 make technical, conforming and budgetary changes.

22          Without objection, it is so ordered.

23          I want to thank every Senator on this Committee who  
24 participated today.  Once again, this is a unique  
25 exercise for this Committee and I believe we -- if I

1 could have order.

2 I believe we have blazed an important trail here. I  
3 hope we can have similar markups in the future as we work  
4 to address the concerns and interests of all members of  
5 this very important Committee.

6 I certainly appreciate everybody's willingness to  
7 work with Senator Wyden and myself through this process.

8 Senator Carper. Mr. Chairman, could I just be  
9 recognized for a moment, please?

10 The Chairman. Sure.

11 Senator Carper. First of all, thank you for  
12 scheduling this markup. I am just delighted we could do  
13 it and pleased with the way that it proceeded.

14 I would just like to make an observation. I think  
15 every one of the bills that we have just considered  
16 requires a pay-for, requires an offset. Some of the  
17 provisions that we were offered have their own offset. A  
18 number of them did not.

19 Several years ago some of us worked on a bill called  
20 the Tax Gap legislation just to go after areas within the  
21 Tax Code directed by IRS, directed by GAO, areas of the  
22 Tax Code where we should make some tax law changes. Some  
23 of those we adopted, but a number we did not.

24 The pay-for for most of these provisions that we  
25 have adopted today comes from that Tax Gap legislation.

1 And there is a fellow sitting right behind me named Chris  
2 Prendergast, who is a member of my staff, who has worked  
3 hard to identify provisions in the Tax Code that are  
4 problematic, where we should make corrections to reduce  
5 the tax gap.

6 I just came from a hearing on Homeland Security and  
7 Government Affairs Committee where Gene Dodaro, the  
8 Comptroller General of the United States for GAO, he  
9 testified that if the tax gap -- the most recent  
10 calculation of the tax gap, \$385 billion -- \$385 billion.

11 There are many elements there that add up to \$385  
12 billion. One of them was used to pay for most of the  
13 provisions that we have just adopted.

14 I just want to say to Chris, thank you for -- thank  
15 him for his efforts, for everybody on our Committee and  
16 our Committee staff, Majority and Minority, who have  
17 worked with him to make possible the good work that we  
18 have done today.

19 Thank you.

20 The Chairman. Thank you, Senator.

21 The Committee will stand in recess.

22 [Whereupon, at 11:13 a.m., the meeting was  
23 concluded.]

24

25

I N D E X

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STATEMENT OF:

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**Senator Chuck Grassley**  
**Statement Concerning Small Mutual Inflation Bill**  
**February 11, 2015**

Mr. Chairman, I'm pleased that the Committee is marking up legislation I have worked for years on with Senator Harkin and a bipartisan group of other Senators to update for inflation the small mutual insurance company threshold. Senator Harkin and I had hoped to be able to find an avenue to move this legislation at the end of last year, but were unsuccessful in finding an appropriate vehicle. While Senator Harkin is now retired, I wanted to recognize his efforts toward the end of last year as they contributed to this legislation being ready for markup by the Committee today.

The small mutual insurance inflation update is important for many rural communities in Iowa and across the country who rely on Small Mutuals or Farm Mutuals to obtain property insurance. Frequently, rural residents have difficulties obtaining property insurance through traditional insurance companies, given their unique circumstances.

Farm Mutuals help fill the void by providing insurance for property that may otherwise be left uninsured.

However, the ability of Farm Mutuals to fill this void has become threatened since the threshold that qualifies them for special tax treatment was never indexed to inflation. The last time this threshold was increased was 29 years ago. As a result, many small companies are approaching the current \$1.2-million limit, and both they and their customers will be adversely impacted if it is not raised.

Under the legislation before the Committee today, the \$1.2-million limit will be raised to \$2.2 million and indexed to inflation going forward. As a result, this legislation will help ensure Farm Mutuals continue to have the capacity to serve the rural communities that they have become so much a part of. I urge my colleagues to support reporting this legislation.

**SENATOR DEAN HELLER – STATEMENT FOR THE RECORD**  
**SENATE FINANCE COMMITTEE MARKUP**  
**MISCELLANEOUS TAX BILLS**  
**FEBRUARY 11, 2015 – 10:00 AM**

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Thank you, Mr. Chairman. I commend the committee for moving forward with this bipartisan markup and hope this will be the first of many tax-related markups.

I would like to briefly discuss two priority tax bills of mine that I strongly believe should have the opportunity to be considered here this morning. Though these two pieces of legislation are not a part of today's markup, I am optimistic that they can be considered in a future markup of tax-related bills.

The first, the Mobile Mammography Promotion Act, is a bill I have long been a champion for. This is a simple, straightforward bill that would help mobile mammography units, or "mammovans," devote more of their limited resources to providing critical breast cancer screenings to women in under-served communities.

The second bill is the Hearing Aid Assistance Tax Credit Act, legislation with a long history of bipartisan support in both the Senate and the House. Recently, I and Senator Klobuchar reintroduced this legislation to help those with hearing loss by providing a tax credit for the purchase of the hearing devices they need.

Again, I am extremely disappointed these bills are not part of today's session, but I sincerely hope that we will have the opportunity to review these important bills in a future markup. I remain deeply committed to working with my colleagues on both sides of the aisle to move both of these bills forward.

Before I conclude, I would like to briefly touch on the industrial efficiency legislation on today's agenda.

Due to an unintended gap in the tax code, waste heat to power is currently not eligible for the investment tax credit. This legislation would fix that oversight, provide parity for waste heat power, and encourage developers, manufacturers and service companies all along the supply chain to generate clean electricity from a waste resource that flows freely on industrial sites.

In Nevada, waste heat power is particularly attractive because in addition to not needing any additional fuel to produce, the technology also doesn't require any additional water

consumption. As the west suffers from years of drought, businesses are constantly looking for new and innovative avenues to reduce water use. I am grateful to Senator Carper for the opportunity to team up on this bill and encourage my colleagues to support it.

With that, I thank the Chairman and the Ranking Member as this committee works to relieve unnecessary tax burdens upon the American people.

**Statement for the Record of Senator Enzi**

Thank you, Senator Menendez. I agree with your assessment. We continue to have strong bipartisan support for reforming FIRPTA. In many ways, our tax code has become an impediment for businesses to remain competitive in a dynamically changing global market. I'd like to point out that reforming FIRPTA helps attract investment and create jobs. We need this type of reform during a time in which there is fierce global competition for capital investment.

**American Farm Bureau Federation**

600 Maryland Ave. SW  
Washington, DC 20024

February 10, 2015

Senator John Thune  
United States Senate  
511 Dirksen Senate Office Building  
Washington, DC 20510

Senator Debbie Stabenow  
United States Senate  
731 Hart Senate Office Building  
Washington, DC 20510

Dear Sens. Thune and Stabenow:

Public agricultural research has been a major contributor to advances in agricultural productivity that have led to abundant and affordable food, fiber and energy for the United States. Yet, the challenge of meeting global demand is projected to grow by at least 70 percent by 2050 due to population growth, energy demands and higher incomes in developing countries. Meeting the world's future needs will require U.S. farmers and ranchers to further raise their productivity.

Farm Bureau supports legislation to provide for special rules concerning charitable contributions to, and public charity status of, agricultural research organizations. The creation of this new type of charitable, tax-exempt organization will allow private monies to fund agricultural research organizations that would work in conjunction with agricultural and land-grant colleges and universities to conduct agricultural research, complementing existing public and private efforts.

The importance of investing in agricultural research is imperative. Public funding for agricultural research must continue, but legislation to provide a new way to raise funds for research efforts is critical to the future of our industry. Thank you for your leadership on this critical issue.

Sincerely,

Bob Stallman  
President

**BREWERS ASSOCIATION****United States Senate  
Committee on Finance****Statement of Bob Pease  
Chief Executive Officer  
Brewers Association****Chairman's Mark of a Proposal to Remove Alcohol  
Bonding Requirements for Certain Taxpayers****February 11, 2015**

Mr. Chairman, the Brewers Association represents 2,500 craft brewers from all fifty states and the District of Columbia. On behalf of our membership, I appreciate your willingness to produce and consider the Chairman's Mark to Remove Alcohol Bonding Requirements for Certain Taxpayers ("Chairman's Mark"). Senator Wyden and a bipartisan group of other Committee members advocated similar proposals in the past, and the Chairman's Mark enjoys strong bipartisan support on both sides of Capitol Hill.

Enactment of the Chairman's Mark will ratify actions that the federal Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB) has discussed in the past to simplify excise tax administration for small brewers and other small alcohol beverage producers. In addition to providing relief from regulation and redundant tax filings, the draft legislation before the Committee could encourage adoption of other administrative reforms that are mutually beneficial to excise taxpayers and TTB.

The federal beer excise tax was enacted to help finance the Civil War, and it is still imposed on a 19th Century standard beer barrel, which contained 31 gallons. In 1976, Congress enacted a tax differential for small brewers that produce less than 2 million barrels annually. In today's beer market, that 2 million barrel figure is slightly more than 2 percent of the 97 million barrels of beer produced by the largest U.S. brewer. A huge gulf in scale exists between the largest brewer and all members of the Brewers Association, which warrants the differential and the relief in the Chairman's Mark.

The excise tax system is designed to collect taxes from the largest brewers, which produce millions of barrels of beer every two weeks, triggering substantial excise tax liability. The need for a surety bond when dealing with large sums of money is understandable, however, many very small brewers and most brewpubs generate relatively tiny tax liabilities. The vast majority of excise tax returns from small breweries include payments under \$1000.

Forty-four percent of craft brewers are actually brewpubs that usually sell their beer in one location. Their average annual production is less than 800 barrels. A second group of small brewers exists that the Brewers Association designates as microbrewers. They sell beer in kegs, bottles, and cans primarily in their home markets and surrounding communities. Average brewpub production in 2013 was 1,706 barrels or about 0.001 percent of the production of the largest U.S. brewer. Brewpubs and microbreweries are very small businesses and would be the beneficiaries of the Chairman's Mark. Small brewers with larger production volumes will continue to maintain bonds and pay their taxes twice a month.

In spite of the differences in size and tax liability, brewpubs and microbrewers are required to hold brewer's bonds currently mandated in the Internal Revenue Code to ensure payment of the federal beer excise taxes. The Chairman's Mark would eliminate the expense of maintaining the bond and it would relieve TTB of the obligation to review and approve thousands of bonds for craft brewers and other small producers. The legislation also has the practical effect of allowing hundreds of craft brewers to file quarterly excise tax returns instead of the returns they are now filing twice a month. Therefore, the Chairman's Mark would relieve TTB of the need to process thousands of excise tax returns each year.

Enactment of the Chairman's Mark would not reduce accountability of brewpubs and microbrewers. All of the breweries that benefit from the Chairman's Mark have a physical presence in the United States. Each brewer, regardless of size, is required to file an extensive brewer's notice with the TTB before commencing operations. The brewer's notice must be updated with information on significant changes in ownership, new officers and directors, expansion of the facilities, addition of warehouses, and other changes in the business. TTB possesses detailed information about the officers, directors, and investors associated with every brewery. In short, if anyone attempts to evade or fails to pay the beer excise tax, TTB knows where they live and where their bank accounts are located.

In summary, we believe that the Chairman's Mark is sound public policy and an important step in reforming excise tax administration in recognition of the smaller scale of most craft brewers in the United States. A very low risk to the revenue exists and a substantial savings in administrative costs accrues to TTB through the reduction in brewer's bonds and tax returns that agency personnel must currently review.

Thank you again for the opportunity to offer this testimony. We will be happy to respond to any questions from Committee members or staff.

***Bob Pease***  
***Chief Executive Officer***  
***Brewers Association***