TAX PROVISIONS AFFECTING STATE AND FEDERAL LEGISLATORS' AWAY-FROM-HOME EXPENSES

HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2012, S. 2015, S. 2092, S. 2113, S. 2176, S. 2321, and S. 2413

JUNE 18, 1982

Printed for the use of the Committee on Finance

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TAX PROVISIONS AFFECTING STATE AND FEDERAL LEGISLATORS' AWAY-FROM-HOME EXPENSES

FRIDAY, JUNE 18, 1982

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

The subcommittee met, pursuant to notice, at 2:20 p.m., in room 2221, Dirksen Senate Office Building, Hon. Bob Packwood (chairman of the subcommittee) presiding.

Present: Senators Packwood (presiding), Dole, Chafee, Long, and Bradley.

[The committee press release, the bills S. 2012, S. 2015, S. 2092, S. 2113, S. 2176, S. 2321, and S. 2413, the description of these bills by the Joint Committee on Taxation, and the prepared statements of Senators Dole, Chafee, and Long follow:]

[Press Release No. 82-134]

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT SETS HEARING ON TAX PROVISIONS AFFECTING STATE AND FEDERAL LEGISLATORS' AWAY-FROM-HOME EXPENSES

Senator Bob Packwood, Chairman of the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance, announced today that the Subcommittee will hold a hearing on Friday, June 18, 1982, on seven miscellaneous tax bills.

The hearing will begin at 2 p.m. in room 2221 of the Dirksen Senate Office Building. Among the legislative proposals to be considered at the hearing are the following:

S. 2012.—Introduced by Senator Proxmire for himself and others. S. 2012 would disallow deductions for away-from-home expenses of Members of Congress in excess of $3,000, and would deny the Treasury regulatory authority to prescribe a per diem deduction for Members while away from their home State or district.

S. 2015.--Introduced by Senator Domenici. S. 2015 would disallow Members' deductions for away-from-home expenses in excess of $6,000, and would deny the Treasury regulatory authority to prescribe a per diem deduction.

S. 2092.—Introduced by Senator Chafee. S. 2092 would deny the Treasury regulatory authority to prescribe a per diem deduction for Members of Congress while away from their home State or district.

S. 2113.—Introduced by Senator DeConcini. S. 2113 would disallow deductions for away-from-home expenses of Members of Congress in excess of $3,000, and would deny the Treasury regulatory authority to prescribe a per diem deduction for Members while away from their home State or district.

S. 2176.—Introduced by Senator Armstrong for himself and Senator Weicker. S. 2176 would deny the Treasury regulatory authority to prescribe a per diem deduction for Members of Congress while away from their home State or district.

S. 2321.—Introduced by Senator Mattingly for himself and Senator Specter. S. 2321 would deny the Treasury regulatory authority to prescribe a per diem deduction for Members of Congress while away from their home State or district.

S. 2413.—Introduced by Senator Long. S. 2413 would deny the Treasury regulatory authority to prescribe a per diem deduction for Members of Congress while away from their home State or district, and would repeal the statutory rule that a Member's residence in his home State or district is his tax home.

Section 127 of the Economic Recovery Tax Act of 1981 concerning State legislator's travel expenses will also be considered. Section 127 allows State legislators to treat their district residence as their tax home and to treat as business expenses an amount equal to the greater of the Federal per diem or the State per diem, with certain limitations, and without regard to the "away-from-home" rule.

II

97TH CONGRESS
2D SESSION

S. 2012

To amend the Internal Revenue Code of 1954 to limit the deduction of living expenses by Members of Congress and to eliminate the provision which allows such deduction without substantiation of such expenses.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 1982

Mr. PROXMIRE (for himself, Mr. MITCHELL, Mr. PRESSLER, Mr. DECONCINI, Mr. COHEN, Mr. RANDOLPH, Mr. ROBERT C. BYRD, Mr. DANFORTH, Mr. ZORINSKY, Mr. KASTEN, Mr. MOYNIHAN, and Mr. RIEGLE) introduced the following bill, which was read twice and referred to the Committee on Finance

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A BILL.

To amend the Internal Revenue Code of 1954 to limit the deduction of living expenses by Members of Congress and to eliminate the provision which allows such deduction without substantiation of such expenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the last sentence of section 162(a) of the Internal Revenue Code of 1954 is amended by inserting ", but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000" after "home".

(b) Paragraph (4) of section 280A of such Code (relating to coordination with section 162(a)(2)) is amended to read as follows:

"(4) COORDINATION WITH SECTION 162(a)(2).—Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).".

(c) Subsection (a) of section 139 of the Act of October 1, 1981 (95 Stat. 967) is hereby repealed.

SEC. 2. (a) The amendment made by section 1(a) shall apply to taxable years beginning after December 31, 1980.

(b) The amendment made by section 1(b) shall apply to taxable years beginning after December 31, 1975, except that in the case of taxable years beginning after December 31, 1975, and before January 1, 1980, the amendment made by section 1(b) shall apply only to taxable years for which, on the date of the enactment of this Act, the making of a refund, or the assessment of a deficiency, was not barred by law or any rule of law.

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II

97TH CONGRESS
2D SESSION

S. 2015

To amend the Internal Revenue Code of 1954 to limit the deduction of living expenses by Members of Congress and to require substantiation of such living expenses

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IN THE SENATE OF THE UNITED STATES

JANUARY 25, 1982

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

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A BILL

To amend the Internal Revenue Code of 1954 to limit the deduction of living expenses by Members of Congress and to require substantiation of such living expenses.

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

SECTION 1. DEDUCTION OF LIVING EXPENSES BY MEMBERS OF CONGRESS.

(a) DOLLAR LIMITATION ON DEDUCTION.—The last sentence of section 162(a) of the Internal Revenue Code of 1954 is amended by inserting ", but amounts expended by such Members within each taxable year for living expenses

shall not be deductible for income tax purposes in excess of $6,000" after "home".

(b) SUBSTANTIATION OF LIVING EXPENSES.—Paragraph (4) of section 280A of such Code (relating to coordination with section 162(a)(2)) is amended to read as follows:

"(4) COORDINATION WITH SECTION 162(a)(2).—Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).".

(c) CONFORMING AMENDMENT.—Subsection (a) of section 139 of the Act of October 1, 1981 (95 Stat. 967) is hereby repealed.

SEC. 2. EFFECTIVE DATES.

(a) DOLLAR LIMITATION.—The amendment made by section 1(a) shall apply to taxable years beginning after December 31, 1980.

(b) SUBSTANTIATION.—The amendment made by section 1(b) shall apply to taxable years beginning after December 31, 1975, except that in the case of taxable years beginning after December 31, 1975, and before January 1, 1980, the amendment made by section 1(b) shall apply only to tax-

able years for which, on the date of the enactment of this Act, the making of a refund, or the assessment of a deficiency, was not barred by law or any rule of law.

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II

97TH CONGRESS
2D SESSION

S. 2092

To amend section 280A of the Internal Revenue Code of 1954 to permit Members of Congress to deduct expenses incurred while away from home in pursuit of trade or business on the same basis as other taxpayers.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9 (legislative day, JANUARY 25), 1982

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

---

A BILL

To amend section 280A of the Internal Revenue Code of 1954 to permit Members of Congress to deduct expenses incurred while away from home in pursuit of trade or business on the same basis as other taxpayers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (4) of section 280A(f) of the Internal Revenue Code of 1954 (relating to coordination with section 162(a)(2)) is amended to read as follows:

"(4) COORDINATION WITH SECTION 162(a)(2).—Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or

any deduction which meets the tests of section 162(a)(2) but is allowable under another provision under this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).".

(b) The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1975, except that in the case of taxable years beginning after December 31, 1975, and before January 1, 1980, the amendment made by such subsection shall apply only to taxable years for which, on the date of enactment of this Act, the making of a refund, or the assessment of a deficiency, was not barred by law or any rule of law.

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II

97TH CONGRESS
2D SESSION

S. 2113

To amend the Internal Revenue Code of 1954 to limit the deduction of living expenses by Members of Congress and to require substantiation of such living expenses.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11 (legislative day, JANUARY 25), 1982

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

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A BILL

To amend the Internal Revenue Code of 1954 to limit the deduction of living expenses by Members of Congress and to require substantiation of such living expenses.

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

SECTION 1. DEDUCTION OF LIVING EXPENSES BY MEMBERS OF CONGRESS.

(a) DOLLAR LIMITATION ON DEDUCTION.—The last sentence of section 162(a) of the Internal Revenue Code of 1954 is amended by inserting ", but amounts expended by such Members within each taxable year for living expenses

shall not be deductible for income tax purposes in excess of $3,000" after "home".

(b) SUBSTANTIATION OF LIVING EXPENSES.—Paragraph (4) of section 280A of such Code (relating to coordination with section 162(a)(2)) is amended to read as follows:

"(4) COORDINATION WITH SECTION 162(a)(2).—Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).".

(c) CONFORMING AMENDMENT.—Subsection (a) of section 139 of the Act of October 1, 1981 (95 Stat. 967), is hereby repealed.

SEC. 2. EFFECTIVE DATES.

(a) DOLLAR LIMITATION.—The amendment made by section 1(a) shall apply to taxable years beginning after December 31, 1980.

(b) SUBSTANTIATION.—The amendment made by section 1(b) shall apply to taxable years beginning after December 31, 1975, except that in the case of taxable years beginning after December 31, 1975, and before January 1, 1980, the amendment made by section 1(b) shall apply only to tax-

able years for which, on the date of the enactment of this Act, the making of a refund, or the assessment of a deficiency, was not barred by law or any rule of law.

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II

97TH CONGRESS
2D SESSION

S. 2176

To amend the Internal Revenue Code of 1954 to require substantiation of the living expenses of Members of Congress which are allowed as a deduction.

IN THE SENATE OF THE UNITED STATES

MARCH 8 (legislative day, FEBRUARY 22), 1982

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

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A BILL

To amend the Internal Revenue Code of 1954 to require substantiation of the living expenses of Members of Congress which are allowed as a deduction.

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

SECTION 1. SUBSTANTIATION OF LIVING EXPENSES BY MEMBERS OF CONGRESS.

Subparagraph (B) of section 280A(f)(4) of the Internal Revenue Code of 1954 (relating to substantiation of living expenses) is hereby repealed.

SEC. 2. EFFECTIVE DATE.

The amendment made by this Act shall apply to taxable years beginning after December 31, 1980.

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II

97TH CONGRESS
2D SESSION

S. 2321

To amend the Internal Revenue Code of 1954 to require substantiation of the living expenses of Members of Congress which are allowed as a deduction.

IN THE SENATE OF THE UNITED STATES

MARCH 31 (legislative day, FEBRUARY 22), 1982

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

---

A BILL

To amend the Internal Revenue Code of 1954 to require substantiation of the living expenses of Members of Congress which are allowed as a deduction.

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

SECTION 1. SUBSTANTIATION OF LIVING EXPENSES BY MEMBERS OF CONGRESS.

Paragraph (4) of section 280A(f) of the Internal Revenue Code of 1954 (relating to coordination with section 162(a)(2)) is amended to read as follows:

"(4) COORDINATION WITH SECTION 162(a)(2).—Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any

deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).".

SEC. 2. EFFECTIVE DATE.

The amendment made by this Act shall apply to taxable years beginning after December 31, 1981.

O

II

97TH CONGRESS
2D SESSION

S. 2413

To delete the provisions of the Internal Revenue Code of 1954 which treat Members of Congress separately with respect to living expense deductions.

IN THE SENATE OF THE UNITED STATES

APRIL 21 (legislative day, APRIL 13), 1982

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

---

A BILL

To delete the provisions of the Internal Revenue Code of 1954 which treat Members of Congress separately with respect to living expense deductions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses) is amended by striking out the last sentence.

(b) Paragraph (4) of subsection (f) of section 280A of the Internal Revenue Code of 1954 (relating to coordination with section 162(a)(2) and substantiation of deductions) is amended to read as follows:

"(4) COORDINATION WITH SECTION 162(a)(2).—Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).".

(c) The amendments made by this section shall apply to taxable years beginning after December 31, 1981.

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DESCRIPTION OF TAX BILLS
(S. 2012, S. 2015, S. 2092, S. 2113, S. 2176, S. 2321, and S. 2413)
RELATING TO FEDERAL AND STATE LEGISLATORS' AWAY-FROM-HOME EXPENSES

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

INTRODUCTION

The bills described in this pamphlet have been scheduled for a public hearing on June 18, 1982, by the Senate Finance Subcommittee on Taxation and Debt Management. The hearing will focus on the tax treatment of away-from-home expenses of Federal and State legislators.

There are seven bills relating to the tax treatment of away-from-home expenses of Members of Congress scheduled for the hearing: S. 2012 (introduced by Senator Proxmire and others), S. 2015 (introduced by Senator Domenici), S. 2092 (introduced by Senator Chafee), S. 2113 (introduced by Senator DeConcini), S. 2176 (introduced by Senators Armstrong and Weicker), S. 2321 (introduced by Senators Mattingly and Specter), and S. 2413 (introduced by Senator Long). In addition, the hearing will also consider the tax treatment of travel expenses of State legislators.

The first part of the pamphlet is a summary of the bills. This is followed in the second part with a description of present law. The third part discusses the historical development of rules affecting Members of Congress, and part four discusses the treatment of State legislators. Part five is a description of the provisions of the seven bills relating to Members of Congress.

I. SUMMARY

In general, an individual is allowed a deduction from gross income for all ordinary and necessary expenses incurred in carrying on any trade or business. Deductible expenses include reasonable and necessary travel expenses, including expenses for meals, lodging, and transportation, incurred while away from home overnight in the pursuit of a trade or business.

The deduction of travel expenses is subject to certain limitations. In general, out-of-pocket travel expenses for meals and lodgings incurred by a taxpayer are deductible only if they are (1) incurred while away from home overnight, (2) reasonable and necessary for the taxpayer's business and directly attributable to it, (3) not lavish or extravagant, (4) not reimbursable, and (5) properly substantiated. No deductions are allowed for personal, living, and family expenses except as expressly allowed under the Code.

Like other businessmen, Members of Congress may deduct ordinary and necessary business expenses, including travel expenses incurred while away from home overnight in the pursuit of a trade or business. In general, the same limitations on deductibility applicable to other businessmen apply to Members of Congress.

The rules with respect to Members of Congress have, at various times, been explicitly provided by statute in three areas: (1) the determination of their tax homes, (2) the maximum amount deductible as living expenses in Washington, D.C. and (3) the rules relating to substantiation of Washington, D.C. expenses. Rules with respect to State legislators also have been provided by statute in these three areas.

The bills described in the pamphlet would modify some or all of the statutory rules governing the travel expenses of Members of Congress. None of the bills would modify the treatment of State legislators' expenses.

II. PRESENT LAW

A. Overview

General rule

In general, an individual is allowed a deduction from gross income (i.e., an "above-the-line" deduction) for all ordinary and necessary expenses incurred in carrying on any trade or business. Deductible expenses include travel expenses, such as meals, lodging, and transportation, incurred while away from home overnight in the pursuit of a trade or business (sec. 162(a)(2)).

The cost of meals includes the actual cost of food and expenses incident to preparation and serving. The cost of lodging includes rental, repairs, insurance, laundry and utilities. Lodging costs also include depreciation on a house and household furnishings owned by the taxpayer and used while away from home on business. Mortgage interest and real estate taxes are deductible under other provisions of the Code (secs. 163 and 164).

No deductions are allowed for personal, living, and family expenses, except as expressly allowed under the Code. The taxpayer must substantiate both the amount and business purpose of an expense. In general, this requirement may be met by adequate records or sufficient evidence corroborating the taxpayer's statements regarding the amount, time, place, and business purpose of the expenditure.

For determining the deductibility of travel expenses, a taxpayer's home generally is considered to be located at his regular place of business or his regular place of abode in a real and substantial sense.

General requirements for deductibility of business expenses

The deduction of travel expenses is subject to certain limitations. In general, out-of-pocket travel expenses for meals and lodgings incurred by a taxpayer are deductible only if they are (1) incurred while away from home overnight, (2) reasonable and necessary for the taxpayer's business and directly attributable to it, (3) not lavish or extravagant, (4) not reimbursable, and (5) properly substantiated. No deductions are allowed for personal, living, and family expenses except as expressly allowed under the Code.

B. Away from Home Overnight

For travel expenses to be deductible, a taxpayer must be "away from home." The Internal Revenue Service and the Tax Court take the position that a person's tax home means the location of the taxpayer's principal place of business, and not where the taxpayer chooses to maintain his residence. Other courts have used a permanent place of abode test. The Supreme Court has yet to take a position on the issue. However, the Supreme Court has indicated that where the employer gains nothing from the taxpayer's personal decision to reside

in a different city from the place of business, the expenses are not considered to be incurred in the pursuit of business and therefore are treated as nondeductible personal expenses.[1]

If the taxpayer is regularly engaged in business at two or more separate locations, the Internal Revenue Service has ruled that the taxpayer's home is considered to be located at his principal place of business.[2] If the taxpayer maintains his family residence at the minor place of business, travel from the principal place of business to the minor business location is considered to be travel away from home when the primary purpose for the return to the location of his residence is business in nature.

A taxpayer does not necessarily lose his tax home when he works at a different location for a temporary period of time. However, if the stay is indefinite, the taxpayer may be considered to have changed his tax home. In determining whether a job is temporary or permanent, all facts and circumstances are considered. The Internal Revenue Service views a one-year or more stay as strongly indicating a presence beyond a temporary period.[3]

In general, the taxpayer's home includes the general area surrounding his regular place of business. Also, it is wellsettled that "away from home" includes only overnight trips or trips on which a stop for sleep is required.

C. Business *v.* Personal Expenses

Overview

Expenses incurred while away from home overnight are deductible only to the extent reasonable and necessary to the taxpayer's trade or business. Thus, it is necessary to distinguish business expenses from personal or family-expenses. A taxpayer may not deduct as a business expense clothing, medical expenses, and charitable contributions, although medical expenses and charitable contributions may be deductible under other provisions of the Code. Clothing generally is considered a nondeductible personal expense.

Spouse's presence

In general, expenses attributable to the presence of a spouse (or other family member) are not deductible unless it can be shown adequately that the spouse's presence has a bona fide business purpose. The performance of some incidental service by the spouse or child does not constitute a bona fide business purpose.

A business purpose does not include acting as a hostess at receptions,[4] or assisting in making business acquaintances.[5] Merely attending luncheon, and dinners is not sufficient to establish a business purpose.[6] However, the court in *United States* v. *Disney*[7] has held that the travel expenses of the wife of a corporation president are deductible if the dominant purpose of the wife's presence was to serve her

[1] *Commissioner* v. *Flowers*, 326 U.S. 465 (1946), *rev'g*, 148 F.2d 163 (5th Cir. 1945).
[2] Rev. Rul. 75-432, 1975-2 C.B. 60.
[3] Rev. Rul. 60-189, 1960-1 C.B. 60.
[4] *See, Sheldon* v. *Commissioner*, 299 F.2d 48 (7th Cir. 1962), *aff'g*, T.C. Memo 1961-44.
[5] *See, Fenstermaker* v. *Commissioner*, T.C. Memo 1978-210.
[6] Rev. Rul. 56-168, 1956-1 C.B. 93.
[7] 413 F.2d 783 (9th Cir. 1969).

husband's business purpose in making the trip and it was reasonable and necessary (and not merely helpful) for her to spend a substantial amount of her time in assisting her husband in fulfilling that purpose. In holding that Mrs. Disney's presence was necessary to her husband's business on that trip, the court noted that if Mr. Disney had held a less powerful executive position, the presence of the wife would have been considered necessary only if employer insistence amounted to a condition of employment.

Incidental personal activity

The Internal Revenue Service has ruled that an employee can deduct not only his expenses for meals and lodging while making trips to and from a temporary post, but also expenses for meals and lodging for the entire time during which his duties prevent him from returning to his regular post of duty.[8] One court has held that a State Supreme Court Justice who was required to spend the 9-month court term away from home could deduct rent for an entire year since he was required to sign a 1-year lease to obtain an apartment for the 9-month term.[9] The court stated that there is no requirement that a person on business at a temporary post stay in a hotel or other transient residence.

Allocation between business and personal expenses

If a taxpayer's expenses, while away from home are both business and personal, the taxpayer must make an allocation to determine what portions of the expenses are deductible. For example, if the taxpayer were unable to show a business purpose for the presence of a family member, the taxpayer would have to exclude that portion of the expenses attributable to the family member.

In general, the required allocation must be made on an incremental basis. For example, if a taxpayer stays in a hotel, the difference between a single rate and a multiple occupancy rate would be nondeductible. One court has held, though, that if a child is present in a rented apartment at a temporary business location for only a very short time (i.e., a few weekends and part of one month), no allocation is required since the apartment was not provided to supply the child with a place to stay.[10] Also, the court did not require an allocation for the wife's use of the apartment. It is unclear whether an allocation would have been required if the dwelling unit had been a house or large apartment. The size of the dwelling might indicate a nonbusiness purpose of providing lodging for family members. With respect to meals, all costs attributable to the family member would be nondeductible.

Special limitations on personal use of residence

Prior to enactment of section 113 of the Black Lung Benefits Revenue Act of 1981 (Pub. L. 97-119), the application of the tax rules governing business use of a home (sec. 280A)[11] could have resulted in

[8] Rev. Rul. 75-432, 1975-2 C.B. 60.

[9] *United States* v. *LeBlanc*, 278 F.2d 571 (5th Cir. 1960).

[10] *United States* v. *LeBlanc*, supra.

[11] Section 280A was enacted as part of the Tax Reform Act of 1976 to replace vague standards on which the courts and the Internal Revenue Service differed concerning the deductibility of expenses incurred in connection with use of the taxpayer's home in a trade or business or income producing activity or in connection with the rental of vacation homes and other residential real estate.

denial of lodging expenses otherwise deductible as traveling expenses. For example, assume a businessman buys a condominium in New York because of his frequent business trips to that city. If section 280A were to apply, depreciation and other lodging expenses could be disallowed.

In general, section 280A limits the amount a taxpayer may deduct as expenses attributable to the business use of a dwelling unit if the taxpayer uses the dwelling unit for personal purposes during a taxable year for a total of 14 days or more. If this limitation is exceeded, deductions attributable to business use are limited to the amount by which the gross income derived from the business use of the dwelling unit exceeds the deductions otherwise allowable without regard to the business use of the dwelling (*e.g.*, interest and taxes).

Under section 280A (as it appeared prior to Pub. L. 97-119), a taxpayer was deemed to have used a dwelling unit for personal purposes for a day if, for any part of the day, the unit is used for personal purposes by (1) the taxpayer or any other person who owns an interest in the home; (2) the brothers and sisters, spouse, ancestors, or lineal descendants of the taxpayer, or other owners; (3) any individual who uses the unit under a reciprocal arrangement (whether or not a rental is charged); or (4) any other individual who uses the dwelling unit during a day unless a fair rental is charged.

If a businessman used a dwelling for travel away from home but he or his family also used the dwelling for personal purposes for a total of more than 14 days per year, section 280A could have applied, eliminating the deduction for lodging expenses (other than the cost of a hotel room) otherwise allowable.

The Black Lung Benefits Act revised the rules for applying section 280A to family rentals. The Act provided that section 280A is not to be applied to limit any deduction allowable under section 162 (or any deduction that meets the tests of section 162(a)(2) but is allowable under another provision, such as section 167 governing depreciation) for travel expenses while away from home.

D. Political or Campaign Expenses

In general, no deduction is allowed under section 162 for payments for political purposes. Expenses disallowed under this rule include the cost of campaigning for political office, the cost of supporting a political candidate, and the cost of attending certain political conventions. Such payments generally are considered personal expenses and not trade or business expenses.

The courts have uniformly disallowed deductions for campaign expenses paid by a candidate for public office, whether successful or unsuccessful, and whether for election to a position previously held or to a new position. These expenses are considered to be nondeductible personal expenses in that they are incurred in seeking or qualifying for a new trade or business. The courts also have refused to allow campaign expenses to be amortized over the term of office.[12]

With respect to payments made on behalf of candidates for public office, section 41 allows a credit for one-half of all political contributions up to a limit of $50 ($100 on joint returns). However, no trade or business deduction is allowed for any amount incurred for partic-

[12] *See, May* v. *Bowers*, 201 F.2d 401 (4th Cir. 1953).

ipation in, or intervention in, any political campaign on behalf of any candidate for public office.

In addition, no deduction is allowed for amounts paid for advertising or for admission to a dinner or program if the proceeds inure to the benefit of a political party or candidate (sec. 276).

With respect to expenses incurred in attending a convention or other meeting, the issue is whether there is a sufficient relationship between the performance of the taxpayer's trade or business and attendance at the convention. For example, if an elected official attends a convention for political, social or other purposes unrelated to his or her official functions, the expenses are nondeductible. In a recent decision,[13] the United States Tax Court held that a Congressman's travel expenses paid or incurred in connection with his attendance at the Democratic National Convention or the Black National Political Conference were not deductible as ordinary and necessary expenses incurred in the performance of his public office as a Congressman. The court found that the Democratic National Convention was "quintessentially political" because it involved formulating a platform and electing candidates for the Office of President and Vice President. Therefore, the Congressman's expenses in attending the convention were not directly related to his trade or business. However, the court noted that section 7701 (a) (26) recognizes that the term "trade or business" includes the performance of the functions of a public office. Thus, the court indicated that expenses incurred in direct connection with submissions to Committees or individual Members of Congress or with respect to any specific legislation or proposed legislation may be deductible.

E. Lavish or Extravagant Expenses

Under the general rule, business expenses must be ordinary and necessary to the conduct of business. For meals and lodging, which are listed as travel expenses included within the general rule, the statute specifically excludes expenses that are "lavish or extravagant under the circumstances."

F. Reimbursements

In general, amounts are not deductible to the extent they do not represent an actual out-of-pocket expense. Thus, an expense for which a taxpayer is entitled to reimbursement is not deductible. The courts have held that reimbursable expenses for which a taxpayer fails to request reimbursement generally are not considered necessary expenses and, thus, are not deductible by the taxpayer.[14]

The Internal Revenue Service has ruled that to the extent government officials can establish that they incurred unreimbursable expenses directly in connection with their official duties, out-of-pocket expenses may constitute a charitable contribution.[15]

The courts have applied the same rule to out-of-pocket expenses for which reimbursement was available but not claimed because of a desire to make a donation to the charity.[16]

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[13] *Diggs* v. *Commissioner*, 76 T.C. 888 (1981).

[14] *See, Coplon* v. *Commissioner*, 277 F.2d 534 (6th Cir. 1960), *aff'g*, T.C. Memo 1959-34; *Kennelly* v. *Commissioner*, 56 T.C. 936 (1971), *aff'd without opinion*, 456 F.2d 1335 (2nd Cir. 1972).

[15] *See*, Rev. Rul. 59-160, 1959-1 C.B. 59.

[16] *Wolfe* v. *McCaughn*, 5 F. Supp. 407 (E.D. Pa. 1933).

G. Substantiation

No deduction for travel expenses (including meals and lodging) is allowed unless the taxpayer substantiates expenditures. In general, to meet the substantiation requirements, a taxpayer must maintain an account book, diary, statement of expense or similar record supported by documentary evidence such as receipts, paid bills, and cancelled checks. The records and documentary evidence must clearly establish the elements of each expenditure sought to be deducted, namely, the amount, time, place, and business purpose of the expense. The record of these elements must be made at or near the time of the expenditure. Documentary evidence is specifically required for lodging expenses and for any other expenditure of $25 or more. A written statement of the business purpose of an expenditure is generally required, unless such business purpose is evident from the facts and circumstances surrounding the expenditure.

Under certain circumstances, an employee reimbursed for travel by the employer under a subsistence or per diem arrangement is not required to substantiate the amount of the expense or report the reimbursement as income. To qualify, (1) the employee must adequately account to the employer, and (2) the reimbursement must not exceed actual business expenses. The adequate accounting requirement will be considered met if (1) the employer reasonably limits payments of travel expenses to those that are ordinary and necessary in the conduct of a trade or business, (2) the employee substantiates by records or other evidence the time, place, and business purpose of the travel, and (3) the reimbursement does not exceed the greater of $44 or the maximum Federal per diem applicable for the locality in which the travel occurs.[17]

The Internal Revenue Service will rule that an employer reasonably limits payments under an actual subsistence arrangement to ordinary and necessary expenses if the employer maintains adequate internal controls, such as requiring verification and approval of the expense account by a responsible person other than the employee. For per diem arrangements, the Internal Revenue Service must determine if the employer's travel allowance practices are based on reasonably accurate estimates of travel costs, including recognition of cost variances encountered in different localities. If the employer's reimbursement arrangement is considered to reasonably limit payments to ordinary and necessary expenses but the payment on any occasion exceeds deductible business expenses, the employee must report the excess as income. If the taxpayer wants to deduct actual expenses exceeding the reimbursement, the employee must include the reimbursement income and substantiate all deductions.

[17] Rev Rul. 80-62, 1980-1 C.B. 63, as modified by Rev. Rul. 80-208, 1980-2 C.B. 101.

III. HISTORICAL DEVELOPMENT OF RULES AFFECTING MEMBERS OF CONGRESS

A. Overview

Like other businessmen, Members of Congress may deduct ordinary and necessary business expenses, including travel expenses incurred while away from home overnight in the pursuit of a trade or business. In general, the same limitations on deductibility applicable to other businessmen apply to Members of Congress.

The rules with respect to Members of Congress have, at various times, been explicitly provided by statute in three areas: (1) the determination of their tax homes, (2) the maximum amount deductible as living expenses in Washington, and (3) the rules relating to substantiation of Washington expenses.

B. Tax Home and Limitations on Deductions

Prior to 1952, the Board of Tax Appeals in *George W. Lindsay*,[18] had held that on the facts of that case the home of that Member of Congress was Washington, D.C. The Court based its conclusion largely on the fact that, under then existing law, the official duties of Members of Congress were to be performed in Washington, D.C.

In 1952, Congress amended the Code to provide a uniform rule under which the tax home of any Member of Congress would be considered their residence within the home State or district (Pub. L. No. 83–178). However, under the amendment, a Member could deduct only $3,000 of living expenses incurred in Washington, D.C.

The legislative history of the 1952 amendment and the case law suggest that the amendment did not waive the requirement that the trip must include an overnight stay.[19] Under this interpretation, a Member who commuted to Washington from the home State on a daily basis and did not stay in Washington overnight could not deduct travel expenses (e.g., meals and transportation). Those expenses would be treated as nondeductible personal commuting expenses.[20] It was unclear whether a Member who lived within commuting distance of Washington but stayed overnight in Washington could deduct travel expenses. The Internal Revenue Service takes the position that a person's tax home is the general area surrounding the person's abode.[21] If the Members's place of residence within the home State was

[18] 34 B.T.A. 840 (1936).

[19] *See*, 98 Congressional Record 5280 (1952); *Chappie* v. *Commissioner*, 73 T.C. 823, 831 (1980).

[20] Although a deduction for meals while in Washington might not be allowed as a travel expense under section 162(a)(2) the cost of business meals in surroundings generally conducive to business discussions would be deductible under general business expense rules.

[21] Rev. Rul. 190, 1953–2 C.B. 303.

within commuting distance of Washington, Washington might be considered within the area of the Member's home. Under that interpretation, travel expenses could be denied even if the Member stayed overnight in Washington.

C. Recent Legislative Actions

In 1981, Congress enacted several other changes affecting the deductibility of travel expenses of Members of Congress. As part of the First Continuing Resolution, Congress repealed the $3,000 cap on the deduction of a Member's living expenses in Washington, D.C. As part of the Third Continuing Resolution, Congress made that change retroactive to January 1, 1981.

The Black Lung Benefits Revenue Act of 1981 also made changes affecting the deductibility of travel expenses of Members of Congress. For all taxpayers, including Members of Congress, the Act makes clear that the rules under section 280A disallowing lodging costs in connection with business use of a home do not apply with respect to travel expenses allowable under section 162(a)(2) (or any deduction that meets the tests of that section but is allowable under a different section). Also, the Act adds a provision requiring Treasury to prescribe amounts deductible as travel expenses by Members of Congress without substantiation. Under the Act, Treasury may not prescribe an amount in excess of an amount determined to be appropriate under the circumstances.

D. Treasury Regulations

The Treasury Department has issued regulations in temporary and proposed form prescribing amounts deductible by Members of Congress without substantiation. In general, the regulations allow Members of Congress to elect to deduct a designated amount as travel expenses for each Congressional day in the year in lieu of substantiating their actual travel expenses.

The amount deductible is determined by reference to the maximum amount of reimbursement available to a government employee traveling to Washington, D.C., which is currently $75. For a Member who elects to deduct interest and taxes attributable to the ownership of a personal residence in the Washington, D.C. area, two-thirds of the maximum Federal reimbursement ($50) is allowable for each Congressional day. For Members who do not elect to deduct interest and taxes for the Washington residence, the full $75 per Congressional day is allowable.

The number of Congressional days for a Member is the number of days in the taxable year less the number of days in periods in which the Member's Congressional chamber was not in session for 5 consecutive days or more (including Saturday and Sunday). The number of days for a Member is determined without regard to whether the Member was in the Washington, D.C. area on those days. The number of Congressional days for 1981 was 262 for the House and 256 for the Senate.

The election under the Treasury regulations does not prevent a Member from claiming additional amounts for travel expenses in the

Washington, D.C. area. If the taxpayer does not elect to use the designated amounts to compute his deduction, all of his deductions must be substantiated. The Treasury regulations do not apply to expenses incurred outside the Washington, D.C. area. Those travel expenses also must be substantiated.

If a Member lives in a residence owned by him or her in the Washington, D.C. area, the Member must reduce his or her basis in the Washington residence by 20 percent of the amount elected (either the $50 or $75 amount) under the regulations to reflect the portion of deductible expenses attributable to depreciation of the residence.

The regulations were issued in temporary form to permit the public to comment. A public hearing on these regulations was held on May 11, 1982.

E. Pending Congressional Actions

On May 27, 1982, the Senate passed the Urgent Supplemental Appropriations Bill for 1982 (H.R. 5922). A provision of that bill added by the Senate would limit the deduction of living expenses by Members of Congress to $3,000 per year (the prior law limit). In addition, the bill would repeal the rule requiring Treasury to prescribe an amount of travel expenses that may be deducted by a Member of Congress without substantiation (the so-called $75/50 a day rules). The changes would apply for taxable years beginning after December 31, 1981.

On June 9, 1982, the House agreed to a motion to instruct the House conferees to agree to the Senate amendment to the Urgent Supplemental Appropriations Bill regarding the tax treatment of travel expenses of Members of Congress.

None of these actions pending in Congress would affect the rule designating the Member's home state or district as that Member's tax home or the travel expense rules for State legislators.

IV. AWAY-FROM-HOME EXPENSES OF STATE LEGISLATORS

A. Historical Development

Prior to the Tax Reform Act of 1976, there was no special rule for ascertaining the location of a State legislator's tax home. As a result, the generally applicable rules, described above, determined the location of a State legislator's tax home. In general, the courts held that if a State legislator who has no other trade or business is required to spend most of his working time at the State capitol, that area is considered to be his principal post of duty and, under the principal place of business test, his tax home.[22] If a legislator is engaged in a separate trade or business elsewhere, all facts and circumstances must be examined to determine which place is his tax home.

The Tax Reform Act of 1976 provided an election for the tax treatment of State legislators for taxable years beginning before January 1, 1976. This was extended for one year by the Tax Reduction and Simplification Act of 1977 to taxable years beginning before January 1, 1977, and was extended further by Public Law 95–258 to taxable years beginning before January 1, 1978. Public Law 96–167 again extended the State legislator election to taxable years beginning before January 1, 1981.

Under this election, a State legislator could treat his or her place of residence within the legislative district as his or her tax home for purposes of computing the deduction for living expenses. If this election was made, the legislator was treated as having expended for living expenses an amount equal to the sum of the daily amount for per diem generally allowed to employees of the U.S. Government for traveling away from home, multiplied by the numbers of days during that year that the State legislature was in session, including any day in which the legislature was in recess for a period of four or fewer consecutive days. For this purpose, the rate of per diem to be used was the rate that was in effect during the period for which the deduction was claimed. In addition to days in session a State legislator could count each day in which his or her physical presence was formally recorded at a meeting of a committee of the State legislature.

The State legislator provision of the 1976 Act was construed by the U.S. Tax Court in *Eugene A. Chappie* v. *Commissioner*, 73 T.C. 823 (1980). In that case, the Tax Court held that the generally applicable business deduction rules (sec. 162) required a California Assemblyman to be away from home overnight in order to be entitled to a business deduction for traveling and living expenses. Because section 604 of the Tax Reform Act of 1976 made no change in this rule for State legislators, the Tax Court held that no deduction was available as to days when a legislator actually was not away from his tax home (i.e., his place of residence in the district represented) overnight. The Court

[22] *Montgomery* v. *Commissioner*, 532 F.2d 1088 (6th Cir. 1976), *aff'g*, 64 T.C. 175 (1975).

explained that the rules pertaining to business deductions and commuting expenses (secs. 162 and 262) precluded a deduction for expenditures incurred in the legislator's travels to and from Sacramento.

B. Current Rules

The Economic Recovery Tax Act of 1981 modified, and made permanent, the provisions of the Tax Reform Act of 1976 which relate to a State legislator's annual election to treat his or her place of residence within the legislative district represented as his or her tax home.

Present law allows a State legislator to elect, for any taxable year, to treat his or her residence within the legislative district represented as his or her "tax home" for purposes of computing the deduction for expenses. An electing legislator is treated as having expended for living expenses (incurred in connection with the trade or business of being a legislator) an amount equal to the sum determined by multiplying each of the individual's legislative days during the taxable year by the greater of: (1) the amount generally allowable with respect to such a day to employees of the executive branch of the State of which the individual is a legislator for per diem while away from home, or (2) the amount generally allowable for per diem with respect to such day to employees of the U.S. Government for traveling away from home. A State per diem allowance is taken into account only to the extent that it does not exceed 110 percent of the Federal per diem.

An electing legislator is deemed to be away from home in the pursuit of a trade or business on each legislative day. This is an exception to the general travel expense rules. Because such an individual is deemed to be away from home in the pursuit of a trade or business while incurring the deemed expenses, such an electing legislator is not required to be present at the legislature for that day (or for any day in a legislative recess of four or fewer consecutive days), or away from home overnight. This change in effect reversed the Tax Court decision in *Chappie* as to electing State legislators, for open and future tax years. However, no provision was made for opening closed years.

In determining the appropriate rate of per diem to be utilized for the deduction computation, the rate of both Federal and State per diems to be used are those rates which were in effect for the legislative days for which deduction is claimed.

For taxable years beginning after 1980, present law provides that the generally applicable State legislator rules do not apply to any legislator whose actual home within the district represented is 50 miles or less from the State capitol building. The 50 miles is to be determined by measuring the actual distance a legislator would be required to travel by surface transportation between his or her district residence and the State capitol building. As a result, such legislators may not elect to have this provision apply to them. Instead, such legislators must establish the location of their tax homes under the generally applicable facts and circumstances test. In addition, legislators excluded by this 50-mile test may not use the statutory formula for computing deductible business expenses. Rather, these legisaltors are subject to the general business expense rules.

The provisions of the Economic Recovery Tax Act of 1981 affecting State legislator's travel expenses generally are effective for taxable years beginning on or after January 1, 1976.

V. DESCRIPTION OF BILLS

(AWAY-FROM-HOME EXPENSES OF MEMBERS OF CONGRESS)

1. S. 2012—Senators Proxmire, Danforth, Durenberger, Heinz, Matsunaga, Mitchell, Moynihan, et al; and S. 2113—Senator DeConcini

Explanation of the bills

The bills would restore the $3,000 cap on the deductibility of living expenses incurred by Members of Congress in the Washington, D.C. area for business purposes. The bills also would eliminate the special rule permitting Members to deduct a designated amount for travel expenses in lieu of substantiation. The bills would retain the rule designating as the tax home of a Member of Congress the members residence within the home state or district. The bills also would retain the 1981 amendment to section 280A that affects the deductibility of expenses incurred in connection with business use of a home. However, the amendment to section 280A would not have significant practical effect under the bill because Members generally would have $3,000 of expenses without regard to expenses incurred in connection with their use of a dwelling in Washington, D.C.

The amendment would not affect the deductibility of travel expenses by State legislators.

Effective date

The provision restoring the $3,000 cap would apply to taxable years beginning after December 31, 1980. Thus, amended returns for 1981 calendar year returns would be required for Members that claimed expenses in excess of that amount. The other provisions of the bill would apply to open taxable years beginning after December 31, 1975.

2. S. 2015—Senators Domenici and Stennis

Explanation of the bill

The bill would impose a $6,000 cap on the deductibility of living expenses incurred by Members of Congress in the Washington, D.C. area for business purposes. The bill also would eliminate the special rule permitting Members to deduct a designated amount for travel expenses in lieu of substantiation. The bill would retain the rule designating as the Member's tax home his or her residence within the home State or district. The bill also would retain the 1981 amendment to section 280A that affects the deductibility of expenses incurred in connection with business use of a home.

The bill would not affect the deductibility of travel expenses by State legislators.

Effective date

The provision imposing the $6,000 cap would apply to taxable years beginning after December 31, 1980, requiring amended returns for Members claiming expenses in excess of that amount. The other provisions of the bill would apply to open taxable years beginning after December 31, 1975.

3. S. 2092—Senator Chafee; S. 2176—Senators Armstrong and Weicker; and S. 2321—Senator Mattingly

Explanation of the bills

The bills would eliminate the special rule permitting Members to deduct a designated amount per Congressional day for travel expenses incurred in Washington, D.C. for business purposes in lieu of substantiation. The bills would permit Members to deduct without a specific dollar limitation those travel expenses the Member can substantiate as ordinary and necessary business expenses under section 162. The bills would retain the rule designating as the Member's tax home his or her residence within the home State or district. The bills would also retain the 1981 amendment to section 280A that affects the deductibility of expenses incurred in connection with business use of a home.

The bills would not affect the deductibility of travel expenses by State legislators.

Effective date

S. 2092 and S. 2321 would apply to open taxable years beginning after December 31, 1975, requiring amended returns to be filed by those Members who claimed amounts in 1981 in excess of amounts that can be substantiated as deductible travel expenses. S. 2176 would apply to taxable years beginning after December 31, 1980, and thus also may require amended returns for 1981.

4. S. 2413—Senators Long, Bentsen, Mitchell, Grassley, et al

Explanation of the bill

The bill would repeal all rules expressly governing the deductibility of travel expenses by Members of Congress. The bill would repeal the rule designating as the tax home of a Member of Congress the Member's residence within the home State or district. The determination of a Member's tax home would be made on a case-by-case basis under the general principles applicable to all taxpayers. The bill would repeal the special rule permitting Members to deduct a designated amount per Congressional day in lieu of substantiation. The bill would retain the 1981 amendment to section 280A that affects the deductibility of expenses by all taxpayers incurred in connection with the business use or a home.

The bill would not affect the deductibility of travel expenses by State legislators.

Effective date

The bill would apply to taxpayers beginning after December 31, 1981, eliminating the need to file amended returns for 1981.

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STATEMENT
OF SENATOR BOB DOLE
HEARING ON TRAVEL EXPENSE DEDUCTIONS
FOR MEMBERS OF CONGRESS AND STATE LEGISLATORS

Introduction

First of all, I would like to thank the Chairman, the distinguished Senator from Oregon, for scheduling today's hearing on the tax rules affecting travel expenses deductions for Members of Congress and state legislators.

This is a difficult subject to deal with, in part because Members are criticized whenever there is any legislation specifically dealing with Members' personal concerns. Unfortunately, in many cases we have no choice, since there is no other body that can legislate on the few issues that concern Members of Congress personally.

Perhaps the Constitution should provide differently, but it does not. And so we are faced from time to time with these difficult issues.

The Media's Role

Of course, the media only tends to aggravate the problem. This week there were still press reports about the so-called "$19,000 tax break", even though the provisions that created the present controversy actually resulted in a tax benefit of under $5,000 for

MANY MEMBERS. BUT WE WOULD NOT WANT ANYONE TO GET CONFUSED BY THE FACTS, NOT WHEN THERE'S AN OPPORTUNITY TO DO-IN THE MEMBERS.

THIS IS A CONTROVERSIAL AREA, AND THE MEDIA IS OBVIOUSLY JUSTIFIED IN MAKING ITS OWN INDEPENDENT JUDGMENTS AS TO WHAT IS NEWSWORTHY. IF THE MEDIA DECIDE TONIGHT THAT MEMBERS DEDUCTIONS SHOULD BE THE LEAD-OFF STORY ON THE NIGHTLY NEWS, AHEAD OF THE FALKLANDS AND THE MIDDLE EAST, THEY ARE ENTITLED TO THEIR JUDGMENT. I MAY BE DISAPPOINTED, BUT THEY ARE ENTITLED TO MAKE POOR JUDGMENTS AS MUCH AS ANYONE ELSE.

I AM MORE CONCERNED ABOUT INACCURACIES AND GROSS DISTORTIONS IN THE MEDIA COVERAGE OF THIS ISSUE. WE HAVE SOME EXAMPLES OF INACCURATE AND DISTORTED COVERAGE WHICH I WOULD LIKE TO SUBMIT FOR THE RECORD. WE ALSO HAVE A TRANSCRIPT OF THE ABC "20/20" REPORT ON THE MEMBERS DEDUCTIONS, WHICH I WOULD LIKE TO INCLUDE TOGETHER WITH A STAFF REPORT DETAILING THE PROGRAM'S INACCURACIES. I WILL NOT GO INTO THAT NOW. I WOULD JUST POINT OUT THAT THE "20/20" STORY INACCURATELY REPORTED THAT I WAS UNWILLING TO APPEAR ON CAMERA TO ANSWER THEIR QUESTIONS. IN FACT, WHEN MY PRESS SECRETARY CALLED ABC THREE TIMES, THEY REFUSED TO RETURN OUR CALLS.

SENATOR DOLE'S ROLE

MY PERSONAL ROLE IN THIS MATTER HAS BEEN REPORTED INACCURATELY, AND I WOULD LIKE TO SET THE RECORD STRAIGHT. I DID NOT SPONSOR THE

AMENDMENT THAT REPEALED THE $5,000 CEILING ON MEMBERS DEDUCTIONS. DID NOT EVEN PARTICIPATE IN THE FLOOR DEBATE. I DID VOTE IN FAVOR OF THE AMENDMENT, IN AN OPEN, RECORDED VOTE, BECAUSE I BELIEVE THE $5,000 CEILING WAS ECONOMICALLY UNREALISTIC AND DISCRIMINATORY.

MY ACTIVE INVOLVEMENT IN THIS AREA BEGAN WHEN I REALIZED THAT THE MEMBERS WOULD HAVE DIFFICULTY TAKING THEIR LEGITIMATE DEDUCTIONS WITHOUT SOME CLARIFYING RULES DEALING WITH THE ALLOCATION AND SUBSTANTIATION PROBLEMS. THE SO-CALLED "DOLE AMENDMENT" TO THE BLACK LUNG BENEFITS REVENUE ACT WAS INTENDED TO SOLVE THOSE PROBLEMS, BY LETTING THE TREASURY PRESCRIBE REASONABLE AMOUNTS DEDUCTIBLE WITHOUT SUBSTANTIATION, ON A PER DIEM BASIS.

LEGITIMATE PUBLIC CONCERNS

I KNOW THAT THERE ARE SOME MEMBERS, AND MANY PRIVATE CITIZENS WHO ARE SINCERELY CONCERNED. THEY ARE CONCERNED THAT IT MAY BE INAPPROPRIATE FOR CONGRESS TO TAKE ANY ACTION AFFECTING MEMBERS PERSONALLY, EVEN IF THE ACTUAL PROVISIONS CONGRESS PASSES ARE OBJECTIVELY FAIR AND REASONABLE. THAT'S A LEGITIMATE VIEW, BUT THE RAMIFICATIONS ARE UNCERTAIN.

ONE THING IS CLEAR. ISSUES OF THIS NATURE ONLY AFFECT MEMBERS WHO ARE NOT INDEPENDENTLY WEALTHY. ANY MEMBER WITH OUTSIDE INCOME FROM TRUSTS OR INVESTMENTS CAN VOTE TO REDUCE CONGRESSIONAL

DEDUCTIONS, OR OTHER CONGRESSIONAL BENEFITS WITHOUT ANY PERSONAL CONCERN. BUT, OF COURSE, THEN THE QUESTION MUST BE ASKED: DO WE WANT PUBLIC SERVICE IN THE CONGRESS TO BE POSSIBLE ONLY FOR INDEPENDENTLY WEALTHY INDIVIDUALS?

THREE POINTS SHOULD BE KEPT IN MIND

WE WILL HEAR TODAY ABOUT THE BACKGROUND OF THE RECENTLY ENACTED RULES, AND WE WILL HEAR VIEWS EXPRESSED ON WHAT ACTION SHOULD BE TAKEN BY THE FINANCE COMMITTEE. I WOULD ONLY LIKE TO MAKE THREE POINTS.

FIRST, IT MUST BE MADE CLEAR THAT CONGRESS DID NOT TAKE THE INITIATIVE IN DECIDING THAT SPECIFIC LEGISLATION WAS NEEDED TO DEAL WITH MEMBERS' TRAVEL EXPENSE DEDUCTIONS. BACK IN 1956, THE TAX COURT HELD THAT A MEMBER COULD NOT DEDUCT HIS TRAVEL EXPENSES IN WASHINGTON, AND ALSO COULD NOT DEDUCT HIS TRAVEL EXPENSES IN HIS HOME DISTRICT. THAT RESULT WAS CLEARLY UNFAIR. BUT THE COURT STATED THAT ITS DECISION WAS BASED ON A PRIOR ACT OF CONGRESS, A STATUTE DECLARING THAT THE SEAT OF GOVERNMENT WAS WASHINGTON, D.C. THE COURT HELD, IN EFFECT, THAT CONGRESS ITSELF HAD UNWITTINGLY DISALLOWED TRAVEL EXPENSE DEDUCTIONS FOR MEMBERS OF CONGRESS, REGARDLESS OF THE RULES THAT WERE APPLICABLE TO OTHER TAXPAYERS. ACCORDINGLY, THE COURT EXPLAINED QUITE CLEARLY THAT IF CONGRESS WANTED TO CHANGE THAT SITUATION CONGRESS WOULD HAVE TO PASS ANOTHER STATUTE.

IN 1952, CONGRESS DID ENACT AN ACROSS-THE-BOARD RULE THAT A MEMBER WAS CONSIDERED "AWAY FROM HOME" WHILE AWAY FROM HIS RESIDENCE IN THE STATE OR DISTRICT HE REPRESENTS. BUT CONGRESS ALSO SET A CEILING ON MEMBERS' DEDUCTIONS FOR WASHINGTON LIVING EXPENSES. THE CEILING WAS SET AT $3,000, WHICH WAS THEN EQUAL TO A FIFTH OF THE MEMBERS' SALARIES.

THAT BRINGS UP THE SECOND POINT I'D LIKE TO MAKE. MERELY ADJUSTING THE $3,000 CEILING FOR PRICE INCREASES SINCE 1952 WOULD RAISE THE CEILING TO AN AMOUNT VERY CLOSE TO THE DEDUCTION ALLOWED UNDER THE PER DIEM RULES ADOPTED LAST YEAR. IF THE CEILING WERE NOW SET AT THE SAME FRACTION OF MEMBER'S SALARIES IT REPRESENTED IN 1952, THE CEILING WOULD NOW BE $12,000. INTERESTINGLY ENOUGH, THE $50 PER DIEM RULE ADOPTED BY THE TREASURY YIELDED A TAX DEDUCTION OF $12,800 LAST YEAR. THE $50 PER DIEM IS THE APPROPRIATE FIGURE FOR COMPARISON SINCE THE $3,000 LIMITATION, LIKE THE $50 PER DIEM, PERMITS A SEPARATE DEDUCTION FOR QUALIFIED MORTGAGE INTEREST AND TAXES.

FINALLY, I AM HAPPY THAT WE HAVE SEVERAL DISTINGUISHED STATE LEGISLATORS HERE TODAY, BECAUSE THE REAL PRECEDENT FOR THE SO-CALLED "MEMBERS' TAX BREAK" IS THE TEMPORARY PROVISION WE ENACTED IN 1976 FOR STATE LEGISLATORS. THAT PROVISION PERMITS STATE LEGISLATORS TO TAKE A PER DIEM DEDUCTION FOR EACH LEGISLATIVE DAY AT THE STATE CAPITAL. IN SOME CASES THE STATE LEGISLATOR'S PER DIEM IS LARGER

THAN THE PER DIEM MEMBERS ARE ALLOWED UNDER THE NEW TREASURY REGULATIONS.

I AM SURE OUR DISTINGUISHED WITNESSES CAN TELL US ABOUT THE COMPLEXITIES AND UNCERTAINTIES THAT LED CONGRESS TO ENACT THE STATE LEGISLATORS' PROVISION IN 1976. THAT TEMPORARY 1976 PROVISION WAS MODIFIED AND MADE PERMANENT IN 1981. BUT IN MY VIEW, IT MAY BE APPROPRIATE TO CONSIDER MODIFYING OR REPEALING THE STATE LEGISLATORS' PROVISION. STATE LEGISLATORS AND MEMBERS OF CONGRESS FACE ESSENTIALLY SIMILAR PROBLEMS DEALING WITH A GENERAL TAX PROVISION WRITTEN TO DEAL WITH TAXPAYERS WITH LESS ESOTERIC FORMS OF EMPLOYMENT. MEMBERS OF CONGRESS AND STATE LEGISLATORS IN OUR REPRESENTATIVE FORM OF GOVERNMENT HAVE LEGITIMATE BUSINESS REASONS FOR SPENDING TIME IN THE CAPITAL, AND ALSO WITH THEIR CONSTITUENTS BACK HOME.

IT REALLY IS ONLY A QUESTION OF FAIRNESS IN MY VIEW. I WOULD HOPE WE COULD TREAT PUBLIC OFFICIALS FAIRLY. I KNOW THAT IS DIFFICULT, BUT I STILL HOPE.

ILLUSTRATIVE EXAMPLES OF MISLEADING MEDIA COVERAGE OF TAX CHANGES AFFECTING MEMBERS' EXPENSES IN WASHINGTON, D.C.

1. Judy Mann, Washington Post, January 20, 1982

"With the friendly cooperation of the Internal Revenue Service, which last week issued guidelines on the new rules, it is now possible, even probable, that Members of Congress will pay next to nothing in taxes on their congressional salaries."

2. Raymond Coffey, Chicago Tribune, April 4, 1982

"But under another provision, they can deduct almost any expense they have here. And the effect is, as critics trying to repeal the thing say, that Members could almost entirely escape income taxes on their congressional salaries."

(January 20, 1982)

"And now, sweetest deal of all, if you get yourself elected (to Congress), you can be practically exempt, immune and permanently vaccinated against paying taxes."

3. Human Events, January 30, 1982

"...the innocent looking rider, sneaked through the Congress by the leaders of both parties, actually wiped out all Federal taxes for many of its Members...

* * *

"Journalists took calculators in hand and discovered what the drafters of the legislation knew all along--they were wiping out the entire Federal tax obligation on their $60,622 congressional salaries."

4. Washington Post, "The Federal Register," Walter Pincus, January 28, 1982

"The best example of how this works out is that in 1981, the Senate was in session 165 days but the number of congressional days a Member can collect his deduction is 265. Thus, if he elects the blanket deduction, he can take $19,875 off his taxes with no questions asked."

5. Chicago Tribune, Editorial, April 4, 1982

"At stake was a hefty tax benefit that Congress quietly voted itself last year--an amendment that virtually exempts Members from paying income taxes, since it lets them deduct $75 a day as "business expenses."

6. Bureau of National Affairs, Daily Tax Report, June 9, 1982

"That tax break could be worth $20,000 a year per legislator."

ABC NEWS **20/20**

April 8, 1982

HUGH DOWNS: Good evening. I'm Hugh Downs. And this is 20/20.

ANNOUNCER: On the ABC Newsmagazine, 20/20, with Hugh Downs and Barbara Walters, tonight:

TOM FIELD, executive director, Tax Notes: Do you deduct the cost of your meals prepared at home when you prepare your tax return? If the answer to that question is yes, you're in trouble with the Internal Revenue Service — unless you're a Congressman.

ANNOUNCER: Income tax time — for most of us it means money going out, but for our Congressmen it means a big refund. A special tax break pushed through unnoticed just for them. How was it done? Tom Jarriel, with a special report on "The Great Capitol Tax Gain."

Walter Matthau — he's done 22 plays and 53 movies: "The Odd Couple," "The Fortune Cookie," and now, "I Ought To Be in Pictures." But he's still his own severest critic. Tonight Barbara Walters talks with "Walter Matthau."

DICK WILDMAN, aerospace employee: They ripped everybody off. They ripped off little old ladies that spent their last dime on these things, thinking that was going to be their retirement.

ANNOUNCER: The promise of happiness, a new kind of vacation — time-sharing. For many it works; but for others — hidden costs, high-pressure sales, and nothing in return. It could happen to you. John Stossel, with a report: "Vacation Dream, Vacation Nightmare."

The shroud of Turin — is it the image of Jesus? For 600 years, Christians have debated: Is it a hoax, or an incredible religious relic? For over two and a half years 30 sceptical scientists using space-age techniques have examined the image. For this Easter season we repeat Geraldo Rivera's astonishing report on "The Holy Shroud of Turin."

Two weeks ago in Houston, Texas, people just like you watched 20/20 and told us what they thought. Tonight you'll meet them in "Talk Back to 20/20."

HUGH DOWNS: Up front tonight: at tax time, a tax bonus for the already privileged. Members of Congress are paid nearly $61,000 a year, and in addition there are perks that some say double their salary. And now, perhaps the unkindest "cut" of all — a private tax cut, just for them. And here to tell us about it is Tom Jarriel. Tom?

TOM JARRIEL: Hugh, we're talking, of course, about the U.S. Congress, the members of the House and the Senate who are filling out their 1040 forms with a nifty bonus they awarded themselves in December. How they did it and why they did it in these lean economic times has touched off a ground swell of public anger that's threatening to bring that stately old dome right down around their political ears.

JERRY WILLIAMS, radio show host *[on the air]*: Sometime in December, Ali Baba and the Forty Thieves took off after the taxpayer's money.'

JARRIEL *[voice-over]*: On this Boston call-in radio show, passions are running high because Congress has given itself a tax break.

Mr. WILLIAMS: This is Jerry Williams. You're on the air.

WOMAN CALLER: Jerry Williams?

Mr. WILLIAMS: Yes.

WOMAN CALLER: Yes, I'll make this quick. I have my letter written to my congressman; just have to put it in the mail. And I am so mad I could spit.

Mr. WILLIAMS: Thank you very much.

JARRIEL *[voice-over]*: What seems to infuriate people is that members of Congress already earn $60,000 a year, putting them in the top one percent of the wage earners.

Rep. BILL CHAPPELL Jr., (D) Florida: Sixty is in the top one percent— of the earnings in the country? Whew!

JARRIEL *[voice-over]*: They number 535 members, do serious work, put in long days and must travel a lot. So, quite naturally, many consider they're underpaid. *[on camera]* A presidential commission actually recommended the base pay be hiked nearly $20,000. But in these days of inflation, high unemployment and deficit spending, politically there was not enough support up front for a pay raise. So Congress simply went in the back door. *[voice-over]* Critics called it "sneaky" — the pickpocket's way; in back-corridor maneuvers, they slipped a pay raise through disguised as a tax break for themselves on the simple contention that they are businessmen living away from home.

[on camera] What Congress voted for adds up to a total of $10.5 million in personal tax deductions for themselves. Under a complicated IRS formula, each lawmaker can deduct $75 per day for each so-called congressional day. Now, they are assured at least 262 of those congressional days. That includes weekends, by the way. So they get to deduct $75 for each of those days, bringing their total tax break to a figure of $19,650 per member.

[voice-over] For example, Congressman William Ratchford rents his home, so he's eligible for the $19,600 deduction, and it's not even subject to an IRS audit. He and his family live in the suburbs, and he commutes to the office, like businessmen everywhere. But the homes in Washington congressmen and senators live in are now, in effect, hotels or motels which can be written off as on-the-road expenses. Independent tax expert Tom Field says that's special treatment.

TOM FIELD, executive director, Tax Notes: Congressmen, when they're at work in Washington, really are not away from home. It is true that there's a statute that says that congressmen's homes are back there in their districts. But for an ordinary businessman, home is where the work is. And where the work is for a congressman is right here in Washington.

JARRIEL *[voice-over]*: Congressmen who own their own homes in Washington can deduct even more than the $19,600. Like all taxpayers, they can deduct the mortgage interest and the real estate taxes, but now they can gradually write off the entire value of their Washington properties, and with receipts they can bill Uncle Sam for even more. Again, Tom Field.

Mr. FIELD: Congressmen are deducting their personal living expenses for their homes, their family, their groceries, their dry cleaning, the depreciation on their house — if they choose to take depreciation on the house, and so on. No businessman can claim any comparable deductions.

JARRIEL: You mentioned groceries. Is it so unusual to deduct groceries?

Mr. FIELD: Well, I think your viewers can probably answer that question for themselves. *[to the viewers]* Do you deduct the cost of your meals prepared at home wher you prepare your tax return? If the answer to that question is yes, you're in trouble with th Internal Revenue Service — unless you're a congressman.

JARRIEL *[voice-over]*: The $19,600 tax break is like a free handout to about 20 campers who spent much of last year sleeping in their office. Like Congressman Jim Jeffords.

Rep. JIM JEFFORDS, (R) Vermont: I took the sofa bed that I had, took the government couch out and put the sofa bed in, stuffed some things in the closets we have in the little area where the refrigerator, and put the old hot plate in, and survived all right.

JARRIEL: What will you do with the money, the tax break you earn by, in effect, living on the couch here?

Rep. JEFFORDS: I will give that money that is, in a sense, is the tax break from that, to a charity.

JARRIEL *[voice-over]*: While Jeffords says he'll give his windfall to charity, his fellow Capitol Hill campers will be able to claim $75 a day for living in the offices they already get for free. Congressman Jeffords let us see his 1040 IRS tax return for 1981. It shows a total

income of $71,349.64. On line 23, there it is, his new tax break: $19,650. That chunk, plus other deductions, reduces the congressman's taxable income to $21,141.93. Meaning on line 54 he paid $4,079.08 this year in taxes. Without the congressional break, Jeffords would have owed the federal treasury $12,000. By donating his nearly $8,000 windfall to charity, he'll get a philanthropic opportunity ordinary citizens don't have.

Another congressman willing to show us what the new tax break means to him is Pete McCloskey. That's because one of his political opponents has challenged him on the issue.

Rep. PETE McCLOSKEY Jr., (R) California: I hadn't thought about it at the time, and I said, "Well, I would have opposed it, but I think I ought to take the tax break as part of the law." And the more I tried to argue that case with people — and people would just look at you in disbelief.

JARRIEL *[voice-over]*: Remember now, McCloskey won't take the tax break, but on his congressional salary, McCloskey earned a total of $60,000 last year. With some large personal business losses, his tax bill is only $6,887. Had McCloskey taken the additional new tax break, he figures he would have paid only $1,000 in tax due on a $60,000 income. As McCloskey has found, it all adds up to an uncompromising political issue. How did our national politicians paint themselves into such a corner? Well, the leadership did it. The key players were Dan Rostenkowski, chairman of the House Ways and Means Committee; Robert Michel, the GOP House leader; and Tip O'Neill, Democratic leader on the House side. The brain trust on the Senate side: Howard Baker of Tennessee, Robert Dole of Kansas, and Senator Ted Stevens of Alaska. Talk about bad timing, on September 24th, the very day the congressional leaders were maneuvering for their tax break, the President was telling the public to tighten its belt.

Pres. RONALD REAGAN *[September 24, 1981]*: We must also ensure that taxes due the government are collected, and that a fair share of the burden is borne by all.

JARRIEL *[voice-over]*: None of the congressional leadership would appear on camera to answer questions about the tax break. It was done in stages. Three times this winter, this leadership rushed new congressional tax goodies through, attached as amendments to non-controversial bills which were sure to pass. The final touch came December 16th. Senator Dole hooked a tax break amendment onto the popular Black Lung Bill. It could not pass without the tax break also going through, and the Black Lung Bill was certain to pass. It did in the Senate, and was rammrodded through the House before the Dole amendment could even be printed.

Rep. DAN ROSTENKOWSKI: Mr. Speaker, I urge the approval of the Senate Amendments to HR5159 so that the bill can be enacted in a timely fashion.

House Speaker pro temp: The question is, will the House suspend the rules and agree to the Senate amendment. Those in favor will vote aye, those opposed will vote no, and members will record their votes by electronic device.

JARRIEL: The immensely popular Black Lung Bill, HR5159, passed, and along with it the tax break. Only afterward did tax opponents raise their voices — in vain.

House Speaker pro temp: The House will be in order. Members will take their seats.

Rep. MARC L. MARKS, (R) Pennsylvania: I and many of my colleagues didn't realize when we were on the floor exactly what we were voting for. We voted for it, however.

Rep. PAT SCHROEDER, (D) Colorado: I think the leadership thought they were doing us a favor. I think they thought, we'll give them this little Christmas present, and they can all say "We didn't know what happened."

JARRIEL *[voice-over]*: Congressman Bill Chappell defends the tax break.

Rep. CHAPPELL: And we wanted to attract the very best people to come up here and represent the country in the seat of government in Washington. And so we are down to the choice now, if you don't let them at least have the same opportunities that they would have as ordinary citizens, then we're going to deprive a lot of them of the opportunity of coming.

JARRIEL *[voice-over]*: Opponents of the issue cite public reaction.

Rep. SCHROEDER: People were furious, and I don't blame them. I can't possibly tell them why we're declaring ketchup a vegetable, and yet the Congress needs more tax breaks. Why unemployment is very, very high, and they will get free cheese and we get tax breaks.

JARRIEL *[voice-over]*: The $19,600 windfall might not have been such a sticky problem for Congress except Melissa Brown, editor of *Tax Notes*, blew the whistle. Newspapers picked up her story. Anger built. Housewives circulated petitions demanding a repeal.

[on camera] The tax break has become the rallying cry for consumer actions groups, like Common Cause, the Congress Watch, the National Taxpayers Union. The IRS received 4,000 angry letters of protest, and they've set public hearings for May 11th on the issue. *[voice-over]* Our talk show host, Jerry Williams, has the $19,600 question he put to Congresswoman Millicent Fenwick for an answer.

Mr. WILLIAMS: Where can we get a decent and honest count on how many people have— do we have to set up a committee to roll it back? —No.

Rep. MILLICENT FENWICK, (R) New Jersey: Send telegrams to Howard Baker, who is the Senate Majority leader, and to the speaker of the House: "Roll back the increases that you stole from the people."

JARRIEL: And Hugh I'm sure if there are those in our audience who would like to congratulate Congress on their new tax break and tell them they deserve it, they'd like to hear from them, too.

HUGH DOWNS: I'm sure. I have my pen in hand. Thank you, Tom. You select your dream vacation home. Then you run into hidden costs. Developers disappear and high-pressure sales people appear. It could happen to you. A vacation nightmare. That in a moment. But next, Barbara Walters talks with a durable star who's one of his own harshest critics — Walter Matthau.

[commercial break]

HUGH DOWNS: We keep hearing that there are few real stars in Hollywood — few who could last year after year. Well, those that do become almost classics. One such is Walter Matthau — versatile, accomplished, and enduring. That's the general opinion, and most people would agree, except for—

BARBARA WALTERS: Except for Walter Matthau, Hugh. He says of himself, and I quote, "I can't do anything first-rate." He just doesn't seem to see himself as others see him — and speaking of seeing, when we visited with Matthau recently in California, we found he'd had minor eye surgery for a detached retina. He was wearing dark glasses, but to our eyes, that was his only problem.

[voice-over] In general, life for Walter Matthau is very good indeed. He has a wife, Carol, whom he adores; he makes over a million dollars a film, and has no trouble finding parts. But Matthau claims to be happy only when he's miserable. For example, sunny California he loves, but he misses New York, which he hates.

WALTER MATTHAU: I once saw a guy in New York, he was honking his horn, he wasn't even in the car.

WALTERS: *[laughs]* Walter, as we walk, do you know you walk funny?

MATTHAU: I know.

WALTERS: Do you— can you— you know, people make a whole profession of walking like you.

MATTHAU: I know. I walk like a penguin who needs a prosthetic— prostatectomy — prostatectomy.

WALTERS: Shall we show them?

MATTHAU: Where the prostatectomy is?

RESPONSE TO 20/20 PROGRAM SEGMENT

"The Great Capitol Tax Gain"

aired April 8, 1982

by

Jeff M. Bingham, Administrative Assistant

to Senator Jake Garn

On April 8, 1982, ABC News' program "20/20" produced and aired a segment entitled "The Great Capitol Tax Gain," dealing with the issue of tax deductions for living expenses of members of Congress. The segment calls into serious question whether or not the "20/20" program is misnamed. The term "20/20", after all, is a numerical euphemism for clear, distinct and accurate vision. "The Great Capitol Tax Gain" was clear only in that it was clearly inaccurate. This paper is intended to be a response to that program, identifying the reasons why the "20/20" segment was sloppy journalism, at best, and "yellow" journalism, at worst. A response seems necessary because the program -- and numerous other media accounts relating to the same question -- have been the source of a great deal of anger and concern expressed by people who saw or heard or read these reports, assumed they were accurate, and took them to be further "evidence" of what I believe to be an unfair and gross stereotype of members of Congress as insensitive, greedy and irresponsible. The stereotype has been allowed to flourish in large part because most members of Congress choose not to respond to stories of this type, preferring not to dignify them with a comment. They know that any response or defense they make most likely will simply be used as another opportunity for the media to restate their earlier stories as "background" to the response, thereby automatically doubling the exposure for the original story. Most members of Congress just don't think it's worth it. I think it is, because I think the institution of the Congress, and the vast majority of its members, deserve better.

Because there were so many inaccuracies and false innuendoes in the story, I will simply wade through them, point by point, as they appear in the transcript of the program.

1. The first point grows out of the first statement in the "teaser" cut of Mr. Tom Field, Executive Director of Tax Notes, where he says:

> "Do you deduct the cost of your meals prepared at home when you prepare your tax return? If the answer to that question is yes, you're in trouble with the Internal Revenue Service -- unless you're a Congressman."

What's wrong with this statement is as much what it does NOT say as what it does say. That, along with the obvious inflammatory aspect of the inference it draws in making a distinction between ordinary taxpayers and Congressmen.

The first error is Mr. Field's use of the phrase "at home". As a purported tax expert, Mr. Field should know that the "tax home" of any individual is an important distinction in the I.R.S. Code for calculation of taxes. It has been an established fact, since at least 1954 -- when members of Congress, by statute, were first given an automatic living expense deduction of $3,000 -- that their residency in the Washington, D.C. area imposed cost burdens on them as a direct consequence of their service, burdens not imposed upon the ordinary taxpayer. The 1952 law clarified the fact that, for tax purposes, the "tax home" of members of Congress is their legal residence in their

home state or district. The states of Maryland and Virginia, and the District of Columbia also acknowledge this fact in allowing members of Congress to consider their home state as their state of residence for state income tax purposes, as well as automobile license and tax purposes. By suggesting that members of Congress are "at home" when considering deductions for living expenses -- meals, specifically -- in the Washington, D.C. area, he is comparing a legal apple with a legal orange, and condemning the apple for not being an orange.

The second problem with his statement is the failure to point out the limits even of his poor analogy. He is referring, of course, to the option that the I.R.S. guidelines, published on January 21, 1982, provide for itemizing the amount of living expense costs that may be taken as a deduction. This option is one of three options, about which more will be said later. Within this particular option, which provides for itemization of living expenses, Mr. Field is suggesting that a member may deduct all of the costs of meals prepared in his or her Washington, D.C. area residence. This is simply not true.

The Senate Finance Committee and the Joint Committee on Taxation issued a summary of the I.R.S. regulations, which states:

> "Like all businessmen, Members are only permitted to deduct as a business expense their own living expenses when away from their district, and not the expenses of their families."

Describing more specifically what would be required under an itemization of actual expenses, versus a flat, per diem amount as provided in the other two options, the summary goes on:

> "...an allocation would have to be made for each item of furniture, all groceries, and heating and other utility expenses. Members would also be required to determine what portion of their homes are used by them and what portion is used by their family. The same allocation would have to be made for the family car and for anything else used by the Member and his family."

This distinction also was made clear on the floor of the Senate during debate on the amendment which directed the Secretary of the Treasury to establish rules governing the living expense deductions. Senator Russell Long (D-Louisiana) said, referring to the previously passed language:

> "Under this provision a Senator cannot receive the deduction for members of his family. He has to allocate. In other words, it he has a wife and children he has to allocate for the portion that they are presumed to use of the house and he is only entitled to the part for himself....He can only claim the part that applies to him. He cannot deduct the part that applies to his family...." (Congressional Record, December 16, 1981, page S15489)

It is clear that the limitations of this deduction option impose a complex accounting burden on anyone selecting it as the method of calculating tax deductions, and that it is not as simple as "deducting groceries." It also is clear that a Member does not receive a subsidy, through a tax deduction, for his family's living expenses. And again, the only amounts he is able to deduct are for the same sort of expenses that any businessman is able to deduct when away from his "tax home" on business.

2. The second point follows closely on the heels of the first, this time in a statement made by the "ANNOUNCER", when he says:

> "Income tax time -- for most of us it means money going out, but for our Congressmen it means a big refund."

This is a gross and negligent generalization which has absolutely no basis in fact, as it is stated. Where is the data supporting it? Just how many Members got a refund for the 1981 tax year as a result of the "new" tax break? I would suggest that any Member who did receive a refund would be one who already had significant tax deductions available as any other citizen under the law. Contrary to the assertion that Members would get a refund, it is not even likely that they could avoid paying taxes. As the Summary quoted earlier states:

> "Contrary to press reports, a Member using this rule could not come close to eliminating his Federal tax liability. The $12,750 deduction produced by the

rule-of-thumb (in this case, $50.00 a day times 255 congressional days in 1981, which is the THIRD option) is less than $10,000 over the $3,000 limit in prior law. This deduction would reduce Members' taxes somewhere between $3,000 and $5,000." (Parentheses mine)

Those Senators of whom I am aware, that have described the impact of this deduction on their lives, have paid taxes in the five-figure range; a far cry from the "big refund" described by the announcer. And even if there are exceptions of which I am not aware, the statement of the announcer is unjustified in that he is making a blanket, all-inclusive statement, without caveats such as "many" or "some." He is not just painting with a broad brush, he is slopping it all over everyone.

3. The announcer moved very quickly to the next misrepresentation:

"A special tax break pushed through unnoticed just for them."

The operative -- and most offensive -- word here is "unnoticed." Throughout much of the coverage of this issue, the press has characterized the congressional tax deduction as a sneaky, back-door action, slipped through while no one was watching. This characterization was repeated in the "20/20" segment in several instances other than the announcer's opening:

"JARRIEL....Congress simply went in the back door. (Voice-over) Critics called it 'sneaky' -- the

pickpocket's way; in backcorridor maneuvers, they slipped a pay raise through disguised as a tax break...."

"JARRIEL....three times this winter...leadership rushed new congressional tax goodies through, attached as amendments to non-controversial bills which were sure to pass. The final touch came December 16th. Senator Dole hooked a tax break amendment onto the popular Black Lung Bill. It could not pass without the tax break also going through, and the Black Lung Bill was certain to pass. It did in the Senate, and was ramrodded through the House before the Dole amendment could even be printed."

This second statement by Tom Jarriel contains a number of inaccuracies, which I will return to later. It is used here to illustrate the focus of the program on what it calls the "sneaky," "back-corridor" way in which the tax deduction provision was adopted. I should point out here that this critical description of the procedures used in passage of the tax deduction provision may or may not be fairly levelled at the House of Representatives. It is not the business of someone connected with the Senate to explain, defend or justify actions taken by the House of Representatives. The customs and procedures are different between the two bodies. I am only addressing specifically the action of the Senate. Such a distinction also should have been made in the reporting of the

"congressional" action on this issue, reflecting the realities of a bicameral legislature.

At least as regards the Senate, the sort of characterizations quoted above are simply unwarrented, as the facts clearly demonstrate.

First, there were four recorded, roll-call votes directly related to the tax-deduction issue, on which Members of the Senate had the opportunity to debate and cast their votes on the merits of the issue. Even Mr. Jarriel indirectly and, one suspects, inadvertently, acknowledged this fact in his commentary, saying:

> "...on September 24th, the very day the congressional leaders were maneuvering for their tax break...."

And saying subsequently:

> "Three times this winter, this leadership rushed new congressional tax goodies through....The final touch came December 16th."

Of course, Mr. Jarriel's characterization of these activities is distorted, and his understanding of what, in fact, took place is minimal, as will be pointed out later. But the point here is that there were several opportunities for Senators to stand up and be counted, through a recorded, roll-call vote, on this question, with the public and the press in the galleries presumably, if they were listening, in a position to "notice"

what was going on. Hardly a "back-corridor maneuver," as Mr. Jarriel described it.

To be more specific, the following chronology of events reflects the congressional, and especially the Senate, action on this issue:

September 24, 1981

A. During Senate Consideration of H.J.Res. 325, Fiscal Year 1982 Continuing Appropriations, Senator Ted Stevens (R-Alaska) proposed an amendment, no. 420, which removed the $3,000 limit on tax deductions for living expenses of Members of Congress, which had been in effect since 1954. The amendment expressed the "sense of the Congress that the dollar limits on tax deductions for living expenses of Members of Congress while away from home shall be the same as such limits for businessmen and other private citizens." (Congressional Record, September 24, 1981, p. S10388)

B. Senator William Proxmire raised a point of order against the amendment, a clear opportunity to kill the amendment parliamentarily. The Chair sustained the point of order.

C. Senator Stevens appealed the ruling of the Chair. The Chair's ruling on Senator Proxmire's point of order was not sustained, on a recorded roll-call vote of 44 to 54. (Ibid., p. S10404)

D. The Stevens amendment was then adopted on a recorded roll-call vote of 50 to 48, and became a part of H.J.Res. 325. (Ibid.)

September 25, 1981

The Senate passed H.J.Res. 325, as amended, by recorded vote of 47-44, insisted on its amendments, and requested a conference with the House of Representatives to iron out the differences between their respective versions of the bill.

September 30, 1981

A. The House of Representatives agreed to the Senate amendment on tax deduction in a separate vote.

B. The Senate once again voted on the amendment in a separate vote on an amendment in disagreement, and adopted the amendment on a recorded vote of 48 to 44. (Congressional Record, September 30, 1981, p. S10892-10893)

October 1, 1981

H.J.Res. 325 was signed into law by the President (P.L. 97-51; 95 Stat. 967, Sec. 139)

December 16, 1981

A. Senator Robert Dole (R-Kansas) offered an amendment, no. 799, to H.R. 5159, the Black Lung

Benefits Revenue Act. This amendment was described as a "perfecting" amendment, and in the course of discussion on the floor its specific purpose was outlined. It was two-fold. First, it was designed to clarify the situation wherein, under another provision of law, the deduction for living expenses, authorized in September, would apply differently to Members of Congress living in the Washington, D.C. area who are unmarried, or whose families are not with them, than it would apply to those who were married and whose families lived with them. The second purpose was to direct the Secretary of the Treasury to issue rules and guidelines to implement the previously-passed tax deduction provision. During floor discussion, it was also stated that it was the expectation that the Secretary would develop some "reasonable and fair" provisions for uniform deductions as an option in addition to that of itemizing and allocating expenses between individual and family expenses, with the understanding that no deductions would be allowed without substantiation that would be in excess of amounts that might be claimed through itemization. The amendment was voted on separately and not as an integral part of the Black Lung bill. That is, it could have been defeated and not jeopardized the passage of the main bill in any way. The amendment was adopted on a recorded roll-call vote of 46 to 44. (Congressional

Record, December 16, 1981, p. S15492)

B. The Senate passed H.R. 5159, the "Black Lung Benefits Revenue Act," on a recorded vote of 63 to 30.

C. The House agreed to the Senate amendments to H.R. 5159 (Congressional Record, December 16, 1981, p. H9788-9798; See also House Record for H.R. 4961 on December 15, 1981, and H. Report No. 97-404 for other House action in this issue.)

January 12, 1982

Secretary of Treasury Donald Regan announced rules regarding the implementation of the tax deductions for living expenses of Members of Congress, as directed by the Congress. The guidelines provide for three options, from which a Member may choose one for the purpose of calculating deductions to which he or she is entitled. The regulations were published in the Federal Register on January 21, 1982.

4. Hugh Downs joined the panoply of misrepresentation at his first opportunity, introducing the segment with the following statement:

"...a tax bonus for the already privileged. Members of Congress are paid nearly $61,000 a year, and in addition there are perks that some say double their

salary. And now, perhaps the unkindest 'cut' of all -- a private tax cut, just for them...."

There are three things I find objectionable in this statement.

First, the characterization of the "already privileged" Members of Congress. This standard, tiresome stereotype of Members of Congress living it up in the lap of luxury, spawned and proliferated by this sort of comment, is a myth, as any objective observer would have to conclude. If they are "privileged," it is because they feel it is a privilege to be elected to represent their fellow citizens in the Congress. They are "privileged" to be entrusted with the responsibility of governing, through the enactment of laws that drive public policy in the country; which is a staggering responsibility in this complex world and massive society with a gigantic federal government affecting the lives of every citizen. The suggestion that a $61,000 salary makes them by definition "privileged", in a pejorative sense -- as if it's not something they deserve -- represents a failure to understand and acknowledge the job they are called upon to do, or the personal sacrifices, both in terms of time and earning capacity, that they make in order to do that job.

It also fails to account for the relative lack of growth in the size of congressional salaries in the past dozen or so years. By any measure of inflation, the rate of congressional pay has not kept pace with the cost of living. Since 1969, when the congressional salary rate was $42,500, the Consumer Price Index

has increased by 131%. Other indices show similar increases. Yet, congressional salaries have increased by only 42%. The index of hourly earnings has gone up by 126%; the federal Civil Service GS average has gone up by 118%. Had the 1969 congressional salary level been increased according to the C.P.I., it would be $110,000 today.

One wonders, too, at the hypocritical condemnation of a $61,000 salary as indicative of a "privileged" status by major media figures whose own salaries are probably four or five times that amount or more. Of course, that is an assumption based on not much more than hearsay; we don't know exactly how much they are paid, because they are not required to make annual disclosures of their personal finances, as are Members of Congress. I suspect that would be considered by many journalists to be an unwarranted invasion of their privacy. Yet they are, individually and collectively, in a position to have a far greater impact on public attitudes, and therefore public policy, than any individual Member of Congress.

My second objection to Mr. Downs' statement concerns another pet stereotype of the media: That "there are perks that some say double their salary." Year after year the media repeats this assertion. And what do they point to as "perks"? A few examples I think will, illustrate the absurdity of their definition of "perks":

A. Free air travel to and from their home state or district.

What would they prefer? That Members of Congress

stay in Washington all of the time, isolated from the very people they are supposed to represent? It stretches the imagination to believe the press would fail to criticize that situation, if it existed. There is no doubt that the constituents would be critical of it! Do they suggest, then, that such travel to the district or state should be paid out of the Member's own pocket? When journalists go out on a story, who pays? Surely they don't pay for it personally. Is that not then a "perk" for the media, under their application of the principle to the Congress?

B. Free postage, through the congressional franking privilege.

(That word "privilege" again!) Members of Congress each receive thousands of letters a year from constituents, expressing views, asking for information, or seeking help. Do the media suggest those letters should go unanswered? What would happen to the notion of a representative form of government? More to the point, what are the people going to say when their representatives don't communicate with them? Don't respond to their pleas for help?

There is no question that there have been abuses of the franking privilege, usually in connection with newsletters. But the rules

governing the use of the frank have been modified in the past several years, and any objective study of those rules will lead to the conclusion that the limitations and restrictions make the frank a valuable and legitimate tool for communications between elected officials and the people they are elected to represent. As such, it is a necessary adjunct to the job of a Member of Congress. Furthermore, since it cannot in any way benefit him or her financially, how can it be considered to be a "perk"?

C. Free Telephones, WATS lines, etc.

Many of the same points can be made on this so-called "perk" as were made with regard to air fare and franked mail. It is difficult to believe that anyone would consider an office telephone to be a "perk" that contributes to a "doubling of the salary" of an elected official, or even benefits one personally in any material way. Sure, a WATS line could be used to make personal calls, and almost certainly is. But any congressional office one would care to ask will respond that they have strict and explicit restrictions on the use of WATS lines for personal calls. WATS lines are vital to the effective functioning of an individual physically located hundreds and, in many cases, thousands of miles from the people he or she is supposed to

serve, and their use saves the taxpayers literally millions of dollars in toll calls that would otherwise have to be made in the course of conducting official business.

D. Staff Allowances

It simply boggles the mind to see this mentioned repeatedly as a "perk" for a Member of Congress. These are not personal servants of a Member. They don't do the laundry, or cook or clean house. The only way I see that they might be of personal benefit to a Member of Congress is by keeping him or her from going insane or suffering total mental and physical collapse from trying to personally deal with all of the mail, answer all of the phone calls, and research all of the issues confronting the Congress on a day-to-day basis. Staff are nothing more than an extension of the Member's own resources and have but one purpose and that it to assist the Member in doing the job he or she is elected to do. How many employers, one might ask, consider their staff and subordinates to be "perks," as opposed to necessary resources? Some might argue that a staff enhance's the Member's political standing. However, knowledgable observers recognize that no amount of staff work can insulate a member from public scrutiny and personal accountability. Beyond that, the staff doesn't help to pay the Member's personal

bills.

> If the definition of a "perk" is applied to include staff, then we might ask the news commentators about their researchers, writers, eidtors, technicians and production staff. Aren't they also "perks" in the sense the term is being applied to members of Congress? Or is this one of those situations where we are supposed to accept a double standard?

I could go on. Mr. Downs says that "some say" these "perks" "double the salary" of Members of Congress. Who says it, and how can they justify such ridiculous assertions? Show me the evidence, and document how they have the effect of doubling congressional salaries. Show me, in fact, how they even materially augment their salaries in any real, measurable way. And, to the extent such "perks" as parking, first aid medical treatment, even lunch rooms, restaurants or barbershops are of personal benefit to Members, show me how that is different from many progressive organizations with hundreds of employees which provide similar "amenities and services" to their employees. This does not make Members of Congress "privileged" in a way millions of other individuals in the American work force are not also "privileged".

Finally, on this point, Mr. Downs' description of the "unkindest cut of all ++ a private tax cut, just for them" also is unfair. It ignores the intent of the sponsors of this legislation, which was to give some relief to Members of Congress who incur added personal expenses as a direct result of their

"employment," in a manner similar to that provided to individual businessmen and state legislators for direct personal costs they incur in the course of legitimate business activity. That intent is clearly spelled out in the language enacted in September, which established the expanded tax deduction for Members of Congress:

> "Sec. 139(a). It is the sense of the Congress that the dollar limits on tax deductions for living expenses of Members of Congress while away from home shall be the same as such limits for businessmen and other private citizens."

There is no question that the specific terms of providing that relief may differ; after all, the circumstances and burdens are different. The solution has to be tailored to fit the situation. That does not mean that the underlying principle is violated. There are, of course, only 535 Members of Congress. They are, in that sense, a unique assembly of people. Why should we expect a solution to their unique problems not to also be unique, or "just for them", to use Mr. Downs' phrase?

In looking for a benchmark of some sort, against which to compare the congressional tax deduction, the most logical place to look is for a situation where the terms of "employment" are reasonably similar to those of Members of Congress. State legislators provide the best available comparison. As Senator Robert Dole point out, during the debate on his amendment:

> "There is precedent for this deduction of certain

costs without documentation. We did that in the Economic Recovery Act for State legislators." (Congressional Record, December 16, 1981, p. S15490)

Actually, the precedent is even broader, as the following exchange from that same debate illustrates:

"Mr. PROXMIRE. Does that not give the Member of Congress an extraordinary advantage compared to the average business taxpayer who has to substantiate everything?

Mr. DOLE. As I understand their rules now, they have arrangements between them for reimbursement between the employer and the employee. So we are not breaking new ground.

Mr. PROXMIRE. Is a businessman allowed to make deductions in broad areas without substantiation, subject to audit?

Mr. DOLE. Yes, without substantiation, where it is either per diem or reimbursement from his employer, the employee has an agreement with the employer and the employee spends the amount specified in the agreement." (Ibid., p. S15491)

Mr. Downs' comment, then, is both unfair and inaccurate, and infers that Members of Congress have gone about giving tax relief to themselves, and not to others upon whom similar, though not identical, burdens are imposed. It is a blatant attempt to

portray them as greedy and selfish; to cast them as the "bad guys," worthy only of contempt; to, in fact, make all the other allegations and characterizations in the piece all that much more believable to the listening audience.

5. Tom Jarriel than followed Mr. Downs with a simple error of fact. He describes the tax deduction as a:

> "...nifty bonus they awarded themselves in December."

He later makes the comment::

> "...on September 24th, the very day the congressional leaders were maneuvering for their tax break...."

Mr. Jarriel doesn't appear to really understand what the Congress, in fact, did, or when they did it. One wonders, therefore, if he is really in a position to report it fairly and accurately.

As the chronology outlined earlier clearly indicates, it was in September when the tax deduction was passed. The December action was a clarification of the tax deduction, and a specific direction to the Secretary of Treasury to formulate guidelines and regulations for the implementation of the tax deduction. This distinction is completely ignored in the overwhelming majority of news items on this issue, and in the "20/20" piece it is confused, at best. Instead, the message one hears is only the description of the "backdoor tactic" of "attaching the tax-cut to

the Black Lung Benefits Bill." Contrary to what Mr. Jarriel said, there was no tax-cut passed in December; there was only an amendment passed which clarified the law which had been on the books since October 1st. As for the "Black Lung Connection," I will address that more specifically later.

Mr. Jarriel then finished his opening statement with the following:

> "How they did it and why they did it in these lean economic times has touched off a ground swell of public anger that's threatening to bring that stately old dome right down around their political ears."

In the first place, neither the stately old dome, nor the Members' "political ears" (said as if they had some form of grisly infection) are in danger as a result of the "ground swell of public anger". From my own conversations with many of those angry people I find that it is not so much what, how or why the Congress did what they did, as it is the inflammatory, distorted, and misleading press reports which has touched off the "ground swell" of anger. Without exception, my conversations with those who are genuinely concerned and want to understand what the congress did have resulted in a positive and amicable exchange. I won't pretend that I have convinced every one of them of the correctness of the tax deduction, or its merits, but they have certainly felt better about the means by which it was done, at least in the Senate, and they certainly shared my own puzzlement at why the media have provided such distorted and inflammatory

accounts of the congressional action.

6. Mr. Jarriel's next appearance on camera brings with is the following statement:

> "What Congress voted for adds up to a total of $10.5 million in personal tax deductions for themselves. Under a complicated I.R.S. formula, each lawmaker can deduct $75 per day for each so-called congressional day. Now, they are assured at least 262 of those congressional days. That includes weekends, by the way. So they get to deduct $75 for each of those days, bringing their total tax break to a figure of $19,650 per member."

There are at least four things wrong with this statement.

First is the figure of $10.5 million dollars in personal tax deductions. It is easy to see where the figure came from. Multiplying the $19,650 figure used in the latter part of the statement, which was arrived at by multiplying $75 times 262 days, times 535, the number of Senators and Congressmen, results in a figure of $10,512,750. At least the arithmetic is reasonably correct, when you use round figures. The problem is in the assumption of the baseline figure -- the $19,650 amount of individual deductions. That figure is based on assumptions made which may or may not be valid, and which raise the next two points which give me trouble with this statement. I will note those and use them to make my point about the $10.5 million figure.

The second point is the $75 per day figure used as the base for calculating deductions. Mr. Jarriel fails to point out -- nor is it pointed out anywhere else in the program -- that the $75 per day deduction is only one of three options which, under the IRS guidelines, Members may use to calculate their deductions. In order to best explain this, I will jump ahead to a subsequent statement by Mr. Jarriel which clearly illustrates his failure to understand or unwillingness to explain the nature of the tax deduction process in question here. Of course, he does make reference to "a complicated IRS formula," perhaps in an effort to justify his lack of understanding. It really isn't all that complicated, and since a thorough understanding of it is essential to be able to fairly describe it, I would have thought that responsible journalistic practice would require that some special effort be made to unravel its mysteries. The statement Mr. Jarriel makes is as follows:

> "Congressmen who own their own homes in Washington can deduct even more than the $19,600. Like all taxpayers, they can deduct the mortgage interest and the real estate taxes, but now they can gradually write of the entire value of their Washington properties, and with receipts they can bill Uncle Sam for even more."

This statement is the clearest possible evidence that no effort was made to understand, much less fairly describe, the actual implementation of the deduction. What Mr. Jarriel has done here is to take the three options provided to Members of

Congress has only one of which they are allowed to take - and lump them together as three parts of a single option! To illustrate this, let me describe the "complicated IRS formula". The following is a simplified paraphrase of the I.R.S. regulations:

A. The member may deduct actual living expenses if substantiated by proper records. These deductions would be limited to those expenses which are incurred by the Member alone as not by his or her family; allocations of expenses would have to be made accordingly, OR

B. A Member may deduct an amount equal to $75 (the amount authorized for per diem expenses for federal employees on travel to the Washington, D.C. area) multiplied by the number of "congressional days" during the particular tax year. "Congressional days" are defined as the number of days of the year (365) minus any period when the Congress is not in session for five or more days. (The I.R.S. guidelines used as an example a hypothetical year in which the number of "congressional days" was 241. If a Member chooses this option, he or she must give up any deduction for taxes and interest on his or her residence in the Washington, D.C. area, OR

C. A Member may deduct an amount equal to $50 times the number of "congressional days" in the year and

continue to deduct the interest and taxes on a home in the Washington, D.C. area.

I repeat, this is an "either-or" situation. Only one of these three methods may be used by a Member to calculate expense deductions; not all of them in unison. The $19,600 figure used in the "20/20" program is based on the $75 per diem option ($75 times 262, the number of congressional days for House Members in 1981, equals $19,650.) A highly significant point is totally ignored in the program: under this option a Member must give up any deduction he or she might otherwise make for the taxes and interest on a home owned in the Washington, D.C. area. That is, as any taxpayer knows, the largest single source of deduction for most taxpayers -- yet it is denied to Members if they use the $75 per deim option. This is significant because it means that either a Member who owns a home will take the $50 per diem option instead of the $75 per diem option; or, if he or she takes the $75 option, it will mean the loss of the deduction for mortgage interest and taxes. In either case, the assumption made by Mr. Jarriel in arriving at the $10.5 million figure is invalid. If some Members take the $50 per diem option, then the total deduction for them is one-third less than it would have been at $75 per diem; so that amount would have to be deducted from the $10.5 million. Because a large number of Members own homes in the Washington, D.C. area, it is reasonable to assume a high percentage would choose the $50 per diem option, thereby reducing the $10.5 million figure considerably.

On the other hand, if many Members who own homes were to choose the $75 option, their deduction of $19,650 (if they were

House Members) would be offset by whatever the amount they as a group would otherwise deduct in taxes and interest. This would make their individual net deduction, after that offest, worth some amount less than the $19,650. Obviously, that amount, for that group of Members, also would have to be deducted from the $10.5 million total.

Even more fundamental than this is the question of the number of "congressional days" by which the selected per diem rate is multiplied. The"20/20" program uses the figure of 262 days. In fact, Mr. Jarriel actually goes so far as to say "they are assured at least 262 of those congressional days". So he uses the 262 figure as inviolate and bases all his arithmetic on it. It takes no mathematical genius to know if you are trying to come up with a sum which is the result of multiplying two figures you will get a different answer if you change one of the two figures. Multiplying $75 by 262 will give you one number. Multiplying $75 by some other figure will give you another one. If you multiply both products by 535, you will get two different answers, and you will greatly expand the gap between the two. (I am trying to make this as simple as possible for Mr. Jarriel who doesn't like "complicated formulae.") It was true that in 1981 there were 262 "congressional days" for Members of the House of Representatives, as defined by the I.R.S. guidelines. However, the Senate "congressional days," under the Treasury definition, were 256. Not a massive difference, to be sure. The point to be made, however, is that the number of "congressional days" may be ** and usually is ** different between the House and the Senate, depending on their respective schedules. It also varies from

year to year, and in many years has been considerably less than the 262 figure used in the program. Therefore, Mr. Jarriel is wrong to use a single figure and even more wrong to state it as the minimum number of "congressional days" of which Members can be assured.

Getting back to the original statement, it is clear that the $10.5 million figure is wrong. The figure of 262 congressional days is wrong, both as a matter of fact for 100 Senators, and as a generalization as a minimum figure. And, finally, the $19,650 deduction for each member is wrong, since it reflects only what some members of the House might have as a deduction (only those who do not own a home and choose the $75 per diem option), and no members of the Senate. In short, every single figure used by Mr. Jarriel is either wrong or incorrectly used. The result is a gross generalization that distorts the true picture of the deduction.

One other point that Mr. Jarriel fails to take into account is the announced intention of not a few Members of Congress not to exercise any of the options to secure a deduction for living expenses. Remember, all three options have the word "may" in them -- not the word "shall".

So much for the first statement of Mr. Jarriel under this point. The second statement (which I jumped ahead in the transcript to point out to underscore his lack of understanding of the deduction) bears one more look in light of what I have said. Here again is what Mr. Jarriel said:

"Congressmen who own their own homes in Washington can deduct even more than the $19,600. Like all taxpayers, they can deduct the mortgage interest and the real estate taxes, but now they can gradually write off the entire value of their Washington properties, and with receipts they can bill Uncle Sam for even more."

This entire statement is wrong. If a Member has taken a $19,600 deduction, to use the figures Mr. Jarriel is using, it means he or she is a House Member and has chosen to use the $75 per diem option. If they are deducting interest and real estate taxes, then they must have chosen the $50 per diem option, which allows them to retain the customary deduction for taxes and interest. If they are writing off any value in their property, and using receipts to get even more deductions, then they could only have chosen the itemizing option, and even then they would have to make the necessary allocations of expenses between themselves and their family, thus making it impossible to write off either expenses or property value in their entirety.

Yet, Mr. Jarriel says this as if they can make all of these deductions at the same time. Someone should remind him that while "and" and "or" are both conjuctions, they mean very different things.

7. Tom Field, Executive Director of Tax Notes, gets back on camera with another comment with which I disagree. He says:

"Congressmen, when they're at work in Washington,

really are not away from home. It is true that there's a statute that says that congressmen's homes are back in their districts. But for an ordinary businessman, home is where the work is. And where the work is for a congressman is right here in Washington."

As I have said previously, the circumstances of employment for Members of Congress and businessmen obviously differ. It is ridiculous to suggest that they are identical and to therefore assume that their tax treatment should be identical. As I also said before, however, that does not mean that the same basic concept of tax relief cannot be applied to both, and that is what was intended by the Congress in its adoption of the tax deduction for Members, as I have demonstrated in Item No. 4 above.

Mr. Field not only dismisses that notion, and appears to be able to think only in terms of exactly similar circumstances and exactly similar procedures for determining deductions, he also ignores some obvious facts. He says that "for an ordinary businessman, home is where the work is." That is not the issue here. An ordinary businessman, when he travels, is going where the work is ~~is~~ away from home. And he is allowed to deduct the reasonable expenses incurred when he does that. The same it true for Members of Congress. They are elected from a District or State. They are not even eligible to seek the office if they do not live in that district or state. Once elected, they are not expected to then sever their ties with the district or state ~~as~~ quite the contrary. Their continued service requires that they

maintain their connection with the constituents they have been elected to represent. The most fundamental and essential responsibility they have is to move among those constituents and get to know their concerns and problems. They are then sent to Washington by those constituents -- their true employers -- to represent their interests in the same way a businessman is sent to his travel destination by his employer to represent his interests.

It only has been since just after the Second World War that the Congress has met in Washington for most of the year. Before that, it was unusual if they met in Washington for more than nine months out of the twenty-four months of a Congress. The rest of the time was spent at home, among their constituents. The changing situation, and the resulting necessity for Members to be in Washington for most of the year, created the need for them to own or rent a residence in the Washington, D.C. area, and, if they wanted to see their families, to bring them with them. That was an added economic burden, placed upon them strictly by virtue of their service. This was recognized in 1952 with the adoption of statute which not only acknowledged that their legitimate home is in their state or district, but also allowed them to take a $3,000 deduction for living expenses in the calculation of their federal income taxes. Mr. Field's brusque dismissal of this statute ignores the fact that there was a good and sufficient reason for it then, as there is a good and sufficient reason for a living expense deduction now -- but not a deduction based on the financial situation of Members of Congress thirty years ago.

For as long as Members have been forced to maintain a residence in the Washington, D.C. area, it has been recognized that they deserve some relief from the personal costs imposed upon them by that necessity, and that relief has been given by means of a tax deduction. The action taken last year by the Congress was nothing more than an effort to bring that deduction into line with the changed economic situation. It was not a "new tax goody." This point has been totally ignored by most news media accounts, and the "20/20" program is no exception.

I am not suggesting that the simple fact that it has been done for thirty years makes it right; I am simply pointing our that it was done for specific reasons, with a historical background, which can debated elsewhere on their merits. It was not then, nor is it now, a pernicious attempt to feather the nests of Members of Congress. Instead, it was an effort to lessen the financial pain of buying both "feathers" and a "nest" that Members would not be forced to buy if they were not Members of Congress.

Many will say, on this point, that "they knew the cost before they were elected, and they shouldn't have run if they couldn't afford it." That argument goes directly to the question of what sort of people do we want to have in the Congress? Do we want only those from the economic elite, who can "afford" it? Already, an estimated one-third of all Senators are millionaires, along with at least thirty House members. These people obviously don't need the tax relief, or any help with living expenses -- though I would argue, in a purist sense, that

they, too are deserving of relief from costs they would not otherwise have to incur. But how many more financially independent people will come to the Congress because they are the only ones who can afford it, which will be the case if something is not done for the others of lesser means? Not that millionaires are not fully competent individuals capable of selfless dedication to serving the public, but they are not, by definition, representative of the broad and diverse American electorate.

8. The next point in the program is the comment Mr. Jarriel makes about Members of Congress who live in their offices, and for whom the tax break is, in Mr. Jarriel's words, "...like a free handout".

Without questioning the fact of some number of Members living in their offices, I wonder at the fact that "20/20" chose to point out that situation without asking those Members "Why?" What is it that prompted them to live in their offices in the first place? I would lay odds that the answer to that question would be something like this: "I can't afford to do otherwise; it's just too expensive for me to live anywhere else in the Washington area and still keep my home in the district." Rather than being used as an example of how a Member of Congress could get a "free handout" with the tax break, it seems to me that a fair story also would have to use these congressmen as an example of how financially burdensome it is -- even on a salary of $61,000 plus $4 to maintain two residences, and therefore as an example of the justification for a tax deduction for living

expenses.

As for the prospects of a "windfall" from the tax deduction for someone living in his or her office, I would have to point out again that Members of Congress are not REQUIRED to take a tax deduction; they MAY take one. If these Members don't need it, they probably shouldn't take it. If they take it, it seems to me that they should now be in a position to be able to start looking for someplace to live other than their office. They seem to me to be one of the best arguments FOR such a tax deduction for living expenses as the Congress has adopted.

9. Mr. Jarriel suggests that the timing of the tax break was particularly bad. He cites President Reagan's statement on September 24, 1981 that:

> "We must also ensure that taxes due the government are collected, and that a fair share of the burden is borne by all."

This quote by the President is used, obviously, to suggest that Members of Congress are working against the spirit of the President's comment by adopting a tax deduction for living expenses, or, even worse, that they are "ducking" their liability. I would, instead, use the same comment to underscore the justification for the tax deduction. The President said that "a fair share" of the tax burden should be borne by all. The entire objective of the congressional tax deduction was to resolve an UNFAIR situation, in which Members were bearing a greater burden than they should by virtue of a thirty-year-old

limit on the amount they could deduct for living expenses. The President certainly did not mean by his statement that no one should have tax relief -- how else could he have proposed one of the largest tax cuts in history? He obviously was talking about applying the tax burden fairly. So was the Congress, in adopting the living expense deductions. The fact that the law affects themselves is taken to mean that it is selfish and greedy. But, under the Constitution, who else is going to do it for them? They make the laws; it is their responsibility, and is a constitutionally unavoidable conflict of interest. They could either ignore the problem, and continue to suffer the consequences, or face up to it, debate it, and act upon it, as they did, in the full light of day.

10. Following the President's comment, Mr. Jarriel says:

> "None of the congressional leadership would appear on camera to answer questions about the tax break."

The producers of "20/20" invited Senator Jake Garn, of Utah, among others, to appear on the program. Senator Garn is a member of the leadership, as Secretary of the Republican Conference. He indicated that he would be happy to appear, providing he had enough time to explain what, in fact, the tax deduction meant. The "20/20" staff said they would get back in touch. They never did. Apparently, they felt their time was too short to allow anyone an ample opportunity to defend the deduction. Looking at the program as it was aired it is easy to see why. They had a twenty second statement by Congressman Bill Chappell as the ONLY statement in the entire program in defense of the Congress'

action.

With only twenty seconds available to them to state their case, why SHOULD any of the congressional leadership appear on camera? Whatever they could say in the brief time allowed would be drowned out by the avalanche of distortions and misrepresentations on the other side. As the sheer length of this response indicates it would take an hour, at lest, to reply to the statements and assertions made in the rest of the program in any fair and meaningful way. But that would give the viewers an opportunity to judge for themselves, on the basis of a balanced discussion of the issue, whether or not the deduction was justified. That does not appear to be what "20/20" had in mind.

11. Mr. Jarriel, at this point, makes the statement I referred to earlier, under items number 3 and 5, above, where he describes a connection between the congressional tax break and the Black Lung Benefits Bill. To repeat, he says:

> "Senator Dole hooked a tax break amendment onto the popular Black Lung Bill. It could not pass without the tax break also going through, and the Black Lung Bill was certain to pass."

A few moments later he says:

> "The immensely popular Black Lung Bill, H.R. 5159, passed, and along with it the tax break."

At the risk of repeating some of what has already been said, in describing the chronology of events involving the tax

deduction, let me point out the inaccuracy of these statements. I stress this because the "Black Lung Connection" has been raised over and over again by the media as some insidious, dark, and sinister act. This has been one of the most greatly misrepresented and misunderstood aspects of this issue, and a chief source of irritation for the public because of the way it has been portrayed by the media.

Mr. Jarriel says that "Senator Dole hooked a tax break amendment onto the popular Black Lung Bill." That is wrong on two counts. First, it was the Senate, not Senator Dole by himself, which "hooked" an amendment onto the bill, by a separate vote of 46 to 44. Without that vote, the bill would not have been amended to include any reference to tax deductions for living expenses, and THE BILL WOULD CERTAINLY HAVE PASSED WITHOUT IT, directly contrary to what Mr. Jarriel says. Once that amendment was adopted, THEN and ONLY THEN would Mr. Jarriel's statement that the bill "...could not pass without (it)..." be accurate. The bill was not being held hostage to the Dole amendment, and it is totally inaccurate and irresponsible to suggest otherwise.

Another aspect of this is the frequent implication by the media that attaching an amendment to another bill is a sneaky thing to do. This kind of statement demonstrates a fundamental lack of understanding of the legislative process. Amendments, called "riders," are attached to bills on the floor all of the time. There is no requirement in the Senate, except under cloture situations, and some appropriations measures, for an

amendment to be directly related to the main topic of a bill. The amendments stand or fall on their own merits, in separate votes, before they are attached to a bill. If they are adopted as part of a bill, the bill is only a vehicle, on which the amendment "hitches a ride" through the legislative process. It can still be addressed as a separate issue in the other body, if someone wishes to offer an amendment to the bill as it came from the other house, or in a conference committee.

If one is going to criticize the procedure of adding a "rider" to a bill as an inherently inappropriate procedure, it is important to know the pattern, practice and history of its use. It would take too long to outline it all here, but two examples might help:

> A. In 1960, Senate Majority Leader Lyndon Johnson used the "rider" technique to bring civil rights legislation to the floor of the Senate. He called up a minor House-passed bill which dealt with authorizing the Army to make some unused barracks available at Fort Crowder, Missouri, to be used temporarily as a school for the town of Stella, Missouri, whose school had burned down. With the bill pending before the Senate, he then invited Senators to offer civil rights amendments to it. How many of those criticizing the "sneaky" procedure in the Black Lung Bill passage would be critical of Johnson's use of the same procedure in

connection with civil rights legislation?

B. In 1979, the Federal Election Commission authorization bill was amended in a surprise move with a "rider" which was, in fact, a complete bill, known as the "Obey-Railsback" Bill. This legislation dealt with limitations on political action committees. Groups like Common Cause, a leading critic of the "Black Lung Connection" on congressional tax deductions, would surely not be critical of the same procedure, when used to promote a bill like "Obey-railsback", which was a major legislative goal of Common Cause.

Other examples could be given. Surely, those who criticize the "Black Lung Connection" would have to apply the same criticism to these examples, or stand guilty of an obvious and blatant double standard.

The second count on which Mr. Jarriel's statement is wrong is in his characterization of the Dole amendment. He calls it "the tax break." I previously explained in some detail, under item number 5, above, why this characterization is wrong. "The tax break," as Mr. Jarriel calls it, was adopted in September and had nothing to do with the Black Lung Bill. The Dole amendment was a clarification of the tax deduction, and a simple direction to the Secretary of the Treasury to issue guidelines for its implementation. NO NEW BENEFIT WAS CONFERRED that was not already authorized under the previously passed language.

CONCLUSION

This response has become far more lengthy than anticipated. However, the inaccuracies and distortions presented in the "20/20" program were simply too numerous and too onerous to leave unanswered. In fact, there is no question that a book-length response could easily be made to the larger issues raised in the program. The tax treatment of Members' living expenses, their so-called "perks", the procedures used in the legislative process, congressional salaries, even the very nature of the job of a Member of Congress, all are issues raised, directly or indirectly, by the "20/20" program.

Unfortunately, most people simply would not take the time to read such a response, or even discuss these issues in any detail. They prefer to rely on presumeably informative news stories and programs like those produced by "20/20" for their information. As long as that is the case, and as long as those news programs continue to be shallow, unfair and inaccurate, as I believe I have shown the "20/20" program on the tax deduction to be, the public will never really understand and appreciate the institutions of their government. They will continue to denigrate and condemn those institutions and the people in them, who are too busy doing their jobs to defend themselves against the constant barrage of yellow journalism and hypocritical hyperbole directed at them. More and more people will decide that public service is not worth the aggravation and personal sacrifice, and more and more citizens will lose respect for and confidence in their institutions of government. Carried to their logical conclusion, the implications of these developments for our democratic society are not only discouraging -- they are frightening.

I hope it is not too much to ask that someone at ABC will read this response objectively, recognize the weaknesses of the content of "The Great Capitol Tax Gain," and take steps to ensure that writing and reporting of such poor quality is never again inflicted upon the American people.

A STATEMENT TO THE FINANCE COMMITTEE
BY
SENATOR JOHN H. CHAFEE
CONCERNING LEGISLATION TO REPEAL
PER DIEM TAX DEDUCTION FOR MEMBERS OF CONGRESS

JUNE 18, 1982

MR. CHAIRMAN, ON FEBRUARY 9 I INTRODUCED LEGISLATION TO REPEAL THE AUTHORITY OF THE INTERNAL REVENUE SERVICE TO GRANT MEMBERS OF CONGRESS A PER DIEM TAX DEDUCTION FOR UNSUBSTANTIATED BUSINESS EXPENSES. MY BILL WOULD REQUIRE MEMBERS OF CONGRESS TO DEDUCT EXPENSES ON EXACTLY THE SAME BASIS AS OTHER TAXPAYERS.

OVER THE PAST NINE MONTHS, THE SENATE HAS CHANGED THE RULES FOR DEDUCTING CONGRESSIONAL BUSINESS EXPENSES ON THREE OCCASIONS, ONCE DURING DEBATE ON THE FIRST CONTINUING RESOLUTION IN SEPTEMBER, AGAIN JUST BEFORE WE ADJOURNED SINE DIE IN DECEMBER, AND YET AGAIN LAST MONTH WHEN WE AMENDED THE URGENT SUPPLEMENTAL APPROPRIATIONS BILL. LET ME BRIEFLY REVIEW THE LEGISLATIVE HISTORY.

IN 1954, CONGRESS PASSED A LAW ALLOWING EACH MEMBER OF CONGRESS TO DEDUCT $3,000 FROM HIS/HER SALARY TO OFFSET THE COST OF MAINTAINING A SECOND RESIDENCE IN THE WASHINGTON AREA. IN SEPTEMBER 1981,

CONGRESS VOTED TO REMOVE THE $3,000 DEDUCTION, THEREBY REQUIRING THE MEMBERS TO ITEMIZE THEIR LEGITIMATE BUSINESS EXPENSES, JUST AS ANY OTHER TAXPAYER WOULD DO.

I SUPPORTED THIS ACTION BECAUSE I DO NOT BELIEVE MEMBERS OF CONGRESS SHOULD BE TREATED DIFFERENTLY FROM OTHER TAXPAYERS. ENACTING SPECIAL TAX LAWS JUST FOR SENATORS AND CONGRESSMEN IS WRONG ON PRINCIPLE AND CREATES PUBLIC DISTRUST OF ELECTED REPRESENTATIVES. THEY SHOULD ITEMIZE BUSINESS EXPENSES UNDER THE RULES APPLICABLE TO EVERY OTHER CITIZEN AND BE SUBJECT TO THE SAME IRS SCRUTINY FACED BY EVERY OTHER TAXPAYER.

IN DECEMBER, HOWEVER, CONGRESS LEGISLATED ONCE AGAIN ON THIS SUBJECT. AN AMENDMENT PASSED, WHICH I AND 43 SENATORS VOTED AGAINST, REQUIRING THE IRS TO DRAFT SPECIAL REGULATIONS ESTABLISHING AN AMOUNT THAT MEMBERS OF CONGRESS CAN DEDUCT FOR EXPENSES WITHOUT PROVING THE EXPENSES WERE ACTUALLY MADE. IRS HAS SET THAT AMOUNT AT $75 FOR EVERY DAY, AND MANY WEEKENDS IN BETWEEN THE DAYS, THAT CONGRESS IS IN SESSION. NO OTHER AMERICAN IS BLESSED WITH SUCH PRIVILEGE.

THIS NEW PROVISION IS A DIRECT CONTRADICTION TO THE PRINCIPLE WE SOUGHT TO ESTABLISH IN SEPTEMBER BY REMOVING THE $3,000 LIMIT. IN THESE TIMES OF FISCAL AUSTERITY, WHEN CONGRESS HAS VOTED TO CUT SHARPLY IN MANY IMPORTANT DOMESTIC SPENDING AREAS, WE ARE CREATING A DOUBLE STANDARD: BENEFITS FOR CONGRESSMEN AND BENEFIT CUTS FOR

EVERYONE ELSE. THESE LEGISLATIVE ACTIONS HAVE NOT ESCAPED PUBLIC NOTICE. LET ME QUOTE FROM LETTERS WHICH MY CONSTITUENTS HAVE SENT ME ON THIS MATTER. THEY SPEAK MORE ELOQUENTLY THAN I CAN.

> "AS HARD WORKING, PRODUCTIVE CITIZENS, WE FEEL THAT WE MUST GO ON RECORD AS NOTIFYING YOU THAT WE FIND THIS (TAX BREAK) TO BE AN UNCONSCIONABLE AND RECKLESS PROPOSAL IN THE FACE OF ALL THE CUTS BEING PUT INTO EFFECT BY OUR PRESIDENT WHICH ARE PARTICULARLY DESTRUCTIVE TO THE POOR AND ELDERLY WHO ARE SUFFERING FROM THE RIGORS OF A HARSH WINTER...;"

> "I AM WRITING TO EXPRESS MY SURPRISE AND DISAPPOINTMENT WITH THE MANNER IN WHICH CONGRESS UNDERHANDEDLY VOTED ITSELF A RAISE BY PROVIDING FOR TAX BREAKS AND ALLOWANCES TO WHICH NO OTHER CITIZEN IS ENTITLED...HOW DO YOU THINK THIS MAKES THE AVERAGE AMERICAN, WHO HAS NO CONTROL OF THE CONSTANT TUG ON HIS OR HER TAX DOLLAR, FEEL;" AND

> "WHO ARE YOU TO PRESENT YOURSELVES AS AN INSULATED CLASS OF THE EFFECTS OF INFLATION AND TAXATION THAT YOUR PEERS MUST FACE?"

IN A HURRIED RESPONSE TO THIS PUBLIC OUTCRY, LAST MONTH THE SENATE VOTED TO REVERSE ITS EARLIER DECISIONS BY REIMPOSING THE OLD $3,000 CAP. THIS IS SIMPLY NOT AN EQUITABLE SOLUTION. FOR SOME SENATORS, THIS LIMIT MAY BE TOO HIGH, FOR SOME IT MAY BE TOO LOW. WHY CAN'T WE SIMPLY TREAT OURSELVES LIKE WE TREAT ALL OTHER U.S. TAXPAYERS?

MR. CHAIRMAN, THE LAW ON THE SUBJECT OF BUSINESS TAX DEDUCTIONS SHOULD BE NEUTRAL. MEMBERS OF CONGRESS SHOULD ENJOY NO SPECIAL TAX PRIVILEGES NOR BEAR ANY ADDED BURDEN. HAVING CONSISTENTLY VOTED WITH THESE OBJECTIVES IN MIND, I URGE MY COLLEAGUES TO COSPONSOR AND SUPPORT MY BILL.

STATEMENT OF SENATOR LONG ON LEGISLATION TO ELIMINATE SPECIAL TAX TREATMENT OF MEMBERS OF CONGRESS.

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT.

JUNE 18, 1982

MR. CHAIRMAN, THANK YOU FOR SCHEDULING THIS HEARING TO ALLOW THE SUBCOMMITTEE TO CONSIDER THE ISSUE OF WHAT IS WRONG WITH THE TAX CODE AS IT APPLIES TO MEMBERS OF CONGRESS, AND WHAT IS NECESSARY TO FIX IT.

IN APRIL, I INTRODUCED S.2413. THE COSPONSORS OF THE BILL ARE SENATORS BENTSEN, MOYNIHAN, MITCHELL, DURENBERGER, GRASSLEY, CANNON, PROXMIRE, NUNN AND COCHRAN. S.2413 WOULD ELIMINATE FROM THE INTERNAL REVENUE CODE ALL SPECIAL PROVISIONS RELATING TO DEDUCTIONS CLAIMED BY MEMBERS OF CONGRESS. MANY MEMBERS AND MANY CONSTITUENTS HAVE SAID THAT ALL THEY WANT IN THIS AREA IS FOR MEMBERS OF CONGRESS TO BE TREATED THE SAME AS EVERYONE ELSE. I AGREE, AND BELIEVE THAT THIS GOAL CAN BE ACHIEVED ONLY BY ELIMINATING EACH AND EVERY REFERENCE TO MEMBERS OF CONGRESS FROM THE INTERNAL REVENUE CODE. MY BILL IS THE ONLY ONE THAT DOES EXACTLY THAT.

WHAT IS WRONG WITH THE CURRENT TAX RULES APPLICABLE TO MEMBERS OF CONGRESS? ONE THING THAT IS WRONG IS THAT MEMBERS ARE ALLOWED AN UNSUBSTANTIATED $75 A DAY DEDUCTION FOR EVERY DAY THAT CONGRESS IS IN SESSION. I VOTED FOR THE STATUTORY PROVISION AUTHORIZING THESE REGULATIONS AS AN AMENDMENT TO THE BLACK LUNG BILL IN DECEMBER OF 1981, BUT I HAVE COME TO THE CONCLUSION THAT THAT VOTE WAS A MISTAKE. THE FIRST THING THAT MY BILL DOES IS REPEAL THE AUTHORITY FOR THOSE REGULATIONS.

DOING AWAY WITH THE $75 A DAY IS NOT ENOUGH. THREE OF THE BILLS UNDER CONSIDERATION TODAY WOULD ONLY GO THAT FAR. THE REAL PROBLEM HERE IS THAT THE INTERNAL REVENUE CODE PROVIDES THAT A MEMBER OF CONGRESS HAS HIS PRINCIPAL PLACE OF BUSINESS BACK IN HIS HOME STATE. UNDER THESE BILLS THAT DO NO MORE THAN REPEAL THE $75 A DAY DEDUCTIONS, ALL I WOULD HAVE TO HAVE IN LOUISIANA IS JUST AN ADDRESS, AN ADDRESS OF A FRIEND, AND NOT EVEN A CHANGE OF UNDERWEAR IN THE SPARE BEDROOM, AND THAT WOULD BE CONSIDERED AS MY PRINCIPAL PLACE OF BUSINESS FOR TAX PURPOSES. WASHINGTON WOULD NOT BE CONSIDERED TO BE MY HOME OR MY PRINCIPAL PLACE OF BUSINESS, EVEN THOUGH THIS IS WHERE I DO THE MAJORITY OF MY WORK AND IS WHERE I SPEND MOST OF MY TIME. BECAUSE OF THE STATUTORY FICTION THAT I AM AWAY FROM HOME WHEN I AM IN WASHINGTON, I COULD ITEMIZE MY WASHINGTON EXPENSES AND CLAIM THEM AS DEDUCTIONS, EVEN IN EXCESS OF $19,000. THERE IS NO BUSINESSMAN IN THE COUNTRY WHO GETS TO DEDUCT THE COST OF LIVING AT HOME, WITHIN COMMUTING DISTANCE OF THE OFFICE WHERE HE DOES MOST OF HIS WORK. THE ONLY REASON THAT MEMBERS OF CONGRESS CAN DEDUCT THIS TYPE OF PERSONAL LIVING EXPENSE IS BECAUSE OF THIS SPECIAL RULE FAVORING US AGAINST EVERY OTHER TAXPAYER. THAT IS WRONG, AND IT SHOULD BE CORRECTED.

THERE ARE ALSO BILLS BEING CONSIDERED TODAY THAT WOULD PLACE A CAP ON WASHINGTON LIVING EXPENSE DEDUCTIONS, BUT WHICH WOULD LEAVE IN THE TAX CODE THE IRREBUTABLE PRESUMPTION THAT A MEMBER'S PRINCIPAL PLACE OF BUSINESS

IS IN HIS CONGRESSIONAL DISTRICT. FOR EXAMPLE, SOME OF THESE BILLS WOULD RESTORE THE RULE OF PRIOR LAW THAT THERE WAS A $3,000 CAP ON WASHINGTON EXPENSES. WHEN THIS TYPE OF PROVISION WAS OFFERED AS AN AMENDMENT TO THE URGENT SUPPLEMENTAL APPROPRIATIONS BILL, I VOTED FOR IT, SO THAT WE COULD RESTORE THE STATUS QUO AND GET A CALMER ATMOSPHERE IN WHICH TO DELIBERATE OVER WHAT THE RIGHT SOLUTION TO THIS PROBLEM SHOULD BE. HOWEVER, I DO NOT FEEL THAT IMPOSITION OF CAPS IS THE RIGHT ANSWER IN THE LONG TERM. IT SIMPLY TAKES AN UNFAIR PROVISION - THE IRREBUTABLE PRESUMPTION THAT A MEMBER'S PRINCIPAL PLACE OF BUSINESS IS IN HIS DISTRICT - AND LIMITS HOW MUCH HE CAN TAKE ADVANTAGE OF THAT UNFAIRNESS. FURTHER, THE AMERICAN PEOPLE DO NOT WISH TO SEE SPECIAL LIMITS ON THE DEDUCTIONS OF MEMBERS OF CONGRESS ANY MORE THAN THEY WISH TO SEE SPECIAL TAX TREATMENT FAVORING MEMBERS. THEY SIMPLY WANT EQUAL TREATMENT.

I ALSO WANT TO CLEAR UP ANY CONFUSION ABOUT THE POSSIBLE EFFECT OF MY BILL ON STATE TAXES, VOTER REGISTRATION, OR OTHER THINGS. THIS IS A FEDERAL TAX BILL ONLY, AND WOULD HAVE ABSOLUTELY NO EFFECT ON ANY OTHER AREA OF FEDERAL, STATE, OR LOCAL LAW.

MR. CHAIRMAN, WE IN THE FINANCE COMMITTEE WILL SOON BE CONSIDERING MEASURES TO IMPROVE COMPLIANCE WITH OUR TAX SYSTEM AND RAISE TAX REVENUES IN ORDER TO NARROW THE BUDGET DEFICIT. I THINK IT IS IMPORTANT THAT WE GET OUR OWN TAX HOUSE IN ORDER AS PART OF THAT PROCESS. WHEN THE FULL COMMITTEE MEETS TO MARK UP A TAX BILL, I PLAN TO OFFER MY BILL AS AN AMENDMENT. I HOPE THAT THE COMMITTEE WOULD CONSIDER IT FAVORABLY. I THINK THAT THE AMERICAN PEOPLE DESERVE TO KNOW THAT THE INTERNAL REVENUE CODE IS FREE FROM SPECIAL PROVISIONS INSERTED FOR THE SOLE BENEFIT OF MEMBERS OF CONGRESS.

Senator PACKWOOD. The hearing will come to order.

We are honored to have as our first witness today Senator Russell Long, the former chairman of this committee, the ranking member, and in my judgment one of the most extraordinary legislators that I have ever met. Senator.

Senator LONG. Thank you very much, Mr. Chairman.

I am genuinely honored to appear before this subcommittee. It has been some time since I appeared as a witness before a subcommittee of this great committee.

Senator PACKWOOD. It has been a long time since you have sat in the witness chair.

Senator LONG. And I am pleased to do so, Mr. Chairman, and particularly before a very capable and great chairman, the Senator from Oregon. Let me just briefly state my position.

In April, I introduced S. 2413, the cosponsors of this bill being Senators Bentsen, Moynihan, Mitchell, Durenberger, Grassley, Cannon, Proxmire, Nunn, and Cochran. S. 2413 would eliminate from the Internal Revenue Code all special provisions relating to deductions claimed by Members of Congress. Many Members and many constituents have said that all they want in this area is for Members of Congress to be treated the same as everyone else. I agree, and believe that this goal can be achieved only by eliminating each and every reference to Members of Congress in the Internal Revenue Code. My bill is the only one that does exactly that.

What is wrong with the current tax rules applicable to Members of Congress? One thing that is wrong is that Members are allowed an unsubstantiated $75-a-day deduction for every day that Congress is in session. I voted for the statutory provision authorizing these regulations as an amendment to the black lung bill in December 1981, and I am here to apologize, Mr. Chairman. That was a mistake, and I admit my error. And may I say that I have seen many unpopular things that we have done around here in the last 33 years, and that takes the cake. That is the most unpopular thing from the public point of view that has been done in the 33 years that I have served here, so we ought to correct it.

Now, doing away with the $75 a day is not enough. Three of the bills under consideration today would only go that far. The real problem here is that the Internal Revenue Code provides that a Member of Congress has his principal place of business back in his home State. Under these bills, that would do no more than repeal the $75-a-day deduction. All I would have to do in Louisiana is just to have an address, the address of a friend. I would not even have to keep a change of underwear or have a spare bedroom, and that would be considered my principal place of business for tax purposes. Washington would not be considered my home or my principal place of business, even though this is where I do the majority of my work and is where I spend most of my time.

Because of the statutory fiction that I am away from home when I am in Washington, I could itemize my Washington expenses and claim them as deductions even in excess of $19,000. There is no businessman in the country who gets to deduct the cost of living at home within commuting distance of his office where he does most of his work. The only reason that Members of Congress can deduct this type of personal living expense is because of this special rule

favoring us against every other taxpayer. That is wrong and it should be corrected.

There are also bills being considered today that would place a cap on Washington living expense deductions, but which would leave in the Tax Code the irrebutable presumption that a Member's principal place of business is in his congressional district. For example, some of these bills would restore the rule of prior law that there was a $3,000 cap on Washington expenses. When this type of provision was offered as an amendment to the urgent supplemental appropriations bill, I voted for it, so that we could restore the status quo and get a calmer atmosphere in which to deliberate over what the right solution to this problem should be.

However, I do not feel that imposition of caps is the right answer in the long term. It simply takes an unfair provision, an irrebutable, erroneous presumption that a Member's principal place of business is in his district, and limits how much he can take advantage of that unfairness. Further, the American people do not wish to see special limits on the deductions of Members of Congress any more than they wish to see special tax treatment favoring Members. They simply want equal treatment.

I also want to clear up any confusion about the possible effect of my bill on State taxes, voter registration, and things of that sort. This is a Federal tax bill only, and it would have absolutely no effect on any other area of Federal, State, or local law.

Mr. Chairman, we in the Finance Committee will soon be considering measures to improve compliance with our tax system and raise tax revenues in order to narrow the budget deficit. I think it is important that we get our house in order as a part of this process. When the full committee meets to mark up a tax bill, I plan to offer my bill as an amendment. I hope that the committee would consider it favorably. I think that the American people deserve to know that the Internal Revenue Code is free from special provisions inserted for the sole benefit of Members of Congress.

Senator PACKWOOD. Senator, if we are going to treat Virginia or the District or Maryland, as our principal home, shouldn't logic dictate that it be our principal home for purposes of local taxation?

Senator LONG. Well, I think what the American people object to is us giving ourselves some special break that others do not receive. Now, a previous law has provided that you pay your State income tax to the State which you represent, and so do I. Now, in some cases that might be an advantage and in some cases it might be a disadvantage, but nobody is concerned about that. You at least get the same break that every other citizen you represent gets.

Senator PACKWOOD. But isn't it true that in your situation and mine, if the law were silent, we would pay our income taxes to Maryland, Virginia or the District of Columbia, and not to our home States, because this would be our principal place of residence?

Senator LONG. You would probably prorate, Mr. Chairman.

Senator PACKWOOD. You would, but under present law we don't.

Senator LONG. You would probably pay about half of it up here and half of it down there, two-thirds and a third.

Senator PACKWOOD. Well, you would get into an argument with two-State tax commissions as to how long you have lived where.

Senator LONG. But they do have an arrangement among the State revenue agents that whoever heads the revenue department that collects their taxes has a sort of uniform rule that they tend to agree to, and I think under that we would probably prorate.

Senator PACKWOOD. What it really amounts to is that no matter what the law is, I would pay my entire taxes to the State of Oregon, even if I had to pay additional taxes to the State of Maryland. Nothing could be more politically damning than to say to your home State, I am no longer a resident here; I pay my taxes in Maryland. They would see to it that that fiction very soon became an actuality.

Senator LONG. I would like to make the point, though, Mr. Chairman, that while that is, of course, it is a parallel problem, and in some respects it is relevant. That has to do with how we pay our State taxes, and I do not think anybody is upset about that. I have not heard any complaint about the fact that you pay your income tax in Oregon and I pay my income tax in Louisiana. The District of Columbia might not be happy about that, but we try to compensate them with some other provision in law.

Senator PACKWOOD. Let me ask you another question. If we change the law so that we are treated like all other citizens, shouldn't we, again in logic, change the law as it applies to State legislators? At the moment, they are allowed to take their principal place of residence as their home even if their legislature meets 7, or 8, or 9 months a year.

Senator LONG. Well, I am just not relying on the principal that two wrongs make a right, assuming that that is wrong when we did that. You know, when we did that for those State legislators, we were not subject to the charge of a conflict of interest, and that is what really has made the action of the Congress so bitterly resented by the people, I suppose, that they say, well, we did this for ourselves, we gave ourselves a break that we didn't give them. It is true that we did give State representatives about the same type of treatment, but they were not subject to the charge that they did it for themselves. We are.

Senator PACKWOOD. My last question: If we were to adopt your theory, could we deduct as business expenses the entire cost of our home and all other expenses associated with it in our home States?

Senator LONG. It would have to depend on the circumstances of each individual case, but in your case, yes, sir, you could, you and I could. I could deduct the expense of travel in Louisiana and the expense of meals when I am in Louisiana.

Senator PACKWOOD. Would interest, insurance, maintenance, and depreciation on a home be deductible?

Senator LONG. That is right. I could do that and so could anybody else. Any lawyer who does most of his work up here in Washington but does maintain a home in Louisiana or Oregon, he could do the same thing, so I don't think we would have any complaint about that.

I undertook to compare how it would work out for me personally. I could have deducted $4,600 in Louisiana under the law I am advocating. Under the law as it stood at that moment, I did not do it, but I would have been privileged to deduct about $19,600 for my

situation here in Washington under that provision that the public objects to so strongly.

Senator PACKWOOD. I have no other questions. Will you come up here and join me?

Senator LONG. Thank you very much. I will join you.

Senator PACKWOOD. Thank you. Senator Arlen Specter, junior Senator from Pennsylvania is our next witness.

STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

I appreciate this opportunity to testify before this subcommittee and commend the subcommittee and you, Mr. Chairman, for proceeding with these hearings, so that there may be a full exploration of the issues underlying the question of deductions for business expenses for Congressmen in an orderly and systematic way. This contrasts with the approach taken late last year, when the expenses were tacked onto the black lung bill and produced such an enormous controversy. Although this was done more as a procedural matter perhaps than as a substantive matter, I think that it was inappropriate in its suddenness.

I became active in making a legislative suggestion several months ago when Senator Armstrong had attached to the continuing resolution a provision which would have rescinded the action taken last year to place Congressmen back in the posture with the $3,000 cap. I offered a substitute amendment for Senator Armstrong's amendment which would, I thought, place the Congressman in an identical position to all other taxpayers.

I voted against the $75 per diem, but I then voted in favor of the black lung bill because it was of special importance to Pennsylvania, and I, like so many other Senators and Congressmen, came under a barrage of questioning, more questioning than criticism, once the issue was explained. It was and is my view that the $75 per diem is not appropriate. Congressmen ought to be required to itemize, specify, and verify what their deductions are, and I feel that it was especially problemsome to have the rules written so that deductions could be taken on a per diem basis when Congressmen were not actually in Washington incurring some expenses.

The bill that Senator Mattingly and I then put in, following the sequence which I discussed with Senator Armstrong, was a carryover of the amendment which I had put in the night before which had been defeated. Ultimately Senator Armstrong's proposal was defeated, and the entire matter was tabled at that time. This has set the stage for the seven bills now being considered at this hearing.

I think that Senator Long's proposal to alter the statutory home residence for tax purposes has a great deal of merit. I am concerned as to its implications, if it subjects Congressmen to additional taxes in the District of Columbia. I have discussed that informally with Senator Long, and he has concluded that that would not be the case.

I am also concerned about a possible interpretation by Internal Revenue Service or the courts that, absent the current provision

for a tax home, that Congressmen might not be able to take deductions in either place. I know there is some case law for the proposition, which would raise a question as to deductibility, but as long as there is a determination as to what is a person's principal place of residence, and one place or another is subject to deduction as any other taxpayer would be able to take, then I think that is a fair and appropriate system.

There has been a tremendous amount of interest focused on this issue in Pittsburgh, Pa.; perhaps more interest in Pittsburgh than in any other particular locale based upon national media attention. It was the subject of extensive editorializing. It was then the subject of a radio program, and people in the Pittsburgh area started to carry red flags on their car aerials in protest against congressional deductions.

I was invited to appear on a 1-hour live television program on KDKA-TV in Pittsburgh on this subject, and there were 250 people in the live audience, all wearing red prominently, in furtherance of the red symbol and red slogan. I was pleased to have an opportunity in that forum to discuss my votes on the issue, and I said precisely what I had done, and said that I thought it appropriate for Congressmen to be able to take deductions like any other taxpayer.

When that proposition was stated in those essential terms, there was general agreement with the proposition. The taxpaying citizens did not like the idea of a per diem deduction which was not verified. They did not like the idea of a deduction which could be taken when you weren't actually in Washington. However, treating Congressmen like everybody else was a concept which they thought was a good one.

There is an interesting editorial from KDKA-TV in Pittsburgh on this subject which I would like to have made a part of the record. I would like to highlight parts of it at the moment. It starts off saying, "U.S. Representatives and Senators are in hot water." It proceeds to say that the Congress is in hot water because of what the Congress did on the controversial black lung bill. Then it says, "The larger question is whether Congress deserves a bigger deduction than the $3,000 a year submitted since the 1950's. We say that it does. Things are more expensive now."

Continuing the quotation from the editoral:

> Furthermore, business people can deduct expenses. So should elected officials, who, incidentally, have to maintain households in one of America's most expensive cities in addition to one in their home towns. At $60,000 plus a year, it seems people in Congress make lots of money, but $60,000 is really not that much when it comes to living in two cities.

So says KDKA-TV.

> To attract and keep qualified people, money can be a problem. Paying an adequate amount to get good people is a sound investment.

I think this is an especially significant editorial, coming as it does in Pittsburgh, Pa., where there has been so much attention focused and so much public controversy and concern. Essentially stated, I think if we place ourselves on the same footing as everyone else, and if we state it openly, in a forthright manner, have hearings like this, and face up to it squarely, that it will be well accepted by

the American people. Then we can all face up to the television cameras and all, and say exactly what we have done.

Thank you very much, Mr. Chairman.

Senator PACKWOOD. Thank you.

Senator Mattingly.

STATEMENT OF HON. MACK MATTINGLY, U.S. SENATOR FROM THE STATE OF GEORGIA

Senator MATTINGLY. Thank you, Mr. Chairman

Senator Specter and I are going to try to give an approach to this problem that would be a rational approach and not one where people would be ranting and raving.

Senator PACKWOOD. Please pull the mike closer They may not be able to hear in the back.

Senator MATTINGLY. Wouldn't you know, Senator Specter would give me the dead mike. [Laughter.]

Senator SPECTER. Senator Specter gave him a live mike Let the record show.

Senator PACKWOOD. The record will show.

Senator MATTINGLY. I will begin again.

Thank you, Mr. Chairman. I would say that Senator Specter and I are trying to make a rational approach to this problem and not one through ranting and raving, either on the floor of the House or the U.S. Senate, but just trying to resolve the issue

In December, I voted against the black lung bill that included the unsubstantiated $75 per day tax provision that actually provoked a cry of outrage from the public, and deservedly so I might add. Here, in the midst of sacrifice, Congress was just passing itself a special privilege. Senator Specter, another opponent of the $[illegible] day deduction, and I introduced S. 2321 in an attempt to rectify the situation.

It would treat Congressmen as other taxpayers in regards to deductions. That is, every deduction would have to be substantiated and verified to the satisfaction of the Internal Revenue Service A very offensive feature of the black lung tax break was that it provided for no substantiation. It was a no questions asked deduction There has been a flurry of actions since Senator Specter and I introduced our legislation. With a great deal of ballyhoo, both Houses have seemingly voted a preference to return to the old $3,000 limit It made for great press coverage. It allowed many of my colleagues who were unfortunately on record as voting for the deduction in December to now vote to rescind the tax break. This is an election year, and that sort of demagoguery is to be expected The citizens see through it. Some of the responsible Members of Congress see through it. But somehow not all the pundits see through it

But all of that has not changed the law. I doubt that many of us were naive enough to believe that the vote in the Senate or in the House would send us back to the $3,000 limit, not even Mr. Fleece himself. The bill the amendment was attached to will be vetoed by the President of the United States. We all knew that. The House, despite their vote, will certainly never let our simple amendment through. We know their private feelings on this, and we see by their actions——

Senator SPECTER. Mr. Chairman, I would like to interrupt Senator Mattingly for 1 minute to make this editorial available as part of the record, and ask to be excused, because I have to catch a plane.

Senator PACKWOOD. It will be made a part of the record. Thank you very much, Arlen, for coming.

[The material referred to follows:]

EDITORIAL EDITORIAL KDKA-TV 2 / KDKA RADIO 1020

PER DIEM

NO. 70

U. S. REPRESENTATIVES AND SENATORS ARE IN HOT WATER. THEY'VE VOTED THEMSELVES A TAX DEDUCTION FOR DAYS SPENT IN WASHINGTON. TENTATIVELY, THE I-R-S SAYS THE DEDUCTION WILL BE 75-DOLLARS A DAY. THAT'S THE MAXIMUM THE GOVERNMENT REIMBURSES FEDERAL EMPLOYEES VISITING D.C. ON OFFICIAL BUSINESS.

THE DEDUCTIONS, WHICH ARE SUBTRACTED FROM GROSS INCOME, ARE CONTROVERSIAL. CONGRESS DIDN'T VOTE DIRECTLY FOR THEM. WHEN A PIECE OF UNRELATED LEGISLATION ON BLACK LUNG BENEFITS CAME UP FOR A VOTE, CONGRESS ATTACHED THE DEDUCTIONS TO IT. BOTH PASSED. NOW, MANY PERSONS SAY THE DEDUCTIONS ARE A BACK DOOR PAY RAISE - APPROVED IN A VERY ROUND ABOUT WAY.

FURTHERMORE, THE DEDUCTIONS DON'T HAVE TO BE SUBSTANTIATED WITH RECEIPTS OR CANCELLED CHECKS. OFFICIALS GET DEDUCTIONS WHETHER OR NOT THE MONEY WAS SPENT.

SOME OF THE CRITICISM DIRECTED AT CONGRESS IS JUSTIFIED. THE MEMBERS SHOULD HAVE VOTED ON THE MATTER INSTEAD OF SNEAKING IT THROUGH. THEY SHOULD ALSO HAVE TO SUBSTANTIATE THE EXPENDITURES - OTHERWISE SOMEONE LIVING FOR LESS THAN 75-DOLLARS CAN POCKET SOME OF THE DIFFERENCE.

THE LARGER QUESTION IS WHETHER CONGRESS DESERVES A BIGGER DEDUCTION THAN THE THREE-THOUSAND DOLLARS A YEAR PERMITTED SINCE THE 1950'S. WE SAY IT DOES. THINGS ARE MORE EXPENSIVE NOW.

FURTHERMORE, BUSINESS PEOPLE CAN DEDUCT EXPENSES. SO SHOULD ELECTED OFFICIALS WHO, INCIDENTALLY, HAVE TO MAINTAIN HOUSEHOLDS IN ONE OF AMERICA'S MOST EXPENSIVE CITIES - IN ADDITION TO ONE IN THEIR HOMETOWNS.

AT SIXTY-THOUSAND DOLLARS PLUS A YEAR IT SEEMS PEOPLE IN CONGRESS MAKE LOTS OF MONEY. BUT SIXTY-THOUSAND IS REALLY NOT THAT MUCH WHEN IT COMES TO LIVING IN TWO CITIES.

TO ATTRACT AND KEEP QUALIFIED PEOPLE MONEY CAN BE A PROBLEM. PAYING AN ADEQUATE AMOUNT TO GET GOOD PEOPLE IS A SOUND INVESTMENT.

BROADCAST: MAY 12, 13, 1982

BY: JONATHAN KLEIN
VICE PRESIDENT/
GENERAL MANAGER
KDKA RADIO

Senator MATTINGLY. I will repeat that the House, despite their vote, will certainly never let our simple amendment go through. We know their private feelings on this, and we see by their actions what they plan to attach to the $3,000 limit. The vote in the Senate on May the 27 just allowed us to dress up in sackcloth and ashes for the press and the public, without any fear of changing the law. We had the $75-a-day deduction then, and we have it now.

I still seek, along with Senator Specter, to change it with a reasonable law that is fair to both the public and to the officeholder, and we can vote with the $3,000 limit 100 times and still not change the law. I want to do more than just organize a publicity stunt.

This subcommittee will be able to study the issue and draw up permanent legislation that will settle this issue once and for all, so that we can get on to the serious business of this country. There are various approaches to the problems, and they deserve serious study, but we need to be practical in looking at what we can reasonably expect to get passed into law by reasonable and responsible debate and hearings.

Let us not be fooled by meaningless votes. One criticism that has been made of the Mattingly-Specter bill is that it would allow unlimited deductions as long as a Congressman could substantiate the expense. The idea behind this is that the Member of Congress could rent a Rolls Royce to drive to work and write it off his taxes. Now, I do not believe for 1 minute that the Internal Revenue Service would allow such a ridiculous expense. Just as all taxpayers must show an expense to be reasonable and necessary, so would that Member of Congress.

I am willing to even go further than that, and suggest an amendment to the legislation that would alleviate the fear of runaway deductions. I propose that we could add to our standard financial disclosure form that would give the amount that the Member deducted on his taxes for away-from-home expenses. If the Member wanted to deduct huge amounts for high living, the public would know it, and could act accordingly. The public obviously has a great interest in this area, and I doubt that many Members of Congress would be foolish enough to risk their wrath with unreasonable deductions. By the same token, if a Member deducted only a small amount, he would be credited by the public for that action.

I have always personally disclosed my income tax information down to the smallest detail, and that is not what I am suggesting now. I will leave that up to each individual. All I am suggesting is the addition of one line on the disclosure that we already file, that would include the lump sum each Member was deducting for out-of-town expenses.

Mr. Chairman, what offends people more than anything else is back-door dealing. That is why this whole congressional tax break issue has been so volatile. You know, the public believes Congress tried to sneak one by them, and they resent it. It has been my experience that the more you keep everything out in the open for the public to judge for themselves, the better off you are, and the system of our Government.

Specifically, S. 2321 will allow Members of Congress to deduct "reasonable and necessary business expenses." This is the same ap-

plication of the Tax Code section 1621 applicable to businessmen in the private sector. Neither businessmen in the private sector nor Members of Congress are or would be allowed to take deductions for lavish and extravagant expenses. Any deductions claimed by Members of Congress would have to be substantiated and justified, the same requirement which applies to businessmen in the private sector.

In addition, S. 2321 as amended would require Members of Congress to disclose on their financial disclosure form the amount of business deductions claimed. This will prevent any appearance of impropriety and act as a safeguard to prevent abuses. The Mattingly-Specter bill would end the special tax break for Congressmen without enacting special penalties. I do not believe that Members of Congress should be either rewarded or punished by tax laws of our country.

Thank you, Mr. Chairman.

[The prepared statement of Senator Mattingly follows:]

STATEMENT OF

S E N A T O R M A C K M A T T I N G L Y

Mr. Chairman:

In December, I voted against the Black Lung bill that included the unsubstantiated $75 per day tax provisions that provoked a cry of outrage from the public. And deservedly so. Here in the midst of sacrifice, Congress was passing itself a special privilege.

Senator Specter, another opponent of the $75 dollar a day deduction, and I introduced S. 2321 in an attempt to rectify the situation. It would treat Congressmen as other taxpayers in regards to deductions. That is, every deduction would have to be substantiated and verified to the satisfaction of the Internal Revenue Service.

A very offensive feature of the Black Lung tax break was that it provided for no substantiation. It was a no-questions-asked deduction.

Now there has been a flurry of action since Senator Specter and I introduced our legislation. With a great deal of ballyhoo, both houses have seemingly voted a preference to return to the old $3000 dollar limit.

It made for great press coverage. It allowed many of my colleagues, who were unfortunately on record as voting for the deduction in December, to now vote to rescind the tax break. This is an election year and that sort of demagoguery is to be expected. The citizens see through it. Some of the responsible Members of Congress see through it, but somehow not all the pundits see through it.

But all of that has not changed the law. I doubt that many of us were naive enough to believe that the vote in the Senate or the House would send us back to the $3000 limit, not even the Fleese himself. The bill the amendment was attached to will be vetoed by the President. We all knew that. The House, despite their vote, will certainly never let our simple amendment through. We know their private feelings on this

and we see by their actions of late what they plan to attach to the $3000 limit amendment.

No, the vote in the Senate on May 27th just allowed us to dress up in sack cloth and ashes for the press and the public without any fear of changing the law.

We had the $75 a day deduction then and we have it now. I still seek to change it with a reasonable law that is fair to both the public and the office holder. We can vote for the $3000 limit a hundred times and still not change the law. I want to do more than organize a publicity stunt. This subcommittee will be able to study the issue and draw permanent legislation that will settle this issue once and for all so we can get on with the serious business of this country.

There are various approaches to the problem and they deserve serious study. But we need to be practical in looking at what we can reasonably expect to get passed into law by reasonable and responsible debate and hearings. Let us not be fooled by meaningless votes.

One criticism that has been made of the Mattingly-Specter bill is that it would allow unlimited deductions as long as the Congressman could substantiate the expense. The idea behind this is that the Member of Congress could rent a Rolls Royce to drive to work and write it off on his taxes.

Now I do not believe for one minute the Internal Revenue Service would allow such a ridiculous expense. Just as all taxpayers must show the expense to be reasonable and necessary, so would the Member of Congress.

I am willing to go even further than that, however, and suggest an amendment to my legislation that would alleviate the fear of runaway deductions. I propose that we add a line to our standard financial

disclosure form that would give the amount the Member deducted on his taxes for away from home expenses.

If the Member wanted to deducte huge amounts for high living, the public would know it and could act accordingly. The public obviously has a great interest in this area and I doubt that many Members of Congress would be foolish enough to risk their wrath with unreasonable deductions.

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It has been my experience that the more you keep everything out in the open for the people to judge for themselves, the better off you are and our system of government.

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The Mattingly-Specter bill would end the special tax break for Congressmen without enacting special penalties. I do not believe Members of Congress should be rewarded or punished by the tax laws of our country.

Senator PACKWOOD. Thank you, Mack.

I wonder if we might take Senator Proxmire before questions, and then Russell and I may have questions for both of you.

STATEMENT OF HON. WILLIAM PROXMIRE, U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator PROXMIRE. Thank you very much, Mr. Chairman and Senator Long. I appreciate your invitation to appear before the subcommittee to discuss Federal legislators' tax treatment.

Regardless of the action this subcommittee takes, the final product should have in my judgment certain characteristics: First, it should help restore public confidence in the institution of Congress. The public view, right or wrong, that their elected officials are profiting materially by sleight of hand tax legislation must be dispelled.

There is an interesting result from national polls on public confidence in our institutions. While the Congress itself always ranks very low on the scale of confidence, individual Members often rank high. The special tax break legislation we passed last fall is precisely the issue that brings the Congress into disrepute as an institution.

Any legislation reported out by the subcommittee also should be understood easily by the public. Complex rules or interpretations left to the Internal Revenue Service should be avoided. If there is a material benefit to be gained by Members, this should be computed and made public.

Further, I hope the subcommittee will take into consideration any changes in the Tax Code for Members which would be inconsistent with current economic conditions. I do not see how the Congress can provide increased benefits to Members through the Tax Code at a time when 10½ million Americans are out of work, when interest rates have housing, automobile manufacturing, and farm machinery flat on their backs, and when the average family can no longer buy a house or finance a new car or send their children to college without extraordinary effort.

If ever the old saying, "Now is not the time, this is not the place," had meaning, it is now.

Last, I would argue that Members do not need any additional form of compensation, directly or indirectly through the Tax Code. There is no dearth of candidates in the political marketplace. Thousands would gladly trade places with us at half the salary and no tax benefits at all. The salary and tax benefits of being a Member are not the conditions which draw individuals into this field. We do not improve the competition, nor enlarge the pool of available talent, by increasing compensation or providing special tax incentives.

Now, it will come as no surprise to this subcommittee if I strongly support the Proxmire repeal amendment. By a May vote of 70 to 23, the Senate supported this position, restoring the traditional $3,000 limitation on allowable business expenses for Members. The House on June 9 voted 378 to 7 to instruct their conferees to accept the amendment on the urgent supplemental bill, after having voted 356 to 43 on the substance of the amendment itself.

Now, why was this approach so apparently appealing? The answer: No. 1, it was simple. It was clearly recognized as repealing the special tax break approved last fall. And it returned the situation to the status quo. The Congress lived with the 1954 $3,000 limitation for 27 years without suffering undue harm that anyone can measure. There is every reason to think that Members could continue to thrive under the $3,000 limitation.

Yet a case can be made, although one with which I would disagree, that the $3,000 limitation is an inadequate, inflexible ceiling considering the rate of inflation and the increased cost of housing for Members with residences in two different locations. The subcommittee undoubtedly will hear testimony that the ceiling should be raised for past and future rates of inflation or should be dropped entirely in favor of unlimited deductions for expenses here in Washington. Neither of these approaches resolves the fairness question or addresses the need for simplicity and public acceptance.

The strongest appeal for change from the $3,000 limit is the rationale of treating Members of Congress as any other businessmen, and I would subscribe to that proposition. But the subcommittee must be wary when this broad statement is translated into specific legislation.

For example, there is one proposal, just addressed by Senators Specter and Mattingly, which has been overwhelmingly rejected by both the House and the Senate, that claims it will result in treating Members as any other businessmen, when in fact it continues special determinations favoring Members. Of course I refer to the legislation that would allow for deductions of Washington expenses based on an arbitrary determination that the principal place of business for a Member is his State or district. All ordinary and necessary expenses while residing in Washington would then be allowable, in effect, reinstating one of the three options under the IRS ruling from last January.

Now, that is not treating a Member like any other businessman, since the Member's principal place of business is not determined by IRS factors, as it is for every other businessman, such as the relative proportion of income derived at each residence, the degree of business activity performed at each residence, and the length of time spent at each residence.

But there is legislation which recognizes the problem by requiring every Member to stand the same tests of principal place of business that other taxpayers must face. I refer to the Long bill, S. 2413, which repeals any statutory declaration of the principal place of business for computing away-from-home travel and living expenses. Should a Member be found to have his principal place of business here in Washington, as I expect most would, then there would be no deductions for living expenses or travel to and from or while in the Washington, D.C. area, but there would be a possibility of deductions for travel away from Washington, D.C., based on the same expenses allowable to other taxpayers in similar situations.

Therefore, I support the Long bill and I am a cosponsor of that legislation. Acceptance by the Congress of the Proxmire or Long bills does not put the issue to rest, however. There are additional considerations to be examined.

May I direct the attention of the subcommittee to the Omnibus Congressional Compensation Reform Act introduced on April 21, 1982, by Senator Thurmond and myself. The majority leader is right when he observes that the Congress seems to be institutionally unable to deal with matters of compensation. This is an understandable condition since there is an implicit element of self-interest, conflict of interest, in all compensation issues.

How do we insulate Members of Congress from the element of self-interest when voting on compensation, outside income, or tax benefits? That issue was debated during the Constitutional Convention when language was dropped from the proposed Constitution requiring that any vote on compensation not go into effect until the seating of the next Congress.

Frankly, I believe it is time to resurrect that provision and apply it to all compensation-related items—salary, tax benefits, and outside income. Further, there should be rules established by both Houses which provide for the orderly consideration of such legislation. These rules, for example, could require that any compensation-related legislation be submitted in bill form unattached to any other legislation. That is, it should stand alone and it should be required to be passed on by record vote.

That would assure the public of an open debate on any compensation or tax issue, without mixing subjects and without approval by voice vote.

Obviously, some of these reforms are outside the scope of this hearing and involve action by the Rules Committee. But I offer them as embodied in S. 2407 for your consideration.

Thank you very much.

Senator PACKWOOD. Senator Long?

Senator LONG. I will yield to you, Mr. Chairman.

Senator PACKWOOD. Senator, does your logic apply to State legislators, then, as well as Members of Congress?

Senator PROXMIRE. I think it would. But I do think in the case of State legislators you have a situation—and I was a State legislator myself—where almost every State legislator I know, and I know them very well in my State, actually lives in the district he represents. They do visit Madison, Wis., our capital, but they are not in

this position we are where we are in session almost all, or at least last year it was two-thirds, of the year each year.

There are few State legislatures, in very large States such as California or New York, where you might have the situation where they are in the State capital most of the year, but I think that is very rare.

Senator PACKWOOD. I was reading the statement of Representative Ritter of Pennsylvania and he says they are in session 10 months.

Senator PROXMIRE. In 1 year. How about the next year?

Senator PACKWOOD. I do not know. He just makes reference to 1 year.

Senator PROXMIRE. I think there are exceptions. Pennsylvania is also a very big State where that might very well be possible. But I think if that were the case it seems to me that that should apply the same way. I cannot see anything wrong with that, and I certainly cannot see any objection to treating them the same way under those circumstances.

I do think it would work a hardship in many States, such as Wisconsin and perhaps Oregon, where senators are in session for a relatively small part of the time and they do actually live in their home district. But then I would think that the IRS would find that their taxable base was their home district.

Senator PACKWOOD. You would have no objection, I take it, to either your amendment, which places the cap back to $3,000, or Senator Long's?

Senator PROXMIRE. I support Senator Long's, and I should have made that clear in my statement. I have argued for my amendment because it may or may not be possible to get the Long amendment adopted, but I am for it. I think it is a much better amendment. It would definitely treat Members of Congress exactly the way every other taxpayer is treated, and I think that is the way we should be treated.

Senator PACKWOOD. Which means that all Members of Congress could then deduct their living expenses in their home State as business expenses, including the interest on their home and insurance on their home?

Senator PROXMIRE. Well, we do that now. And in addition, of course, Members of Congress can properly deduct their expenses in their home State if it is not their actual home. In other words, when I go home, my home is in Madison. If I am in Superior or Milwaukee and I stay at a motel, the Federal Government pays for that, and I think that would continue. I see nothing wrong with that.

Senator PACKWOOD. Senator Long.

Senator LONG. I think you and I can agree, Senator Proxmire, that the question of which place should be regarded as your home for tax purposes ought to be the place where you spend most of your time. Basically, it should be an economic answer rather than a political one, and I think that is where Congress in the beginning got itself into criticism.

I have been here longer than you have. I hate to say it, because I am no longer a young man. I mentioned to my wife the other night

that these round-the-clock sessions were going to kill some of these old men, and she said, including you. [Laughter.]

I have been here 33 years now, and I can recall back in the days when this $3,000 deduction was subject to severe criticism. That was even before I went on the Finance Committee. I think John Williams used to give it a bad time, saying that Congress had voted itself a special tax advantage that no one else in America got, that we got this arbitrary $3,000. And that would be like $10,000 today.

And he made a point, and was applauded around the country from those who understood it, that it was not fair, it was arbitrary, that we just arbitrarily said that our home is in our State for tax purposes even if a person did not even maintain a bedroom there but merely had an address. As I indicated in my statement, they did not even have to have a change of underwear there. That is regarded as being his home by an arbitrary, incorrect assumption imposed by law.

Now, that is where all the trouble starts, and to build on that is to build on a false premise and provide special treatment. Now, when you really get down to it, all the Long amendment does, which you have joined in cosponsoring, I am happy to say, is just to strike those three lines here which treats us different from everyone else. It strikes the line that says:

> For purposes of the preceding sentence, the place of residence of a Member of Congress, including any Delegate and Resident Commissioner, within the State, congressional district, or possession which he represents in Congress shall be considered his home.

Now, that arbitrary assumption is what we would strike. It is those three lines that make us different from everybody else. For example, when you try to explain, why should your administrative assistants, assuming that it is like in my case—my administrative assistant comes from Louisiana. He has his ties in Louisiana. He regards that as his home from a political point of view. But he cannot afford to maintain two homes, so he has his family up here.

But if he were a Senator he would be subject to an arbitrary assumption that his home is in Louisiana, even though he does not have any home there but stays with his family, his mother and father when he is there. That type of arbitrary treatment was wrong in the beginning. Because it did not involve a very large amount of money it gained some acceptance over a period of time. But it was wrong. It was special treatment for Members of Congress.

And as you indicated so well in your statement, that type of thing does not meet with public approval at all. So we ought to change it.

Senator PROXMIRE. I agree with that. I think we ought to change it. I think that we get away from the fact sometimes that we also have the right, of course, to deduct—even if you do deduct interest and the taxes that you pay on your home in your State, you also can do exactly the same thing here, and we do that.

Senator LONG. Now, I think that you might have just briefly touched on another aspect of the problem, which I think is very much in the minds of our friends on the House side. Some of them are bitterly resentful of you and of me that we are trying to put

this back the way it was in the beginning and the way it should be, because they need the income, at least they feel that way.

And it seems to me that the answer to the problem about the income of Members of Congress ought to be to simply remove the conflict of interest. In my judgment, we ought to simply pass a constitutional amendment saying that someone else—in this case I would suggest that we pass one saying that the President of the United States—will every 2 years appoint a commission and that that commission will fix our salaries, and that will be the salary, that we can do nothing about it. Just take it completely away from us, because it is a clear conflict of interest for us to fix our salary no matter what we fix it at. If we pay ourselves anything, we still have a conflict of interest in doing it.

If we simply take that away from ourselves and let the President appoint whomever he wants to appoint, I think we might want to pick some standards out. You have a witness here from Common Cause to testify, for example, and my impression has been generally that whoever has been the head man at Common Cause, or the head lady, as the case may be, is usually someone who has credentials to say about what our compensation ought to be.

But about two-thirds of the Members of Congress have been lawyers before they came here. About one-quarter of the Members of the Senate have been Governors before they came here. If one simply picked a group of people who understand what the job is and about what type of people you hope to attract to run for the job and let them fix it from time to time, I think that would solve the salary problem so that the Members of Congress need not be so angry at you and I about trying to do away with something that is obviously in error, this fiasco that is presently on the statute books about that deduction.

Senator PROXMIRE. Well, I think that makes a lot of sense. As you know, the majority leader has proposed that the Supreme Court have that authority. That is another option.

Senator LONG. But, Senator, that is not going to work.

Senator PROXMIRE. It is a matter of well, the Supreme Court, we fix their salaries and they would fix ours.

Senator LONG. Well, that is exactly the point. My Uncle Earl would say, well, can't you figure that one out? [Laughter.]

You fix their salary and they fix your salary; can't you figure that out? So we cannot do that. We cannot get away with that. We would be severely criticized.

We are going to have to put it out there where it is taxpayers, people who have some understanding about what the public has to pay for all this Government, and where other folks in other lines of endeavor, have them do it, people who are not depending on us for any benefit, people who pay our salaries. Let them say what the salary is. Let the taxpayers tell us what the salary ought to be.

Senator PROXMIRE. I think that is fine. I think that kind of commission, however, should be representative of the taxpayers. That is, they ought to have an average income of around $20,000 a year. Then I think you would be more likely to get the kind of response that taxpayers would give us.

I think these commissions often have people who are in six figures. They have the feeling, I think, that Members of Congress

ought to be in the same company, and most of us would like to be. But in all fairness, I think it might be more objective to get typical taxpayers.

Senator LONG. Well, we can arrive at that however we want to. But I think we should go on the principle that we have a conflict of interest here and it is not appropriate for us to fix our own salaries. It would be far better for someone else to fix it.

Senator PROXMIRE. OK.

Senator PACKWOOD. Senator Bradley?

Senator BRADLEY. No questions.

Senator PACKWOOD. Senator Chafee?

Senator CHAFEE. Well, Mr. Chairman, do I understand Senator Proxmire's testimony to be that he wants no automatic deduction, but that Members of Congress be treated just like businessmen? If their home is here then they get no away-from-home expenses; if their true home is in Wisconsin or Michigan or wherever it might be, then they do get expenses from away from home just as a businessman would?

Senator PROXMIRE. That is exactly right, and the determination of your home would be determined on the basis of the IRS rules that apply to all other taxpayers.

Senator CHAFEE. So you do away with the $3,000 automatic?

Senator PROXMIRE. That is correct.

Senator CHAFEE. I agree with you on that. You and I had a little discussion on that on the floor, but I did not get that to be your position then.

Senator PROXMIRE. My position was that the easiest thing to get through and act on and get rid of what I thought was a damaging law, damaging I think to the reputation of the Congress, was that $75 or $50 a day deduction. And I felt that that was the simplest kind of action.

I was supported by Senator Long, who is the author of the other kind of legislation. And, as you know, the Senate adopted that by a big vote and the House adopted it by an even more overwhelming vote.

Senator CHAFEE. Now, of course——

Senator PROXMIRE. That goes back to the situation that we have had since 1954.

Senator CHAFEE. And now in your finalized position or the position since you have had time to consider this is just do away with the whole business and compute it. Now, of course, that $3,000 is in dispute because of the vehicle it is attached to, is it not, doing away with the $75?

Senator PROXMIRE. Yes. If the President vetoes it—and many people expect that—and the Congress does not pass the legislation over his veto, then we would have to start again on the whole business. That is correct.

Senator CHAFEE. Well, I suppose that historically the $3,000 grew up because of some way of computing some expenses, but primarily because people wanted—Congress probably wanted a raise but did not want to take a raise, maybe. I do not know. That was long before my time.

Senator PROXMIRE. Before you came in Senator Long explained that when that came in there was considerable criticism of it. The

$3,000 was considered to be a rip-off because it did not require documentation or justification. You just took it.

[The prepared statement of Senator Proxmire follows:]

Testimony by Senator William Proxmire

Before the Senate Finance Subcommittee

On Taxation and Debt Management

June 18, 1982

Room 2221 Dirksen Senate
Office Building

Mr. Chairman, I appreciate your invitation to appear before this Subcommittee to discuss Federal Legislators' tax treatment.

My testimony goes to three central themes. First, the attractiveness and fairness of the so-called "Proxmire repeal" amendment which has just overwhelmingly passed the Senate and House on the Urgent Supplemental Appropriations Bill.

Second, the positive features of the Long proposal which will allow tax treatment for Members on the same basis and with the same governing regulations as businessmen.

Third, the additional reforms necessary to permanently correct the problems of Member compensation, tax treatment, and outside income.

While I will expand on each of these issues shortly, I will spare the Subcommittee a detailed recounting of the changes in tax treatment the Congress has voted since last Fall. Those issues, charges and rebuttals, are a matter of extensive public record with numerous votes culminating in the Urgent Supplemental Bill this month. In lieu of this historical record, may I suggest that the Congressional Research Service study titled "Recent Changes in the Taxation of Members' of Congress Living Expenses" be made a part of the record at some appropriate point. This study examines the 1981 amendments in some detail.

Before discussing my three central themes, I think it relevant to make certain basic observations.

Regardless of the action this Subcommittee takes, the final product should have certain distinct characteristics.

---- It should help restore public confidence in the institution of Congress. The public view, right or wrong, that their elected officials are profiting materially by sleight of hand tax legislation must be dispelled. There is an interesting result

from national polls of public confidence in our institutions. While the Congress itself always ranks very low on the scale of confidence, individual Members often rank high. The special tax break legislation we passed last Fall is precisely the issue that brings the Congress into disrepute as an institution.

---- Any legislation reported out by this Subcommittee also should be understood easily by the public. Complex rules or interpretations left to the Internal Revenue Service should be avoided. If there is a material benefit to be gained by Members, this should be computed and made public.

---- Further I hope the Subcommittee will take into consideration any changes in the tax code for Members which would be inconsistent with current economic conditions. I do not see how the Congress can provide increased benefits to Members through the tax code at a time with 10.5 million Americans out of work; when interest rates have housing, automobile manufacturing and farm machinery flat on their backs; and when the average family can no longer buy a house or finance a new car or send their children to college without extraordinary effort. If ever the old saying "now is not the time, this is not the place" had meaning--it is now.

---- Lastly I would argue that Members just do not need any additional form of compensation--directly or indirectly--through the tax code. There is no dearth of candidates in the political marketplace. Thousands would gladly trade places with us at half the salary and no tax benefits whatsoever. The salary and tax benefits of being a Member are not the conditions which draw individuals into this field. We do not improve the competition,nor enlarge the pool of available talent, by increasing compensation or providing special tax incentives.

Now it will come as no surprise to this Subcommittee if I strongly support the "Proxmire repeal" amendment. By a May 27th vote of 70-23 the Senate supported this position, restoring the traditional $3,000 limitation on allowable business expenses for Members. The House on June 9th voted 378 to 7 to instruct their conferees to accept the Proxmire amendment on the Urgent Supplemental Bill after having voted 356-43 on the substance of the amendment itself.

Why was this approach so apparently appealing? The answer: It was simple. It was clearly recognized as repealing the special tax break approved last Fall. And it returned the situation to the status quo. The Congress lived with the 1954 $3,000 limitation for 27 years without suffering undue harm that anyone can measure. There is every reason to think that Members could continue to thrive under the $3,000 limitation.

Yet a case can be made, although one with which I would disagree, that the $3,000 limitation is an inadequate, inflexible ceiling considering the rate of inflation and the increased cost of housing for Members with residences in two different locations. The Subcommittee undoubtedly will hear testimony that the ceiling should be raised for past and future rates of inflation or should be dropped entirely in favor of unlimited deductions for expenses here in Washington. Neither of these approaches resolves the fairness question or addresses the need for simplicity and public acceptance.

The strongest appeal for change from the $3,000 limit is the rationale of treating Members of Congress as any other businessmen. And I would subscribe to this proposition. But the Subcommittee must be wary when this broad statement is translated into specific legislation.

For example, there is one proposal, which has been overwhelmingly rejected by both the House and Senate, that claims it will result in treating Members as any other businessmen, when in fact it continues special determinations favoring Members. I refer to legislation that would allow for deductions of Washington expenses based on an arbitrary determination that the principle place of business for a Member is his State or district. All ordinary and necessary expenses while residing in Washington would then be allowable --in effect reinstating one of the three options under the IRS ruling from last January 12: (option 1: The Member may deduct actual living expenses if substantiated by proper records).

This is not treating a Member like any other businessman since the Members principle place of business is not determined by IRS factors such as the relative proportion of income derived at each residence; the degree of business activity performed

at each residence; and the length of time spent at each residence.

But there is legislation which recognized the problem by requiring every Member to stand the same tests of principle place of business that other taxpayers must face. I refer to the Long bill, S. 2413, which repeals any statutory declaration of the principle place of business for computing away from home travel and living expenses. Should a Member be found to have his principle place of business here in Washington, as I expect most would, then there would be no deductions for living expenses or travel to and from or while in the Washington, D.C. area. But there would be a possibility of deductions for travel away from Washington, D.C., based on the same expenses allowable to other taxpayers in similar situations.

Therefore I support the Long bill and am a cosponsor of that legislation.

Acceptance by the Congress of the Proxmire or Long bills does not put the issue to rest, however. There are additional considerations to be examined.

May I direct the attention of the Subcommittee to the Omnibus Congressional Compensation Reform Act of 1982--S. 2407-- introduced on April 21, 1982 by myself and the distinguished Senior Senator from South Carolina (Mr. Thurmond).

The Majority Leader is right when he observes that the Congress seems to be institutionally unable to deal with matters of compensation. This is an understandable condition since there is an implicit element of self interest in all compensation issues.

How do we insulate Members of Congress from the element of self interest when voting on compensation, outside income, or tax benefits? This issue was debated during the Constitutional Convention when language was dropped from the proposed Constitution requiring that any vote on compensation not go into effect until the seating of the next Congress.

I believe it is time to resurrect this provision and apply it to all compensation related items--salary, tax benefits and outside income. Further there should be rules established by both Houses which provide for the orderly consideration of such legislation. These rules, for example, could require that any compensation or related legislation be submitted in bill form unattached to any other legislation--that is it should stand alone--and that it be required to be passed by record vote.

That would assure the public of an open debate on any compensation or tax issue, without mixing subjects and without approval by voice vote.

Obviously some of these reforms are outside the scope of this hearing and involve the revision of Senate Rules. But I offer them, as embodied in S. 2407, for your consideration.

Thank you.

Senator CHAFEE. Well, let me say, I agree with your position and thus I find myself agreeing with Senator Long's position. That has been my position all along. I am against the $75, against the $3,000, against them all. Just have us be treated like everybody else.

Thank you. Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you.

Any other questions?

[No response.]

Senator PACKWOOD. Thank you very much.

Next we will hear from Secretary Glickman, who we asked to appear not to give the administration's position on this, but simply to explain the law. Mr. Secretary, your entire statement will be in the record. If you could please briefly explain what the history of the law is, how we got there in the early 1950's and what we changed when we passed our act last fall. Then if you want to, you could also comment on the provision as it touches State legislators.

STATEMENT OF DAVID G. GLICKMAN, DEPUTY ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY

Mr. GLICKMAN. Thank you, Mr. Chairman.

As you stated, I have been requested to appear before you today to discuss the general treatment of expenses incurred by taxpayers traveling away from home on business and the rules in this area applicable to State legislators and Members of Congress. This discussion is intended to aid you in your consideration of the seven bills which you have before you today.

In my statement I have a description of the seven bills and the differences between the two. But rather than taking the time of this committee, I will just pass that over, assuming that——

Senator PACKWOOD. Let me state it and you tell me if I am stating it correctly. Basically, the bills fall in four categories: (1) a statutory deduction, which is what we passed last year, (2) the $3,000 deduction; as in Senator Long's bill, (3) let the IRS determine where our home is; or (4) the approach of Senators Specter and Mattingly, which would statutorily say that our home is in our home States and we would take whatever business deductions we are allowed here.

Mr. GLICKMAN. I think that—I believe that is correct, sir. Let me go back through it again briefly. As I see it, the bills can be broken down as follows. Senator Long's bill would eliminate any reference in the law to Members, which means that the current law as applicable to businessmen or whoever it is would be the rules that would be followed.

Another bill would return to prior law with the $3,000 cap, but leave in the law the concept that a Member's tax home is in his home district.

Another bill would increase the cap from $3,000 to $6,000, but still assume that the tax home is in the congressional district.

And the final bill would remove the cap completely and also remove—each one of them, I guess, would remove the requirement that the IRS promulgate regulations setting forth a safe harbor amount which need not be substantiated.

I believe that is what you said, but this is the way we have them categorized. I thought it would be helpful if I just explained briefly how the law has developed over the years with respect to these three different areas.

First, I would like to talk about the general treatment of expenses for traveling away from home. In general, a taxpayer may not deduct expenditures for personal, living, or family expenses. However, code section 162(a) provides an exception for ordinary and necessary expenses incurred while traveling away from home in pursuance of a trade or business. For this purpose, an individual is away from home only if he is traveling on business overnight or for a period sufficient to require sleep or rest.

If a taxpayer is traveling away from home on business, his deductible expenses include expenditures for transportation, meals, lodging, et cetera. Deductions for lodging expenses incurred away from home are appropriate to reflect a duplication or increased level of expenses which the taxpayer would not incur in the absence of business necesssity, and similarly for the eating expenses outside.

Because an individual may only deduct living expenses incurred while away from home, it is necessary to determine the location of the individual's tax home. Under the rules the Internal Revenue Service applies to taxpayers generally, an individual's tax home is the principal place of business. Obviously, there are other tests which have been applied, which have been reviewed, but this is the Internal Revenue Service's position, that the tax home must be the principal place of business.

If an individual has two businesses or is engaged in a single business in two locations, his principal place of business is determined on the basis of the facts and circumstances. The most important considerations in making this determination are the amount of time spent there, the amount of income derived from a particular location, the degree of business activities at each location.

Generally, before a deduction for travel may be claimed, a taxpayer must substantiate, by adequate records or by sufficient records corroborating his statement, the amount of the expenses, the time and place of travel, and the business purpose of the expenses. Adequate records include an account book, diaries, et cetera.

It is significant to note at this point that expenditures made for political purposes, including costs of campaigning and attending political conventions, are considered nondeductible personal expenses. This rule is applicable whether or not the campaign is successful and whether or not the campaign is for a new position or for reelection to a position previously held.

Now, with respect to State legislators, prior to 1976 the rules generally applicable to all taxpayers for deducting travel expenses were applied to State legislators. Most State legislators treated their residence as their home for tax purposes and deducted their traveling expenses while at the State capital. However, the Internal Revenue Service often challenged these deductions. The tax home of State legislators was determined on a case-by-case basis.

The tendency toward more frequent and lengthy State legislative sessions often made it unclear whether the legislator's home was at the State capital or the home district. In some cases the legislator's

tax home would shift from year to year. This in turn caused record-keeping difficulties for legislators as they tried to provide the required substantiation for travel expenses without knowing what the location of their tax home was in advance.

In recognition of this problem, special temporary rules for State legislators were enacted as part of the Tax Reform Act of 1976. Under these rules, a State legislator could elect as his tax home his place of residence within the legislative district which he represents. This provision was contained in section 162(i), Mr. Chairman, which is different than the Members' definition of where the home is. But the reason for this is because that was an elective provision with respect to State legislators. But the language of the two provisions with respect to where the home is is virtually identical.

He thus could claim deductions for transportation costs and living expenses incurred while away from home. The deductible living expenses could be claimed without substantiation. The amount was computed by multiplying the legislator's total number of legislative days for the year by the per diem amount generally allowed to Federal employees for travel away from home.

The second amendment was made in 1981, which created a conclusive presumption that a legislator was away from home on business on each legislative day. This amendment reversed the decision of the Tax Court which affirmed the Internal Revenue Service position that a State legislator must comply with the normal rules requiring a taxpayer to be away from home in order to deduct living expenses.

The third amendment to the 1976 provision excluded from the application of the elective provision any legislator whose place of residence within his legislative district is 50 miles or fewer from the State capital.

With respect to Members of Congress, Members, like other business travelers, are entitled to deduct ordinary and necessary travel expenses incurred in the pursuance of their trade or business as a representative of their legislative districts. One of the first issues to arise in connection with the deductibility of Members' travel expenses involved the location of the Member's tax home.

In an early decision of the Board of Tax Appeals, it was held that the tax home of one particular Member of Congress was the District of Columbia. Under this rule Members of Congress were generally not permitted to deduct any of their living expenses while at the Nation's capital. Subsequently in 1952, Congress reversed this case and amended the code, section 162, to provide a permanent rule that a Member's tax home shall be his or her residence in the district that he or she represents.

The Senate report explained that the amendment was intended "to permit the Members of Congress to claim deductions for tax purposes to the same extent as other persons whose business or profession required absence from home for varying periods of time." In addition, allowable trade or business deductions were limited for living expenses in each taxable year to an amount not to exceed $3,000.

In 1981——

Senator PACKWOOD. I wonder if I might stop you there. I think everybody knows what Congress did last fall in the three amend-

ments we put in. If you want to conclude, I have a couple of questions I do want to ask.

Mr. GLICKMAN. OK, Mr. Chairman.

A Member's deductions are not allowed to the amounts established by the—well, we have put out the regulations, as you know. The regulations were in response to the legislation which was passed, and those regulations specifically state the amount that would be allowable without any kind of proof of those amounts.

Knowing, as you said, Mr. Chairman, you do know what the provisions are, so I think that I will just conclude my remarks and take whatever questions you might have.

[The prepared statement of Mr. Glickman follows:]

For Release Upon Delivery
Expected at 2:00 p.m. EDT
June 18, 1982

STATEMENT OF
DAVID G. GLICKMAN
DEPUTY ASSISTANT SECRETARY (TAX POLICY)
DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE SENATE COMMITTEE ON FINANCE

Mr. Chairman and Members of the Subcommittee:

I have been requested to appear before you today to discuss the general treatment of expenses incurred by taxpayers traveling away from home on business, and the rules in this area applicable to State legislators and Members of Congress. This discussion is intended to aid you in your consideration of seven bills (S. 2012, S. 2015, S. 2092, S. 2113, S. 2176, S. 2321, and S. 2413) relating to the deduction of travel expenses incurred by Members of Congress.

Description of Bills

S. 2012 and S. 2113 would replace the current rules for claiming deductions for travel expenses incurred by the Members of Congress with the law as it existed prior to 1981. Basically, these bills would reinstate the $3,000 limit on deductions for Members' living expenses and repeal the provision which requires the Department of the Treasury to establish an amount as deductible without substantiation.

S. 2015 would also return to the pre-1981 rules for deducting Members' living expenses, except that the $3,000 limit would be increased to $6,000.

S. 2092, S. 2176, and S. 2321 would not reinstate the $3,000 limit on the amounts a Member may deduct, but would repeal the statutory provision requiring the Department of the Treasury to promulgate regulations setting an amount

which is deductible without substantiation. S. 2321 would apply only to taxable years beginning after 1981. The amendment made by S. 2176 would be effective for taxable years beginning after 1980. S. 2092 would be effective retroactively to years beginning after 1976 that are not closed by the statute of limitations.

S. 2413 also would repeal the statutory provision requiring the Department of the Treasury to set an amount which is deductible without substantiation, and, in addition, would repeal the provision enacted in 1952 which establishes a Member's home district as his or her tax home.

General Treatment of Expenses for Traveling Away From Home on Business

In general, a taxpayer may not deduct expenditures for personal, living, or family expenses. However, Code section 162(a) provides an exception for ordinary and necessary expenses incurred while traveling away from home in pursuit of a trade or business. For this purpose, an individual is "away from home" only if he is traveling on business overnight or for a period sufficient to require sleep or rest.

If a taxpayer is traveling away from home on business, his deductible expenses include expenditures for transportation, meals, and lodging, together with incidental expenses such as laundry, etc. Deductions for lodging expenses incurred away from home are appropriate to reflect a duplication or increased level of expense which the taxpayer would not incur in the absence of business necessity. Similarly, deductions for meal expenses incurred away from home are appropriate to reflect the additional expense of eating outside the home which the taxpayer incurs for business reasons.

Because an individual may only deduct living expenses incurred while away from home, it is necessary to determine the location of the individual's "tax home." Under the rules the Internal Revenue Service applies to taxpayers generally, an individual's tax home is his principal place of business.1/ If an individual has two businesses, or is

1/ At least one Circuit Court of Appeals, in deciding the locale of an individual's tax home, has framed the issue in terms of whether, based on all the facts, it would be reasonable for the taxpayer to live in the vicinity of where he is employed. See Six v. United States, 450 F.2d 66 (2d Cir. 1971). Although this approach rejects the IRS' "principal place of business" formulation, the results reached under either test would in most instances be the same.

engaged in a single business in two locations, his principal place of business is determined on the basis of facts and circumstances. The most important considerations in making this determination are: the amount of time spent at each location; the amount of income derived at each location; and the degree of business activity at each location.

Generally, before a deduction for travel expenses may be claimed, a taxpayer must substantiate, by adequate records or by sufficient records corroborating his own statement, the amount of the expense, the time and place of travel, and the business purpose of the expense. Adequate records include an account book, diary, statement of expense, or similar record, together with documentary evidence, such as receipts or paid bills, for expenditures of $25 of more.

Expenditures made for political purposes, including costs of campaigning and attending political conventions, are considered nondeductible personal expenses. This rule is applicable whether or not the campaign is successful and whether or not the campaign is for a new position or for reelection to a position previously held.

State Legislators

Prior to 1976, the rules generally applicable to all taxpayers for deducting travel expenses were applied to State legislators. Most State legislators treated their residence as their tax home for tax purposes and deducted their traveling expenses while at the State capital; however, the Internal Revenue Service often challenged these deductions. The tax home of State legislators was thus determined on a case-by-case basis.

The tendency toward more frequent and lengthy State legislative sessions often made it unclear whether the legislator's tax home was the State capital or his home district. In some cases, the legislator's tax home would shift from year to year. This, in turn, caused recordkeeping difficulties for legislators as they tried to provide the required substantiation for travel expenses without knowing the location of their tax home in advance.

In recognition of this problem, special temporary rules for State legislators were enacted as part of the Tax Reform Act of 1976. Under these rules, a State legislator could elect as his tax home his place of residence within the legislative district which he represents. He thus could claim deductions for transportation costs and living expenses incurred while away from home. The deductible living expenses could be claimed without substantiation. The amount was computed by multiplying the legislator's total number of "legislative days" for the year by the per diem amount generally allowable to Federal employees for travel away from

home. For this purpose, "legislative days" included (1) days in which the legislature was in session (including any day in which the legislature was not in session for 4 consecutive days or less, i.e., weekends) and (2) days in which the legislature was not in session but the legislator attended a meeting of a legislative committee.

Revenue Ruling 82-33, 1982-10 I.R.B. 4, holds that for purposes of these rules the "generally allowable" Federal per diem is the maximum Federal per diem authorized for the seat of the legislature. The Federal per diem travel allowance is $50 for most areas of the United States but is higher for certain high cost areas, including a number of State capitals.

In 1981 the temporary elective provisions for State legislators were modified and made permanent. The amendments liberalized the amount of unsubstantiated deductions per day to equal the greater of the amount generally allowable to Federal employees in travel status or the amount generally allowable by the State to its employees for travel away from home, up to 110 percent of the appropriate Federal per diem.

A second amendment made in 1981 created a conclusive presumption that a legislator was away from home on business on each legislative day. This amendment reversed the decision of the Tax Court in Chappie v. Commissioner, 73 T.C. 823 (1980), which affirmed the Internal Revenue Service's position that a State legislator must comply with the normal rules requiring a taxpayer to be "away from home" in order to deduct living expenses.

The third amendment to the 1976 provisions excluded from application of the elective provisions any legislator whose place of residence within his legislative district is 50 or fewer miles from the State capitol building.

Members of Congress

Members of Congress, like other business travelers, are entitled to deduct ordinary and necessary travel expenses incurred in pursuit of their trade or business as a representative of their legislative districts. One of the first issues to arise in connection with the deductibility of a Member's travel expenses involved the location of a Member's tax home.

In an early decision, the Board of Tax Appeals held on the facts presented that the "tax home" of one particular Member of Congress was the District of Columbia. Lindsay v. Commissioner, 34 B.T.A. 840 (1936). Under this rule, Members of Congress were generally not permitted to deduct any of their living expenses while at the nation's capital. Subsequently, in 1952, Congress reversed the rule in Lindsay

and amended the predecessor of Code section 162 to provide a permanent rule that a Member's tax home shall be his or her residence in the district he or she represents. The Senate Report explained that the amendment was intended "to permit the Members of Congress to claim deductions for tax purposes to the same extent as other persons whose business or profession requires absence from 'home' for varying periods of time." S. Rept. 1828, 82d Cong., 2d Sess., reprinted in 1952-2 C.B. 374. In addition, allowable trade or business deductions were limited for living expenses in each taxable year to an amount not to exceed $3,000.

In 1981 Congress made three amendments to the rules affecting the living expenses of Members living in the Washington, D.C. area. First, the $3,000 cap on deductible expenses was eliminated. A Member's expenses for meals and lodging in the Washington are now deductible without limit.

Second, section 280A was amended to provide an exception to the general rule which denied a business expense deduction in connection with a residence used by a taxpayer or his family for personal purposes for more than 14 days a year. Under the amendment, the general rule will not apply in cases where the residence is used by the taxpayer while away from home on business.

Third, section 280A was further amended to provide that the Department of the Treasury is to prescribe amounts deductible, without substantiation, for a Member's living expenses while away from home in the District of Columbia area. Pursuant to this directive, the Department of the Treasury promulgated regulations in January of this year setting forth a series of rules which were patterned after the rules applicable to State legislators. Under these regulations, a Member may deduct, without substantiation, an amount equal to the number of "Congressional days" in the taxable year with respect to the Member times the per diem amount the Federal government pays its employees for travel away from home in Washington, D.C., which is currently $75 a day. For Members who deduct interest and taxes attributable to the ownership of a personal residence in the Washington, D.C. area, the per diem amount deductible is limited to two-thirds of the Federal per diem amount for travel ($50 based on the current $75 per diem amount).

The number of Congressional days with respect to a Member is the number of days in the taxable year less the number of days in which the Member's Congressional chamber was not in session for 5 consecutive days or more. The number of days with respect to a Member is determined without regard to whether the Member is actually in Washington, D.C., on each of those days; however, the "away from home" requirement must be met in the first instance, and therefore the rules would not apply to Members whose legislative districts were within commuting distance of the Washington area. The number of Congressional days for 1981 was 262 for the House and 256 for the Senate.

A Member's deductions are not limited to the amounts established by the regulations as allowable without substantiation. A member may deduct more or less than $75 (or $50) a day. However, if a Member deducts more than the prescribed amounts, he or she must substantiate all expenses, including the $75 (or $50). The regulations do not apply to travel expenses incurred outside the Washington, D.C. area. Any deductible expenses outside this area must be substantiated.

This concludes my remarks and I will be happy to answer any questions that you may have.

Senator PACKWOOD. I want to make sure the record is clear and that we all understand. What we have done for Members of Congress is statutorily say that for purposes of taxation, our home is our home State.

Mr. GLICKMAN. Right.

Senator PACKWOOD. And for members of the State legislatures, have we left them with an option to declare whichever they want, or have we said, your tax home will be the home in the district?

Mr. GLICKMAN. No; The State legislators have an election. They can make the election or use the normal rules.

Senator PACKWOOD. If we were to repeal the law for both State legislators and Members of Congress, and we left it to the determination of the IRS, as for anyone else in business, then the IRS will determine that either we are residents here the bulk of the year and our expenses to go home—and I use that in the sense of going home to our State—would be business expenses, assuming we were there on business?

Mr. GLICKMAN. That is correct, Mr. Chairman.

The one thing that I do want to mention here is that if they found that your tax home here in the District, there are some limitations, as you know, about what is deductible if you are traveling away from home. One of them is that it has to be in your business, and you said that. But there is this problem which I mentioned in my testimony, concerning the nondeductibility of campaign expenses, which means that if you were going back to your home district for that purpose I presume that the question would be raised immediately as to whether that would be pursuant to your trade or business and thus a deductible type of expense.

Senator PACKWOOD. That becomes a difficult line. When you go home for a week and you spend 90 percent of the time on normal Senate business, but you also spend some time going to a political convention. How would the IRS handle something like that?

Mr. GLICKMAN. It is a facts and circumstances type of determination. Sometimes it is an allocation type of determination. But you are right, Mr. Chairman, there are a number of administrative problems.

Senator PACKWOOD. Senator Long.

Senator LONG. Would it not make better sense if this section 162 were amended so that the words "principal establishment" were used rather than the word "home" because as a practical matter as far as most people are concerned, if there is any doubt about where the person's home is, you tend to look at the entire mix of circumstances, and where the person spends most of his time with his family, that would tend to be the place that he would regard as his home.

But it tends to be also his principal establishment, does it not? In other words, if you are thinking about what the law is with regard to people other than Members of Congress, where the word "home" is used does that not tend to be his principal establishment?

Mr. GLICKMAN. Senator Long, that certainly is true in many cases, although the law is not absolutely clear. For example, as I stated, if you have two substantial businesses and you live in one town, but you have two different businesses, I guess the question

could arise there, or if you had one business but it had different locations.

As I stated, the Internal Revenue Service's position is that your tax home is where your principal business is. There has been some authority which has stated it is where your principal place of abode is or permanent place of abode is. So the law is not absolutely clear with the definition of what type of test you should be looking at here.

Senator LONG. Now, does the Treasury have a position with regard to this? Does Treasury care to advise us as to what you think the better law would be?

Senator PACKWOOD. I did not ask him to testify to that effect.

Senator LONG. Well, I am just asking the question.

Mr. GLICKMAN. Senator Long, obviously when Senator Packwood asked us to appear, and we at Treasury discussed this quite a bit. It seems to us in large measure that this is something that is within the unique ambit of this body to make that type of determination as to what should be the rules that should apply, both with respect to the Members and with respect to State legislators, with which I think there is a great deal of similarity.

I would just like to add one thing, though. From an administrative standpoint, I think that I could say that, whatever you do, we would like to see bright-line type of rules apply. We would like to see the type of rules that tell us where the home would be and perhaps even a cap, so that from an administrative standpoint we do not constantly have to go in and from an audit standpoint look at these types of matters.

I think from an administrative standpoint that would simplify our situation greatly.

Senator PACKWOOD. Let me interrupt there a second, Russell.

I want to make sure I understand what you are saying. From your standpoint, administratively you would like the law to say, either our home is here or our home is there? I can picture a situation with many of the Members of the House, who indeed do come here and leave their families at home. You then have a situation as to which place is their tax home. You would prefer to have us say statutorily it is either here or there?

Mr. GLICKMAN. Senator Packwood, I understand what you are saying. And obviously everyone else that is out there, they are subject to the facts and circumstances type of problem. Our problem really is, as I said, an administrative one and we would prefer to see bright-line rules if that would be a possibility. But again, this is not our——

Senator LONG. But you don't have any clear rules with regard to everybody else in America, though, do you? Don't you have to look at the circumstances as far as those people are concerned?

Mr. GLICKMAN. Senator Long, that is correct. We do not have bright-line rules with respect to anyone else.

Senator LONG. So it seems to me that we should not be asking any special favors in that regard. We are seeing what we get for asking for special favors. We just got through passing the most unpopular piece of legislation I have seen in 33 years. So we saw what we got by asking for special favors and giving ourselves special treatment, and we should not do that again.

We ought to treat ourselves the same as everybody else. If you want to recommend a rule that you think would be easier to apply and be more uniform and be more acceptable to all taxpayers, I would be willing to consider that. But I would hope that, whatever it is, it would be something that applies to everybody else uniformly.

Now, I had not given this the consideration that I wish I had before it became law, but I have since. And I for one do not want to vote for some law that is going to treat my administrative assistant different than it treats me. I do not want any special tax advantage over him, nor anyone else, any lawyer who might have to spend part of his time in Louisiana and part of his time here, or a businessman who has to do that.

What I think we should be looking for is something that is going to treat us the same as everyone else. And would it not appear that if you want to treat us the same as everyone else the simple thing to do is to strike those three lines here, where it says that for purposes of the preceding sentence the principal place of a Member of Congress, and so forth? I see you are nodding. Just strike those three lines and it does treat us the same way as everyone else, does it not?

Mr. GLICKMAN. I think it is fair to say that both the Member and the State legislator provisions were required to be added to the code. And if you took those out, I presume that means that whatever the normal rules out there would be would apply to everyone.

Senator LONG. I am not talking about the State legislators. I am talking about as far as we are concerned and 999 out of 1,000 other people. Just striking those three lines would take care of that, would it not?

Mr. GLICKMAN. It would mean that the rules that are out there now would apply to the Members, yes, sir.

Senator LONG. And that to me seems to be the best way to handle it, because otherwise I do not think this thing is going to go away. I think that the Members of Congress cannot defend it, for a simple reason: It is not defensible. And that being the case, every Member of Congress that voted for it should cut his losses and get loose from this thing as fast as they can.

I hope the House people realize that. They got by that thing without a rollcall vote. So a lot of them still want to hang in there and hope they still do not have to go on record about this matter. But most of us, I think that even those of us who voted for this thought we made a mistake and we want to correct it as soon as we can.

As far as I am concerned, as far as most Members of Congress, we did not claim the full advantage of it anyhow; we just want to make the law the way it ought to be and make it uniform.

I thank you for your advice. I think you have given us some good information as to what the situation has been in the past. I think it is helpful for us in making a decision. Thank you.

Senator PACKWOOD. Senator Bradley.

Senator BRADLEY. Thank you, Mr. Chairman.

What is your definition of "principal business"?

Mr. GLICKMAN. Senator Bradley, obviously if you only have one business, obviously that is going to be your principal business, and

I would assume that if you have more than one business you would look at the facts and circumstances as to where you spend most of your time, where the greatest part of the revenues come from, the type of comparison that you might generally draw where you are talking about your first business and a supplemental type of business.

Senator BRADLEY. Well, we get a paycheck every 2 weeks from the Treasury in Washington. So does that mean that our revenues come from Washington?

Mr. GLICKMAN. Obviously you are spending a great deal of your time here. You also, as I understand it, have offices back in your home district. Under most definitions, I guess, this would be—my view is that it would be one business and the question is where your—I would say that the allocation problem would be made in some fashion between the two locations.

Senator BRADLEY. So our choice would be, is our principal business voting or is our principal business meeting with our constituents.

Mr. GLICKMAN. I think that obviously would be one of the facts and circumstances that you would have to look at.

Senator BRADLEY. That is a pretty difficult choice to make.

What is your definition of "principal abode"?

Mr. GLICKMAN. The principal abode I presume would be where you actually live, where you spend the bulk of your time from a living standpoint.

Senator BRADLEY. The number of days per year you live in one place versus the other? Is it a majority situation?

Mr. GLICKMAN. I think it could depend. That obviously would be one of the facts. Another fact would be whether it is permanent or temporary. For example, you might be living in one area a great deal more of the time than you lived in the other, yet at the same time it is only temporary and you are eventually going to go back to your first location.

Senator BRADLEY. Will you expand on that last point?

Mr. GLICKMAN. There is at least one case in which Ethel Merman lived in Colorado and she moved to New York to be in a play there. The issue in that case was the location of her principal place of business, and she was contending that her home, her tax home, was in Colorado because she was temporarily in New York City for the purposes of her profession.

So you get into the type of question of whether it is temporary or permanent, even though during that period of time she may have been spending a great deal of her time, probably most of her time, in New York City. I guess the question would be whether she ultimately planned to return there or not.

Senator BRADLEY. So you are arguing that we should treat a 6-year term as a longrun Broadway hit? [Laughter.]

Mr. GLICKMAN. I guess that depends on the results. No, all I am pointing out is that the issues we are talking about here are not bright line, as I would say. There is a great deal of grayness in them, and different cases in different courts have viewed them in different manners.

Senator BRADLEY. Well, it seems to me that everyone, I think, wants to get the thing clear and operate with no special privilege

whatsoever. And at the same time you want to have it clear, so that discretion is somewhat limited over the interpretation. Therefore, if you say it depends upon where the principal business is and principal abode, a clear definition of both of those has to be the most significant guideline that we could have if we entered into a kind of arrangement envisioned by Senator Long's amendment, which treats us no differently than anyone else.

Would you agree?

Mr. GLICKMAN. Again, Senator Bradley, I think that this is the type of issue—let me back up and phrase it this way. I think that the area is murky in certain respects and I think that on these types of issues as to what should be the right answer, I think that it really should be left to this body to make the determination as to——

Senator BRADLEY. So you are saying that Congress should define the relevant terms if the guidelines that you have set out for principal business and principal abode are insufficiently clear. In other words, if we say we are the same as other taxpayers we should define principal abode and principal business for the purpose of the Members' deduction.

Mr. GLICKMAN. No. What I would say would be that if you strike out the sentences that Senator Long was talking about, obviously the rules that are out there right now, whether precise or questionable, would be applicable to the 535 Members of Congress and they would be applied accordingly, based on a facts and circumstances test.

I guess we would get into questions about how many days are actually spent here as opposed to your home district. But it would be a facts and circumstances test from that point forward.

Senator BRADLEY. And you are saying the record shows that the essence of those rules are principal business and principal abode?

Mr. GLICKMAN. The Internal Revenue Service's position is——

Senator BRADLEY. Principal business and principal abode is determined on a facts and circumstances basis?

Mr. GLICKMAN. That is correct.

Senator BRADLEY. So basically, Members of Congress are in the same state of uncertainty as any other person in the country.

Mr. GLICKMAN. I would think that that could be true, especially with—well, obviously you have people for whom it is clear where their principal place of business and their principal abode is, and they are clearly traveling away. But if you have people who do have, as I said, different businesses in different locations, as many people do, I guess the rules then, similar rules, would come into play.

Senator BRADLEY. Thank you.

Senator PACKWOOD. Senator Dole?

Senator DOLE. I want to thank you, Mr. Chairman, for having these hearings. I apologize for being a bit late, but we were on the voting rights matter.

I would just say in a general way that whether this provision survives or dies is not going to be of any great moment. But I would hope that there would be a short course for the media about accurate reporting. Not that they are required to report accurately. Some never do, some try to.

But I have never seen an issue as distorted as this has been by the media, including the media in my home State and others. They take great delight in reporting when it comes to Members of Congress or anybody in public life, particularly many of the well-paid anchormen who get a million dollars, $2 million a year, who somehow seem to think that $60,000 is outrageous. And I am not going to get into that, because you cannot win in public life trying to defend your salary or any other area that might be called a perk by the media.

But I have seen this advertised by the media—and "advertised" is not an overstatement—as a "tax break," a "tax credit," "zeroing out your taxes." I mean, I have seen more misinformation by people who should know better on this, and I think it is good we have had these hearings. So I want to thank the chairman.

But the media does not cover this hearing, which is another indication of their great interest in this issue, not really a deep interest, just a superficial interest to report inflammatory statements and comments that they do not know much about.

And I think there is a willingness on the part of this committee, as the committee of principal jurisdiction, to try at least to see if we cannot resolve the problem. I must say that I think as I look back on it, I think this committee or this Senator was improperly given credit for repealing the $3,000 limitation on Members' deductions. That provision originated in the House. There is a great deal of interest in this issue by Members of the House and Members of the Senate, but the primary interest is on the part of Members of the House.

This Senator is also concerned that we are going to treat State legislators the same way we treat Members of Congress. But for some reason they have escaped the wrath of the press. Maybe it is because there are so many of them. But we hope to get into that later on in the hearing.

I wanted to ask a question. How does the Tax Code treat an elected State judge who is required to live in his election district, but work in the capital? How do you treat that person?

Mr. GLICKMAN. Senator Dole, there is no specific provision in the tax law with respect to a State judge. There is some authority. There has been a case, at least one case that I am familiar with, in which, as I recall the facts, the State judge was required to maintain a home in his district, but the court sat in the State capital. And the court concluded that his tax home was in his home district in that case.

Senator DOLE. Is that a recent case?

Mr. GLICKMAN. 1960, Senator Dole.

Senator DOLE. The other questions I have have been answered and made a part of the record, and it will be very helpful to us to see if there is any resolution. I do not believe the American people have been properly informed, and we are not trying to cover up something or slip something through the American taxpayers or by the American taxpayers that will be so strongly objected to.

Let's face it. There are a lot of Members in the Congress—over half in the Senate are millionaires, and it is certainly of no great moment to them, but there are others, particularly in the House, who have families and who do travel back and forth to their homes

almost every weekend, and maybe this is not the right way to proceed.

I think you will have other testimony that says, well, you ought to raise the pay of Members of Congress, and you would have the same outcry and the same people complaining if that were done. Senator Baker has gone so far to say that maybe the Supreme Court could set our pay. That illustrates the frustration from trying to come to grips with this issue. That is probably not an answer either.

As I understand it, you have made no specific recommendation on what we might do.

Mr. GLICKMAN. That is correct, Senator.

Senator DOLE. I do not blame you. [General laughter.]

Thank you.

Senator PACKWOOD. Any other questions?

[No response.]

Senator PACKWOOD. Mr. Secretary, thank you very much. You were very patient, and I appreciate it.

Next, let's take the panel: Fred Wertheimer from Common Cause, James Dale Davidson from the National Taxpayers Union, and Jay Angoff, Public Citizen's Congress Watch. Mr. Wertheimer, do you want to start?

STATEMENT OF FRED WERTHEIMER, PRESIDENT, COMMON CAUSE

Mr. WERTHEIMER. Yes. Thank you, Mr. Chairman.

If I could, I want to submit my remarks for the record, and I will briefly summarize.

Senator PACKWOOD. I will say for all of the witnesses your statements will be in the record in their entirety, and if you would abbreviate them, we would appreciate it

Mr. WERTHEIMER. I will try to be very brief. Let me start out by applauding you and the subcommittee for having these hearings. I think the hearings are necessary. They are the appropriate way to deal with this kind of issue, and they compare quite favorably with what has happened in the past, which has contributed, I think, to the way this matter has been dealt with and looked at by the public.

We have joined in expressing deep concern about the steps that have been taken in the last few months in this area. We have in the past recognized the need for appropriate salary increases for Members of Congress. We have supported pay increases for Members of Congress and other executive branch officials, judiciary officials. We will do so again.

I think it is one of the most—may be one of the most difficult questions that Congress constantly faces, but I have always felt that it was one of the most important, and I guess I feel it just seems to be getting more and more important. The harder it is to deal with, the more important it becomes.

What we saw happen with respect to the cap on executive branch officials, what is happening in Congress is a national problem that our organization is interested in working on and willing to work on, and I think we have a real disaster on our hands in the

next decade if we cannot figure out the question of how to deal with salaries for the people who are responsible for leading this country.

On the other hand, we do not feel that is a basis or should ever be a basis for sending out a message to the American people that Members of Congress who write the tax laws have placed themselves in a position of advantage compared to every other taxpayer. There is no way the public will accept that. I know parts of the public object strongly to pay increases. Other parts of the public do not. I have rarely seen an issue with the reaction to this particular one, and I do not think a pay increase would ever engender the kind of reaction that this issue has engendered.

It happens for a couple of reasons. It came at a time of economic hardship in this country, and it gives the appearance, and I think there is a reality, that there is a set of rules that are providing tax treatment for Members of Congress that is different from everyone else, and what it comes down to, even if you take out the automatic $75-a-day deduction, what it comes down to is that for many Members of Congress, their ordinary, normal living expenses with their families at home had been turned into tax deductions for business purposes, and that, I think, is the dividing line. That really does have to be dealt with in a way that eliminates that difference, and we believe that Senator Long's proposal would eliminate that difference, and therefore we support it.

We have supported efforts to restore the cap, the $3,000 cap as an interim solution because of the way in which these battles unfold. Our basic support is for Senator Long's proposal. Once Senator Long's proposal were enacted, then you would raise the question of the uncertainties that come with it, and those are uncertainties that everyone faces. Perhaps, as Senator Long mentioned earlier, maybe the definition that exists for everyone does not make sense any more. Maybe the question of establishment rather than principal place of business is the right standard. I do not testify on that question except to say that as long as it is done across the board for everyone, I believe it should be acceptable. It is certainly acceptable to us, and we will support it.

Thank you.

[The prepared statement of Mr. Wertheimer follows.]

TESTIMONY OF

FRED WERTHEIMER

I want to express the appreciation of Common Cause for the opportunity to present our views today as this Subcommittee looks for a way to deal with what has become a major controversy in this country -- the deductibility of business-related travel expenses for Members of Congress.

The national public outcry that has occurred in response to the tax break Members voted themselves last year is rooted in the public's objection to Members of Congress creating special tax rules that benefit them and are not available to any other taxpayers. This kind of favored treatment for Members of Congress is wrong. It has been correctly recognized by the public as unfair, unjust and inequitable. Any ultimate solution for dealing with the public's legitimate concerns must be designed to assure that Members are not receiving preferred tax treatment over other taxpayers.

In 1954 Congress enacted legislation which established each Member's home state or congressional district as the Member's home for tax purposes. It is this special provision, combined with the lifting of the $3,000 cap on tax deductions for business-related travel expenses by Members, and the requirement for an automatic per diem tax deduction for Members, that generated the public uproar that has taken place.

At a time of national austerity when tens of millions of Americans were suffering economic hardships, Members of Congress

substantially reduced their own taxes by providing themselves with special tax treatment. This action has been correctly viewed throughout the country as a uniquely unfair windfall for Members of Congress.

Common Cause recognizes the need and importance of providing reasonable and appropriate salary increases for Members of Congress, as well as for other government officials. It is essential, in our view, that those in public office be adequately paid for the jobs they are performing. We have publicly supported salary increases in the past for all three branches of government, including the raises enacted in 1977 and 1979. We will continue to support appropriate pay raises in the future.

The need for appropriate salaries for public officials, however, is not and cannot be a justification for enacting unfair tax breaks that turn Members of Congress into a privileged class as compared with other taxpayers.

There are many taxpayers in this country today who, like Members of Congress, conduct business activities in two different locations. Living expenses associated with these business activities can only be deducted, normally, if those expenses are incurred while the taxpayer is away from home. "Home" is defined for tax purposes as the place where the taxpayer has his or her principal place of business. This means, in effect, that the normal daily costs of living at home with a family do not become eligible for treatment as a deductible business expense.

The special provision in the tax law for Members, however, automatically established a Member's principal place of business for tax purposes as the state or congressional district that the Member represents, regardless of where the Member actually spends his or her principal time conducting business and regardless of where the Member actually lives most of the time. This means that Members of Congress -- and Members of Congress only -- are eligible to take as business deductions what are actually the normal everyday costs of living at home.

The legislation introduced by Senator Russell Long, S. 2413, would repeal the special tax advantage that this unique definition of "principal place of business" provides for Members of Congress. We support this legislation as the correct long-term solution to the problems that now exist. We believe, however, that certain definitional and administrative questions must be addressed if S. 2413 is to appropriately achieve its goals.

Before addressing the substance of this and other proposals, however, we would like to congratulate this Subcommittee for holding public hearings on this matter.

The method by which the tax changes for Members were dealt with last year -- without any committee discussion, with limited initial floor debate, and with no opportunity in the House for a separate recorded vote -- only served to confirm to the public its dubious nature. The nationwide reaction against the action of last year, as you know, has been intense and sustained. The Internal Revenue Service has received more than 33,000 letters of

protest against their proposed regulations to implement the tax deduction for Members. I would like to submit for the record testimony which I presented on behalf of Common Cause to the IRS on May 11, 1982 in opposition to the proposed regulations.

Since last September the tax benefit issue has been on the floor of the House and Senate on at least five different occasions. Legislation has been attached to continuing resolutions, Black Lung legislation, supplemental appropriations and debt ceiling legislation. It is past time for Congress to settle this matter and to do so through a process that will enhance chances for public acceptance of the result. In this context, we believe that this Subcommittee makes a very positive contribution by holding these hearings.

Substantial majorities in the House and Senate have now gone on record, in response to overwhelming public opposition, as recognizing that last year's action was wrong and that the automatic $75 per day deduction it led to is unacceptable. The automatic deduction -- available for any "congressional day" and regardless of whether the Member is in Washington -- has been thoroughly discredited and fortunately no longer appears to be under serious consideration.

The urgent supplemental appropriation recently passed by the Senate included a provision that would repeal all of the changes made last year and restore the previous $3,000 limit on business-related travel expenses by Members (although the unlimited deduc-

tion for Members is allowed to stand for the year 1981). We have supported repealing last year's action as an interim solution because we believe it is important to have the status quo restored in order for Congress to put behind it the hailstorm of public criticism which has fallen upon it since the tax break was enacted last year.

We believe that Senator Long's proposal takes us to the next logical and appropriate step in dealing with this matter. It would result in Members of Congress being treated the same as similarly situated taxpayers who have to conduct their professional responsibilities in two places requiring travel and business-related travel expenses. It would remove the $3,000 cap on deductions, a figure set in 1954 and would also remove the special definition for a Member's principal place of business. It is this definition which has set the stage for Members -- and Members only -- to be eligible to deduct the normal daily costs of living at home.

As Senator Long stated when his legislation was introduced:

> . . . I would suppose that Washington would be seen as the principal post of duty or place of business for many Members of Congress -- even though their legal domicile would be elsewhere. If Washington is treated as a Member's principal post of duty, then his expenses for personal meals and a personal home in the Washington area would not be allowed. His expenses for travel away from Washington would be deductible business expenses, subject to the general rule that only reasonable expenses are deductible.

The basic approach contained in S. 2413 is correct in our view. It treats Members of Congress the same as all other taxpayers, no better, no worse. As noted earlier, however, there are defini-

tional and administrative problems that we believe must be addressed. Clearly the deduction should be applied only to unreimbursed legitimate business expenses -- the away-from-home business associated with a Member's official duties as a Member of Congress. Conversely, the deduction should not be available to Members of Congress with regard to expenditures made for political campaigning or other political purposes. If the deduction were allowed for political activities it would represent, in effect, an in-kind campaign contribution from the federal treasury, available only to Members of Congress and not their challengers.

We recognize that at times the task of separating political travel from travel related to official duties may not be an easy one. But we believe that steps must be taken to make clear that this distinction has to be drawn by Members, and by the IRS, in calculating what are legitimate business-related travel expenses for Members.

While the Long proposal in our view would eliminate any preferred tax status for Members of Congress, S. 2321, sponsored by Senator Mattingly would perpetuate special tax treatment for Members. Chairman Dan Rostenkowski of the Ways and Means Committee has sponsored a similar bill in the House.

The Mattingly/Rostenkowski proposal would allow Members to deduct as away-from-home business expenses all living expenses incurred in Washington, D.C. that can be substantiated. It incorporates the special provision in the tax law that automatically establishes a Member's tax home for federal tax purposes as the

state or congressional district that the Member represents, and therefore under S. 2321 Members of Congress -- and Members of Congress only -- are eligible to take as business deductions what are actually the normal everyday costs of living at home.

Under the Mattingly/Rostenkowski proposal, Members of Congress remain eligible to deduct normal living expenses that, according to the Internal Revenue Service's proposed regulations, may include all meals (including preparation and service), lodging, depreciation on residence and household furnishings; utilities, insurance, maintenance of residence, cleaning, laundry and local transportation.

We strongly urge the Committee to reject this proposal which will not eliminate a privileged tax status for Members of Congress and will not end the public uproar that such status has generated.

In summary, Common Cause believes that the tax benefits for Members adopted last year are unfair, unjustified and should be repealed. We have supported reimposing the previous $3,000 limit as an interim solution to the problems created by last year's legislation. We support the approach set forth in Senator Long's bill, S. 2413 to fully repeal the special provision for Members of Congress, as a long-term solution to the problem but believe steps must be taken to make clear that expenditures by Members for political purposes are not eligible for tax deductions. We strongly oppose the proposal of Senator Mattingly and Representative Rostenkowski which would carry forward, not eliminate, privileged tax treatment for Members of Congress.

Senator PACKWOOD. Mr. Davidson?

STATEMENT OF JAMES DALE DAVIDSON, CHAIRMAN, NATIONAL TAXPAYERS UNION

Mr. DAVIDSON. Thank you, Mr. Chairman, and members of the committee.

We, too, applaud your taking the step of having this hearing. We favor the legislation S. 2012 that Senator Proxmire has introduced and alluded to in his testimony, but more vigorously we support S. 2413, which has been introduced by Senator Russell Long. Senator Long's bill would also deny the Treasury regulatory authority to prescribe a daily deduction for Members, but more importantly in our view it would eliminate special tax treatment for Members of Congress and truly place Members of Congress on the same footing as the average taxpayer.

In today's fiscal environment of inflationary turmoil, high-interest rates, declining disposable income, and runaway Federal budget deficits, it is ironic but not surprising that Members of Congress have decided to take a back-door approach to giving themselves a raise. While the tax laws become ever more complicated and the penalties harsher for the average taxpayer, Congressmen can now claim over $19,000 in tax deductions each year without fear of an audit or penalties. That is unfair.

First of all, as I stated, it is a back-door way to increase congressional pay. Frustrated by the public's unwillingness to accept a direct congressional pay increase, proponents in Congress decided to opt for subterfuge, and this, in my view, was a very grave mistake. It amounts to an average of a $9,000 pay increase for Members of Congress. I think the public outcry which has been forthcoming is easily understood.

The new tax deduction also retains the practice of special favorable tax treatment for Members of Congress. These differences are: First, Members can deduct up to $75 for each congressional day without documenting any actual expenses. Two, Members of Congress are allowed to take the flat per day tax deduction even though they may not be in Washington or incur any expenses for the days when deductions are claimed. Three, the Treasury has defined a congressional day in a very liberalized manner. The definition is drawn so that even though the House was only in session 163 days last year, Members were allowed to deduct 262 congressional days. In the Senate, the Senate lasted only 165 days, yet there were 256 congressional days.

Four, the regulations allow Members of Congress to deduct expenses even though they may have been reimbursed for many if not most of them. Again, no taxpayer can do that. Although this is nothing new, Federal law says that Congressmen can claim their home State or district as their tax home rather than their principal place of business. This was an unimportant distinction until Congress lifted the $3,000 cap on away-from-home expenses. Again, this frees Congressmen from proving where their tax home is, something that many taxpayers find an irksome part of our Nation's tax laws.

Because many Members of Congress actually live in the Washington area, this provision allows Members to deduct personal living expenses. We believe that the Congress should either reinstate the $3,000 limit, as has been proposed by Senator Proxmire, or in the alternative, and preferably, Congress should adopt the legislation which has been proposed by Senator Long.

We feel, too, that the Omnibus Congressional Compensation Reform Act of 1982, S. 2407, which has been proposed by Senators Thurmond and Proxmire is a way out of the difficult bind which Members of Congress find themselves in. We sympathize with the fact that many people among the citizenry do not believe that the performance of the Congress is up to the standard that merits a merit raise, and for that reason you have a difficult problem. But the Founding Fathers, when they thought about these issues, believed that they had a solution which was proposed in the collection of amendments that became the Bill of Rights. Unhappily, the State legislatures at that time did not ratify such an amendment, but today it seems as though it might have been a good idea.

In any event, we believe that Senator Long's bill would go the crucial final step that requiring that the IRS apply the same test to Members as it does to ordinary citizens in establishing a person's tax home. We believe that it is time that the Members of Congress cope with the same tax laws as average citizens. Senator Long's bill does this. It is the only bill which would do this, and we believe it deserves support. Thank you.

[The prepared statement of James Davidson follows:]

STATEMENT OF JAMES DALE DAVIDSON

CHAIRMAN, NATIONAL TAXPAYERS UNION

before the

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

COMMITTEE ON FINANCE

UNITED STATES SENATE

June 18, 1982

Mr. Chairman and members of the Committee, thank you for the opportunity to appear on behalf of the members of the National Taxpayers Union on the subject of tax provisions affecting congressmen's away-from-home expenses.

We favor legislation such as S. 2012, by Senator William Proxmire, which would disallow deductions for away-from-home expenses of members of Congress in excess of $3,000, and deny the Treasury regulatory authority to prescribe an unsubstantiated per day deduction for members while away from their home state or district. Alternatively, we support S. 2413 by Senator Russell Long. Senator Long's bill would also deny the Treasury regulatory authority to prescribe a daily deduction for members. But more importantly, it would eliminate special tax treatment for members of Congress, and truly place members of Congress on the same footing as the average taxpayer.

In today's fiscal environment of inflationary turmoil, high interest rates, declining disposable income and runaway federal budget deficits, it is ironic, but not surprising that members of Congress have decided to take the "back door" approach to giving

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themselves a raise.

While the tax laws become evermore complicated and the penalties harsher for the average taxpayer, congressmen can now claim over $19,000 in tax deductions each year without fear of an audit or penalties. That's unfair.

Let me explain why I think the new deductions are unfair.

It's a backdoor way to increase congressional pay. Frustrated by the public's unwillingness to accept a direct congressional pay increase, proponents decided to opt for subterfuge. By allowing new congressional tax deductions of approximately $19,000 per year, most members of Congress could expect a take home pay increase of $9,000. Because that is roughly equivalent to Congress voting itself a 20% salary increase, the public outrage is understandable.

The new deductions also continue the practice of special favorable tax treatment for members of Congress. These differences are:

1) Members can deduct up to $75 for each "congressional day" without documenting any actual expenses. No other taxpayers are allowed a flat unsubstantiated daily deduction.

2) Members of Congress are allowed to take the flat per day tax deduction even though they may not be in Washington or incur any expenses for the days where deductions are claimed. No other taxpayer can claim a deduction for a day away from home when he's at home.

3) The Treasury has defined a "congressional day" in a very liberalized manner. The definition is drawn so that even though the House was only in session 163 days last year, members were

allowed to deduct 262 congressional days. In the Senate, the session lasted only 165 days. Yet, there were 256 congressional days. The IRS is never this generous when writing regulations for average taxpayers.

4) The regulations allowed members of Congress to deduct expenses even though they may have been reimbursed for many, if not most, of them. Again, no taxpayer can do that.

5) Although this is nothing new, federal law says that congressmen can claim their home state or district as their tax home, rather than their principle place of business. This was an unimportant distinction until Congress lifted the $3,000 cap on away-from-home expenses. Again, this frees congressmen from proving where their tax home is, something that many taxpayers find an irksome part of our nation's tax laws. Because many members of Congress actually live in the Washington area, this provision allows members to deduct personal living expenses. This is a practice that the IRS frowns on when average taxpayers attempt it.

We believe Congress should reinstate the $3,000 limit on the deductions allowed for Washington living expenses. As Congress is thinking of increasing taxes for all Americans by approximately $100 billion over the next 3 years, we think it is unfair for congressmen to vote themselves a substantial new tax break at the same time.

Alternatively, Congress could adopt legislation to treat congressmen as ordinary citizens. To do this, Congress would have to pass S. 2413, by Senator Long.

Many members of Congress are proposing legislation which would simply require that members of Congress substantiate Washington expenses. They claim that this would place members on the same footing as average citizens. This is simply not true. Unless members are required to comply with IRS rules on establishing a principal place of business, this approach will still allow members to deduct personal living expenses. No other taxpayer can do that.

Senator Long would go the crucial final step by requiring that the IRS apply the same test to members as it does to ordinary citizens in establishing a person's tax home. If a member could prove that his tax home is in the district or home state, then Washington expenses would be deductible. Likewise, if a member proves that his principle place of business is in the Washington, D.C. area, all reasonable nonreimbursed expenses incurred while traveling back to the home state or district would be deductible.

It's time that congressmen cope with the same tax laws as average citizens. Senator Long's bill is the only bill which would do this. It deserves your support.

Senator PACKWOOD. Thank you.
Mr. Angoff.

STATEMENT OF JAY ANGOFF, STAFF ATTORNEY, PUBLIC CITIZEN'S CONGRESS WATCH

Mr. ANGOFF. Thank you, Mr. Chairman.

I am Jay Angoff. I am a lawyer with Congress Watch. I appreciate the opportunity to testify here today, and appreciate your having these hearings.

Clearly, there has been a great deal of negative press and a great deal of public outrage about the congressional tax break enacted last year, but I think that there are some intelligent, reasonable arguments, not necessarily that we agree with them, but there are certainly intelligent, reasonable arguments that could be made in defense of what Congress did last year.

The main one is that Members of Congress are underpaid, that $60,000 is simply not enough compensation for people who work as hard as Members of Congress, and who have to live the way that Members of Congress do in Washington. Now, in the Senate, the problem is not as great, as Senator Dole pointed out. Well, I have heard the figure that anywhere from 40 to 75 percent of Senators are millionaires, so a few thousand dollars either way does not

make that much difference. In addition, there is no limit on outside income in the Senate.

On the other hand, in the House, there are many fewer millionaires, proportionately, certainly, and there is an $18,000 limit on outside income, so the problem is greater in the House, and we do sympathize.

Senator DOLE. What do you mean by outside income?

Mr. ANGOFF. Thirty percent outside earned income limit.

Senator DOLE. It is all right to be a billionaire and collect a billion a year in investments.

Mr. ANGOFF. Yes, it is.

Senator DOLE. They want to limit that, limit anybody who does not have any money from making any.

Mr. ANGOFF. That is correct. There is certainly some unfairness with that. So we do sympathize with the argument that Members of Congress should somehow get more. It is true that the public will not accept a direct salary raise, so this was one way to do it. Although those arguments may be reasonable and intelligent, as Senator Dole pointed out, you cannot win with them. So the question becomes what to do.

Senator Proxmire has one solution, and that is just to put the law back the way it was. We support that, in that it would show that Congress can respond to the public, and it also would insure that Congress would not be increasing its own benefits at the same time that it is reducing benefits for other Americans.

Another solution has been suggested by Senator Mattingly, and that would be to allow Congressmen to deduct all their living expenses in Washington as long as they could substantiate this. The argument made in defense of that is that that is really treating Members of Congress like all other taxpayers, but the fallacy is that Members of Congress are not away from home on business in Washington. In fact, most of them live in Washington, so they are deducting ordinary living expenses under the Mattingly proposal, whereas average citizens do not deduct, cannot deduct ordinary living expenses.

Now, the best solution and, we believe, the most elegant and simple solution is Senator Long's bill, which would, in fact, provide equal treatment for Members of Congress and for people who are not Members of Congress. The IRS would simply determine where a Member of Congress tax home is, and would use the three criteria that it uses for other people, that is, where you spend your time, where you make your money, and where you do your business.

And in most cases, virtually all cases, it would seem that a Member's tax home would be Washington. So he would not deduct ordinary living expenses in Washington, but he would deduct expenses in his home district, while away from home, that is, while away from home in Washington on business.

In conclusion, Mr. Chairman, we support most strongly Senator Long's bill. We think this is a positive tax reform measure, and we hope that this will be only the first of many positive tax reform measures that Senator Long will sponsor. We hope that he will now take the lead in the area of corporate tax reform, possibly re-

pealing leasing, instituting a corporate minimum tax, and cutting back on the ACRS system enacted last year. Thank you very much.

[The prepared statement of Mr. Angoff follows:]

STATEMENT OF JAY ANGOFF

Mr. Chairman, Members of the Subcommittee:

My name is Jay Angoff and I am a Staff Attorney with Public Citizen's Congress Watch, a public interest advocacy group founded by Ralph Nader. Public Citizen is a nationwide consumer organization with approximately 70,000 contributors annually.

There has been a great deal of Congressional maneuvering over the last eight months on the subject of tax treatment for Members of Congress. So far, all of the maneuvering has either been last-minute attachment of Congressional benefits to unrelated legislation, or last-minute attempts to retract those benefits through amendments to other unrelated legislation. All of this action has taken place without any hearings or other opportunity for public comment.

We are pleased that this Subcommittee is now holding hearings to consider the subject of tax treatment for Members of Congress in a more deliberate and public manner.

From 1952 until last year, there was a $3,000 ceiling on the amount members of Congress could deduct for living expenses in Washington. On the last day of the last session, both Houses voted to repeal the $3,000 limit and substitute for it an automatic deduction of $75 for each "congressional day" - all days except periods of five or more consecutive days (including weekends) during which the member's Congressional chamber was not in session - regardless of the number of days the member was really in Washington and regardless of how much his living expenses actually were. In 1981, there were 262 congressional days in the House and 256 in the Senate, so that congressmen could automati-

cally deduct 262 X 75, or $19,650, on their 1981 tax return, and senators could automatically deduct 256 X $75, or $19,200.

Understandably, a public outcry followed. Various bills have now been introduced that would modify the action Congress took on the last day of last year. For example, S. 2321, introduced by Senator Mattingly, as well as similar bills introduced by Senators Armstrong and Chafee, would repeal the automatic $75 a day deduction but would allow members to deduct all their living expenses in Washington - which could be even more than $75 a day - as long as they could substantiate them. Members of Congress thus would still get a windfall under these bills, and Congress Watch strongly opposes them.

Senator Proxmire, on the other hand, has introduced a bill, S. 2012, that would simply put the law back to the way it was before December 16 of last year: it would repeal the automatic $75 a day deduction and reinstitute the $3,000 ceiling on members' living expenses in Washington, D.C. Congress Watch strongly supports S. 2012. By enacting this bill, members of Congress would show that they can be responsive to their constituents, and they would ensure that members of Congress would not be increasing benefits for themselves while reducing benefits for everybody else.

Congress Watch also strongly supports the Long bill, S. 2413. In the long run, this bill is probably the best solution, in that it simply treats members of Congress like everyone else.

The general rule for taxpayers who are not members of Congress is that out-of-pocket travel expenses, including expenses for meals and lodgings, are deductible if they are incurred pursuant

to business travel while away from home overnight, are not lavish or extravagant, are not reimbursable, and are properly substantiated. There is no dollar cap or other limit on business travel deductions for taxpayers generally.

The "tax home" concept is used by the IRS and by most courts to determine whether or not a taxpayer is away from home overnight when he travels on business. In general, a taxpayer's tax home is the general area surrounding the taxpayer's principal place of business. If a taxpayer has two regular places of business, his tax home is considered to be the area that is the major or principal business location of the two. In choosing which regular place is the major or principal business location, all the facts and circumstances are considered, with the most relevant fact being the amount of working time spent by the taxpayer in each respective location.

For example, in Revenue Ruling 55-604, a department store employee had worked for many years at the company's headquarters and main store, which were located in an unidentified city, but let's assume the headquarters city was Richmond, Virginia. He was then appointed to be the manager of a new store in another city - let's say Balitmore - which was about 100 miles away from Richmond. The employee spent Tuesday through Saturday managing the store in Baltimore, and attended meetings in Richmond on Mondays. The taxpayer's family stayed in Richmond, and the taxpayer stayed in a rented residence when he was in Baltimore. The ruling held that the taxpayer's "tax home" was Baltimore, where he spent most of his working time, so that his expenses for his rented Baltimore residence were not deductible as travel

expenses. On the other hand, a business deduction was allowed for the portion of the family's expenses for meals and lodging, in Richmond, properly attributable to the taxpayer's presence there in the actual performance of his duties.

Since 1952, Congress has declared itself immune from these "tax home" rules, and has instead provided a statutory rule that the "tax home" of a Member of Congress is located in his Congressional district. Thus, even though a Member of Congress might be in a situation very similar to the department store employee in Revenue Ruling 55-604, he would be able to deduct his expenses for living within commuting distance of his Washington office where he spent most of his working time.

Until last year, the unfairness of this Members-only tax home rule was limited by a $3,000 cap on deducitons for Washington living expenses. However, with the elimination of the $3,000 cap and the promulgation of the notorious $75-a-day regulations, the impropriety of the special tax home rule became much more apparent. While working Americans were struggling to make ends meet, Members of Congress were claiming deductions for depreciation on their houses, groceries, utility bills, and laundry expenses, and perhaps for their cooks, gardeners and chauffeurs. Congress Watch shares what it believes to be the view of the majority of the American people that Members of Congress should not get tax deductions for the expenses of living at home. Because the Members-only tax home rule incorrectly labels such personal living expenses as business expenses, it should be repealed as part of any reform effort in this area.

Congress Watch does recognize that Members of Congress are different from most employees in that they must divide their time between their Congressional districts and their Washington offices in order to carry out their Congressional duties. However, the general tax rules for business travel address this problem in an appropriate way and do not require special amendment for Members of Congress. Just like the department store employee in Revenue Ruling 55-604, a Member of Congress has a principal post of duty in Washington and a type of "headquarters" back in his Congressional district, where he must travel on a fairly regular basis in order to perform his Congressional duties. If the Members-only tax home rule is repealed, the Members of Congress will be treated just like that department store employee - his expenses of living in the Washington area will not be deductible, but his out-of-pocket, unreimbursed expenses involved in traveling to his district in pursuit of his Congressional duties will be a regular business deduction.

In short, S. 2413 would provide equal treatment for Members of Congress by repealing the Members-only tax home rule and the authority for the $75-a-day regulations. We urge this committee to support it.

Senator PACKWOOD. I did not find that last part in your statement here.

Mr. ANGOFF. That was an improvisation.

Senator PACKWOOD. Should we apply the same law to State legislators and eliminate their special preference? Let me start with you, Fred, and just go across.

Mr. WERTHEIMER. You asked whether the logic applies, and the logic does apply. The circumstances may not. I think one of the responsibilities that Congress always faces when it deals with tax codes is whether there are special circumstances for any class of taxpayers that would argue for different treatment. I do not know that there are here. I do not automatically say that there are not.

There is a difference in terms of part time versus full time, although the part-time nature of State legislators—they are attorneys.

Senator PACKWOOD. Mr. Angoff.

Mr. ANGOFF. I agree with that. Logically it is consistent and there may be other counterbalancing considerations.

Senator PACKWOOD. Mr. Davidson?

Mr. DAVIDSON. I agree as well. The logic is pretty hard to defeat. I think that it is true, as Senator Proxmire pointed out, that in the case of many State legislators, they are literally living at home. They get in their cars or get in a small private plane and fly up or drive up, and then they go back, or they sleep in their office or something, so they would have a much easier time, in my view, sustaining a claim that their home was wherever they lived, and not the State capital. And I think that perhaps the reason for this legislation in the first place was to iron out difficulties that might have turned up in the Tax Court, and perhaps some direct clarification of the rules about residences would be in order for everybody.

Senator PACKWOOD. Let me read from each of your statements and see if you are all in accord on this. This is Mr. Wertheimer's statement concerning Senator Long's proposal: "It would result in Members of Congress being treated the same as similarly situated taxpayers. The basic approach contained in S. 2413 is correct, in our view. It treats Members of Congress the same as all other taxpayers, no better, no worse."

Mr. DAVIDSON. "Congress should adopt legislation to treat Congressmen as ordinary citizens."

And Mr. Angoff. "It simply treats Members of Congress like everyone else." This is your suggestion. "In short, S. 2413 would provide equal treatment for Members of Congress."

All of you are saying that we should have no privileged position, but no inferior position. We should be treated exactly like everybody else. Is that correct?

Mr. WERTHEIMER. Yes, that is our position.

Mr. DAVIDSON. Exactly.

Mr. ANGOFF. Yes.

Senator PACKWOOD. Why not the same philosophy in terms of outside income? Why not be treated like all other taxpayers?

Mr. WERTHEIMER. Well, or you could say for campaign finance rules. You mean the question of limits on outside income?

Senator PACKWOOD. Yes.

Mr. WERTHEIMER. That is an issue, as you know, that we have discussed before.

Senator PACKWOOD. I am curious about the logic of the equal treatment.

Mr. WERTHEIMER. The logic has to do with the purpose of the rules. The purpose of those rules is designed to try to prevent conflicts, potential conflicts for people who are making judgments about the expenditure of tax dollars, the raising of tax dollars and the expenditure of tax dollars. They are also designed, in part, to deal with the questions of time working on the job versus time away speaking.

So that the restrictions that were adopted for a while do focus in on money that is made available or can be made available by outside interests to people who hold office, because of the potential that that may cause for influencing public policy.

Senator LONG. May I interrupt at that point? I was just discussing with a member of our staff today, Mr. Wertheimer, just the human problem involved in some of these things.

Now, I was invited to take a trip to Japan at the expense of some foundation or other. I thought about it. My wife would have loved to have gone. She had not been to Japan. But the more I thought about it, I have got some real strong feelings about the way those people have been giving us the worst of it in our trade relations with that country, and if I go over there any other way than either paying my way or with this Government paying my way, that might tend to keep me from speaking out as strongly for what I think to be this Nation's interest as I would otherwise.

I can recall one time the President invited my wife and myself to have dinner down at the White House. When I went home that night, I told my wife, I cannot go enjoy that man's hospitality and the kindnesses of the man's wife and criticize his administration as strongly as I had planned to do when I make that speech before the Press Club tomorrow, so I had to tone that speech down. Maybe I am better off that I did, looking back on it.

But when Members of Congress accept large honorariums, it does create a problem, and I think that is just the kind of point that Common Cause had in mind, and to a large degree I think we agree that perhaps the best answer is just to report it, but there is a question there of how much outside earnings people should have.

Frankly, the time I really got concerned about it was when my good friend, Hubert Humphrey, a man I very much admired and supported for President, got up there and spoke out against the pay raise bill, but he was getting $90,000 a year in honorariums. It seemed to me that he ought to be supporting the pay raise. Goodness knows, he would have needed it if he didn't have all those honorariums. And John Pastore pointed that matter out, and that is why I felt that there ought to be some limit.

Frankly, I felt that one reason it ought to be that way is that Members ought to be under some pressure to vote to decide what the salary ought to be. I say that as one who has a large amount of outside income, but I felt in fairness I should vote for pay raises not so much because I needed it, because I didn't, but because Members of Congress, generally speaking, were not being adequately paid.

What you are saying with regard to the honorariums and that sort of thing, you are saying that it does create a problem, a difference from just the ordinary citizen out there who might receive some speaking fee.

Mr. WERTHEIMER. Well, yes, and I recognize Senator Packwood's point goes to the basic question of distinguishing between earned income and unearned income, and there is a basic difference there, a difference that gets felt in this body and the other body in many ways. We come back to a point of view of being concerned and seeing dangers in that route and wanting to see a system where Members of this body and the other body are paid for the job in a way that they can be adequately compensated, and also not have to face the kind of appearance questions that you get, and sometimes reality questions that you get in the area of honoraria, that you get in the area of fees, that we used to get a lot more of in the past when there were Members of Congress who had law practices at the same time that they were in Congress, but that has not existed in the Senate for some time and it hasn't existed for a while now in the House.

Mr. DAVIDSON. I would like to respond to that question, just to indicate that there is not complete unanimity. My view has always been that the rationale for denying Members of Congress outside income really is a way of stepping in front of the voter and saying, we deny your competence to decide what is a relevant consideration as to the conduct and the voting behavior of your Member of Congress.

It seems to me that it is not a great offense of justice if a Member of Congress decides that he wants to earn outside income. This certainly ought to be reported. It ought to be something which the constituents have at their fingertips as information. However, the distinction between income that one receives from a blind trust or from known investments and income which he receives in honoraria or if you write a book is not great. You could very easily get around this limit. Senator Long's Uncle Earl could "see through that." You could write a book, and some group could buy 50,000 copies of it, and then you would get the royalties.

When you come down to it, limits can easily be gotten around if anyone were earnest in trying to be paid off in some way. It seems to me that we ought to just bring the thing out in the open and let Members of Congress speak for $50,000, if anybody will pay that much to hear them talk, and let their constituents match up the speech they gave on the hustings with the one they were paid for and see if it was worth the difference.

Senator PACKWOOD. Mr. Angoff?

Mr. ANGOFF. Mr. Chairman, I think our answer to your question is simple. There is no possibility of a conflict of interest with respect to the tax rules applied to Members of Congress. There is such a possibility with respect to the outside income question, and therefore they are different, and Members of Congress are different in the latter sense and not in the first.

Senator PACKWOOD. But no conflict of interest if you have dividends from bank stocks?

Mr. ANGOFF. No, there is a big problem, I think, with allowing people to earn unlimited amounts of dividends, interest, unearned

income, and not allowing them to earn outside earned income. I do not necessarily, though, think that the solution is to allow unlimited amounts of both. We might want to consider putting limits on both.

Senator DOLE. We may do that next week.

Senator PACKWOOD. Senator Dole.

Senator DOLE. Have you done any study on State legislators, or is this an observation that they are different than we are and they do not live in the capital? Is there some illusion that they live in Wichita and drive back to Topeka every day? You haven't done much work in that, have you, Mr. Davidson?

Mr. DAVIDSON. I would have to admit frankly that I have not done any scientific survey of members of State legislatures, but having visited about 40 of them in the last six or seven years, I could say that they certainly do have much more limited facilities available, and many of them do drive from Kansas City down to Jefferson City, for example, because I have ridden with them in the cars along the bumpy roads.

Senator DOLE. And again, I am not quarreling with State legislators. I am just talking about how there is some logic to the treatment of State legislators. I wonder why that logic doesn't apply to Members of Congress. In many cases, State legislators are paid more than Members of Congress. In New York last year they stayed in session almost year round. They worked it out so that they were in session every day, even a few Sundays, I think, to take advantage of the $75 or more per diem that they were receiving under the special tax treatment that was enacted last year on the Economic Recovery Tax Act.

Senator PACKWOOD. Let me ask you something, Bob, if I could on that. They are also different in the respect that they actually get the per diem as income and do not have to count it. It is not a deduction. They get actual income.

Senator DOLE. They are a very special class, but somehow they are not addressed because there are so many of them around the country that I guess it is easier if you want to target, you select a smaller group, and they are all right here in one building, or they are all right here in the Capital, and it is easier to focus on 535 in the District of Columbia than it is a couple of hundred in each State.

Mr. WERTHEIMER. If I could comment, Senator, I see the same problem with that automatic set rate deduction for them that we saw with respect to Congress, and my comments, I would focus them in on the place of business. I do not think that should be in the code.

Senator DOLE. We hope to address that, and again, I might say as chairman of the Finance Committee last year when this amendment was offered we did not want the amendment. We did not have the votes to do much about it, because we felt there should have been hearings. I assume that had we had hearings on the Members' deduction, we might have been better advised. But that was not the case either. And maybe, as Senator Long has indicated, you might decide it is not worth the effort.

But I think there are some legitimate cases, maybe none of us, but there are some legitimate cases where Members of Congress do

travel back and forth to their States, particularly in the House. They leave on Thursday and they come back on Monday. They have a home in their district and they have a home here, or they have an apartment. They have a lot of expense, and I would guess—I do not know how many House Members, but, you know, a lot of them do not live here. So there is a special problem, and maybe that would be resolved by the amendment of the chairman of the committee.

But if in fact after the hearings and after some reflection on it, it is determined that we ought to go the Russell Long way, then so be it.

Mr. WERTHEIMER. Well, at this point, I would say that Senator Long's legislation is the best approach, and under it you might well, if you are treated on an individual basis, some of the Members of the House may well be eligible to treat Washington differently than most other Members would wind up doing.

Mr. DAVIDSON. Representative Mottl, I believe, according to press reports, sleeps on his office sofa and goes home every opportunity he has. He has no house here in the city.

Senator DOLE. He will not need one much longer. [General laughter.]

Now, just a final question, because we are going to have this debate next week. The annual honorarium debate comes up next Monday or Tuesday. Members just love to kick each other around. Some even write for Reader's Digest, they enjoy it so much, and they get elected by riding on the backs of their colleagues. It is great sport, and again, I do not quarrel with that, but it seems like there are other things.

We have $100 billion to worry about in the next 2 weeks in this committee, but I bet we will spend more time worrying about this and trying to straighten out the Members than we do safe harbor leasing, which is $30 billion, and a minimum income tax on people that do not pay any tax and make millions of dollars. I hope we pass something, but when we really get to tax breaks, I hope you are all around. I appreciate the little editorial comment there.

But in fact we may consider limiting outside income. Everything is of public record now for Members of Congress—you either release your returns or you release everything in your returns that is of any consequence—most Members do and should, I believe. It is a tough question, because some Members of Congress were successful before they came here and they have a lot of income. Others were successful but not in a financial way. Some Members have $1 million or more a year of so-called unearned income.

We are often told by the rich Members of the Senate—and there are more rich than nonrich—that we cannot earn outside income, even if it is speaking at the Hyatt Regency which is 5 minutes away, and doesn't take any time from our job. But somebody else can pocket a million or two a year from some investment income or oil income or other income. It is hard to understand why there is that difference, because most of us try to make certain when we speak to a group and are paid for it, at least I do, that there is no direct conflict between my job in the committee and the group I am speaking to. Otherwise it would be rather foolish to accept.

So if you build in those protections, which we should, how do we resolve this question of outside income? I think that is going to be the next issue. I do not want to delay the hearing, but you have touched on it. I do not think it is fair that we should limit somebody's income who has made good investments, or has family income. On the other hand, if in fact we are not being influenced by speaking to some seminar or some other group that does not have any direct relationship to something we are doing, is there something so bad about that?

Mr. WERTHEIMER. Well, if you look at it from the original standpoint that you described, the different rules for different people based on wealthy versus nonwealthy, you would come out where you come out. I think there are other factors.

And I think one of the real problem factors is that ultimately in these earned income situations a member who is a full-time member is also winding up in one form or another of a fee-for-services relationship with one or many groups or many different kinds of groups.

Senator DOLE. That could be true for campaign contributions, too, in a sense.

Mr. WERTHEIMER. Well, it could. All of us have been struggling with this for a long time, with different views, quite often. And invariably in this process you reach a point that it does not necessarily solve all the problems. Sometimes from our perspective it really does solve problems. From your perspective, it causes them.

The fact of the matter is, as you know, we have supported ways of trying to have rules and guidelines that limit and contain the ability of outside funds to influence or give the appearance of influencing your decisions.

And something has changed rather dramatically even in the last 10 years, and that is the size of the stakes here. The size of the stakes is that much bigger, $700 billion budgets and $250 billion tax preferences. Just in a 10-year period, I think the qualitative size of the stakes of your decisions is far more important to people out there——

Senator DOLE. Thank you. I appreciate that. It is just one of those problems.

Mr. DAVIDSON. If I may say, I think it is a bit too much optimism about the effect of this kind of rule in terms of altering outcomes in the way that presumably it is intended to do. I would say that it is very improbable that this limit on outside income has affected anything in terms of votes or laws that were passed. I am sure that it has caused some hardship. I am sure that there may have been some few people who did not stand up on a podium and collect $5,000 for doing what they might have done anyway, but I can cite no instance, and I doubt if any instance is citable, where any great change has taken place.

We know that there are people who have outside incomes. Even if the money is in trust, they know where it is coming from. As we found out with Lyndon Johnson when his money was in blind trust, he was on the telephone every night shifting his investments. Does Teddy Kennedy not know that the Merchandise Mart is somehow involved in his trust fund?

It is really unrealistic if we do not recognize that in any event, people have a place in the world from which they came, and if they are defeated or when they leave Congress they are going to go back to that place, and they have interests to protect. And it is very silly not to allow a straightforward effort by Members of Congress to earn income. If they feel obliged to do so, they should be able to take any kind of income, because, as I said, the definition between earned and unearned income is such that you can easily bridge it. Any Member of Congress, instead of providing a speech, could cut a record, and it could be played, and he could get royalties that would be presumably outside of the limit.

So, we are talking about things which, if you look at them closely, do not stand to scrutiny and commonsense. It would make for more sound policy, in my view, if we just eliminated the distinction between earned and unearned income, and let the Members of Congress take anything that was legally done, and if they violate a conflict of interest there are laws that deal with that problem.

Mr. WERTHEIMER. I would add, it was eliminated. We are not talking about rules on the books. We are talking about rules on the books that were eliminated before they even went into effect.

Senator DOLE. I have a radio program, but I do not have any sponsors.

Senator LONG. I would like to ask a question to these witnesses. I think that you touched on a point, Mr. Wertheimer, that compels us to act in this area, and I had not really given much thought to it until this matter received the very bad reaction that it received among the American people. I had not really thought about it much.

It never occurred to me that I could deduct not the gasoline tax but the actual expense of driving myself back and forth to work. That is ordinarily a personal expense, as I recall it, and it never occurred to me that I could deduct the expense of fixing my own meal in my apartment in Washington, or that I could deduct the expense—that I could go down and buy some groceries at the grocery store and deduct that. What housewife can do that for her family? That never occurred to me, and it is only when I began to think about all these things and see how bad the public was reacting to what the Congress did that I realized that this whole thing was a fiasco and a mess.

Now, I do not claim credit for authorship of this bill. We have a tax lawyer here who works for us and looked at the situation. He cannot deduct all that. His home is regarded as being where he lives, where he lives from day to day, and his thought is that the only thing that makes any sense is to treat us like everybody else, just strike out the special treatment.

Now, what you have said about this and what you said on television discussing the thing as well is, the only thing that makes any real sense is—you cannot defend that before the American people. There is no sense in us Senators feeling sorry for ourselves about this, you know. The American people feel that they have a right to feel sorry for themselves, that we are here deducting expenses that they cannot deduct, and what you are relating here is that that tends to undermine confidence in the Government. Isn't that it?

We give ourselves a special tax break that other people do not get, and that is what the people are upset about, and it is not going to go away. It is going to stay here and plague us until we straighten this matter out. Isn't that about the way it looks to you?

Mr. WERTHEIMER. Yes, it is going to get worse, not better.

Senator LONG. Do you agree with that, Mr. Davidson?

Mr. DAVIDSON. Absolutely. I think that your bill is exactly the right approach, and I think that many people in Congress perhaps would be surprised that the American people are not mean-spirited, that they really have a sense of justice and fair play, and they feel that above all, that this provision of the Constitution that says that there should be equality before the law really should have substance.

I think that they feel that they have been treated to a kind of cheap dealing when the Congress has gone around and said, what we really want is more money, and we do not think that you will tolerate it if we do it openly, so we are going to try to pull the wool over your eyes, and look what we have done.

I think that your solution to this problem is exactly the right one, which is to say, not treat Members of Congress as inferior citizens, but certainly not give them the status of royalty that entitles them to some extra benefit that other people cannot have. And if there are conflicts, confusions, difficulties in the law, those are the same conflicts and difficulties that every other citizen must face, and we may as well have the Members of Congress knowing what they are putting everybody else in touch with.

Senator LONG. Let me get to this other problem. This matter has to do with honorariums and all. Congress can act however it wants to about that, but it seems to me that is kind of irrelevant to this problem here.

My personal thought is that the Congress ought to find a way to see that Members of Congress are adequately paid, and we ought to pay ourselves or find some way to see that Congress is paid fairly, whatever that might be, out in the open, aboveboard, where everybody can understand what the salary is, and they run for the job, and then the public is entitled to expect us to give most of our time to doing this job.

Now, some of this outside income is subject to challenge. I can recall the day when my father stood up on the U.S. Senate floor and held up a copy of Martindale and Hubble, and undertook to put in the record a list of the law clients of the majority leader. And he made the statement, I am not saying just because a man draws money from all of these people every day of the week that it would influence his judgment. Oh, no.

At that point somebody put him in his seat for violating rule 19, that he would even make reference to the fact that the majority leader represented 50 big corporations and was drawing a regular honorarium from all those people day by day. To even infer that that might affect the judgment of the majority leader was such that the man ought to be put in his seat and not be permitted to speak any further.

That practice sort of went away, I guess partly because Senators just did not have the time to maintain that type of thing, but I would think that today if a Senator had a private law practice and

large corporations that were regularly paying a retainer to that law practice, would that not be subject to severe criticism today?

Mr. WERTHEIMER. Well, it would be a violation of the Senate rules, because the Senate has adopted rules that prohibit that, correct rules in our view.

Senator LONG. Well, back in that day, back in 1933, if you even inferred that that might influence a person's judgment at all, that was subject to challenge.

Well, how do you feel about the thought that I mentioned previously that perhaps we ought to try to pass a constitutional amendment and say that a President will appoint a commission and the commission will meet every 2 years to fix this salary?

Mr. WERTHEIMER. I do not have a particular view whether that is the best approach to go at this point, although Congress has struggled for years with every various method, and yet it still does not seem to work, as long as Congress is doing it itself. So, it seems that some form of getting it beyond Congress may be the only way to deal with it.

Senator LONG. Well, the reason we are in this trouble here is because of the conflict of interest aspect of it. Nobody was mad about us passing this law about State legislators. When they got up in arms was when we provided something for ourselves. My thought is that we should have someone else fix the salaries. Is it not a clear conflict of interest when we ourselves have to vote on our salary?

Mr. WERTHEIMER. Well, it is a problem. It is a conflict situation, but you are also the only one who can do it under the present rules, and under the present circumstance, we would like to see it done.

Senator LONG. That is why I am asking you.

Mr. WERTHEIMER. I would be happy to set it. You would be better off with me, though, than you would with Mr. Davidson. [General laughter.]

Senator LONG. Well, frankly, my thought about it is that personally, I would like to eliminate the conflict of interest involved in that. There is a clear conflict of interest. Do you not feel that way about it, Mr. Angoff?

Mr. ANGOFF. Yes, Senator Long. I think one of the worst things about this whole episode is the amount of time that so many people have spent on this issue which is really, relative to the budget and the tax problems, is absolutely inconsequential.

Senator DOLE. Including the press.

Senator LONG. Well, why does it attract so much attention? People figure that they understand that. That is something they understand, this thing about $100 billion here or $25 billion there.

Senator DOLE. They do not understand it. They are just told it is a $19,000 tax credit. Not everybody did that, but enough of them did. They had this "20-20" program, which I renamed zero-zero. They had a big special on it. Everybody had a lot of fun with it, because——

Senator LONG. Well, $19,000 they understand. Further, a lot of folks feel like they know that Congressman, and they wouldn't put it past him to do just exactly that. [General laughter.]

Mr. ANGOFF. There are a lot more important issues that Congress has to deal with, and I think it would be better if it were taken out of the hands of Congress and Congress could get on to looking at the tax bill this year.

Senator LONG. What is your thought, Mr. Davidson?

Mr. DAVIDSON. I have a thought. I have already suggested that I would support the proposal made by Senator Thurmond and Senator Proxmire, but I have a little out of hand suggestion which you might like, which is that we have a performance standard whereby Members of Congress pay would rise automatically when the budget came into balance, when the tax rates fell and inflation was down.

Senator DOLE. That is an old idea.

Mr. DAVIDSON. Then, if you gentlemen got together and decided suddenly to balance the budget and have a sound economy, then your income could be $1 million a year as far as I am concerned.

Senator DOLE. That is as bad as some of our ideas. [General laughter.]

Mr. DAVIDSON. It may be less likely to be——

Senator LONG. Well, there is some appeal to that. We have tried everything else and it has not worked. Maybe we should try that.

Senator DOLE. We have a balanced budget amendment coming up, so under your rule if I vote for that, am I entitled to a pay raise?

Mr. DAVIDSON. No, when you balance the budget, when taxes fall in real terms, and when inflation is down, when the economy grows, that is the time when Members of Congress deserve a merit raise, and I would be for any size raise under those conditions.

Senator DOLE. Even those who voted against all the things to make that happen? They would get a raise, too?

Mr. DAVIDSON. I am afraid that you would have to persuade them, at least enough of them to vote yes so that the raise would come into effect, but I would have more confidence that the American people would support a raise under conditions when the Congress had done those things which people want them to do, which is to have a sound economy, to have lower taxes, to have the budget and the fiscal policy of the government under control.

Senator DOLE. I think Proxmire might be a natural for that idea. [General laughter.]

Senator PACKWOOD. Thank you gentlemen very much. We appreciate it.

Now we will conclude with a panel representing State legislators, Hon. Paul Hess, a senator of the State of Kansas, and Hon. James Ritter, a representative of the State of Pennsylvania. Gentlemen, you have been very patient in waiting.

Mr. RITTER. The conversation was very enlightening.

Senator PACKWOOD. Senator Hess, why don't you start?

STATEMENT OF HON. PAUL HESS, A STATE SENATOR IN THE STATE OF KANSAS

Mr. HESS. Mr. Chairman, the previous 2 hours have been extremely enlightening to me as a member of the State legislature in the State of Kansas. I feel like I need a lease on a safe harbor on

the basis that I want to make a case that State legislators by and large, in my judgment, do have a different situation, and probably a greater can of worms than you gentlemen as Members of the U.S. Senate and the U.S. Congress.

I would like to simply paraphrase the testimony. Mr. Glickman really has covered the history very well, and I will not repeat that. I want to make two points, though, in regard to the difference between the tax home and the district home for the Congress as compared to State legislatures.

First of all, the law requires, the IRS Code establishes your district home as your tax home. In our case, we have a choice. We can take our district home or we can choose the State capital.

Senator PACKWOOD. That is even a better situation than Congress; is it not?

Senator DOLE. You cannot lose.

Mr. HESS. I am going to argue that in some ways it is not a better situation because of the short-term nature of most State legislatures. Most of us are not in the State capital for more than half the year or derive more than half our income from the State capital, and therefore I am making the argument that in terms of simplifying our geographic situation within a State of where we live versus the State capital, that having a straight deduction would minimize some of the issues that you gentlemen have raised, particularly with Mr. Glickman, and that is the administrative nightmare of determining exactly where your tax home should be.

I want to stress that most members of legislatures only meet 3 or 4 months a year. We can talk about New York or California, but those are the exceptions to the rule. In fact, we did an estimate of the 7,500 legislators. It is our conclusion that well under 1,000 of them consider themselves to be full time. So I am going to say somewhere in the neighborhood of probably 15 percent would be classified as full time, whereas Members of the U.S. Congress, in my judgment or perception, would be considered full time, and most of us are not.

Now, another point that I would like to make is on the issue of per diem. As an example, in the State of Kansas we are paid $42 per day, and if we are not in the State capital, we are not paid. We are paid on a daily basis. Last year I made $5,040 in salary. That computes, assuming I am in my office at 7 o'clock, which I am, and that I work until 7:30, I make less than the minimum wage in terms of my salary. I make about $3.23 an hour.

Senator Dole, I believe, served at $2 a day when he was in the Kansas Legislature. When I sat in his very seat——

Senator DOLE. Most people thought that was too much.

Mr. HESS. When I sat in his very seat and came into the legislature 12 years ago, I made $10 a day.

So to compare salaries of State legislators to Members of Congress simply in my judgment is not a comparable item.

I do not want to venture into the thicket of what you should do about your own situation. I am only trying to point out that members of State legislatures are placed in a very difficult situation of having to spend a fair amount of time in the State capital. I spent a total of 127 days last year in the State capital, and many legisla-

tors are borderline cases in terms of where their tax home should be.

As legislatures begin to meet longer, it is becoming more difficult to make that determination. If you leave it on a case-by-case basis, it seems to me that you have not only put individual members of the legislature in an extremely difficult situation but you also have made it difficult for the IRS in terms of the audit.

Those are my general observations. I would urge you to keep the provision in the present law pertaining to State legislators. I think that that administratively would be much more workable rather than leaving many of us in a no-man's land.

[Statement of State Senator Paul Hess follows:]

STATEMENT OF
SENATOR PAUL HESS, KANSAS

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, SENATOR ROSS DOYEN, THE PRESIDENT OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, AND THE PRESIDENT OF THE KANSAS SENATE, REGRETS THAT HE IS NOT ABLE TO BE HERE TODAY TO ADDRESS AN ISSUE OF IMPORTANCE TO ALL STATE LEGISLATORS. HE DID ASK THAT I MAKE THE TRIP TO PRESENT HIS CONCERNS. MY NAME IS PAUL HESS AND I SERVE AS CHAIRMAN OF THE SENATE WAYS AND MEANS COMMITTEE IN KANSAS.

THE PRESS HAS BEEN VERY ACTIVE IN RECENT MONTHS REPORTING ON CONGRESSIONAL ACTIONS TO CHANGE YOUR TAX TREATMENT. THEY WERE QUITE EXPRESSIVE AROUND APRIL 15TH WITH REGARD TO STATE LEGISLATORS' TAX TREATMENT. THE PROVISION ENACTED AS PART OF THE ECONOMIC RECOVERY TAX ACT OF 1981 FOR STATE LEGISLATORS HAS TWO MAIN PROVISIONS, AND EACH, I THINK, IS IMPORTANT FOR ELECTED LEGISLATORS. FIRST, STATE LEGISLATORS ARE GIVEN THE CHANCE TO CHOOSE OUR DISTRICT HOME AS OUR HOME FOR TAX PURPOSES. THE SENTENCE OF THE IRS CODE FOR MEMBERS OF CONGRESS ESTABLISHES YOUR DISTRICT HOME AS YOUR TAX HOME. WITH YOUR ANNUAL SESSIONS MEETING 10 MONTHS AND MORE EACH YEAR, THAT AMOUNTS TO SIMILAR PROTECTION. MANY STATE LEGISLATORS HAVE OTHER FULLTIME JOBS BECAUSE THEIR LEGISLATIVE SESSIONS DON'T TAKE MORE THAN THREE TO FOUR MONTHS. THUS THEIR BUSINESS MAY MAKE IT ADVANTAGEOUS TO ESTABLISH THE TAX HOME WHEREVER THE IRS WOULD JUDGE IT TO BE ON THE BASIS OF SOURCE OF EARNINGS AND TIME SPENT IN VARIOUS PLACES.

THE ABILITY TO CHOOSE IS ESSENTIAL. FOR INSTANCE IN MY STATE, KANSAS, MANY OF MY COLLEAGUES ARE FARMERS. THAT IS NOT AN OCCUPATION LIKELY TO GUARANTEE A HEALTHY INCOME. THUS WHILE OUR LEGISLATIVE SALARY IS LOW, APPROXIMATELY $5000, A FARM INCOME COULD BE LESS, GIVING IRS SOME CAUSE TO ESTABLISH THE STATE CAPITAL AS THE TAX HOME. IF LIVING EXPENSES WHILE AT THE CAPITAL COULD NOT BE DEDUCTED, AND THAT IS THE RESULT OF HAVING THE CAPITAL ESTABLISHED AS THE TAX HOME, MANY STATE LEGISLATORS COULD NOT AFFORD TO SERVE.

HERE IN THE CONGRESS, WITHOUT THAT PROTECTION, THE IRS WOULD ALMOST CERTAINLY ESTABLISH WASHINGTON, D.C. AS YOUR TAX HOME. THE REQUIREMENT OF KEEPING A SECOND RESIDENCE BACK IN YOUR STATE -- OR FOR STATE LEGISLATORS BACK IN THEIR DISTRICT -- WOULD BE A SIGNIFICANT FINANCIAL BURDEN. STATES DONT PRETEND TO REIMBURSE, EITHER THROUGH SALARY OR PER DIEM, SUFFICIENTLY TO COVER ALL THESE COSTS AND AT THE SAME TIME HAVE THESE REIMBURSEMENTS TREATED AS TAXABLE INCOME. THAT WOULD BE AN EXPENSIVE CATCH-22.

THE SECOND PROVISION ALLOWS A PER DIEM DEDUCTION FROM OUR LEGISLATIVE INCOME TO SERVE AS AN EQUITABLE AND UNIFORM MEANS OF DEDUCTING LIVING EXPENSES. SINCE THE PEOPLE MUST ELECT ALL LEGISLATORS EVERY 2 OR 4 YEARS, THERE IS A READY PROCESS AVAILABLE FOR REVIEW. IF AN OPPONENT MAKES PUBLIC HIS OR HER TAX RETURNS FOR THE PAST 2 OR 3 YEARS, A LEGISLATOR IS GOING TO BE HARD PUT TO KEEP FROM DISCLOSING HIS. IF AN

OPPONENT IS A BUSINESS PERSON WITH TRAVEL AWAY FROM HOME, HIS RETURN WILL LOOK MUCH THE SAME: FOR YEARS THE IRS COMMISSIONER HAS HAD THE ABILITY TO ESTABLISH A DAILY RATE WHICH BUSINESSMEN CAN REPORT IN LIEU OF DOCUMENTING EVERY LIVING EXPENSE. THIS PER DIEM PROVISION COVERS LIVING EXPENSES -- NOT BUSINESS EXPENSES. WE ARE BEING TREATED NO DIFFERENTLY THAN OTHER TAXPAYERS.

THAT IS THE ONE POINT I WANT TO MAKE HERE: STATE LEGISLATORS AND MEMBERS OF CONGRESS DESERVE TAX TREATMENT EQUAL TO THAT OF BUSINESSMEN. THE UNDERLYING PREMISE OF A BUSINESSMAN'S EXPENSES AND TRAVEL EXPENSES IS THAT THEY WILL PAY OFF IN GREATER EARNINGS IN THE FUTURE. EVEN WITH THAT POSSIBLE FUTURE ADVANTAGE, THE EXPENSES ARE DEDUCTIBLE. AS PUBLIC SERVANTS, OUR TRAVEL IS TO KEEP IN TOUCH WITH OUR COMMUNITIES AND ELECTORATE, TO IMPROVE THEIR ACCESS TO GOVERNMENT. CERTAINLY THEY SHOULD BE AS DEDUCTIBLE, YET YOUR $3000 CAP ON LIVING EXPENSES WHICH WAS ESTABLISHED IN 1952 DOES NOT ALLOW THAT. THE $3000 CAP WAS 20% OF YOUR SALARY WHEN IT WAS ADOPTED, $12,000 WOULD BE A COMPARABLE FIGURE TODAY. IF YOU LOOK AT THE INFLATIONARY FACTORS, YOU SEE THAT THE $3000 IS ONLY WORTH $840 TODAY, OR WHAT COST $1.00 IN 1952 TODAY COSTS $3.56. IT IS PROBLEMATIC TO LEAVE YOURSELVES TIED TO SUCH AN ANTIQUATED FIGURE. THE PRESSURE FOR HIGHER SALARIES TO OFFSET THIS LOSS PRESENTS A DISTORTED PICTURE TO THE AMERICAN PUBLIC.

I THINK IT CANNOT BE EMPHASIZED ENOUGH THAT PUBLIC OFFICE SHOULD BE AFFORDABLE TO VOTERS WHO WANT TO RUN FOR OFFICE. THEY SHOULD NOT BE PLACED AT RISK FOR SUBSTANTIAL COSTS OF TRAVEL AND MAINTENANCE OF TWO RESIDENCES WITHOUT REASONABLE COMPENSATION AND EQUITABLE TAX TREATMENT. STATE CONSTITUTIONS DON'T REQUIRE ANYONE OTHER THAN STATE LEGISLATORS TO HAVE PERMANENT HOMES MAINTAINED AT SPECIFIC LOCATIONS THROUGHOUT THE STATE. SIMILARLY IN THE SITUATION OF MEMBERS OF CONGRESS, EACH OF YOU IS ELECTED FROM A STATE OR A CONGRESSIONAL DISTRICT THAT YOU MUST KEEP IN CONTACT WITH. MANY VOTERS EXPECT YOU TO SPEND SIGNIFICANT TIME BACK IN YOUR DISTRICTS TO LEARN THE CONCERNS OF YOUR CONSTITUENTS. THUS TWO RESIDENCES ARE REQUIRED IN YOUR WORK ALSO.

I THANK YOU FOR THIS CHANCE TO ADDRESS A CRITICAL PROBLEM. SECTION 127 OF THE ECONOMIC RECOVERY TAX ACT PROVIDES PERMANENT COVERAGE FOR STATE LEGISLATORS, CONTINUING THE CHOICE OF THE DISTRICT HOME AS THE TAX HOME, AND THE PER DIEM DEDUCTION FOR LIVING EXPENSES. BOTH OF THESE ARE ESSENTIAL TO EFFECTIVE LEGISLATIVE WORK IN STATES WHERE SESSIONS RANGE FROM 30 DAYS TO 11 MONTHS. I URGE YOU TO TAKE STEPS TO INSURE THAT YOUR TAX TREATMENT IS ALSO EQUITABLE AND PLACES YOU ON AN EQUAL BASIS WITH OTHER TAXPAYERS.

Senator PACKWOOD. Representative Ritter, you are also representing the National Conference on State Legislators; is that correct?

STATEMENT OF HON. JAMES RITTER, A REPRESENTATIVE IN THE LEGISLATURE OF THE STATE OF PENNSYLVANIA, AND ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. RITTER. Yes, Mr. Chairman.

You have my remarks, so I am just going to try to capsulize and perhaps comment on some of the observations that were already made.

I just wanted to point out to you that one of our problems in terms of a State legislator is that in my particular instance I am a "full-time" State legislator and I get a salary of $25,000. Now, because I am full time and that is the only income I have, prior to the law being passed the IRS determined, therefore, that my tax home was the city of Harrisburg where the State capital is. Regardless of how many days I spent back in Allentown, the fact is that that was the only income I had, and therefore, as I say, I was considered to be a resident of Harrisburg.

I wanted to point that out to you. For instance, I rented an apartment. I cannot find any apartment owner willing to rent me an apartment for the 2 or 3 days or 2 or 3 nights a week that I may be in Harrisburg. I have to rent it for the entire month.

I want to submit also that a lot of comment was made about treating Congressmen and State legislators as ordinary people. I submit to you that we are ordinary people, but I also submit that we happen to be in extraordinary circumstances. For instance, the requirement for Members of Congress and the requirement for State legislators is that you must maintain a residence in the district from which you were elected.

Now, if I worked in the city of Harrisburg for Harrisburg Steel Co., I don't think I would continue to live in Allentown 85 miles away. I think I would move to Harrisburg. Therefore, I would not have those "expenses" of traveling back and forth. But if I wanted to live in the city of Harrisburg and still represent my constituents in the city of Allentown, I cannot do that. I have got to maintain a residence in my hometown.

I don't know about other people, but my family stays in Allentown, so when I go to the State capital, I don't take my family with me. I have an apartment which is an efficiency apartment. It is a place to sleep. When I have the opportunity, I go back home to my home.

And frankly, in the late seventies I think most States, certainly in Pennsylvania and those other States that had a long session—were audited by the Internal Revenue Service. In addition to the application I just made to you that if you in fact were full time, that the capital was considered your home—and incidentally, Senator Dole mentioned the judge. I think there was a case that superseded that, the case of Chafee from Michigan, where the IRS determined that since he was a State senator and the bulk of his income

came as a State senator then Lansing was his home for tax purposes, therefore he could not deduct his expenses.

But we were audited, and in addition to that kind of interpretation, we were all subjected to different interpretations of what was reasonable and ordinary expenses by the different auditors, and members in Pennsylvania were treated differently from one part of the State as they were in another. The whole thing is a hodgepodge. It is a mess. But I submit that what you did last year in terms of defining a tax home for State legislators and, I think, for Congressmen at least established to that degree some predictability.

Frankly, if from year to year I have to worry about whether we are in session 10 months this year and 3 months next year and therefore what are my expenses going to be and what is my income tax going to be, I don't know how many of us can continue to serve. When we were audited in Pennsylvania, some members had to pay as high as $3,000 and $4,000 in back taxes because those expenses that we thought were expenses were treated as income by the Internal Revenue Service.

That puts a tremendous burden on us. And while Senator Hess was absolutely correct, I think that the majority of State legislators are considered part time, but there are many States, at least several States where they are considered full time.

The point is that whether I spend 3 days in the State capital and 4 days at home—I think Senator Bradley when he was here pointed out that when I meet with my constituents and take care of their business and when I am back home, is that as important or more so as when I go to the State capital and vote on bills. While I cannot make that determination, I think my constituents probably could.

So I think when you allow us to make the election of what is our home for tax purposes, that I would continue to maintain that where I live in the city of Allentown is my home not only for tax purposes, that it is my home, period. And if I worked in the city of Harrisburg for anything other than the State legislature as a legislator, I would move there.

I have staff people that live in the city of Harrisburg. One of my staff members originally came from New York but he now lives in Harrisburg, so therefore he should not be entitled to expenses for some home that he had maintained once upon a time in Brooklyn, N.Y. He moved to Harrisburg, as I would if I were not required under the law to live in my legislative district. So there is a distinction.

And to repeat once again, I think we are ordinary people but because of the conditions, we find ourselves in some extraordinary circumstances. We are not asking for special treatment, but we are asking for consideration of those extraordinary circumstances which we all find ourselves in, both Congressmen and State legislators.

Senator PACKWOOD. Thank you.

Senator Long.

Senator LONG. What you say as far as State legislators are concerned, I voted for what we did. I hope it was what you wanted done. It is not the first time I have voted to make the tax law the

way that the taxpayer thought it ought to be. I am personally kind of just like the ordinary shopkeeper who feels that the customer is usually right. The old saying is the customer is always right. In the last analysis, our customer is the public out there.

All I am concerned about is the fact that what the Senators did for ourselves really stirred up a hornet's nest. It has given us more bad publicity than anything I have seen in 33 years. After I analyzed it in my own judgment, I don't think it makes a lot of sense, and I think we ought to, as far as we are concerned, put ourselves in conformity with what the rank and file of the citizens out there find to be the law.

Now, there had been times when I was claiming that $3,000 deduction and I didn't even have a home in Louisiana. Sometimes I would be up here for long periods of time and I wouldn't even be occupying an apartment down there.

I wasn't the one that came up with the idea of the $3,000 deduction, but all I know is that when we did what we did last year, gave ourselves a $75 deduction and proceeded to give ourselves the right to deduct all of our expenses of living here on the theory that we are away from home when we are here, an arbitrary assumption that we enacted into law, that nothing in that section says anything about anyone except Members of Congress, in trade or business, it doesn't mention various other professions, lawyers, doctors, accountants and so forth, that that special tax advantage that Congress gave itself has brought Congress into more criticism than anything I have seen, anything that we did.

We might have been unjustly accused of something or suspected of something that we didn't do, but of things that we did, we got more adverse publicity about that than anything I have seen, and that is what I think we should correct.

Now, as far as your business is concerned, I don't see any reason why we have got to legislate in some way adverse to you in order to take care of our situation. All we have to do is just repeal three lines that we put in a law that has given us all kinds of headaches. I hope you don't object if we just get ourselves out of this trap. As far as I am concerned, I am ready to say that the customer is right and get on with the next thing.

Does that give you any problem?

Mr. RITTER. No, obviously it doesn't, Senator. But may I say also that I am here with the approval of both the majority and minority leaders in Pennsylvania. We have been discussing the 4-day rule in our State because I think that 4-day rule is probably where a lot of this problem came in. That is, if you adjourn on Wednesday and come back in session on Monday, theoretically Thursday, Friday, Saturday and Sunday you are entitled to deduct that $75 a day.

That caused a considerable amount of problem in my news media. For instance, when I testified before a House committee last year I suggested to them that the 4-day rule is not practical for Pennsylvania. It may be for some other State but it is not for our State. When I go back to Allentown, I ought not to be able to collect per diem. But under that 4-day rule, I can, and I think that is wrong. I am saying that now personally. I am not speaking for NCSL. I think it is wrong.

I did say, however, and I think we ought to consider this, the rank and file Member—I happen to be in a leadership position, and when I go there, I can get my expenses because it is considered a committee meeting—but the rank and file Member who goes to the legislature, to the State capital those days when the legislature is not in session or when there are no committee meetings but he goes there to take care of constituent requests, to look at his mail and just take care of legislative business, under the ruling if we are adjourned for more than those 4 days—and for instance, in Pennsylvania we are now adjourned until September 13th—those expenses are reimbursable but they are also considered income by the IRS.

I think we ought to recognize that there are those kinds of days. I would much prefer if I could go down to my chief clerk's office on those days that I am talking about between now and September 13th and sign an attendance log. That is not demeaning to me. I am talking about protecting my interest. Sign a sheet that I was in the State Capitol building that day and I can deduct my expenses then and that they are not taxable expenses.

I dare say if we went to Harrisburg next Monday or Tuesday, there will be about 50 percent of the membership who will be there, and we are not in session and there are no committee meetings. They are there to take care of legislative business. But we don't get any recognition for that. But under the 4-day rule I could have for most of the weeks between January and our current recess, I could have claimed $75 a day, or $69 in Pennsylvania.

Senator DOLE. Let me say that under section 127 of the Economic Recovery Tax Act of 1981, it permits State legislators, with certain exceptions, to treat their residence within the legislative district represented as their tax home. The provision also permits legislators to claim a per diem deduction for legislative days away from home at the State capital whether or not they stay at the State capital overnight. The per diem deduction is generally the greater of the Federal or State per diem allowed for Government employees traveling to the State capital. We have even made it possible for you to go back and file amended returns for the past 5 years.

I guess my question is should there be any difference in the way Members of Congress and State legislators are treated?

Mr. RITTER. Senator, I indicated earlier I thought that we were in the same position because there are residency requirements.

Senator DOLE. What about Mr. Hess?

Mr. HESS. Senator Dole, No. 1, we don't live in the State capital.

Senator DOLE. Do you drive back and forth to Wichita every day?

Mr. HESS. No. But we only live in the State capital during the legislative session and then commute home on weekends. That is the general pattern. It seems to me that the conclusive presumption that a State legislator has his or her home in their home district that you established last year, I think that is a good provision because that takes away the question that Senator Bradley raised about, you know, where is your tax home.

I have no problem with the 50-mile rule. I think the real nub——

Senator DOLE. There are some that do have a problem with that. I have heard from a number of State legislators. You don't have it because you are more than 50 miles away, but if you were more

than 49 miles away, you might have a problem with the 50-mile rule.

Mr. HESS. That is probably true, although I would say that the majority of those within 50 miles commute on a daily basis. Not all of them, but the majority of them would. Virtually all the legislators in New Hampshire, as an example, commute every day.

Senator DOLE. But if you are not there overnight, you can claim it anyway, and they cannot.

Mr. RITTER. I think there is some business—I don't quite understand the Tax Code, but my understanding is that there is some way they can take a deduction if it is a legitimate business expense, but I'm not quite sure how that works. But I agree with the Senator. I think most people in that 50-mile radius do commute, most of them. Not all, but most.

[The prepared statement of Rep. James Ritter follows:]

Senator DOLE. Some of them have some hardships, though, because I have heard from some, one from Hope, Kans.

Mr. HESS. Well, Senator Dole, I think the nub of the problem is the unvouchered daily or per diem expense which we receive, which in Kansas is $50 a day. It would amount to a 90-day session, which we have annually. You can see that. That is the amount. That is what we are talking about. Now, if we are required to keep——

Senator DOLE. Is there something in the State tax code that takes care of you that way, too?

Mr. HESS. Yes. We are allowed to deduct the $50 per day that we receive in per diem and that is received on a daily basis for attendance during the legislative session and for any interim committee meetings on a daily basis.

Mr. RITTER. We have a limit, too, in Pennsylvania of a maximum amount that you can collect in any given year.

Senator DOLE. Well, I think the only point I want to make, we certainly think these hearings have been worthwhile, and maybe now the so-called tax experts can take a look at some of your problems. Apparently we don't have any problems. But the experts can take a look at us anyway and see whether or not we ought to have the same treatment. Frankly, I think there should be.

There may be some differences that ought to be resolved, but just because the focus is on us and you may have escaped the media attention doesn't mean that if ours is wrong, that yours is right. So I hope we can focus on that.

I appreciate the chairman's——

Mr. RITTER. Senator, we did not escape it in Pennsylvania. The news media did a job on us, and what some of us tried to do is sit down with the news people, the news reporters——

Senator DOLE. Good luck.

Mr. RITTER. We explained the circumstances to them, and I have to agree with you, I think they singled in on that issue, and we have so many other pressing issues, but they singled in on a $19,000 "tax credit" or whatever the terminology is. I am sure there may be Members of Congress who abused that tax benefit.

Senator DOLE. You may find one.

Mr. RITTER. There were probably some State legislators who did, too, but don't I think the overwhelming majority of Members deserve that kind of treatment. We had expected that we would be

reimbursed for our legitimate expenses, and frankly, the criticism that came down was totally unrelated to what I thought were legitimate expenses. That is all we were asking for anyway, the reimbursement for legitimate expenses.

Mr. HESS. Mr. Chairman and Senator Dole, I want to make one last point. It is my understanding that for years the IRS Commissioners has the ability to establish a daily rate which businessmen can report in lieu of documenting every living expense.

Senator DOLE. That is right.

Mr. HESS. That, in my mind, may be a solution to this problem to determine what our living expenses are on a daily basis so that we can simply deduct those and not have to keep detailed records floating in and out of the State capital on a daily basis when we are only earning $5,000 a year. I think that that is something that should be kept in mind.

Senator DOLE. That is in the law. That is another matter that we decided, but that was overlooked by the media, for obvious reasons.

Mr. HESS. We appreciate the hearing very much.

Senator PACKWOOD. Gentlemen, thank you very much. Having been in the State legislature myself for a number of years, I know the problem.

STATEMENT OF
REPRESENTATIVE JAMES RITTER. PENNSYLVANIA
PENNSYLVANIA HOUSE DEMOCRATIC POLICY CHAIRMAN

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I TOO THANK YOU FOR THE OPPORTUNITY TO ADDRESS THIS IMPORTANT PROBLEM. MY NAME IS JAMES RITTER AND I SERVE AS THE DEMOCRATIC POLICY CHAIRMAN OF THE PENNSYLVANIA HOUSE. I AM A MEMBER OF THE EXECUTIVE COMMITTEE OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES AND AM AWARE OF THE WIDE VARIETY OF SITUATIONS FACING LEGISLATORS IN THE STATES, EACH OF WHICH BENEFIT FROM THE TAX HOME PROTECTION OF SECTION 127, AND THE PER DIEM DEDUCTION.

MY STATE OF PENNSYLVANIA IS IN SESSION NEARLY 10 MONTHS OF EACH YEAR. GEOGRAPHICALLY IT IS A LARGE STATE, AND THE MAJORITY OF OUR LEGISLATORS HAVE TO DRIVE CONSIDERABLE DISTANCES. OUR LEGISLATORS SPEND MANY DAYS AND NIGHTS AWAY FROM HOME AT THE CAPITAL. SECTION 604 OF THE TAX REFORM ACT OF 1976 WAS VERY HELPFUL TO US, BUT THE ENSUING PROBLEM WITH THE IRS' DEFINITION OF "AWAY FROM HOME" SOON MADE IT UNUSABLE. NEARLY ALL OF OUR STATE LEGISLATORS WERE AUDITED IN THE LATE '70'S TO CHECK ON USE OF THAT PROVISION. IT WAS A PETTY ISSUE BUT AN EXPENSIVE ONE IN TERMS OF THE HOURS OF WORRY AND CONCERN -- LET ALONE THE TIME COLLECTING OLD RECORDS AND RECONSTITUTING SCHEDULES AND MEETING WITH THE AUDITORS -- AND THE DISILLUSIONED MEMBERS WHO WALKED AWAY FROM PUBLIC SERVICE BECAUSE OF THE STIGMA THAT SOMETHING ILLEGAL WAS BEING DONE.

SECTION 127 DOES PROVIDE THE NEEDED PROTECTION. FOR INSTANCE, I RENT AN APARTMENT IN HARRISBURG AND YET THE MAJORITY OF WEEKENDS I DRIVE HOME TO ALLENTOWN, WHERE MY WIFE AND FAMILY LIVE. BUT WHEN I'M IN ALLENTOWN, I'M STILL PAYING FOR MY APARTMENT IN HARRISBURG. I CAN'T MANAGE TO FIND AN APARTMENT OWNER WILLING TO RENT TO ME AT A COMPARABLE PRICE FOR JUST THOSE DAYS THAT I HAPPEN TO STAY IN TOWN. IN MY JUDGEMENT ANY ORDINARY BUSINESSMAN IN THIS SITUATION WOULD RENT AN APARTMENT. OF COURSE THE IRS WOULD ALSO MAKE HARRISBURG HIS TAX HOME AND ONLY ALLOW DEDUCTIONS FOR NIGHTS IN ALLENTOWN IF HE HAD PROOF THAT THE TRIPS WERE BUSINESS. BUT I'VE GOT TO KEEP MY HOUSE AND FAMILY IN ALLENTOWN OR I WON'T HAVE MY SEAT. YOU FINALLY HAVE ENACTED A PIECE OF PROTECTIVE LEGISLATION WHICH MEETS THE PROBLEMS THAT OUR UNIQUE SITUATION ENTAILS. PLEASE DON'T TAKE IT AWAY.

THE REAL SUFFERING JUST A FEW YEARS BACK OF STATE LEGISLATORS IN MY STATE, IN CALIFORNIA, IN MINNESOTA, IN MANY STATES BECAUSE OF THE CONFUSION OVER THE OLD PROVISION AND THE RELENTLESS AUDITING OF THE IRS, WAS DANGEROUS TO EFFECTIVE GOVERNMENT. RATHER THAN ATRACTING DEDICATED PUBLIC SERVANTS, THE SITUATION WAS DRIVING THEM AWAY. WHEN INTEGRITY IS A MAIN QUALIFICATION FOR YOUR JOB, THIS PERSISTENT CONFLICT CAN CLOUD EVEN YOUR OWN IMAGE OF YOURSELF.

THE LAW SHOULD BE CLEAR AND SPECIFIC. WHEN I EXPLAIN OUR TAX TREATMENT TO MEMBERS OF THE PRESS, EVENTUALLY THEY SEE THE EQUITY OF THE SYSTEM.

MORE TO THE POINT, SINCE THE MAJORITY OF OUR STATE LEGISLATURES ARE ONLY PART-TIME AND THE MEMBERS HOLD OTHER FULL-TIME JOBS, THEY AREN'T IN THIS WORK FOR MONEY, AND A TAX AMBIGUITY OR TAX TREATMENT WHICH WOULD JEOPARDIZE THEIR ABILITY TO DEDUCT THEIR NECESSARY LIVING EXPENSES AS LEGISLATORS, WOULD MAKE THE JOB VERY EXPENSIVE. THE AVERAGE STATE LEGISLATIVE SALARY IS $10,000 PER YEAR, MAKING US THE LOWEST PAID STATE OFFICIALS. WE HAVEN'T DONE A STUDY ON THE COSTS OF HOLDING OFFICE, I.E. THE LIVING EXPENSES THEMSELVES FOR THE TIME WE'RE IN SESSION, THE TIME WE'RE IN THE CAPITAL FOR COMMITTEE MEETINGS, CONSTITUENT SERVICES, OR JUST GETTING INFORMATION ON HOW OUR STATE BUREAUCRACY FUNCTIONS. IT IS CLEAR THAT THIS CONSTITUTES A SIGNIFICANT EXPENSE. ON SALARIES LIKE OURS WHO WOULD EVER UNDERTAKE THE WORK? INSTEAD MANY STATES PROVIDE A PER DIEM LIVING EXPENSE AND SECTION 127 PROVIDES A PER DIEM DEDUCTION FROM INCOME SO WE AREN'T TAXED ON WHAT IS ENTIRELY A REIMBURSEMENT FOR NECESSARY LIVING EXPENSES.

IF OUR DEDUCTIBLE EXPENSES HAD BEEN CAPPED LIKE YOURS THIRTY YEARS AGO, I'M CERTAIN EITHER OUR SALARIES WOULD BE HIGHER OR FEWER PEOPLE WOULD BE SERVING IN STATE LEGISLATURES. WE COULDN'T FUNCTION WITH THAT ARRANGEMENT AND, PERSONNALLY, I THINK IT MUST MAKE LIFE DIFFICULT FOR YOU. OUR CURRENT TREATMENT

IS CLEARER AND MORE STRAIGHT FORWARD.

ONE OF THE BILLS BEFORE YOU TODAY WOULD BE PARTICULARLY DISASTROUS IF APPLIED TO STATE LEGISLATORS. THAT BILL REMOVES THE PROTECTION OF THE DISTRICT HOME AS THE TAX HOME AND ALLOWS IRS TO ESTABLISH THE "HOME FOR TAX PURPOSES". ONE OF THE RECENT CHANGES WHICH HAVE MADE STATE LEGISLATURES MORE REPRESENTATIVE OF THE CITIZENS AND MORE RESPONSIVE TO THEIR NEEDS, HAS BEEN THE INCREASE IN MEMBERSHIP BY WOMEN AND RETIRED PERSONS. SOME OF THESE WOMEN ARE HOUSEWIVES WITH LITTLE OR NO OTHER INCOME THE REMAINDER OF THE YEAR. FOR THEM, IF THE STATE LEGISLATIVE SESSION STRETCHES INTO 4,5 OR 6 MONTHS, INCLUDING THE TIME THEY COME TO THE CAPITAL FOR NON-SESSION WORK, THE STATE CAPITAL WILL BE ESTABLISHED AS THEIR TAX HOME, AND NONE OF THEIR LIVING EXPENSES WILL BE DEDUCTIBLE. THIS POLICY WOULD ERECT A SUBSTANTIAL BARRIER TO THEIR PARTICIPATION IN STATE LEGISLATURES. IN PENNSYLVANIA, WITH OUR LONG SESSIONS, IT WOULD PRECLUDE IT.

I HAVE ATTACHED TO MY TESTIMONY A LISTING OF THE VARIOUS STATE LEGISLATIVE SALARIES -- PLEASE NOTE THAT IT LISTS BIENNIAL SALARIES NOT ANNUAL SALARIES -- LEGISLATIVE PER DIEM, AND THE LENGTH OF LEGISLATIVE SESSIONS. VARIETY IS THE KEY, AND WITHIN EACH HOUSE IN EACH STATE THERE IS FURTHER VARIETY.

WHATEVER CHANGES YOU MAY FEEL NECESSARY FOR YOURSELVES AND YOUR TAX TREATMENT THIS ELECTION YEAR, DON'T ASSUME THAT IT SHOULD AUTOMATICALLY APPLY TO STATE LEGISLATORS. THESE CHARTS AND NUMBERS SHOW JUST THE BEGINNING OF THE DIVERSITY WHICH ARE THE 7500 STATE LEGISLATORS. OVER THE PAST EIGHT YEARS, WE'VE HAD TO DEVOTE A GOOD AMOUNT OF ENERGY TO DEVELOPING A PROPOSAL FOR TAX TREATMENT AND CONVINCING THE CONGRESS THAT IT IS NEEDED. THE CHOICE OF THE DISTRICT HOME AS THE TAX HOME AND THE PER DIEM DEDUCTION FOR LIVING EXPENSES ARE BOTH KEY PARTS OF THAT APPROACH THAT STATE LEGISLATORS MUST MAINTAIN. LOSS OF THIS TREATMENT WOULD ADVERSELY AND UNFAIRLY AFFECT THOUSANDS OF THESE LEGISLATORS. WHATEVER THE OUTCOME OF YOUR DELIBERATIONS ON THESE BILLS, I WANT TO MAKE YOU AWARE THAT OUR TREATMENT IN SECTION 127 SERVES OUR NEEDS. WHILE IT MAY NOT SERVE YOUR NEEDS, THERE SHOULD BE NO REASON TO CHANGE IT WHILE ACTING TO CLARIFY YOUR TAX TREATMENT.

NATIONAL CONFERENCE OF STATE LEGISLATURES
CALENDAR OF 1981 LEGISLATIVE SESSIONS

STATE	PLANNED DATES	LIMITS
Alabama	February 3 -- mid-May	30 legislative days in 105 calendar days.
Alaska	January 12 -- May	No limit.
Arizona	January 12 -- mid-April	April 17.
Arkansas	January 12 -- mid-March	60 calendar days.
California	December 1, 1980 -- early September	No limit.
Colorado	January 7 -- early June	No limit.
Connecticut	January 7 -- June 3	June 3.
Delaware	January 13 -- June 30	June 30.
Florida	April 7 -- June 5	60 calendar days.
Georgia	January 12 -- Late March	40 legislative days.
Hawaii	January 21 -- mid-April	60 legislative days.
Idaho	January 12 -- early April	No limit.
Illinois	January 14 -- June 30	No limit.
Indiana	January 12 -- mid-April	61 legislative days or April 30.
Iowa	January 12 -- early May	*No limit.
Kansas	January 12 -- mid-April	No limit.
Kentucky	No 1980 session	
Louisiana	April 20 -- July 13	60 legislative in 85 calendar days.
Maine	January 7 -- May	No limit.
Maryland	January 14 -- April 13	90 calendar days.
Massachsetts	January 7 -- all year	No limit.
Michigan	January 7 -- all year	No limit.
Minnesota	January 6 -- May 18	120 legislative days or 1st Monday after 3rd Saturday in May.
Mississippi	January 6 -- early April	90 calendar days.
Missouri	January 7 -- June 30	June 30.

Montana	January 5 -- late April	90 legislative days.
Nebraska	January 7 -- early May	90 legislative days.
Nevada	January 19 -- May	*No limit.
New Hampshire	January 7 -- June	*No limit.
New Jersey	January 13 -- all year	No limit.
New Mexico	January 20 -- March 21	60 calendar days.
New York	January 7 -- about July 1	No limit.
North Carolina	January 14 -- June	No limit.
North Dakota	January 5 -- late March	80 natural days.
Ohio	January 5 -- all year	No limit.
Oklahoma	January 6 -- early June	90 legislative days.
Oregon	January 12 -- early July	No limit.
Pennsylvania	January 6 -- all year	No limit.
Rhode Island	January 6 -- all year	*No limit.
South Carolina	January 13 -- July	No limit.
South Dakota	January 20 -- late March	45 legislative days.
Tennessee	January 13 -- May	*90 legislative days.
Texas	January 13 -- June 1	140 calendar days.
Utah	January 12 -- March 12	60 calendar days.
Vermont	January 7 -- April	No limit.
Virginia	January 14 -- mid-February	30 calendar days.
Washington	January 12 -- April 25	105 calendar days.
West Virginia	January 14; February 10 -- April 11	60 calendar days.
Wisconsin	January 13 -- late June (fall session probable)	No limit.
Wyoming	January 13 -- February 27	40 legislative days.

*Limit on number of days for which legislators may be paid or receive per diem.

REV. 01/19/81

NATIONAL CONFERENCE OF STATE LEGISLATURES
Biennial Legislative Compensation
and
Per Diem Living Expenses

STATE	BIENNIAL SALARIES	PER DIEM SALARY (BIENNIAL)	PER DIEM LIVING EXPENSES DURING SESSION
Alabama	$	$ 2,100.00 $10/day for 105 calander days in each year of the biennium	$65 up to 105 calander days (unvouchered)
Alaska	23,000.00		$60 (unvouchered)
Arizona	30,000.00		$40 ($20 for Maricopa County legislators) (unvouchered)
Arkansas	15,000.00		$44 (vouchered)
California	56,220.00		$46 (unvouchered)
Colorado	28,000.00		$40 ($20 for Denver Metropolitan legislators) (unvouchered)
Connecticut	10,500.00 (1981) 7,500.00 (1982)		Receive no per diem $2,000 annually (unvouchered)
Delaware	19,260.00		Receive no per diem
Florida	24,000.00		$50 (unvouchered)
Georgia	14,400.00		$44 (unvouchered)
Hawaii	24,000.00		$20 (for legislators outside of Oahu) (unvouchered) $2,500 annual allowance for incidential expenses
Idaho	8,400.00		$44 ($25 if legislator lives at home in capital city) (unvouchered)
Illinois	56,000.00		$36 (unvouchered)
Indiana	12,000.00		$50 (unvouchered)
Iowa	12,800.00 (1981) 13,700.00 (1982)		$30 ($15 for Polk County legislators) (unvouchered)
Kansas		$ 40.00/day*	$50 (unvouchered)
Kentucky		3,000.00	$75 (unvouchered)

Louisiana		6,000.00	Receive no per diem but receive round trip weekly mileage.
Maine	4,500.00 (1981) 2,500.00 (1982)		$35/7-day week meals and housing or $17/day meals, mileage up to $20/day (vouchered)
Maryland	17,600.00 (1981) 18,500.00 (1982)		$50 maximum (vouchered)
Massachusetts	21,050.00 (1981) 19,766.76 (1982)		Receive no per diem, but receive mileage for every session day
Michigan	54,000.00		Total of $5,200 in 1981 (vouchered)
Minnesota	37,000.00		$27 ($17 for metropolitan legislators) (unvouchered)
Mississippi	16,200.00		$44 for actual daily attendance (none for Jackson legislators) (unvouchered)
Missouri	30,000.00		$35 for actual daily attendance (unvouchered)
Montana		3,555.00 (Legislators receive $2,500 allowance for incidental expenses	$40/7-day week (unvouchered)
Nebraska	9,600.00		Receive no per diem
Nevada		9,600.00 Legislators receive a $3,500 travel allowance for regular sessions and a $1,000 supplemental for special sessions.	$44 (unvouchered)
New Hampshire	200.00		Receive no per diem, but receive mileage for every session day
New Jersey	36,000.00 (until 1984) 50,000.00 (after 1984)		Receive no per diem
New Mexico		3,600.00	$40 (vouchered)

New York	61,608.00		Up to $55 (vouchered)
North Carolina	13,872.00		$50 (unvouchered)
North Dakota		400.00	$70 (unvouchered)
Ohio	45,000.00		Receive no per diem (only weekly mileage during session)
Oklahoma	18,000.00		$35 (only mileage during session if legislator lives at home) (vouchered)
Oregon	15,696.00		$44 (unvouchered)
Pennsylvania	50,000.00		$58 (vouchered)
Rhode Island		600.00	Receive no per diem (receive mileage each day of session attendance)
South Carolina	20,000.00		$50 subsistence (vouchered)
South Dakota	3,600.00 (1981) 2,400.00 (1982)		$50/5-day week (unvouchered)
Tennessee	16,616.00		$66.47 (unvouchered)
Texas	14,400.00		$30 (unvouchered)
Utah		2,000.00	$15 expense allowance (unvouchered)
Vermont		250.00/wk** session length varies	$45.00 if housed in capital ($17.50 if legislator lives at home) (unvouchered)
Virginia	16,000.00		Up to $50 but no more than $44 as allowed by IRS (unvouchered)
Washington	19,600.00		$44 (unvouchered)
West Virginia	10,272.00		$30 lodging, or up to $30 travel expenses if commuting, Charleston legislators $20 for meals but no other expense. (unvouchered)
Wisconsin	45,276.00		$30 ($15 if legislator lives inside Madison) (unvouchered)
Wyoming		1,800.00	$44 (unvouchered)

*One year--unlimited session length

Senator PACKWOOD. The hearing is adjourned.
[Whereupon, at 4:55 p.m., the hearing was adjourned.]