EXECUTIVE COMMITTEE MEETING

WEDNESDAY, SEPTEMBER 28, 1994

ORIGINAL

U.S. Senate,

Committee on Finance,

Washington, DC.

The meeting was convened, pursuant to notice, at 10:35 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan, Chairman of the Committee, presiding.

Also present: Senators Baucus, Bradley, Pryor, Rockefeller, Daschle, Breaux, Conrad, Packwood, Dole, Roth, Danforth, Chafee, Durenberger, Grassley, Hatch, and Wallop.

Also present: Lawrence O'Donnell, Jr., Staff Director; Lindy Paull, Chief of Staff, Minority.

Also present: Leslie Samuels, Assistant Secretary for Tax Policy, U.S. Treasury; John Buckley, Chief of Staff, Joint Tax Committee; Alicia Munnell, Assistant Secretary for Economic Policy; Jack Ramirez, Executive Vice President, National Association of Independent Insurers.

[The press release announcing the meeting follows:]

OPENING STATEMENT OF THE HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK, CHAIRMAN OF THE COMMITTEE

The Chairman. A very good morning to our distinguished Assistant Secretary of the Treasury, and our guests.

I apologize that we have put this hearing off for a half an hour. President Boris Yeltsin came to breakfast this morning and ran somewhat over time because he was asking questions and we were hearing fascinating comments. You would be interested to know, I think, I say to my fellow members of the committee, that he indicated that the Russian Federation would like to join NAFTA, so we can put that down. You might take notes, Mr. Samuels.

He was in New York yesterday, or whenever, and met with business leaders and told them that, in 1975, there would be a new tax code which would provide incentives for foreign investment, and he went on about a number of things. The only thing he did not mention was the Superfund, but that may be coming yet.

This is a mark-up on the Superfund, and Mr. Buckley will take us through the actual legislation. Secretary Samuels has a new proposal in the area of the EIRF insurance tax provisions which have been being negotiated in the last several days.

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I would like to invite Senators to make opening statements and I would simply confine myself to an editorial in yesterday's Buffalo News which says, simply, "Update the Superfund Law: Reforms Can Improve Clean-Up Success Rates." It says, "The pending package involves a troubled law. The bill is worthy of passage because of the faults that it attempts to correct and the welcome support it has won from diverse interests that normally agree on not much else." And I will put the full text in the measure.

[The information appears in the appendix.]

The Chairman. It notes that 29 percent of New York State's population lives within a four-mile radius of at least one site on the Superfund priority list, which gives you a sense of what --

Senator Baucus. That's the national average.

The Chairman. Is that the national average?

Senator Baucus. Yes, it is.

The Chairman. Obviously the bill will be open to amendment, but I will plead that we try to keep amendments to germane issues, and not just the members themselves.

Senator Packwood?

Senator Packwood. Well, I am intrigued about that editorial. Did that editorial writer say that divergent views had agreed?

The Chairman. Well, that is what it said.

Senator Packwood. I think this writer is talking to different people than I am talking to.

The Chairman. Well, that is --

Senator Wallop. Senator Packwood, if you will forgive just a momentary interruption. I had some time with Tom Clancy yesterday, who described a meeting that he had had with Woodward and Sam Donaldson, and he said, the only difference between you guys and me is that I write good fiction.

Senator Packwood. Very good. I have no statement, Mr. Chairman.

The Chairman. Senator Baucus, who is Chairman of the Committee on Environment and Public Works, and who, in effect, sends this bill to us, although many of us are also members of that committee.

OPENING STATEMENT OF THE HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator Baucus. Thank you, Mr. Chairman. Mr. Chairman, I, too, think it is important to pass this bill. I will not belabor the committee, but I have a long list of groups that support this legislation for this Senator from Oregon. It will take too long to read the list, it is so long. But there is a very long list and a lot of groups.

In fact, I have not been associated with major legislation where there is such convergence agreement as this--the environmental community, big business, small business, community groups--and it is because they have all worked on this for so many months.

Mr. Chairman, let me just briefly explain the importance of the bill. The Superfund program was created, as you well know, particularly in New York with Love Canal, for all the right reasons. We enacted it very quickly.

It was a lame duck session. I think we went too far when we enacted Superfund in the first place and we created a bit of a mess. We have seen examples back in our States. Local communities do not have a fair say in decisions. They are upset. They feel left out. Clean-ups are costly and slow. Superfund generates huge, endless lawsuits that make the lawyers in Charles Dickens' Bleak House blush with envy. The Reform Act that we just passed in the Environment and Public Works Committee is designed to address these problems. Let me just briefly explain what it does.

First, it makes it easier for States to run the Superfund program. Much more now is delegated to States so that States can run the programs. It involves people that live in a neighborhood where a Superfund site is located. That is not present in current law.

It makes clean-ups quicker, it makes them cheaper, and dramatically reduces litigation. Overall, the bill will reduce clean-up costs, reduce the time that clean-ups take, and reduce transaction costs by up to 50 percent.

That is why the bill is supported by everyone, from the Chemical Manufacturers' Association, the National Association of Counties, to the NFIB, which strongly supports Superfund, the Sierra Club. Today's mark-up, of course, relates to Title 19 of the bill which raises the taxes necessary to support the Superfund program. The only apparent controversy involves the taxes that support the Environmental Insurance Resolution Fund, or EIRF.

A few points. First of all, I admit that the EIRF is the worst acronym in any piece of legislation I can remember. But beyond that, the program makes good sense.

One of the unfortunate by-products of Superfund has been the avalanche of lawsuits between policyholders and insurers over whether Superfund liability is covered by companies' general insurance policy.

Right now, 1,500 of these cases are pending in courts across the country. 1,500 cases. The cases involve a long string of extremely arcane issues, such as whether clean-up cost are legal damages or equitable remedies, how to interpret, for example the "pollution exclusion clause," and there are many others.

The cases take years to resolve. Nationwide, this litigation between polluters and insurance companies costs $500 million a year, and not a penny of that goes to clean up hazardous waste, it all goes to lawyers. The EIRF is designed to virtually eliminate this litigation. Virtually eliminate this litigation by encouraging settlements.

Two points. First, the program is voluntary. It goes forward only if about 80-85 percent of the polluters decide to participate. They have to agree to participate. Even then, a company that wishes to litigate may still do so.

Second, the program is simpler than the current system. As I said, it now takes years and millions of dollars to resolve these cases. Under the new program, a company will document its costs and coverage and present them to the fund for payment, and that is it. The whole process will take about six months, and transaction costs are virtually eliminated.

This is particularly important to small business. As it now stands, small businesses that have Superfund liability do not bring claims against their insurance companies. Why? They cannot afford to, it is too complex, it is too expensive.

In fact, one of the leading small business groups, the Printing Industries Association, has written us a letter saying that, "If a small business has been through the pain of a third-party litigation action, it is unlikely that they will have the will or the resources to tackle their insurer.

The fund proposal improves the current situation for small business. The ability to bring whatever proof of coverage one has to such a fund for a claim is simply a better option than going to court."

I know we have some revenue points to work out here, but the important point is this. We are here discussing Superfund. We have a couple of options. Either we continue with the status quo, which is unconscionable, or we work with the Superfund program, as agreed to by almost every group, and do our best here to work out the remaining small differences with respect to financing the EIRF.

Those are our options. Status quo, on the one hand, or adopt the Superfund reform, which the vast majority of groups all support, which cut taxes because the pass-through from insurance companies, to PRPs, to purchasers of products, will be less--less, not more--under this bill because it will eliminate the current $500 million a year litigation costs that PRPs and insurance companies pay.

So, even if you add the tax, as small as it is, and net it out against the reduced transaction costs, the pass-through is not a tax, it is a tax cut. The pass-through is a savings from insurance companies, to PRPs, to consumers. And that is why it is vitally important we just work out the few remaining details and get this passed for the American people.

The Chairman. Thank you, Senator Baucus, who feels very strongly about it. As well he might.

Senator Dole?

OPENING STATEMENT OF THE HON. BOB DOLE, A U.S. SENATOR FROM KANSAS

Senator Dole. I just heard that the House may leave next Wednesday, which will make this task even more difficult. I have a statement which I will not read in full, but I think it is time to take a reality check around here. This is Wednesday. We are leaving next week.

I have a whole list of amendments that I understand members tend to offer, if not in the committee, on the floor, which include amendment to strike EIRF, amendment to extend the 25 percent self-employed deduction, disaster assistance for farmers, the so called Daschle bill, extenders amendment, which targeted jobs, tax credit, employer-provided educational system. There are several of those that expire that will also be added to this bill, and I assume they would pass.

Everybody knows that Superfund reform has not worked today. We keep calling it reform, we keep spending billions of dollars, and we have tried a number of times. It had to work because it has been based on retroactive viability in the flexible and gold-plated remedial action inappropriate to the situation, and an unfair liability and payment scheme, always subject to dispute. So now we are here to review this EIRF, and a great deal of effort has been extended by a lot of parties, but there were some parties who were not part of the agreement.

They believe that they were sort of dealt out, they were not dealt in. They were not there when the deal was made. So we had the larger companies saying, well, this is fantastic, and the smaller companies and some of the reinsurance people saying, this is a terrible idea, terrible bill, and that they were not there.

And I know that we will hear from Treasury, Mr. Samuels, as they try to correct some of the concerns that small insurers have on retrospective liability, but I am not certain we have addressed all of those concerns. And then we have prospective liability. There is some concern whether or not that has been done. So I think many object to the process.

The Treasury is still working, as I understand, on trying to do all these things, and here we are asked to report out a bill six days before adjournment, pass it on the Senate floor, go to conference, and then finish. The conference is not going to happen. I mean, whether you are for or against the bill, it is not going to happen.

I remember, Senator Mitchell, yesterday. We were going to finish appropriation bills this week. On Monday of next week we do nominations. We will spend all day on nominations. On Tuesday and Wednesday we are going to do Congressional reform, applying all the laws to Congress we apply to everybody else, and I think another effort on campaign reform. That will take two or three days for those. That is Wednesday, Thursday. Then we have GATT Friday and Saturday, whatever GATT happens to get. But some member of the House may not take it up this year. There are a lot of rumors around.

So I just suggest that, notwithstanding some of the legitimate questions that people have -- and I want to commend Senator Baucus. Certainly he has an overriding interest. He has worked hard. He has done, I think, essentially a pretty good job. There are some questions that should be raised and probably will be raised, if not here today, on the Senate floor.

The Chairman. Thank you, Senator Dole. Reality check, indeed.

I am going to ask if there are Senators who have opening statements. Otherwise, we can go right to work.

Senator Rockefeller. Mr. Chairman?

The Chairman. Senator Rockefeller.

OPENING STATEMENT OF THE HON. JOHN D. ROCKEFELLER, A U.S. SENATOR FROM WEST VIRGINIA

Senator Rockefeller. Just one comment. I think it is important to respect the work that other committees have done on this. Legislation is hard to come by. Hard legislation, which is incredibly important for the country, is even harder to come by. One can say today that time is running out, and, therefore, with so much to pass, it will be hard. The same arguments were also used a month ago, indeed, two months ago.

And I just feel, as an individual elected official, that I have a duty to do my best to pass legislation which is deemed to be needed by the American people, and I would hope that, in this committee, at least, that we would do our best to fulfill our obligations.

The Chairman. Thank you, Senator Rockefeller.

Senator Wallop. Mr. Chairman.

The Chairman. Senator Wallop.

Senator Wallop. Just a part of Senator Dole's reality check. As Senator Baucus knows, Senator Johnson, Chairman of the Energy Natural Resources Committee, wrote him a letter yesterday detailing four major amendments that he wished to offer, and I have joined him in those, one of them being the issue of federal facilities, which is an open Federal checkbook to the States in the issues of clean-up. But those are very complicated amendments, too. They add to the list of Senator Dole. Yet, I think they are important and I share the anxiety about EIRF and will, at the appropriate time, offer an amendment to strike it.

The Chairman. Which is the Senator's right, and we expect to have happen.

Senator Baucus. If I might, Mr. Chairman.

The Chairman. Yes, Senator Baucus.

Senator Baucus. May I just very briefly tell my good from, the Senator from Wyoming, that we have been in negotiations with the Energy Committee. It has been very productive. I mean, the federal facilities issue is one where we, frankly, have virtual agreement on.

The issue basically is to be sure that States do not gold-plate clean-ups. And I very much agree with the main concerns that the Energy Committee has, and we are trying to work that out, but we are very close to agreement.

The Chairman. Fine.

Senator Dole. Could I just say one thing?

The Chairman. Yes, Senator Dole.

Senator Dole. I do not disagree with Senator Rockefeller, but I think the leaders have to decide, particularly the Majority Leader, if he has got nine things, which have priority in a certain number of days. And maybe he has not made that choice, and if you could convince him to bring up Superfund today and stay on it all weekend and next week, he will probably finish it. I do not know what happens to the rest of it, but it is at that point now where the Leader has to decide what we can do. We never finish everything. I do not disagree with the Senator from West Virginia.

The Chairman. Right.

Senator Dole. But if he can prevail upon the Majority Leader to set aside everything else for Superfund, why, fine with me.

Senator Rockefeller. I agree with the Republican Leader. I would just also make the observation, Mr. Chairman, it has been fairly rare in the Senate that we wind up a session doing virtually nothing.

The Chairman. Right. And on that note, I am going to say --

(Laughter)

The Chairman. Secretary Samuels, you have a late and last, now, report on the insurance arrangements.

Secretary Samuels. Mr. Chairman, I believe there is to be circulated a proposed amendment.

The Chairman. This will be a Chairman's amendment which I will offer in time.

Secretary Samuels. The purpose of this amendment is to raise the exemption with respect to the retrospective tax imposed on direct writers of insurance from $50 million to $200 million. The $200 million exemption would be phased out dollar for dollar so that it would be completely phased out at $400 million.

With this increase in the exemption, we estimate that 91 property and casualty companies subject to the tax on directly written premiums would be left. So out of the group there are 91 companies that would be subject to this particular tax, and we think that should address the problem that we have been hearing from smaller insurers, that they would be subject to this tax.

The Chairman. Right.

Senator Dole. 91 out of how many?

Secretary Samuels. 91 out of approximately 600 that would have been subject to the tax with no exemption.

Senator Dole. Well, that would still be 400 some subject to the tax.

Secretary Samuels. No. With respect to the retrospective tax on directly written premiums, there is only 91 left.

Senator Chafee. 91 companies?

Secretary Samuels. 91 companies.

Senator Chafee. Subject to the tax.

The Chairman. Thank you, Mr. Secretary. Senators, would you like to ask any further questions? Our audience may wish to know that Secretary Samuels was with us in a session yesterday afternoon and went through this in some greater detail.

Senator Wallop. Mr. Chairman, could I direct --

The Chairman. Of course, Senator Wallop.

Senator Wallop. Secretary Samuels, whatever one feels about the retrospective thing, what I think is worrying them is the prospective on a fund that clearly will not be able to fulfill its obligations, and they view that as a directed tax to be assessed at a time future, and they know it, they believe it. What do you say to them?

Secretary Samuels. Senator Wallop, with respect to the prospective tax, I would like to make a couple of points. First, the prospective tax applies with respect to premiums in excess of $5 million a year, so there is a $5 million carve-out for small insurers with respect to the prospective tax.

I think it is also very important to note that there already exists in the United States taxes imposed by States on insurance premiums. In your State, for example, the tax is 1.6 percent, which is substantially greater than the tax that we are talking about, and the experience, as far as we understand it at Treasury, is that those taxes are passed through to the policyholders over time.

So we think that there has been experience over the years, and the State of every member here has such a tax on premiums, and the average rate is about two percent. There has been substantial experience with that tax and the incidence of that tax. We think that the incidence of this tax will be similar to the incidence of the taxes imposed by virtually every State at higher rates and that they will be passed through to the policyholders.

Senator Wallop. Well, with respect, that is what makes Americans go crazy right now, is that, because the States do it, we can do it, and it is not the companies anyway, it is the policyholders.

So this is, in effect, a tax on all kinds of Americans that they will not ever know about, but we know for a certainty will be levied against them because the fund cannot possibly fulfill the obligations. So just because the States do it, we are justifying the Feds doing it, and, in essence, we are not telling either the public or the companies, although they have identified that this is going to be their problem.

Secretary Samuels. Senator Wallop, in trying to answer your question, as I understood your first point, that the insurers were concerned that the prospective tax would fall on them, and that is what I was trying to address.

The second thing I would say is, as Senator Baucus has said, right now there is effectively a tax on society as a result of the problems that we now have, and what we are trying to do is correct that and reduce the burden on society and reduce the wasteful expenses that are now on us.

As we testified earlier, for every dollar the insurance industry is now paying out in Superfund litigation, 88 cents goes to lawyers and consultants, and only 12 cents goes to clean-up sites. We think that is the type of situation that needs to be corrected, and if it does, everyone in society will benefit, the policyholders, the people who live near the sites, the insurance companies. It is a broad-based problem and we think that this is a very reasonable way to try to address it.

The Chairman. Senator Wallop?

Senator Wallop. Well, it is clear that --

The Chairman. You may not agree.

Senator Wallop. -- the Secretary and I probably do not agree on it.

Could I ask Mr. Buckley a question, sir? That is, whether Joint Tax's view is that this fund will work.

Mr. Buckley. Well, Senator, you are asking, I think, the question as to whether the underlying provisions of the Environment and Public Works Committee could work. We have not analyzed that. We have looked very long and hard at the tax provisions contained in the administration proposal and we believe they are administrable and can be collected.

Senator Wallop. Mr. Chairman, therein lies the problem. Here is a fund, the purpose of which is laudable, the effect of which is unknown. And so we are going to levy a tax on people to fulfill a purpose that has not been examined. I mean, it may be that it is the custom of the Finance Committee, but we ought not to indulge the custom without at least looking at it.

The Chairman. A fair point. Senator, if you do not mind, since I know you are going to have a motion on which you can speak longer if you want --

Senator Wallop. Yes. I will be happy to.

The Chairman. -- I would like to recognize Senator Packwood, and then get on with it.

Senator Packwood. Mr. Secretary, let me divide these taxes into two. We have got the existing taxes, extend those. There is some controversy, but not much. That money goes for clean-up. The EIRF fund does not go for any Superfund clean-up at all, it goes to attempt to resolve differences between the insured and the insurers. Is that right?

Secretary Samuels. Senator Packwood, as I understand it, the taxes and assessments that will be collected will be placed in the EIRF fund. They will be disbursed to the PRPs, and the disbursement will be to reimburse the PRPs for clean-up costs.

Senator Packwood. Well, to reimburse them or for a settlement with the insurance company. They then get the money. There may or may not be further clean-up costs for the PRPs, there may be more than the money they get, but it resolves the insurance difference.

Secretary Samuels. But, as I understand it, the EIRF settlement payments to the PRPs will be made when the PRPs present their documentation that they have incurred clean-up costs.

Senator Chafee. That is right.

Senator Packwood. That is not what my staff says.

The Chairman. Well, now we have a difference of view here.

Senator Packwood. That is not what my staff advises me.

Senator Baucus. Well, my staff advises me that is right.

The Chairman. Mr. Buckley, we have a Joint Committee on Taxation to address such matters to you, sir, non-partisan, professional judgment.

Mr. Buckley. Thank you, Mr. Chairman. The question, I think, that was addressed to Mr. Samuels was the part of the bill that we have not analyzed, and that is the Title 8 EIRF provision themselves. We have analyzed and worked for a fair bit of time on the funding mechanism for that program.

The Chairman. I see. How does the committee wish to proceed? We have two differences of views and obviously only one of them is correct.

Senator Chafee. What is the view that Senator Packwood's staff is informing him of? What is the problem?

Senator Packwood. I will try to restate it again as to what I am advised. The EIRF fund basically brings the insureds to the window. They resolve their difference with the insurance company, but they are still liable for clean-up. Is that correct?

The Chairman. Ms. Munnell, we welcome you to the chair. But I want to make a point that these questions are more properly directed to Senator Baucus, who is Chairman of the committee.

Ms. Munnell. That will be fine.

Senator Packwood. Well, that is fine.

Senator Baucus. If I might, Mr. Chairman.

The Chairman. Yes.

Senator Baucus. You are right, Senator. But the basic question is whether payments by insurance companies goes to clean-up--that is the basic question--or whether it goes to pay lawyers and transaction costs.

Senator Packwood. I understand that. And this tries to get out from paying the lawyers and transaction costs.

Senator Baucus. Correct.

Senator Packwood. But it does not relieve the PRPs from their liability, even though they have made a settlement which solves their insurance problem.

Senator Baucus. No. It does not at all relieve the PRPs from liability, but more premiums that the insured pays, benefits for them because they are liable, then that goes to pay for their clean-ups because the insured cannot go to the EIRF and tell it it is liable for clean-up and presents that claim.

Senator Packwood. But does that absolve the PRP of all liability once they have made this settlement?

Senator Baucus. No, that is a totally separate matter.

Senator Packwood. All right.

Senator Baucus. But your earlier question was with respect to the percentage of insurance company costs that goes to pay claims versus the percent that goes to pay transaction costs and lawyers fees. And Secretary Samuels says that, today 88 percent goes to pay lawyers and transaction costs rather than to pay benefits for coverage.

And the whole point of the EIRF is to dramatically reduce that proportion so that much more of the premium payments to the insurance companies comes back in benefits to pay for coverage and clean-up costs, and less to lawyers. That will reduce the insureds' total liability because it has not reduced its clean-up liability at all, but currently it pays so much more in lawyers that, if this whole proposal is enacted, then the total dollar amount that the insured pays will be less and it will still pay for clean-up.

Senator Packwood. Does the insured get its money before its liability is fixed? In other words, I realize this formula, in terms of 60 percent, 40 percent, and whatnot. Is there going to be a tendency for the insureds to want to settle with their insurance companies and its cash in hand now, and now the insurance company is out from liability? No?

The Chairman. Ms. Munnell?

Ms. Munnell. Thank you, Mr. Chairman. The payments from the fund are made when the PRP submits its clean-up bills to the fund, so the payments are made over time as the PRP actually expends money for clean-up.

The Chairman. In the aftermath of a clean-up.

Ms. Munnell. Right.

The Chairman. Well, I do not think we can clear this up any more. So I am going to thank Secretary Samuels, thank Secretary Munnell, for your latest proposal, which will be offered as a Chairman's amendment. We excuse you, with gratitude.

Mr. Buckley, you have 10 minutes to explain this bill, which I cannot doubt that you will do.

Mr. Buckley. Thank you, Mr. Chairman. The proposal before the committee today is a substitute for Title 9 of S. 1834, the Superfund Reform Act of 1994. The proposal contains two parts. The first part would be a five-year extension of four taxes that are currently used to fund the Superfund program.

This is an excise tax on certain petroleum products, an excise tax on certain hazardous chemicals, an excise tax on certain imported substances that use hazardous materials in their manufacture or production--either petroleum products or the hazardous chemicals--and a corporate environmental income tax.

This part of the proposal would also conform the Superfund expenditure programs to the program as modified in S. 1834 and would lift the dollar caps on the aggregate amount of the revenues that are to be derived by those taxes.

The second part of the bill is a series of proposed excise taxes and an Environmental Insurance Resolution Trust Fund. As has been discussed, the Superfund Reform Act would establish a new environmental insurance fund to resolve disputes between potentially responsible parties and their insurers. This proposal would finance that fund through a series of two excise taxes and one assessment which are designed to raise approximately $810 million per year over a 10-year period.

During the first four years, the retrospective tax would raise approximately 69 percent of the total projected financing. The remainder would be collected through a prospective tax on certain commercial premiums.

There would be caps on both the retrospective taxes, and the prospective taxes, and there would be separate caps for both the direct insurers and the reinsurers, and for both the foreign and domestic reinsurers. During years 5-10, there would be no retrospective tax on direct insurers, there would only be a retrospective tax on reinsurers. And there would be an assessment on direct insurers designed to raise approximately 11 percent of the total revenues.

Again, there would be caps placed during that period of time. The tax rates on the retrospective tax for direct insurers would be .22 percent for the first four years and no tax thereafter; the retrospective tax on reinsurers would be .48 percent for the entire 10-year period; the tax rate for the prospective tax would be .37 percent for the first four years, and .69 percent for years 5-10.

The retrospective tax is computed by the amount of the

EXECUTIVE COMMITTEE MEETING

WEDNESDAY, SEPTEMBER 28, 1994

U.S. Senate,

Committee on Finance,

Washington, DC.

The ing was convened, pursuant to notice, at 10:35 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan, Chairman of the Committee, presiding.

Also present: Senators Baucus, Bradley, Pryor, Rockefeller, Daschle, Breaux, Conrad, Packwood, Dole, Roth, Danforth, Chafee, Durenberger, Grassley, Hatch, and Wallop.

Also present: Lawrence O'Donnell, Jr., Staff Director; Lindy Paull, Chief of Staff, Minority.

Also present: Leslie Samuels, Assistant Secretary for Tax Policy, U.S. Treasury; John Buckley, Chief of Staff, Joint Tax Committee; Alicia Munnell, Assistant Secretary for Economic Policy; Jack Ramirez, Executive Vice President, National Association of Independent Insurers.

[The press release announcing the meeting follows:]

net premiums written during a base period. People would be liable for the tax if, prospectively, they are either United States persons or foreign persons engaged in business in the United States where the income of that business is subject to our tax on a net income basis.

There would be a special alternative tax on foreign insurers that they would have to pay in lieu of the retrospective tax unless they entered into a closing agreement with the Internal Revenue Service, agreeing to be subject to the retrospective tax as if they were a United States person.

The prospective tax is imposed on direct written premiums with respect to certain commercial insurance policies. The lines of businesses that would be subject to tax are set forth in the document. They would include a variety of lines and would include all personal lines.

This is basically the same thing that was in the House bill, with the exception that more lines were excluded, such as financial guaranty and fidelity, and there would be broader exclusion for a variety of personal lines.

Then the final part of the bill is an assessment on direct insurers, and this would be determined on an annual basis by computing, for each insurer whose policy has been presented to EIRF for settlement, a portion of the revenue target for that assessment, which is $85 million. So you would compute how many insurance policies each insurer had that EIRF made payment on in the last four years, and then they would have to pay a portion of the revenue target based on that ratio.

The Chairman. Good. Thank you, Mr. Buckley. That was very succinct and very helpful.

Now, there is going to be a Chairman's amendment, as I mentioned, to bring the text before us into line with the Treasury's new agreement. Our co-sponsors are Mr. Baucus, Mr. Pryor, Mr. Riegle, Mr. Rockefeller, Mr. Breaux, and Mr. Danforth.

Could you, Mr. Buckley, describe the Chairman's amendment in very few words?

Mr. Buckley. The Chairman's amendment merely increases the exemption from the retrospective tax, from $50 million to $200 million. The exemption only applies to direct insurers. It increases it from $50 million to $20 million, and then provides a phase-out of that exemption between $200-400 million of premiums.

The Chairman. Fine. Thank you very much.

Now, there being a vote on, I would like to, first of all, offer the Chairman's amendment. Would you like a roll call?

Senator Packwood. No.

The Chairman. Those in favor will say aye.

(A chorus of ayes)

The Chairman. Those opposed?

(No response)

The Chairman. No. Very well. There are none. The amendment is adopted.

Now, the bill is open to amendment. I might like to ask my colleague here, does he want to proceed to get down to vote and come back?

Senator Packwood. It's Interior final passage. It should not take us long. We can go down and vote and hurry back.

The Chairman. The suggestion is that we vote. Sir?

Senator Dole. Would it be possible to come back just to hear for, say, 30 seconds, a representative from NAII and see if they concur with Mr. Samuels?

The Chairman. Yes. Yes, of course. Is there a representative from NAII present? Would you come forth, sir, and state your name?

Mr. Ramirez. My name is Jack Ramirez. I am Executive Vice President of NAII.

The Chairman. Thank you. We will have a 30-second or more explanation when we get back. That is comity. We all want to hear what you have to say. You two can talk while we are away and try to work out an agreement. Very well. Quickly, now. We will be voting. If you miss the votes, you will be sorry.

(Whereupon, at 11:15 a.m., the meeting was recessed.)

AFTER RECESS

(11:40 a.m.)

The Chairman. The committee will come to order.

Mr. Ramirez, a request was made that you be given 30 seconds. It is irregular, but it is not inappropriate. If you could tell us in a minute's time, the response to the question put to you.

Senator Packwood. You represent the National Association of Independent Insurers?

Mr. Ramirez. Yes, the National Association of Independent Insurers.

Senator Packwood. Thank you.

Mr. Ramirez. But I am speaking also at this moment on behalf of NAMIC.

Senator Packwood. On behalf of who?

The Chairman. No, no. No acronyms. Spell it out.

Mr. Ramirez. All right. The National Association of Mutual Insurance Companies, and then the Alliance of American Insurance Companies.

The Chairman. Fine.

Mr. Ramirez. Together, those three organizations have about 2,000 companies and have over 50 percent of the market share of the P&C market, the total market, both personal and commercial lines. And all these organizations are opposed, even with the Chairman's amendment. The

Chairman's amendment does not address --

Senator Packwood. Excuse me. Is P&C personal and commercial or property and casualty?

Mr. Ramirez. Property and casualty.

Senator Packwood. Thank you.

Mr. Ramirez. And the amendment does not address the basic inequity of the tax, which is that those companies who have little or no Superfund liability are going to be taxed in order to pay the liabilities of the larger companies, for the most part, who do have Superfund exposure. That's the inequity. You are changing the competitive advantage and disadvantage of various companies in the insurance market by trying to use this as a vehicle for whatever social good indirectly might come from this. That is the disadvantage. The specific exemption that you are creating is only on the retrospective tax. That is only in effect for the first four years of the tax, then it switches to primarily a prospective tax.

And, at that point, these same smaller regional and single State companies are then going to have to start picking up the tab to pay the liabilities of the larger companies who have the principal share of the Superfund exposure.

That is the inequity that is not being addressed, and that is why the exemption for the first four years is almost like a bait and switch. You get people into this, but when the price tag finally comes due, then this will be a prospective tax and those same companies who presumedly are being exempted are going to be paying, and they are going to be paying for somebody else's liabilities, they are going to be at a competitive disadvantage because they are paying the debts of their competitors. That is the basic inequity that has never been addressed. We have a proposal to address that which we have been trying to have considered for quite some time.

The Chairman. Mr. Ramirez, we thank you very much for a very succinct statement, and very helpful to the committee.

Mr. Ramirez. Thank you very much.

The Chairman. We excuse you, now.

Senator Baucus. Mr. Chairman, I just wondered if Mr. Samuels could just, for an equally short period of time, 60 seconds, just summarize the administration's view on this matter.

The Chairman. Of course. Of course.

Secretary Samuels. Senator Baucus, the administration's view is that when you look at this package as a whole, it is a fair package. We have dealt with the retrospective tax, with the increase of an exemption. And, with respect to the prospective tax, we still have the $5 million and we think that that is an appropriate balance for our proposal.

The Chairman. Thank you. Very well.

The bill is open to amendment.

Senator Wallop. Mr. Chairman.

The Chairman. Senator Wallop.

Senator Wallop. Having just adopted the Chairman's amendment to the EIRF, I would move to strike the EIRF provision in its entirety, as amendment.

The Chairman. Move to strike the EIRF provision, as amended.

Senator Wallop. And let me just explain why. Senator Baucus has called it simple. I doubt seriously if anybody understood completely what Mr. Buckley said. It has nothing to do with Mr. Buckley's articulateness or lack thereof, it has to do with the very complex nature of this provision and where it goes.

Second, we are creating an open-ended obligation for the Federal Government with authorization to borrow if the fund does not fulfill its needs. And you can believe that one of the reasons why both the small insurers and reinsurers are against it, it is because it is a certain tax obligation down the road which is implicit, but not explicit.

We have heard Mr. Samuels' attempt to explain this complex and complicated agreement, but it was achieved really rather bizarrely and at the expense of the people who are now protesting it.

We were led to believe that the proposal is an equitable agreement negotiated by the industry, but we know that not to be true. We know that certain parties were never privy to the negotiations, and certainly most Senators on this committee were not privy to the negotiations.

We now have more than 50 percent of the insurance industry opposed to it, yet we are being asked to support it because we have no other way of funding it. The statement that Mr. Samuels made is, their view is that it is equitable, in its totality, may be true, but it is achieved at the expense of inequity to a certain large percentage of the industry.

Let us not kid ourselves. The financing provisions are unfair. The taxes are designed to shift the liability costs of large insurance companies currently in litigation to small- and mid-sized property and casualty companies who have no environment liability.

The proposal originally started at a 70 percent retrospective tax on companies who would have benefitted from the fund by having their liabilities reduced. Now, after these closed-door negotiations, including the most recent one, the tax is 50 percent prospective, paid by many companies who have no Superfund liability.

It is a broad-based tax, fair enough, that is designed to be borne indirectly by the general public, a statement and point Mr. Samuels made clear, but it is a tax which will be paid into a fund that is clearly under funded. Nobody has made the case that it will be able to accommodate its obligations.

The administration seems to keep changing the amount of total liability it gave before this committee only two weeks ago. But the number really does not matter. What does matter is that no one really knows how many claims will be filed and the total amount of the obligations to the fund.

We only know that the Federal Government has authority in this to borrow to fulfill the requirements. We are told that the fund's obligations expire at the end of 10 years. The parties to the proposal expect and hope that the taxes will continue.

Would you read, please, pages 15 and 16 of the mark-up document? If the taxes do not continue and the fund cannot meet its obligations, the companies will, again, have the right to sue. I ask you where we have gone, except to have put in a tax and restored the position that is currently sought to be replaced.

In addition, it is not clear that EIRF will work as promised. For example, it is not clear that the revenues paid out will, in fact, be used for clean-up costs and not be used by the PRPs to further litigate other issues. I am not certain anyone here today can say for sure that the fund will work.

Mr. Buckley said it was administrable, which is different than saying it will work. One can administer almost anything given a set of language, but whether or not it accomplishes what it is said to do has not yet--and correct me if I am wrong, Mr. Buckley--been a part of the research that you have done.

Mr. Buckley. Senator, I was limiting my remarks to the financing provisions contained in the bill. I think you are more addressing the underlying EIRF proposal.

Senator Wallop. That is true. But if we are to be asked to fund something we ought to be able to understand that that something can accomplish what it is that it sets out to do, and many of us do not believe--and uncontestedly we do not believe--that it will fulfill its stated purpose.

We do not know, Mr. Chairman, a lot of things. But what we do know is that EIRF and its financing provisions are clearly controversial. We have heard from the small insurers and we have not had adequate time to examine the agreement, or to understand it. I confidently say I do not believe anybody in here really fully understands all of it because, as we have seen, there are two very sophisticated staff in disagreement as to its application.

Let me also note for the record the transmittal letter from Secretary Bentsen to Senator Packwood dated August 17th of the year, and at that time Senator Bentsen submitted what was then called the consensus position of the industry and he said, "We all strongly believe, however, that the integrity of this agreement must be preserved throughout the legislative process. If this compromise is not legislatively attainable or if there are changes in the attached proposal which run counter to the principles embodied in it, the administration will work with you to remove from the bill the provisions creating and financing EIRF."

Now, there are clearly changes made to the original document that no longer embody the principle that those who benefit most should pay the most significant share of the reform. In fact, 50 percent of the industry does not now believe that the proposal embodies that principle.

I think it is time we slowed down and put the provision aside until we can fully analyze what it is we are creating. I know why it is we have created it, but whether it accomplishes that, I do not believe anybody with confidence can argue. So, I move my amendment at the appropriate time.

The Chairman. Thank you, Senator Wallop.

Senator Baucus, did you want to make a clarification? I do think it is clear, in Mr. Wallop's statement, that he strikes the Sections 902, 903, and 904 relating to financing provisions.

Senator Baucus. That is what I understand, Mr. Chairman. Namely, it is the provisions that deal with financing the EIRF, which are the only ones subject to the amendment.

Senator Wallop. Yes. I am not trying to strike the current financing provisions.

Senator Baucus. Yes. That is correct.

Senator Wallop. And have no intention of doing that.

The Chairman. Senators.

Senator Packwood. Roll call. Senator Packwood asked for a roll call vote on Mr. Wallop's amendment. The clerk will call the roll.

The Clerk. Mr. Baucus.

Senator Baucus. No.

The Clerk. Mr. Boren.

The Chairman. No, by proxy.

The Clerk. Mr. Bradley.

The Chairman. No, by proxy.

The Clerk. Mr. Mitchell.

The Chairman. No, by proxy.

The Clerk. Mr. Pryor.

Senator Pryor. No.

The Clerk. Mr. Riegle.

The Chairman. No, by proxy.

The Clerk. Mr. Rockefeller.

Senator Rockefeller. No.

The Clerk. Mr. Daschle.

Senator Daschle. No.

The Clerk. Mr. Breaux.

Senator Breaux. No.

The Clerk. Mr. Conrad.

Senator Conrad. Aye.

The Clerk. Mr. Packwood.

Senator Packwood. Aye.

The Clerk. Mr. Dole.

Senator Packwood. Aye, by proxy.

The Clerk. Mr. Roth.

Senator Roth. No.

The Clerk. Mr. Danforth.

Senator Danforth. No.

The Clerk. Mr. Chafee.

Senator Chafee. No.

The Clerk. Mr. Durenberger.

Senator Durenberger. Aye.

The Clerk. Mr. Grassley.

Senator Grassley. Aye.

The Clerk. Mr. Hatch.

Senator Packwood. Aye, by proxy.

The Clerk. Mr. Wallop.

Senator Wallop. Aye.

The Clerk. Mr. Chairman.

The Chairman. No.

The Chairman. The vote is 7 yeas, 13 nays. The amendment is not adopted.

The bill is open to amendment.

Senator Grassley. Mr. Chairman.

The Chairman. Senator Grassley.

Senator Grassley. Could I offer, if the staff would pass out something known as the Grassley-Packwood-Dole amendment. It deals with a 25 percent deduction for health insurance for self-employed.

Most of our major health care bills introduced in the current Congress have called for an increase extension of this 25 percent health insurance for the self-employed; most of them have even gone to 100 percent.

There is a broad consensus that an increased health insurance deduction would contribute to tax fairness and would also lead to a significant reduction on a number of uninsured Americans.

Unfortunately, as we know, the self-employed health insurance deduction expired December 31, 1993, with the understanding that an extension and possible expansion would be part of a health care reform in 1994.

Now that it appears that any comprehensive health care reform will be postponed until the next Congress, I think it is very important for us to take action this year that will, at the very least--at the very least--extend the 25 percent deduction.

Otherwise, if the 25 percent deduction is not retroactively reinstated, the self-employed will be hit with a sizeable tax increase. Moreover, it would be a tax increase on predominantly middle income persons, since about 73 percent of those persons who pay self-employment tax earn under $50,000 in adjusted gross income.

Mr. Chairman, I hope we all agree that we have to find a way to at least extend the 25 percent deduction so that we can work towards expanding this deduction in any further health care reform measures.

I would like to add Senator Wallop as a co-sponsor as well. I think, perhaps, other members on this side of the aisle want to speak to the point of the offset, but it is very clearly stated at the bottom of my amendment what the offset is, and I will not go into that at this point.

The Chairman. Thank you, Senator Grassley. I want to move along now. I had hoped we would not have amendments to other matters on the bill. On the other hand, I do note that our committee is almost uniformly in favor of providing deductibility for the insurance costs of the self-employed. I announced yesterday a four-point measure which included that. On the other hand, to pay for it in this manner is something I think many of us would find not acceptable, so we may have to work out an arrangement there.

I do not want to speak, I want to let others speak, first.

Senator Bradley. Mr. Chairman?

The Chairman. Senator Bradley asked, then Senator Rockefeller, Senator Breaux, Senator Danforth, Senator Roth.

Senator Bradley. Mr. Chairman, what is the underlying measure we are considering?

The Chairman. Sir?

Senator Bradley. What is the underlying measure we are considering?

The Chairman. The EIRF provisions for payment with respect to the Superfund amendment.

Senator Bradley. Right. You know, if we are going to open this up to health care amendments, tax amendments, trade amendments, are we going to put GATT on this thing, too?

The Chairman. No, GATT is tomorrow.

Senator Bradley. Yes, we hope. I am a little reluctant to try to load this thing down with extraneous amendments. I mean, I know it is not unusual. I mean, these are all important things. But I think if we are going to have any chance of getting anything passed, it is going to have to be, I think, separate bills, myself.

The Chairman. Sir, I said at the outset that I had hoped that there would be no non-germane amendments. I agree with you.

Senator Grassley. If I could respond to that and just take 10 seconds.

The Chairman. Of course you can, Senator Grassley.

Senator Grassley. I think we all agree that this is so important. The last time this thing ran out we all agreed it was so important that we made it retroactive. We may every one of these self-employed people file amended returns. Why go through that again?

The Chairman. Well, it is one way to pass the Superfund.

(Laughter)

The Chairman. Senator Rockefeller?

Senator Rockefeller. Mr. Chairman, I would agree with the Chairman in not only opposing the Child Vaccine Program as being a source of funding, but also that I think it should be very clear, if we are to take this up--which I would hope that we would not, but I guess we have to--that Medicare would not be included. 72 percent of two-year-olds in this country have not received their vaccines. The program is scheduled to start this Saturday.

There have been some problems, I would say to the Senator from Iowa, in terms of working out that distribution, but I believe that Senator Danforth, Senator Bumpers, and HHS have worked out some of those differences. I believe that Rhode Island's State done program will continue under this program, and I would just strongly oppose the financing of this from children's vaccines, and Medicare, should somebody decide to bring that up.

The Chairman. Thank you, Senator Rockefeller.

Senator Riegle is holding a hearing in the Banking Committee right now and obviously cannot be here, but he would like to express his firm opposition to financing the provision for this by eliminating the vaccine program.

I am going to see if we cannot go back and forth. Senator Danforth?

Senator Danforth. Well, Mr. Chairman, I strongly support this amendment. First, because of the tax provision, which I think all of us agree with, but, second, from the standpoint of the pay-for, which I think is just right. I think it is just right, not because I am against vaccinating children, because I am obviously for vaccinating children, and all of us are, but the vaccination program that has been developed by the administration is, frankly, just wacky. Articles have been written about it on the front page of the New York Times pointing out the fallacy of the program, the Wall Street Journal. Senator Bumpers has taken a very keen interest in this. He has held hearings on this subject.

The problem with the Administration's vaccination program is that it essentially nationalizes vaccinations. What it does, is to define the wrong problem--the problem is not the cost of vaccines--then proceed to buy up all the vaccines, or the Federal Government would buy more than the national dosage of vaccines, more than 100 percent of what is needed to vaccinate all the children, and the Federal Government would buy it. Now, this has not been worked out, I say to Senator Rockefeller.

The administration's original proposal was that they had a warehouse, which was a GAO warehouse in New Jersey, and their idea was to buy up all this vaccine and then ship it to New Jersey and run a governmental distribution system out of New Jersey.

So they had this GAO warehouse and the warehouse was used for storing furniture, paper products, all kinds of things. They were going to convert this warehouse into a place with refrigeration and whatnot to store vaccines. Well, there was such a hue and cry about that idea that they apparently abandoned the idea of the warehouse, but they still keep their purchase program and their distribution program. It is totally screwy.

The problem with inadequate vaccinations in the United States is not a problem of cost, it is a problem of outreach, it is a problem of responsibility, it is a problem of keeping track of what kids have been vaccinated for what.

This is the kind of thing that Senator Bumpers has focused on, particularly. It is exactly the opposite of the way the administration is handling it. The administration's program really should be scrapped. It should be scrapped for the sake of kids, as well as for the sake of the vaccines. I think that Senator Grassley, Senator Packwood, Senator Dole, and whoever else is involved in this should be commended for this amendment.

The Chairman. Thank you, Senator Danforth.

May I say that many of us have read those articles and I think the Finance Committee has to hold an oversight hearing on this matter, and if I am around, I mean to do.

Senator Pryor?

Senator Pryor. Mr. Chairman, I think the Senator from

Iowa's has good intentions--hopefully, I think he knows that I share those intentions--to do something about this particular issue. One, I do not think the amendment goes far enough. I think we need 100 percent deduction. That is the first flaw I see in your amendment, I would say to my colleague and friend.

Second, I think the other flaw is, it takes money from the wrong fund, as Senator Rockefeller has stated, the vaccine fund. I do not think right now is the time to do that, and I do share Senator Rockefeller's concern, as I shared with my colleague, Senator Bumpers, that we have got to protect this fund and we have got to make sure that we do not emasculate it at this time.

Third, I think we are sending a wrong signal out there to the taxpayers. I think we are going to be confusing those taxpayers who believe that we are getting ready to give them a 25 percent deduction because, very honestly, I do not think this bill is going anywhere.

So, I think we ought be honest and just say that there is going to be a day to do this, and hopefully we can do it retroactively by the next tax season. Those are my three concerns, Mr. Chairman, with the amendment.

The Chairman. I would like to go back and forth. Senator Roth, and then Senator Breaux.

Senator Roth. Well, thank you, Mr. Chairman. I, too, sympathize with the purpose, the spirit, of Senator Grassley's amendment. But I have to say that, at least in the case of my State of Delaware, to do away with the Federal Vaccine Program would create some serious problems at the present time.

My State is scheduled to have a universal vaccine program in January which builds on the Federal Vaccine Program. Now, I know that there are some serious problems with the program, and I think it is important, Mr. Chairman, that we address those problems in this committee at the earliest possible time.

As I say, according to Dr. Konigsburg, the Director of Delaware Public Health, the State has established a partnership with pediatricians, private insurers, and the Federal Vaccine Program to assure our children are immunized.

So, I do have problems with the way we are paying for the 25 percent deduction. As I said, I very strongly support the purpose of the legislation insofar as it makes the 25 percent deduction retroactively continue, and I think that should be done.

It seems to me, Mr. Chairman, we ought to look for some alternative proposal, though. For example, at a later time I will offer an amendment proposing the 25 percent deduction be continued, but I would pay for it with a small increase in the tobacco tax, something like one cent.

The Chairman. Something like that. Thank you, Senator Roth. I am asked, do you mean to offer that amendment in this mark-up or on the floor?

Senator Roth. It was my thought that I would offer it here, sir.

The Chairman. You have that right.

Senator Breaux. Thank you, Mr. Chairman. I do not want to belabor the point. I think all the points have basically been made. I would agree with the comments of Senator Roth on the issue.

I would just ask Senator Grassley to take note of the Minority Leader's comments about where this bill is going. If this is a really important issue, I would suggest this is not the best thing to tie it onto if you want to get it passed.

The second point, is the merits of the tax deduction are laudable. I totally agree with it. We have to do it, we should do it this year. But the offset, I think, is not a good offset. I mean, we have problems with the children's vaccination program. Do not kill the program, fix it. There are a lot of ways to fix it other than killing it.

I mean, the National Service Program that we just passed in this Congress has created an AmeriCorps program.

These young men and women are being used to vaccinate and get this outreach program going. I think it is right on target. It is going to help solve the problem with the vaccination program, which is an outreach problem, and I think we are making progress with it. Do not kill it in order to fix it. This absolutely kills it. We are exchanging children's vaccinations for a tax credit for business. They deserve the tax credit, but do not take it out of the lives and health of young children.

The Chairman. And, last, Senator Baucus.

Senator Baucus. Thank you, Mr. Chairman. Mr. Chairman, at the outset I would like to state that I am a firm supporter of the self-employed deduction. In fact, I have introduced legislation this year to accomplish just this purpose. However, we have very few days left in this session. There is a time and place for everything. This is not the time and place for this amendment.

If we adopt this amendment, there is no reason not to adopt any other non-germane amendment, which means that we are trying to solve virtually all, if not all, of the world's problems, or at least a good portion of the world's problems, all at the same time, and that just cannot be done. We have to exercise some self-discipline. I very strongly favor this amendment, but not at this time. I think if we are going to pass Superfund, in the very few remaining days left we have no choice but to move on with the substance of the bill and go to the floor with it and try to pass it. That will only happen if we do not load it up with amendments that have nothing to do with this legislation.

The Chairman. Right. And with the understanding that this committee, as near as makes no matter, is unanimous in support of the deductibility of insurance costs of the self-employed, even so, I think that we have to have a roll call vote. The clerk will call the roll.

The Clerk. Mr. Baucus.

Senator Baucus. No.

The Clerk. Mr. Boren.

The Chairman. No, by proxy.

The Clerk. Mr. Bradley.

Senator Bradley. No.

The Clerk. Mr. Mitchell.

The Chairman. No, by proxy.

The Clerk. Mr. Pryor.

Senator Pryor. No.

The Clerk. Mr. Riegle.

The Chairman. No, by proxy.

The Clerk. Mr. Rockefeller.

Senator Rockefeller. No.

The Clerk. Mr. Daschle.

Senator Daschle. No.

The Clerk. Mr. Breaux.

Senator Breaux. No.

The Clerk. Mr. Conrad.

Senator Conrad. No.

The Clerk. Mr. Packwood.

Senator Packwood. Aye.

The Clerk. Mr. Dole.

Senator Packwood. Aye, by proxy.

The Clerk. Mr. Roth.

Senator Roth. No.

The Clerk. Mr. Danforth.

Senator Danforth. Aye.

The Clerk. Mr. Chafee.

Senator Chafee. No.

The Clerk. Mr. Durenberger.

Senator Durenberger. No.

The Clerk. Mr. Grassley.

Senator Grassley. Yes.

The Clerk. Mr. Hatch.

Senator Packwood. Aye, by proxy.

The Clerk. Mr. Wallop.

Senator Packwood. Aye, by proxy.

The Clerk. Mr. Chairman.

The Chairman. No. There are 6 ayes and 14 nays, so the amendment is not agreed to.

The bill is open to amendment. The hour is past noon.

Senator Roth. Mr. Chairman.

The Chairman. Senator Roth. Senator Roth, do you really want to do this? We can find a place on the floor to put this provision in. The committee wants to do it. If we mess it up with this other matter then the harmony that presently exists will dissipate.

Senator Grassley. Could we just have unanimous consent right here to get a bill out and put it as a separate bill and have it out there and then you are in a position to get it done? But you do not have a bill out there to get it done on. If the Chairman says he is going to do it -- I mean, you have got your nanny tax bills. You can surely get something simple like this through.

The Chairman. Alas, we need an H.R. bill and we do not have one. There was a day when Senator Long always had one or two in his pocket, but that seems to have disappeared. But I am committed. Yesterday on the floor of the Senate we proposed 100 percent deductibility. We are with you now. We are all with each other. I would like to plead with the committee to let this hold. Yesterday we proposed to pay for it with a tobacco tax. We will find a place to do it on the floor, and, of course, we really do need an H.R. bill.

With that, I am going to propose, if there are no further amendments--I see no one seeking amendments--we would like to have a vote. Those in favor of reporting out the EIRF provisions of the Superfund bill will say --

Senator Packwood. Hold on. Hold on.

Senator Roth. Mr. Chairman, with all due deference, I do feel compelled to offer my amendment.

The Chairman. You have absolute right to do so.

Senator Roth. Mr. Chairman, my amendment, copies of which will be passed out now, is a very simple amendment. We all know the problems that we face because of the health insurance deduction for the self-employed expired at the end of last year.

Hundreds of thousands of small business people and farmers will no longer be able to deduct 25 percent of their health insurance costs. Already the tax law is unfair because it allows corporations to deduct 100 percent of their health insurance costs, but not the farmer or small business person.

At a minimum, we need to extend the 25 percent deduction. I would like to increase it to 100 percent. Hopefully we will do that in health care reform early next year. But my amendment would grant a 25 percent deduction retroactively for all of 1994, and then through 1995.

I would pay for part of it by denying the Earned Income

Tax Credit to illegal immigrants. The remainder would be paid for by increasing the cigarette tax over the five years. I believe, based on my own calculations, that it would be about a one cent increase in the tax over five years, but I would allow the Joint Committee on Taxation to come up with the exact figure.

The Chairman. Very well. Those who are in favor of the Roth amendment will say aye.

(A chorus of ayes)

The Chairman. Those opposed?

(A chorus of nays)

The Chairman. The nays appear to have it. The amendment is rejected.

Senator Roth. Mr. Chairman, may I ask for a roll call vote?

The Chairman. You have the right to that. The clerk will call the roll and the clerk will announce the vote in terms of, first, the yeas and then the nays.

The Clerk. Mr. Baucus.

Senator Baucus. No.

The Clerk. Mr. Boren.

The Chairman. No, by proxy.

The Clerk. Mr. Bradley.

Senator Bradley. No.

The Clerk. Mr. Mitchell.

The Chairman. No, by proxy.
The Clerk. Mr. Pryor.
Senator Pryor. No.
The Clerk. Mr. Riegle.
The Chairman. No, by proxy.
The Clerk. Mr. Rockefeller.
Senator Rockefeller. No.
The Clerk. Mr. Daschle.
Senator Daschle. No.
The Clerk. Mr. Breaux.
Senator Breaux. No.
The Clerk. Mr. Conrad.
Senator Conrad. Aye.
The Clerk. Mr. Packwood.
Senator Packwood. No.
The Clerk. Mr. Dole.
Senator Dole. (No response)
The Clerk. Mr. Roth.
Senator Roth. Aye.
The Clerk. Mr. Danforth.
Senator Danforth. Aye.
The Clerk. Mr. Chafee.
Senator Chafee. Aye.
The Clerk. Mr. Durenberger.
Senator Durenberger. No.

The Clerk. Mr. Grassley.

Senator Grassley. No.

The Clerk. Mr. Hatch.

Senator Hatch. (No response)

The Clerk. Mr. Wallop.

Senator Wallop. (No response)

The Clerk. Mr. Chairman.

The Chairman. No. There are 4 yeas, 13 nays. The amendment of the Senator from Delaware is not agreed to.

Senator Packwood?

Senator Packwood. I have an amendment, Mr. Chairman, on behalf of Senator Dole. And I might say, and call to Senator Baucus' attention, this is sort of a form of income averaging for farmers.

Senator Baucus. Thank you.

Senator Packwood. The proposed amendment would allow farmers the option to recognize income in the year of a disaster if they can prove that they would have received the income from the sale of the crop in that year, and the amendment is paid for by a correction to the indexing provisions in the 1993 Reconciliation Act relating to luxury automobiles.

What you have is this situation: you have got a farmer, he has got crops, you have a disaster, they are wiped out, gone. Now, the next year he gets his Disaster Assistance payments, and he also has a crop in that year.

So, in essence, he has got a double income. That year he has to pay taxes on both, and he had no income in the year of disaster. This would give him the option to, in essence, declare the Disaster Assistance that he receives in this year's income last year. And it is paid for by a modest change in the index provision on the luxury tax on automobiles.

The Chairman. Senator Packwood. I am sorry. I am sorry. Did Senator Grassley want to say something?

Senator Grassley. I should not interfere with you. I do want to speak on the amendment.

The Chairman. Sure. I just want to say that Senator Riegle is not here, but to increase the tax on automobiles would be just so difficult for him.

Senator Grassley. Well, you know, this same bill got out of here unanimously this spring when we were trying to put it on your nanny tax. So this bill is out on the calendar waiting for this high visibility it was supposed to have all year, and is not getting.

The Chairman. Senator Daschle.

Senator Daschle. Mr. Chairman, I am the author of the legislation that Senator Grassley refers to, and I feel very strongly about its need. But, as we have argued in the case of the other amendments, this is not the vehicle.

This is legislation that ought to pass on its own right, I believe ultimately will pass on its own right, and I certainly would hope we would vote against it in this case.

The Chairman. Senator Durenberger.

Senator Durenberger. Mr. Chairman, could we clarify where this particular provision is? I mean, is it on your nanny tax bill or is it freestanding?

The Chairman. It is freestanding.

Senator Durenberger. Freestanding on the calendar.

The Chairman. It is on the calendar.

Senator Durenberger. And, Mr. Chairman, what most likely might happen? This is a bill which sort of has an immediate impact on, as the gentleman from South Dakota would know, on farmers who are paying taxes in 1994 for 1993 income that they did not have, and it is sort of like a real immediate problem. If we do not support it on this vehicle, what --

The Chairman. I will undertake to get it up. We will be doing a lot of things in surprising ways in the next few days.

Senator Durenberger. Today is not one of the those days.

The Chairman. Keep this bill clean. We are for this. It is perfectly, elementally good. It is equity.

Senator Durenberger. Yes.

The Chairman. Senator Daschle, who is the sponsor of the bill, says it is equity, but not on this bill.

Senator Grassley. As long as you are giving so much assurance of all the proposals you want to help us get passed, could you help us get the Medicare-dependent hospital provisions passed and then I will not have to offer that as an amendment here.

The Chairman. I am sorry, Senator.

Senator Grassley. Medicare-dependent hospital provisions. There is an offset for it right here in this bill so we do not have to dig up a lot of new money.

The Chairman. Senator, we are not going to take up Medicare today.

Senator Grassley. Medicare-dependent hospital. That is an existing program. It is running out. There are 12 members of this committee that are affected by that program if it runs out.

The Chairman. We are not going to legislate in this manner. I am sorry.

Senator Grassley. I thought you would just give me those assurances, you are going to help us get it passed separately.

The Chairman. Yes. Absolutely.

Senator Grassley. All right.

The Chairman. Absolutely.

Senator Breaux. Mr. Chairman?

The Chairman. Senator Breaux.

Senator Breaux. I think it is obvious, one of the reasons we have all these health care amendments is we are not doing the health care bill. And the Superfund legislation could not be the Health Care Reform Act. I mean, there is a lot of support for doing the health bill. That is where these things appropriately belong.

The Chairman. Well, nobody tried harder than you and Senator Danforth.

Now, do you want to have a voice vote?

Senator Packwood. They want a roll call.

The Chairman. The clerk will call the roll on the Dole amendment.

Senator Danforth. Mr. Chairman.

The Chairman. I am sorry. Senator Danforth?

Senator Danforth. I take it that you would resist putting the completed contract method of accounting on this one?

The Chairman. No. Oh, no.

(Laughter)

The Chairman. They were saving that as a farewell gift on the GATT for you.

Senator Bradley. We are going to do the completed contract right after we eliminate the deduction for tobacco advertising.

(Laughter)

Senator Chafee. What are we voting on, now?

The Chairman. We are voting on the Dole amendment, with the understanding that the Chairman makes the absolute commitment to try to get this perfectly equitable provision passed. It is on the calendar now.

I would ask that the members vote no simply so we can get a clean EIRF provision out and the Superfund on its way. The clerk will call the roll.

The Clerk. Mr. Baucus.

Senator Baucus. No.

The Clerk. Mr. Boren.

The Chairman. No, by proxy.

The Clerk. Mr. Bradley.

Senator Bradley. No.

The Clerk. Mr. Mitchell.

The Chairman. No, by proxy.

The Clerk. Mr. Pryor.

Senator Pryor. No.

The Clerk. Mr. Riegle.

The Chairman. No, by proxy.

The Clerk. Mr. Rockefeller.

Senator Rockefeller. No.

The Clerk. Mr. Daschle.

Senator Daschle. No.

The Clerk. Mr. Breaux.

The Chairman. No, by proxy.

The Clerk. Mr. Conrad.

Senator Conrad. Aye.

The Clerk. Mr. Packwood.

Senator Packwood. No.

The Clerk. Mr. Dole.

Senator Packwood. Aye, by proxy.

The Clerk. Mr. Roth.

Senator Roth. Aye.

The Clerk. Mr. Danforth.

Senator Danforth. Aye.

The Clerk. Mr. Chafee.

Senator Chafee. No.

The Clerk. Mr. Durenberger.

Senator Durenberger. No.

The Clerk. Mr. Grassley.

Senator Grassley. Aye.

The Clerk. Mr. Hatch.

Senator Packwood. Aye, by proxy.

The Clerk. Mr. Wallop.

The Chairman. Aye, by proxy.

The Clerk. Mr. Chairman.

The Chairman. No. The yeas are 7 and the nays are 13.

The amendment is not agreed to. But the commitment by the Chairman to get this matter up as much as can be done is in place.

Now, can we say that it is well past the hour of noon?

Senator Grassley. 22 minutes, to be exact.

Senator Packwood. You want a roll call on that?

(Laughter)

The Chairman. I think, what do you say we have a resounding aye and report the bill out and know that we have done a good morning's work?

Those in favor will say aye.

(A chorus of ayes)

The Chairman. Those opposed?

(No response)

The Chairman. The ayes have it. The bill is reported out. We thank you.

Senator Baucus. I want to thank you for your leadership during this whole thing. Thank you very much.

The Chairman. Thank you, Senator Baucus. Thank all concerned. Tomorrow we will meet on the GATT and the completed contract method of accounting. The House has reported the GATT out 35 to 3.

(Whereupon, at 12:24 p.m., the meeting was concluded.)

CERTIFICATE

This is to certify that the foregoing proceedings of an Executive Committee Meeting of the Committee on Finance, United States Senate, held on Wednesday, September 28, 1994, were transcribed as herein appears and that this is the original transcript thereof.

William J. Moffitt

WILLIAM J. MOFFITT

Official Court Reporter

My Commission Expires April 14, 1999

Joint Committee on Taxation
September 27, 1994
JCX-20-94

REVENUE-RELATED PROVISIONS OF S. 1834 (SUPERFUND REFORM ACT OF 1994)

Scheduled for a Markup by the Senate Committee on Finance on September 28, 1994

I. LEGISLATIVE BACKGROUND

S. 1834 (the "Superfund Reform Act of 1994"), the Administration's Superfund reauthorization proposal, was introduced (by request) by Senators Baucus and Lautenberg, on February 7, 1994. The bill was jointly referred to the Committee on Environment and Public Works and the Committee on Finance for matters under their respective committee jurisdiction. Title IX of S. 1834, as introduced, would extend the four present-law Superfund excise taxes through December 31, 2000, and would make conforming amendments to the Superfund Trust Fund expenditure purposes to allow financing of the revised Superfund program.

S. 1834 was ordered favorably reported, with amendments, by the Committee on Environment and Public Works on August 3, 1994, and the report was filed on August 19, 1994 (S. Rept. 103-349). Title VIII of the bill would create a new Environmental Insurance Resolution Fund (the "EIRF") to settle disputes between insurers and their policyholders concerning certain environmental cleanup costs. The Committee on Environment and Public Works did not amend Title IX ("Taxes") of the bill.

On August 17, 1994, the Administration submitted to the House Committee on Ways and Means a proposal[1] for funding the EIRF. The proposal would impose two new excise taxes and a special assessment (also imposed as an excise tax under the Internal Revenue Code) on persons issuing or bearing risks under certain property and casualty insurance policies. A special assessment on reinsurers was substituted for a portion of the excise taxes on reinsurers by the House Committee on Ways and Means in its amendment to Title IX of H.R. 3800 as approved on August 19, 1994. (See H. Rept. 103-582, Part 3, August 26, 1994.)

The Committee on Finance held a public hearing on the Superfund revenue proposals on September 14, 1994. In connection with that hearing, the Administration submitted to the Committee on Finance a revised funding proposal for the EIRF. Among other

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[1] This proposal was a substitute for a prior Administration proposal that was submitted on May 20, 1994.

things, the revised proposal would eliminate the special assessment on reinsurers, as added by the House Committee on Ways and Means. Subsequent revisions to the proposal were transmitted by the Administration on September 26, 1994.

The Administration intends that the new excise taxes and the special assessment under its proposal be incorporated in Title IX of S. 1834 as the financing source for the new Environmental Insurance Resolution Fund program.

II. DESCRIPTION OF PROPOSED REVENUE PROVISIONS

A. Extension of Current Superfund Taxes and Trust Fund

Present Law

Four different taxes are imposed under present law to fund the Hazardous Substance Superfund (the "Superfund") program. These are in general:

(1) An excise tax on certain petroleum products, imposed at a rate of 9.7 cents per barrel;

(2) An excise tax on certain hazardous chemicals, imposed at a rate that varies from $0.22 to $4.87 per ton;

(3) An excise tax on certain imported substances that use as materials in their manufacture or production one or more of the hazardous chemicals subject to tax in (2) above; and

(4) A corporate environmental income tax equal to 0.12 percent of the amount of modified alternative minimum taxable income of a corporation that exceeds $2 million.

Amounts equivalent to the revenues from these taxes are dedicated to the Superfund Trust Fund, established in the Trust Fund Code of the Internal Revenue Code. Amounts in the Superfund Trust Fund may be expended for the purposes provided in present-law authorizing legislation, as that legislation was enacted in 1986.

In general, the Superfund taxes are scheduled to expire after December 31, 1995. However, the taxes would terminate before then if either (1) the unobligated balance in the Superfund exceeds $3.5 billion on December 31, 1994, and the Treasury Department estimates that the unobligated balance will exceed $3.5 billion at the end of 1995 (assuming no Superfund taxes are imposed during 1995), or (2) the Treasury Department estimates that more than $11.97 billion of revenues from these taxes will be credited into the Superfund before January 1, 1996. At the present time, neither of these early expiration events are expected to occur.

Administration Proposal

In general, the Administration proposal would extend the present-law Superfund excise taxes on petroleum, chemicals, and imported substances through December 31, 2000, and the present-law corporate environmental income tax through taxable years beginning before January 1, 2001. However, these taxes would terminate before then if the unobligated balance in the Trust

Fund exceeds $3.5 billion on December 31, 1998, or December 31, 1999, and if the Treasury Department estimates that the unobligated balance would exceed this amount at the end of December 31, 1999 or December 31, 2000, respectively, if no Superfund taxes were imposed during such year. Also, no further taxes would be imposed if the Treasury Department estimates that more than $22.0 billion of these taxes have been credited into the Superfund before January 1, 2001.

The Administration proposal would conform the Superfund expenditure purposes to the program as modified in S. 1834.

B. Proposed Environmental Insurance Resolution Trust Fund and Excise Taxes

Present Law

No Federal excise tax is imposed on domestic casualty insurance policy premiums. A Federal excise tax is imposed on premiums for certain insurance issued by foreign insurers and reinsurers, including casualty insurance and reinsurance. The rate of tax with respect to casualty insurance is four cents per dollar of premiums paid, and with respect to reinsurance is one cent per dollar of premiums paid (sec. 4371).

Revenues from the present-law excise tax on premiums paid to foreign insurers and reinsurers are deposited in the General Fund of the Treasury. There is no trust fund or other fund for Federally sponsored settlement of private environmental insurance claims.

Administration Proposal

Overview

S. 1834 would establish a new Environmental Insurance Resolution Fund (the "EIRF") to resolve disputes between potentially responsible parties (persons potentially liable for cleanup of Superfund sites) and their insurers regarding liability for cleanup of Superfund sites. Under this program, awards would be made to potentially responsible parties in an amount generally equal to a statutory percentage of eligible cleanup costs actually incurred. The percentages would vary from 20 percent to 60 percent, depending on the State in which the sites were located and the litigation venue for the various sites. Potentially responsible parties electing to receive payments from the EIRF would waive all claims against insurance companies with respect to Superfund sites.

S. 1834, as reported by the Committee on Environment and Public Works, does not include funding provisions for the EIRF; the Administration, however, has proposed that the EIRF be funded with two new excise taxes and a new assessment generally imposed with respect to commercial insurance. These taxes would be imposed as follows:

<u>Years 1-4 (1995-1998)</u>.--A retrospective excise tax based on certain insurance premiums written during the period 1968 through 1985 would raise approximately 69 percent of projected total revenues during this four-year period. Of this amount, approximately 46 percent of total revenues ($374 million a year) would be collected through a tax based on net direct insurance premiums written and 23 percent of such revenues ($188 million a year) would be collected through a tax based on net reinsurance premiums written. The remaining 31 percent of revenues ($248 million a year) would be raised by a prospective tax on premiums written for direct insurance. Tax rates (described below) would be established in a manner that would raise total revenues of approximately $810 million per year.

The following caps would apply to the taxes imposed during this four-year period: (1) the revenues from the retrospective tax on direct insurance could not exceed $1.496 billion ($374 million times four); (2) the revenues from the retrospective tax on reinsurance premiums could not exceed $752 million ($188 million times four); and (3) the revenues from the prospective tax could not exceed $992 million ($248 million times four).

In addition, separate caps would apply to the retrospective taxes collected on foreign and domestic reinsurance premiums. During this four year period, the revenues collected from the retrospective tax on reinsurance premiums issued by domestic reinsurers could not exceed $444 million ($111 million times four) and the revenues collected from the retrospective tax on reinsurance premiums issued by foreign reinsurers could not exceed $308 million ($77 million times four).[2]

<u>Years 5-10 (1999-2004)</u>.--The retrospective tax on direct insurance would be replaced by an assessment on direct insurers designed to raise approximately 11 percent of total revenues ($85 million per year). The retrospective tax on reinsurance would produce 23 percent of total revenues ($188 million a year). The prospective tax rate would be increased to provide the remaining 66 percent of total revenues ($537 million a year). As in the first four years, total projected revenues would be approximately

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[2] The caps applicable to domestic and foreign reinsurers were determined by the Administration based on the relative market shares of the domestic and foreign reinsurance premiums during the base-period years. The Administration does not believe that these caps violate the obligations of the United States under any existing tax treaty or trade agreement, or under the proposed General Agreement on Trade in Services.

$810 million per year.

The following caps would apply to the taxes imposed during this six year period: (1) the revenues from the retrospective tax on reinsurance premiums could not exceed $1.128 billion ($188 million times six); and (2) the revenues from the prospective tax could not exceed $3.222 billion ($537 million times six). As in the first four years, a separate cap would apply to the retrospective taxes collected on foreign and domestic reinsurance premiums. During this six year period, the revenues collected from the retrospective tax on reinsurance premiums issued by domestic reinsurers could not exceed $666 million ($111 million times six) and the revenues collected from the retrospective tax on reinsurance premiums issued by foreign reinsurers could not exceed $462 million ($77 million times six).

Tax Rates.--The tax rates required to produce the revenues described above would be --

	Years 1-4	Years 5-10
Retrospective tax --		
Direct insurance	0.22%	N/A
Reinsurance	0.48%	0.48%
Prospective tax --	0.37%	0.69%

The gross revenues from these excise taxes and assessments would be deposited in the Environmental Insurance Resolution Trust Fund (the "Trust Fund"), a new trust fund established for this purpose in the Trust Fund Code of the Internal Revenue Code.

Retrospective tax

In general

The retrospective tax would be imposed on any "assessable person" that engages in a trade or business (whether or not related to the current issuance of insurance) within the United States. The retrospective tax would be based on the net premiums written for direct insurance and reinsurance by the assessable person (or certain predecessors in interest) during the 18-year period from January 1, 1968 through December 31, 1985 (the "base period"), with respect to certain "qualified commercial policies".

In general, a qualified commercial policy would mean any insurance or reinsurance policy: (1) with respect to hazards, risks, losses, or liabilities within the United States;[3] and (2) the premiums for which were reported in the applicable annual statement[4] (or would have been reported had an annual statement been filed) as relating to the commercial multiple peril, or the "other liability" lines of business. A qualified commercial policy, however, would not include any policy for which premiums were required to be reported as relating to the "other liability" line of business, if the policy either (1) did not provide any commercial coverage, or (2) did not provide any comprehensive general liability coverage or any environmental liability coverage. For example, premiums related to medical malpractice coverage would be excluded; however, premiums related to commercial property damage insurance could not be excluded from either the commercial multiple peril or "other liability" line of business.

In the case of direct insurance, the retrospective tax generally would be determined by multiplying (1) a direct insurance funding rate for the calendar year, by (2) the total net direct premiums written by the assessable person (or certain predecessors in interest) during the base period in excess of an exemption amount of $50 million.[5] For reinsurance, the retrospective tax generally would be determined by multiplying a reinsurance funding rate for the calendar year by the total net reinsurance premiums written by the assessable person (or certain

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[3] For purposes of the excise taxes and the assessment under the Administration proposal, the United States generally would include Puerto Rico, and U.S. possessions and territories. The term "United States person", however, would have the meaning in Code section 7701. Thus, for purposes of determining whether a person was a "United States person", the term "United States" would not include Puerto Rico, or U.S. possessions and territories.

[4] The annual statement is the financial statement filed for State regulatory purposes, on the form approved by the National Association of Insurance Commissioners.

[5] Certain related parties would be required to share one exemption amount. For this purpose, related parties would include: (1) persons treated as a single employer as of February 2, 1994, under Code sections 52(a) and (b), as determined on a worldwide basis; (2) persons participating in certain joint underwriting operations as of February 2, 1994; and (3) persons participating in a joint underwriting operation that is subject to a closing agreement as of February 2, 1994.

predecessors in interest) during the base period.[6] In making these calculations, the net premiums written in each base-period year would be indexed for inflation and restated in 1985 dollars.

For calendar years 1995 through 1998, the annual funding rate applicable to direct insurance would be .22 percent. After 1998, the tax applicable to direct insurance would expire. For calendar years 1995 through 2004, the annual funding rate applicable to reinsurance would be .48 percent.

Assessable person

An assessable person generally would be defined as any person that has commercial net premiums written during the base period, and that is either (1) a United States person, or (2) any other person that (a) is engaged in a trade or business within the United States during the calendar year, (b) has taxable income effectively connected with such trade or business, and (c) is not exempt from net basis U.S. income tax under a treaty. For example, an assessable person would include a resident of a treaty country that has a permanent establishment in the United States.

Determination of net premiums written

The retrospective tax on direct insurance would be imposed on the net direct premiums written[7] during the base period from any qualified commercial policy providing insurance. The retrospective tax on reinsurance would be imposed on the net premiums written during the base period from allocated

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[6] No exemption amount generally would apply with respect to reinsurance. However, the Treasury Department would have the authority to provide an exception excluding base-period reinsurance premiums of a de-minimis amount.

[7] During the base period, ceded reinsurance was not separately reported on the annual statement for purposes of determining the net direct premiums written and the net premiums written for reinsurance. Accordingly, the Administration intends that taxpayers would reduce premiums for direct insurance by any cession of the directly written insurance and that taxpayers would reduce premiums for reinsurance by any retrocession of the reinsurance. In determining the net premiums written from direct insurance and from allocated reinsurance, actual identification of the insurance to which the ceded premiums relate would be required. However, a reasonable and consistent allocation method acceptable to the Treasury would be permitted if actual identification is not possible.

reinsurance,[8] and 33 percent of the net premiums written during the base period from unallocated reinsurance. For this purpose, premiums from reinsurance between members of certain "controlled groups" would be treated, in certain cases, as direct premiums rather than reinsurance in recognition of the fact that such transactions did not shift risk outside the controlled group.[9] Net premiums written would only be subject to tax to the extent that they are attributable to the coverage of United States risks.

The determination of the net premiums written for a year generally would be based on the underwriting and investment exhibit of the annual statement filed for that year.[10] If no annual statement was filed for a given year, the premium information would be determined on a basis consistent with the annual statement requirements applicable to such year. The Treasury Department could accept a reasonable method of premium determination if Treasury determines that adequate records are not reasonably available.

Special rules would apply for determining a person's net premiums written during the base period where the person has engaged in acquisitions or dispositions, assumption reinsurance transactions, commutation of reinsurance, or similar other transactions.

Alternative tax on foreign insurance

A foreign person that is not an assessable person, and that therefore would not be liable for the retrospective tax, generally would be subject to an alternative excise tax imposed on a prospective basis (herein referred to as the "alternative foreign excise tax"). The alternative foreign excise tax generally would be imposed as a withholding tax on (1) any casualty insurance policy that covers hazards, risks, losses, or liabilities wholly or partly within the United States, and (2)

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[8] Allocated reinsurance is any reinsurance for which the net premiums written were reported on the underwriting and investment exhibit of the annual statement (or would have been reported had an annual statement been filed) as relating to a covered line of business.

[9] This determination would be made as of the time that the relevant premiums were written.

[10] If more than one annual statement were filed in a given year, the determination would be based on the annual statement filed with any State that reports and identifies the relevant premiums most specifically by line of business.

any reinsurance policy with respect to such an insurance policy.[11] For this purpose, a casualty insurance policy would be any insurance policy other than any "policy of life, sickness, or accident insurance, or annuity contract" as defined in Code section 4372(e).

The alternative foreign excise tax would be an amount equal to one-half of one percent (0.5%) of the maximum limit of liability of the foreign insurer under the policy. However, the total liability for the alternative foreign excise tax and the prospective tax with respect to a transaction would be limited to the total amount of premiums and other similar consideration related to such transaction.

The term "maximum limit of liability" generally would be defined as the total amount for which the foreign insurer (or reinsurer) would be liable if each person entitled to recover from the insurer (or reinsurer) under the policy was simultaneously entitled to the maximum recovery allowed under the policy. The maximum limit of liability under a policy would be reduced by any amount for deductibles and self-insured retentions, but would not be reduced by the amount of any reinsurance.

All persons having control, receipt, custody, disposal, or payment of any premium or other amount under the policy subject to the tax would be personally liable for withholding and remitting the tax to the Treasury Department.

Foreign persons that are not assessable persons could elect to be subject to the retrospective tax in the same manner as an assessable person (see discussion above), instead of the alternative foreign excise tax. Electing parties generally would be required to enter into a closing agreement with the Treasury Department to ensure proper computation and payment of the retrospective tax and the assessments imposed on insurers and reinsurers.[12] Pending execution of such a closing agreement, the alternative foreign excise tax would not apply to any premium

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[11] The tax, however, would not be imposed on a policy of reinsurance of a risk with respect to which the foreign reinsurer can demonstrate that the tax had been paid previously by or on behalf of the reinsured foreign person.

[12] Foreign insurers and reinsurers that are not subject to U.S. income tax on a net basis and that seek to enter into a closing agreement with respect to the retrospective tax and assessments would be permitted to bring a declaratory judgment action challenging the reasonableness of the position of the Internal Revenue Service with respect to such insurer or reinsurer's retrospective tax, subject to certain conditions.

written by a foreign person if certain conditions are met, including: (1) the foreign person has in effect a binding election (meeting requirements prescribed by the Treasury) to be treated as an assessable person; (2) the person has posted a bond or other security (in the manner and amount required by the Treasury Department); and (3) the person satisfies other requirements imposed by Treasury, such as the waiver of treaty benefits and providing access to books and records. This exception would apply only with respect to premiums written after the date that the foreign person has met the three requirements for the preliminary election described in this paragraph.

If a closing agreement is not finalized in a timely manner, the foreign person would be liable for the alternative foreign excise tax accruing from the date that the preliminary election was effective, together with any interest, penalties and additions to tax.[13] The Treasury may apply any security provided by the foreign person against the liability of the foreign person for such amounts.

A foreign person generally would not be required to enter into a closing agreement (and would not be subject to the retrospective tax or the alternative foreign excise tax) if (1) such person (and related persons) did not have net written premiums (in excess of any applicable exemption amount) during the base period and (2) such person complied with certain expedited procedures.

Anti-abuse rules (including regulatory authority) would be provided to prevent the avoidance of the retrospective tax and the alternative foreign excise tax by foreign insurers and reinsurers in the absence of a closing agreement.

Prospective tax

In general, the prospective tax would be imposed on the direct premiums written by an insurer after December 31, 1994, with respect to certain commercial insurance policies that cover hazards, risks, losses, or liabilities within the United States. The tax rate would be .37 percent during the period January 1, 1995 through December 31, 1998, and .69 percent thereafter. The determination of direct premiums written for a year generally would be based on the exhibit of premiums and losses of the

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[13] Withholding agents would not be liable for any amount of the excise taxes under Title IX that may have become due with respect to prior transactions (that occurred after the date the preliminary election was effective) if the foreign insurer or reinsurer fails to conclude a closing agreement.

annual statement for that year.[14] Taxpayers generally would be permitted an exemption amount of $5 million of premiums written per year. However, certain related parties would be entitled to only one exemption amount, which would be allocated among them.

The lines of business that would be subject to tax under the Administration proposal are: fire, allied lines, commercial multiple peril, farmowners multiple peril, ocean marine, inland marine, products liability, other liability, commercial auto no-fault, other commercial auto liability, commercial auto physical damage, aircraft, surety, glass, burglary and theft, and boiler and machinery. Thus, lines of business that would not be subject to the prospective tax (under current annual statement classifications) are: multiple peril crop, homeowners multiple peril, financial guaranty, mortgage guaranty, medical malpractice, earthquake, accident and health, workers' compensation, private passenger auto no-fault, other private passenger auto liability, private passenger auto physical damage, fidelity and credit.

The lines of business set forth in the preceding paragraph are based on the 1993 form of the annual statement as approved by the National Association of Insurance Commissioners. The Treasury Department generally could not expand the lines of business subject to the prospective tax. The Treasury Department, however, would be granted authority to preserve the inclusion of premiums for types of insurance coverage intended to be subject to the prospective tax. For example, Treasury would have the authority to respond to changes in the construction of the annual statement lines originally covered. This authority would not extend to the inclusion of any reinsurance coverage.

Premiums written for the following types of insurance policies would not be subject to the prospective tax, even though the premiums for such policies are required to be reported on the annual statement as relating to a covered line of business: (1) directors and officers liability, (2) professional liability, (3) fire, other perils, or extended coverage on residential or farm owner-occupied housing units, (4) personal liability umbrella, (5) personal articles, (6) personal owner-used boats, (7) personal owner-piloted aircraft, and (7) property damage and liability coverage for owner-occupied condominium associations.

The taxable period for the prospective tax would be a

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[14] If an annual statement is not filed for such year, the determination of direct premiums written would be made on a basis consistent with the annual statement requirements for such year.

calendar quarter;[15] however, estimated monthly deposits would be required to be made by the 14th day following the end of the month in which the premium is included in direct premiums written. No deposits of tax would be required, however, until such time as, and only to the extent that, the direct premiums written during the calendar year exceed the exemption amount.

A special withholding rule would apply to policies issued by a foreign person unless the income from the premiums (or from other amounts paid for such policies) is effectively connected with a U.S. trade or business and is not exempt from net basis U.S. income tax under a treaty. Under this special rule, the tax generally must be withheld and remitted to the Treasury Department by any person who has control or custody over any payment of any premium or other amount under the policy. A person that fails properly to withhold and remit the tax would be personally liable unless that person can establish to the satisfaction of the Treasury that withholding is not required with respect to the foreign insurer.

The total liability for the prospective tax and the alternative foreign excise tax with respect to a transaction would be limited to the total amount of premiums and other similar consideration related to such transaction.

Assessment on direct insurers

Beginning on January 1, 1999, a portion of the EIRF's revenues would be raised by an assessment on direct insurers (imposed as an excise tax under the Internal Revenue Code). The assessment imposed on a particular insurer would be based on the EIRF awards paid with respect to policies issued by the insurer (or certain predecessors in interest) during a prescribed prior period. Each direct insurer's assessment would be determined annually.

The assessment would be determined by multiplying an insurer's annually-determined "EIRF-certified percentage" by $85 million. The EIRF-certified percentage of each insurer would be determined by dividing the coverage limits on all assessable direct policies of that insurer by the aggregate coverage limits of all such policies of all direct insurers. Generally, the coverage limit of an assessable direct policy would be the aggregate limit on coverage under the policy, determined without regard to deductibles or any self-insured retention.

An assessable direct policy would be an insurance contract (1) that has been presented to the EIRF in connection with a

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[15] Quarterly returns would be due no later than the 30th day following each calendar quarter.

claim for an award, (2) that the EIRF has determined to be a valid contract, and (3) with respect to which the EIRF has made one or more resolution payments to an eligible party (e.g., a potentially responsible party) during any of the four calendar years preceding the year in which the assessment is imposed.

The EIRF would be required to identify to each insurer its assessable direct policies for each year, and to permit the insurer to identify which, if any, of those policies was reinsured. The coverage limit of any assessable direct policy generally would be reduced by 80 percent of the amount of any reinsurance.[16] This reduction also would be reflected in the aggregate limits on all assessable direct policies for purposes of determining the EIRF-certified percentage.

The EIRF would be required to determine the EIRF-certified percentages and to report them to the Treasury Department no later than August 1 of each calendar year in which the assessments were to be imposed. The Treasury Department then would be required to notify insurers of the amount of their assessments, which would be payable no later than September 30 of each year.

The determinations made by the EIRF of EIRF-certified percentages would not be subject to judicial review. Similarly, the EIRF-certified percentages would not be subject to review by the Department of the Treasury in any administrative proceeding.

Establishment of Environmental Insurance Resolution Trust Fund

The Administration proposal would establish a new Environmental Insurance Resolution Trust Fund (the "Trust Fund") in the Trust Fund Code of the Internal Revenue Code. The Trust Fund would receive deposits of the gross receipts from the new excise taxes (including the assessments), as well as any regulatory filing fees authorized under Title VIII of S. 1834 and recoveries of certain amounts by the EIRF.

Amounts in the Trust Fund would be used to fund the new direct spending authorized for the EIRF by Title VIII. Revenues available to the EIRF for expenditure would be limited to an amount equal to the excise taxes, assessments, and other revenues deposited in the Trust Fund. Also, the Trust Fund would be the sole source of payment for all activities of the EIRF. The Trust Fund generally would not be permitted to borrow from the Treasury. The Trust Fund, however, could borrow money as

[16] This reduction would not be allowed in certain circumstances, such as if the reinsurer and the reinsured were members of the same controlled group.

permitted by the Treasury solely for purposes of short-term cash management if the following conditions are met: (1) the Treasury Department approved the loan, including the rate of interest and the terms and conditions of the loan, (2) the loan did not cause the total outstanding debt of the Trust Fund to exceed $350 million, and (3) the loan was secured solely by the taxes and assessments under Title IX of S. 1834. Any such loan could not remain outstanding after December 31, 2003.

Effective Dates

The retrospective tax (other than the alternative foreign excise tax) would be effective on January 1, 1995. The prospective tax on domestic insurers and foreign insurers subject to U.S. income tax on a net basis would apply to policies for which direct premiums were written on or after January 1, 1995. The assessment on insurers would be imposed beginning in calendar years after 1998. The alternative foreign excise tax and the prospective tax on foreign insurers not subject to U.S. income tax on a net basis would apply to policies for which premiums were written after the close of the contingency period specified in section 816 of S. 1834. The contingency period must end no later than 225 days after the date of enactment.

Notwithstanding the preceding paragraph, none of the new excise taxes and assessments would be collected unless the EIRF program under Title VIII of S. 1834 is in effect on August 15, 1995, and the contingency period has expired by such date. The EIRF program under Title VIII would terminate unless certain minimum participation standards were achieved by the end of the contingency period. If more than 20 percent of all eligible potentially responsible parties reject participation in the EIRF, the EIRF and the imposition of the excise taxes would terminate. If the rejection rate is between 15 and 20 percent of all eligible potentially responsible parties, the chairperson of the EIRF, in consultation with the EIRF board, could elect to continue or to terminate the EIRF. These determinations would be required to be made by the end of the contingency period.

All of the new excise taxes (other than the alternative foreign excise tax and the prospective tax on certain foreign insurers) and the assessments would terminate after December 31, 2004. The alternative foreign excise tax and the prospective tax on foreign insurers not subject to U.S. tax on a net basis would terminate 10 years after the date that such taxes first take effect.

As provided in Title VIII, the Federal government would have no liability for obligations incurred by the EIRF that remain unsatisfied after the excise taxes expire and the Trust Fund has no remaining funds. It is the intent of the Administration that sufficient financing be obtained from the property and casualty insurance industry for the Trust Fund to permit it to satisfy fully any carryover obligations of the EIRF after year ten. No inference is intended by the allocation in any year, or combination of years, between the retrospective tax, the prospective tax, and the assessment on direct insurers with respect to the structure of any tax or assessment that Congress determines necessary to enact in the future. Expenditures, if any, by the Trust Fund after the Trust Fund's tenth year would continue to be limited to no more than $810 million per year.

A Treasury study would be conducted in the eighth year of the Trust Fund to make recommendations to Congress with respect to the insurance industry's financing of the Trust Fund after the tenth year. The study, after consultation with representatives of the insurance industry and its policyholders, would include an analysis of the distribution of the benefits of the Trust Fund as well as an accounting of the various sources of financing for the Trust Fund.

C. Tax Exemption for Environmental Insurance Resolution Fund

Present Law

Federal tax exemption for an instrumentality of the United States that is organized on or after July 18, 1984, may be provided only by an amendment to the Internal Revenue Code or by a provision enacted as part of a revenue act (sec. 501(c)(1)).

Administration Proposal

The Administration proposal would provide an exemption from Federal income tax to the Environmental Insurance Resolution Fund.

Effective Date

The proposal would be effective on January 1, 1995.

D. Additional Proposals

The following additional matters have also been proposed for markup:

1. The EIRF would be required to publish a biennial report estimating its incurred liabilities for eligible sites by eligible persons that have accepted offers from the EIRF as of the end of the applicable reporting period.

2. The Treasury Department would be required to make public the revenues received from each of the excise taxes and the assessment under Title IX, including a breakdown of the revenues

received from foreign and domestic sources.

3. Under Title VIII of S. 1834, the Environmental Protection Agency ("EPA") would be authorized to accept ownership of certain financial instruments, such as annuities, in connection with settlement procedures. The proposal would require that the terms and conditions of these financial instruments be approved by the Treasury Department before acceptance by EPA.

FINANCING OF THE ENVIRONMENTAL INSURANCE RESOLUTION FUND

Tax Rates

Years	Retrospective Tax: Direct Insurance	Retrospective Tax: Reinsurance	Prospective Tax
1-4	0.22%	0.48%	0.37%
5-10	0	0.48%	0.69%

Revenue Caps ($ millions)

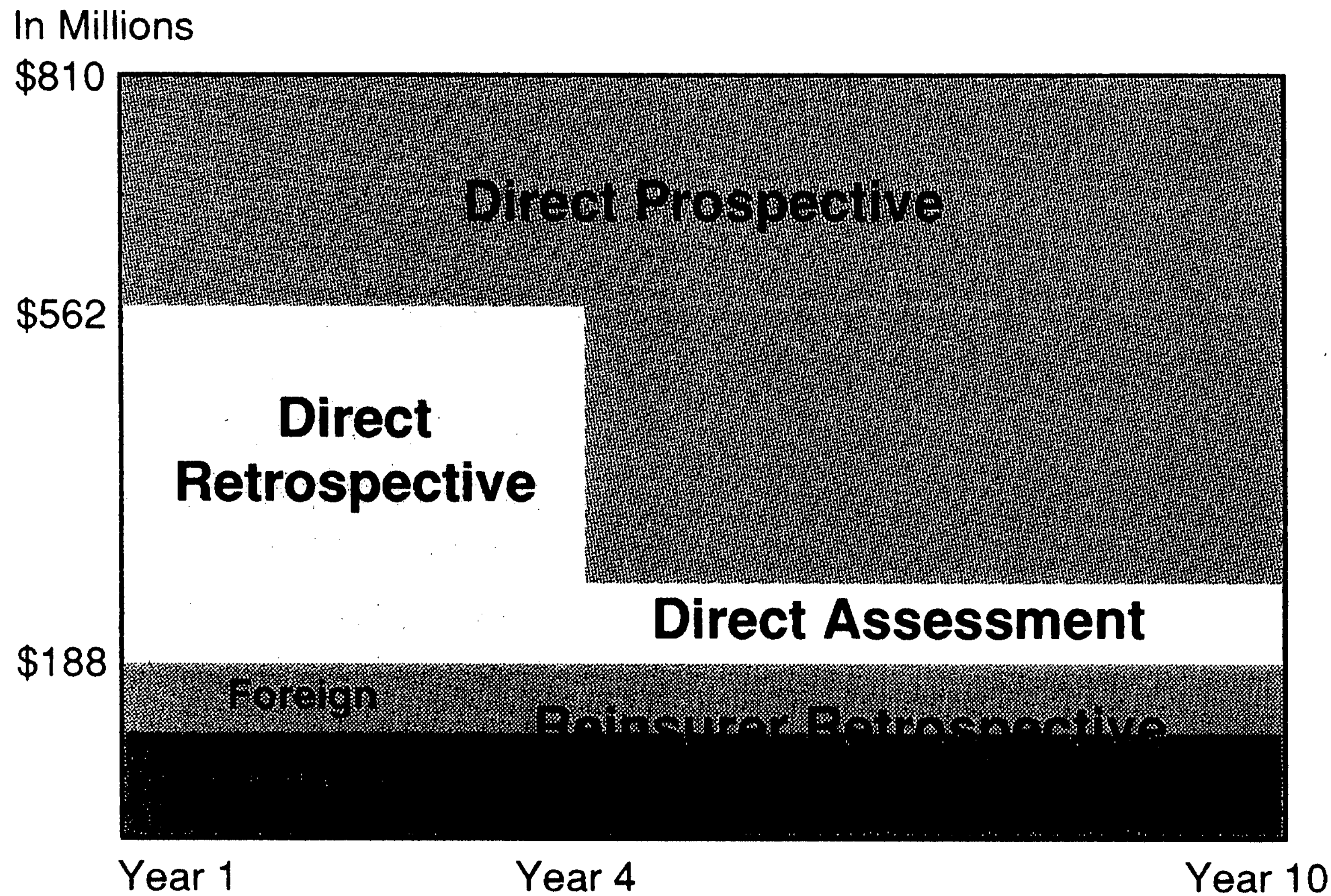
	Retrospective Tax					
Years	Direct Insurance	Reinsurance Domestic:	Foreign	Total	Prospective Tax	Assessment
1-4	$1,496	444	308	752	992	0
5-10	0	666	462	1,128	3,222	510

Annual Revenue Target ($ millions)

Years	Retrospective Tax Direct Insurance	Retrospective Tax: Reinsurance Domestic:	Foreign	Retrospective Tax Total	Prospective Tax	Assessment	Total
1-4	374	111	77	188	248	0	810
5-10	0	111	77	188	537	85	810

Treasury Department
September 28, 1994

EIRF TAX DESIGN



DEPARTMENT OF THE TREASURY

ENVIRONMENTAL PROTECTION AGENCY

August 17, 1994

The Honorable Bob Packwood
Ranking Republican, Senate Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Packwood:

We are pleased to transmit herewith the Administration's revised proposal for financing the Environmental Insurance Resolution Fund ("EIRF"), as set forth in Title VIII of H.R. 3800 and S. 1834, the Superfund Reform Act of 1994. The attached legislative proposal is a substitute for and supersedes our earlier proposal for financing the EIRF.

The attached EIRF financing proposal was developed through extensive negotiations with the insurance industry. We believe that it is fully supported by all those insurers who support the enactment of H.R. 3800 and S. 1834, including the EIRF provisions of Title VIII.

As you know, the design of the insurance fee for financing the EIRF has been a matter of some controversy. Many insurers have agreed to the attached compromise, which combines elements of both prospectivity and retrospectivity.

We firmly believe the design of the EIRF financing mechanism is inextricably intertwined with the structure of Title VIII. If one fails, the other fails. The Administration and all parties who have endorsed this compromise are steadfast in their support of it. We all strongly believe, however, that the integrity of this agreement must be preserved throughout the legislative process. If this compromise is not legislatively attainable or if there are changes in the attached proposal which run counter to the principles embodied in it, the Administration will work with you to remove from the bill the provisions creating and financing the EIRF.

This compromise reflects a consensus position achieved at this point in time; it does not represent a concession by any party to the appropriate allocation between retrospective and prospective fees at such time as this bill requires reauthorization.

We believe the attached financing proposal constitutes the missing piece necessary to complete the Superfund puzzle. The groups that have endorsed this language have all agreed to actively support the compromise and the entire Superfund legislation in both the House and Senate. We strongly urge Congress to adopt this proposal in its entirety.

Sincerely,

Lloyd Bentsen

Lloyd Bentsen

Carol Browner

CHAIRMAN'S AMENDMENT TO THE ADMINISTRATION'S PROPOSAL FOR FINANCING THE ENVIRONMENTAL INSURANCE RESOLUTION FUND

AMENDMENT: For purposes for determining adjusted base-period commercial premiums, the current proposal allows a $50 million exemption from the premium base. This $50 million exemption amount would be increased to $200 million. The $200 million exemption would be phased out dollar for dollar to the extent that the sum of inflation-adjusted commercial premiums for all base-period years exceeds $200 million. Accordingly, an insurer with inflation-adjusted base-period commercial direct premiums in excess of $400 million would not be entitled to an exemption amount. Aggregation rules would continue to apply for purposes of allocating the exemption amount. This change will not affect the tax rates incorporated in the markup document.

WALLOP AMENDMENT TO STRIKE THE FINANCING PROVISIONS OF EIRF

Current Law:

No federal excise tax is imposed on domestic casualty insurance policy premiums.

Proposal:

Title IX of S. 1834, the Superfund Reform Act of 1994, would impose certain retrospective and prospective excise taxes on property and casualty insurance companies to fund a new Environmental Insurance Resolution Fund (EIRF).

Amendment:

To strike sections 902, 903, and 904 of Title IX relating to the financing provisions of the EIRF.

This amendment is not intended to effect section 901 relating to the extension of current superfund taxes.

Grassley-Packwood-Dole Amendment
Superfund Mark-up
September 28, 1994

Deduction for Health Insurance Costs of Self-employed Individuals

Present Law

Under present law, and employer's contribution to a plan providing accident or health coverage is excludable from an employee's income. However, self-employed individuals do not get the same favorable tax treatment.

However, until the end of 1993, the law provided for a deduction for 25% of the amounts paid for health insurance for a taxable year on behalf of a self-employed individual and the individual's spouse and dependents.

The 25% deduction expired at the end of 1993, with the thought that it would be extended and increased under health care reform legislation.

Description of Proposal

The 25% deduction for health insurance costs of self-employed individuals would be extended retroactively back to January 1, 1994, and extend through December 31, 1995.

Estimated revenue cost equals $800 million over 5 years.

Revenue Offset

The federal vaccine program would be repealed[redacted]. A recent GAO report concluded that the federal vaccine program is plagued by serious problems and GAO is doubtful the program could begin full operation on October 1, 1994 (this Saturday!). GAO also concluded that even if these problems are overcome the vaccine program will probably not increase immunization levels.

Savings equals 1.1 Billion over 5 years.

Roth Amendment
Superfund Mark-up
September 28, 1994

1.) Deduction for Health Insurance Costs of Self-employed Individuals
2.) Deny the EITC for Illegal Aliens
3.) Increase the Cigarette Excise Tax

Present Law

Under present law, and employer's contribution to a plan providing accident or health coverage is excludable from an employee's income. However, self-employed individuals do not get the same favorable tax treatment.

However, until the end of 1993, the law provided for a deduction for 25% of the amounts paid for health insurance for a taxable year on behalf of a self-employed individual and the individual's spouse and dependents.

The 25% deduction expired at the end of 1993, with the thought that it would be extended and increased under health care reform legislation in 1994.

Description of Proposal

The 25% deduction for health insurance costs of self-employed individuals would be enacted retroactively back to January 1, 1994, and extend through December 31, 1995.

Estimated revenue cost equals $800 million over 5 years.

Revenue Offset

The law would be clarified to deny illegal aliens the right to claim the earned income tax credit

Estimated revenue savings is $30 million over 5 years, and $74 million over 10 years.

The federal excise tax on cigarettes would be increased by the level necessary to raise $770 million over 5 years to offset the remaining cost of the health insurance deduction.

DOLE AMENDMENT: DISASTER ASSISTANCE FOR FARMERS

The proposed amendment would allow farmers the option to recognize income in the year of the disaster, if they can prove that they would have received the income from the sale of crop in that year. The amendment is paid for by a correction to the indexing provision in the 1993 Reconciliation Act relating to luxury automobiles.

For example, farmers who received disaster assistance payments in 1994 relating to the 1993 flood disaster, may treat such payments as received in 1993, so long as the taxpayer can establish that the income from the crops would have been reported in 1993. Without this amendment, farmers will be forced to recognize the disaster payments as income in 1994 in addition to their normal '94 income. This could result in higher 1994 taxes and the loss of several deductions and exemptions based on adjusted gross income.