

NOMINATION OF DONALD C. LUBICK

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
SECOND SESSION
ON
THE NOMINATION OF
DONALD C. LUBICK, TO BE ASSISTANT SECRETARY OF THE
TREASURY FOR TAX POLICY

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**NOMINATION OF DONALD C. LUBICK TO BE
ASSISTANT SECRETARY OF THE TREASURY
FOR TAX POLICY**

WEDNESDAY, APRIL 19, 1978

**U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.**

The committee met, pursuant to notice, at 10:15 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (chairman of the committee) presiding.

Present: Senators Long, Ribicoff, Byrd, Jr., of Virginia, Gravel, Bentsen, Matsunaga, Moynihan, Curtis, Hansen, Dole, Packwood, Roth, Jr., and Danforth.

The CHAIRMAN. Senator Gravel?

Senator GRAVEL. Mr. Chairman, I do not mean to intervene on the discussion. I apologize for being late.

I think the first item on the agenda was the nomination of Don Lubick and I would like to see the committee make a decision on that and it might be favorable to his recommendation.

The CHAIRMAN. It was originally scheduled to be taken up first, but I was holding it up at Mr. Gravel's suggestion. It is all right with me if we talk to Mr. Lubick. Is he here?

Senator RIBICOFF. I think I should point out, Mr. Chairman, that I have a series of questions myself. It will take considerable time. If you are going to act on it today, it is all right with me to go ahead.

The CHAIRMAN. We also have some questions Mr. Dole would like to submit to Mr. Lubick. I understand that Mr. Dole would like to see the answers for the record.

Senator CURTIS. That is my understanding.

Senator GRAVEL. May I understand this, in that regard, the committee is not going to be meeting for awhile again, I understand. If the committee could report on him before it comes up on the floor, I am sure that Mr. Lubick would have a chance to meet privately with each one of the members and cover their questions with him so that there would not be delay at the committee level.

Senator HANSEN. Mr. Chairman, I am just going to make this observation. I do not think that is a satisfactory solution at all.

I say that because yesterday we had hearings before the Energy Committee on some matters, among which were included the participation by Charles Curse, a very talented and qualified—and, I might add, a very honorable person—who now serves as chairman of the Federal Regulatory Commission.

The thing that disturbed me was his participation in secret meetings that had been going on around here. I do question the propriety of the head of a regulatory commission being in private sessions and the hearsay that comes to me, his participation certainly gives reason for people to speculate what he might have said, or what he might have implied would happen.

And because of that—I say this with the highest regard for Mr. Lubick—but I think if Senator Dole or anybody else has any questions that the questions and those answers ought to be spread on the public record and it would not serve Mr. Lubick well, nor our process well around here, to have him and an interested Senator meet privately and discuss this.

The CHAIRMAN. Let me suggest this. I am proud of the fact that we are in an efficient committee and we do not waste a lot of time when we have a chance to get something done.

Why do we not let Mr. Lubick just retire to the room on the side and let him go ahead and prepare a written answer to any questions and see if Senators are satisfied with that. Then we can, in turn, get Mr. Lubick from there. That ought to save some time.

Senator HANSEN. That would be fine.

Senator RIBICOFF. The questions I have, I want asked in public, Mr. Chairman. I do not want them in private.

The CHAIRMAN. That is fine with me. I have no complaint at all.

Since Mr. Dole is willing to submit those questions, Mr. Lubick can give an answer in writing. You can just use one of our secretaries back there, Mr. Lubick, and dictate your response. They could type it up, and I should think that you would take care of that within the next hour.

Senator HANSEN. Then we would have access to that before we vote.

The CHAIRMAN. We can have copies made and then we can all look over them. After we take care of a few other matters here, we can come back to Mr. Lubick's nomination and perhaps we can dispose of it today.

Otherwise, if someone wants it to go over, of course, we will go over. I respect the wishes of any Senator in that respect.

Mr. LUBICK. I can answer these questions in about 3 minutes.

The CHAIRMAN. Is that right?

Mr. LUBICK. Yes. It is really on one issue, and I am familiar with the issue.

The CHAIRMAN. Then let's hear the answer to them.

STATEMENT OF DONALD C. LUBICK

Mr. LUBICK. Basically, these questions of Senator Dole deal with the possible taxation by the Internal Revenue Service as unrelated income of TV receipts of the universities from broadcasting college sporting events. The Internal Revenue Service has this question before it now on technical advice and I have received a number of inquiries about the subject from Members of the Congress generally. We have looked into the question.

We are trying to consider all of the policy considerations regardless of how the matter comes out as a technical matter by the Internal Revenue Service. I think that at the Treasury Department we find it difficult to distinguish between income derived by a college or uni-

versity from admission charges and income derived from televising the same game.

It is a college activity which seems to be held for purposes of carrying on a normal educational function of the college or university in the context of sports and, therefore, there is a question of policy, regardless of the interpretation of the statute. Presently, we do not see any difference from the admission charges being nontaxable and the TV receipts.

I think that it is different when a college or university goes out and derives income from something which is not connected with the educational function. I do not see how we can draw a line between the two.

I think basically that answer applies to the six questions which are different facets of it. Senator Dole has asked whether or not the tax should be imposed prospectively as opposed to retroactively.

I think that, inasmuch as it is the Treasury Department's view that this is not an unrelated activity but a related activity to the educational function, I think that probably disposes of all of the questions.

The CHAIRMAN. You do not think it should be taxed?

Mr. LUBICK. That is correct, whether it is retroactive or prospective.

The CHAIRMAN. It would not make any difference.

Mr. LUBICK. It disappears as a question.

The CHAIRMAN. Did Senator Hansen want to raise a question about a private meeting? Does that have to do with Mr. Lubick or somebody else?

Senator HANSEN. I was just saying that I think this kind of thing should be on the public record. I did not think that the idea of having considerations regarding the qualifications or acceptability of a particular candidate ought to be engaged in privately and off the record. I think they ought to be on the record.

Senator GRAVEL. Mr. Chairman, with reference to that, since I brought it up, I will, after Senator Ribicoff, rephrase the questions which I posed to Mr. Lubick which were not at all private. I just did not choose that approach. I think it should be part of the public record. I will rephrase it with him.

I would like to defer to Senator Ribicoff.

Senator HANSEN. I think I interrupted. Maybe Senator Ribicoff had a point.

Senator RIBICOFF. I am going to wait until I am recognized by the chairman. I think Senator Curtis had a question.

The CHAIRMAN. Senator Curtis?

Senator CURTIS. On the subject of retroactivity, do you believe that the Treasury should exercise the right to change the tax law in the situation where the law has been established by a matter of usage over a period of years? Or do you feel that they should come to Congress and ask them to change it?

Mr. LUBICK. I think, generally speaking—well, Treasury has no right to change the law, period, Senator Curtis. Insofar as possible, we try to interpret the law—and I recognize that some persons take the view that sometimes an interpretation is contrary to what the Congress intended.

Senator CURTIS. Is it not true that the Treasury and the IRS, assume that certain factors of law, that they act upon that for years become precedents. That is what I referred to as a law established by usage and then you have attempted to change that law by regulation. Is that not true?

Mr. LUBICK. Very frequently there are interpretations of the statute which appear with the benefit of hindsight to be erroneous. In those situations, where we think the interpretation is erroneous, we try to follow up what we believe was the intent of Congress in enacting the statute, but where the change affects persons who have relied on a contrary interpretation to their serious detriment we try, under section 7805(d) to make the change prospective and we try also to do it through a notice of proposed rulemaking to give the public a chance to respond and the Congress, if they think our position is wrong, to overrule it by statutory change.

Senator CURTIS. You spoke of an erroneous ruling being followed for years. Whose error is that, the taxpayer's or the Government's?

Mr. LUBICK. In very many cases, it is the Government. Sometimes a ruling cuts two ways. It can be in favor of the Government in one situation or the taxpayer in another situation. But very frequently it can be an erroneous interpretation of the Internal Revenue Service.

The CHAIRMAN. Here is one thing that bothers me, Mr. Lubick, and Mr. Curtis probably does have one situation in mind.

Senator CURTIS. I have two or three.

The CHAIRMAN. And there are some which come to my mind undoubtedly not the same thing that he is thinking about. Here comes a taxpayer who sees how other people are doing business and he wants the same ruling that other people had, so he applies for what should be a routine thing. He says, you gave this ruling to my competitor and I want the same ruling that he had. Then he comes up here, waits for 6 months, since it takes 6 months to get from the bottom of the stack up to the top of the stack, even though it appears to be an ordinary, routine proposition.

But he finally gets up to what somebody is going to look at it. At that point, they say, well, I am sorry, but we are not going to give you the same ruling that we gave your competitor because we think maybe we made a mistake in the rule. We are going to reconsider the whole thing.

How do we explain that to taxpayers?

It would seem to me, if you make a rule, it should be the rule until you change it. Maybe you would like to change that now. But do not let the taxpayers A, B, C, D, E, F, G, H, I, J, K get the benefit of the ruling which in effect which would be the law by virtue of the Treasury ruling, and not let anybody have the benefit.

How do we defend that to a taxpayer?

Mr. LUBICK. Let me point out, Mr. Chairman, that basically I think what you are talking about are Internal Revenue Service rulings and regretfully, you know that we in the Treasury Department do not always see eye to eye with the Internal Revenue Service in points of administration.

We try to work cooperatively and I think we have a pretty good relationship with them. There are times when there is disagreement and ultimately, if there is a question of the administration of the tax laws, the Internal Revenue Service issues its ruling and we can only make a suggestion that some other action be taken to go in the other direction.

But, by and large, I think that we are in accord with them that, first of all, the taxpayers are entitled to know, the general public

is entitled to know, what the position of the Internal Revenue Service is and for that reason, Congress made some legislative changes recently which made all rulings public and it is the policy of the Internal Revenue Service to publish in the Internal Revenue Bulletin any ruling which could be of general application.

In the situation where there is a change in a ruling, it is the practice of the Internal Revenue Service to make a change on a prospective basis only.

To get back further to Senator Curtis' point, his question was, how can you make a change when the Service, perhaps, has taken the position for a number of years—indeed, some of these rulings go back very many years—how can we make a change at all?

And I think that the fact of the matter is that the Internal Revenue Service is a vast organization and is trying to perform a service for taxpayers in issuing a large number of rulings, and every one of those rulings cannot be reviewed by the Commissioner of the Internal Revenue Service. Otherwise, no rulings could get out.

As a result, they have to issue the rulings through the Internal Revenue Service officers at relatively low levels who are sometimes inexperienced. You may get a period of time elapsing before the fact that the service has been taking a certain interpretation that has been reviewed by the Commissioner or the Assistant Commissioner or the Chief Counsel or one of the chief policymaking officials of the Internal Revenue Service.

As a result, positions are taken, the full consequences of which are not understood. In those situations, the Service is required to perhaps change its practice and, in so doing, because it does so on a prospective basis.

But to say that the Service, once it has taken a position can never change that position because some issue or ruling in the Service has been put out, which destroys the Service's ability to give this service to the taxpayer.

People would be afraid to let any ruling out before it has been reviewed.

I think the cure, in that case, would be more disastrous than the evil that it is trying to avert.

Senator CURTIS. I have a question right there. I have a number of cases that I can cite. One is the question involving the investment credit.

A building is not entitled to the investment credit. Sometimes there is a structure that has a specialized purpose, other purposes. There was such a controversy for the farmers out in the agricultural States and they were buying what they thought was personal property and were denied the investment credit.

In 1971, this committee took it up and the committee report spelled out exactly what they intended, all of the details. That was 1971.

Now, in 1978, this week, I got six letters from taxpayers who were denied the investment credit in situations that fall clearly in what this committee decided.

We have other cases the Treasury has undertaken on two or three occasions to change the law in reference to industrial development bonds.

People are entitled to their opinion on these bonds. The Treasury taxes in a certain manner and then they come out and change all of that, changing the tax status without ever asking Congress.

There are situations where you not only change the law, but you do so retroactively. I am talking about the field in reference to the definition between an independent contractor and an employee. There are businesses who thought that certain of those people, whether they run a filling service or sell door to door operate as independent employees and the Service treated them as that for years and years.

All of a sudden they said no, they are an employee, thereby you owe the employment taxes. The employer does for many years back. That is the Treasury changing the law as they have operated and also changed it retroactively.

In reference to the change in the law that you just recently made in reference to industrial bonds and refinancing of them, you were present in my office and met with a group of these people and promised them that you would undertake a transition rule and later that day, the Treasury Department decided not to have a transition rule.

I think the Treasury has plenty of work to do. They should not get into legislative fields.

That is all, Mr. Chairman.

Mr. LUBICK. Senator, if I may address the three topics which you brought up. I agree with you that the Treasury has no power to change the law. Again, sometimes it is a question of interpreting the law and I do not think that the Treasury is forever foreclosed, or the Internal Revenue Service, from retrieving an area and, within that area, I recognize that there are differences that can be had in good faith.

Basically, when we appeared both before this committee and the Ways and Means Committee in the area of fringe benefits, for example, there have been some indications that consideration was being had to reversing some past practices and we agreed in a pledge to you, and I think that pledge is still in effect, that any changes of interpretation would not be done except with a very substantial advance notice to give both you and the public a chance to review it.

In the area you talked about, in the investment credit, I must confess I am not at all familiar with that problem. We have made a legislative proposal in that area that would eliminate a sticky problem of whether real property is eligible for the credit or not.

I will be very pleased to look into it.

On the industrial development bond question, you are quite right. We indicated to you in your office that we did not want to leave anybody in the position of having had a justified reliance on a particular rule set forth in proposed regulations which were outstanding when the new rules on advanced refunding were also proposed and that we would sit down and review the situation with respect to those bonds.

Indeed, I think that we spent a great number of hours in the Treasury Department reviewing perhaps 100 different cases, meeting with representatives of persons in all different stages of process on the refundings and we did, indeed, for purposes of transition, modify the rules somewhat, not as far as many people would have wished, but we did provide an extended transition in the area of many public housing bonds where we found that the rule would operate inequitably.

We found it impossible to draw up a further line in that area because the situation was very fuzzy.

In the independent contractor area, again, I am familiar with that, and in the year before I came down here in private practice I had about seven cases representing people, employers, who were assessed liability for unpaid withholding taxes.

Senator CURTIS. They were assessed retroactively, were they not?

Mr. LUBICK. Every assessment is retroactive, because the Internal Revenue Service, of course——

Senator CURTIS. How many years did they go back?

Mr. LUBICK. Three years.

I was successful in many of the cases, but not all of them, in persuading the Service that we did indeed have independent contractors. This, again, is a problem that the Treasury Department is studying and we are preparing a proposal to go up and we are going to follow your suggestion, Senator Curtis.

We think that perhaps changes are appropriate in this area but they should be made by legislation and it is up to the Congress to accept and reject them, or modify them as it pleases.

Senator CURTIS. I appreciate your recognizing the legislative branch's having the lawmaking power of the Government.

Mr. LUBICK. We would also suggest that it is important in this area that any doubts be involved in favor of the taxpayer with respect to the situation as it existed before, because there are uncertainties and bona fide arrangements that have been entered into.

I think in many instances I found, in private practice, that the Internal Revenue Service would arrive at agreements with many of my clients, to the effect that, all right, we will drop any liability for back years if we can all agree that this is an appropriate treatment from here on out. That seemed to be satisfactory in many cases.

I recognize that in some situations that has not been done.

Senator CURTIS. That is all.

The CHAIRMAN. Senator Ribicoff?

Senator RIBICOFF. Thank you, Mr. Chairman.

Mr. Lubick, based upon my contact with you and the information I have to date, I have the highest respect for your integrity and your ability. However, certain recent activities in the Department of the Treasury are of concern to me. It is my understanding that you were involved in these activities. Your role will be a major factor in my decision whether to vote for your confirmation. I also believe that it is of importance that this committee have a full explanation of the Treasury Department's conduct.

In 1976, I proposed an amendment to the Tax Reform Act of 1976 to end certain tax benefits for American companies found to be complying with the Arab boycott. This amendment became section 999 of the Internal Revenue Code. The Treasury Department first issued guidelines implementing the antiboycott amendments during the final days of the Ford administration. In those first guidelines, the law was deliberately misinterpreted. In addition, the guidelines encouraged companies to circumvent the law by providing information on how American companies could participate in the boycott and, at the same time, continue to take tax benefits.

During Secretary Blumenthal's confirmation hearings, I asked Mr. Blumenthal about the antiboycott amendment and the Treasury's implementation of it. He stated as follows:

I am completely opposed to these sorts of boycotts. I agree with, and support and welcome the Ribicoff amendment that became law. I will most certainly, immediately upon taking office, if I am confirmed, review these draft regulations to insure that they do, in fact, carry out the intent of this law and seek to administer them in a way that is consistent with the intent of this legislation.

New, revised draft guidelines were issued by the Treasury Department last August. They reflected an encouraging effort to bring the Department's interpretation of the antiboycott provision more closely in line with the law and the intent of Congress. However, the draft guidelines were still deficient in important ways.

I submitted additional detailed comments to the Treasury Department in October. I then agreed at Secretary Blumenthal's request not to oppose an extension of the time for issuing final guidelines relating to bank letters of credit on the representation by Secretary Blumenthal that he would work together with me to correct the problems raised in my October letter. The final guidelines were issued on January 20, 1978. Mr. Mundheim, General Counsel of the Treasury Department, briefed my staff at that time as to what was done in the final guidelines.

I have serious concerns about whether Mr. Mundheim made full disclosure to my staff. More importantly, I am very concerned about what appears to be a sophisticated and deliberate attempt, in these final guidelines, to permit the biggest American banks in this country to continue to enforce the Arab boycott by the use of letters of credit.

I would like to ask you a few questions on this matter.

Is it not true that Secretary Blumenthal had the responsibility for approving the final Department of Treasury guidelines issued on January 20, 1978, relating to the Ribicoff Anti-International Boycott Amendments to the Tax Reform Act of 1976?

Mr. LUBICK. I believe that is true, Senator.

Senator RIBICOFF. Was your office involved in the drafting and revising of those guidelines?

Mr. LUBICK. Our office was involved to the extent that it made recommendations to the Secretary based on the interpretation of the statute that was adopted by the Congress.

Senator RIBICOFF. And Larry Woodworth, who was involved with this committee in drafting that legislation, was also involved in that, as your superior?

Mr. LUBICK. Larry was involved up to the time of his death exclusively. I was not involved in that matter at all.

Senator RIBICOFF. Was Mr. Mundheim, General Counsel of the Treasury Department, involved in the drafting and revising of those guidelines?

Mr. LUBICK. I believe he was, Senator.

Senator RIBICOFF. What was his role?

Mr. LUBICK. I believe that he played a significant role in coordinating the efforts of the Office of the Assistant Secretary for International Affairs and the Office of Tax Policy and persons in the General Counsel's Office. There were several papers which were submitted and I believe he coordinated the position that was taken by various parts of the Department.

Senator RIBICOFF. Was it usual to have the General Counsel playing such a role in the drafting of tax guidelines and making of tax policy?

Mr. LUBICK. I believe that it is not unusual, but in this case, the Secretary would normally have delegated the supervision of this to

the Deputy Secretary because it involved such an important matter for the Department. The Deputy Secretary was disqualified because of conflict of interest.

For that reason, I believe the General Counsel did not have that conflict of interest but was a very high-ranking official in the Department and was brought in.

Senator RIBICOFF. Was not the General Counsel formerly with the law office which represented some of these major banks?

Mr. LUBICK. I am not aware of that one way or the other, Senator. I know he came primarily as a law school professor. What practice activities he had in addition, I do not know.

Senator RIBICOFF. Do the antiboycott guidelines issued this past January differ in any substantive way from the recommendations of your office, the Office of Tax Policy, regarding the treatment of bank letters of credit?

Mr. LUBICK. Yes; they do.

Senator RIBICOFF. Please explain the differences between the recommendations of the Office of Tax Policy on the guidelines and what was ultimately adopted.

Mr. LUBICK. Our office, and again, I may say that my personal role in this was very limited because Dr. Woodworth had been handling the matter, with the International Tax Counsel and members of the staff. So primarily I was relying on the people that Dr. Woodworth had been relying on to make the recommendations, but I did review them briefly and it was our interpretation of the statute that we thought was the correct interpretation, although we recognized some arguments that could be made the other way.

But we thought, for a more consistent interpretation of the statute it was, to say that the boycott guidelines did apply to foreign beneficiaries of letters of credit.

Senator RIBICOFF. So, in your opinion, do the Department of Treasury antiboycott guidelines on bank letters of credit carry out the congressional intent and are these guidelines based upon the normal reading of the tax statute?

Mr. LUBICK. There was a difference of opinion. I think it was the opinion of our office that the congressional intent could best be carried out by a different interpretation.

Senator RIBICOFF. That becomes very important because Mr. Woodworth, whom we all respected and we all relied on—I remember the many discussions we had in the conference on that bill, and the major role that Larry Woodworth played. And then Larry Woodworth, in carrying out your part of that tax policy, came up with a recommendation of guidelines on letters of credit consistent with the discussions with this committee, consistent with our advice to him and his advice to us involved, I think that Mr. Woodworth had many discussions to straightening this out with the chairman and others. So Mr. Woodworth and the Office of Tax Policy comes out with this set of guidelines. My understanding is that the big banks of this country then leaned upon the Treasury Department to manipulate those guidelines to what was finally adopted—guidelines which we consider, I consider, a complete evasion of what Congress intended, contrary to what the Office of Tax Policy under Woodworth, and you worked with Woodworth, what you thought was the congressional interpretation.

These guidelines are now the guidelines that are in operation and give the banks, the big banks in this country, a very substantial tax break involving millions and millions of dollars.

Now, Mr. Chairman, the actions of the Department of Treasury with respect to the guidelines, implementing our antiboycotting amendment are of great concern to me. It is the Office of Tax Policy which plays the crucial role in matters like this and which, under both Larry Woodworth and Mr. Lubick played, or should have played a leading role in formulating these guidelines.

I believe that the final guidelines with respect to bank letters of credit are the product of a sophisticated and deliberate effort within the Treasury Department to permit American banks to continue to enforce the Arab boycott by use of letters of credit. There is no doubt in my mind that guidelines which have that effect are inconsistent with congressional intent and are incompatible with a normal reading of this tax statute.

I will object to any vote by this committee on Mr. Lubick's nomination until I receive a full explanation from those responsible and, if necessary, until I receive adequate assurance that this problem will be corrected.

From Mr. Lubick's testimony—and I believe him—it appears that he and Mr. Woodworth courageously advocated the proper course of conduct in the Department of the Treasury. My opposition of the immediate consideration of his confirmation should not be interpreted in any way as calling into question his integrity or ability.

However, something somewhere in the Treasury Department has gone seriously wrong and the office that Mr. Lubick is acting head of should have a key role in formulations of guidelines such as this. Is he the right person for the job if the Secretary does not heed his advice on something as crucial as the guidelines implementing such a recently passed statute?

Therefore, Mr. Chairman, I would like this additional information before I vote on Mr. Lubick's confirmation.

Mr. LUBICK. Senator, if I may say one word, I do not think I am a profile in courage on this particular point. The issue arose very shortly after Larry's unfortunate death and it was a matter with which I had extremely little familiarity.

The staff who had been working with Larry got up the recommendations, I reviewed them, they seemed logical to me, and I forwarded them on. I did not profess to have any particular background in the matter or a great hand to give expert advice to the Secretary.

Senator RIBICOFF. I know that: This is symbolic. There is no question in my mind that your conduct and Larry's was completely correct throughout. There is no question in my mind that I am going to vote for your confirmation. But in holding this up, it is not a question of reflection on you, but I think that this committee has an explanation coming from Mr. Mundheim and the Secretary of the Treasury as to just what the hell was going on.

Senator BENTSEN. Mr. Chairman, quite apart from the issue that Senator Ribicoff has spoken to, because I do not have knowledge on that and I can understand his concern, but I do want to state my very firm support of Mr. Lubick and my knowledge of his integrity, as stated by Senator Ribicoff, and his ability and his very successful career as a tax attorney and a man I think we are fortunate to have to

come down and do his bit in public service and face up to what people have to face up to in public service these days, and I am quite supportive of him.

The CHAIRMAN. I just hope, Senator, that during the time that this matter is being held up there is not someone else who comes along who is irritated about some ruling or something. It could be any one of us, one of us mad or irritated about a change in a ruling in the Department that Mr. Lubick was not completely responsible for. First one thing, then another.

Here is a man nominated for a significant job. If we hold up this confirmation, I just hope that it does not work out somewhat like it did last night when I objected to these fellows making speeches. By the time I got through relenting and let them have a half an hour to make closing speeches on the treaty, Bill Scott was on his feet objecting.

Mr. Moynihan and then Mr. Gravel.

Senator MOYNIHAN. Mr. Chairman, I would say that Senator Ribicoff has raised a large and important issue. If this is what it takes to get an answer from Treasury to get this straightened out, then he has done entirely the right thing. But I would be remiss, I did not introduce Mr. Lubick to the committee because he is so well-known to the committee, but I would not want the opportunity to pass without noting that he is a New Yorker, a Buffalonian, a teacher, a lawyer, and we are lucky to have him.

The CHAIRMAN. Mr. Gravel?

Senator GRAVEL. Mr. Chairman, taking the statement that you made, I would like to question Mr. Lubick, but I would like to state my experience, which is somewhat different. Of course, we have worked with Mr. Lubick, and I share that same high opinion for him expressed by Senator Ribicoff and Senator Bentsen.

My concern was from a philosophical point of view. We have the opportunity to hire very competent people in Government. Beyond the determination of their competence, we have a responsibility to determine their philosophy. If their philosophy is consistent with the goals we feel are in the best interests of our country and our economic system, we should support them and push them.

If we have a competent person who has views which are an anathema to what I consider to be important to the free enterprise system, then I would stand here and oppose that person because he would be moving very competently in the opposite direction from what I thought was in the interests of this country.

So that is the reason that I approached Mr. Lubick, because I was interested in his philosophy, not in his competence—I am aware of that; that has been ascertained. I was very interested in something which I think is fundamental to our society, a view that you share, Mr. Chairman. I am satisfied with not only the philosophical approach, but the intelligence that would be used to pursue that philosophical goal and that is what it is all about. Now we are going to have a competent person who is going to move in what I think is the right direction.

The issue I discussed with Mr. Lubick was something I think members of the committee will be interested in, because it affects what we have already done and what we might be doing in the future.

The Senate has already approved the Alaska gasline that would bring gas down to help supply our people in the South 48. The gasline was merely approved by the Congress and by both the Canadian and the American Governments. They are now having some difficulties in securing the necessary financing. Unlike the oil line, the companies in question do not have the economic power to secure the debt in question.

The company in question approached the State of Alaska with the same attitude as everyone else; that we are very wealthy up there, let Alaska go ahead and help. Obviously, we are not that wealthy, but we do have the ability to commit some of our resources to a project which would benefit Alaska.

In Alaska, we want to do this. We think it is important to build this gasline. If it does not come out of the ground, we will not make any tax or royalty income for our citizens.

The problem arose when the gas pipeline company came forward and said, we would like some help, to the tune of maybe \$1 billion, \$1.5 billion. I am for that. But then came the very critical question, does the State of Alaska, as a result of participating, take an equity interest in this?

If the State of Alaska does—and I am very fearful of this personally—it would be the beginning of State socialism in Alaska and I would think would accelerate throughout the United States. While I want to help the gasline, I do not want to see us become a socialistic society in Alaska, so I took recourse to what we have already done.

We set up ESOP's. We have 10 million Americans today who acquire stock ownership in the companies they work for and there is no payment of corporate income tax on that profit. Over the Easter recess I suggested, to the Alaska legislature that what we should do is set up a GESOP. That is, set up a corporation started by the government which would be spun off to the stockholders, the people of Alaska. You would have the government of Alaska here and the people of Alaska over there.

To make that corporation work would require that we treat the GESOP the same as we treat ESOP's. The language obviously is not there in law to make that treatment clear. What I was attempting to ascertain was the philosophy of the gentleman who will be the leader of philosophical development within Treasury as to how he would view this treatment of a GESOP. To operate effectively the GSOP cannot pay corporate income taxes as it must use pretax income to repay debt as ESOP's do now. The stockholders of GSOP should of course pay taxes on their income.

I have approached Mr. Lubick on this subject. I would like to show you what is involved. We are talking about a gasline interest of approximately \$1.5 billion, the possibility of buying a piece of the existing oilline that would be \$1.5 billion, and a large petrochemical development that would be \$2.5 billion where we could get about a half a billion.

So, on the immediate horizon in Alaska, we are talking about \$3.5 billion, if we can get a working GESOP. I think this GESOP would be a precedent that would come back to this committee as an example of something that works. Then people will ask, Why do we not do something like this for all of the American people to diffuse capital ownership?

That was the issue I discussed with Mr. Lubick. I wonder if Mr. Lubick might share with the committee his views which he expressed them to me as to where existing precedent might lie.

Mr. LUBICK. Senator, you and I talked about a couple of questions. One involved the general statutory approach which I indicated might cause some problems if we had a situation where there was neither any corporate tax or tax at the individual level, which you indicated was not your intention in that situation.

Senator GRAVEL. That the individuals in this case—

Mr. LUBICK. Would be residents of the State. We then talked about a number of technical questions which I think can be disposed of rather readily, some involving the investment credit where there is a coparticipation between a State or local government with members of the private sector, and there would seem to be no policy or reason why the proportional amount of the investment credit attributable to the investment of the private sector should be denied simply because there is a coparticipation with a governmental organization, although the Internal Revenue Service is currently reviewing that question in another instance, on a question of technical advice.

Second, you talk about the possibility of the State of Alaska forming a corporation and financing it, and again, that would seem to be an activity well within normal precedent, that many States conduct liquor businesses and other State monopolies, again with tax exclusion, and I do not see any difference in this situation.

When we got to the situation of how ownership could be in the hands of a vast number, if not all, of the residents of Alaska, which I think we agreed would be a desirable objective, to have individual stock ownerships as widely spread as possible, giving them an interest in this. We agreed to explore with you possibilities within the framework of existing precedents in the Internal Revenue Code for the imposition of a single tax, and I think we talked about exploring the precedent of the tax treatment of cooperatives and the tax treatment of regulated investment companies and real estate investment trusts, into which there has been inability to have an interest in investments in the hands of a wide number of people with direct current taxation of that income to those individuals.

In the cooperative area, we talked about, for example, the fact that there could be certain cash distributions and certain noncash distributions with the cash distributions being sufficient to cover tax liability and indeed, in many instances, the recipients would presumably be persons in very low or no-tax bracket at all.

So I think that we have agreed that we would work closely with Mr. Gauche and other members of your staff to see if we could work out something in the realm of accepted tax principles.

Senator GRAVEL. One further comment, I am very happy with the statement you just made regarding the comparability with ESOP's as they presently exist in law.

Mr. LUBICK. I think, in that instance, as we discussed it, I pointed out to you that when an ESOP made a distribution of corporate stock pursuant to the terms of the pension plan, there was a tax at the individual level, so that ultimately in an ESOP there is tax at one level.

In the situation you have in mind, I do not think we are talking about employees so the deferral of taxation which Congress has decided is appropriate in the case of retirement income might not be appropriate, but if we could work out some system of current taxation within the existing framework, we may have a basis to go forward on.

Senator GRAVEL. I was very satisfied with that, Mr. Chairman, because that is essentially what I am trying to accomplish within my State. I might say that if we can get it accomplished, we would be happy to invite all of the Finance Committee up to the State to look at what we are doing.

I thank you, Mr. Lubick. We will invite you also.

Mr. LUBICK. Thank you very much.

The CHAIRMAN. If there are no further questions, I would suggest that we excuse the witness at this point.

Senator BYRD. Mr. Chairman?

The CHAIRMAN. Mr. Byrd?

Senator BYRD. I have no questions of the witness. I do want to make a very brief statement for the record, not in regard to Mr. Lubick, but I would like to make it for the record.

I would hope that the staff, when it develops the agenda for the so-called tax-reform legislation, if and when it gets from the House of Representatives to the Senate, will take into consideration that I expect to move very fully and take a great deal of time to review and understand, all of its ramifications.

I say that because, in the past, legislation has gone out of this committee where this committee did not understand its full ramifications. What this committee does has such a great effect on the free enterprise system that we ought to be sure of what we are doing. I want to make clear that, so far as I am concerned, I expect to do what Senator Long did last night in the Senate, utilize whatever one Senator can utilize, to slow down the process—not to destroy the efficiency of the committee, but to slow down the process so that we know, when we make changes in these tax laws, just what effect they will have on the American people.

I do not think we have been aware of that in some cases in the past.

I just wanted to make that for the record, Mr. Chairman.

The CHAIRMAN. Fine, Senator. We are always happy to have your advice and thoughts about all of this.

You are chairman of the Tax Subcommittee and we are counting on you, Senator, to get into all of this minutiae and be able to advise all of us about it. We are sure that you will.

Senator BYRD. I will be glad to do that, Mr. Chairman.

The CHAIRMAN. Thank you very much.

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

[The biographical sketch of Mr. Lubick follows:]

BIOGRAPHICAL SKETCH OF DONALD C. LUBICK

I. EMPLOYMENT HISTORY

From March, 1977, to the present I have served as Deputy Assistant Secretary for Tax Policy (Tax Legislation), Department of the Treasury.

Before that time I practiced law in Buffalo, New York (from 1950 to 1977) except for the period 1961 to 1964 when I served as Tax Legislative Counsel, U.S. Treasury Department. In my private practice I was first an associate, and later a partner in Hodgson, Russ, Andrews, Woods & Goodyear, a firm that now numbers about 50 lawyers. My practice was largely in the field of taxation, including pension planning, estate planning, and general corporate and individual tax practice, both planning transactions and contested tax cases.

From 1950 to 1961 I also taught part-time at the University of Buffalo Law School, including courses in federal income taxation and corporate taxation.

I have also contributed to tax periodicals and lectured extensively at tax institutes.

II. CIVIC AND PROFESSIONAL ACTIVITIES

During 1958 and 1959 I was Chairman of the Tax Revision Committee of the City of Buffalo, a nonpartisan study committee appointed to review the City's tax system and to make recommendations for alternative sources of local taxation.

I am a member of the New York and Florida bars. I have served on numerous committees (including as Chairman) of the Tax Section of the American Bar Association, the New York State Bar Association and the Erie County Bar Association. I am a member of the American Law Institute.

I was a member of the Advisory Group to the Commissioner of Internal Revenue for 1976.

In 1974 I was a member of an Advisory Committee to a Select Committee of the New York State Legislature to Study the New York Election Law and Related Statutes.

[Thereupon, at 11:10 a.m., the committee proceeded to other business.]

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