DU PONT-CHRISTIANA

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

TAX ASPECTS OF DIVESTITURE OF GENERAL MOTORS COMMON STOCK BY E. I. DU PONT DE NEMOURS & CO. AND CHRISTIANA SECURITIES CO.

MARCH 17 AND 24, 1965

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
45-218 WASHINGTON : 1965

COMMITTEE ON FINANCE

HARRY FLOOD BYRD, Virginia, *Chairman*

RUSSELL B. LONG, Louisiana
GEORGE A. SMATHERS, Florida
CLINTON P. ANDERSON, New Mexico
PAUL H. DOUGLAS, Illinois
ALBERT GORE, Tennessee
HERMAN E. TALMADGE, Georgia
EUGENE J. McCARTHY, Minnesota
VANCE HARTKE, Indiana
J. W. FULBRIGHT, Arkansas
ABRAHAM A. RIBICOFF, Connecticut

JOHN J. WILLIAMS, Delaware
FRANK CARLSON, Kansas
WALLACE F. BENNETT, Utah
CARL T. CURTIS, Nebraska
THRUSTON B. MORTON, Kentucky
EVERETT McKINLEY DIRKSEN, Illinois

ELIZABETH B. SPRINGER, *Chief Clerk*

CONTENTS

WITNESSES

EXHIBITS

DU PONT-CHRISTIANA

WEDNESDAY, MARCH 17, 1965

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

The committee met, pursuant to notice, at 10:10 a.m., in room 2221, New Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

President: Senators Byrd, Smathers, Anderson, Douglas, Gore, Talmadge, McCarthy, Hartke, Fulbright, Ribicoff, Williams, Carlson, and Morton.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. This meeting has been called to afford members of the committee an opportunity to question the Secretary of the Treasury and the Commissioner of Internal Revenue regarding the results of the Du Pont-Christiana divestiture of General Motors stock.

The committee has received certain communications from the Internal Revenue Service regarding the tax aspects of the divestiture.

The first letter is one by me dated December 18, 1964, to Acting Commissioner of Internal Revenue Bertrand M. Harding, requesting a complete report on the entire transactions.

The second communication, dated January 15, 1965, is Acting Commissioner Harding's reply. Attached to it are letters from the Service to the Du Pont Corp., dated May 28, 1962, and to the Christiana Corp., dated October 18, 1962; a letter from the Christiana Securities Corp. to the Commissioner of Internal Revenue dated December 14, 1964, and the Commissioner's reply dated December 15, 1964.

The third communication, dated March 15, 1965, by Commissioner Sheldon Cohen furnishes additional data and revenue estimates regarding the divestiture.

Without objection, they will be inserted at this point in the record.

Also, I would like to have printed at the end of today's hearing the final judgment of the U.S. District Court, Northern District of Illinois, Eastern Division, *United States of America, Plaintiff* v. *E. I. du Pont de Nemours and Company, General Motors Corporation, Christiana Securities Company, and Delaware Realty & Investment Corporation, Defendants.*

(The final judgment referred to appears at p. 111.)

(The documents referred to follow:)

DECEMBER 18, 1964.

HON. BERTRAND M. HARDING,
Acting Commissioner of Internal Revenue,
Washington, D.C.

DEAR MR. COMMISSIONER: Several members of the Committee on Finance are interested in the final distribution of General Motors stock by Du Pont to determine if it was carried out in accordance with the intent of the legislation enacted.

I shall, therefore, appreciate your giving me as soon as possible a complete report of the entire transaction. I am particularly interested in the special ruling made by the Internal Revenue Service respecting Christiana and shall appreciate your furnishing me with copies of this ruling and any others which may have been made in connection with the distribution of the General Motors stock.

It will be appreciated if your report is made in triplicate with three copies of all attachments thereto.

With kindest regards, I am,

Faithfully yours,

HARRY F. BYRD, *Chairman.*

U.S. TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
Washington, D.C., January 15, 1965.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your letter dated December 18, 1964, requesting a complete report of the tax aspects of the divestiture of General Motors Corp. (hereinafter called "General Motors") common stock by E. I. du Pont de Nemours & Co. ("Du Pont") and Christiana Securities Co. ("Christiana") through distributions to their respective shareholders.

Early in 1962 Du Pont sought rulings from us on a number of tax questions arising from the required divestiture by it of General Motors stock. These questions were answered by us in a ruling letter dated May 28, 1962, a copy of which is attached.

At about the same time, Christiana also sought rulings from us on several questions involving the tax consequences of the required divestiture by that corporation of General Motors stock held and to be acquired as a result of the contemplated Du Pont distribution. We issued a ruling letter to Christiana in answer to these questions on October 18, 1962. A copy of this ruling letter is also attached.

In August 1964, Christiana asked for reconsideration of one of the conditions in this ruling letter and requested rulings on certain other questions which had arisen in connection with the divestitures of the General Motors stock. These questions were answered in our ruling letter of December 15, 1964, a copy of which is also attached.

The matter on which reconsideration was requested by Christiana was one which had been protested at the time of the ruling letter of October 18, 1962, and involved the first of the following two conditions contained in that ruling letter:

"In addition to any other conditions which may be applicable to the following rulings, they shall be of no force or effect in the event that any General Motors shares Christiana now owns or hereafter acquires are exchanged by Christiana for its own shares, or if Christiana is merged into Du Pont before Christiana has divested itself of all the General Motors stock it is required to divest by the Court order referred to above."

These conditions were inserted in our ruling letter by reason of advice from the then General Counsel of the Treasury Department, Mr. Robert Knight, that the estimated revenue yield under Public Law 87-403 enacted February 2, 1962, would be between $350 and $470 million, and that this had been the clear understanding of the Senate Finance Committee and officials of Christiana during the consideration of this legislation. This revenue estimate was based upon the understanding that under the legislation somewhat more tax would be imposed on corporate shareholders receiving "antitrust stock" as defined therein than under then existing law, and that the only tax on individual shareholders would be the capital gains tax due to the "return of capital" treatment provided for individual shareholders. The revenue estimate was based upon the then fair market value of General Motors common stock.

The Internal Revenue Service did not then and does not now consider that there was any basis in law for the condition relating to non pro rata distributions by Christiana. The condition was inserted in our ruling letter solely because of the revenue considerations discussed above. It was and is the position of the Service that no particular method of distribution of the General Motors stock by Christiana was intended or specified by Public Law 87-403. This conclusion is clearly indicated by the following passage appearing on page 5 of Senate Report No. 1100, 87th Congress, 1st Session:

"* * * Your committee wishes to make it very clear that it expresses no opinion as to what particular method of divestiture of General Motors stock by Du Pont or by Christiana is appropriate. It is contemplated by your committee that all issues dealing with the manner of divestiture are to be determined judicially, solely with reference to the antitrust principles announced by the Supreme Court in the *Du Pont* case."

It may also be noted that article IX of the final judgment of the U.S. District Court for the Northern District of Illinois, Eastern Division (civil action No. 49 C–1071), specifically authorized non pro rata distributions in the divestiture of the General Motors stock by Christiana. In ordering Christiana to divest itself of all General Motors stock specified therein, the judgment in part provided:

"(2) Christiana shall distribute to its shareholders (including non pro rata distributions in redemption of its own stock) the remaining shares of General Motors stock required to be divested by it."

When Christiana requested reconsideration of this matter in August 1964, former General Counsel Robert Knight was employed as a consultant to the Acting Commissioner of Internal Revenue because of his intimate knowledge of events which led to the enactment of Public Law 87–403.

It was Mr. Knight's recommendation that, provided the maximum revenue estimate of $470 million considered at the time of enactment of Public Law 87–403 would be reached, there would be no justification for a denial of Christiana's request that the Service modify the ruling letter of October 18, 1962, by eliminating the condition as to non pro rata distributions.

In view of the foregoing, and because the required procedures to effect in a timely manner the required final divestiture by Christiana made it necessary to determine the tax effect of the final distributions of General Motors stock prior to the time when the revenue effect could be estimated on the basis of known market values, the Service agreed to modify its ruling letter of October 18, 1962, by removing the condition in question. This action, taken in the ruling letter of December 15, 1964, was based upon certain undertakings by the board of directors of Christiana and assurances as to methods of divestiture geared to a scale of possible price levels of General Motors stock at the time of the final distribution by Du Pont which, on the basis of supplemental revenue estimates, could reasonably be expected to produce the estimated revenue yield of at least $470 million. A copy of Christiana's letter of December 14, 1964, containing the assurances and undertakings, is attached.

This information is furnished to you as chairman of the U.S. Senate Committee on Finance in accordance with section 6103(d) of the code and section 301.6103 (d)–1 of the income tax regulations.

With kind regards,

Sincerely,

BERTRAND M. HARDING,
(Acting) Commissioner.

MAY 28, 1962.

E. I. DU PONT DE NEMOURS & CO.,
Wilmington, Del.
(Attention of R. R. Pippin, treasurer).

GENTLEMEN: This is in reply to a letter dated March 26, 1962, in which a ruling is requested with respect to the Federal income tax consequences of a proposed pro rata distribution by E. I. du Pont de Nemours & Co. (hereinafter called "Du Pont") of shares of stock of General Motors Corp. (hereinafter called General Motors"). Additional information was submitted in letters dated March 30, 1962, April 27, 1962, and May 10, 1962. The relevant facts submitted for consideration are substantially as set forth below.

In 1949 the U.S. Government initiated an antitrust suit against Du Pont, charging that it had violated the Clayton Act, and against Du Pont, General Motors, Christiana Securities Co., Delaware Realty Investment Corp., and others charging that they had violated the Sherman Act. Pursuant to instructions by the U.S. Supreme Court, final judgment was entered under the Clayton Act on March 1, 1962, by the U.S. District Court for the Northern District of Illinois, eastern division (Civil Action No. 49–C–1071).

Article VIII of the judgment provides in part as follows:

"A. Du Pont shall divest itself of all of the General Motors stock specified and itemized in Paragraph B of this Article VIII by distributing such stock to its stockholders * * * such divestiture to commence within ninety (90) days from the effective date of this Judgment and to be completed not later than thirty-four

(84) months from the date on which this Judgment becomes final (appeal time having run or appeal having been completed).

"B. The General Motors shares which shall be divested by Du Pont pursuant to Paragraph A of this Article VIII are:

"(1) The 63,000,000 shares of General Motors stock now owned by Du Pont.

"(2) And additional shares of General Motors stock which Du Pont may acquire as provided in Article III of this Judgment in respect of the 63,000,000 shares specified in Paragraph B(1) of this article VIII.

"C. The Court makes the following findings with respect to the application of the provisions of Public Law 87-403, enacted February 2, 1962, to this Judgment:

"(1) The divestiture by Du Pont of all of the General Motors stock which it now has, and which it may acquire as provided in this judgment, in the manner described in Paragraph A of this Article VIII is necessary and appropriate to effectuate the policies of the Clayton Act.

"(2) The application of section 1111(a) of the Internal Revenue Code of 1954, as amended, is required in order to reach an equitable antitrust order in this proceeding.

"(3) The time for the complete divestiture fixed in this order is the shortest period within which such divestiture can be executed with due regard to the circumstances of this particular case."

The reference to article III, which is made in article VIII B(2) above, pertains to the acquisition of stock by the exercise of rights issued with respect to presently owned General Motors stock.

There was no finding by the Court that divestiture is required because of an intentional violation of the Sherman Act or the Clayton Act by Du Pont.

Du Pont plans to divest itself of the General Motors stock specified in the judgment by pro rata distributions to its common stockholders within the 34-month period referred to in the judgment. However, the management of Du Pont feels that conceivably circumstances may arise which could make the sale of some General Motors stock desirable.

The Commissioner finds that the history of the passage of section 1111 of the Internal Revenue Code of 1954 shows that Congress contemplated that General Motors shares would not be exchanged by Du Pont for its stock in redemptions.

Based solely on the information submitted, it is held as follows:

(1) Subject to the provisions of section 1111(c)(1), section 1111(a) of the Internal Revenue Code of 1954 will apply to the distribution of General Motors stock by Du Pont to its qualifying shareholders (as defined in section 1111(b). This assumes that the divesture will be effected in accordance with the terms of the court's order of March 1, 1962, referred to above, and that none of the General Motors shares specified in the order will be exchanged for Du Pont shares.

(2) Upon a distribution of General Motors stock by Du Pont to which section 1111 (a), applies—

(*a*) The amount of the distribution will be applied against and reduce the adjusted basis of the particular Du Pont share (or block of shares having the same adjusted basis per share) with respect to which distribution is made. (Sec. 301(c)(2).)

(*b*) To the extent that the amount of the distribution exceeds the adjusted basis of the particular Du Pont share (or block of shares having the same adjusted basis per share) with respect to which distribution is made, it will be treated as gain from the sale or exchange of property. (Sec. 301 (c)(3)(A).)

(3) Upon a distribution of General Motors stock by Du Pont to a domestic corporation which may be allowed a deduction under section 243, 244, or 245 with respect to dividends received, that portion of the amount of the distribution which constitutes a dividend (as defined in sec. 316) will be included in gross income. (Sec. 301(c)(1).)

(4) For the purposes of paragraphs (2) and (3), the amount of the distribution will be—

(*a*) If the shareholder is not a corporation, the fair market value of the General Motors stock received as of the date of its distribution. (Sec. 301 (b)(1).)

(*b*) If the shareholder is a domestic corporation which is a party to the antitrust suit described heretofore, the fair market value of the General Motors stock received as of the date of its distribution. (Sec. 301(f)(2).)

(c) If the shareholder is any other domestic corporation, the lesser of the fair market value of the General Motors stock received as of the date of its distribution or the adjusted basis of such stock in the hands of Du Pont immediately before the distribution. (Sec. 301(b)(1).)

(5) The tax basis of General Motors stock distributed by Du Pont will be—

(a) If the shareholder is not a corporation, the fair market value of such stock as of the date of its distribution. (Sec. 301(d)(1).)

(b) If the shareholder is a domestic corporation which is a party to the antitrust suit described heretofore, the fair market value of such stock as of the date of its distribution decreased by so much of the deduction for dividends received under the provisions of section 243, 244, or 245 as is, under regulations to be prescribed by the Secretary or his delegate, attributable to the excess, if any, of the fair market value of such stock over the adjusted basis of such stock in the hands of Du Pont immediately before the distribution. (Sec. 301(f)(3).)

(c) If the shareholder is any other domestic corporation, the lesser of the fair market value of such stock as of the date of its distribution or the adjusted basis of such stock in the hands of Du Pont immediately before the distribution. (Sec. 301(d)(2).)

(6) A distribution of General Motors stock by Du Pont to which section 1111 (a) applies will not decrease the earnings and profits of Du Pont.

(7) No gain or loss will be recognized to Du Pont upon the distribution of General Motors stock to its shareholder. (Sec. 311(a).)

It is important that a copy of this letter be attached to the Federal income tax return of Du Pont for the taxable year in which divestiture commences.

Sincerely yours,

MORTIMER M. CAPLIN,
Commissioner.

OCTOBER 18, 1963.

CHRISTIANA SECURITIES CO.,
Du Pont Building,
Wilmington, Del.
(Attention of Mr. L. du Pont Copeland, president.)

GENTLEMEN: This is in reply to a letter dated March 26, 1962, in which rulings and closing agreements are requested with respect to the Federal income tax consequences of a proposed distribution by Christiana Securities Co. (hereinafter called Christiana) of shares of stock of General Motors Corp. (hereinafter called General Motors). Additional information was submitted in letters dated April 13, 1962, and July 26, 1962. The relevant facts submitted for consideration are substantially as set forth below.

Christiana, a Delaware corporation, is a closed-end, nondiversified management investment company registered under the Investment Company Act of 1940. The principal asset of Christiana has been the capital stock of E. I. du Pont de Nemours & Co. (hereinafter called Du Pont), presently consisting of approximately 29 percent of the outstanding common stock of Du Pont.

In 1949 the U.S. Government initiated an antitrust suit against Du Pont, charging that it had violated the Clayton Act, and against Du Pont, Christiana, General Motors, and others charging that they had violated the Sherman Act. Pursuant to instructions by the U.S. Supreme Court, final judgment was entered under the Clayton Act on March 1, 1962 by the U.S. District Court for the Northern District of Illinois, eastern division (Civil Action No. 49–C–1071).

Article IX of the judgment provides in part as follows:

"A. Christiana shall, within three years from the date on which this judgment becomes final (appeal time having run or appeal having been completed), divest itself of all the General Motors stock specified and itemized in Paragraph B of this Article IX in the following manner:

"(1) Christiana may sell such number of shares of General Motors stock as, in the judgment of its Board of Directors, is necessary to provide net proceeds sufficient to pay the taxes imposed upon the receipt by it of General Motors stock from Du Pont and any expenses and taxes incurred upon the sale of the shares to be sold.

"(2) Christiana shall distribute to its shareholders (including non *pro rata* distribution in redemption of its own stock, the remaining shares of General Motors stock required to be divested by it.

"B. The General Motors shares which shall be divested by Christiana pursuant to Paragraph A of this Article IX are:

"(1) The 535,500 shares of General Motors stock now owned by Christiana;

"(2) Any shares of General Motors stock received by Christiana from Du Pont pursuant to Paragraph A of Article VIII of this Judgment:

"(3) Any additional shares of General Motors stock which Christiana may acquire in respect of the General Motors shares specified in Paragraphs B(1) and B(2) of this Article IX as provided in Article III of this Judgment.

* * * * * * *

"H. The Court makes the following findings with respect to the application of the provisions of Public Law 87-403, enacted February 2, 1962, to this Judgment:

"(1) The divestiture by Christiana of all of the General Motors stock which it now has, or which it may acquire as provided in this Judgment, in the manner described in this Judgment is necessary and appropriate to effectuate the policies of the Clayton Act.

"(2) The application of Section 1111(a) of the Internal Revenue Code of 1954, as amended, is required in order to reach an equitable antitrust order in this proceeding.

"(3) The time for the complete divestiture fixed in this order is the shortest period within which such divestiture can be executed with due regard to the circumstances of this particular case."

The reference to article III, which is made in article IX B(3) above, pertains to the acquisition of stock by the exercise of rights issued with respect to presently owned General Motors stock.

There was no finding by the Court that divestiture is required because of an intentional violation of the Sherman Act or the Clayton Act by Christiana.

As your representatives have pointed out (1) in the course of testimony by the Treasury Department before the congressional committees it was stated that the Treasury Department had sought and received no commitments from Du Pont or Christiana that they would in fact follow the course on which the revenue estimates presented by Christiana representatives were based; (2) subsequently, the only commitment that the Treasury Department sought was that Christiana would not contest the validity of section 2 of H.R. 8847, then pending before the Congress and subsequently enacted into law as Public Law 87-403; (3) Christiana gave this commitment on December 7, 1961, to the Treasury Department and stated at that time that it would give no commitment that Christiana would not merge with Du Pont; and (4) Christiana formally informed Congress, on January 23, 1962, that it would not contest the validity of section 2, but in doing so made no statement with respect to the possibility of a merger.

The Senate Finance Committee, sponsors and opponents in the Senate, and the President, concerned that the district court should be free to decide whether Christiana should divest by sale or distribution, stated that the court's decision of the antitrust questions before it should not be affected in any way by the legislation.

However, the Internal Revenue Service also finds that the history of the passage of section 1111 of the Internal Revenue Code of 1954, as reflected in the congressional hearings, committee reports, and congressional debates, including representations made by or on behalf of Christiana and Du Pont, shows that Congress contemplated that, insofar as now appears pertinent, General Motors shares owned by Du Pont and distributable to Christiana would in fact be distributed to Christiana within the period specified by the statute and, if the court authorized Christiana to divest by distribution, Christiana would distribute pro rata to its shareholders all of the General Motors shares ordered divested (except for a limited number of shares to be sold to cover taxes payable) and such distributions would be in addition to and not in lieu of cash dividends.

CONDITIONS OF RULINGS

In addition to any other conditions which may be applicable to the following rulings they shall be of no force or effect in the event that any General Motors shares Christiana now owns or hereafter acquires are exchanged by Christiana for its own shares, or if Christiana is merged into Du Pont before Christiana has divested itself of all the General Motors stock it is required to divest by the court order referred to above.

RULINGS

Based solely on the information submitted, it is held as follows:

(1) Subject to the provisions of section 1111(c)(1), section 1111(a) of the Internal Revenue Code of 1954 will apply to the pro rata distribution of General Motors stock, now held by Christiana or received by Christiana from Du Pont pursuant to the final judgment described above, to its qualifying shareholders (as defined in sec. 1111(b)). This assumes that the divestiture will be affected in accordance with the terms of the court's order of March 1, 1962, referred to above.

(2) Upon a distribution of General Motors stock by Christiana to which section 1111(a) applies—

(*a*) The amount of the distribution will be applied against and reduce the adjusted basis of the particular Christiana share (or block of shares having the same adjusted basis per share) with respect to which distribution is made. (Sec. 301(c)(2).)

(*b*) To the extent that the amount of the distribution exceeds the adjusted basis of the particular Christiana share (or block of shares having the same adjusted basis per share) with respect to which distribution is made, it will be treated as gain from the sale or exchange of property. (Sec. 301(c)(3)(A).)

(3) Upon a distribution of General Motors stock by Christiana to a domestic corporation which may be allowed a deduction under sections 243, 244, or 245 with respect to dividends received, that portion of the amount which constitutes a dividend (as defined in sec. 316) will be included in gross income. (Sec. 301(c)(1).)

(4) If, in connection with the distribution of General Motors stock by Christiana, certificates representing fractional shares of General Motors stock are delivered to a bank or trust company with the express consent of the shareholders entitled to these fractional shares under an arrangement requiring the bank or trust company to comply with the instructions of each of these shareholders either to buy an additional fractional share sufficient to round out his fractional interest to a full share or to sell his fractional interest and remit the proceeds, then, delivery of the certificates to the bank or trust company will be treated as a distribution of a fractional share of General Motors stock to the Christiana shareholder entitled to such fractional share.

(5) For purposes of rulings (2), (3), and (4), the amount of the distribution will be—

(*a*) If the shareholder is not a corporation, the fair market value of the General Motors stock received as of the date of its distribution. (Sec. 301(b)(1).)

(*b*) If the shareholder is a domestic corporation, the lesser of the fair market value of the General Motors stock received as of the date of its distribution or the adjusted basis of such stock in the hands of Christiana immediately before the distribution. (Sec. 301(b)(1).)

(6) The tax basis of General Motors stock distributed by Du Pont to Christiana will be the fair market value of such stock as of the date of its distribution decreased by so much of the deduction for dividends received under the provisions of sections 243, 244, or 245 as is, under regulations to be prescribed by the Secretary or his delegate, attributable to the excess, if any, of the fair market value of such stock over the adjusted basis of such stock in the hands of Du Pont immediately before the distribution. (Sec. 301(f)(3).)

(7) The tax basis of General Motors stock distributed by Christiana will be—

(*a*) If the shareholder is not a corporation, the fair market value of such stock as of the date of its distribution. (Sec. 301(d)(1).)

(*b*) If the shareholder is a domestic corporation, the lesser of the fair market value of such stock as of the date of its distribution or the adjusted basis of such stock in the hands of Christiana immediately before the distribution. (Sec. 301(d)(2).)

(*c*) If a full share is acquired by a shareholder as a result of the purchase of an additional fractional share, the basis of the fractional share distributed to the shareholder plus the cash paid to buy the additional fractional share.

(8) In addition to any income recognized upon the distribution of a fractional share, gain or loss will be recognized upon the sale of such fractional share to the extent of the difference between its basis and the proceeds of that

sale. Providing such interest is a capital asset in the hands of the shareholder, the gain or loss will constitute a capital gain or loss subject to the provisions and limitations of subchapter P of chapter 1 of the Code.

(9) The holding period for each share of General Motors stock received by Christiana from Du Pont will include the period during which Du Pont held such stock. (Sec. 1223(2).)

(10) No gain or loss will be recognized by Christiana upon the pro rata distribution of General Motors stock to its shareholders. (Sec. 311(a).)

No ruling has been issued concerning Christiana's earnings and profits since regulations reflecting changes in the law made by Public Law 87–403 have not yet been issued and accordingly that question has not been considered at this time.

You have stated to us that you do not agree with some of the findings on which this ruling is based and have advised us that you may ask for reconsideration of these findings at a later date. You have asked that we note this position in our ruling to you and we have done so since under the regular ruling procedures of the Internal Revenue Service any taxpayer has the right to request a reconsideration of a ruling.

Inasmuch as the rulings set forth above differ from the rulings and closing agreements requested, no closing agreements have been prepared.

It is important that a copy of this letter be attached to the Federal income tax return of Christiana for the taxable year in which divestiture commences.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to Mr. David E. Watts.

Sincerely yours,

(Signed) MORTIMER M. CAPLIN,
Commissioner.

CHRISTIANA SECURITIES CO.,
Wilmington, Del., December 14, 1964.

Re modification of requests for rulings relating to distributions of common stock of General Motors Corp., pursuant to the decree in *U.S.* v. *Du Pont.*

COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C.

DEAR SIR: This letter replaces the letter of Christiana Securities Co. dated December 10, 1964, and filed with you on that date, which letter is hereby withdrawn.

The requests for tax rulings that Christiana Securities Co. has previously filed with you relating to the divestiture of common stock of General Motors Corp. pursuant to the final judgment of the U.S. District Court for the Northern District of Illinois entered March 1, 1962, in the case of *United States* v. *E. I. du Pont de Nemours and Company, et al.* are hereby modified as follows:

(1) If the mean of the high and low prices for General Motors common stock on the New York Stock Exchange on the date of the final distribution by Du Pont under said final judgment (scheduled for January 4, 1965), is less than $85 per share, then the amount of such stock that will be offered to holders of Christiana common stock in exchange for Christiana stock, or that will in fact be exchanged with such stockholders, will not exceed the number of shares determined as follows:

(*a*) if such mean price shall be less than $85 but not less than $80 per share, then the maximum number of shares to be so offered or exchanged will be 7,600,000 shares;

(*b*) if such mean price shall be less than $80 but not less than $75 per share, then the maximum number of shares to be so offered or exchanged will be 6,600,000 shares;

(*c*) if such mean price shall be less than $75 but not less than $70 per share, then the maximum number of shares to be so offered or exchanged will be 5,400,000 shares;

(*d*) if such mean price shall be less than $70 but not less than $65 per share, then the maximum number of shares to be offered or exchanged will be 4 million shares;

(*e*) if such mean price shall be less than $65 but not less than $60 per share, then the maximum number of shares to be so offered or exchanged will be 2,400,000 shares;

(*f*) if such mean price shall be less than $60 but not less than $55 per share, then the maximum number of shares to be so offered or exchanged will be 600,000 shares; and

(*g*) if such mean price shall be less than $55, then no shares will be so offered or exchanged.

(2) If such mean price is less than $85 per share, then Christiana will make a pro rata distribution to holders of its common stock pursuant to the final judgment in *U.S.* v. *Du Pont* of an amount of General Motors common stock that shall not be less than the number of shares determined as follows:

(*a*) if such mean price shall be less than $85 but not less than $80 per share, then the minimum number of shares to be so distributed will be 800,000 shares;

(*b*) if such mean price shall be less than $80 but not less than $75 per share, then the minimum number of shares to be so distributed will be 1,800,000 shares;

(*c*) if such mean price shall be less than $75 but not less than $70 per share, then the minimum number of shares to be so distributed will be 3 million shares;

(*d*) if such mean price shall be less than $70 but not less than $65 per share, then the minimum number of shares to be so distributed will be 4,400,000 shares;

(*e*) if such mean price shall be less than $65 but not less than $60 per share, then the minimum number of shares to be so distributed will be 6 million shares;

(*f*) if such mean price shall be less than $60 but not less than $55 per share, then the minimum number of shares to be so distributed will be 7,800,000 shares; and

(*g*) if such mean price shall be less than $55, then the minimum number of shares to be so distributed will be 8,400,000 shares.

(3) The request for closing agreements relating to such tax rulings is withdrawn.

Christiana represents and agrees (A) that it will make no offer for exchanges of General Motors stock, nor will it make any exchanges of such stock, except in conformance with the limitations on the number of shares to be offered for exchange as determined under paragraph (1) above, and (B) that, if such mean price for General Motors common stock on the date of Du Pont's final distribution shall be less than $85 per share, Christiana will make a pro rata distribution or distributions to the holders of its common stock pursuant to said final judgment of an amount of General Motors common stock that shall not be less than the number of shares determined under paragraph (2) above.

Enclosed is a certified copy of resolutions adopted by the board of directors of Christiana which authorize and direct the foregoing modifications of the pending requests for tax rulings and the foregoing commitments with respect to limiting the number of shares of General Motors common stock that may be exchanged for Christiana common stock and with respect to pro rata distributions of General Motors common stock to holders of Christiana common stock.

Respectfully submitted,

CHRISTIANA SECURITIES CO.,
By HENRY B. du PONT, *President.*

CERTIFICATE

I, T. E. House, an assistant secretary of Christiana Securities Co., a Delaware corporation, do hereby certify that the resolutions attached hereto are true, correct and complete copies of resolutions duly adopted by the board of directors of the corporation at a meeting duly called and held on December 14, 1964, at which meeting a quorum was present and acting throughout, and that such resolutions have not been amended, modified or repealed and are in full force and effect as at the date hereof.

In witness whereof, I have executed this certification and affixed the seal of said corporation this 14th day of December, 1964.

[SEAL] T. E. HOUSE, *Assistant Secretary.*

Resolved, That the resolutions adopted by this Board at the special meeting held on December 10, 1964 are hereby revoked;

Resolved further, That if the mean of the high and low prices for General Motors common stock on the New York Stock Exchange on the date of the final distribution by Du Pont pursuant to the final judgment in *U.S.* v. *Du Pont*, scheduled for January 4, 1965, is less than $85 per share, then the amount of

General Motors common stock to be offered to the company's shareholders in exchange for the company's common stock, or in fact so exchanged, will not be in excess of the number of shares determined as follows:

(*a*) If such mean price shall be less than $85 but not less than $80 per share, then the maximum number of shares to be so offered or exchanged will be 7,600,000 shares;

(*b*) If such mean price shall be less than $80 but not less than $75 per share, then the maximum number of shares to be so offered or exchanged will be 6,600,000 shares;

(*c*) If such mean price shall be less than $75 but not less than $70 per share, then the maximum number of shares to be so offered or exchanged will be 5,400,000 shares;

(*d*) If such mean price shall be less than $70 but not less than $65 per share, then the maximum number of shares to be so offered or exchanged will be 4 million shares;

(*e*) If such mean price shall be less than $65 but not less than $60 per share, then the maximum number of shares to be so offered or exchanged will be 2,400,000 shares;

(*f*) If such mean price shall be less than $60 but not less than $55 per share, then the maximum number of shares to be so offered or exchanged will be 600,000 shares; and

(*g*) If such mean price shall be less than $55, then no shares shall be so offered or exchanged;

Resolved further, That if such mean price is less than $85 per share, the company will make a pro rata distribution to holders of its common stock pursuant to the final judgment in *U.S.* v. *Du Pont* of an amount of General Motors common stock that shall not be less than the number of shares determined as follows:

(*a*) If such mean price shall be less than $85 but not less than $80 per share, then the minimum number of shares to be so distributed shall be 800,000 shares;

(*b*) If such mean price shall be less than $80 but not less than $75 per share, then the minimum number of shares to be so distributed shall be 1,800,000 shares;

(*c*) If such mean price shall be less than $75 but not less than $70 per share, then the minimum number of shares to be so distributed shall be 3 million shares;

(*d*) If such mean price shall be less than $70 but not less than $65 per share, then the minimum number of shares to be so distributed shall be 4,400,000 shares;

(*e*) If mean price shall be less than $65 but not less than $60 per share, then the minimum number of shares to be so distributed shall be 6 million shares;

(*f*) If such mean price shall be less than $60 but not less than $55 per share, then the minimum number of shares to be so distributed shall be 7,800,000 shares; and

(*g*) If such mean price shall be less than $55, then the minimum number of shares to be so distributed shall be 8,400,000 shares;

Resolved further, That the company's officers are authorized and directed:

(*a*) To modify the pending request to the Commissioner of Internal Revenue for tax rulings relating to the company's divestiture of General Motors common stock so as to limit, as set forth in the foregoing resolutions, the proposed amount of stock to be offered for exchanges;

(*b*) To represent to the Commissioner of Internal Revenue that the company will not make any offer to its shareholders for exchanges of shares of General Motors common stock, or make any such exchanges, in excess of the maximum number of such shares that may be offered in accordance with the foregoing resolutions;

(*c*) To make a commitment to the Commissioner of Internal Revenue that such pro rata distribution to the company's shareholders, if any, as may be necessary to comply with the foregoing resolutions will be made; and

(*d*) To make any other modifications in the company's pending request for tax rulings that may be necessary or desirable to carry out the intent of the foregoing resolutions.

DECEMBER 15, 1964.

CHRISTIANA SECURITIES CO.,
Du Pont Building, Wilmington, Del.
(Attention Henry B. du Pont, president).

GENTLEMEN: This is in reply to a letter dated August 17, 1964, requesting further rulings with respect to the Federal income tax consequences of a proposed distribution by Christiana Securities Co. (hereinafter called "Christiana") of shares of common stock of General Motors Corp. (hereinafter called "General Motors"). Additional information and representations were submitted in letters dated November 18, December 8, and December 14, 1964. The relevant facts submitted for consideration are substantially as set forth below.

On October 18, 1962, this office issued a ruling letter with respect to the Federal income tax consequences of a proposed divestiture by Christiana of the General Motors common stock then held by Christiana or to be received from E. I. du Pont de Nemours and Company (hereinafter called "du Pont"). The divestiture was being made pursuant to a final judgment entered on March 1, 1962, by the United States District Court for the Northern District of Illinois, Eastern Division, in the case of *United States* v. *E. I. du Pont de Nemours and Company, et al.* Our ruling letter dated October 18, 1962, is incorporated herein by reference.

Page 7 of our ruling letter dated October 18, 1962 states, in part, as follows:

* * * * * * *

"You have stated to us that you do not agree with some of the findings on which this ruling is based and have advised us that you may ask for reconsideration of these findings at a later date. You have asked that we note this position in our ruling to you and we have done so since under the regular ruling procedure of the Internal Revenue Service any taxpayer has the right to request a reconsideration of a ruling."

* * * * * * *

Your letter of August 17, 1964, constitutes a request for reconsideration and modification of the ruling letter of October 18, 1962, and this letter is the result of such reconsideration.

Since 1962, Christiana has disposed of 9,882,420 shares of General Motors common stock. Of this number 8,832,420 shares have been distributed by two pro rata distributions to the Christiana shareholders and 1,050,000 shares have been sold in secondary offerings to raise funds to pay taxes incurred with respect to the receipt of General Motors stock from Du Pont. Christiana presently owns 2,191,803 shares of General Motors stock and, prior to March 1, 1965, expects to receive an additional 6,708,560 shares from Du Pont as a final distribution. It proposes to sell an additional 500,000 to 600,000 shares in order to pay taxes incurred on the receipt of the shares described above. The approximately 8,400,000 remaining shares will then be distributed prior to May 1, 1965, in accordance with the final judgment.

Under the proposed divestiture, as described in resolutions adopted by the Christiana Board of Directors on December 14, 1964, incorporated herein by reference, Christiana will distribute the approximately 8,400,000 shares of General Motors stock first by offering to its shareholders an opportunity to exchange their Christiana stock for General Motors stock and then by distributing any remaining General Motors shares to the Christiana shareholders on a pro rata basis. Pursuant to the exchange proposal, all of the shareholders of Christiana will be extended an invitation for tenders of Christiana common stock in exchange for General Motors common stock at an exchange ratio to be fixed by the Christiana Board of Directors. It is represented that the number of shares of General Motors stock, if any, which will be offered to the Christiana shareholders is subject to the exchange and pro rata distribution formulas stated in the resolutions adopted by the Christiana Board of Directors on December 14, 1964, but will not exceed 8,400,000 shares. All Christiana stock received upon such an exchange will be canceled.

In order to avoid the possibility that some General Motors common stock might be distributed to persons who have purchased Christiana common stock solely for the purpose of participating in the stock redemptions, Christiana proposes to fix the record date, which will determine the eligibility of Christiana shareholders to participate in the exchange, at a date not later than the date of the public announcement of the stock redemption plan. However, the plan might provide that, in the discretion of the Christiana Board of Directors or a committee thereof, a Christiana shareholder who was not a holder of record on

the record date may be treated as making a valid tender of Christiana stock if is established that such shareholder in fact owned the stock tendered, or had contracted to purchase such stock prior to the public announcement of the stock redemption and that such stock was not acquired primarily for the purpose of participating in the exchange.

Fractional shares resulting from the exchange transactions or from a subsequent pro rata distribution to which Christiana shareholders may be entitled will be distributed by Christiana to an exchange agent as undivided interests in full shares of General Motors stock. The exchange agent will either buy or sell fractional interests in accordance with instructions given by each shareholder. In the event a shareholder fails to give any instructions with respect to his fractional interest within a reasonable time, such fractional interest will be sold by the exchange agent.

It is represented by Christiana that Christiana and du Pont will not merge prior to the final distribution of General Motors common stock by du Pont.

Based solely on the information submitted (which includes the resolutions of the Christiana Board of Directors dated December 14, 1964, and the representations and agreement contained in your letter dated December 14, 1964) and after reconsideration of our ruling letter dated October 18, 1962, it is held that the ruling letter of October 18, 1962, will remain in full force and effect except that paragraphs two and three of page four are hereby delected, subject to your adherence to the exchange and pro rata distribution formulas stated in the resolutions and in your letter of December 14, 1964. In all other respects that ruling letter will remain in effect. It is further held as follows:

(1) If subsection (b)(1), (b)(2), or (b)(3) of section 302 of the code applies to a distribution of General Motors common stock in redemption of Christiana common stock, such distribution will constitute a distribution in part or full payment in exchange for the Christiana common stock. However, no opinion is expressed as to whether such subsections of section 302 are applicable.

(2) If a distribution of General Motors common stock in redemption of Christiana common stock will not qualify under section 302(a) of the code, the transaction will be treated in accordance with the appropriate rulings stated in our ruling letter dated October 18, 1962.

(3) No gain or loss will be recognized to Christiana as a result of its distribution of General Motors common stock in redemption of shares of its Christiana common stock (sec. 311).

It is important that a copy of this letter, together with a copy of the October 18, 1962, ruling letter, be attached to the Federal income tax return of Christiana for the taxable year in which the proposed transaction is consummated.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to Mr. David E. Watts.

Sincerely yours,

BERTRAND M. HARDING,
Acting Commissioner.

U.S. TREASURY DEPARTMENT,
COMMISSION OF INTERNAL REVENUE,
Washington, D.C., March 15, 1965.

Hon. HARRY F. BYRD,
Chairman, Committee on Finance, U.S. Senate.

DEAR MR. CHAIRMAN: This is in further reply to your letter dated December 18, 1964, requesting a complete report of the Federal income tax aspects of the divestiture of General Motors Corp. (hereinafter called "General Motors") common stock by E. I. du Pont de Nemours & Co. ("Du Pont") and Christiana Securities Co. ("Christiana") through distrubution of their respective shareholders. Our letter of January 15, 1965, on this subject matter, which was addressed to you, is incorporated herein by reference.

In our discussion with members of your committee in executive session on February 4, 1965, we were requested to furnish information regarding the tax effect of the final divestiture by Christiana of its General Motors stock. Prior to the final divestiture, Christiana had already disposed of 9,882,420 shares of General Motors stock as follows:

	Shares
Sold	1,050,000
Distributed pro rata	8,932,420

After the final distribution by Du Pont, Christiana had 8,900,363 shares of General Motors remaining. Of these, Christiana sold 457,312 shares to pay taxes and expenses of the distributions, leaving 8,443,051 shares to be disposed of.

The information equested by pour committee is what amount of revenue will be derived from the actual final divestiture by Christiana of 8,443,051 shares of General Motors stock as compared to the revenue that would have been derived had all of the shares been distributed pro rata to Christiana shareholders.

The figures furnished by the companies show that 4,487,051 of the 8,443,051 shares of General Motors stock were distributed in redemption of 1,380,631 shares of Christiana stock on a basis of 3¼ shares of General Motors for 1 share of Christiana. The 3,956,000 shares of General Motors left after the exchange were distributed pro rata to the holders of the remaining Christiana shares.

Present estimates furnished by the companies and examined by the Treasury revenue estimate staff indicate that taxes incurred as a result of the non pro rata exchanges will be $23 million and the pro rata distribution will result in taxes of $85 million or a total of $108 million.

Assuming no exchange offer had been made, it is estimated that the tax on the final pro rata distribution by Christiana would have approximated $164 million. Thus, the difference in revenue between the two methods is estimated to be $56 million ($164 million minus $108 million).

It should be recognized that this estimate of $56 million will be eventually reduced due to capital gains taxes on subsequent sales of Christiana stock. This will result because the Christiana shareholders who did not exchange their shares own a larger proportionate interest in the remaining assets of Christiana.

It is noted that of the 1,380,631 shares of Christiana stock exchanged, 887,702 shares (64.3 percent) were exchanged by tax-exempt organizations, 282,760 shares (20.5 percent) were exchanged by corporations, and 210,079 shares (15.2 percent) were exchanged by individuals.

The following table shows an estimate of the number of General Motors shares received by categories of Chritiana shareholders on the final divestiture by Christiana as compared to the number they would have received had the entire final divestiture been on a pro rata basis:

Shareholders	Received	Would have received if all pro rata
Individuals	4,337,000	7,119,000
Corporations	1,060,000	451,000
Exempt organizations	3,046,000	873,000
Total	8,443,000	8,443,000

It is estimated that the revenue yield on the complete divestiture by Du Pont and Christiana will be approximately $612 million. This is $142 million in excess of the maximum estimate of $470 million considered at the time of the enactment of Public Law 87-403.

This information is furnished to you as chairman of the U.S. Senate Committee on Finance in accordance with section 6103(d) of the Code and section 301.6103 (d)-1 of the income tax regulations.

With kind regards,

Sincerely,

SHELDON COHEN, *Commissioner.*

The CHAIRMAN. The first witness will be the Secretary of the Treasury, the Honorable Douglas Dillon.

STATEMENT OF HON. DOUGLAS DILLON, SECRETARY OF THE TREASURY

Secretary DILLON. I have been asked to appear today to discuss the recent ruling of the Internal Revenue Service concerning the tax treatment of the recent non pro rata distribution of General Motors com-

mon stock by the Christiana Securities Co. I welcome this opportunity for a public discussion of the subject. I have every confidence that the Internal Revenue Service has issued the legally correct ruling. The Commissioner of Internal Revenue is here with me and is prepared to discuss it in detail. As I informed the committee in executive session last month, I took no part in the decision to issue this ruling, and I am not in a position to discuss the technical and legal considerations that led to its issuance. However, because of the interest in this matter expressed by the committee, I have inquired in some detail into the revenue aspects of the distribution of General Motors stock by the Du Pont Co. and the Christiana Securities Corp., and I would like to review these aspects with you briefly.

Christiana is a holding company which holds a 29-percent interest in the Du Pont Co. The various members of the Du Pont family listed in the final judgment of the U.S. District Court in Chicago directly or indirectly own or control about 50 percent of Christiana. As this committee knows, the ruling that is the subject of this hearing stems from the landmark decision of the U.S. Supreme Court in the antitrust action prosecuted by the Government in the 1950's against the Du Pont Co. and others. In that decision the Court held the Du Pont Co. in violation of the antitrust laws and later ordered Du Pont to divest itself of its holdings of General Motors stock.

While the U.S. District Court in Chicago was considering the terms of an order requiring the divestiture, Public Law 87–403 was enacted. It permitted modified tax treatment for the distributions of General Motors stock by Du Pont and Christiana. This committee in its report on the bill, the discussion of the bill on the Senate floor and President Kennedy when he signed the law, all made it clear that the tax treatment provided for in the bill was not intended to affect in any way the terms of the court's divestiture order, which was strictly an antitrust matter.

The district court in its final decree ordered Christiana to divest itself within 3 years of all General Motors stock held or received from Du Pont. It specifically permitted Christiana to dispose of General Motors stock by any or all of three methods: (1) sale; (2) non pro rata exchange for Christiana stock; or (3) pro rata distribution. In addition, the court held that certain members or connections of the Du Pont family and institutions controlled by them would have to dispose of any General Motors stock they might receive from Christiana. They were given 10 years to complete this disposition and during that period they could not vote their General Motors stock.

After the decision of the district court, which was accepted by all parties, including the Government, I am informed that both Du Pont and Christiana requested rulings from the Commissioner of Internal Revenue as assurance that their planned distribution of General Motors shares would, among other things, come within the provisions of Public Law 87–403. I am further told that the Commissioner, in the exercise of his lawful discretion, determined to include in the Christiana ruling letter issued in 1962, a condition that the ruling would be of no force and effect if Christiana entered into any non pro rata exchange of stock. Thus, if Christiana wanted the benefit of the ruling, it could make only direct sales and pro rata distributions.

I am informed that the Commissioner took this action in his 1962 ruling largely on the recommendation of the then General Counsel of the Treasury, Mr. Robert H. Knight, who had represented the Treasury in the congressional hearings on Public Law 87–403. The reason for Mr. Knight's recommendation was that when Public Law 87–403 was being considered by the Senate, representations were made on behalf of Du Pont that the distribution of General Motors stock under the provisions of the pending bill would result in very substantial revenue to the Government. A figure as high as $470 million was mentioned. Since no pro rata distribution of General Motors stock would be less likely to yield revenues as high as $470 million than pro rata distribution, Mr. Knight recommended that the Service's ruling be on the condition that no non pro rata distributions be made even though such distributions had been specifically permitted by the order of the district court. When the Commissioner of Internal Revenue accepted Mr. Knight's recommendation, I am informed that Christiana protested the inclusion of the condition in the ruling and specifically reserved the right to seek reconsideration at a later date.

Du Pont has completed its divestiture of General Motors stock without offering any shares in exchange for or redemption of Du Pont shares, and Christiana made two sizable pro rata distributions before applying for modification of the ruling.

In August 1964, Christiana applied for a modification of its 1962 ruling that would permit it to offer to its stockholders a non pro rata exchange of General Motors stock for Christiana stock and still retain the benefit of the 1962 ruling.

In December 1964, after he had satisfied himself that the Government would receive at least $470 million in revenue, I am informed that the Acting Commissioner issued a new ruling which removed the condition against non pro rata distributions in the form of exchanges or redemptions by Christiana. It is this ruling which is the subject of today's hearing.

I am informed that Mr. Knight, who served as a temporary consultant to the Acting Commissioner on the December 1964, ruling, recommended that the condition he had originally proposed be removed. I understand it was Mr. Knight's view that the condition had served to protect the revenue of the Government and was no longer justified. Mr. Knight is here today from New York at your invitation and is prepared to discuss his recommendation with you.

Except for a final public sale of 457,312 shares of General Motors stock by Christiana, all the distributions have now been completed.

On the basis of the figures supplied by the companies, which have been checked by the Treasury estimating staff and by the Internal Revenue Service, it appears that the total revenues from the distributions will amount to an estimated $612 million, or $142 million more than the $470 million figure mentioned during debate on Public Law 87–403.

Christiana in January offered its stockholders the right to exchange their holdings of Christiana stock for 8,400,000 shares of General Motors stock held by it on the basis of 3¼ shares of General Motors for each share of Christiana; 4,487,051 shares of General Motors stock were exchanged for 1,380,631 shares of Christiana. Thereafter, another 3,956,000 shares of General Motors stock were distributed pro rata to Christiana stockholders.

It should be made perfectly clear that the non pro rata distribution carried out by Christiana was a taxable exchange and offered no special tax benefits whatsoever to those who took advantage of it. However, there were indirect tax benefits to the Christiana stockholders who did not accept the exchange offer. They flowed from the fact that tax-exempt charitable holders of Christiana stock found the offer attractive and exchanged substantial quantities of their holdings, thus receiving far more General Motors stock than they would have received under a straight pro rata distribution. Thus, there were fewer shares of General Motors stock left for the final pro rata distribution to taxable stockholders. As a result, the total tax payable by Christiana stockholders on the shares received in the two distributions was $56 million less than it would have been if all the shares had been distributed on a pro rata basis. The Government will recoup some part of this amount in capital gains taxes on future sales of Christiana stock by present shareholders of Christiana.

It is interesting to note the actual result of the non pro rata exchnage offer: 1,380,631 shares of Christiana stock were exchanged for General Motors stock; Of that total, 210,079 were attributable to individuals, 282,760 to corporations, and 887,792 to charitable and nonprofit holders. On a percentage basis, only about 2 percent of Christiana's individually owned shares took advantage of the exchange offer. The percentage of corporate owned shares exchanged was 40 percent, while in the case of charitable holders, who were tax exempt in any, event, the percentage was 65 percent.

The exchange was particularly attractive to charitable holders since, based on 1964 dividend payments, the income from the General Motors shares received in exchange for Christiana was approximately twice as much as that on the exchanged shares of Christiana. Commissioner Cohen's letter dated March 15, 1965, to Chairman Byrd provides further details of the results of the exchange offer. I am attaching two tables which summarize the distributions by which Du Pont and Christiana have divested their General Motors stock.

(The tables referred to follow:)

TABLE I.—*Distribution by Du Pont of GM stock*

Date	Type of divestiture	Total number of shares	Total number of shares distributed to Christiana
July 9, 1962	Pro rata distribution (½ share General Motors per 1 share Du Pont).	22,991,402	6,708,560
Jan. 6, 1964	Pro rata distribution (30/100 share General Motors per 1 share Du Pont).	16,557,983	4,830,163
Jan. 20, 1964	Sale	409,000	
Jan. 4, 1965	Pro rata distribution (½ share General Motors per 1 share Du Pont).	23,002,678	6,708,560
Oct. 4 through Dec. 5, 1964.	Sale	38,847	
Total		63,000,000	18,247,283

NOTE.—Total sales, 447,847; total pro rata, 62,552,153; total shares, 63,000,000.

TABLE II.—*Distribution by Christiana of General Motors stock*

Date	Type of divestiture	Number of shares
July 25, 1962	Sale	550,000
Nov. 14, 1962	Pro rata distribution (⅓ share General Motors per 1 share Christiana)	4,416,210
Nov. 20, 1962	Sale	100,000
Jan. 6, 1964	Pro rata distribution (⅓ share General Motors per 1 share Christiana)	4,416,210
Jan. 29, 1964	Sale	400,000
Feb. 8, 1965	Exchange (3¼ shares General Motors for 1 share Christiana)	4,487,051
Mar. 8, 1965	Pro rata distribution (⅓ share General Motors per 1 share Christiana)	3,956,000
Mar. 17, 1965	Sale	457,312
	Total	18,782,783
	Total sales	1,507,312
	Total pro rata	12,788,420
	Total exchange	4,487,051
	Total	18,782,783

Secretary DILLON. As I stated earlier, I have not played any substantive part in the issuance of rulings on these stock distributions. This was in accord with the basic and longstanding policy that the Secretary of the Treasury does not decide individual tax cases.

However, the Revenue Service is, of course, free to get Treasury help and advice whenever it so desires. In the case of both the 1962 rulings and the 1964 ruling, I am informed that such information and advice was sought regarding the legislative history of Public Law 87–403. In addition, Treasury revenue estimators were asked to assist the Revenue Service in verifying the reasonableness and accuracy of estimates of taxes payable or to be payable as a result of the distributions.

Last October, while Christiana's request for a modification of the 1962 ruling was under consideration, my tax staff suggested to me that it would be helpful if the services of Mr. Knight could be obtained as a temporary consultant. In view of Mr. Knight's knowledge of the legislative history of Public Law 87–403 and of the background of the 1962 ruling, it seemed logical that his advice would be helpful to the Commissioner in reaching a decision. I, therefore, telephoned Mr. Knight, who agreed to serve as a temporary consultant to the Commissioner of Internal Revenue on this matter.

Because of the committee's interest in this matter, and because of Senator Gore's desire that I acquaint myself with the basic facts of the case, I have done so. I have gone into the matter enough to assure myself that the procedures used in developing the new ruling were entirely proper and to give me full confidence that the Commissioner issued the legally correct ruling. Beyond that Commissioner Cohen, who is here with me today, has a statement as to exactly what the two rulings covered and the reasons for their issuance. He is also prepared to answer detailed questions regarding the rulings or their issuance.

Thank you, Mr. Chairman.

Senator GORE. Mr. Chairman, I do not ask the privilege of questioning out of turn, but since it was I who raised this issue, I would ask unanimous consent to read a two-page statement to the committee in order that the issue may be squarely placed before the committee.

The CHAIRMAN. You may proceed Senator GORE.

Senator GORE. Mr. Chairman, it was I who asked you to call the committee together in public session so that we could discuss with the Secretary of the Treasury, the Commissioner of Internal Revenue, and others the revenue aspects of the Du Pont-Christiana divestiture of General Motors stock.

We are here concerned with public business about which the people have a right to know. All too many people and officials have come to feel in recent years that a taxpayer's business was of no concern to anyone other than the taxpayer and officials of the Treasury Department. Many tax matters have been settled through private negotiation. I think a public airing of some of these so-called private matters would be highly beneficial. But at least when the Treasury Department officials, two-thirds of the way through a transaction involving three publicly held corporations, suddenly and privately change a tax ruling to the extent that the Government faces a potential loss of revenue of some $100 million, and with actual loss according to Treasury statistics of $56 million, I surely think the public is entitled to know what happened.

There is, in addition to the revenue aspects of this transaction, a possible antitrust element, but this is neither the place, the time, nor the committee to explore that problem.

Briefly, Mr. Chairman, here is what happened.

1. The Congress in 1962 enacted a relief bill to reduce the taxes of Du Pont and Christiana stockholders in the event the Federal court in Chicago ordered a pass-through-type of divestiture of GM stock. Subsequently, the Court did so.

2. In passing the Du Pont bill, it was the clear understanding of the Congress that, in the event of a required distribution of General Motors stock by Christiana, there would be a pro rata distribution. This is clearly borne out by the statement of the distinguished chairman of this committee, when he presented the bill on the floor of the Senate. This will be found on pages 21026 of the Congressional Record for September 23, 1961.

I quote Senator Byrd:

> First. This bill as it is will yield $233 million in revenue. Moreover, if the court orders Christiana to sell its General Motors stock, this sum will be increased by $184 million; that is, to a total amount of $417 million. On the other hand, if the court orders Christiana to distribute its stock to its shareholders, the revenue will be increased by $136 million, so that the total will be $369 million. These estimates are based upon General Motors selling at $45 a share. Recent figures indicate that this stock is selling around $48 a share, so that on this basis the estimate will be higher.

This understanding is verified by the letter of Commissioner Caplin of October 18, 1962, to Christiana. This letter laid down as a condition of the rulings therein issued, which the Secretary has now testified to, the stipulation that distribution must be pro rata.

Now, Mr. Chairman, I have been under resraint in using confidential communications to the committee. But since the distinguished chairman has now, I think, exercised very good judgment in making the entire record public, I would like to read this paragraph from Commissioner Caplin's letter to which I have referred in general in my statement.

I read now from page 4:

> However, the Internal Revenue Service also finds that the history of the passage of section 1111 of the Internal Revenue Code of 1954 as reflected in the

congressional hearings, committee reports, and congressional debates, including representations made by or on behalf of Christiana and Du Pont, shows that Congress contemplated that, insofar as now appears pertinent, General Motors shares owned by Du Pont and distributed to Christiana would in fact be distributed to Christiana within the period specified by the statute and, if the court authorized Christiana to divest by distribution, Christiana would distribute pro rata to its shareholders all of the General Motors shares ordered divested (except for a limited number of shares to be sold to cover taxes payable) and such distributions would be in addition to and not in lieu of cash dividends.

The next paragraph is "Conditions of rulings."

In addition to any other conditions which may be applicable to the following rulings, they shall be of no force or effect in the event that any General Motors shares Christiana now owns or hereafter acquires are exchanged by Christiana for its own shares, * * *

This is exactly what the change permitted.

or if Christiana is merged into Du Pont before Christiana has divested itself of all the General Motors stock it is required to divest by the Court order referred to above.

Continuing with my statement:

3. Under the 1962 rulings, part of which I have just read, Du Pont made two distributions as follows:

July 1962, 23 million GM shares.

January 1964, 17 million GM shares.

This much of the transaction gave rise to tax liabilities of about $132 million. Christiana also made two pro rata distributions as follows:

November 1962, 4.4 million GM shares.

January 1964, 4.4 million GM shares.

From this part of the transaction, there was $90 million in tax liabilities. In addition, there was a tax liability on Christiana's part of $18.9 million due to sale of some of its General Motors stock. Du Pont's final distribution was 23 million shares in January 1965.

With the continuing rapid rise in the price of General Motors stock, there was a consequent increase in tax liability of members of the Du Pont family and others to whom General Motors stock was distributed, even under the generous terms of the relief bill. This was particularly true of Christiana stockholders whose stock was acquired at a low price. Christiana officials requested that the ruling be changed to allow a non-pro-rata distribution. If permitted, such a change would allow a very large reduction in the overall tax consequences to Christiana individual stockholders of Christiana's third and final distribution of some 8.4 million shares of General Motors stock. The desired reduction in tax liabilities would be brought about, as the Secretary has now said, in different words—by funneling more General Motors shares into tax-exempt organizations, many of them responsive to members of the Du Pont family. This would, of course, have two very tangible results, which the Secretary described, I believe, as substantial tax benefits.

(*a*) A smaller number of General Motors shares would be distributed to individual Christiana stockholders, thus relieving them of much of the tax burden of the entire transaction.

(*b*) Christiana shares turned in to the company on the exchange would be retired, thus making each outstanding share of Christiana stock far more valuable without immediate tax consequence to the owner of the stock.

4. Mr. Robert Knight, former General Counsel of the Treasury Department, was called in by Secretary Dillon as a consultant to negotiate the arrangement.

5. The Treasury then modified its rulings to allow some non pro rata distribution, the amount depending on the price of General Motors stock at the time of Du Pont's third and final distribution.

This entire procedure appears to me to be highly irregular. Either the Treasury issued unenforcible rulings in 1962—which is in itself improper—or it practiced tax favoritism for a few by allowing a taxpayer an unwarranted benefit from the Treasury of the United States by modifying and partially reversing its 1962 rulings.

I think it is highly important that the public understand what has happened. I hope this disclosure will discourage such conduct in the future.

Senator MORTON. Mr. Chairman, since the Senator from Tennessee has read two paragraphs from the letter to Christiana Securities from Internal Revenue, may I just read one short paragraph from that same letter which I think is pertinent.

This is the next to the last paragraph on page 7 of the letter:

You—

Meaning Christiana, because the letter is addressed to Christiana Securities Co.—

You have stated to us that you do not agree with some of the findings on which this ruling is based and have advised us that you may ask for reconsideration of these findings at a later date. You have asked that we note this position in our ruling to you and we have done so since under the regular ruling procedures of the Internal Revenue Service any taxpayer has the right to request a reconsideration of a ruling.

Senator WILLIAMS. Mr. Chairman, in line with that thought, I would like to ask there be printed in the record a copy of the committee report accompanying this bill, beginning on page 3, "Reasons for the bill," down through the end of page 5. In line with that, I should like to read just one paragraph from this report which we are incorporating.

The Department of Justice is expected to seek a court order requiring Christiana to divest itself of the General Motors stock by selling such stock. However, the court may direct Christiana to distribute some or all of General Motors stock received in the distribution. If this were to occur under terms of the amendments made by the bill, the individual shareholders of Christiana would be treated in the same manner as individual shareholders of Du Pont were treated in the antitrust distribution made by it. Your committee wishes to make it very clear that it expresses no opinion as to what particular method of divestiture of General Motors stock by Du Pont or by Christiana is appropriate. It is contemplated by your committee that all such issues dealing with the manner of divestiture are to be determined judicially, solely with reference to the antitrust principles announced by the Supreme Court in the *Du Pont* case.

(Pp. 3, 4, and 5 of S. Rept. 1160 filed by the Senate Committee on Finance when reporting H.R. 8847 on September 21, 1961, follow:)

II. REASONS FOR THE BILL

The problems arising out of antitrust distributions were called to the attention of Congress by the two decisions of the Supreme Court in the case of *United States v. E. I. du Pont de Nemours and Company, et al.* (353 U.S. 586 (1957) and 365 U.S. 806 (1961)).

Du Pont is a large chemical company engaged (among other things) in the manufacture of automotive paints and fabrics. It owns about 23 percent of

the common stock of General Motors, nearly all of which it acquired about 40 years ago. General Motors is one of the largest users of automotive paints and fabrics in the country.

In 1949 the Department of Justice filed a complaint in an antitrust action against Du Pont. In 1957, after protracted litigation, the Supreme Court found that Du Pont's ownership of 23 percent of the stock of General Motors was a violation of section 7 of the Clayton Act, since this ownership might enable Du Pont to prevent other suppliers of automotive paints and fabrics from selling to General Motors. The Court reached this conclusion although it believed that "* * * all concerned in high executive posts in both companies acted honorably and fairly * * *." The decision accordingly returned the case to the district court for proper equitable relief.

In the district court the Department of Justice proposed that Du Pont distribute its General Motors stock to its shareholders over a 10-year period. However, impressed by the harsh income tax consequences that would result from such distribution, the district court declined to order a divestiture and instead entered a decree under the terms of which Du Pont would refrain from voting the stock of General Motors but such stock would be voted instead directly by the Du Pont shareholders.

The United States again appealed and on May 22, 1961, the Supreme Court ruled that no less a remedy than complete divestiture is required and that such divestiture must be completed within 10 years. Thus, at the present time Du Pont will be required to rid itself of 63 million shares of General Motors stock within the period mentioned.

The problem of getting rid of such a huge amount of stock without upsetting the market is by no means an easy one. It seems that under any plan Du Pont will have to distribute at least some of the General Motors stock to its shareholders. It should be observed that an individual Du Pont shareholder receiving General Motors stock will (under existing law) be taxed on dividend income to the extent of fair market value of the stock received. Thus, he will owe a large tax but may have no cash in hand with which to pay it. In these circumstances it will frequently happen that he will be obliged to sell some or all of the stock received. Your committee believes that this result is harsh, insofar as the Du Pont shareholders are concerned, since these shareholders were not violators of the antitrust laws and were not parties to the proceedings. In addition, serious harm would result to the General Motors shareholders. It is clear that if a large number of persons are at the same time compelled to sell General Motors stock, the increase in the supply of this stock will appreciably depress its price to the detriment of the many General Motors shareholders who are not guilty of any wrongdoing. It is the purpose of this bill to prevent both the application of an unreasonably high tax rate to the individual shareholders of Du Pont and to save the General Motors shareholders from having the value of their investment seriously diminished by reason of events beyond their control.

Under the amendment made by the bill, the only individual shareholders who will owe any tax on the receipt of the General Motors stock will be those whose basis for their Du Pont stock is less than the value of the General Motors stock to be distributed to them. Since in recent years the market price of the Du Pont stock has been high, in general, only shareholders who acquired the Du Pont stock before 1950 will pay any tax. As a result, a very large portion of the recipients of the General Motors stock will not be under any pressure to sell this stock, so that the depressing effect on the market will be minimized.

Further market stability is expected to result from the enactment of the bill due to the fact that a major part of the Du Pont stock held at a very low basis is held by a relatively small group of shareholders. It is believed likely that this group will be able to sell some General Motors stock in an organized and orderly manner through underwriters.

For the reasons given, your committee believes that the enactment of the bill will make it possible to distribute the General Motors stock to the individual shareholders without unfair consequences to these shareholders and without damage to investors in General Motors stock. Your committee also believes that enactment of the bill will make it possible to accomplish this within the 3-year period fixed in the bill.

Christiana Corp. is the largest corporate shareholder of Du Pont, owning about one-third of the outstanding stock. For this reason, if Du Pont distributes all of the General Motors stock owned by it, Christiana will receive about 20 million shares of General Motors. The Department of Justice is expected to seek a court order requiring Christiana to divest itself of the General Motors stock by selling

such stock. However, the court may direct Christiana to distribute some or all of the General Motors stock received in the distribution. If this were to occur, under terms of the amendments made by the bill the individual shareholders of Christiana would be treated in the same manner as individual shareholders of Du Pont were treated in the antitrust distribution made by it. Your committee wishes to make it very clear that it expresses no opinion as to what particular method of divestiture of General Motors stock by Du Pont or by Christiana is appropriate. It is contemplated by your committee that all issues dealing with the manner of divestiture are to be determined judicially, solely with reference to the antitrust principles announced by the Supreme Court in the *Du Pont* case.

It should be observed that under the amendments made by the bill, Christiana will pay somewhat more tax on the receipt of the General Motors stock than it would pay if such amendments had not been made. Your committee believes that this is justified by the fact that Christiana's individual shareholders will receive the special "return of capital" treatment provided for in the bill, if Christiana should be ordered to distribute to them the stock received by it. However, Christiana will pay the additional tax whether or not a distribution by it is ordered.

The amendments made by the bill provide only for distributions in court proceedings which were begun on or before January 1, 1959. Your committee has not yet reached a definite opinion as to what relief, if any, should be given to other taxpayers who may be required to distribute stock pursuant to the antitrust laws. However, it should be observed that in many antitrust situations the corporation which would be required to distribute stock of another corporation would own more than 80 percent of such stock. Thus, in many cases the distribution of the stock would be tax free to the shareholders because of section 355 of the Internal Revenue Code. (That section permits the tax free distribution of the stock of an 80-percent owned subsidiary when parent and subsidiary have each been engaged in the active conduct of a trade or business for more than 5 years.)

The Treasury Department and the Department of Justice do not object to enactment of the substitute for the committee amendment to H.R. 8847.

Senator WILLIAMS. Then I would like to quote just one paragraph from the court order pressed down as a result of civil action No. 49–C–1070. I quote paragraph 1X–A(2):

Christiana shall distribute to its shareholders (including non pro rata distribution in redemption of its own stock) the remaining shares of General Motors stock required to be divested by it.

The CHAIRMAN. Senator Smathers.

Senator SMATHERS. Mr. Chairman, I would like to ask a couple of questions. Before doing so, I would like to make a very brief statement.

Since 1961, when the Supreme Court held that the Du Pont Co., should divest itself of General Motors stock many people in my State have been greatly concerned. As a matter of fact, over 5,000 people in my State are holders of Du Pont stock. Over 500 are owners of Christiana stock. Many of them are retired, and live on the dividends received from their investment plus some social security, to get along. Some of them get along very well and others not so well.

They naturally keep me pretty well informed of their concern about this matter.

In 1962, when Congress considered legislation to prevent severe economic dislocations and severe penalties that would result to the stockholders, I participated in the debate and was very much in favor of the law, and was very happy that this committee reported out the bill by a vote of 14 to 2. I think it later passed the Senate by a vote of something like 77 to 16. It passed the House of Representatives on a voice vote and was signed into law by President Kennedy in February 1962.

Since that time, there have been two rulings by the Internal Revenue Department with respect to this divestiture and how it would be treated taxwise. The first one I personally did not agree with, and neither did the people whom I represented in my State, my constituents. Rightly so, these constituents let me hear from them in no uncertain terms.

As a result of those complaints, I volunteered in 1964 to write a letter to the Treasury Department, in which I expressed my view that it was the intention of the Congress to in no way try to tell the court the manner of distribution that would be followed. That was a matter which should be left to the court. And I think that the Senator from Delaware has pretty well substantiated that by reading into the record what the committee report actually said. At a later time I would like to introduce into the record the letter which I wrote to the Secretary of the Treasury.

On that point, with respect to what the committee did say, I have in front of me the Finance Committee report with minority views on this very bill in the 87th Congress. This report in part states as follows:

> Your committee wishes to make it very clear that it expresses no opinion as to what particular method of divestiture of General Motors stock by Du Pont or by Christiana is appropriate.

Since Senator Williams has already asked that it be made a part of the record of this hearing I shall not take the time of this committee to read other pertinent data bearing on the congressional intent of the legislation.

However, when President Kennedy signed the bill into law on February 2, 1962, he had this to say:

> At the same time this legislation was before the Congress, the U.S. District Court for the Northern District of Illinois had before it the litigation to determine what method of distribution of the General Motors stock should be adopted in order to carry out the Supreme Court decision.
>
> No final divestiture decree has yet been rendered. The Department of Justice is urging the district judge to require Christiana to sell the General Motors stock which it would receive as a stockholder of Du Pont so that the stock would not pass through to Christiana stockholders. If the pass through occurred, a large percentage of General Motors stock would be acquired by members of the Du Pont family. This, it is argued, would mean that the Du Pont family would still effectively control both Du Pont and General Motors.

At this time I would like to bring out the point that the court—in its final decision required that all the members of the Du Pont family dispose of any General Motors stock which might come to them through divestiture.

Is that not correct, Mr. Secretary?

Secretary DILLON. Not a hundred percent. It is substantially correct. The court required that certain listed members of the Du Pont family and corporations controlled by them divest themselves. I don't think it is correct to say all members of the Du Pont family, because I don't know what you define that as. These members listed by the court controlled 50 percent of the stock of Christiana. This was acceptable to the Government in their antitrust proceedings.

Senator SMATHERS. The President went on to say in his message—

> This legislation clearly does not attempt to express a judgment upon the question that is now before the Court. The Senate Finance Committee report pointed out that all issues dealing with the manner of divestiture should be determined

judicially, solely with reference to antitrust principles, and without regard to the provisions of the bill before it. The debate discloses a unanimity of intent on this point. Both the proponents and the opponents of the bill agreed that the antitrust questions, particularly the question of whether the pass-through of stock to Christiana stockholders should be permitted, should not be affected in any way by the legislation.

In view of this unequivocal construction of the legislation, I am approving it. It should be clearly understood that neither the Congress nor I have approved a divestiture which will permit the stock of General Motors to pass through Christiana to the stockholders of Christiana. The tax impact upon stockholders of Du Pont who may receive General Motors stock in the divestiture decree by the district judge will be affected. However, the Court should not be influenced in its determination as to what relief is appropriate to carry out the decision of the Supreme Court and the Department of Justice should not be prejudiced in any way in its effort to enforce the antitrust decision of the Supreme Court by this legislation.

(Signed, President Kennedy, February 2, 1962.)

Senator SMATHERS. Mr. Secretary, you stated that you did not participate in any of these rulings on the part of the Internal Revenue with respect to how these people who receive General Motors stock would be treated as taxpayers. Is that a correct statement?

Secretary DILLON. That is correct.

Senator SMATHERS. Is that an unusual proceeding for the Secretary of the Treasury to not participate or did you choose not to participate in this particular one? What is the practice?

Secretary DILLON. No. This is the standard practice, as I said in my statement. It has been so at least officially since 1955, when Secretary Humphrey signed an order delegating authority, complete authority to the Commissioner of Internal Revenue to administer the tax code.

In addition to that, I had informed this committee at the time of my confirmation that I had no intention of participating in individual tax cases, and also issued an order to the Department that I did not want any individual tax cases brought to me, and that I wanted all individual tax cases that might come in any way from taxpayers to members of the Treasury staff, to be referred without comment to the Commissioner of Internal Revenue to be handled by him.

Senator SMATHERS. As I understand it, you say you issued an order to all the members of the Department, that you did not want and would not consider this type or character of a case, is that correct?

Secretary DILLON. That is correct—private individual tax cases.

Senator SMATHERS. Did other Secretaries of the Treasury follow a similar practice?

Secretary DILLON. They had followed such a practice for a very long time. It was part of the regulations promulgated by Secretary Humphrey. There had been a period around 1948 or 1950 when the Secretary of the Treasury or some other Treasury officials did take some part—not very active—in certain tax cases. This procedure was severely criticized by the Congress, particularly by the Kean Subcommittee of the House Ways and Means Committee, which looked into this matter, and which reported that there was no reason whatsoever for the Secretary of the Treasury to take part in individual tax cases and that they should be left to the Internal Revenue Service. And I think that has been followed ever since.

Senator SMATHERS. Let me ask you this other question, as a matter of information for myself, at least.

Is it customary or is it proper, and how often is it done that an individual taxpayer, whether he be an individual or a corporation, can go to the Internal Revenue Service in advance, we will say, and get from that Internal Revenue Service what would amount to a ruling as to what will happen under certain conditions? Is that practice generally followed?

Secretary DILLON. No, that is very widely followed. I am informed by Commissioner Cohen—and he can testify later in greater detail—last year some 40,000 of such rulings were issued, of which approximately 20,000 were more or less procedural, not substantive. There were about 20,000 substantive rulings of that nature issued by the Internal Revenue Service last year.

Senator SMATHERS. Mr. Secretary, I know everybody else wants to ask a lot of questions, and I would like to come back and ask you some later. But I would like to temporarily close with this question:

Are you aware of any impropriety with respect to anything that occurred in this particular case?

Secretary DILLON. None whatsoever. And I have not been aware either of any irregularity or any specific charge of irregularity.

Senator SMATHERS. That is all the questions I want to ask at this time.

The CHAIRMAN. Senator Williams?

Senator WILLIAMS. I am wondering if it would not be better if we heard Commissioner Cohen's statement first, and then proceeded to questions.

Senator DOUGLAS. There is a question I would like to ask.

Senator WILLIAMS. I will pass right now.

The CHAIRMAN. Senator Anderson?

Senator ANDERSON. Are we changing the order or going ahead? We wanted to question the Secretary before we get to Mr. Cohen.

The CHAIRMAN. I would suggest we go ahead with the questions.

Senator WILLIAMS. Go ahead—I will ask my questions later.

Senator ANDERSON. Mr. Secretary, you referred to these 40-some thousand cases handled each year. Are they cases involving sums running into millions of dollars?

Secretary DILLON. I would have to defer to the Commissioner on that. But I am sure there are many of them that are highly important cases running into millions of dollars. I doubt if there are many that have as many dollars involved as in this particular case, because this happened to be unusually large.

Senator ANDERSON. Do you not generally refuse to rule on the tax consequences of these matters?

Secretary DILLON. Yes, I have nothing to do with them. I never have had.

Senator ANDERSON. Does the Department generally refuse to act on tax matters?

Secretary DILLON. That is correct. They never have, since 1955.

Senator ANDERSON. But they did in this case?

Secretary DILLON. No, they did not in this case. The Commissioner of Internal Revenue issued the ruling in this case.

Now, as I pointed out, the Commissioner of Internal Revenue has the right, if he so desires, to consult with the Department on points leading up to his decision. In both the 1962 and 1964 rulings, the

Internal Revenue Service did wish to consult with the Department regarding the legislative history of this particular bill—not the legal problems, but the legislative history. And they also asked for help in verifying certain revenue figures that had been submitted by the companies to see if these were accurate. The Treasury estimators verified these figures for the Internal Revenue Service, and returned them to the Revenue Service which then made the determination.

Senator ANDERSON. But am I wrong in believing, then, that the decision as to how it was to be handled taxwise was handled before the distribution was made?

Secretary DILLON. Oh, yes. The rulings were all made before any distributions which they affected were made. That was the reason for the request for the ruling, so that the companies would know in advance what the tax consequences would be.

Senator ANDERSON. That was my question a moment ago.

Is that customary to do that? Do you do it for all taxpayers?

Secretary DILLON. The Commissioner informs me that the Revenue Service will not rule after the fact. They only rule in advance of the fact, and all these rulings that we mentioned to you earlier are made in advance of the fact.

Senator ANDERSON. If they don't rule after the fact, how do they come back to people for extra income tax payments?

Secretary DILLON. After the fact they assert a tax or don't assert a tax. They don't rule.

Senator ANDERSON. But if they don't like the way some man handles his income tax matter, they bill him?

Secretary DILLON. That is correct.

Senator ANDERSON. And this is how the corporation knew what its tax was to be in advance?

Secretary DILLON. Yes, and I think it is probably worthwhile to explain briefly—again the Commissioner can do this better and in legal terminology—what the nature of these rulings is. These rulings are advisory. They are not binding on the recipient of the ruling They are—except in very unusual circumstances—treated by the Internal Revenue Service as binding on the Service once they are issued. It is Service policy not to contest any action that is carried out in accordance with a ruling.

Therefore, the Revenue Service reserves the right in its own discretion to decide whether or not to make a ruling, and they will make it when they think it is sound practice.

This is a totally discretionary thing. That is the reason for the inclusion of that provision in the 1962 ruling which was clearly not provided for either in the law or by the court.

As I understand it, in effect the Revenue Service told the Christiana Securities Co. that it could have a ruling with that provision in it. Or Christiana had the choice of ignoring the conditions in which event the ruling would have been of no benefit.

Senator ANDERSON. You mentioned the fact that you had asked the people in the Department not to take these matters up with you. And I read you from our own memorandum of February 21, 1961:

In accordance with what I am advised has been the general practice of my predecessors, and to assure an orderly administration of the business of the Department, I desire that you not refer to me cases involving the tax liability of particular taxpayers or other matters requiring determinations affecting

individuals or corporations. Accordingly, I request that, in the normal course, you dispose of all such maters within your respective offices. In the event you feel that a matter raises questions of policy of such importance to require determination at a higher level, please in the first instance consult with the Under Secretary, or in his absence the General Counsel.

Now, this was addressed to the Under Secretary and the Assistant Secretaries, and so forth.

Did any of them feel this matter involving at least a hundred million dolars was a matter of importance?

Secretary DILLION. No. In this case, there was no question of general tax policy involved. Types of rulings which have come to Treasury's attention, and which I have taken part in, are, for instance, matters that have industrywide application. There was a ruling that was issued just the other day revising the formula for the computation of bad debt reserves of all commercial banks. That was an industrywide ruling. That sort of ruling is a policy matter that comes to the Treasury, and we were active in advising on the conclusion that was reached there.

Similar questions arose in the various rulings that were made in 1962, and again this February on depreciation. These were industrywide.

But this is the only type of ruling that is brought to the attention of the Treasury. They are handled generally by our tax staff, unless they are of such general importance, such as the commercial bank bad debt reserve problem and the depreciation problem, that they are brought to my attention.

Senator ANDERSON. In your statement, in another statement which we have had, you have indicated what the consequences were of the tax imposed running some $400 million, or above that, perhaps, higher than the figure estimated originally. Could you furnish us with a statement showing what the facts would be if you used the figures as of the date of this original passage of the law? In other words, General Motors at that time was considered to be below what it is now. This windfall we get by a rise of prices in General Motors is one thing. What would have happened by the hypothesis indicated by the chairman of the committee if we had gone ahead and the price remained where it was?

Have you got a figure on that?

Secretary DILLON. No; it is a very difficult figure to come up with, unless we also make an assumption, which I suppose could be made, that the price of Du Pont stock also stayed the exact same price as it was at that date. The relationship between General Motors stock and Du Pont stock was what led to setting the figure in this exchange offer at three and a quarter shares of General Motors to one share of Christiana.

At the time of the original offering, when the original figures were made, in the fall of 1962, that relationship was different, and it presumably would not have been possible to have the same offering of three and a quarter shares of General Motors for one share of Christiana because nobody would have taken it.

So it is impossible, really, to figure out what these tax consequences would have been on that basis. All we can figure out is what they would have been on the present basis if there had been a full pro rata distribution, and we have done that—it would have been $56 million more.

Senator ANDERSON. I was only concerned with the accuracy of the estimate given to us in 1961 and 1962 when we were working on this matter.

Secretary DILLON. Well, these estimates—whatever they were—are equally accurate as the final $612 million. They are made in the same fashion and under substantially the same assumptions.

Senator ANDERSON. I see the Commissioner of Internal Revenue is here with you. Was he the person that acted in this matter?

Secretary DILLON. Commissioner Cohen here was not the Commissioner at the time this 1964 ruling was issued. The ruling was signed and issued by the Acting Commisioner, Mr. Harding, but Commissioner Cohen was the Chief Counsel of the Internal Revenue Service at that time. He approved of this ruling. He has studied it fully, is fully aware of it, and approved of it at the time it was made.

Senator ANDERSON. You brought Mr. Knight back from New York. What was his connection in New York?

Secretary DILLON. Mr. Knight was a partner in the law firm of Shearman & Sterling.

Senator ANDERSON. Did he have any connection as such with Christiana, Du Pont, or General Motors?

Secretary DILLON. No. I think it would probably be useful to introduce into the record at this point a letter which I received from Mr. Knight on November 5, which indicated that neither he nor any members of his family, nor the firm of Shearman & Sterling had any connection with either Du Pont or Christiana, either present or prospective.

Senator ANDERSON. Or General Motors?

Secretary DILLON. I don't know that he mentioned General Motors.

The CHAIRMAN. Do you have the letter with you, Mr. Secretary?

Secretary DILLON. Yes. I would be glad to put it in the record.

The CHAIRMAN. Without objection.

(The letter referred to follows:)

NOVEMBER 5, 1964.

Hon. DOUGLAS DILLON,
Secretary of the Treasury, U.S. Department of the Treasury, Washington, D.C.

DEAR MR. SECRETARY: You have asked me to serve as consultant to the Acting Commissioner of Internal Revenue and make recommendations to him with respect to a petition by Christiana Securities Co. for an amendment of an Internal Revenue ruling issued to it on October 18, 1962, with regard to the Federal income tax consequences of its distribution of General Motors shares pursuant to the final judgment in the U.S. District Court for the Northern District of Illinois. In making this request, you inquired as to any possible conflict of interest which might bar me from reaching a fair and impartial conclusion in the matter. Because of the large amounts of money involved, particularly for Christiana and its shareholders, I find it appropriate to reply in some particularity to your inquiry.

The law firm of which I am a member, Shearman & Sterling, of New York City, is not retained and has no present expectancy of being retained by E. I. du Pont de Nemours & Co., Christiana Securities Co., or any of their shareholders as such, with regard to any matter. Neither I nor any member of my family has any connection with either the Du Pont or Christiana Co. While I have not examined the list of shareholders of Christiana Securities, I am not aware that any such shareholder is either a client of my firm or has any relationship whatsoever with me or members of my family.

At my request and with your approval, the Treasury has retained the services of Mr. Arnold Fisher to assist me in this undertaking. Mr. Fisher is presently employed as a member of the law firm of Lowenstein & Spicer, of Newark, N.J. His senior partner, Mr. Lowenstein, has sent me a letter, a copy of which is

attached, stating that his firm is not now retained by Du Pont, Christiana, or the shareholders of either as such, and has no present expectancy of being so retained. Mr. Fisher has also furnished me a letter, a copy of which is attached, saying that he and members of his family have no connection whatsoever with Du Pont, Christiana, or their shareholders.

I have also made inquiry of the employees of the Treasury Department who have been assigned by Assistant Secretary Surrey to assist me, and they have assured me that they and members of their families have no pecuniary or other interest which would bar them from participating in this undertaking.

Sincerely yours,

ROBERT HUNTINGTON KNIGHT.

LOWENSTEIN & SPICER,
Newark, N.J., November 4, 1964.

ROBERT H. KNIGHT, Esq.,
Shearman & Sterling,
New York, N.Y.

DEAR MR. KNIGHT: Arnold Fisher is presently an employee of this firm. You have asked him to serve as a consultant to the Commissioner of Internal Revenue with respect to a matter now pending before the Internal Revenue Service.

The purpose of this letter is to inform you that this firm is not presently retained by E. I. du Pont de Nemours & Co., Christiana Securities Co., or any other shareholders as such, with regard to any matter, and has no present expectancy of being so retained.

Yours truly,

ALAN V. LOWENSTEIN.

LOWENSTEIN & SPICER,
Newark, N.J., November 4, 1964.

ROBERT H. KNIGHT, Esq.,
Shearman & Sterling,
New York, N.Y.

DEAR MR. KNIGHT: You have asked me to serve as consultant to the Commissioner of Internal Revenue and assist you as a consultant to the Commissioner of Internal Revenue in making recommendations to him with respect to a request by Christiana Securities Co. for an amendment of an Internal Revenue ruling issued to them on October 18, 1962. The purpose of this letter is to inform you that neither I nor any other members of my family have any connection whatsoever with E. I. du Pont de Nemours & Co., Christiana Securities Co., or any of their shareholders as such.

Sincerely yours,

ARNOLD FISHER.

Senator ANDERSON. Did Mr. Knight draw pay while he was down here with the Government?

Secretary DILLON. When Mr. Knight was General Counsel of the Treasury, he received the salary of General Counsel.

Senator ANDERSON. When he came back?

Secretary DILLON. He was not paid anything. He served as a consultant, and he did not charge for his services.

Senator ANDERSON. I have no further questions.

The CHAIRMAN. Anything further, Senator?

Senator ANDERSON. No.

The CHAIRMAN. Senator Carlson?

Senator CARLSON. Mr. Chairman, if I am to be recognized next, I would like to yield to the Senator from Delaware.

Senator WILLIAMS. I thought we were going to get the Commissioner's statement first—but it is all right.

Mr. Secretary, did this ruling in any way change the provisions of existing law as they are available to any other taxpayer?

Secretary DILLON. No, it did not.

Senator WILLIAMS. Other taxpayers under similar circumstances may obtain a similar ruling; is that correct?

Secretary DILLON. That is correct.

Senator WILLIAMS. Is it not also true that Mr. Harding, in his letter of January 15, made this statement in referring to the restrictions that were placed in the original ruling. I quote:

The Internal Revenue Service did not then and does not now consider that there was any basis in law for the condition relating to non pro rata distribution by Christiana. The condition was inserted in our ruling letter solely because of the revenue considerations discussed above.

Is that still the position of both the Treasury Department and the Revenue Service?

Secretary DILLON. I understand this is the legal position of the Revenue Service, and we think it is a sound position.

Senator WILLIAMS. Have there been other precedents where other companies have applied for rulings to exchange their stock under similar non pro rata basis and been approved?

Secretary DILLON. I am sure there have, many of them.

Senator WILLIAMS. I was advised that in 1959 the Matson Navigation Co. announced an offer to exchange for each of its common shares tendered the following:

Cash, $33.69, or one-third share of Honolulu Oil Corp., and one-fourth of a share of the Pacific Intermountain Express Co., or one share of Pacific National Life Assurance.

I understand they, too, got a ruling similar to this non pro rata exchange.

Secretary DILLON. I am not aware of that, but I am sure you are correct.

Senator WILLIAMS. I was advised, in addition to Matson, the Equity Corp. and the Eastern Gas & Fuel Associates have likewise had similar rulings as that applied for by Christiana, and I would like this to be printed in the record, because it shows this is carrying out an intent of the existing law.

The CHAIRMAN. Without objection.

(The document referred to follows:)

SELECTED EXCHANGE OFFERS

MATSON NAVIGATION CO.

On October 9, 1959, Matson Navigation announced an offer to exchange, for each of its common shares tendered, the following:

1. Cash $33.69.
2. One-third share of Honolulu Oil Corp.
3. One-fourth share of Pacific Intermountain Express Co.
4. One share of Pacific National Life Assurance.

There were 620,951 shares of Matson Navigation tendered.

THE EQUITY CORP.

On May 23, 1961, Equity Corp. announced terms of an offer to exchange, for each 12 shares of Equity common tendered, 1 share of Friden, Inc. common stock.

There were 749,028 shares of Equity Corp. tendered.

EASTERN GAS & FUEL ASSOCIATES

On July 27, 1962, Eastern Gas & Fuel announced an offer to exchange, for each two shares of Eastern common stock tendered, one share of Norfolk & Western Railway Co. common stock.

There were 449,472 shares of Eastern stock exchanged.

EASTERN GAS & FUEL ASSOCIATES

On January 17, 1963, Eastern Gas & Fuel announced an offer to exchange the following:

1. For one share of Eastern perferred, nine-tenths share of Norfolk & Western common.
2. For one share of Eastern common, one-half share of Norfolk & Western common.

There were 1,333,701 shares of Eastern common and 97,045 shares of Eastern preferred stock exchanged."

Senator WILLIAMS. Certainly as one member of the committee who was taking an active part in this legislation, I would not want any tax favoritism to develop at this late date.

But, on the other hand, as is pointed out in the committee report, it was not our intention that we write the method or rule that was to be passed down by the Supreme Court order providing for the divestiture. I think we made that very clear. In the committee report we said, "Your committee wishes to make it very clear that it expresses no opinion as to what particular method of divestiture of General Motors stock by Du Pont or by Christiana is appropriate."

Now, in rendering its decision did the Supreme Court not specifically provide that non pro rata distribution would be permissible under their Court order?

Secretary DILLON. The district court did provide that, yes.

Senator WILLIAMS. And was it not clear in your opinion that the Finance Committee, the Congress which passed the bill, and the President who signed it intended that we not supersede the right of the Court to pass down the rules on this distribution?

Secretary DILLON. That was the major premise that was debated in the Congress, and I think was decided when the bill was passed.

Senator WILLIAMS. In order to clear up any suggestion that the committee or the Congress was giving any favoritism to Christiana, under the law which was in effect prior to the enactment of the 1961 law by the Congress, what would have been the tax liability to Christiana as a corporation upon its receipt of this General Motors stock?

Secretary DILLON. By Christiana?

Senator WILLIAMS. Yes.

Secretary DILLON. It would have been very low, because they would have paid the full corporate tax of 52 percent on 15 percent of the cost of the General Motors stock to Du Pont. And I think that the average cost to Du Pont was around $2 a share. It was indicated in the Senate debate a number of times that that tax would have been about 16 cents a share.

Senator WILLIAMS. And that was the law prior to the enactment of this legislation reported by this committee?

Secretary DILLON. It still is the law.

Senator WILLIAMS. Still is the existing law.

Secretary DILLON. Yes, for every corporation, except for Christiana Corp., which had a specific tax applied to it with respect to this distribution by Public Law 87-403.

Senator WILLIAMS. Under title II of the 1961 bill——

Senator SMATHERS. We changed the law——

Senator WILLIAMS. We changed the law as it affected Christiana and I was one of those insisting on that change at the time, whereby

they would be taxed at a higher rate under this most recent distribution. Instead of 16 cents, Christiana had to pay about $7.50 to $7.80, did they not?

Secretary DILLON. Something like that.

Senator WILLIAMS. So Christiana's taxes, instead of being a negligible amount, has been a-hundred-and-some-odd million at corporate level.

Secretary DILLON. Yes. The total taxes payable by Christiana at the corporate level have been $91 million on receipt of the stock from Du Pont, and then Christiana in addition at the corporate level has a capital gains tax of $19 million on the General Motors shares that it had to sell in order to raise the money to pay the $91 million of tax. So there is a total of about $110 million in corporate taxes payable in this transaction by Christiana Securities Corp.

Senator GORE. Mr. Chairman, will the Senator from Delaware yield for a question?

Senator WILLIAMS. In just a minute.

The $19 million paid in capital gains would have been paid under the law prior to our enactment.

Secretary DILLON. Yes, except for one thing, Senator. They would not have had to raise money to pay the other taxes, so they wouldn't have had to sell those shares in the market.

Senator WILLIAMS. That is the point I was going to make. They would not have had to sell because they would have had but a negligible amount of tax to pay, maybe $3 or $4 million instead of the $91 million.

Secretary DILLON. That is correct.

Senator GORE. Will the Senator yield?

I take it the Senator is aware that the issue here is not at all the tax liability of Christiana Corp. or Du Pont Corp. The sole issue here is the tax liability of the stockholders of Christiana Corp. The questions which the Senator has asked are wholly irrelevant to the issue.

Senator WILLIAMS. Well, perhaps they would be irrelevant in Tennessee, but in the State of Delaware the taxes that a corporation pays reflects on the income and the worth of the stock to the stockholders.

Senator DOUGLAS. Will the Senator further yield?

Senator WILLIAMS. So I would proceed.

Senator DOUGLAS. Will the Senator yield?

Senator WILLIAMS. This particular point was one of the arguments used by those who felt that this distribution should be a tax-free passthrough for Christiana.

I took strong exception to this argument at the time. I thought they should pay the 52-percent tax, subject to certain conditions, but it should be paid on the basis of the value of the stock. As a result of that position being sustained the Treasury has collected around $90 million instead of $3 or $4 million—it really collected about $110 million altogether because as the Secretary points out, they would not have had to sell this other stock to raise the money to pay the $90 million.

I am merely using this as a background to show that this additional tax was supported strongly by the Treasury Department. As I recall, this provision that I am speaking of, title II, was strongly supported by the Treasury Department.

Secretary DILLON. The particular provision was supported. The Treasury Department took no position on the bill as a whole. If it hadn't been for this provision, the Treasury would have been opposed to it.

Senator WILLIAMS. Sure, and I merely use that as a background to show there has been no background record of tax favoritism to this company. Quite the contrary. The 1961 bill as reported by the committee first made this law applicable to all corporations in America.

Later, much to my regret, it was restricted so that this increased rate of taxes that are paid under title II is paid by Christiana Corp. alone and not by any other corporation in America.

Certainly this is a far cry from favoritism for these people.

Secretary DILLON. That is correct.

Senator WILLIAMS. It is an unusual incident in our tax law to single out one particular corporation for a higher rate of tax, and, as I understand it, in order to get the bill through Christiana waived its right to contest its constitutionality and agreed to accept it and pay the tax.

Secretary DILLON. That is correct.

Senator WILLIAMS. I think the committee was right in levying that tax, but I think we were wrong in not insisting that it be made applicable to all corporations in America in general law.

Does the Senator want me to yield?

Senator DOUGLAS. I think the Senator from Delaware inadvertently has misstated the existing law at the time of 1960 or 1961, but I think perhaps I should reserve my comments on that until after the Senator has completed his testimony.

Senator WILLIAMS. I would like to straighten it out now. Was I wrong as to the existing law in the manner I described it?

Senator DOUGLAS. 1960, 1961.

Senator WILLIAMS. 1961.

Secretary DILLON. Well, as I understand it, under existing law, if a corporation declares a dividend in the stock of another corporation, it is received by the corporation as ordinary income, and that ordinary income is taxed either on the fair market value of the stock when received or on the cost to the distributing corporation, whichever is lower.

Senator WILLIAMS. That was existing law prior to 1962?

Secretary DILLON. As I understand it.

Senator WILLIAMS. It is the law today, is it not?

Secretary DILLON. Yes.

Senator WILLIAMS. In all instances except Christiana.

Secretary DILLON. That is right.

Senator WILLIAMS. If any other corporation in America today that owned Christiana and received Du Pont stock had the same basis of cost it would pay but 16 cents a share today, would it not——

Secretary DILLON. Taxed on the cost basis it would be something like that.

Senator WILLIAMS. Assuming the cost basis. That was one of the weaknesses that we didn't cover.

Senator DOUGLAS. Mr. Chairman?

Senator WILLIAMS. Yes, I yield.

Senator DOUGLAS. The issue was not what taxes Christiana would have to pay, but what taxes individuals would have to pay on the capital gains which they received.

If I may make a statement in this connection—there is such a long history, and it goes back prior to the 1962 act, it goes back to 1959, 1960.

The Du Pont Corp. owned approximately 63 million shares of General Motors. It purchased these shares somewhere around 1916 or 1917, at $2.16 a share. At the time this issue was raised at the end of 1959, 1960, the value of General Motors shares was approximately $43. The capital gain had been approximately $41.

The Du Pont Corp. and its lawyers came in and I think they called on all of us, and they said that if the law were not changed, the capital gains that individuals received would be taxed as ordinary income.

Well, ordinary income on such large gains as this made by the Du Pont family and their friends and relatives would be very high, because the rates of taxation upon their income is high.

They proposed instead that—to change the law, so that the tax would be 52 percent of 15 percent of the original price of the stock, of General Motors stock to Du Pont, which amounted to 16 cents a share. They proposed to pay a tax of 16 cents a share on what that had been at that time a capital gain of $41.

As I remember, the legislative history, this was passed by the House of Representatives, without a rollcall. It came over to the Senate and before this committee, and was defeated by the very narrow margin of 1 vote.

That matter was then dropped.

The next year the Du Pont Corp. came in with a proposal that they be given a modified capital gains tax on the increment of capital value. But this time I think the value of the stock had risen to $45 a share, possibly $48 a share.

The Senator from Tennessee and I were opposed to having this taxed as ordinary income. We felt that would be too severe a treatment. But we did believe it should be an ordinary capital gains tax which would have amounted to approximately $10.75 a share, instead of the 16 cents a share in the original provision, and instead of the lesser amount, modified capital gains tax, which the Du Pont representatives were urging.

We were defeated on that, both in committee and on the floor. But we thought a principle had been established rather than a stated amount of income to be received. And I am startled at the statement on page 3 of the letter from Mr. Cohen to Chairman Byrd that Mr. Knight reversed his previous ruling, and I quote:

> **Provided the maximum revenue estimate of $470 million considered at the time of enactment of Public Law 87-402 would be reached,**
>
> Then—
>
> **there would be no justification for a denial of Christiana's request that the Service modify the ruling letter of October 8, 1962, by eliminating the condition as to non pro rata distribution.**

In other words, if you raise $470 million or more, which was the estimate when General Motors was selling at $48 a share, you can waive the principle.

Now, we all know that the price of General Motors stock has gone up enormously.

The Wall Street Journal for this morning quotes a price of General Motors at approximately $100 a share. The capital gains, therefore,

which we though was around $2½ billion, when the price was $45 a share, has now become a capital gain of well over $6 billion on the Du Pont holdings.

Now, I want to say that I thought we were establishing as a principle a modified capital gains tax. I felt we should apply a full capital gains tax, on the gains made by Du Pont and by the corporations and individuals inside of Du Pont. They are like one ball within another ball within another ball. And I am startled now to read the statement by which Mr. Knight justified the second ruling reversing his first ruling; namely, that as long as we got $470 million the principle of pro rata distribution could be waived.

Senator ANDERSON. And he wasn't even on the payroll.

Senator DOUGLAS. I would like to ask a rhetorical question, but I think it is an appropriate one.

Suppose the price of General Motors had fallen. Suppose it hadn't gone up, but had gone down to $20 a share, and instead of realizing $470 million, we realized only $200 million. Should we then have asked the holders of Du Pont and/or Christiana, to make good the difference between $20 and $45, and to pay $25 a share? Or is this something that works only one way, i.e., that if the stock goes up, the capital gain in excess of the amount realized at the time the bill was passed is forgiven. If it goes down, no effort is made for collection.

Very frankly it seems to me this has been a heads I win, tails you lose ruling—heads Du Pont wins, and tails the Government loses.

Du Pont doesn't have to pay the added tax because its capital gain is greater than people believed.

Under the law the tax liability of Du Pont is increased, but the tax gains of Christiana or the stockholders of Christiana and the rest, have enormously increased. Instead of being $43 as of the time the bill was passed, it is now $98 a share. And these are enormous amounts in view of the enormous holdings.

Perhaps I am anticipating the issue, but I felt that my good friend from Tennessee was leading us down the garden path into irrelevant flower beds.

Senator GORE. Did you say relevant or irrelevant?

Senator DOUGLAS. Irrelevant.

Senator GORE. You mean Delaware instead of Tennessee.

Senator DOUGLAS. Did I say Tennessee?

Senator GORE. Yes.

Senator DOUGLAS. That is a slip of the tongue. The Senator from Delaware has been leading us down the garden path into irrelevant flowerbeds.

Let the record stand corrected.

Senator WILLIAMS. Mr. President, I am always glad to have the Senator from Illinois following me down any path.

He has outlined substantially the historical background. There was a difference of opinion, as he pointed out, as to the formula that should be incorporated in the law providing for this tax distribution. The Senators from Illinois and Tennessee thought it should be straight capital gains with no regard to the cost. The committee—I supported it—did provide that we set up a different formula using their cost as a basis. But we are not debating that point here now. That was settled in 1961.

The question we are trying to decide here is, was this distribution carried out in accordance with the court order and the intent of the Congress? In my opinion it was. In the committee report we specifically stated we were not taking any position as to how this distribution should be made. We were merely setting up a formula of taxation under various circumstances to cover the situation as it would be handled.

I happen to be, as the Senator from Illinois knows, one who cast a deciding vote in favor of the 1961 bill. As the Senator from Florida says, he has quite a few stockholders in his State; we have quite a few of them in my State also.

I cast, and I am not apologizing for it now, that one vote which stopped the almost complete tax-free distribution of this General Motor stock. Instead of a revenue——

Senator DOUGLAS. You were 1 of 11, John.

Senator WILLIAMS. I was one of eight.

Senator DOUGLAS. There were 10 others as well.

Senator WILLIAMS. There were 15 members of the committee then, there are 17 now. It was 8 to 7, and I was 1 of 8, and over home in the minds of a lot of people I was the eighth.

Senator DOUGLAS. The existing law had to be changed in order to provide this 16-cent tax. So your statement that the existing law only provided the 16-cent tax is not correct.

Senator WILLIAMS. Oh yes; as far as corporations were concerned—not for individuals.

Senator DOUGLAS. The effort was made to change the law so that the 16-cent tax would apply to individuals.

Senator WILLIAMS. To individuals but not to corporations. But to corporations, the tax——

Senator DOUGLAS. They wanted to apply the corporation tax to individuals.

Senator WILLIAMS. No.

What I said was that the existing law would have only provided about a 16-cent tax as far as Christiana was concerned. Section 2 of the bill that we passed changed that existing law for Christiana alone and made it taxed under this last distribution at around $7.80 a share.

Senator DOUGLAS. At the price of the stock at that time.

Senator WILLIAMS. At the price of the stock at that time, around $50 their tax would have been raised to around $3.80 a share.

Senator FULBRIGHT. Will the Senator yield?

Has he ever made an estimate what would have been the income if no law at all had been passed, not just the Christiana, but everybody? Is there an estimate in existence on that?

Senator WILLIAMS. From those who were paying in the 90-percent bracket the Government would have taken 90 percent of the value of the General Motors distributed because under the law as it was before any change was made—and I want the Secretary to correct me on this if I am in error—Christiana as a corporation would have paid about 16 cents a share, but the individual stockholders would have been taxed on the full market value of the stock at date of distribution. Is that right, Mr. Secretary?

Secretary DILLON. Yes. But I think in answer to the Senator from Arkansas' question, in reading the record of the debate, I noted that apparently Du Pont did indicate that if they were allowed to follow

the Supreme Court decision on divestiture, which allowed 10 years to make the divestiture, that they could, by using all means available to them, under the then existing law—if Public Law 87-403 had never been passed—they could have completed the divestiture with a tax of approximately, I think the figure they gave was, $330 million at that time. In other words, that was about the same as the total tax consequences that flowed from this method of distribution, compressed into 3 years.

Senator ANDERSON. Will the Senator from Delaware yield?

The Senator recognizes, most of us do, that if we allowed the law to stay as it was, and the stock to be given to individuals as capital gain or ordinary income, it would amount to almost a confiscation. That is why the committee acted.

Senator WILLIAMS. That is correct. I don't think anybody was arguing that the law did not need some change. There was a difference of opinion as to whether in computing the capital gains they should be allowed the basis of the cost of the stock as a deduction or whether they should pay the capital gains on the full value of the distribution.

Senator SMATHERS. Will the Senator yield?

Have we not changed the law in other instances where there have been forced divestitures such as the Bank Holding Company Act and others?

Senator WILLIAMS. We have.

Senator MORTON. Will the Senator yield for a point here?

Senator WILLIAMS. Yes.

Senator MORTON. As Senator Gore has pointed out, the issue is the change in the ruling by the Internal Revenue Service. Now, let's get one fact clear.

DuPont—I mean Christiana Securities Co. never accepted that ruling, that first ruling. They took exception to it, saying it did not conform with the court order.

Senator GORE. Will the Senator yield?

On the contrary, Christiana requested the ruling and operated under the ruling. True, company officials stated that they reserved the right to ask further benefits or changes. But they didn't have to state that. Any taxpayer has a right to petition a change. Christiana requested the ruling.

Senator MORTON. Requested a ruling, and then took exception to the ruling.

Senator GORE. But operated under it.

Senator MORTON. Operated under it to a degree.

Senator GORE. And made two distributions under it.

Senator MORTON. Made two distributions under it.

Senator GORE. But as General Motors stock began to go up and up, it came in and asked for a change in the ruling.

Senator MORTON. It gave notice at the time that before final divestiture it was going to ask for a change in the ruling.

Senator GORE. That is irrelevant. It didn't have to give notice.

Senator SMATHERS. Mr. Chairman, don't you think it might help if we put into the record the letter which the Senator from Tennessee is talking about—the letter from the Acting Commissioner of Internal Revenue, Mr. Harding, addressed to you dated January 15, 1965, because he goes into this very point.

Senator MORTON. That is in the record.

Senator WILLIAMS. Mr. Chairman, other members wish to ask questions, and I may have some later. I will pass now. But I just want to read into the record here a letter from the Department of Justice addressed to the general counsel of the DuPont Co. in Wilmington, which is rather significant considering that Justice was the Department that was insisting upon this divestiture. I quote from the Justice Department letter of January 18, 1965:

Ordinarily it is the practice of this Department to simply acknowledge receipt of reports filed pursuant to antitrust judgments. Your letter of January 11 which reports the completion of the divestiture of 63 million shares of General Motors stock by E. I. du Pont de Nemours & Co. warrants something more.

Du Pont is to be congratulated on the orderly and prompt manner in which it has complied with the Court's direction to divest this stock. While I recognize there are those who will not agree, I firmly believe the completion of this portion of the divestiture ordered by the Court is an important step toward insuring continuing vigorous competition and health in our free enterprise system.

(Signed) William H. Orrick, Jr. Assistant Attorney General, Antitrust Division.

I ask this letter be made a part of the record.

(The letter referred to follows:)

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., January 18, 1965.

Re *United States* v. *E. I. du Pont de Nemours & Company, et al.*

F. J. ZUGEHOER, Esq.
General Counsel,
E. I. du Pont de Nemours & Co.,
Wilmington, Del.

DEAR MR. ZUGEHOER: Ordinarily it is the practice of this Department to simply acknowledge receipt of reports filed pursuant to antitrust judgments. Your letter of January 11 which reports the completion of the divestiture of 63 million shares of General Motors stock by E. I. du Pont de Nemours & Co. warrants something more.

Du Pont is to be congratulated on the orderly and prompt manner in which it has complied with the Court's direction to divest this stock. While I recognize there are those who will not agree, I firmly believe the completion of this portion of the divestiture ordered by the Court is an important step toward insuring continuing vigorous competition and health in our free enterprise system.

Sincerely yours,

WILLIAM H. ORRICK, Jr.,
Assistant Attorney General, Antitrust Division.

Senator DOUGLAS. The second recommendation of Mr. Knight, according to a letter from the Commissioner of Internal Revenue to Senator Byrd, page 3—the Government got $470 million—that meant that previous rulings would be reversed.

I was not aware that this was a provision that was established by the 1962 law.

I do not think that can be defended at all.

As I have said, this means that if there was an increase of the price, as there was, of General Motors stock, the Government would lose the revenue on the added capital gains which the recipients would receive, but if it fell there would be no recovery by the Government.

I take it that the mechanism by which this was effected was to provide that the so-called exempt organizations, instead of receiving pro rata shares of General Motors, were allowed to exchange at the rate of three and a half to one, so that instead of receiving 873,000 shares, they were given 3,046,000 shares, and that this diminished the tax which individuals who hold shares in Christiana would otherwise have made.

That is a correct statement; is it not?

Secretary DILLON. That is a correct statement of the way the tax consequences of this ruling operated.

Senator DOUGLAS. Thank you.

Now, I would like to ask this: What are these exempt organizations? Could they be named? Could the Commissioner name them?

Secretary DILLON. I think we have a list of them.

Senator DOUGLAS. I think it would be well to put them publicly into the record.

Senator WILLIAMS. I wanted to raise the same question.

Senator DOUGLAS. Let's have the official source. Would the Commissioner read the list, with the number of shares held by each.

Secretary DILLON. The list is fairly extensive.

Senator DOUGLAS. How many shares does the Longwood Foundation own?

Secretary DILLON. The Longwood Foundation exchanged some 87,000 shares of Christiana out of the total number of shares that were exchanged, and if the Longwood Foundation, which owned 505,945 shares, had exchanged all of its shares, I think the exchange by charitable institutions, nonprofit institutions, instead of being 65 percent, would have been something like 95 percent.

Senator DOUGLAS. How many shares of General Motors did the Longwood Foundation receive?

Secretary DILLON. Senator, I would like to finish my first answer.

Senator DOUGLAS. Mr. Secretary——

Secretary DILLON. I think this bears on a statement——

Senator DOUGLAS. Mr. Secretary, Senator Williams would like the entire list.

Secretary DILLON. That is a partial list of the tax-exempt organizations, which is based on those who are of record. Now, in addition, there were shares held by fiduciaries tendered for exchange, and we do not have the names of those organizations.

Senator DOUGLAS. I move, Mr. Chairman, this list be printed in the record.

It is a long list.

Secretary DILLON. It is a long list.

Senator DOUGLAS. Is it not true that the Longwood Foundation had 87,000 shares?

Secretary DILLON. That is right.

Senator DOUGLAS. Now, were those exchanged at the rate of three and a half for one?

Secretary DILLON. Three and a quarter for one.

Senator DOUGLAS. Three and a quarter for one?

Secretary DILLON. That is correct. But it is also correct, Senator, that the Longwood Foundation had held 505,945 shares of Christiana, and according to this record only exchanged 87,000.

Senator DOUGLAS. But they would be exchanged on a three and a quarter to one ratio approximately——

Secretary DILLON. 250,000 shares, a little more.

Senator DOUGLAS. Something more than that—I think probably 275,000.

Secretary DILLON. Yes, something like that.

Senator DOUGLAS. I do not know whether to use the American pronunciation or the British pronunciation, but using the American pronunciation, what about the Chichester Du Pont Foundation—using the British pronunciation, Chester?

Secretary DILLON. They exchanged 18,000.

Senator DOUGLAS. The Episcopal Church School Foundation, 35,000?

Secretary DILLON. 25,000.

Senator WILLIAMS. Cornell University, 10,000. You missed that one.

Senator SMATHERS. What?

Senator WILLIAMS. Cornell University, 10,000 shares; you missed that one.

Secretary DILLON. Yes; Cornell University, 10,000.

Senator WILLIAMS. Massachusetts Institute of Technology was 27,284 shares.

Secretary DILLON. That is right. That is another large one.

Senator DOUGLAS. Now, who are the trustees of the Longwood Foundation?

Secretary DILLON. I do not know, Senator, but the Longwood Foundation is listed in the court order as filed in Chicago, as one of the organizations that has to dispose of any General Motors stock which it receives from Christiana within 10 years. So this stock which it receives will be, or already has been, disposed of.

Senator MORTON. I would like to point out the Moorman Home for Women in Louisville, Ky., 160 shares.

Senator WILLIAMS. The University of California exchanged 5,768 shares, and the Westinghouse Electric pension fund 10,400, and the Wilmington General Hospital 9,440, and Wilkins College, in Wilkes-Barre, 1,600 shares.

We will have the whole list printed here, but those are some of the major ones. North American Co's. pension fund in Philadelphia had 4,000 shares that they exchanged.

The CHAIRMAN. Without objection, the list will be printed.

(The list referred to follows:)

Shares of Christiana common stock exchanged for shares of General Motors common stock on Feb. 8, 1965, by tax-exempt organizations

	Number of Christiana shares exchanged
Academy of the New Church, Bryn Athyn, Pa	2,800
Annuity Board of the Southern Baptist Convention, Dallas, Tex	800
Cameron Baird Foundation, Buffalo, N.Y	720
Boston Fatherless & Widows Society, Inc., Cambridge, Mass	100
Bostonian Society, Boston, Mass	160
Louis Calder Foundation, New York, N.Y	1,000
Canisius College, Buffalo, N.Y	300
Catholic Foundation, Wilmington, Del	200
Chatham Foundation, Savannah, Ga	100
Chichester Du Pont Foundation, Inc., Wilmington, Del	18,000
Children's Friend and Service, Providence, R.I	160
Children's Hospital, Portland, Maine	300
Christ Church Christiana Hundred, Wilmington, Del	2,000
Children Farm School, Paoli, Pa	150
Church Home Society, Boston, Mass	240
Church of Our Merciful Savior, Penns Grove, N.J	160
Connecticut Bank & Trust Co. Retirement Plan, Hartford Conn	160
Cornell University, Ithaca, N.Y	10,000
John Deere Foundation, Moline, Ill	800
Delaware State College, Wilmington, Del	150
Detroit & Wayne County Tuberculosis Foundation, Detroit, Mich	100
Episcopal Church School Foundation, Inc., Wilmington, Del	35,000
Father Flanagan's Boys Home, Inc., Omaha, Nebr	1,600
Frohring Foundation, Chagrin Falls, Ohio	100
Frohring Foundation, Cleveland, Ohio	100
General Church of the New Jerusalem, Bryn Anthyn, Pa	700
Girard Estate Retiremend Fund, Philadelphia, Pa	1,000
Grace Methodist Church, Wilmington, Del	1,200
Halliburton Employees Benefit Fund, Duncan, Okla	800
Luella Hannan Memorial Home, Detroit, Mich	500
Haverford College, Philadelphia, Pa	1,120
Herring College, Watertown, N.Y	320
Mary Hitchcock Memorial Hospital, Hanover, N.H	320
Home for Aged, Providence, R.I	240
Home for Incurables, Baltimore, Md	530
Hopedale Charitable Corp., Hopedale, Mass	300
Inductotherm Corp. Profit Sharing Plan, Rancocas, N.J	100
Institute for International Order, New York, N.Y	189
Jaffna College Funds, Boston, Mass	240
Johnson Memorial Hospital, Hartford, Conn	160
Lalor Foundation, Inc., Wilmington, Del	1,142
Longwood Foundation, Inc., Wilmington, Del	87,000
Massachusetts Congregational Fund, Boston, Mass	300
Massachusetts Institute of Technology, Cambridge, Mass	27,284
Milford Hospital, Inc., Milford, Mass	400
Moorman Home for Women, Louisville, Ky	160
Mullen Benevolent Corp., Denver, Colo	240
Nanticoke Memorial Hospital, Inc., Seaford, Del	195
New England Historic Genealogical Society, Boston, Mass	160
North America Companies, pension fund, Philadelphia, Pa	4,000
Arnot Ogden Memorial Hospital, Elmira, N.Y	800
Osteopathic Hospital Association, Wilmington, Del	200
Presbyterian Home for Aged, Philadelphia, Pa	500
Protestant Episcopal Church, Savannah, Ga	150
Sarah A. Reed Home, Erie, Pa	320
Reliable Electric Co. Profit Sharing fund, Franklin Park, Ill	600
Rogoff Foundation, Rowayton, Conn	160
St. George's School, Providence, R.I	145
Salvation Army, Atlanta, Ga	100
Savannah Bank & Trust Co., retirement plan, Savannah, Ga	100
Savannah Benevolent Association, Savannah, Ga	170

Shares of Christiana common stock exchanged for shares of General Motors common stock on Feb. 8, 1965, by tax-exempt organizations—Continued

	Number of Christiana shares exchanged
Savannah Electric & Power Co., employees' retirement plan, Savannah, Ga	100
Scripps College, Claremont, Calif	560
John Scudder Foundation, Detroit, Mich	150
Shady Hill School, Brookline, Mass	180
Springfield Monarch Insurance Cos., retirement fund, Springfield, Mass	240
Teachers' Retirement System of Georgia, Atlanta, Ga	800
Trinity Church, Wilmington, Del	480
Unitarian Service Committee, Inc., Boston, Mass	100
United Church of Christ, Honolulu, Hawaii	100
United States Naval Academy Foundation, Inc., Annapolis, Md	100
University of California, Berkeley, Calif	5,768
Wabash College, Indianapolis, Ind	560
Wesson Maternity Hospital, Springfield, Mass	160
West Virginia Home for Aged Women, Wheeling, W. Va	200
Western Saving Fund Society pension fund, Philadelphia, Pa	160
Westinghouse Electric pension fund, New York, N.Y	10,400
Whitman College, Walla Walla, Wash	130
Wilkes College, Wilkes-Barre, Pa	1,600
Wilmington General Hospital, Wilmington, Del	9,440
Wisconsin Alumni Research Foundation, Madison, Wis	500
Wyoming Seminary, Wilkes-Barre, Pa	600
Young Men's Christian Association, Wilmington, Del	200
Ziegler Foundation for the Blind, Inc., New York, N.Y	240
62 tax-exempt organizations of record, each of which exchanged less than 100 Christiana shares	2,370
Total Christiana shares exchanged by tax-exempt organizations which are stockholders of record	242,192
Estimated number of Christiana shares exchanged by fiduciaries (banks, brokers, and nominees) who held such shares for the account of tax-exempt organizations	[1] 645,600
Estimated total number of Christiana shares exchanged by tax-exempt organizations	887,792

[1] Estimate based on data supplied by fiduciaries who tendered for exchange more than 90 percent of the total number of shares so tendered by fiduciaries.

Senator DOUGLAS. I would like to make one comment on this list that has been submitted.

The total number of Christiana shares exchanged, which would be multiplied by 3¼, come to 242,192 shares. The total—887,792 were exchanged by tax-exempt organizations. This leaves 645,600 shares unaccounted for.

Now, whose are these?

Secretary DILLON. I will read what the description of this list is:

Estimated number of Christiana shares exchanged by fiduciaries (banks, brokers, and nominees) who hold such shares for the account of tax-exempt organizations, 645,600.

And then there is an asterisk after that for a footnote, and the footnote says:

Estimate based on data supplied by fiduciaries who tendered for exchange more than 90 percent of the total number of shares so tendered by fiduciaries.

Senator DOUGLAS. There is approximately three-quarters of the shares not accounted for. Nobody knows who turned them in. And in so doing reduced the tax liabilities of stockholders in Christiana.

Now, if these estimates are based on the data supplied by the fiduciaries, you must have the record of who these fiduciaries are, or at least some of them. Who are these fiduciaries?

Secretary DILLON. Tax returns have not yet been filed, so there is no way we can have those records.

Senator DOUGLAS. You say this is based on data supplied by fiduciaries. You must have the data therefore on those who supplied them.

Secretary DILLON. The data was given to Christiana, and I am not sure they gave the names, because they might then be breaking a trust. They just gave a total of tax-exempt organizations' shares.

Senator ANDERSON. How would that break a trust; by revealing the name?

Secretary DILLON. I would assume that a fiduciary would not ordinarily want to indicate the transactions that an organization for which it was acting as fiduciary had undertaken. These are financial transactions undertaken by tax-exempt organizations whose securities were being held by fiduciaries, and I do not think the fiduciaries would ordinarily, unless asked by a court, disclose the details of transactions to outsiders.

Senator ANDERSON. Why would a tax-exempt organization be unwilling to reveal its identity?

Secretary DILLON. I have no idea that they are.

Senator ANDERSON. You said it would break a trust.

Secretary DILLON. I said that the fiduciaries would feel that way. I did not say that tax-exempt organizations would not give them permission if they were asked.

Senator GORE. Will the Senator yield?

I wonder if the Senator would be interested to find out just why Longwood Foundation, which is under court order to sell all of its General Motors stock within 7 years, would be the largest single participant in this tax reduction scheme.

Senator WILLIAMS. If the Senator would yield, I can answer that very easily.

The value of this distribution based on three and a quarter shares of General Motors, around $100 a share, is worth $325. The quoted value of Christiana was around $265 to $275. So these tax-exempt organizations had a substantial gain by exchanging.

Now, the average individual would have to pay to the capital gains. They do not. So for that reason it was more advantageous for these tax exempt organizations.

Senator GORE. If there is a hundred dollars profit on a deal, that makes it worse.

Senator ANDERSON. I do not understand why they do not sell all of it, then.

Senator WILLIAMS. I do not understand why more of the stockholders did not exchange it, because they could get $325 worth of General Motors. Except this—as the individuals accept the offer it becomes subject to capital gains tax immediately, and therefore they had to discount the $325 worth of stock they received by the amount of capital gains they would have to pay. In addition, members of the Du Pont family, under the court order, were not eligible to exchange their stock.

Secretary DILLON. That is correct.

Senator WILLIAMS. They could better afford to take a drop in the price of Christiana than to pay the capital gains.

Secretary DILLON. I think that is the reason so few individuals took advantage of this.

Senator DOUGLAS. I would like to suggest—and I am not a party on this subject—by making this exchange, they reduced the taxes which the other stockholders in Christiana would otherwise have been compelled to pay. This reduction in taxes amounts to $57 million; according to the most recent estimate of Internal Revenue.

Senator GORE. Would the Senator yield?

The simple fact is that Christiana Corp. was under court order to distribute its holdings of General Motors stock.

If the distribution was on a pro rata basis, which was the ruling of the Treasury Department in 1962, then each stockholder, individual or foundation, would receive his pro rata share of the distribution, according to his holding of Christiana stock.

The price of General Motors stock, as has been cited here, has more than doubled. Therefore, if the holders, the individual taxable holders, of Christiana stock received a large distribution, they would owe a large tax. The tax-exempt corporation would owe no tax in any event. So this change of ruling was given in order that a non pro rata distribution could be made. Therefore, these millions of shares, which otherwise would have been required to be distributed to the taxable stockholders, were funneled into the nontaxable stockholders, which relieved the taxable stockholders of Christiana of the necessity of paying that tax—$56 million. And they received the benefit, however, just the same, because the Christiana stock that was turned in to Christiana Corp. was retired, thus enriching the remaining individual stockholders of Christiana Corp.

Now, Mr. Secretary, is that not the case?

Secretary DILLON. Senator, except for the use of the word "funneled," which I would not agree to——

Senator GORE. You select your own word.

Secretary DILLON. I think that I have never heard a more lucid explanation of what actually took place.

Senator DOUGLAS. I congratulate you, Mr. Secretary.

Senator GORE. Thank you.

Secretary DILLON. I am glad to congratulate you whenever you are correct, and you are correct in this instance. That is exactly what we said, that this opportuniity was offered to charitable stockholders, they accepted it because it was attractive.

The question before us is whether the ruling that made that, if they did it, there would be no attempt by the Internal Revenue Service to assert any tax further on the pro rata distributions. There is no question as to the non pro rata distribution, the taxes were set on that in any event by other law.

You again made a very clear statement of the problem on the last page of your statement, Senator, I do not agree with the first part of that statement, but the rest of the statement does shed some light on the dilemma. And while I am not a lawyer, and Mr. Cohen and Mr. Knight who are lawyers would be able to comment far better on this, it is my understanding that on the question of straight legal correctness, they both feel that the 1964 ruling was sounder legally than the 1962 ruling.

The 1962 ruling, nevertheless, was made because it was discretionary, and the Commission has the right to either issue a ruling or not. Because of that discretion, he put into it this provision which overrode the provisions of the court and said that there should be no non pro rata distributions. And the reason I understand for that was simply to see that the total figure of $470 million was reached.

It indicates in that ruling, as you pointed out, that the reason for this is that Congress contemplated that this would be done on a pro rata basis.

I think on further study of the record, it is the opinion of the Internal Revenue Service that that particular statement is too strong, and Congress did not contemplate any particular method of distribution, and that that is borne out by the statement of the President, by the debate throughout.

One of the very few times this question was raised in the course of the debate, as to how distributions might be made, it was raised by Senator Douglas on the 26th of September on the floor of the Senate, when he said the following:

> Then there is, as I have said, the Christiana factor. In the pleading, if we may call it such, that Du Pont made before the Chicago court, it is asking for complete freedom in divesting itself of its General Motores shares. If this request is granted, there is no doubt that the divestiture could be manipulated in such a way as greatly to reduce the ultimate tax liability.

And so it was very clear that there were many methods by which this could be done, and not simply pro rata.

There was also a statement by Senator Gore—the only other statement that so indicated that during the whole course of the debate in January.

Otherwise, it was simply not mentioned, as to whether this would be pro rata or non pro rata.

Senator SMATHERS. Well, the Secretary would agree that during the course of the debate, it was not mentioned whether it was a pro rata or exchange. The bill had nothing to do with determining whether or not it would be a pro rata or exchange, although there was a statement by both, as you say, the Senator from Tennessee and the Senator from Illinois, that there would be certain tax advantages were it done one way as distinguished from the other.

Secretary DILLON. Actually, it is of interest in this connection to recall that at the time of the debate—the situation changed afterwards—but at the time of the debate the Department of Justice for antitrust reasons far preferred nonpro rata exchange, because a nonpro rata exchange which divorced the holder of Christiana from Du Pont—he had to turn in his Christiana which controlled Du Pont—would meet their requirements of divestiture. He would be left with only General Motors. And what I referred to about the statement from the Senator from Tennessee in January—he read from the brief that was submitted to the court by the Department of Justice in October of 1961, which stated just that—that they were against a pro rata distribution, but they were not opposed to an exchange of stock.

Now, the antitrust part of this situation completely disappeared with the order of the court in Chicago, which found a new way to skin this cat, if I may say that.

There had been this tremendous debate in the Senate, all on the antitrust part, and very little on tax—very eloquently put by the Senator from Tennessee when he said in the opening of his major statement that this is an antitrust problem, and tax problems are subsidiary. That was the whole tenor of the debate.

It was felt that there was a choice between a passthrough, which would leave this stock in the hands of the Du Pont family, or a sale—one or the other—and no one at that time conceived of the solution which was finally worked out by the judge and was accepted by the United States; namely, that there could be a passthrough, but that the Du Pont recipients of it would then have to sell the stock. And that achieved the antitrust purpose.

Now, there was very little discussion in the whole debate about the tax consequences of this. Ninety percent of the talk in the debate revolved around antitrust principles, whether this bill was a directive to the court to issue a certain kind of decree. And I think this decision was made by the Senate when they voted on the motion to recommit by a majority of about two and a half to one, that this was not a directive to the court, and it was perfectly proper to go ahead. And this is what was recognized by President Kennedy when he signed the bill.

So that is why our lawyers feel that they are on sound ground in saying that the Congress could not have been choosing to direct a particular method which to be followed by the court. That is what the whole debate was about, and the question was decided by a free vote on the Senate floor.

Senator DOUGLAS. Mr. Secretary, do you maintain that the guiding principle of the tax features of the 1962 act was that if the revenue appreciably exceeded $470 million, that a different tax system could be adopted than if it were only $470 million?

That is apparently the ground for Mr. Knight's second ruling as stated in the fourth paragraph of Mr. Harding's letter to Chairman Byrd.

Secretary DILLON. No, Senator, I do not think that is quite correct.

Now, again, this is a legal question, and this is the problem of having me as a lawyer discuss that.

The Commissioner and Mr. Knight are much better qualified; but they have told me their view. Their view was that as a strict matter of law, looking at the law that was passed, the committee report describing the law, the actions of the court, there was absolutely nothing which would in any way have prevented nonpro rata distributions right from the beginning. In other words, nothing would have prevented the issuance of the 1964 ruling right away in 1962. There was, however, a collateral consideration that was brought in, a minor element that flowed from the debate in the Senate—although it was not mentioned a great deal during the course of the debate. This element was that if this law were passed, a certain amount of revenue would be reached.

So because of that, Mr. Knight felt originally, and the Commissioner agreed with his feeling, it would be proper to take every step feasible to insure collection of that revenue, which was the amount of $470 million.

Of course, at the time of the 1962 ruling no one felt that the General Motors stock would go way up and that we would have this different situation.

Actually, everybody felt that it was highly conjectural that they would raise $470 million.

Now, they did put into that first ruling a paragraph, which Senator Gore read, which indicates that it was their view that Congress had passed this law in the view or on the understanding that there would only be pro rata distributions. And as I said—and this can be better explained again by our legal people in the Internal Revenue Service, why that was put in in the first place—they do not now agree that that was the intent of Congress from reading the Congressional Record, and they feel that that explanation was probably not a valid explanation in the first place.

So I think we should just make that very clear, because that is their position now, and I think that illuminates the central point here.

Senator DOUGLAS. In other words, in 1962 the ruling said it was the intent of Congress to provide for pro rata distribution?

Secretary DILLON. That is what it said in that ruling.

Senator DOUGLAS. Then later in 1964, after the price of General Motors stock had gone up, and the capital gains had increased, the ruling was that that was not congressional intent, but the reasoning stressed by Commissioner Harding—not Mr. Cohen—was that provided you could get $470 million in revenue, it was all right to reverse the ruling.

Now, I had thought that rulings were supposed to be, and lawyers rulings were supposed to be based upon principles of equity, and that you did not alter them according to the amount of money that you would bring in.

I would defend Du Pont against having us go back, if the price of General Motors stock had fallen, and try to collect from them. I certainly would not have favored that. If the price of General Motors stock had shrunk, I would say the principles laid down in the 1961–62 bills should be followed. But if the price of General Motors stock subsequently goes up and you make more than $470 million, I do not see why you say, "Well, we have the $470 million." And I would like to point out that in the recent letter signed by Mr. Cohen—I have the copy of March 10—he says:

> It is estimated that revenues yield on the complete divestiture by Du Pont-Christiana will be approximately $613 million. This is $143 million in excess of the maximum estimate of $470 million considered at the time of the enactment of Public Law 87–403.

I would like to suggest, like the flowers that bloom in the spring, tra la, this has nothing to do with the case whatsoever—nothing at all.

The question is whether you have one ruling and one interpretation of the intent of Congress when the price of General Motors, is, let us say, $25 a share, and another interpretation when General Motors is $100 a share.

I will grant you that if the tax liabliity has gone up, the capital gains has gone up many times that amount.

These people are not suffereing form lack of equity.

Secretary DILLON. If we follow your logic, Senator, if that is correct, then there was no justification whatever for the issuance of the

1962 ruling. Because you said you cannot use a figure like $470 to protect the revenues of the United States. You said you were not interested in that.

Senator DOUGLAS. I did not say that at all.

I simply said that principle should be followed which at the time would have yielded $470 million. But if the price of General Motors stock went up for entirely different reasons, it would be a larger amount, if the price of General Motors went down, the yield would be less.

Secretary DILLON. All I can do is rely on my lawyers who tell me that the law clearly indicates that there is absolutely no reason for requiring the continuance of that condition after that revenue estimate had been met. They feel if Christiana had gone ahead with an exchange anyway—without a ruling—they would have been sustained in court.

Senator DOUGLAS. First you have said that this maximum revenue estimate of $470 million was not central to the decision. Now you are saying it was central to the decision.

Secretary DILLON. I never said it was not. I have always said it was central.

Senator ANDERSON. Will the Senator yield?

Secretary DILLON. To the 1962 decision, it was absolutely essential.

Senator ANDERSON. Was Mr. Knight in the Department at the time the orginal resolution was reached in 1962?

Secretary DILLON. Yes, it was on his recommendation that this was put in.

Senator ANDERSON. And he then said it was the intent of Congress for pro rata distribution?

Secretary DILLON. No, he did not say that.

Senator ANDERSON. That was not in the decision?

Secretary DILLON. That was not in the recommendation he made. He made a recommendation that the ruling be qualified by not allowing pro rata distributions.

He did not say anything, and was not aware he tells me, of the language that was written into the ruling by the Internal Revenue Service regarding the intent of Congress.

Senator ANDERSON. Who wrote that?

Secretary DILLON. That I do not know. Someone in the Internal Revenue Service.

Senator ANDERSON. But if you know who wrote part of it, why can you not find out who wrote all of it?

Secretary DILLON. I know Mr. Knight is here to testify, is ready to testify, that it was on his recommendation that the prohibition was put in.

He did not prepare and knew nothing about the augmentation leading up to that condition.

Senator ANDERSON. Did Mr. Caplin agree with that language?

Secretary DILLON. He must have. He signed the ruling.

Senator ANDERSON. As long as he stayed as Commissioner, the ruling stood; is that right?

Secretary DILLON. The ruling stood until there was a request for reconsideration, which did not come until after he was no longer Commissioner.

Senator SMATHERS. Was there not in the letter signed by the then Commissioner of Internal Revenue stating that Christiana has the right for reconsideration of the ruling?

Secretary DILLON. Well, they had that right anyway.

Senator SMATHERS. I know they have the right. But was that not in the letter?

Secretary DILLON. It was specifically put in the letter at the request of Christiana that they disagreed with the decision and that they reserved the right to come back at a later date.

Senator ANDERSON. Did they immediately disagree, or wait until Mr. Caplin had gone?

Secretary DILLON. They immediately disagreed at that time. It was in the letter Mr. Caplin signed that they disagreed.

Senator FULBRIGHT. What good is this ruling in this case?

What benefit to the Government is the ruling?

Does that preclude the Government?

Secretary DILLON. It is of no benefit to the Government except administrative. A ruling, sir, is not designed to benefit the Government as against taxpayers. It is designed to benefit taxpayers. It allows taxpayers to decide and find out ahead of time on what basis they will certainly be free to act, and to know that the Government will accept their actions without challenge.

Senator FULBRIGHT. But in this case the ruling did not benefit them, they did not like it. Why did they ask for it?

Secretary DILLON. When they asked for it, they did not know what the ruling was going to be. They asked for it thinking they would get permission to make non pro rata distributions they argued for.

Senator FULBRIGHT. They are free to go ahead—if the prior law—I mean the existing law at the time authorizes the non pro rata distribution, they are free to do it in spite of the ruling.

Secretary DILLON. The ruling does not affect what they do at all, except freeze the Government's hands in case the Government decided it wanted to say that the distribution of Christiana stock pro rata to the Christiana stockholders was not in accordance with Public Law 87–403.

Senator FULBRIGHT. You mean non pro rata?

Secretary DILLON. No, pro rata.

There was never a question in the law about non pro rata distribution. They had a clear right under the law to do that at any time.

The only problem is that under the condition that was placed in the ruling that only pro rata distributions were in accordance with Public Law 87–403, the ruling would be null and void if non pro rata distributions were made.

But the Government was under no compunction to take action or to deny this treatment to the stockholders thereafter if they had done it. Whether or not Internal Revenue Service would have tried to assess any tax liability is conjectural. The Revenue Service experts say if they had tried, it is their opinion they would have lost the case in court.

Senator HARTKE. On the basis of that, with all due respect to the lawyers on the case, maybe they would have been a little bit better advised to advise these people to disregard the Internal Revenue ruling entirely, and proceed, and there would have been much less

tax liability, and the tax consequences for the Government would have been much less realized.

Secretary DILLON. The reason why there was great power in this ruling lay in the fact that this distribution was being made by Christiana Corp. The board of directors of the corporation had to decide this. And even if the chance was one in a million that they might be wrong, still something might happen, and they would then be subject to such tremendous liabilities personally, as directors, from the stockholders for having made an erroneous decision, that the board was not willing to go ahead, except in reliance on the ruling.

Senator HARTKE. Yes. But that had nothing to do with the legality of it?

Secretary DILLON. No.

Senator HARTKE. Or even a question of impropriety?

Secretary DILLON. No, none at all.

Senator HARTKE. As far as the Court ruling is concerned, there is no contention that the Court ruling was not followed, is there?

Secretary DILLON. No, none whatsoever.

The Court ruling specifically provided for non pro rata exchanges.

Senator HARTKE. Is there even any contention really that something has been done outside the bounds of the law itself that we passed?

Secretary DILLON. None whatsoever. The law makes no reference to this at all.

In statements of the committee report and the statement of the chairman of the committee, in introducing the bill and describing it on the floor, and in the statement of the President in signing it, it is made perfectly clear that this law was not supposed to provide any guidelines for how this distribution should take place. This was considered an antitrust matter to be decided by the district court in Chicago.

Senator HARTKE. Did you ever at any time affirmatively, negatively, or in any way pass upon the ruling, the first one or the second one?

Secretary DILLON. Not at all.

The only reason I know about this is, I have been asked to come up here, and asked to prepare myself for this, so I have done a lot of reading and conferred with the people who are responsible for it. What I am telling you now is based on that study, which all occurred within the last 2 or 3 weeks.

Senator GORE. Mr. Secretary, if I may take exception to that—I think the man who selected Mr. Knight to come down and arrange this is the man responsible for it.

Secretary DILLON. I take full responsibility for requesting Mr. Knight to come down.

As I pointed out, this was not an original idea of my own; it was suggested to me by my tax staff. Mr. Knight had been the man who was familiar with the 1962 ruling. He had been the man who insisted that this non pro rata exchange be barred—which the lawyers for Christiana had felt was an unfavorable decision. So asking him to come down here would certainly seem to have been a sound thing. That is why I accepted that advice—because it would have seemed likely that he would be stronger for maintaining that 1962 ruling than anyone else.

Now, the fact of the matter is that Internal Revenue Service, if left to its own devices, and if Mr. Knight had not come down here, would probably have issued the 1964 ruling, several months earlier.

Senator GORE. Mr. Chairman, may I be recognized to ask some questions? I have asked other people to yield.

Had you finished?

Senator HARTKE. I interrupted Senator Fulbright, so that is all right with me. I am not complaining.

Senator GORE. Well, Mr. Chairman, I expect to show during the course of this investigation that this particular ruling, these particular rulings, both in 1962 and 1964, were irregularly handled. We have repeatedly heard it stated that Mr. Knight made the ruling in 1962. Many times Mr. Knight's activity in relation to the ruling of 1962 has been referred to here.

According to the memorandum which the Secretary himself supplied to Senator Long, and which was placed in the Congressional Record, the usual procedure would be for the Commissioner of Internal Revenue to consider this matter and make the ruling. And I suggest that Mr. Mortimer Caplin be invited to testify before the committee.

The CHAIRMAN. What is the pleasure of the committee?

Secretary DILLON. I am informed by Mr. Cohen that Mr. Mortimer Caplin is in Teheran, Persia.

Senator GORE. I talked to him this morning. He just returned.

Secretary DILLON. Oh, is he back?

Well, that is fine.

Senator DOUGLAS. Second the motion.

Secretary DILLON. I am sure he would be delighted to come.

Senator GORE. We have a motion seconded.

The CHAIRMAN. We do not need a second.

Without objection, he will be invited at a subsequent date.

Senator MCCARTHY. I think we ought to hear Mr. Cohen first. I do not think at this point we have to bring in the former Commissioner of Internal Revenue to ask him to testify yet. We may want to come to that.

I would like to hear Mr. Knight and Mr. Cohen before they do this.

Senator GORE. Mr. Chairman, I am perfectly willing to hear Mr. Knight and Commissioner Cohen and others. But I requested that the former Commissioner, who signed the ruling letter of 1962, be invited to testify before the committee. I do not think it is improper to make that determination now.

The CHAIRMAN. It is agreed upon.

Senator GORE. All right. Then he will be invited.

Now, Mr. Secretary, you have stated in your prepared statement that you are satisfied that the legally correct ruling was issued.

As a matter of fact, it was discretionary with the Internal Revenue Service, Department of Treasury, whether any ruling be issued, either in 1962 or 1964 or at any other time; is that correct?

Secretary DILLON. That is correct.

Senator GORE. Christiana corporation requested a ruling in 1962; is that correct?

Secretary DILLON. That is correct.

Senator GORE. I hope I am stating this correctly.

Upon the recommendation of Mr. Knight, a ruling was given, and upon the recommendation of Mr. Knight, as I understand it, a condition of that ruling was that the distribution by Christiana Corp. be on a pro rata basis; is that correct?

Secretary DILLON. Yes.

There was an additional condition which he placed in that ruling, and that is that Christiana not be merged into Du Pont. You mentioned this was strange that Mr. Knight and the Treasury was asked to have anything to do with this. The reason was that the Internal Revenue Service felt that it needed advice on legislative history of this bill, which had just been enacted. Mr. Knight had represented the Treasury in the enactment of the bill; so he was uniquely qualified to give that sort of advice. And so they asked for that advice from him. But the Commissioner made the decision, not Mr. Knight.

Senator GORE. At this point I would like to suggest to you that in 1962 Mr. Knight was General Counsel of the Treasury, a holder of a high official position. He was charged with public responsibility.

According to your testimony here today, he was not even a dollar a year man in 1964.

By what reason did he have any public responsibility at all? He was not an employee of the Government. He did not sign the order. A corporation lawyer from New York, who I daresay has a bright future in corporation law, here recommended a ruling without public responsibility.

Is that not an irregular procedure?

Secretary DILLON. No; I think it is perfectly all right for the Commissioner, if he feels it advisable, to ask for a consultant to come, receive the consultant's advice, and then make his own determination.

As a matter of fact, as I understand it, Mr. Knight's recommendations were made in writing sometime around November 20 and the ruling was not issued until December 15, during which time Mr. Knight had nothing further to do with it. There were a great many further negotiations and talks between Christiana and Commissioner of Internal Revenue, which led to the exact form of the ruling that was issued.

So it was the Commissioner's ruling, again.

Senator GORE. Now, to return to the question of the legally correct ruling—it was not the Government which desired to issue the ruling in 1962, as you responded to Senator Fulbright. The ruling gave no benefit to the Government of the United States. The ruling was desired and petitioned, requested by Christiana corporation.

Secretary DILLON. That is correct.

Senator GORE. As a condition of the ruling, let me read you—before I read, let me point out that the ruling did not require, legally require, or undertake legally to require, a pro rata distribution.

Secretary DILLON. No; that is absolutely correct. Rulings do not require anything.

Senator GORE. All right. But unless a pro rata distribution should be followed, which the Department in 1962, when the price of General Motors was at $45, held was the legislative intent of the bill—should be pursued, then this ruling provided that the ruling would be null and void and no effect.

Let me read.

In addition to any other conditions which may be applicable to the following rulings, they shall be of no force or effect in the event that any General Motors shares Christiana now holds or hereafter acquires are exchanged by Christiana for its own shares.

So this which Christiana desired in 1962 was granted in the ruling on condition that the legislative intent be followed.

Secretary DILLON. Is this a question or is this your idea what the legislative intent——

Senator GORE. It is not my idea; it is your Department's idea.

Secretary DILLON. No.

Senator GORE. Stop right here, and let me read.

You were Secretary of the Treasury in 1962, were you not?

Secretary DILLON. Oh, yes.

Senator GORE. And Mr. Mortimer Caplin was Commissioner of Internal Revenue?

Secretary DILLON. Yes, sir.

Senator GORE. Let's settle that question right now.

* * * The Internal Revenue Service also finds that the history of the passage of section 1111 of the Internal Revenue Code of 1954, as reflected in the congressional hearings, committee reports, and congressional debates, including representations made by or on behalf of Christiana and Du Pont, shows that Congress contemplated that, insofar as now appears pertinent, General Motors shares owned by Du Pont and distributed to Christiana would in fact be distributed to Christiana within the period specified by the statute and, if the court authorized Christiana to divest by distribution, Christiana would distribute pro rata to its shareholders all of the General Motors shares ordered divested. * * *

Now, Mr. Secretary, that is not my language, that is the language of your Department in 1962.

Senator SMATHERS. Would the Senator yield?

Senator GORE. Yes; I yield.

Senator SMATHERS. I do not gather from that at all that Mr. Caplin or whoever signed the letter, said that was what the Congress said. He said if the court says that.

Read that again.

Senator GORE. All right, I will read it.

Senator SMATHERS. Just read what he said.

Senator GORE. I would be happy to read it.

Senator SMATHERS. If the court did it. I just listened to it.

Senator GORE. All right. Will you let me read it?

Senator SMATHERS. Yes.

Senator GORE. I will not real the whole paragraph. I will read the pertinent part.

"Insofar as now"—just a minute—"and, if the court authorized Christiana to divest by distribution"—the court did do so—"Christiana would distribute pro rata"——

Senator SMATHERS. If the court authorized it.

Senator GORE. The court did authorize it.

Senator SMATHERS. And if the court also had authorized the distribution by an exchange, then I presume that would have been all right.

Senator GORE. Well, the court did.

Senator SMATHERS. And the court authorized that, too.

Senator GORE. The court was silent on the manner of distribution, whether it be pro rata or non pro rata.

Secretary DILLON. No. The court specifically authorized both.

Senator SMATHERS. The court authorized both?

Senator GORE. It is silent as to a choice between the two. Insofar as the court decision was concerned, Christiana was free to distribute pro rata or non pro rata. But your Department held in 1962 that it was the legislative intent that the Christiana distribution be pro rata.

Now, you say that was my interpretation.

Secretary DILLON. No; I do not say that is your interpretation, Senator. I say that was that ruling, and that is a part of the ruling which my legal experts now feel was erroneous—that the intent of Congress was clearly not that, that the intent of Congress clearly was to make no choice as to a particular method of distribution, but that there was in the background of the congressional debate the idea that a minimum amount of money—the highest figure which was ever mentioned being $480 million—be raised.

Now, there is a difference of view between that 1962 paragraph, that single paragraph, and the views presently held by the Internal Revenue Service, and also the views held as a consultant, both at that time and now, by Mr. Knight.

Senator SMATHERS. Would the Senator yield, that he might explain something to me that I am still not clear on?

I have here the district court order of March 1, 1962, and I presume that is the one we are talking about. In pertinent part it provides as follows:

1. Christiana may sell such numbers of shares of General Motors stock as, in the judgment of the board of directors is necessary to provide net proceeds sufficient to pay the taxes imposed upon the receipt by it of General Motors stock from Du Pont and any expenses and taxes incurred on the sale of the shares to be sold.

2. Christiana shall distribute to its shareholders (including non pro rata distributions in redemption of its own stock)—

Which would mean exchange—

the remaining shares of General Motors stock required to be divested by it.

So it seemed to me, from that court order, that the court said it could go either way or a combination of both.

Secretary DILLON. That is correct.

Senator SMATHERS. It did not limit it just to a pro rata distribution.

Secretary DILLON. That is right.

And it is also clear, Senator, that the Congress indicated very clearly—which was confirmed in the signing statement by the President—it was not indicating any particular method of distribution and was leaving the choice of method of distribution up to the court.

Senator HARTKE. Would the Senator yield at this point?

Senator GORE. Yes; I have asked everybody else to yield. I really do not have many questions. I will yield.

Senator HARTKE. As I understand, no one contends that the court order is wrong. You could contend that the court, in view of the fact that it acted after the Congress acted, anticipated that the congressional intent was that there could be any type of distribution. But that does not have anything to do with what we are talking about today anyway.

The whole point is, we are talking about a ruling, and the ruling in the letter, according to this, gave an interpretation as to legislative intent. That could have been followed or could have been ignored. It is not binding. And the net result of all of it is that there is just a

question here of an agency of the Government giving in a ruling an interpretation at that time, and that they changed the ruling at a later date.

Now, as I understand, the argument is that the ruling should not have been changed.

Senator GORE. Let me state the question again.

Senator HARTKE. Unless there is something I regularly—I can see there is a change, but I do not see the irregularity, and I do not see any impropriety, personally.

Senator GORE. Let me state it a little differently.

The question here is the rightness or the wrongness or morality of a private changing of a tax ruling to give $56 million in tax relief to a relatively few taxpayers.

Senator ANDERSON. Would the Senator yield for just one second?

You have made the statement, Mr. Secretary, that while originally you found the intent of Congress was a certain thing, subsequently they found something else. Could you submit for the record what language they found to change their minds? I do not think we will find it at all, but they might.

Secretary DILLON. I can submit that easily—the President's signing statement on the bill.

Senator ANDERSON. Is the president a Member of Congress?

Secretary DILLON. We will leave that aside.

I will submit the chairman's statement as to what the bill was designed to do.

I would be glad to read it to you if you wish.

Senator ANDERSON. I wish—Mr. Knight found something the second time though he did not find the first time. Now, what did he find?

Could he not submit that to us?

Where did he find it?

Secretary DILLON. He is here. It is very easy to ask him whenever you get finished talking to me. As I said, I had no part in this. But it is very clear where the chairman says in his original statement:

> It is contemplated by your committee that all issues as to the methods of divestiture shall be judicially determined solely with reference to the antitrust principles announced by the Supreme Court in the *Du Pont* case.

Senator ANDERSON. Mr. Secretary, that is the reason you put certain language in the report. We kept being told, if we started to lay down a system of distribution, we would be involved in the court. So now we are being told because we did exactly what was suggested to us, in order to keep the court free, we were prejudging the case. I do not think that is true at all.

Secretary DILLON. I would agree with you. Certainly you were not prejudging the case. That is just what we are saying here.

It was the contention that in that 1962 ruling you were prejudging the case. And that is a conclusion that I now feel probably was erroneous, certainly by reading the record, it seem to me to have been erroneous.

Senator GORE. Well, Mr. Secretary, I think that I have heard the 1962 ruling berated as wrong about long enough to point out to you that your 1964 ruling did not reverse the 1962 ruling.

Secretary DILLON. It most certainly did not. It merely modified it and dropped the condition.

Senator GORE. So if it was wrong in 1962, then the modification of the condition in 1964 is equally wrong.

Secretary DILLON. No. All I am saying about the 1962 ruling is that the one paragraph which was modified and dropped was probably erroneous. The rest of it was fine.

Senator GORE. It was not dropped, though, Mr. Secretary.

Secretary DILLON. It was dropped.

Senator GORE. I am sorry, it was not. I will read—I promised first to yield.

Senator MCCARTHY. Go ahead.

Senator GORE. This is from page 4 of the ruling of December 15, 1964. This is signed by Acting Commissioner Harding.

Based solely on the information submitted which includes the resolutions of the Christiana board of directors dated December 14, 1964, and the representations and agreement contained in your letter dated December 14, 1964 and after reconsideration of our ruling letter dated October 18, 1962, it is held that the ruling letter of October 18, 1962, will remain in full force and effect except that paragraphs 2 and 3 of page 4 are hereby deleted, subject to your adherence to the exchange and pro rata distribution formulas stated in the resolutions and in your letter of December 14, 1964. In all other respects that ruling letter will remain in effect.

Secretary DILLON. That is exactly what I was trying to say—paragraphs 2 and 3 are deleted.

Senator GORE. Mr. Secretary, that may have been what you were trying to say, but that is not what you said.

Secretary DILLON. It is what I said.

I beg your pardon, sir. You may have construed it differently. That is what I said. I said that paragraph was dropped. I used the wrong word. The right word was "deleted." If you think "dropped" is different from "deleted," maybe I was wrong.

Senator GORE. Mr. Secretary, I am perfectly willing for you to state what you intended to say.

Secretary DILLON. I think the record will show I said "dropped." and I think "deleted" is the word here.

If you think there is a difference, I modify it.

Senator GORE. But the requirement for pro rata distribution was not deleted, except on condition—I read to you again from the Acting Commissioner's letter.

* * * Subject to your adherence to the exchange and pro rata distribution formulas stated in the resolutions and in your letter of December 14, 1964.

Now, I have that letter. Fortunately, the chairman of this committee has made this whole record public, and I can discuss it with a little more lucidity.

Now, I would like to read that letter.

This letter is to the Commissioner—addressed to the Commissioner of Internal Revenue, and it is signed by Henry B. du Pont, president. Christiana Securities Co.

This letter replaces the letter of Christiana Securities Co. dated December 10, 1964, and filed with you on that date, which letter is hereby withdrawn.

The requests for tax rulings that Christiana Securities Co. has previously filed with you relating to the divestiture of common stock of General Motors Corp. pursuant to the final judgment of the U.S. District Court for the Northern District Court for the Northern District of Illinois entered March 1, 1962 in the case of *United States* v. *E. I. du Pont de Nemours and Company et al.* are hereby modified as follows:

(1) If the mean of the high and low prices for General Motors common stock on the New York Stock Exchange on the date of the final distribution by Du Pont under said final judgment (scheduled for January 4, 1965) is less than $85 per share, then the amount of such stock that will be offered to holders of Christiana common stock in exchange for Christiana stock, or that will in fact be exchanged with such stockholders, will not exceed the number of shares determined as follows:

(a) if such mean price shall be less than $85 but not less than $80 per share, then the maximum number of shares to be so offered or exchanged will be 7,600,000 shares;

(b) if such mean price shall be less than $80 but not less than $75 per share, then the maximum number of shares to be offered or exchanged will be 6,000,000 shares;

(c) if such mean price shall be less than $75 but not less than $70 per share, then the maximum number of shares to be so offered or exchanged will be 5,400,000 shares;

(d) if such mean price shall be less than $70 but not less than $65 per share, then the maximum number of shares to be so offered or exchanged will be 4 million shares;

(e) if such mean price shall be less than $65 but not less than $60 per share, than the maximum number of shares to be so offered or exchanged will be 2,400,000 shares;

(f) if such mean price shall be less than $60 but not less than $55 per share, than the maximum number of shares to be so offered or exchanged will be 600,000 shares; and

(g) if such mean price shall be less than $55, then no shares will be so offered or exchanged.

(2) If such mean price is less than $85 per share, then Christiana will make a pro rata distribution to holders of its common stock pursuant to the final judgment in *U.S.* v. *Du Pont* of an amount of General Motors common stock that shall not be less than the number of shares determined as follows:

(a) if such mean price shall be less than $85 but not less than $80 per share, then the minimum number of shares to be so distributed will be 800,000 shares;

(b) if such mean price shall be less than $80 but not less than $75 per share, then the minimum number of shares to be so distributed will be 1,800,000 shares;

(c) if such mean price shall be less than $75 but not less than $70 per share, then the minimum number of shares to be so distributed will be 3 million shares;

(d) if such mean price shall be less than $70 but not less than $65 per share, then the minimum number of shares to be so distributed will be 4,400,000 shares;

(e) if such mean price shall be less than $65 but not less than $60 per share, then the minimum number of shares to be so distributed will be 6 million shares;

(f) if such mean price shall be less than $60 but not less than $55 per share, then the minimum number of shares to be so distributed will be 7,800,000 shares; and

(g) if such mean price shall be less than $55, then the minimum number of shares to be so distributed will be 8,400,000 shares.

(3) The request for closing agreements relating to such tax rulings is withdrawn.

Christiana represents and agrees (A) that it will make no offer for exchanges of General Motors stock, nor will it make any exchanges of such stock, except in conformance with the limitations on the number of shares to be offered for exchange as determined under paragraph (1) above, and (B) that, if such mean price for General Motors common stock on the date of Du Pont's final distribution shall be less than $85 per share, Christiana will make a pro rata distribution or distributions to the holders of its common stock pursuant to said final judgment of an amount of General Motors common stock that shall not be less than the number of shares determined under paragraph (2) above.

Enclosed is a certified copy of resolutions adopted by the board of directors of Christiana which authorize and direct the foregoing modifications of the pending requests for tax rulings and the foregoing commitments with respect

to limiting the number of shares of General Motors common stock that may be exchanged for Christiana commn ostock and with respect to pro rata distributions of General Motors common stock to holders of Christiana common stock.

Respectfully submitted.

CHRISTIANA SECURITIES CO.,
By HENRY B. DU PONT,
President.

Secretary DILLON. The purpose of that is perfectly clear. It is just to preserve the $470 million of revenue.

Senator GORE. May I point out, Mr. Chairman, that this definitely shows that the condition in the ruling was not repealed. It was not rescinded. It was modified.

Now, if a ruling is wrong in principle then a modification of that ruling is not a repeal of that ruling.

Now, this may be irrelevant. Here is a letter written December 14, 1964—based on the spurious assumption that General Motors stock is not going to be in excess of $85 per share by January 4, 1965. If that came about, there would be a whale of a drop, from $100 to $85.

Secretary DILLON. There certainly would.

Senator GORE. In a 30 day period.

Secretary DILLON. That was the conservatism of the Internal Revenue Service, which wanted to be sure that the $470 million was achieved irrespective of what might happen in the market.

Senator GORE. Mr. Secretary, I think I have been courteous, I have tried to be. You made your point fully. I would like to make mine.

So the 1964 ruling set up a similar condition. The 1964 ruling provided, if I may state it in different language, I think more concisely, that so long as the price of General Motors stock exceeded $85, then it could all be distributed on a non pro rata basis.

Secretary DILLON. Yes. Even on that basis the revenues would be more than $470 million.

Senator GORE. Well, I want to come to the $470 million a little bit later.

So—I am not sure that this is a major point, but a very deliberate attempt here has been made to excuse this change of ruling on the basis that somehow the 1962 ruling was illegal.

As a matter of fact, the ruling in 1962, as I have tried to point out, did not require by law a pro rata distribution. It provided, as I have read, that in the event a pro rata distribution was not followed, then Christiana would not have the benefit of the ruling, it would be null and void.

You provide the same thing in your 1964 ruling. Unless this formula of distribution set out in the letter of Mr. Du Pont should be followed, if the conditions stipulated therein prevailed, then the ruling would be null and void and of no effect.

So if your 1962 ruling would fall on the basis on which you have belabored it, then the 1964 ruling would fall on the same basis.

Secretary DILLON. That is correct.

Senator GORE. Well, it took a long time to arrive at that.

Senator SMATHERS. Will the Senator yield?

Senator GORE. I am trying to finish. I just have—I am trying to finish, and then I will yield.

In what other tax ruling in 1962, or throughout his service as General Counsel for the Treasury, did Mr. Knight play the significant role that he played in this ruling?

Secretary DILLON. I would not know. He is here, and he can testify.

Senator GORE. Do you know of any?

Secretary DILLON. I would not know, no.

Senator GORE. Was not the usual procedure for the Commissioner of Internal Revenue and his staff to make such rulings?

Secretary DILLON. Most certainly, yes. But this was a special case in that it involved a law——

Senator GORE. That is what I thought.

Secretary DILLON. Yes, you are right. It involved a law which had just been passed by the Congress. Mr. Knight had represented the Treasury in the rather long and arduous course of this legislation through the Congress, and he was fully conversant with all aspects of the legislative history. Therefore, the Service asked for his opinion because of that. That is the only reason. I don't think there were any other comparable laws passed by the Congress at that time.

Senator GORE. I yield to the Senator from Florida.

Senator SMATHERS. Does the Senator object to the 1962 ruling as such? I mean, does the Senator feel that was an incorrect ruling?

Senator GORE. No, I didn't imply that at all. I think it was clearly within the discretion of the Department of the Treasury, and based on the statements of the chairman of this committee, based upon the findings of the Department itself, this ruling was in conformity with the legislative intent. No, I didn't criticize it at all. I was merely pointing out——

Senator SMATHERS. As I understand, the Senator said that the 1964 ruling did not change the original ruling. And I was just wondering what point was it that the Senator felt this thing was gotten off the track?

Senator GORE. Well——

Senator SMATHERS. I happen to agree with the Senator about certain other matters. But on this particular matter, I am not clear as to what his objection is.

Senator GORE. Well, as I said, Senator Smathers, I doubt if this is a major point, and I don't want to convert it into a major point. But the same principle involved in the 1962 ruling was involved in the 1964 ruling. But the change in the ruling had the effect of giving tax relief of $56 million to a few taxpayers.

I think that is morally wrong. Fortunately somebody gave me some relevant information that enabled me to bring it to public attention.

Senator SMATHERS. As a result, does the Senator maintain it was contrary to the court's order? Was it contrary to law?

I agree the result is, there has been $57 million saved by some taxpayers.

Senator GORE. I have not undertaken, Mr. Chairman, to say that either ruling is illegal. I think the Secretary and I would agree that the court order permitted distribution either pro rata or nonpro rata.

It was the Department of the Treasury, in conformance with what it interpreted as the legislative intent, that required as a condition of its ruling that a pattern of pro rata distribution be followed.

Does that make it clear?

Senator SMATHERS. I think I understand.

Senator GORE. Mr. Chairman, it is 12:45. I think I will desist.

The CHAIRMAN. What is the pleasure of the committee about meeting this afternoon?

Senator ANDERSON. Oh, yes.

Senator SMATHERS. I think we should, Mr. Chairman.

The CHAIRMAN. What time is agreeable to you gentlemen?

Senator SMATHERS. I would suggest 2:30.

The CHAIRMAN. We will recess until 2:30 this afternoon.

Senator GORE. Mr. Chairman, if I may just have a minute—the Secretary and I have reached an understanding on what the facts are in several respects. We have had an exchange here for quite some while. I know he has some other responsibilities. I would be glad to forgo any further questioning of the Secretary.

Senator DOUGLAS. Mr. Chairman, I don't wish to ask questions of anyone. But there are two interesting salient facts I would like to put in the record at this point.

First, 646,000 shares of Christiana, which were exchanged at the ratio of 3¼ shares of General Motors, by fiduciaries, whoever they may be, identity unknown—and also 103,000 shares which were exchanged at the same ratio by the Chichester Foundation and the Longwood Foundation—making a total from these sources of 749,000—out of total shares exchanged on one basis 888,000, on another basis 873,000.

The record shows, therefore, approximately 85 percent of the shares were held by either the unidentified groups, or by these two foundations.

I think it is highly important that the identity of the groups or organizations be compared with the shares held inside Christiana, by approximately the same individuals, because if you have A, B, and C, and D, E, and F on the boards of directors of foundations agreeing to an exchange which benefits A, B, C, D, E, and F as stockholders in Christiana, you have a most interesting situation.

So it is not merely a question of the widows and orphans of Wyoming Seminary, or the Ziegler Foundation for the Blind, and the Canisius College, or Milford Hospital, or the New England Historic Genealogical Society—but possibly individuals who bear a close resemblance in name and family identity.

So I think this would be an interesting set of facts to develop.

The second fact that I would like to throw out, that we can ponder over during the recess, is that this order was issued during an interregnum. The previous Commissioner of Internal Revenue, Mr. Caplin, had resigned, and the new Commissioner of Internal Revnue, Mr. Cohen—both fine men, and I mean that sincerely—had not yet assumed office. So there was in a sense a vacuum. In this vacuum, an Acting Commissioner makes a ruling, largely upon the advise of an unpaid attorney who is brought in to give advice.

So when we try to reach at the issue, we find ourselves grabbing large quantities of anonymous air.

On that point, Mr. Chairman, I would rest.

Senator MCCARTHY. Mr. Chairman, I don't think I can be back this afternoon. I would like to ask one or two questions of the Secretary.

Mr. Secretary, when we considered the Du Pont bill, as I recall, there were two primary considerations. One was if we forced them to dis-

tribute the stock, that the individual stockholders who received it, would be subject to an unreasonable tax. As Senator Williams said, the corporations would largely have escaped any taxation.

The second consideration was this. The Du Pont Co. said, "We can work out this distribution over a 10-year period and not pay any more taxes than we are offering to pay you under the terms of this bill." They said, in effect, "We would much rather have to pay $470 million in taxes, and not have our whole corporate structure fouled up for the next 10 years."

Is that correct?

Secretary DILLON. That is correct.

Senator MCCARTHY. My conclusion at least, was that Congress should act. And should try to negotiate a settlement. We live in a world of corporate feudalism in America.

Senator DOUGLAS. That has been charged.

Senator MCCARTHY. We negotiated settlements with the insurance companies. We worked out a negotiated settlement here in this committee with the insurance companies, in which they made their offers, and we made our counteroffers. We worked out a reasonable settlement.

The same was true in this case.

The $470 million was the guideline which was given to the Treasury.

Senator GORE. No.

Senator MCCARTHY. Well, roughtly it was.

Senator GORE. No, no.

Senator MCCARTHY. Well, two guidelines. One, Treasury was certain it was the intent of the Congress that we wanted the distribution to be worked out in keeping with the court order. That was clear to you. No question about congressional intent on that.

It got a little mixed up in the ruling.

But when you go back and clear the record, this was clear.

So what did Treasury have against that, excepting the question of how much revenue they should get? And you set it roughly at $470 million. Between these two poles, you worked this thing out.

Senator DOUGLAS. At existing prices of the General Motors stock.

Senator MCCARTHY. Yes—at existing prices.

Senator GORE. Where can the Senator find that $470 million?

Senator SMATHERS. I was reading over the speech that I made with respect to the bill on the Senate floor and I said $470 million. The chairman at one time said somewhere between $300 and $470 million.

Secretary DILLON. I mentioned in my statement $470 million was the highest. There were a whole lot of figures mentioned.

Senator GORE. But those figures were based on the selling price of General Motors. The chairman of this committee made it perfectly plain. He made it very specific that if the price of General Motors stock increased, the amount of revenue to the Government would increase. There was no $470 million cutoff in his statement.

Excuse me.

Senator MCCARTHY. I don't know whether it was a cutoff or base or average.

But I am just trying to establish, if I can, the lines which I think Treasury was trying to follow in making their rulings, and trying to work out this compromise.

Secretary DILLON. You are correct.

Senator FULBRIGHT. Would the Senator allow me?

You say the Treasury was trying to work it out. Did the initiative for working this out come from the Treasury or from the Congress?

Secretary DILLON. Initially for the whole bill, it came from the Congress. This was not a Treasury bill. This was a bill which the Treasury and the Justice Department did not object to, but it was not administration legislation.

Senator FULBRIGHT. It came from the Congress. You were simply trying to give your best efforts to working it out in accordance with what you thought was Congress intent?

Secretary DILLON. Yes. During the congressional hearings we took a very active part, because we wanted to be certain that the bill was so drafted that the revenue were adequate, and it was. When we were satisfied, we said we have no objection.

Senator SMATHERS. May I ask one question again?

Did I understand you to say earlier today that these rulings, such as that requested by Christiana, are not unusual requests, and that, as a matter of fact, the Treasury, did you say, the Internal Revenue will make as many as 40,000 of these during the course of a year?

Secretary DILLON. That is correct. And they are all made on the same basis. The 1962 ruling and the 1964 ruling were treated in exactly the same way. There was no unusual secrecy, or anything of that nature about them.

Actually, the contents of the 1962 ruling were circulated at a later date to all 9,000 shareholders of Christiana. The contents were also published in one of the tax services. So there is no secret about these rulings.

They are made by the Internal Revenue Service on the basis of the information that is given to them. When they make these rulings, they require a full exposition of his entire financial position from the taxpayer and so, in accordance with the spirit of the Internal Revenue Code—tax returns are sacrosanct—they don't publish all this information that is made available. They never have.

Senator SMATHERS. You say they are not secret—but, nevertheless, they are published.

Secretary DILLON. They are only published when they have general application to other taxpayers, and in that event, they do not publish the particular ruling. They expurgate it so that it cannot be traced to a particular company or a particular situation. They publish it as a general ruling.

Out of, say 20,000 substantive rulings, there may be 500 a year that are of enough general interest to be made public. They are published.

But they are expurgated, so that you cannot see what company or what individual asked for that particular ruling. They are published as general revenue rulings.

The CHAIRMAN. Further questions?

Senator ANDERSON. I wonder if there could be supplied some information as to why this change of ruling took place. You must have found something in the proceedings to reach the decision that was the legislative intent. Where was it?

Secretary DILLON. I think it is the clear decision that the legislative intent was to leave to the court the final decision on the method

of distribution. The court left that wide open. So, therefore, it was the feeling that once the responsibility which had been taken to produce $470 million had been met, that was all that was necessary. That was the decision that was made by the lawyers. I think it was a correct decision.

Senator ANDERSON. Mr. Chairman, we both know my question has nothing to do with what the court did. The court had ruled in 1961, had it not?

Secretary DILLON. No; 1962.

Senator ANDERSON. Your own Department subsequently said certain things about the intent of Congress.

Secretary DILLON. That is correct. They changed their mind about that.

Senator ANDERSON. They said certain things about the intent of Congress. You say Mr. Knight objected to that at the time.

Secretary DILLON. I didn't say objected. I said he didn't know about them.

Senator ANDERSON. Pardon?

Secretary DILLON. I said he didn't know about that.

Senator ANDERSON. And you said that you were reflecting the congressional hearings, committee reports, congressional debates. What did they find in the hearings, reports, and the debates, that it was the intent of Congress to do a certain thing, and then what did they find that caused them to change it?

If they found a word or a sentence or a phrase somewhere—but this is very nebulous. He changed his mind. Why?

Secretary DILLON. Well, I think Commissioner Cohen can explain that fully, because as Chief Counsel of the Internal Revenue Service, he gave the legal opinion.

Senator ANDERSON. Were you in on it, Commissioner Cohen?

Commissioner COHEN. On the second ruling; yes, sir.

Senator ANDERSON. In November?

Commissioner COHEN. In December of 1960, I was Chief Counsel. Mr. Harding is likewise here, sir.

Senator ANDERSON. I would like to know what they found. If a man changes his mind—he can't just say, "The weather influenced me. I saw something, in the hearings, in the record."

Secretary DILLON. They will be glad to testify.

Senator ANDERSON. Thank you very much.

The CHAIRMAN. The committee will recess until 2:30.

Thank you very much, Mr. Secretary.

Secretary DILLON. Thank you, Mr. Chairman.

(Whereupon, at 1 p.m., the committee recessed, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

Senator BYRD. The committee will come to order. The first witness is Robert H. Knight.

STATEMENT OF ROBERT H. KNIGHT, FORMER GENERAL COUNSEL FOR THE DEPARTMENT OF THE TREASURY

Mr. KNIGHT. Mr. Chairman and members of the Senate Finance Committee, I am delighted to accept your invitation to appear here

today and to tell you what I know about the ruling letter of the Commissioner of Internal Revenue with respect to the Federal taxes applicable to the distribution of General Motors shares by Christiana Securities Co.

I might be useful to you if I recall for you briefly the background of this ruling.

In 1949, the Department of Justice filed a complaint in the Federal District Court in Chicago, seeking, among other things, to divest E. I. du Pont de Nemours & Co. and Christiana Securities Co., and certain individuals, of their respective shares of General Motors Corp., on the ground that such ownership violated section 7 of the Clayton Act. After protracted litigation, the U.S. Supreme Court directed the trial judge to order a divestiture of the General Motors shares by Du Pont over a 10-year period.

Following the Supreme Court decision, but before entry of a final judgment by the trial court in Chicago, representatives of Du Pont were contending that divestiture of about 63 million shares owned by Du Pont and Christiana would cause inequitable hardship because of the harsh effect of Federal income taxes upon such a distribution and, furthermore, would unnaturally depress the value of both General Motors shares and Du Pont shares in the market, again to the detriment of the owners, and perhaps to the economy. Various bills to relieve this alleged hardship were introduced in successive Congresses.

In 1961, while I was serving as General Counsel of the U.S. Treasury, several similar bills were introduced in the Congress and were sponsored by Congressmen Boggs and Mason of the House Ways and Means Committee and Senators John Williams and Frank Carlson of the Senate Finance Committee. The bill which evolved and which eventually passed was designated H.R. 8847, and provided, primarily, that the General Motors shares distributed by Du Pont and Christiana to their shareholders would be treated as a distribution of capital for Federal income tax purposes, rather than a distribution of ordinary income. To recoup some of the income tax revenue thereby lost, section 2 of the bill substantially increased the intercorporate dividend tax payable by Christiana upon its receipt of General Motors shares from Du Pont, of which Christiana was a substantial shareholder.

As General Counsel, I was designated by Secretary Dillon to present the Treasury's position with respect to H.R. 8847 to the Congress, and, in carrying out this duty, I testified at some length before both the House Ways and Means Committee and this committee. The position of the Treasury and, indeed, of the administration, as I attempted to present it, was a neutral one. In other words, the administration felt that it was appropriate for the Congress to determine whether any tax relief should be granted with respect to the divestiture of General Motors shares, and basic form that such relief, if granted, should take.

It was made plain to the committee that, if the bill was narrowed to cover only this particular divestiture, and if the divestiture was completed with 3 years, and certain other technical recommendations were followed, the bill, if passed by the Congress, would not be vetoed. At the same time, it was made clear that neither the Treasury nor the administration recommended passage of the bill.

While the bill was pending in committee and before the Senate and House, representatives of Du Pont called upon me at the Treasury

Department for two ostensible purposes: First, to secure support for the bill, in which, incidentally, they failed, and, secondly, to ask that the Treasury verify to the Congress their estimates as to the amount of Federal income taxes that would be payable under alternative schemes of disposition of the General Motors shares by Du Pont and Christiana. One scheme of disposition purported to be the plan which would be followed if the bill failed of passage, and the other purported to be the plan which would be followed if the bill were passed.

Treasury estimators reviewed the two plans presented, and eventually reached agreement with the Du Pont representatives as to the estimated Federal income taxes payable upon the execution of each of the plans. The Du Pont representatives made no commitments to the Treasury as to what plan they would use to dispose of the stock, whether or not the bill was passed, and the Treasury asked for none. Indeed, the Chicago court had yet to determine what its order for divestiture would be, and it was felt by the Treasury that it would be improper to ask for a commitment as to how the shares would be divested.

In the course of 1961, the bill was passed by the House, and was reported out favorably by the Senate Finance Committee to the Senate. The Senate, however, adjourned in 1961 before bringing the bill to a vote.

Early in 1962, as the bill was being debated on the floor of the Senate, representations were made by Senators supporting passage of the bill as to the estimated amount of revenue that would be raised if the bill were passed. This estimate, amounting to $470 million, was supported by estimates presented to the Senate by representatives of Du Pont and, in the opinion of the Treasury, acquiesced in by representatives of Christiana Securities Co. For example, Mr. Crawford Greenwalt, chairman of the board of Du Pont, wrote a letter to Senator Williams, dated January 9, 1962, setting forth his potential tax liability as a stockholder of Christiana Securities Co., first, under the then existing law, and, secondly, as it would be if H.R. 8847 passed. All of these estimates appeared to be necessarily based on an assumption that Christiana would distribute the General Motors shares held or received by it from Du Pont pro rata to its shareholders, that is of course assuming the court permitted.

It became clear from the record of the debate that the sponsors of the bill—and presumably the Senators they addressed—expected that, if the bill were passed, the Treasury would receive a total of $470 million in Federal income tax revenue as a result of the divestiture of General Motors stock by Du Pont and Christiana.

After the bill was passed and became section 1111 of the Internal Revenue Code, Du Pont and Christiana applied to the Commissioner of Internal Revenue for ruling letters to the effect that shares received by their shareholders would be entitled to the relief provisions of section 1111. It was plain at the time that Du Pont and Christiana applied for rulings that each of them contemplated making other forms of disposition of General Motors shares in addition to pro rata distributions to their shareholders, and that if such other forms of disposition were followed, the Treasury would receive substantially less than the $470 million revenue which the Treasury felt had been promised to the Members of the Senate.

Since I had played a principal role in presenting the Treasury's position to the Congress, the Commissioner of Internal Revenue, Mortimer Caplin, and members of this staff, consulted me with respect to his proposed ruling letters. I advised Commissioner Caplin that, although he had authority to issue ruling letters in the form requested by Du Pont and Christiana, I recommended that they be granted only if the two taxpayers agreed that the ruling letters be based on a plan of disposition which would assure the Treasury of the $470 million in revenue. At that time, at the market value of the shares then prevailing, a pro rata distribution by both Du Pont and Christiana was determined to be the only feasible way of assuring the revenue result contemplated. Du Pont acquiesced in the inclusion of a requirement for such a distribution as a condition to the issuance and continuing validity of the ruling letter issued to it, but Christiana protested on a number of grounds, principally:

(1) That Christiana itself had made no representations to the Senate, whatever representations may have been made by Du Pont;

(2) That there was nothing in the bill itself nor in its legislative history which would support the conclusion that the Senate expected any particular form of distribution of the shares in question by Christiana; and

(3) That the judgment issued by the Chicago court after the passage of the bill expressly permitted Christiana to offer its General Motors shares in redemption of Christiana stock, and, indeed, permitted Christiana to be merged into Du Pont, both of which devices would enable its shareholders to avoid a substantial tax burden.

In my opinion, at the time neither the bill itself, nor the final judgment of the Chicago court, precluded a merger of Christiana into Du Pont or the offering by Christiana of General Motors shares in redemption of its own shares. However, it seemed equally clear to me that Christiana had acquiesced in representations which had led the Senate sponsors of the bill on the floor to state flatly that the Treasury would realize $470 million in revenue.

Accordingly, in 1962, I was of the opinion that the shareholders of Christiana and Du Pont could obtain the benefits of section 1111 of the Internal Revenue Code, even though Christiana were merged into Du Pont, and even though Du Pont—and Christiana, if not merged—offered the General Motors shares in redemption of Du Pont and Christiana stock, a non pro rata distribution. However, under the law, the Commissioner of Internal Revenue has discretion as to whether or not to issue a ruling letter and, additionally, he has discretion to impose appropriate conditions upon the taxpayer which must be met if the ruling letter is to have any validity. The taxpayer is, of course, free to reject the conditions and consequently the ruling letter, and take his chances in relying on his own interpretation of the law.

Under the circumstances I have just outlined, it appeared to me, and I recommended, that the Commissioner exercise his discretion to refuse to grant Christiana a ruling letter unless the letter was conditioned upon Christiana fulfilling what appeared to me to be its commitment to the Senate. Thereafter, the Commissioner, on my recommendation, and in the exercise of his lawful discretion, insisted on imposition of the condition upon Christiana as well as Du Pont. However, the ruling letter provided that, if circumstances changed, Christiana could

request a reconsideration of the matter. This, of course, is a privilege accorded to any taxpayer where circumstances change after the issuance of a ruling letter.

At the end of 1962, I resigned as General Counsel of the Treasury and returned to the private practice of law. On November 2, 1964, Secretary Dillon telephoned me and said that Christiana had applied for a modification of the Commissioner's ruling letter of 1962, and that, because of my past familiarity with the subject, it was felt it would be useful if I would accept appointment as a consultant to the Commissioner with respect to Christiana's request. I consented, and thereafter a number of Government attorneys in the offices of the Assistant Secretary of the Treasury for Tax Policy, the Commissioner of Internal Revenue, and the Chief Counsel of Internal Revenue, were made available to assist me in reviewing the matter and reaching my conclusions. Additionally, I held a hearing at the Bureau of Internal Revenue, at which representatives of Christiana and of the offices of Assistant Secretary Surrey, the Commissioner, and the Chief Counsel, were all present. I concluded my investigation of the matter on November 20, 1964, and submitted my recommendation to the Acting Commissioner of Internal Revenue, Bertrand M. Harding. Essentially, I recommended that the ruling letter to Christiana be modified so as to remove the condition imposed with respect to the third and final distribution of General Motors shares by Christiana, provided that appropriate steps were taken to see that the total revenue to the United States from the distribution of all General Motors shares by Du Pont and Christiana would be not less than $470 million. At the time my recommendation was made, it was estimated by the Treasury that the United States would realize more than $500 million in Federal income tax revenue, even if all the General Motors shares remaining in Christiana's hands were to be exchanged for Christiana shares. Accordingly, I felt that the objective of placing the condition in the Commissioner's 1962 ruling letter had been fulfilled, and that there was no further reason for continuing to impose it. I am told that Acting Commissioner Harding followed my recommendation.

Thereafter, in January 1965, I am told that Christiana made an offer to its shareholders to exchange its shares of General Motors shares for Christiana stock. As I understand it, about 10 percent of Christiana's shares, mostly owned by charitable organizations, accepted this offer as to about one-half of the shares being offered, and the balance of the shares were either sold or distributed pro rata to Christiana's shareholders. I am also told that the total estimated revenue to be realized by the United States from the entire divestiture by Du Pont and Christiana of General Motors shares exceeds $600 million.

I will be happy to try to answer any questions you may have.

The CHAIRMAN. Thank you very much.

Senator Smathers?

Senator SMATHERS. Mr. Knight, first I would like to ask you a question which I think ought to be asked. Does the law firm with which you are associated represent, directly or indirectly, the Du Pont interests?

Mr. KNIGHT. Not so far as I am aware. I submitted a letter to Secretary Dillon—I believe he referred to it in his testimony—which

stated the fact, which is that my law firm had not within the recollection of the people I was talking to, certainly did not represent either Du Pont or Christiana or the shareholders of either as such, and that it did not anticipate representing them on any matter whatsoever.

Senator SMATHERS. The name of your law firm is what?

Mr. KNIGHT. Sherman & Sterling.

Senator ANDERSON. Sherman & Sterling.

Senator SMATHERS. And your law firm does not today represent any of the Du Pont corporations or any of the Du Ponts individually?

Mr. KNIGHT. No.

Senator SMATHERS. Do you know whether or not the law firm represents any individuals who are stockholders, who may or may not have been benefited by this ruling that has been issued by the Treasury Department?

Mr. KNIGHT. Well, I know that we do not represent any shareholders in their capacity as shareholders. I do not know whether any clients of the firm happen to have Du Pont or Christiana stock. I assume some of them do. But I do not know that to be a fact, nor has anyone presented this question to us.

In other words, I am unaware and my partner, so far as I know, are unaware of clients having an interest in this matter.

Senator SMATHERS. I understood you to say in your statement that the reason that you made your first ruling in essence was because you felt there was an implied agreement with the Members of Congress that there would be $470 million raised; is that correct?

Mr. KNIGHT. That is correct.

This question was originally presented to me by the Internal Revenue Service because apparently they were debating the question as to what kind of ruling should be made, and whether this question of representation should be taken account of. That is how it came to me.

Looking through all the statements and the record, and the activities, so far as we were aware of them, of the Du Pont and Christiana representatives, I came to the conclusion that both companies had made certainly a moral commitment to the Senate that the bill, if passed, would produce $470 million in revenue, absent other circumstances that would change the situation. And obviously, if the stock market fell, as Senator Douglas pointed out, it would be less.

But it seemed to me that this figure had been stated with sufficient authority, particularly in the light of Mr. Greenwalt's letter to Senator Williams, that we should not allow the Commissioner to use his discretion to give a ruling letter that would aid them in evading that commitment.

That is the reason for that condition, and the sole reason.

Senator SMATHERS. While you were General Counsel for the Treasury how often was your advice sought by the Commissioner of Internal Revenue with respect to these advance rulings?

Mr. KNIGHT. Well, I do not oversee them. They ask my advice on it, and my view. The decision was made by the Commissioner, not by me.

But as you know, to answer your question——

Senator SMATHERS. Well, the decision was made by the Commissioner, it is true——

Mr. KNIGHT. But it was on my recommendation.

Senator SMATHERS. It seems like everybody figures that you are the fellow that arrived at this conclusion.

Mr. KNIGHT. That is correct.

Senator SMATHERS. I am just trying to figure out how often this happens, and how it happened in this instance that Mr. Knight ended up being the man who arrived at the solution.

Mr. KNIGHT. Well, to answer your question directly, as you know, the Chief Counsel of Internal Revenue is the Assistant General Counsel of the Treasury, and accordingly he reported to me when I was General Counsel. I have been consulted on a number of occasions—I have no idea how many—by the Chief Counsel of Internal Revenue in connection with ruling letters. More often I would guess that those questions are put to Assistant Secretary Surrey or his staff in the Treasury, because he is the tax expert. They could come to me for a variety of reasons, all involving questions of judgment, but I cannot say how many.

It certainly is not an unusual practice. Unquestionably they probably thought more of my recommendation in this case because of my familiarity with the bill and the subject.

Senator SMATHERS. Did you consult with Assistant Secretary Surrey with respect to this particular recommendation which you made?

Mr. KNIGHT. I did, but I am very clear that the recommendation was mine. I consulted with him a number of times, both in 1962 and 1964, and with his staff. In fact, he made available two members of his staff to assist me on this matter.

Senator SMATHERS. Are you aware as to whether or not he agreed or disagreed with your conclusions as to the ruling which was made in 1962, and again the ruling which was made in 1964?

Mr. KNIGHT. I believe that he concurred in my view in 1962, although I am not clear that he ever said so. He certainly gave me the benefit of his views and advice in arriving at a decision. I just cannot remember whether he expressly concurred or not, I had the feeling he concurred in my view in 1962. I debated this question with him and discussed it with him at great length in 1964, to help me arrive at a conclusion. But he has never expressed his view to me as to whether he concurred or not in 1964.

Senator SMATHERS. I notice you stated in your statement that you did consult with Assistant Secretary Surrey.

Mr. KNIGHT. No. I said I consulted with members of his staff—the Tax Legislative Counsel and an assistant of his helped me in this matter.

Senator SMATHERS. All right. One more question.

I am trying to understand your thinking and your reasoning with respect to these two rulings.

As I gather from what you say, in the first instance you believed there had been some commitment with respect to this divestiture to raise $470 million, even though the court ruled that the divestiture could be on an exchange or pro rata basis.

Mr. KNIGHT. Yes.

Senator SMATHERS. And you nevertheless in effect overruled the decision of the court yourself on the belief that the Treasury needed to collect $470 million in taxes?

Mr. KNIGHT. No. I do not believe that I overruled the court itself. I felt that because of the representations of the two companies, the

two taxpayers, that this amount of revenue would be produced if the bill were passed, that the Commissioner ought not to help them with a revenue letter unless they disposed of the stock in a way which would enable them to reach that amount of revenue.

In other words, a ruling letter is a discretionary matter. There are a number of cases where the law may be clear, but the Commissioner for one reason or another, matters of policy or one thing or another, will withhold issuance of a letter. This does not mean the taxpayer is deprived of his rights under the law. It just means that he is not aided in this with a ruling letter; he is not reassured by a ruling letter.

Senator SMATHERS. When it became apparent that because of the increase in the stock price, you were going to get more than $470 million by virtue of this divestiture, and you were subsequently called back to once again advise Treasury on a proposed change in the original ruling, you then concluded that you had better advise at this point to accede to the order of the court and let Christiana divest either by an exchange or by pro rata?

Mr. KNIGHT. Yes.

It was clear—well, the question that I considered seemed to be the central question—that was the one posed by Senator Douglas a while ago, which is when these representations were made that $470 million in revenue would be raised if the bill were passed, this also implied that if the stock market went up that this was a commitment to raise that much more—or was it merely a commitment to raise $470 million at those current prices. And this is a very difficult question. It was difficult for me.

As I say, I discussed it with everyone in the Service and the Office of Assistant Secretary for Tax Policy that would discuss the matter with me.

I came to the conclusion that there was nothing in the record to show that anyone committed Du Pont or Christiana to follow any plan of disposition of its stock. All of the commitments that we found, let me say, were made in the 1962 debate—it was very clear that the Senate Finance Committee had not taken any form of commitment from any representative of Du Pont or Christiana. But in the 1962 debates, this figure of $470 million was stated very flatly as the amount that would be raised if the bill were passed.

Senator DOUGLAS. At existing prices?

Mr. KNIGHT. That is right, Senator.

Now, the question in my mind was whether the Senate was sufficiently informed during these debates as to how the $470 million figure was arrived at to imply more than a commitment to raise $470 million in revenue.

I came to the conclusion that it was not.

Senator SMATHERS. Did you arrive at the $470 million figure by virtue of the testimony of Mr. Greenewalt, who I believe testified before our committee that he thought there would be about that much money as a result of the divestiture?

Mr. KNIGHT. Well, he indicated support for that figure again in his letter of January 9, 1962, to Senator Williams.

Senator SMATHERS. So, as I gather it, what you are saying is that the reason you recommended the ruling which you did was merely to live up to what you conceived of as a commitment to the Congress to raise $470 million out of this divestiture.

Mr. KNIGHT. That is right. Of course, this commitment may or may not have led the Senators to vote for the bill.

Senator DOUGLAS. Would the Senator yield a moment?

Senator SMATHERS. Let me just finish this other part, and then I will yield.

Then thereafter in 1964, after it became apparent that more than $470 million would be raised, it was then your conclusion that the Internal Revenue would be correct in modifying that additional ruling, to permit an exchange in accordance with the direction of the Court?

Mr. KNIGHT. Absolutely correct.

Senator SMATHERS. And that is the sole basis as to why you changed your mind about it?

Mr. KNIGHT. I felt the objective of putting the condition in had been fulfilled so far as the Treasury was concerned, and there was no policy to be aided by requiring them to pay more than that amount.

Senator SMATHERS. I have no further questions.

The CHAIRMAN. Senator Carlson?

Senator CARLSON. Mr. Chairman—Mr. Knight, may I inquire when you entered your service with the Bureau of Internal Revenue? When did you go into the Service?

Mr. KNIGHT. I was General Counsel of the Treasury, Senator, and I started at the beginning of the Kennedy administration.

Senator CARLSON. 1961?

Mr. KNIGHT. Yes, sir.

Senator CARLSON. Previous to that time were you a private tax attorney, or with a law firm?

Mr. KNIGHT. No. Prior to that time I was Deputy Assistant Secretary of Defense for International Security Affairs—the last 2 years of the Eisenhower administration.

And before that, I was with my present firm.

Senator CARLSON. You did not in any way volunteer or call anyone in the Department to suggest that you might be helpful in arriving at a solution to this situation after you left the Service?

Mr. KNIGHT. On the contrary, Senator.

Senator CARLSON. The Secretary of the Treasury did call you and asked you?

Mr. KNIGHT. He called me and asked me if I would do it.

Senator CARLSON. And he did so, I assume, because of your many years of experience in dealing, not only with this, but with tax matters generally?

Mr. KNIGHT. Senator, I am not a tax specialist. I am a corporation lawyer. I was, however, thoroughly familiar with this particular problem, and I gather that is why the Secretary asked me to come down and help out.

Senator CARLSON. In other words, it was not only quite prominent in the courts of this Nation, beginning even as early as 1949, and on through all those years, which we have heard discussions before this committee—but in 1961, when we began considering legislation, you were the General Counsel?

Mr. KNIGHT. That is correct.

Senator CARLSON. And, therefore, you should have had thorough knowledge of all the proceedings taking place?

Mr. KNIGHT. Yes, sir.

Senator CARLSON. That is all, Mr. Chairman.

The CHAIRMAN. Senator Anderson?

Senator ANDERSON. Mr. Knight, in your statement you say:

Early in 1962 representations were made by Senators supporting passage of the bill as to the estimated amount of revenue that would be raised if the bill were passed. This estimated amount of $470 million—

And so forth.

Mr. KNIGHT. Yes, sir.

Senator ANDERSON. It is your testimony that Members of the Senate testified to $470 million?

Mr. KNIGHT. Yes, sir.

Senator ANDERSON. Later on you say you recommended it be based on a plan of disposition which would assure the Treasury of the $470 million revenue.

Now, Mr. Knight, I have here your testimony before this committee.

Mr. KNIGHT. Yes, sir.

Senator ANDERSON. Starting at page 6, running to page 45.

Would you be willing to take this and take it home with you, and study it, and see if you can find anywhere in it one word, by you, dealing with the sum of $470 million?

Mr. KNIGHT. Yes, sir.

Senator ANDERSON. Do you believe you so testified?

Mr. KNIGHT. No, I didn't say I testified, Senator.

Senator ANDERSON. All right. I am coming to that, too.

Mr. KNIGHT. Let me be clear on this.

I am very clear that representatives of neither Du Pont nor Christiana made any commitment to the Treasury whatsoever. I am very clear that we told them we would not take any commitment. And I so testified before this committee and the House Ways and Means Committee.

Senator ANDERSON. Where did you get the $470 million figure?

Mr. KNIGHT. From statements made on the floor of the Senate during the debate in 1962.

Senator ANDERSON. I refer you to page 21026 of what I am sure you recognize as the Congressional Record.

Mr. KNIGHT. Yes, sir.

Senator ANDERSON. The able Chairman of this committee was presenting the matter, and he used a figure of $417 million. But I find nowhere where he used a figure of $470 million.

Where did you find it? In his testimony?

Mr. KNIGHT. I have a list of various people who mentioned this figure.

Senator ANDERSON. $470 million?

Mr. KNIGHT. Yes, sir.

Senator ANDERSON. Would you give us the list?

Mr. KNIGHT. Some said $450 million. Mr. Williams of Delaware so stated on January 15, 1962:

(The following was subsequently received for the record:)

EXCERPTS FROM THE LEGISLATIVE HISTORY OF PUBLIC LAW 87-403

(NOTE.—In order to avoid confusion with respect to revenue estimates, it must be remembered that between the time of the hearings and the enactment of the bill, the fair market value of GM shares rose from $45 per share to $55 per share raising the revenue estimate from $350 million to $470 million.)

HEARINGS, COMMITTEE ON WAYS AND MEANS, HOUSE OF REPRESENTATIVES, 87TH CONGRESS, 1ST SESSION AUGUST 24, 1961

Page 24

"Mr. KNIGHT. * * *

"Thus, according to the representations made by the Du Pont representatives to the Treasury Department, the effect of the Mason bill would be to change the pattern of distribution of GM stock, * * *. Despite these considerations, however, it must be conceded that if the Du Pont assumptions may be taken as factual, the revenue payable to the United States as a practical matter will be approximately the same whichever tax law is made applicable to the divestiture. If the committee is satisfied that this practical result will in fact obtain, this would remove a principal concern which the Secretary of the Treasury had at the time our report was rendered to this committee."

* * * * * * *

Pages 67–68, 70

"Mr. GREENEWALT. * * *

"It is difficult to calculate precisely the amount of tax the Government would realize under this approach since we have insufficient information as to the cost basis of our stockholders. Our best estimate is that the total for both individual and corporate stockholders would be in the neighborhood of $350 million.

* * * * * * *

"Under present law, then, tax revenues under the combination of methods of divestiture which now appears most favorable would total about $330 million. A distribution under H.R. 8100 would yield tax revenues of about $350 million.

* * * * * * *

"The remaining individual shareholders, who acquired their Du Pont stock for less than $60, together with corporate shareholders, would become liable for about $350 million in taxes.

"I might add parenthetically that these figures assume a redistribution to its stockholders of General Motors shares received by Christiana Securities Co."

* * * * * * *

HEARINGS, COMMITTEE ON FINANCE, U.S. SENATE, 87TH CONGRESS, 1ST SESSION, SEPTEMBER 13, 1961

Page 79

"Mr. GREENEWALT. * * *

"Under present law, then, tax revenues under the combination of methods of divestiture which now appears most favorable would total about $330 million. A distribution under H.R. 8847 would yield tax revenues of about $350 million."

* * * * * * *

Page 81–82

"Mr. GREENEWALT. * * *

"This figure ($350 million) assumes a distribution of the stock received by Christiana Co.

"Senator KERR. That alone involves what amount of the $350 million?

"Mr. GREENEWALT. I have the figure here, sir. I have it on this basis. Under the Boggs bill, in the original distribtution of General Motors stock from Du Pont to Christiana, Christiana would be liable for $65 million in taxes. On the subsequent distribution by Christiana to its stockholders, the individual shareholders as well as we can estimate would become liable for $120 million additional taxes.

"Senator KERR. Is that a part of the $350 million?

"Mr. GREENEWALT. That is a part of the $350 million; yes, sir.

"Senator KERR. Could you tell us on the basis of your assumption that Christiana would pass that stock on to its shareholders?

"Mr. GREENEWALT. I am willing to discuss it.

"Senator KERR. I am sure that there is interest in it.

"Mr. GREENEWALT. Well, my friends from the Department of Justice over here are really in a better position to discuss it than I am. All I can say is this, that in the last hearing in Chicago the Justice Department appeared to be violently opposed to Christiana retaining the General Motors stock allocable to it on distribution by Du Pont. As a matter of fact, they went so far, as I have said in my statement, to suggest that these shares of General Motors stock

allocable to Christiana be held by a trustee and sold for the account of Christiana and the proceeds passed on to Christiana.

"Senator KERR. In that even, would not that liability be in the neighborhood of $120 million or more or less?

"Mr. GREENEWALT. It would be slightly more. * * *

* * * * * * *

"In the event that Christiana passed through the General Motors stock to its shareholders the tax paid by the individual shareholders, over and above the $65 million that Christiana will pay, is about $120 million—$120 million to $130 million. If, on the other hand Christiana was required to sell the stock, the additional tax capital gains tax on the sale would be in the neighborhood of $160 million or $165 million.

* * * * * * *

"Then, depending upon what the court in Chicago finally orders, Christiana might have to sell the stock or redistribute it to its stockholders. I already have indicated the tax situation in either event. We have assumed that the pass through would be a preferable thing. * * *

"As a matter of commonsense and equity it seems to me that the pass through if, indeed, Christiana is required to dispose of its General Motors stock, is the sensible course of action. I have, therefore, assumed a redistribution by Christiana in my calculations."

* * * * * * *

Page 83

Mr. GREENEWALT. To pass the General Motors stock through to the individual Christiana shareholders would result in something in the order of $130 million in taxes paid by the shareholders themselves. The sale by Christiana would result in something like $160 million in taxes. And then you take that $30 million difference and set it alongside a very large number of $350 million total, in one case and $330 million in another, there is really very little difference.

"Senator KERR. I understand.

"Mr. GREENEWALT. On a percentage basis.

"Senator KERR. The only thing I was trying to do Mr. Greenewalt was to have the record show, No. 1, the basis for the assumption and, therefore, the validity of the assumption."

Page 85

"Mr. GREENEWALT. * * *.

"Let me summarize briefly: Under present law, revenue realized would be about $330 million; revenue under H.R. 8847 would amount to about $350 million. * * *"

* * * * * * *

Page 95-96

"Mr. GREENEWALT. * * *.

"As I told you, all of the estimates have been on the presumption that the results in Chicago would be for Christiana to pass through the stock. If that were not so, then the total revenues under the Boggs bill would be $243 million; in other words, of course, there would be the tax on Christiana that it would have under the Boggs bill on the receipt of the shares, but there would be nothing further. I have rationalized that, sir, only on this basis, that if that should be the outcome it will be because no one has been able to persuade either the judge in Chicago or the Supreme Court, if it goes that far, what Christiana is guilty of anything that warrants punishment. * * *"

CONGRESSIONAL RECORD

September 19, 1961 (pp. 19115-19119)

"Mr. MILLS. * * *.

"* * * the stockholders will over this period of 3 years, within which the divestiture will have to occur, will pay a capital gains on the stock received in the amount of approximately $350 million.

* * * * * * *

"Mr. BYRNES. * * *.
"* * * tax revenues from divestiture if H.R. 8847 is enacted would amount to $350 million * * *.

* * * * * * *

"Mr. KNOX. * * *.
"In helping these people we will not cause the Treasury to suffer any revenue loss. The Treasury would take in about $350 million under the bill as against about $330 million under a possible three-pronged flexible program of divestiture. * * *

* * * * * * *

"Mr. BAKER. * * *.
"The Treasury will receive approximately $350 million in revenue as the result of this legislation. * * *"

* * * * * * *

September 28, 1961 (pp. 19702–19701)
"Mr. BYRD. * * *.
"* * * if the court orders Christiana to distribute its stock to its shareholders, the revenue will be increased by $136 million * * *.

* * * * * * *

"Mr. WILLIAMS of Delaware. * * *.
"As defined in the bill it would bring $350 million revenue.

* * * * * * *

"The revenue estimate which was supplied is that, if enacted, this bill would bring in about $350 million. Broken down, it amounts to $64 million from the Christiana Corp.—which, by the way, is $61 or $62 million over and above what it would pay under existing law: $136 million which would be paid by the Christiana stockholders if distributed under a court order; and $150 million from the Du Pont stockholders as a result of the capital gains tax which will be levied against the individual stockholders on distribution. That is a total of $350 million.

* * * * * * *

"Therefore there is no quarrel with the fact that this bill would provide $350 million of revenue.

* * * * * * *

"Mr. GORE. * * *.
"With respect to the bill which the Senator from Delaware supports, we find the statement:
"'A distribution under H.R. 8847 would yield tax revenues of about $350 million.'

* * * * * * *

"Mr. DOUGLAS. * * *.
"If Christiana distributes its portion of General Motors stock to its stockholders, the stockholders will pay capital gains tax on the difference between the original cost and the present value, or will pay roughly 25 percent on a capital gain of $46.50, or, roughly, $11.50 a share. (These figures clearly envision a pro rata distribution.)"

* * * * * * *

January 15, 1962 (pp. 159–180)
"Mr. BYRD. * * *.
"'* * * On the other hand, if the court orders Christiana to distribute its stock to its shareholders, the revenue will be increased by $136 million, so that the total will be $369 million. * * *.'

* * * * * * *

"Mr. BYRD. * * *.
"If the bill in the form the Senate Finance Committee recommends is passed, it will bring into the Treasury $450 million of new taxes.

* * * * * * *

"Mr. KERR. * * *.
"The fact is, and the opinion of the Senator from Oklahoma is, that if the bill is enacted, the Federal Government will receive in the neighborhood of $450 million of additional taxes in 3 years; * * *.

* * * * * * *

"Mr. KERR. There is no advantage in the passthrough.

"Mr. DOUGAS. There certainly is.

"Mr. KERR. Not a bit, because if the Department of Justice fails in its efforts to secure an order from the court requiring the sale by Christiana of its General Motors stock, under the bill that stock would be passed through to the Christiana stockholders; whereupon they would have to pay the same identical capital gains tax that Christiana would have to pay if the court ordered Christiana to sell the stock, which is what the Department of Justice is seeking.

* * * * * * *

"Mr. KERR. * * * If the court does not order a passthrough, or permits it, but orders the sale by Christiana of this stock, the same tax will be paid by Christiana that would be paid under the circumstances referred to by the Senator from Illinois.

* * * * * * *

"Mr. WILLIAMS of Delaware. * * *.

"The estimated revenue under the bill as reported last September was $350 million. That was due to the fact that there was a $45 price on General Motors stock. Since the bill was reported the price of General Motors stock has advanced from $45 to $55 a share, and for that reason we are using an estimate of an additional $100 million revenue that would accrue. * * *

* * * * * * *

"Mr. WILLIAMS of Delaware. * * * I said that the Senator from Iowa had not taken into consideration that under the bill if the distribution is made, there would be an additional $150 million collected from the respective stockholders of Christiana.

* * * * * * *

"Mr. WILLIAMS of Delaware. * * *.

"The difference in the revenue under the terms of the bill and the bill which the Senator from Illinois and I opposed at the last Congress is that that bill would have provided only about $60 million revenue whereas this bill would provide about $470 million."

* * * * * * *

January 17, 1962 (p. 513)

"Mr. MCCARTHY. * * *.

"* * * It is estimated that the Treasury would collect approximately $450 million of revenue over a period of 3 years.

* * * * * * *

"* * * If the bill is not enacted, Du Pont will be moved to resort to certain procedures and practices which may not be sound. They might have the effect of distorting the operations of the two corporations and of distorting the investment portfolios or holdings of many persons and corporations, and of affecting some institutional purchasers who are large holders of General Motors stock."

* * * * * * *

January 18, 1962 (pp. 389–406)

"Mr. GORE. Continuing to read from Mr. Greenewalt's testimony:

"'A distribution under H.R. 8847 would yield tax revenues of about $350 million.'

"Who would pay the taxes under H.R. 8847?

"Mr. KEFAUVER. I know the Senator has discussed this point, but I will appreciate it if he would outline it again.

"Mr. GORE. H.R. 8847 contemplates a passthrough and provides the guidelines and the tax consequences of a passthrough, under which the taxes would be paid not by the Du Pont Co. but by the stockholders, and most of it by the individual stockholders of Du Pont and Christiana.

* * * * * * *

Mr. SMATHERS. * * *

"The most logical way to accomplish the divestiture would be to distribute the shares of General Motors common stock which the Du Pont Co. owns on a pro rata basis to Du Pont's more than 210,000 common stockholders. * * *

* * * * * * *

"The Treasury at the same time will receive substantial revenue from distribution of these General Motors shares to the Du Pont stockholders. On the

basis of current market value of about $55 per share for General Motors, fewer than one-third of the Du Pont stockholders will be subject to taxes, approximating $470 million at the time of distribution—$470 million will go into the Treasury of the United States.

* * * * * * *

"There has been much discussion with respect to the Christiana Securities corporation, the largest corporate shareholder of Du Pont owning about one-third of the outstanding stock. This company is comprised of some 7,000 stockholders. If the pro rata distribution is made by the Du Pont Co., Christiana will receive about 20 million shares of General Motors stock. Some 1,800 stockholders of this company, many of them members of the Du Pont family and others with substantial long-term holdings will be subject to a greater tax than would be paid by them if the divestiture is carried out under existing law.

"If the court directs Christiana to distribute some or all of this stock to its individual shareholders, they would be treated in the same manner as any individual investor in Du Pont. * * *"

* * * * * * *

January 23, 1962 (pp. 601-628)

"Mr. BENNETT. * * *

"Mr. Greenewalt advised the committee that if H.R. 8847 is not enacted, the Du Pont Co. will use other methods than a pro rata distribution. * * *

"Instead, I repeat, we have a question of simple justice. I believe the fairest method of divestiture would be a pro rata distribution to Du Pont stockholders. * * *

* * * * * * *

"But whether Christiana distributes the stock or sells it, the revenue to the Treasury will be about the same.

* * * * * * *

"Mr. KERR. If they passed through to the individual stockholder, the stockholders would have to pay a capital gains tax, would they not?

"Mr. DOUGLAS. Under the bill they would pay a modified tax.

"Mr. KERR. They would pay a capital gains tax in the same identical amount.

"Mr. DOUGLAS. No; not in the same identical amount.

"Mr. KERR. In the same identical amount that Christiana would pay if Christiana should sell under a court order.

* * * * * * *

"Mr. KERR. * * *

"Madam President, I repeat what I said the other day—namely, that under the provisions of the bill the Treasury Department will receive approximately $430 million in taxes within 3 years. * * *

* * * * * * *

"Mr. WILLIAMS. * * *

"Under this bill the Government would collect $470 million in taxes. * * *

* * * * * * *

"Mr. WILLIAMS of Delaware. * * *

"I incorporate Mr. Greenewalt's letter at this point in the Record.

"'E. I. DU PONT DE NEMOURS & Co.,
"'*Wilmington, Del., January 9, 1962.*

"'Hon. JOHN J. WILLIAMS,
"'*U.S. Senate, Washington, D.C.*

"'DEAR SENATOR WILLIAMS: In reviewing the debate in the Senate last fall on H.R. 8847 I find that Senator Gore made a statement which is not based upon the facts of the case. For this reason I feel compelled to present the situation as it actually exists. Senator Gore said, "I believe that the pressure for the passage of this bill does not come from taxpayers in the 20-percent bracket, or the zero bracket retired workers, widows, or orphans, unless they have been misled, but comes from the corporation officials and the high tax bracket stockholders."

"'I think I can best set the record straight by outlining my own tax position as a stockholder of Chrisitiana Securities Co., first, under present law; and second, as it would be under H.R. 8847. I assume that I qualify as one of Senator Gore's "corporate officials and high tax bracket stockholders," and, furthermore, my own

position does not differ substantially from the great majority of Christiana stock holders in high tax brackets.

" 'The figures which follow assume a market value of $55 per share of General Motors as the time of distribution.

" 'Under the Supreme Court decision and present tax laws, tax revenues would arise solely from the sale by the Du Pont Co. of some 40 million shares of General Motors stock over a 10-year period. Since those taxes would be paid by the Du Pont Co., their impact would fall uniformily on every Du Pont stockholder, whether he be rich or poor.

" 'This tax would amount to about $12 per share of either Du Pont or Christiana common stock.

" 'Under H.R. 8847 the distribution of General Motors stock is held to be a return of capital, and the stockholder pays an immediate capital gains tax to the extent that his cost of Christiana or Du Pont is less than the market value of the General Motors stock received. In the case of Christiana there are two additional taxes. There is the intercorporate dividend tax which is levied on the basis of the market value of the General Motors stock at the time Christiana receives it. Since Christiana has no cash with which to pay this intercorporate tax, I assume that it would sell a number of shares of General Motors stock sufficient to produce the necessary funds, which of course would involve a capital gains tax to Christiana on that sale. Upon a distribution by Christiana of the remaining shares (since my cost basis for Christiana is essentially zero), I would pay capital gains tax on the full market value of the General Motors stock received.

" 'The sum of these direct and indirect taxes is about $25 for each Christiana share I hold, whereas under present law my tax would be only $12 per Christiana share.

" 'It is clear then that my personal tax bill would be more than twice as great under H.R. 8847 than it would be if the divestiture were carried out under present tax laws. As the Du Pont Co. proxy statement shows, I am the direct and beneficial owner of roughly 55,000 shares of Christiana common stock; hence my tax bill payable in 3 years under H.R. 8847 would be about $1,400,000 as compared with about $650,000 over a 10-year period under present law.

" 'A numerical majority of the Du Pont Co.'s stockholders have acquired their stock since 1950 and during the intervening years the price of Du Pont common has been in excess of the likely market value of the General Motors stock to be distributed. Hence these stockholders, which include some 50,000 employees, would pay no tax under H.R. 8847 at the time of the distribution of the General Motors stock. This compares with the $12 per Du Pont share payable on their behalf under present law.

" 'These figures should make it abundantly clear that H.R. 8847 brings substantial benefits to the small stockholder and to those who have acquired their stock recently. Inasmuch as the total tax revenues collected by the Government are about the same under present law as they would be under H.R. 8847, it is equally clear that H.R. 8847 in fact shifts the tax burden to those Senator Gore characterizes as "corporate officials and high tax bracket stockholders."

" 'In case you should be interested in further detail I attach a sheet showing exactly how these figures were derived.

" 'Sincerely,

" 'C. H. GREENEWALT, *President*.

" 'TAX CONSEQUENCES TO CRAWFORD H. GREENEWALT AS A COMMON STOCK HOLDER IN CHRISTIANA COMMON STOCK HELD BY CRAWFORD H. GREENEWALT (VALUE IN 1915, 30 CENTS PER SHARE)

" 'Assumption: $55 market value per share of General Motors common at time of distribution; 1 share of Du Pont per share of Christiana common 1.4 shares of General Motors common to be distributed per share of either Du Pont or Christiana common; Du Pont sells 40 million shares General Motors over 10-year period under present law.

" 'Tax under present law: Capital gains tax paid by Du Pont on sale of 40 million shares General Motors—per Du Pont (or Christiana) share (40/65×1.40 ($55—$2.09) ×0.25) $11.76.

" 'Tax under H.R. 8847 per Christiana common share:

" '1. Christiana pays intercorporate dividend tax—(1.4×$55×0.15×0.52) $0.01.

"'2. Christiana sells 0.14 shares of General Motors per Christiana share to raise the above tax and pays capital gains tax on this transaction—(55—$10.03) (×0.14×0.25) $1.58.

"'3. Christiana distributes 1.26 shares General Motors stock (1.40—0.14) per Christiana common share. C. H. Greenewalt pays capital gains tax on essentially full market value ($55×1.26×0.25) $17.33.

"'The total of these taxes is per share held by C. H. Greenewalt, $24.92. (These figures clearly assume pro rata distributions).'"

* * * * * * *

Senator ANDERSON. I have his testimony.

Mr. KNIGHT. My only reference is a span of pages—159 to 180.

Senator ANDERSON. What kind of pages?

Mr. KNIGHT. A span. I say the only reference I have in this particular piece of paper I have with me does not give the specific page—

Senator ANDERSON. I will be glad to give you one. Page 21039.

Mr. WILLIAMS of Delaware. With the revenue estimated which was supplied, if enacted, this bill would bring in about $350 million.

Is $350 million the same as $470 million?

Mr. KNIGHT. No, sir.

Senator Williams said:

The difference in the revenue under the terms of the bill and and the bill which the Senator from Illinois and I opposed the last Congress is that that bill would have provided only about $60 million revenue whereas this bill would provide about $470 million.

I don't have the page reference. But the difference between the $350 million and $470 million figure occurred because the stock market went up. Everyone was using the $45 per share basis for estimating, and then they switched as the debate moved into January to the $470 million figure, which was supported by the stock market value of $55 per share, as I recall.

Senator ANDERSON. I thought the stock was going to go down if all this was put on the market.

Mr. KNIGHT. Fortunately for their shareholders, it did not.

Senator ANDERSON. Mr. Gore of Tennessee was asking some questions. This is on page 21040. He said:

The bill as described is one for relief of Du Pont stockholders. Yet we learn from the language of Mr. Greenewalt himself that the Du Pont Co. under present law would pay only $330 million in taxes,

WHEREAS in the very next sentence—

a distribution of H.R. 8847 would yield $350 million.

I say that because you say in your statement that is based on the testimony of the Senators. Didn't they testify to a lower figure than that?

Mr. KNIGHT. There were a number of figures testified to, Senator. Those figures which the sponsors and supporters of the bill appeared to have agreed on just before the bill was passed appeared to be $470 million.

Senator ANDERSON. Well, you are going to file with the committee where those references are?

Mr. KNIGHT. I would be glad to, sir.

Senator ANDERSON. You say on page 7—

It is equally clear to me that Christiana had acquiesced in representations which had led the Senate sponsors of the bill on the floor to state flatly that the Treasury would realize $470 million in revenue.

Now, did Senator Kerr say that?

Mr. KNIGHT. Senator Kerr used the figure of $430 million at one point.

Senator ANDERSON. Why didn't you use that one, then?

Mr. KNIGHT. Senator Williams was the sponsor of the bill, and also the person to whom Mr. Greenewalt addressed his letter of January 9, and the figure of $470 million appeared to be the one that was used most authoritatively.

Senator ANDERSON. Was his letter used on the floor?

Mr. KNIGHT. Yes. I believe Senator Williams incorporated Mr. Greenewalt's letter in the record during the debate.

Senator SMATHERS. Would the Senator yield right there?

In order to help clear the record—I notice in my remarks on January 18, 1962, with respect to this same bill, I stated:

The Treasury at the same time will receive substantial revenue from distribution of General Motors stock to the Du Pont stockholders. On the basis of current market value of $55 per share for General Motors—the Du Pont stockholders will be subject to taxes, approximating $470 million at the time of the distribution. So $470 million will go into the Treasury of the United States.

Now, to be perfectly frank, I don't know where I got that figure.

Senator ANDERSON. What I am trying to point out is——

Senator SMATHERS. I think I got it from some letter that Senator Williams had, or from the testimony of Mr. Greenewalt.

Mr. KNIGHT. That is correct. I believe that is where those figures came from.

Senator ANDERSON. The point I wish to make is that the original estimate was $330 million to $350 million.

Mr. KNIGHT. That was based on $45 per share.

Senator ANDERSON. Then the stock market goes up to $55 and it becomes $470 million. Then the stock market moves up to $100 and it becomes some $600 million.

Why doesn't it make a change it goes above that?

Mr. KNIGHT. Because of this, Senator. The Senate was told that this bill would raise $470 million, by Senator Williams, Senator Smathers, and others and the bill was passed thereafter. Now, we could not find support in the record for the proposition that Christiana or Du Pont committed themselves as to how they would dispose of the stock, or that commitment as to how they would dispose of it was stated to the Senate. And, therefore, we felt that as far as one could go in saying they committed themselves was a figure rather than a form of disposition. And so, therefore, in 1964, as a matter of judgment, it just seemed that the commitment had secured the result contemplated, and that there was not a basis for applying your logic—that is to say, with the stock market going up there should be more taxes. We just didn't think there was a basis for extending by logic the commitment that far.

Senator ANDERSON. Now, in the taxes on automobiles, you have an excise tax on automobiles. Do you say if they sell 7 million cars in place of 6 million cars, you recommend a reduction of the automobile tax one-seventh or one-sixth? You don't change the rates because of a prosperous year, do you?

Mr. KNIGHT. No.

Senator ANDERSON. Why should we do it in this case?

Mr. KNIGHT. Because in reaching—giving effect to a commitment——

Senator ANDERSON. What commitment?

Mr. KNIGHT (continuing). We felt that the representatives of the two companies, attempting to secure passage of this bill, had gone far enough to have made a moral commitment to the Senate as to the amount of revenue to be realized.

Senator ANDERSON. What commitment did they make?

Mr. KNIGHT. We felt that in the light of the fact that the law did not require any particular form of distribution, and that the judgment of the Chicago court did not require any particular form of distribution, that we had carried that concept far enough. I mean that was our judgment, and that was what we concluded.

Now, we recognize the problem you are referring to. If it is $470 million at $55 a share, logically it is $600 million at $95 a share.

But we felt that you could not support that extension of the concept for that requirement. And so we felt that the objective had been fulfilled when $470 million in revenue was realized.

I might put the other side of this, Senator.

It is perfectly plain that if this condition had not been put in the ruling letter, and Du Pont and Christiana had felt free, and decided to take the risk of making other forms of distribution, even at $95 or $100 a share, less than $470 million in revenue would have been realized.

In other words, as I understand it, Du Pont was contemplating exchanging their General Motors shares for Du Pont preferred that was outstanding. There were other forms of action contemplated which would have very substantially reduced the tax burden below $470 million, even at $45 per share. To have the Commissioner take the burden of these companies doing this, in the light of the activities of the companies themselves to secure passage of the bill seem to us unwarranted.

Now, we did not feel we could extend that logic further than the companies had clearly committed themselves. And so far as we could see, they only clearly committed themselves to a figure, not to a sliding scale of revenue.

Senator ANDERSON. Now, as a lawyer, are you willing to testify that you regarded a letter mentioning a figure as a commitment in any way?

Mr. KNIGHT. No. I think I would refer to this as a moral commitment.

Senator ANDERSON. Moral?

Mr. KNIGHT. Yes, sir. I didn't say it was a legal commitment, and I don't believe it was. If it had been a legal commitment, we would have had a different problem.

Senator ANDERSON. You have been using this term "commitment." It wasn't a commitment at all, was it?

Mr. KNIGHT. It was a statement——

Senator ANDERSON. Statement of opinion?

Mr. KNIGHT. As to the amount of revenue that might be expected if the bill passed. And we felt that while this might not amount to

a legal commitment, it was a moral commitment that the Revenue Service should not assist the companies in getting out of. I might add that Du Pont did not contest this point of view taken by the Commissioner. Only Christiana contested it.

Senator ANDERSON. You are going to file with us the reasons for saying the Senate sponsors of the bill stated flatly the Treasury would realize $470 million in revenue?

Mr. KNIGHT. Yes, sir. As I say, this January letter—January 9 letter of Mr. Greenewalt's, the statement of Senator Williams, that under this bill the Government would collect $470 million in taxes, which was made several times—the statement which Senator Smathers made to the same effect, the statement which others made to the same effect, led us to feel that the Senators sponsoring the bill or supporting it had taken the estimates of—in terms of dollars given by the representatives of the taxpayers, that that amount of revenue would be realized.

Senator ANDERSON. As a principle, then, you would favor any time the Treasury recoups money in any particular category, further relief be given at once?

Mr. KNIGHT. No, sir. This was a private bill, so that the circumstances were peculiar to the particular taxpayers involved.

Senator ANDERSON. Didn't you try to make it a general bill at one time?

Mr. KNIGHT. No, sir. It was at the suggestion of the administration that the bill was narrowed to Du Pont. And I was the person who carried out a portion of that responsibility.

Senator WILLIAMS. I cannot say what position you took personally, but the administration in the beginning took the position that it had to be a general law or they would not go along with it, and we made a general bill. Later we received word that they had changed their minds and it had to be confined to just this one company or they wouldn't go along with it, and then we changed it again.

Mr. KNIGHT. That is right.

Senator WILLIAMS. Who made the two decisions I don't know. But I know that was the order that came down——

Mr. KNIGHT. I do not recall if the question of whether it should be general or particular came to my attention until the administration determined it would be particular.

Senator WILLIAMS. I forget with whom we had the conversation.

Senator ANDERSON. Do you question the legality of the original ruling?

Mr. KNIGHT. No, sir.

Senator ANDERSON. Or the final ruling?

Mr. KNIGHT. No, sir.

Senator ANDERSON. I believe that is all I have.

The CHAIRMAN. Senator Williams?

Senator DOUGLAS. Mr. Knight, you speak of a commitment to the Senate. Who made this commitment?

Mr. KNIGHT. We felt that the representatives of the two corporate taxpayers involved, Du Pont and Christiana, had made it by supplying material to those sponsoring the bill that permitted them to state flatly that the bill would raise $470 million in revenue.

Senator DOUGLAS. It would not raise more than $470 million?

Mr. KNIGHT. They certainly did not say so.

Senator DOUGLAS. And if the bill were to raise more than $470 million, Du Pont and Christiana and the taxpayers were not to be obligated to pay more than $470 million?

Mr. KNIGHT. Well, under the law—that is section 1111, the Du Pont relief bill—as passed by the Senate, there was clearly no requirement as to how the stock was to be distributed.

Senator DOUGLAS. But you speak of a commitment to pay $470 million.

Mr. KNIGHT. If they made a commitment to pay more than that, I would have felt it should be more than that.

Senator DOUGLAS. So they made a commitment to pay $470 million, but no more?

Mr. KNIGHT. That is as much of a commitment as they made.

Senator DOUGLAS. But to pay no more?

Mr. KNIGHT. No, sir. They didn't say that they would pay no more. Neither did they indicate that more would be paid.

Senator DOUGLAS. Now, a commitment to the Senate—did the Senate accept this commitment?

Mr. KNIGHT. That I don't know. We felt the circumstances were such that they could have, and that might have influenced their vote in favor of the bill.

Senator DOUGLAS. Would it have been a commitment if the price of General Motors had gone down? Suppose it had gone down to $20 a share, and the total amount of the tax under the formula suggested would have been not $470 million but approximately $175 million. Would that still have been a commitment to pay $470 million?

Mr. KNIGHT. No; I think it would not.

Senator DOUGLAS. In other words, they accepted a formula; did they not?

Mr. KNIGHT. No; I don't think it goes that far, Senator. I think the question that we were meeting was not whether they had presented a formula, but whether having stated that the bill would raise this amount, and then coming in with a request for a ruling which would allow them even at the price on which their estimate was based—to pay substantially less in revenue, was not a thing which the Commissioner should aid them in doing.

Senator DOUGLAS. Let me go into the question of commitment. Is a commitment a contract?

Mr. KNIGHT. A moral commitment is not a contract, Senator, I would believe, in most circumstances. It is not necessarily one.

Senator DOUGLAS. If you have a contract, you have to have two parties to it; do you not?

Mr. KNIGHT. Yes.

Senator DOUGLAS. Do you charge that any Member of the Senate made this agreement that Du Pont was not to pay more than $470 million?

Mr. KNIGHT. No. As I said, no one said that they would not pay more than $470 million. In fact they paid more—some $612 million.

Senator DOUGLAS. $470 million was the instrument, was it not, that at the existing price which General Motors was selling, that the formula would yield approximately $470 million?

Mr. KNIGHT. Senator, no one testified as to a formula. They only stated that the bill passed would raise $470 million.

Senator DOUGLAS. The formula was in the bill. That was the essence of the bill laid down a formula of something less than 25 percent capital gains tax.

Mr. KNIGHT. That is right. I misunderstood you.

Senator DOUGLAS. And with this formula and with the prices of General Motors stock as they were at the time, you say $55 a share, that the yield would be approximately $470 million.

Mr. KNIGHT. Yes, sir.

Senator DOUGLAS. The yield would have been less if prices had gone down to $20 a share; would it not?

Mr. KNIGHT. That is correct.

Senator DOUGLAS. Would that have been a commitment on the part of Du Pont and Christiana to pay $470 million even though the formula contained in the bill would yield only $200 million?

Mr. KNIGHT. No.

Senator DOUGLAS. Then why is it a commitment that if the price goes up, they are not to pay more than $470 million?

Mr. KNIGHT. As I say, because it did not seem to us under the circumstances that there was a policy to be served by holding them to this condition once the $470 million figure had been met.

Senator WILLIAMS. If the Senator will yield, I think he is correct. As I recall it, there was no commitment that they were to pay a certain amount. That was only an estimate that was furnished, and I do not recall right offhand from where we got the estimate. We had the letter from Mr. Greenewalt, which we will put in the record, but it included no such figures.

Mr. KNIGHT. Referring to his particular liability.

Senator WILLIAMS. But I do not think it refers to $470 million. I do find here in the record in my colloquy——

Mr. KNIGHT. The tax results to him would have produced the $470 million.

Sentor WILLIAMS. Yes, I suppose that is where we got the figure. The $470 million figure was an estimate that was furnished to us.

Mr. KNIGHT. That is correct. They are all estimates, Senator.

Senator WILLIAMS. Sure.

Mr. KNIGHT. Even today the figures given by Secretary Dillon are estimates.

Senator WILLIAMS. That is all he could give.

Senator DOUGLAS. If I may recover the floor, this estimate by Mr. Greenewalt which was adopted apparently by Senator Williams, was that an estimate that he would not pay more than $470 million?

Mr. KNIGHT. No, sir.

Senator DOUGLAS. It was an argument in behalf of the formula of the bill stating he thought it would yield $470 million instead of the $10 million which would have been yielded by the original Du Pont bill.

Senator ANDERSON. Are you talking about Mr. Greenewalt's letter of January 9, just for clarification?

Mr. KNIGHT. Yes.

(The letter referred to follows:)

E. I. DU PONT DE NEMOURS & Co.,
Wilmington, Del., January 9, 1968.

Hon. JOHN J. WILLIAMS,
U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: In reviewing the debate in the Senate last fall on H.R. 8847 I find that Senator Gore made a statement which is not based upon the facts of the case. For this reason I feel compelled to present the situation as it actually exist. Senator Gore said, "I believe that the pressure for the passage of this bill does not come from taxpayers in the 20-percent bracket, or the zero bracket retired workers, widows, or orphans, unless they have been misled, but comes from the corporation officials and the high tax bracket stockholders."

I think I can best set the record straight by outlining my own tax position as a stockholder of Christiana Securities Co., first, under present law and, second, as it would be under H.R. 8847. I assume that I qualify as one of Senator Gore's "corporate officials and high tax bracket stockholders," and, furthermore, my own position does not differ substantially from the great majority of Christiana stockholders in high tax brackets.

The figures which follow assume a market value of $55 per share of General Motors at the time of distribution.

Under the Supreme Court decision and present tax laws, tax revenues would arise solely from the sale by the Du Pont Co. of some 40 million shares of General Motors stock over a 10-year period. Since these taxes would be paid by the Du Pont Co., their impact would fall uniformly on every Du Pont stockholder, whether he be rich or poor.

This tax would amount to about $12 per share of either Du Pont or Christiana common stock.

Under H.R. 8847 the distribution of General Motors stock is held to be a return of capital, and the stockholder pays an immediate capital gains tax to the extent that his cost of Christiana or Du Pont is less than the market value of the General Motor stock received. In the case of Christiana there are two additional taxes. There is the intercorporate dividend tax which is levied on the basis of the market value of the General Motors stock at the time Christiana receives it. Since Christiana has no cash with which to pay this intercorporate tax, I assume that it would sell a number of shares of General Motors stock sufficient to produce the necessary funds, which of course would involve a capital gains tax to Christiana on that sale. Upon a distribution by Christiana of the remaining shares (since my cost basis for Christiana is essentially zero), I would pay capital gains tax on the full market value of the General Motors stock received.

The sum of these direct and indirect taxes is about $25 for each Christiana share I hold, whereas under present law my tax would be only $12 per Christiana share.

It is clear then that my personal tax bill would be more than twice as great under H.R. 8847 than it would be if the divestiture were carried out under present tax laws. As the Du Pont Co. proxy statement shows, I am the direct and beneficial owner of roughly 55,000 shares of Christiana common stock; hence my tax bill payable in 3 years under H.R. 8847 would be about $1,400,000 as compared with about $650,000 over a 10-year period under present law.

A numerical majority of the Du Pont Co.'s stockholders have acquired their stock since 1950 and during the intervening years the price of Du Pont common has been in excess of the likely market value of the General Motors stock to be distributed. Hence these stockholders, which include some 50,000 employees, would pay no tax under H.R. 8847 at the time of the distribution of the General Motors stock. This compares with the $12 per Du Pont share payable on their behalf under present law.

These figures should make it abundantly clear that H.R. 8847 brings substantial benefits to the small stockholder and to those who have acquired their stock recently. Inasmuch as the total tax revenues collected by the Government are about the same under present law as they would be under H.R. 8847, it is equally clear that H.R. 8847 in fact shifts the tax burden to those Senator Gore characterizes as "corporate officials and high tax bracket stockholders."

In case you should be interested in further detail I attach a sheet showing exactly how these figures were derived.

Sincerely,

C. H. GREENEWALT,
President.

TAX CONSEQUENCES TO CRAWFORD H. GREENEWALT AS A COMMON STOCK HOLDER IN CHRISTIANA COMMON STOCK HELD BY CRAWFORD H. GREENEWALT (VALUE IN 1915, 30 CENTS PER SHARE)

Assumption: $55 market value per share of General Motors common at time of distribution; 1 share of Du Pont per share of Christiana common 1.4 shares of General Motors common to be distributed per share of either Du Pont or Christiana common; Du Pont sells 40 million shares General Motors over 10-year period under present law.

Tax under present law: Capital gains tax paid by Du Pont on sale of 40 million shares General Motors—per Du Pont (or Christiana) share (40/63×1.40 ($55—$2.09)×0.25) $11.76.

Tax under H.R. 8847 per Christiana common share:

1. Christiana pays intercorporate dividend tax—(1.4×$55×0.15×0.52) $6.01.
2. Christiana sells 0.14 shares of General Motors per Christiana share to raise the above tax and pays capital gains tax on this transaction—($55—$10.03)×0.14×0.25) $1.58.
3. Christiana distributes 1.26 shares General Motors stock (1.40—0.14) per Christiana common share. C. H. Greenewalt pays capital gains tax on essentially full market value ($55×1.26×0.25) $17.33.

The total of these taxes is per share held by C. H. Greenewalt, $24.92.

Senator ANDERSON. Do you find the $470 million figure in that?

Mr. KNIGHT. No, sir.

Senator ANDERSON. I thought you did.

Mr. KNIGHT. No; I said that Senator Williams in introducing that letter stated that the bill would produce $470 million, and the letter itself states the tax consequences to Mr. Greenewalt, and those tax consequences support in effect the $470 million figure. He arrives at them in the same way that the $470 million was arrived at.

Senator ANDERSON. Surely you are not trying to say Senator Williams made a commitment in behalf of Du Pont.

Mr. KNIGHT. No.

Senator ANDERSON. I would hope not.

Senator DOUGLAS. I want to say Senator Williams is a highly honorable man. I do not think he would make a commitment on behalf of the Senator either that we were not to get any more than $470 million.

Senator WILLIAMS. There were no commitments made anywhere. They were referring to an estimate of $470 million. I notice Senator Kerr referred to $450 million, and about every Senator furnished his own estimates.

Senator ANDERSON. His own figures.

Senator WILLIAMS. Furnished his own figures. I could have put in the record a letter from the Treasury or the company or from some source specifically making an estimate of $470 million. I do not recall it. I do recall using the $470 million figure in my conversation.

Senator DOUGLAS. I want to suggest that we strike that word "commitment" and put "estimate" in its place, the estimates on the basis of existing figures that the yield would be $470 million. Now, are you going to say that an estimate is to be taken as a maximum?

Mr. KNIGHT. No, sir.

Senator DOUGLAS. I cannot believe this.

Mr. KNIGHT. No; we did not do that.

Senator DOUGLAS. Would you say that that word "commitment" in your statement should be stricken and the word "estimate" substituted for it?

Mr. KNIGHT. We felt that whatever moral commitment that the companies had made had been adequately met at the time they requested a modification in the ruling.

In other words, again what we were trying to do in 1962 was to prevent a form of disposition which, at the market price that was prevailing at the time this $470 million figure was given, would automatically reduce the taxes below that $470 million. We did not feel it was proper for these companies to have supported a $470 million figure and then dispose of their stock in a manner at the same price which would produce less revenue. And that was the purpose of the 1962 letter. We felt that purpose had been adequately served in 1964.

Senator DOUGLAS. Now, Mr. Knight, in two places you speak of the commitment of, you say, Du Pont, Christiana, and individuals. In your statement you say:

> This estimate, amounting to $470 million, was supported by estimates presented to the Senate by representatives of Du Pont and, in the opinion of the Treasury, acquiesced in by representatives of the Christiana Securities Co.

In this case you do say "estimate," not "commitment." Now, an estimate is simply an informed guess that on the basis of the scale of charges contained in the bill that the yield will be such and such. Now, the Senator from New Mexico asked a very pertinent question. Suppose you have a levy of so much per automobile, but the sales of automobiles exceed the estimates say by a seventh; are you then going to say that the rates should be reduced?

Mr. KNIGHT. No, I would not. As to the word, Senator, "estimate" and "commitment," we felt that by furnishing estimates of $470 million as to the results it would obtain, there was a moral commitment on the part of the taxpayer not to take action which at the same market price would substantially reduce the revenue which the Government would obtain from the disposition.

Senator DOUGLAS. But the point is that market price has not been the same. The market price has approximately doubled since the time of the passage of the bill.

Mr. KNIGHT. Yes, sir.

Senator DOUGLAS. Now, are you saying that the tax on the part of the increase in the market price should be foregone because there has been such an increase?

Mr. KNIGHT. I felt that when the revenue passed the $470 million figure, that for the Treasury to continue to impose a condition not required by either the law or the judgment of the Chicago court was no longer warranted.

Senator GORE. Will the Senator yield?

Senator DOUGLAS. Yes.

Senator GORE. Did not the 1964 ruling continue in modified form a requirement which was not specified in either the act or the court decision?

Mr. KNIGHT. That is right. It continued a requirement for the $470 million figure.

Senator GORE. Then that is not spelled out in either the bill or the court decision.

Mr. KNIGHT. That is correct, nor was it in 1962. But we felt that since the representatives of the taxpayers——

Senator GORE. It is not a question of how you felt.

Mr. KNIGHT. We believed, we came to the conclusion.

Senator GORE. You just laid down a dictum that you did not feel that the Treasury Department should continue to impose, or should impose, a condition which was not specified either in the act or by the court. Then I asked you if the ruling which you recommended did not so do, and you said yes. Now you tell us how you felt.

Mr. KNIGHT. I am sorry, Senator, I do not understand what you are saying. I missed the point.

Senator SMATHERS. May I ask a question?

Senator DOUGLAS. I would like to continue on the floor a little bit. I know if you give it away, you never get it back. You say:

> This estimate, amounting to $470 million, was supported by estimates presented to the Senate by representatives of Du Pont.

What representatives of Du Pont made this estimate?

Mr. KNIGHT. Du Pont lawyers. I have forgotten at this point who the people were, but they were Du Pont lawyers referring to figures, and they were clearing these figures with the Treasury before they brought them to the Congress so they would not be contested.

Senator DOUGLAS. Did you have conferences at the Treasury with representatives of the Du Pont interests, and did they tell you there that the yield would be $470 million?

Mr. KNIGHT. They did not tell us that there would be any particular revenue yield at the time they appeared before us with their estimates. They asked us if we would have the Treasury estimators verify their figures as to what yield would occur if a plan of disposition were followed.

Senator DOUGLAS. If prices remained the same.

Mr. KNIGHT. On the prices prevailing, that is correct.

Senator DOUGLAS. That is right. Did you make an estimate if prices went up to $100 that the yield would only be $470 million?

Mr. KNIGHT. No. We only verified the plans, figures, and market values presented to us.

Senator DOUGLAS. Was there any agreement that it would pay $470 million if the price went down to $20?

Mr. KNIGHT. No agreement was made with us whatsoever.

Senator DOUGLAS. Was this a commitment or just an estimate on the basis of two things, first, the formula contained in the bill and second, the current price.

Mr. KNIGHT. That is right. Those estimates were based on the formula contained in the bill, the current price plus a plan of disposition.

Senator DOUGLAS. I want to say I am certainly not in agreement. I do not believe that the Treasury or the Senate is bound by this estimate. I do not believe that this was a commitment that the Du Pont interests obtained from anybody. I have here a dictionary, Webster's New International latest unabridged, and I could quote a series of definitions as to estimate. It depicts the value extent and, in a general way, to estimate the value of land, calculate approximately some particulars as to price to be charged, form an opinion on.

The verb, the act of valuing or appraised value, a judgment or opinion usually implying careful consideration of research as to estimate of character inferred and judgment made by calculation, especially from incomplete data, rough or approximate calculation.

I do not see any provision here that the formula was to be so adjusted as to yield $470 million, no more, no less. As a matter of fact, the favor which was granted would yield approximately $630 million, not $470 million. Why did you not cut it down by $166 million, and not merely by $53 million, if that was the provision?

Mr. KNIGHT. No, sir. What was recommended for the Commissioner in his ruling letter was this. That the taxpayers be not allowed to do dispose of their property that on the formula which they used in reaching their estimate, would produce less than $470 million. That is at $55 per share.

Senator DOUGLAS. When you made your original ruling in 1962, what would have been the yield of the bill under full rate of distribution?

Mr. KNIGHT. The Commissioner made the ruling, and I do not know what it would have produced by the time the ruling was issued.

Senator DOUGLAS. He made the ruling on the basis of your opinion, did he not, just as the ruling was modified on the basis of your later opinion?

Mr. KNIGHT. Yes; but I did not follow the matter after I made my recommendation to him.

Senator DOUGLAS. If the commitment had been that there would be $470 million, should you not have checked that?

Mr. KNIGHT. Senator, the commitment was not that they would pay only $470 million. Our feeling was that they had a moral commitment not to change a plan of disposition so that they could not possibly reach the $470 million on the market figures prevailing at the time they gave these estimates.

Senator DOUGLAS. They had a moral commitment then to pay $470 million at the prices then existing.

Mr. KNIGHT. At the prices then existing.

Senator DOUGLAS. But there was an obligation upon the Government not to take more than x number of dollars later?

Mr. KNIGHT. No.

Senator DOUGLAS. No commitment on the part of the Government.

Mr. KNIGHT. The commitment on the part of the Commissioner was that if they disposed of their stock as provided in the ruling letter that he issued to them, he would agree that they were entitled to relief provisions of section 1111. A variety of other things, I think, were also in the ruling.

Senator DOUGLAS. Is this a one-sided transaction, that the Treasury should receive that which Du Pont condescends to pay up to $470 million?

Mr. KNIGHT. The Treasury should receive what the law requires Du Pont to pay, whatever the figure is, based on the way in which they dispose of their stock. All we were saying was that the Commissioner was giving them a ruling letter which in effect is a commitment by the Commissioner that a certain plan of disposition of stock would entitle the shareholders of the two taxpayer corporations to the relief of section 1111. If they chose to dispose of their stock in some way other than that provided in the ruling letter, the Commissioner was not committed. But the taxpayers were free to dispose of their stock in any way they wished, and they would then owe the amount of money which that disposition required them to pay.

Senator DOUGLAS. This is the most extraordinary testimony I have ever heard.

The CHAIRMAN. Senator Morton.

Senator MORTON. Mr. Knight, I think in some ways this might have been a one-sided transaction for the Government. I notice here in Senator Gore's statement of this morning where he says: "Either the Treasury issued an unenforcible ruling in 1962, which is in itself improper * * *." Now, you cannot tell when you issue a ruling whether the court is going to support you or not. So an unenforcible ruling could be issued which might not be improper. It might be that the court in its judgment disagrees with the Department of Internal Revenue, is that not true?

Mr. KNIGHT. That is correct. Let me put it this way, Senator. There is precedent, ample precedent in the office of the Commissioner of Internal Revenue for imposing conditions to the issuance of a ruling letter requested by a taxpayer. Now, on such occasions it may be perfectly clear that the fulfillment of that condition is not necessary for the taxpayer to take advantage of the law as set forth by the Commissioner. The Commissioner is merely saying "I will only give you a ruling letter, a commitment not to contest your statement of how the tax should fall, provided you fulfill this condition. Otherwise you take your own chances in the court." And that is what we did here.

Senator MORTON. That is my understanding, Mr. Knight. On the other hand, the Internal Revenue Service, the Commissioner in issuing a ruling says "If you go no further than this, I will not bother you." It does not say that you cannot go all the way out to the end of this room.

Mr. KNIGHT. That is right.

Senator MORTON. "And I may bother you," but then the courts will finally decide.

Mr. KNIGHT. That is correct.

Senator MORTON. Now, in this case, you are an excellent lawyer, and I speak to you now as a lawyer and not just as the former counsel of the Service, but is it not true that Du Pont could have gone ahead with this non pro rata distribution in spite of your 1962 ruling, had they wanted to, and taken their chance on being dragged into court? It was clear from the Chicago decision that they could go that route if they wanted to. Actually had they gone that route from beginning to end, I think anybody would have to admit that they would have won the case ultimately. Would they not have come up with a tax liability far less than they have actually paid?

Mr. KNIGHT. Yes; and I understand that three very fine law firms at least have so advised them.

Senator MORTON. Yes, and I think that here is a company which probably took into account this moral estimate, moral commitment, whatever you want to call it. When we voted for that bill in the Congress of the United States we were led to believe, rightly or wrongly, that the yield would be $470 million, or a figure in that approximate area.

Mr. KNIGHT. Yes.

Senator MORTON. And I think it is to the credit not only of the company but of the Service for attempting to see that that amount of tax was produced. I regard the Internal Revenue Service as having to

collect all the money that it can and should collect under the law and under any court interpretations that result from any litigation under the law. I do not think it is the province of the Commissioner of Internal Revenue or the Secretary of the Treasury to go out and get money just because he happens to be the tax collector of the country. I do not think it is his province just grabbing everything he can.

I think he has to proceed according to the laws that have been passed by the people's representatives in the Congress of the United States and in accordance with court decisions that result from litigation under those laws.

I have never seen a more futile day myself than we have spent here on this matter.

I thank you, Mr. Chairman.

The CHAIRMAN. Senator Gore?

Senator GORE. You stated to Senator Anderson that you did not question the legality of the letter ruling of either 1962 or 1964.

Mr. KNIGHT. 1962 or 1964, the legality of including the condition? No. I ascertained to my satisfaction that it was legal to propose that condition.

Senator GORE. That is your view now and it was your view, as I understand it, when you were General Counsel of the Treasury?

Mr. KNIGHT. It has been my view right along; yes, sir.

Senator GORE. Yet in executive session about a month ago the present Commissioner of Internal Revenue undertook, it seemed to me, to excuse the whole change in ruling, as Secretary Dillon did this morning, on the alleged fact that the 1962 ruling was some way not soundly based in legality.

Did you ever hear the story of David, Bath-sheba and Uriah?

Mr. KNIGHT. Yes, I have, Senator.

Senator GORE. Do you feel a little like Uriah?

Mr. KNIGHT. No, indeed.

Senator GORE. Then this afternoon you seemed to base your whole case on the fact that there was some kind of a commitment on the part of Senator Williams, or Mr. Greenewalt, or lawyers for DuPont, or somebody, and yet Senator Williams finally pulled the rug from under you and says he does not know anything about any commitment, he does not think there was any.

Again you are a little like Uriah.

Senator WILLIAMS. No, now let's get it straight.

I said there was no commitment of the $470 million figure as such. That was the estimate; that was the nearest estimate that could be furnished based upon consultation between the Treasury Department and the officials of the company, and it was presented by those of us in managing the bill, and it was approved by this committee on a vote of 15 to 2.

Senator DOUGLAS. I would like to ask that I have read that estimate he calls commitment.

Mr. KNIGHT. Senator Gore. I would like to set the record straight. I do not know what Commissioner Cohen testified to in executive session.

Senator GORE. You heard Secretary Dillon today.

Mr. KNIGHT. I do know that Secretary Dillon is of the view that both rulings were legally correct. I understand he agrees with my judgment. I am not clear whether that is——

Senator GORE. I believe you say at the time of this estimate of $470 million that the price of General Motors stock was $55.

Mr. KNIGHT. That is as I recall it.

Senator GORE. At the time Senator Byrd gave his estimate and presented the bill to the Senate, General Motors stock was selling at $48.

Mr. KNIGHT. I believe, however, the estimates that have been given to Senator Byrd and the Senate Finance Committee were based on a $45 per share value. That is my recollection.

Senator DOUGLAS. $45?

Mr. KNIGHT. $45.

Senator GORE. As a matter of fact, that is correct, and in presenting the bill the Chairman of this committee said that his estimates were based upon the market value of General Motors at $45, but he went on to say that it was then selling at $48, and therefore it—I have forgotten his exact words—that more revenue would be realized.

All of these estimates, by whomever used, it seems to me, are based upon the then current market value of General Motors stock. That is what we were talking about divesting. That is what we were talking about being exchanged or sold.

Mr. KNIGHT. Incidentally, I believe Secretary Dillon merely said, as I understood him, that the wording of the finding that appears in the ruling letter of 1962 did not correctly reflect the facts.

I think my own view of that wording is that it is somewhat ambiguous, and at the time I was considering the question in November 1964, I came to the conclusion that what that wording meant and was intended to mean back in 1962 was that the representatives of the taxpayers had given estimates to the extent of $470 million, that the only way they could have arrived at them (in fact we knew enough about them to know how they got to them) required a pass-through of the Christiana stock to its shareholders rather than an offering of it in redemption, and that was what that finding was intended to say. That is—that the only feasible way of achieving the figures that had been given by the taxpayers to the Senate was by a pass-through of stock, and that is what that finding in effect meant.

Senator GORE. By pro rata distribution?

Mr. KNIGHT. By pro rata distribution, but we could find in 1964, and I believe my own recollection of 1962 is that no finding was made that they said to the Senate or anyone said on their behalf that they would pass the stock through. They merely gave the figure and the figure was based on a pass-through theory. When the Senate passed a bill which did not require them to pass the stock through as a condition to getting the relief, and when the court also gave an order which did not require a pass-through, it seemed to me that to hold them beyond the $470 million figure was just not warranted. It is perfectly logical, I grant you, to say that if they say we will raise $470 million at $55 a share, there is a logical implication that they will raise twice as much if the shares sell for twice as much.

But we did not feel that the record supported following that logic. We felt the record only supported requiring them to dispose of their stock in a manner which would produce the figure which they gave.

Senator ANDERSON. Will you yield?

Senator GORE. Yes.

Senator ANDERSON. How do you suppose the Chairman of the committee felt? I can give you his words that Senator Gore just referred to. Senator Byrd said:

> These estimates are based upon General Motors selling at $45 a share. Recent figures indicate that this stock is selling at around $48 a share so that on that basis the estimate will go higher.

He obviously contemplated that it would move up as the stock price moved up, did he not?

Mr. KNIGHT. Yes, sir.

Senator ANDERSON. Why did you not hold with him?

Mr. KNIGHT. Well, because on the basis of all that was said and following the debate through to its conclusion, we felt that we could only hold to a figure.

Senator GORE. Did you consult with the Department of Justice in 1962 before making your recommendations?

Mr. KNIGHT. I did. I sent over the language of the condition that was to be included for their views and comments.

Senator GORE. And what were their comments?

Mr. KNIGHT. They were not opposed to it. They felt that it was a revenue matter and that it did not adversely affect the antitrust situation.

I am being loose with my language because I am just recalling what they said 2 years later, but it was submitted to them and they did not object.

Senator GORE. I come now to the 1964 ruling, and I shall not combat or argue with you about your role. So far as I am concerned, you are a private citizen. You were not a Government employee. You were not a paid consultant. You were an adviser. I will not belabor you about your recommendation. I have a few simple questions.

When did you first know that Christiana wished a modification of the letter ruling?

Mr. KNIGHT. I do not recall, Senator, but it was some time prior to the telephone call that I received from Secretary Dillon.

Senator GORE. From whom did you learn this?

Mr. KNIGHT. I was called first by a representative of Christiana, I believe, and then by people in the Treasury.

Senator GORE. Who was the representative of Christiana?

Mr. KNIGHT. To ask if I would express a view on it which I felt was improper for me to do as a private citizen, and I so stated.

Senator GORE. Will you identify the representative of Christiana?

Mr. KNIGHT. It was an attorney named Clark Clifford.

Senator GORE. Who called you from the Government?

Mr. KNIGHT. I believe that several people in Mr. Surrey's office talked to me before the Secretary asked me if I would do this.

Incidentally, as soon as Mr. Clifford contacted me, I called the Secretary and told him what Mr. Clifford had said to me and what I had said to Mr. Clifford.

Senator GORE. Will you relate to the committee what Mr. Clifford said to you and what you said to Mr. Clifford?

Mr. KNIGHT. To the best of my recollection he said that they were coming in for a modification, and he generally wanted to know if I

agreed that a raising of more than $470 million was adequate, and also if I would interpret the portion of the ruling letter which said they could come in and ask for reconsideration.

Senator GORE. So now we find that Mr. Clifford was the genesis of this idea?

Mr. KNIGHT. No, I do not think so. He was the person who called me and asked if I would express a view as to what I meant in my 1962 letter.

Senator GORE. And what did you say to him?

Mr. KNIGHT. I said I did not feel it was proper for me as a private citizen to comment on what I said in a ruling letter when I no longer had any responsibility for the Treasury. I said when he asked me about the question of coming in for reconsideration, the language that is in the ruling letter that refers to that, I said to him as I recall, my recollection is it means just what says. Anybody can come in for a reconsideration any time they want to and if they want to claim a change of circumstances, that is certainly a basis for doing it. This is the law of the land.

Senator GORE. Just what did he ask you?

What was his question to you about reconsideration?

Mr. KNIGHT. About reconsideration?

Senator GORE. Yes.

Mr. KNIGHT. He asked me if I agreed with him that that language—have you got the ruling, the 1962 ruling?

On page 7 of the 1962 ruling in which the Commissioner stated that:

> You have stated to us that you do not agree with some of the findings on which this ruling is based and have advised us that you may ask for reconsideration of these findings at a later date.

He asked me what those words meant, and whether the fact that his clients produced a lot of revenue was the kind of factor that would permit a reconsideration. I said what those words meant to the best of my recollection is that any taxpayer can come in and ask for reconsideration at any time he wants to, and change of circumstances or any other circumstances is a basis for coming in and asking for a reconsideration. But I said I could not tell him my view as to whether he was entitled to one or whether he was not entitled to one or whether any facts that he had in mind warranted a change, and I did not want to get into it, it was improper for me to do so because I was a private citizen.

I did not want to comment on what I had said or had recommended in an official capacity after I returned to private life.

I then called Secretary Dillon and I said, "Mr. Clifford has called me and this is what I said and this is what he said," and I just wanted to be very clear on the subject. Then subsequently I talked with——

Senator GORE. Before we leave the conversation with Clifford, what else can you recall about the conversation?

Mr. KNIGHT. That is all I recall.

Senator GORE. Did he mention to you the possibility of you playing some role in reconsideration?

Mr. KNIGHT. He said when I took the position I did, he said, "Is the Secretary going to call you back and decide this thing?"

Senator GORE. He said what, now?

Mr. KNIGHT. "Is the Secretary going to call you back and decide this thing?" and I said "I have no idea."

Senator GORE. So you find he had this idea too?

Mr. KNIGHT. I do not know. I think he asked me because I refused to comment. I think it was a logical extension of my stating my own position as a private citizen it was improper for me to get involved in the matter.

Senator GORE. You now recall something else about the conversation that you did not a few moments ago recall. Upon reflection, can you recall any other question Mr. Clifford submitted to you or statement made to you?

Mr. KNIGHT. No, and I do not believe that I said anything differently than I said the first time, Senator.

My position was that I did not want to become involved. It was not proper for me to become involved because I was a private citizen and had no business commenting on what I had done as a public official.

Senator GORE. Now when he asked you if the Secretary was going to call you back——

Mr. KNIGHT. He did not ask me if the Secretary was going to call me back.

Senator GORE. Just what did he say in that regard?

Mr. KNIGHT. He did not say anything. When I said it was not proper for me to comment, he asked me did that mean I was going to be called back by the Secretary to act on the matter. I said, "Not so far as I am aware."

Senator GORE. Insofar as you can recollect now, did this conclude the conversation between you and Mr. Clifford?

Mr. KNIGHT. Yes, it concluded it.

Senator GORE. Now, will you relate to this committee your conversation with Secretary Dillon?

Mr. KNIGHT. I then called Secretary Dillion and told him I had been called by Mr. Clifford, and what I had said.

Senator GORE. And what was the response?

Mr. KNIGHT. I am sorry, I just plain do not recall. He made no particular response.

Senator GORE. Did Mr. Clifford suggest you call the Secretary or request you to call the Secretary?

Mr. KNIGHT. He did not. I called the Secretary to make plain what I had been asked by Mr. Clifford, and what I had said to him. Since I had been asked about this and I felt I ought not to get involved, I wanted to make clear that I had talked about it and stated I did not want to be involved.

Senator GORE. Did you relate to the Secretary that Mr. Clifford had inquired if your attitude meant that you would be called back by the Secretary to negotiate on this matter?

Mr. KNIGHT. I do not recall whether I did or not, Senator. I just plain do not recall. I may have.

Senator GORE. Do you recall whether this matter during the conversation was mentioned, referred to, alluded to in any way whatsoever?

Mr. KNIGHT. To the best of my recollection, I stated as precisely as I could everything that Mr .Clifford had said to me to the Secretary.

I do not recall the words that I used, but my recollection is that I stated as precisely as I could to the Secretary exactly what was said to me.

Senator GORE. Which would have included his reference to the possibility of your being called?

Mr. KNIGHT. As I say, I do not recall the words that I used. I believe I did this. I remember that my intention was to state as exactly as possible what was said to me.

Senator GORE. Do you recall the response of the Secretary with respect to your conversation with him?

Mr. KNIGHT. So far as my recollection goes, it was wholly noncommittal. I do not know whether the matter had been presented to the Commissioner. My recollection is that the Secretary merely said, "Thank you, Bob," or something of that kind and that was it.

Senator GORE. Now, will you identify any other party, public official or private, who discussed this matter with you before your call from the Secretary asking you to act as a consultant?

Mr. KNIGHT. I know Assistant Secretary Surrey talked to me about it on the phone. I did not initiate any of these calls. I want to be clear on that.

I believe the Assistant Secretary talked to me. I believe Mr. Stone, or at least somebody on Surrey's staff who was thinking about the question called me.

I believe my understanding of what had happened was that the request for modification had been presented to the Commissioner and the people who were considering it in the Commissioner's office had checked to see what the files in the Treasury showed on it because of my part in suggesting the condition and the people in the Treasury were calling me to try to get the best of my recollection of what it was about.

Incidentally, I was on the rolls of the Treasury as a consultant. I suppose that they felt it was appropriate to call me in that light.

Senator GORE. You were already on the rolls of the Treasury as a consultant?

Mr. KNIGHT. Yes.

Senator GORE. What do you mean by "on the roll"?

Mr. KNIGHT. All I know is I was told I was on the rolls as a consultant and from time to time I was consulted about things.

Senator GORE. Did any of these parties, Secretary Surrey or any of his assistants, mention to you the possibility of you being asked by the Secretary to act as a consultant on this matter?

Mr. KNIGHT. They may have, Senator. I seem to recall something to that effect—someone wrestling with this problem, saying it in a more or less joking fashion, that you may be called back on it yet, or something, but I do not remember the specifics.

Senator GORE. Did anyone else by telephone, by letter, or orally mention this application on the possibility of you acting as a consultant on it?

Mr. KNIGHT. No.

Senator GORE. Did you telephone anyone?

Mr. KNIGHT. The only person I telephoned about this was Secretary Dillon.

Senator GORE. This one call to which you have already alluded?

Mr. KNIGHT. Yes.

Senator GORE. Did Mr. Clifford call you again?

Mr. KNIGHT. I believe he called me twice.

Senator GORE. About when was the second call from Mr. Clifford?

Mr. KNIGHT. I do not recall.

Senator GORE. Do you recall whether upon this occasion also——

Mr. KNIGHT. No, I believe the second call from Mr. Clifford came after I had been selected and the Du Pont representatives were told that I was going to come down on this and he called up to ask if there were any papers that he could submit.

Senator GORE. You do not think he called you again before?

Mr. KNIGHT. I do not think so.

Senator GORE. Now relate to the committee the call and the conversation, the call from Secretary Dillon and your conversation at the time he requested you to come down and act as a consultant.

Mr. KNIGHT. My recollection is that he said that whoever was considering the matter was having difficulty with it; would I be willing to come down and help out, serve as a consultant to the Commissioner.

Senator GORE. Is that all you recall about the conversation?

Mr. KNIGHT. Yes; I think that is just about all the conversation there was.

Senator GORE. And what was your response?

Mr. KNIGHT. My response was that I would have to consult with my firm and I would advise him. I called him back and said I would be glad to.

Senator GORE. Did you call him back the same day?

Mr. KNIGHT. I just do not recall. I think I did. I know that I would try to give him an answer as quickly as I could and I assume I called him back the same day.

Senator GORE. When did you come to Washington?

Mr. KNIGHT. I came to Washington I think within a few days of my being telephoned, because, as I recall, the Commissioner felt that he wanted to get this matter wound up as quickly, as expeditiously as possible, and I came in, I am told, on the fourth.

Senator DOUGLAS. January 4?

Mr. KNIGHT. No; November 4. I came in. I went over all the files that were available, that could be assembled for me, which Mr. Stone, Miss Holcomb assembled for me and I went through them. I asked for certain memorandums from the Commissioner on the question of making clear the legal point on the discretion of the Commissioner as to how broad it was, and so on, and a variety of other points as a preliminary to getting started on looking into this matter.

Senator GORE. How soon after you agreed to act as a consultant did Mr. Clifford call you the second time?

Mr. KNIGHT. I do not recall, but I am clear that when he called me then he was doing what I gather he felt was a courtesy in saying, "I understand you have been appointed. Is there anything I can furnish? Is there anything you would like us to do?" That kind of thing; calling to assure me that he was going to cooperate and provide anything that I might care to see. It was that nature of a call.

Senator GORE. During this conversation was there any mention again of the amount of revenue realized as the possible basis of reconsideration?

Mr. KNIGHT. I just do not recall, Senator. There may have been. I was asked to conduct an investigation. I was going to have to get information from the Revenue Bureau. I was going to have to examine the files, the record, and so on, and get information from the taxpayer. I just do not recall at what point he made that statement.

Senator GORE. Do you know whether or not——

Mr. KNIGHT. The lawyers for Christiana met with me, I met with them once, but they were sending, submitting information that I asked for, for consideration over the course of the week or 2 weeks that I was considering the matter, and they certainly made their point as to what they were contending for.

Senator GORE. Do you know whether Mr. Clifford is the regular counsel for Christiana Corp., or if he was employed with respect to this particular issue?

Mr. KNIGHT. I know he was one of the counsel who represented them in 1962.

Senator DOUGLAS. In 1962?

Mr. KNIGHT. In 1961 and 1962 when the bill was being contemplated.

Senator DOUGLAS. In 1961 or 1962?

Mr. KNIGHT. Yes, sir; when the bill was pending, and also when the rulings were being requested. They had a number of lawyers, and I know that Mr. Clifford was one of them all through that.

Senator GORE. Who else called you or talked to you or communicated with you between the time that the Secretary asked you to act as a consultant and the time you came to Washington on the 4th?

Mr. KNIGHT. I secured permission of the Commissioner——

Senator GORE. Which commissioner?

Mr. KNIGHT. Of Internal Revenue, the Acting Commissioner, I believe it was the Acting Commissioner I secured permission from him to bring back the career employee of the Internal Revenue Service who had been assigned to assist me when the bill was pending before the Congress, a man named Fisher.

Senator ANDERSON. What was the name?

Mr. KNIGHT. Fisher, Arnold Fisher. Arnold Fisher was an employee of the Internal Revenue Service and he had been assigned to help me at the time the bill was pending before the Congress, and also in connection with the rulings. He had some responsibility for rulings and was the man assigned to me. He was very familiar with this, and because, as I have said, I am not an expert on taxes, I wanted to have a man who had been very familiar with the technical aspects of this bill to help me out too.

And on top of that, as I say, I communicated with the people that Mr. Surrey assigned me, Mr. Stone and Miss Holcomb. I communicated with numerous people in Revenue, representatives of the Chief Counsel's Office and representatives of the Commissioner's Office who were charged with this matter, to assist me, and they sat in on the hearing that we held.

Senator ANDERSON. Was this prior to your coming to Washington?

Mr. KNIGHT. No, this was in—I thought you said after Secretary Dillon called me.

Senator ANDERSON. And between his call and the time you came to Washington on the 4th?

Mr. KNIGHT. Well, between his call and the time I came to Washington on the 4th, I would guess that I talked only to the people in the Treasury who were going to help me, and Mr. Fisher, in order to get this thing organized for study.

Senator ANDERSON. When you came to Washington, whom did you first see?

Mr. KNIGHT. I believe the first person I saw was Assistant Secretary Surrey, and the second person I saw was Mr. Stone, and the third person I saw was Miss Holcomb, and I believe Mr. Fisher.

Mr. Fisher was in there somewhere. He came down from wherever he was in New Jersey and joined me.

Senator ANDERSON. You did not confer with Secretary Dillon upon your arrival?

Mr. KNIGHT. No. After Secretary Dillon secured my consent to do this, I believe he then was away during most of the time that I was there. He was not in town and did not take any part in this.

Senator ANDERSON. When did you first communicate after coming to Washington with Mr. Clifford, or when did he first communicate with you?

Mr. KNIGHT. He called me I think to ask if there was anything he could submit to help my consideration of this, the kind of thing I suppose a lawyer normally does.

Senator ANDERSON. I gather he had——

Mr. KNIGHT. And then I believe I called him to see when would be a convenient time for the Christiana representatives to meet with the Revenue-Treasury representatives and myself in the Internal Revenue Service. I wanted to fix a date so that they could come in and present their case and be questioned by the various representatives of the Service and the Treasury on their case.

Senator GORE. Did you not confer with anyone from the Department of Justice?

Mr. KNIGHT. I did. I called two people in the Department of Justice to tell them what I was doing. One was Assistant Attorney General Oberdorfer who had been the Department of Justice representative testifying before the Congress when the bill was pending and the person to whom I submitted the proposed condition at the time of the 1962 ruling.

I also called Mr. Orrick and told him what I was doing, and in each case I wanted to know if they had any views or any objection or policy considerations that ought to be weighed either way.

Senator GORE. Will you identify Mr. Orrick?

Mr. KNIGHT. Mr. Orrick is the Assistant Attorney General in charge of the Antitrust Division.

Senator GORE. And what views did they communicate to you, either Mr. Oberdorfer or Mr. Orrick?

Mr. KNIGHT. Mr. Oberdorfer said he did not regard this as his business at this time, which was consistent with the view he had really taken back in 1962. In 1962 he did look at our condition, but then his answer was they had no objection and he regarded this primarily as a Revenue matter.

I told Mr. Orrick that I would want a view from him as to whether the Antitrust Division had any interest in how this might be decided either way. He said he would look into the matter.

Subsequently I called him again. I had come to my own conclusions based on Treasury considerations, Revenue considerations. I called him to see if he felt deleting this restriction as to the last distribution of General Motors shares by Christiana would have an adverse effect from the standpoint of antitrust enforcement, and he said no.

Senator GORE. When did you first meet personally with representatives of Christiana Corp.?

Mr. KNIGHT. My recollection is that I met with them only once, and that was on November 10, sir.

Senator GORE. Where did this meeting occur?

Mr. KNIGHT. The meeting occurred in a meeting room of the Commissioner in the Internal Revenue Service.

Senator GORE. Who was present?

Mr. KNIGHT. I will just read from the list here. Mr. Gabig made some notes. He is in the Tax Ruling Section of the Internal Revenue Service. He made a record of the meeting. He lists: Messrs. Knight, Fisher, special consultants; Messrs. Stone, Bonnell, and Miss Holcomb, of the Treasury; Messrs. Davis, Tyree, and Maslansky from the Chief Counsel's Office; Messrs. Bogaard and Gabig from the Tax Ruling Section of the Internal Revenue Service and Messrs. Gemmill, Scott, Watts, Shapiro, Grimes, and Sharon for Christiana.

Senator GORE. Mr. Clifford was not there?

Mr. KNIGHT. Mr. Clifford apparently was not there.

Senator GORE. How long did this meeting last?

Mr. KNIGHT. I called him to ask him to find a date in which the Christiana representatives would be willing to meet or could conveniently meet, that was convenient for everybody.

Senator GORE. Will you relate the proceedings in general of this meeting?

Mr. KNIGHT. I can read from some notes of Mr. Gabig. Commissioner Cohen has just handed me a memorandum prepared by Mr. Gabig.

Senator GORE. That is agreeable.

Mr. KNIGHT (reading):

Mr. Gemmill began the conference with a general discussion of the history and present circumstances of the case. It was stated that approximately 10-to-11 percent of the Christiana stock is held by tax-free institutions involving about 300 shareholders. Approximately 40-to-50 percent of the stock to be distributed by Christiana could be used in its redemption of Christiana stock held by tax-exempt institutions (based upon a $100 fair market value of General Motors and $265 fair-market value of Christiana). The offer to redeem Christiana stock will be made to all the shareholders of Christiana.

The discussion went from this point to the two main issues:

(1) whether or not redemptions were contemplated by Congress

(2) whether or not the $320-to-$470 million figures quoted by Congress were absolute figures or were based upon the then fair-market value of the General Motors stock.

Christiana representatives felt the figures were absolute figures and that Congress may have expected x dollars but gave no basis for the use of a specific procedure or method of distribution. They also pointed out that Christiana made no representations of its intentions and that Justice originally did not want pro rata distributions, but did want non pro rata distributions to persons other than the Du Pont family.

Treasury representatives felt the figures used by Congress were based on the then fair-market value and that Congress would contemplate different tax results at a different price range. Certainly Christiana and its shareholders wouldn't pay the $470 million if the market fell out of General Motors. Why should they not pay if the market rises?

There was also a discussion on the pass through of General Motors stock. This discussion was along the same vain as prior discussions in 1962.

It was brought out at the conference that in 1962 the Commissioner stated he could not rule contrary to the intent of Congress while performing administrative duties and that before exchanges would be approved, we should go to the joint committee to find out their intent.

Senator ANDERSON. What was that last, please?

Mr. KNIGHT (reading):

It was brought out at the conference in 1962, the Commissioner stated he could not rule contrary to the intent of Congress while performing administrative duties and that before exchanges would be approved, we should go to the joint committee to——

Senator ANDERSON. Did they finally go to the joint committee?

Mr. KNIGHT. No, sir.

Mr. Gemmill also commented that they had gone to the committee.

It was briefly mentioned that a letter would be made available on this matter from the chairman of the Senate Finance Committee.

Mr. Knight stated no opinion has been formulated on the revocation of a caveat and that the following memorandum should be submitted.

1. The inflexible figure set by Congress.
2. Public benefits involved in revoking the caveat.

Senator GORE. I must observe the position of the Treasury representatives at this conference seems to be on all fours with the position taken by the Senator from New Mexico here and the position taken by Christiana corporation seems to be on all fours with the decision ultimately rendered.

Mr. KNIGHT. I think I asked all the Treasury representatives at this meeting to do their best to take an adversary position against Christiana, because I felt that it was the only way to bring out the facts.

Senator GORE. If you were called here to be a consultant on this by the Secretary of the Treasury, and at this conference you hear the Treasury officials state that it would not be proper to go contrary to the legislative intent of the Congress without consulting the committee, the joint committee, why was it that you did not consult Senator Byrd before making this recommendation?

Mr. KNIGHT. This was a not that someone wrote of a conference in 1962.

Senator ANDERSON. 1962?

Mr. KNIGHT. 1962.

Senator ANDERSON. But you mentioned that——

Mr. KNIGHT. There was no recommendation made by anyone to go to the committee this time. I know in 1962 the Commissioner did not go to the committee.

Senator ANDERSON. Would you be kind enough to read that section again where it refers to the joint committee, and then it refers to the chairman of the Finance Committee of the Senate, I believe. Read it a little more slowly, will you, please. It is hard to follow you. It refers first to the joint committee and then the chairman of the Finance Committee of the Senate. The Commissioner said certain things.

Mr. KNIGHT (reading):

It was briefly mentioned that a letter would be made available on this matter from the chairman of the Senate Finance Committee.

I don't know who mentioned it, I don't recall.

Senator ANDERSON. Did you get a letter from the chairman of the Senate Finance Committee?

Mr. KNIGHT. Not that I recall.

Senator ANDERSON. Who represented that there was going to be one?

Mr. KNIGHT. Sir?

Senator ANDERSON. Who represented that there was going to be one?

Mr. KNIGHT. I don't know. It doesn't say.

Senator ANDERSON. Weren't you there?

Mr. KNIGHT. I was there. I don't even recall the statement being made.

Senator SMATHERS. What is this date?

Mr. KNIGHT. This is November 10, 1964, at 2 o'clock, from 2 to 4:30.

The CHAIRMAN. My name was mentioned in it?

Senator SMATHERS. Your title, not your name.

Mr. KNIGHT. Somebody said that a letter would be made available from you, but who said it I don't know. It doesn't appear, and I just plain don't recall, Mr. Chairman, that anyone said you were going to give us a letter.

The CHAIRMAN. I was out of the committee chamber when this was mentioned. Did you say there was a letter from me?

Mr. KNIGHT. Someone said that a letter from you would be made available. What they meant by it I just don't know.

The CHAIRMAN. I never wrote any letter.

Mr. KNIGHT. I don't even recall it. I was asked if I held any meetings on this subject, and I said yes, that I did, that there were representatives from Secretary Surrey's office, a number of them, some representatives from the Chief Counsel's office, there were three of them, and representatives from the Commissioner's office of which there were two. The way in which this was run is this.

I asked the taxpayers' representatives to present their case, and I then asked the representatives from the various sections of Treasury and Revenue to cross-examine the representatives from the taxpayer to bring out the facts. This seemed to me to be the appropriate way to conduct the hearing.

Senator ANDERSON. But in the course of this consideration you proceeded to read some notes made at the time by the person supposed to be taking official notes.

Mr. KNIGHT. He wasn't taking official notes. This is merely a report he made to his boss, I guess.

Senator ANDERSON. What would it take to make it official?

Mr. KNIGHT. What?

Senator ANDERSON. Who did this?

Mr. KNIGHT. A man named Gabig.

Senator ANDERSON. What was his position?

Mr. KNIGHT. Tax ruling section.

Senator ANDERSON. He was an official, then?

Mr. KNIGHT. The Commissioner, the Chief Counsel, and the Assistant Secretary for Tax Policy were asked to furnish representatives to question the taxpayers representatives to bring out the facts.

Senator ANDERSON. So he was there in his official capacity.

Mr. KNIGHT. He was there in his official capacity.

Senator ANDERSON. He prepared a memorandum?

Mr. KNIGHT. He prepared a memorandum.

Senator ANDERSON. In the memorandum it said it would be wise to take it up with the Joint Committee on Internal Revenue Taxation?

Mr. KNIGHT. No, sir.

Senator ANDERSON. It doesn't?

Mr. KNIGHT. No, sir.

Senator ANDERSON. Read it again.

Mr. KNIGHT. He reported that in 1962 the Commissioner had said that before he would approve changes he would go to the joint committee to find out their intent.

Senator ANDERSON. So he would have done that.

Mr. KNIGHT. That is his report. I don't know on what he based it.

Senator ANDERSON. But he didn't do it.

Mr. KNIGHT. As far as I know he did not.

Senator ANDERSON. Why not?

Mr. KNIGHT. Senator, I want to make this clear. All I did was review the matter and submit a recommendation. I did not follow it after I submitted my recommendations. Whether the Commissioner went to the joint committee or not I just don't know. My guess is he did not because I think he felt it was a matter for the Commissioner to decide.

Senator ANDERSON. We would have to check with the Commissioner on that then. Can you testify on that?

Commissioner COHEN. I was not the Commissioner at that time, sir.

Senator ANDERSON. Was there any at that time?

Mr. KNIGHT. It was Commissioner Caplin.

Senator ANDERSON. This was a most fortunate time, wasn't it, because it was between rounds.

Mr. KNIGHT. No, sir, this was 1962 when Mr. Caplin was Commissioner.

The CHAIRMAN. I didn't write any letter.

Senator GORE. Mr. Chairman, we have——

Senator SMATHERS. As a matter of record there was a letter written to you people asking for a report as to what happened.

Senator GORE. But this was after the ruling.

Senator SMATHERS. Yes.

Mr. KNIGHT. It was not submitted to me, the letter that was written.

Senator SMATHERS. You had already gone back, that is right.

Senator GORE. How long after this conference before you submitted your opinion?

Mr. KNIGHT. My opinion is dated November 20.

Senator WILLIAMS. What was the date of that conference?

Mr. KNIGHT. The conference was November 10.

Senator GORE. Did you return to New York after the hearing before you rendered your opinion?

Mr. KNIGHT. My recollection is that I made one or two trips to Washington to check matters in the file and go over the papers submitted. We had asked Christiana to submit various papers on various points. I had asked the Commissioner's people to give me papers on various points, and I came back and reviewed those two or three times.

Senator GORE. I know this is a small and perhaps unimportant point, but I would be interested to know if you traveled at the expense of your firm or at your personal expense.

Mr. KNIGHT. I traveled either at the expense of my firm or my personal expense, and I would guess it was probably a combination of the two.

Senator GORE. Will you recall?

Mr. KNIGHT. I believe it is a combination of the two. Normally it would be at my firm's expense. I mean I have been asked on a number of occasions as a private attorney to render assistance to the Government of one kind or another, and when I have done so it has been the policy of my firm whenever any of us are asked to do this to bear the expense, a firm expense, which of course as a partner is also mine.

Senator GORE. Insofar as you now recall, at least a part of your expense was borne by your firm.

Mr. KNIGHT. Yes, and I am assuming it was because that is firm policy. I may not have submitted slips for it, but it was borne either by my firm or by me.

Senator GORE. With whom did you talk about this after this hearing on the 10th?

Mr. KNIGHT. I talked about it with the personnel of the Treasury, perhaps one or two from the Service. I think I talked only with people in the Treasury, Mr. Surrey, and Mr. Stone and Miss Holcomb, and Mr. Fisher who was assisting me.

Senator GORE. You had no communication of any sort, further communication with any representative of Christiana Corp.?

Mr. KNIGHT. As far as I know, no, as far as I can recall. If I had any at all, it was to ask where a paper was, and I think I may have called Mr. Watts once to ask if he could please get in the paper as the Secretary was pressing me to finish my report. He had given me a deadline, and I wanted to meet the deadline if I could. I think I may have called Mr. Watts, who was with Dewey, Ballantine, a lawyer for Christiana, and asked him to get in a paper for me if he was going to do it.

Senator GORE. Will you identify him?

Mr. KNIGHT. Mr. Watts I believe is a partner of the law firm of Dewey, Ballantine, and is one of the counsel for Christiana.

Senator GORE. You say the Secretary was pressing you for a report?

Mr. KNIGHT. The Secretary said that he would like me to get my report finished by a certain date, I have forgotten when, I think it was for the end of the month in any event.

Senator GORE. When did you first talk to the Secretary about it after coming to Washington, before the hearing on the 10th or after?

Mr. KNIGHT. I don't think I talked to the Secretary about it until I had prepared my report and told him I had completed my job.

Senator GORE. Then how was he pressing you to complete it?

Mr. KNIGHT. Because when he asked me to do this, he said he would like to have it done by a certain deadline, Senator.

Senator GORE. Did he give a reason for that?

Mr. KNIGHT. Not that I recall. He just said he would like to have it finished in expenditious time. He wanted to know that I could devote my time to it right away, and stay with it until I had completed it. That was the sense of his question.

Senator GORE. Was there any discussion? Did this discussion occur at the time he asked you to become a consultant?

Mr. KNIGHT. Yes. He gave me a deadline, either at the time he asked me or at the time I called him back and said I would do it.

Senator GORE. Was there any discussion between you with respect to compensation for your services?

Mr. KNIGHT. No.

Senator GORE. Was there any mention made of reimbursement of expense?

Mr. KNIGHT. I was told I believe—I don't think Secretary Dillon said anything to me about it. I was told by somebody in the Treasury that I could submit bills for reimbursement if I wanted, but as a matter of policy I have never done that. Whenever I have been asked to help out on a problem I have borne it at my own expense or my firm's. There is no reason why I could not be reimbursed. I just didn't ask for it.

Senator GORE. Did you return to New York to write your report?

Mr. KNIGHT. Yes, sir.

Senator GORE. Who assisted you in the preparation of it?

Mr. KNIGHT. Well, all the people I have mentioned were assisting me in the preparation of it. The final report I wrote myself.

Senator GORE. Did they come to New York to assist you?

Mr. KNIGHT. No, they did not.

Senator GORE. You called them from New York?

Mr. KNIGHT. I talked to them by telephone. I think Mr. Fisher may have come to New York, but the final draft was my own, and I did not circulate it. I merely submitted it to the Commissioner.

Senator GORE. Did you send a copy to anyone?

Mr. KNIGHT. I think I just submitted it to the Commissioner.

Senator GORE. Are you confident you did not send a copy to someone?

Mr. KNIGHT. I may have sent a copy to Mr. Carswell, special assistant to Secretary Dillon, in case the Secretary was interested, but I know that I was told—I can't remember whether I did or not, but I was told by Mr. Carswell that the Secretary was not interested and did not want to get involved in it because it was inconsistent with his policy.

Senator GORE. You did not make your decision known in any way to any representative of Christiana?

Mr. KNIGHT. No, I did not.

Senator GORE. Are you aware that a representative of Christiana did or did not know of your recommendation?

Mr. KNIGHT. I don't know. My recollection is, and my very clear recollection is, that I mailed this to Acting Commission Harding, and my family and I then went off on a week's vacation.

Senator GORE. When did you communicate with Secretary Dillon?

Mr. KNIGHT. I reported in to say I had completed it, I had met his deadline and the matter had been submitted to the Commissioner.

Senator GORE. In what manner did you report in?

Mr. KNIGHT. I believe I did this by telephone.

Senator GORE. Will you relate the conversation?

Mr. KNIGHT. Yes. I merely said, "Mr. Secretary, I have completed my chore and I have submitted a letter to Mr. Harding, and I believe it is on time and I am now going away. If you want to reach me I can be reached out in Arizona."

Senator GORE. Did you indicate the nature of your recommendation?

Mr. KNIGHT. I just don't recall. If I did, the Secretary made very clear to me that he did not want to become in any way involved in this because he had a policy against it.

Senator GORE. You have told us that.

Mr. KNIGHT. And whether I told him I decided for one or the other, I just plain don't recall. I don't recall that I did.

Senator GORE. The conversation must have been more extensive than this.

Mr. KNIGHT. No, sir. I just called him up to tell him I had done what he asked me to do, to consider the matter and make a report to the Commissioner, that I had submitted it on November 20, that I was going to be out of town, that if any further service was required of me in connection with it, I wanted to leave my address as to where I could be reached, because I would not be in my office for the ensuing week.

Senator GORE. And what did he say?

Mr. KNIGHT. I was going out on parents' day to my boy's school in Arizona. He said, "Thank you, Bob." I believe that is all he said.

Senator GORE. When did you next discuss this with someone, and with whom?

Mr. KNIGHT. I believe at one point I called Commissioner Harding from Arizona to see if there was anything further that would be required of me.

Senator GORE. In the meantime——

Mr. KNIGHT. I have forgotten what day it was. About a week later.

Senator GORE. In the meantime you had communicated with no one with respect to it?

Mr. KNIGHT. No. I wrote my letter and left. I did not communicate with the attorneys for Christiana about it, and the reason I did not is quite plain, Senator.

The Commissioner is perfectly free to follow or not follow my recommendation and to modify it in any respect. There was no reason for me to communicate with anyone.

Senator GORE. Do you have a copy of your recommendation to the Commissioner?

Mr. KNIGHT. I do, sir.

Senator GORE. Will you submit it for the record?

Mr. KNIGHT. I will. I have copies for every one, if you wish.

(The document referred to follows:)

NOVEMBER 20, 1964.

Hon. BERTRAND M. HARDING,
Acting Commissioner of Internal Revenue, Internal Revenue Building, 12th Street & Constitution Avenue NW., Washington, D.C.

DEAR MR. COMMISSIONER: This letter is in fulfillment of my appointment as special consultant to you to make recommendations with respect to the request by Christiana Securities Co. that the Commissioner's ruling letter of October 18, 1962, be amended to eliminate therefrom the following condition:

"In addition to any other conditions which may be applicable to the following rulings, they shall be of no force or effect in the event that any General Motors shares Christiana now owns or hereafter acquires are exchanged by Christiana for its own shares, * * *."

It is my recommendation that Christiana's request be granted, provided that $470 million in Federal income taxes, estimated in accordance with standard Treasury estimating procedures, shall have been paid or be payable with respect to all dispositions of shares of General Motors stock made by Du Pont and Christiana pursuant to the final judgment in the case of *United States* v. *E. I. du Pont de Nemours and Company*, entered on March 1, 1962, in the U.S. District Court for the Northern District of Illinois.

I have examined the various documents submitted to you on behalf of Christiana in support of its request, and have held a hearing attended by counsel for Christiana and by representatives of your office, including representatives of the Chief Counsel of Internal Revenue, and by representatives from the Office of the Assistant Secretary of the Treasury for Tax Policy. I have also examined the proceedings of the U.S. Congress, and committees thereof, leading to the enactment of section 1111 of the Internal Revenue Code of 1954 with respect to which the 1962 ruling letter was issued. Additionally, I have examined the pertinent files of the Treasury Department and the Internal Revenue Bureau made available to me.

On the basis of the foregoing, I have come to the following conclusions:

(1) Before passing section 1111 of the Internal Revenue Code, the U.S. Senate had a basis for assuming that the legislation would produce Federal income tax revenue in an amount of not less than $470 million.

(2) The Senate was given this impression by representations made with at least the deliberate acquiescence of Christiana Securities Co.

(3) The condition set forth in the ruling letter of the Commissioner of Internal Revenue was warranted by the facts and was a lawful exercise of his discretion.

(4) If the condition were now to be removed, the U.S. Treasury would, under any of the proposed modes of distribution of General Motors shares by Du Pont and Christiana, realize in excess of $470 million in Federal income tax revenue at the present market value for General Motors shares.

(5) The realization of $470 million in Federal income tax revenue by the U.S. Treasury would, in my judgment, meet the implied promise to the Senate made by Christiana or its representatives.

(6) If the implied promise is met, there is no other public policy to be served in requiring Christiana to distribute the balance of the General Motors shares held or to be held by it pro rata rather than by exchanging them for Christiana shares, other than the production of more income tax revenue for the United States. This conclusion is concurred in by the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice.

(7) There is no provision, either under section 1111 of the Internal Revenue Code, or any other section of the Internal Revenue Code, or any regulation pertaining thereto, or of the final judgment entered by the Chicago court that would require Christiana to distribute the shares in question pro rata rather than by offering them for exchange; indeed, a fair construction of the judgment and of the pertinent statutes and regulations is to the contrary.

(8) Under the foregoing circumstances, it would in my judgment, be both improper and unwise for the Commissioner to use a ruling letter as an instrument for producing more income tax revenue by making it difficult, if not impossible, for the taxpayers involved to dispose of their property as they see fit, provided such disposition is not contrary to law nor in conflict with some other public policy.

I am not persuaded by the argument that the implied promise to produce $470 million in taxes further implied a promise to produce more than $470 million if the market price of General Motors shares increased (as, in fact, it has), because—

(A) There is nothing in the record that materially supports an intention on the part of Christiana to promise more than $470 million.

(B) The argument made by the proponents of the bill in the Senate was to the effect that $470 million in 3 years was at least as desirable from the Government's point of view as somewhat less tax revenue spread over a period of 10 years, and that the latter would probably be the situation if the relief bill were not passed. The record, in my judgment, does not support a conclusion that the Senate's passage of the bill in any material way hinged upon its understanding as to how Christiana would distribute the General Motors stock to produce $470 million in revenue, nor does the record, in my judgment, make useful speculation as to how the Senate might have reacted had questions of fluctuations in the market been raised. Indeed, had these matters been deemed crucial by the Senate, it must be assumed that they would have provided for them in the statute.

(C) It is my firm recollection, supported, in my judgment by the evidence I have examined, that the condition was imposed not because the Senate or the Congress intended more than is contained in section 1111, but solely because it seemed like an appropriate exercise of the Commissioner's discretion to prevent Christiana and its shareholders from obtaining the advantages of a Commis-

sioner's ruling while, at the same time, taking positive action which would prevent them from fulfilling representations made to the Senate.

(D) It is my judgment that the Commissioner's condition is satisfied, and properly so, when the $470 million in taxes has been paid, and that there is no further reason for the Commissioner to attempt to deny Christiana and its shareholders' rights permitted them under the statute and under the final judgment of the Chicago court.

I have also considered very carefully whether granting Christiana's request should be also conditioned upon the receipt from Christiana's shareholders of the roughly $151 million that they would be required to produce in Federal income tax revenue to enable the $470 million commitment to be met on the basis of the calculations used in 1962 by Christiana to reach the $470 million figure. At present market prices, with no further pro rata distributions, it is estimated that these shareholders will have paid approximately $80 million.

In my judgment, there is nothing in the record to support the conclusion that a subcommitment was made on behalf of Christiana's shareholders. Moreover, if the Christiana shareholders are forced to accept pro rata distribution of enough shares of General Motors stock to enable them to produce Federal income tax revenue in the amount of $151 million, the total amount of income tax revenue produced by all distributions made under the final judgment of the Chicago court would, at present market prices, substantially exceed $470 million. To pursue logic to this end is not warranted by the facts, and, indeed, would be inconsistent with the conclusion that there was an implied promise of a fixed amount of revenue.

The condition I recommend imposing upon the granting of Christiana's request is perfectly feasible. Counsel for Christiana state that Du Pont will make its final distribution of General Motors shares to Christiana early in January 1965. On the date when that is done, the market value of the shares distributed may be readily ascertained. With this information, one can, in accordance with standard Treasury estimating procedures, calculate the total amount of revenue paid and payable with respect to dispositions of General Motors shares by Du Pont and Christiana pursuant to the final judgment of the Chicago court. If it is estimated that the taxes thus paid and payable exceed $470 million, Christiana will then have adequate time to file its registration statement and to take any action necessary to exchange or distribute its shares prior to May 1, 1965, the deadline for disposition set by the court. If the amount of taxes paid or payable is less than $470 million, Christiana will also have time to arrange for a pro rata distribution in accordance with the condition of the Commissioner's ruling letter of October 18, 1962.

Respectfully submitted.

ROBERT HUNTINGTON KNIGHT.

Senator GORE. I won't have time to read this. I know it is getting late and I don't want to hold you and the committee further.

Mr. KNIGHT. Incidentally I would like to make a statement for the record, because I am not clear that I have any authority to give a copy of my recommendations, since it is the property of the Commissioner, but I secured permission in advance from the Commissioner to submit it to the committee.

Senator GORE. One concluding question. Is your recommendation in any way based upon a doubt of legality or propriety of the 1962 letter ruling?

Mr. KNIGHT. No, it is not. In that letter to Mr. Harding, as you will see, that I had no doubt as to the propriety of the 1962 ruling. I think you very correctly pointed out that the 1962 and 1964 rulings really are based on the same concept.

Senator GORE. Thank you very much. Did the Acting Commissioner communicate with you further before he actually signed the letter ruling?

Mr. KNIGHT. I don't believe so. Oh, yes, yes, either he or some assistant of his, I forgot which, did call to ask for a clarification of one sentence in my letter to him. I think the question revolved as I recall

on whether I thought the ruling ought to be issued in January. I have forgotten what it was.

He just asked me what I meant by some sentence, and if it had to do with the time at which the ruling I was recommending should be given. It was a technical problem involving one sentence.

Senator GORE. When were you first advised of the Commissioner's ruling?

Mr. KNIGHT. I was never advised specifically of the Commissioner's ruling.

Senator GORE. So when you submitted your recommendation, that was your final connection other than the call for clarification of a sentence?

Mr. KNIGHT. That is correct. When I came back to New York, I again called the Commissioner and told him I was back in New York in case that he needed anything further from me. My call was merely to keep him posted on where I was in case something further was required of me, since I had been appointed as his consultant.

Senator GORE. This was the total connection you had with this matter?

Mr. KNIGHT. That is correct.

Senator GORE. Thank you, Mr. Chairman.

Mr. KNIGHT. My connection with this ended with my letter.

Senator SMATHERS. Mr. Knight, just a couple of questions. I am not quite clear as to the manner in which you were appointed as a consultant to the Commissioner of Internal Revenue.

As I listened to you in response to the question of the Senator from Tennessee, I somehow got the impression, erroneously or rightly, that Mr. Clifford had something to do with bringing you back down.

Mr. KNIGHT. Nothing whatsoever so far as I am aware. The only thing that had to do with my coming down here was Mr. Dillon asking me. He told me that he was advised—I think by Mr. Surrey—that it would be useful if I were appointed as a consultant to the Commissioner. He asked if I would be willing to be so appointed.

Senator SMATHERS. That is what Secretary Dillon, said to you?

Mr. KNIGHT. That is correct.

Senator SMATHERS. I got the impression in your answer to the Senator from Tennessee's question that Mr. Clifford said something to you to the effect that you would be brought back to Washington. Is this true?

Mr. KNIGHT. So far as I am aware, Mr. Clifford had absolutely nothing whatsoever to do with my being brought back.

When Mr. Clifford asked me if I would care to express an opinion as to what was meant in my 1962 letter, and I said I did not want to get involved in it, and he said, "Oh, do you think you are going to be called back on this thing," and I said——

Senator SMATHERS. So he asked you at that time, "Oh, you think you might be called back"?

Mr. KNIGHT. That was the tenor of his statement.

Senator SMATHERS. All right. Now let me ask you one other question. As a lawyer, would you care to express an opinion as to the legality of this first ruling that was made by you, and the Internal Revenue Service, in the light of the court's decision of March 1962?

Mr. KNIGHT. As a lawyer it is now my opinion and was then, that the ruling was a legal and proper exercise of the Commissioner's discretion, and was a lawful ruling.

Senator SMATHERS. May I ask you a hypothetical question. Had you been the attorney for the Christiana corporation, would you have accepted that ruling or not? I say it is a hypothetical question.

Mr. KNIGHT. Well, I will answer that this way, Senator. I understand that they have a number of legal opinions to the effect that they could have made the distribution and disregarded that ruling, and be sustained in a court.

Now I don't think that affects the validity of the ruling. As a matter of fact, I was of the opinion that they could probably make such a nonpro rata distribution.

Senator SMATHERS. Contrary to the ruling?

Mr. KNIGHT. That is right.

Senator SMATHERS. Which you people had issued.

Mr. KNIGHT. The sole concept of the condition in that ruling was that the Commissioner should not use his discretion to issue a ruling letter which would enable the taxpayers to make a nonpro rata distribution when it seemed to us that the only way in which, at the market prices then prevailing, they could meet a moral commitment they made to the Senate, was by a pro rata distribution. That was the reason for it. It was the only feasible way of their achieving the revenue mark which they had represented they would achieve.

Senator SMATHERS. And as I understand your testimony, you endeavored to achieve that figure which you believed the Congress thought should be brought in, and you did it in the face of and notwithstanding the court decision?

Mr. KNIGHT. That is correct.

Senator SMATHERS. Do you know at any time was there any private or secret meeting that was held by you or any representatives of the Internal Revenue Service, with the lawyers or representatives of the Du Pont corporation of the Christiana corporation?

Mr. KNIGHT. No.

Senator SMATHERS. Do you know whether any meeting of such character ever occurred?

Mr. KNIGHT. So far as I am aware, no secret meeting of any kind occurred. No meeting occurred on this subject other than the one I have described on November 10. It was in effect an informal public hearing.

Senator SMATHERS. Any other questions?

The committee will stand in recess.

Senator GORE. I hope that the Senator didn't understand that I implied any impropriety.

Senator SMATHERS. No, sir.

Senator GORE. As far as Mr. Clifford is concerned, he is a very able lawyer and a gentleman. He is employed to represent Christiana, and he seems to have done a good job for them.

Senator SMATHERS. I don't want to suggest by my questions that I in any way imply or infer that the able Senator from Tennessee had any such implications in mind. As the Senator knows, I have nothing but great affection and respect for him. We sometimes disagree.

If there are no other questions, the committee will stand in recess until further call of the Chair.

(The final judgment previously referred to follows:)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

CIVIL ACTION NO. 49 C 1071

United States of America, Plaintiff, v. *E. I. du Pont de Nemours and Company, General Motors Corporation, Christiana Securities Company, and Delaware Realty & Investment Corporation, Defendants*

FINAL JUDGMENT

At Chicago, Illinois, in said Division and District, on March 1, 1962.

Plaintiff having filed its complaint herein on June 30, 1949, and its amendments thereto on July 28, 1952 and January 16, 1953; all of the defendants having appeared and severally filed their answers to the amendment complaint denying the substantive allegations thereof; this Court, on January 16, 1953, before the conclusion of the presentation of the Plaintiff's case, having entered an order dismissing with prejudice the amended complaint as to certain individual defendants, and on February 16, 1953, at the close of the plaintiff's case, having entered an order dismissing without prejudice the amended complaint as to certain additional individual defendants, and on December 9, 1954, after trial, having entered a judgment herein dismissing this action as to all remaining defendants; the plaintiff having appealed in certain respects from such judgment insofar as it applied to defendants E. I. du Pont de Nemours and Company and General Motors Corporation, and for the retention of Christiana Securities Company and Delaware Realty and Investment Corporation as defendants for the purpose of framing adequate relief herein; the Supreme Court of the United States on June 3, 1957 having held that there was a violation of Section 7 of the Clayton Act by defendant E. I. du Pont de Nemours and Company, and in view of this determination having not decided the plaintiff's appeal from the dismissal of the action under the Sherman Act, and having reversed the District Court's judgment of December 9, 1954, and having denied the motion of defendants Christiana Securities Company and Delaware Realty & Investment Corporation for dismissal of the appeal as to them, and on July 16, 1957 having remanded the case to this Court for a determination after further hearing of the equitable relief necessary and appropriate in the public interest to eliminate the effects of the violation offensive to the Clayton Act; this Court having held such further hearings and having on November 17, 1959 entered a judgment; the plaintiff having appealed from such judgment; the Supreme Court of the United States on May 22, 1961 having vacated the judgment except the provisions enjoining du Pont from exercising voting rights in respect of its General Motors stock, and on June 27, 1961 having remanded the cause to this Court for further proceedings consistent with its opinion and this Court having had such further proceedings; Delaware Realty & Investment Corporation having been merged into Christiana Securities Company on February 24, 1961; and this Court having jurisdiction over all shares of General Motors stock now owned or hereafter acquired pursuant to the terms hereof by E. I. du Pont de Nemours and Company and Christiana Securities Company;

Now, therefore, it is hereby ordered, adjudged and decreed as follows:

I

For the purposes of this Judgment:

A. "Du Pont" means E. I. du Pont de Nemours and Company; "General Motors" means General Motors Corporation; "Christiana" means Christiana Securities Company.

B. "General Motors stock" means shares of General Motors stock of any class having voting rights.

C. "Du Pont stock" means shares of du Pont common stock having voting rights.

D. "Christiana stock" means shares of Christiana common stock having voting rights.

E. "General Motors stockholder" means any holder of record of General Motors stock.

F. "Du Pont stockholder" means any holder of record of du Pont stock.

G. "Christiana stockholder" means any holder of record of Christiana stock.

H. "Member of the du Pont family", as used in Appendix B to this Judgment, means any Christiana stockholder listed in Appendix A to this Judgment, or any individual whose name is listed in Appendix A as a beneficiary, without regard to whether such stockholder or individual is in fact a member of the du Pont family.

II

In conformity with the judgment of June 3, 1957 of the Supreme Court, the judgment of this Court of December 9, 1954, which dismissed the amended complaint finding no violation of Section 1 or Section 2 of the Sherman Act or Section 7 of the Clayton Act, is hereby vacated as to du Pont and General Motors as to those matters specified in the Notice of Appeal filed herein on February 4, 1955, and it is hereby adjudicated that du Pont's acquisition of General Motors stock has violated Section 7 of the Clayton Act.

III

Du Pont and Christiana are each hereby enjoined and restrained from acquiring, directly or indirectly, any General Motors stock except such stock as may be distributed by General Motors with respect to General Motors stock held by them, or as may be acquired by the exercise of rights issued with respect to such stock, or, in the case of Christiana, such stock as may be transferred to it by du Pont in complying with the divestiture requirements of Article VIII of this Judgment, provided that any stock so acquired shall be subject to all of the provisions of this Judgment in the same manner and to the same extent as if du Pont and Christiana had owned such stock on the effective date of this Judgment.

IV

A. General Motors is hereby enjoined and restrained from knowingly having as a director or employee in an executive capacity any person who at any time after February 15, 1960 has served as a director or officer of du Pont or Christiana.

B. Du Pont and Christiana are each hereby enjoined and restained from knowingly having as a director or employee in an executive capacity any person who at any time after February 15, 1960 has served as a director or officer of General Motors.

C. Du Pont and Christiana are each hereby enjoined and restrained from having as an officer or director any person who at the same time is serving as an officer or director of General Motors, and from knowingly having as an employee in an executive capacity any person who is at the same time an employee in an executive capacity of General Motors.

D. Du Pont and Christiana and their officers and directors are each hereby enjoined and restrained from nominating or designating any person for election as a director of General Motors and from proposing any person for a position as an officer of General Motors.

E. The provisions of Paragraphs A and B of this Article IV shall cease to apply on the tenth anniversary of the effective date of this Judgment.

V

So long as du Pont or Christiana owns, directly or indirectly, any General Motors stock, du Pont and General Motors are enjoined and restrained from entering into any contract, agreement or understanding between them which requires General Motors to purchase from du Pont any specified percentage of its requirements of any product.

VI

A. Du Pont and Christiana, and all persons who are directors or officers of du Pont or Christiana, are each hereby enjoined and restrained

(1) from exercising, directly or indirectly, voting rights in respect of General Motors stock which they or any of them hold of record or have the power to vote or the power to direct the vote, or would have the power to vote under the provisions of Article VII of this Judgment, and from attempting to influence, directly or indirectly, any person in any manner with respect to exercising voting rights in respect of any General Motors stock;

(2) from using or attempting to use, directly or indirectly, the stock ownership of du Pont or Christiana in General Motors to influence or control General Motors in any manner whatsoever:

Provided, however, That nothing in this paragraph shall prevent du Pont from performing acts required to be performed by the provisions of Article VII of this Judgment.

B. Du Pont and Christiana, as appropriate, are each hereby directed to give General Motors notice, promptly after the record date for each annual or special meeting of the stockholders of General Motors or other occasion on which General Motors common stockholders are entitled to vote, of the names of the record holders, as of such record date, of the General Motors stock which is not to be voted in compliance with the provisions of Paragraph A of this Article VI, together with an identification of the shares of General Motors stock held by such record holders that are subject to such provisions. Except as provided in Article VII of this Judgment, or unless otherwise directed by this Court or any other court of competent jurisdiction, General Motors is hereby directed to disqualify any record holder of General Motors stock named in such notice from voting, either in person or by proxy, the shares of General Motors stock identified therein, at the annual or special meeting or other occasion for which such notice was given. General Motors shall be entitled to rely exclusively in complying with this Article VI upon the notices to be furnished to it by du Pont and Christiana.

C. The provisions of this Article VI shall remain effective so long as du Pont or Christiana owns, directly or indirectly, any General Motors stock.

VII

A. Du Pont shall authorize the exercise of the voting rights of the General Motors stock held by du Pont in accordance with the provisions of Article III of this Judgment, by the du Pont stockholders as of the record date for the determination of General Motors stockholders entitled to vote, in the manner provided in this Article VII, except that du Pont shall not authorize the exercise of voting rights by Christiana or the officers or directors of du Pont or Christiana, and except that such voting rights shall not be exercised in favor of the election of any person nominated, designated by, or held out in any way to be a representative of du Pont or Christiana.

B. The number of shares of General Motors stock held by du Pont to be voted by each du Pont stockholder entitled to exercise such voting rights shall be determined, as of the record date for the determination of General Motors stockholders entitled to vote, as follows:

The number of shares of General Motors stock held by du Pont at such date shall be divided by the number of shares of all du Pont stock outstanding and which would be entitled to vote at a meeting of du Pont stockholders as of such date, and each du Pont stockholder entitled to exercise the voting rights of the General Motors stock held by du Pont shall be entitled to vote the number of General Motors shares determined by multiplying the quotient by the number of shares of du Pont stock owned of record by such stockholder at such date.

C. The following steps shall be taken prior to each annual or special meeting of General Motors stockholders and prior to any other occasion on which General Motors common stockholders are entitled to vote:

(1) Du Pont shall execute such instruments and take such other steps as may be necessary to authorize each du Pont stockholder who is entitled to vote the General Motors stock held by du Pont at the said meeting of the stockholders of General Motors, or other occasion, to vote, in the manner hereinafter provided in this Article VII, the number of shares of General Motors stock held by du Pont as determined for each such stockholder in accordance with Paragraph B of this Article VII, and du Pont shall furnish to General Motors evidence of such authorization in form satisfactory to General Motors.

(2) Du Pont shall arrange to furnish to each such stockholder a copy of the Notice of Meeting, Proxy Statement, proxy or proxies (which will represent such number of shares of General Motors stock as are determined for each such stockholder in accordance with Paragraph B of this Article VII and shall be modified or supplemented in such manner as to empower each such stockholder freely and effectively to exercise the voting rights with respect to such shares of General Motors stock), and other proxy soliciting material prepared by General Motors for distribution to its stockholders in

connection with any annual or special meeting or any other occasion on which General Motors stockholders are entitled to vote; shall arrange to furnish to each such du Pont stockholder such material as has been prepared by any person or group of persons making a solicitation of General Motors stockholders under and subject to applicable regulations of the Securities and Exchange Commission so as to achieve among such du Pont stockholders substantially the same coverage as will be achieved among General Motors stockholders by the person or group of persons making such solicitation; shall arrange to inform each such du Pont stockholder of the approximate number of shares of General Motors stock which the holder of each share of du Pont stock is entitled to vote hereunder as such proxy holder; and shall arrange to notify each such du Pont stockholder of his right in accordance with the provisions of this Article VII, to vote as such proxy holder and the means of exercising such right. The aggregate number of shares of General Motors stock evidenced by such proxies shall be voted to the last full share.

(3) Du Pont shall also arrange to furnish to each such du Pont stockholder, at or prior to the time it furnishes the proxy soliciting material for each annual meeting of the stockholders of General Motors, a copy of the latest Annual Report of General Motors.

(4) Copies of all such material shall be furnished by du Pont to the Assistant Attorney General in charge of the Antitrust Division at the same time as it is transmitted to stockholders of du Pont.

D. Du Pont and General Motors are each hereby directed to take all necessary and appropriate action to facilities the exercise of voting rights of the General Motors stock owned by du Pont in accordance with the provisions of this Article VII.

E. The provisions of this Article VII shall remain effective until such time as du Pont shall have divested itself of all General Motors stock as required by Article VIII of this Judgment.

F. Within thirty (30) days from the entry of this Judgment the Court will appoint a Monitor of the voting provisions of this Judgment. It shall be the duty of the Monitor to observe the operation of such provisions and to report to the Court following each General Motors annual or special meeting, or other occasion on which General Motors stockholders are entitled to vote, copies of which report shall be made available to the parties hereto. Du Pont, Christiana and General Motors are required to cooperate with the Monitor in the execution of his duties. No information obtained by the Monitor in the execution of his duties hereunder shall be disclosed except to the extent necessary in the preparation and submission of the reports to the Court provided for above and upon written request of the Attorney General of the United States or his authorized representative. The Monitor shall provide all parties hereto with copies of all information submitted in response to such requests. No information obtained by means provided in this Paragraph F shall be divulged by any party, or by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

VIII

A. Du Pont shall divest itself of all of the General Motors stock specified and itemized in Paragraph B of this Article VIII by distributing such stock to its stockholders (including non pro rata distributions in redemption of its own stock), or, in the alternative, by disposing of all such stock by such methods or combination of methods as it may select, such divestiture to commence within ninety (90) days from the effective date of this Judgment and to be completed no later than thirty-four (34) months from the date on which this Judgment becomes final (appeal time having run or appeal having been completed).

B. The General Motors shares which shall be divested by du Pont pursuant to Paragraph A of this Article VIII are:

(1) The 63,000,000 shares of General Motors stock now owned by du Pont.

(2) Any additional shares of General Motors stock which du Pont may acquire as provided in Article III of this Judgment in respect of the 63,000,000 shares specified in Paragraph B(1) of this Article VIII.

C. The Court makes the following findings with respect to the application of the provisions of Public Law 87–403, enacted February 2, 1962, to this Judgment:

(1) The divestiture by du Pont of all of the General Motors stock which it now has, and which it may acquire as provided in this Judgment, in the manner described in Paragraph A of this Article VIII is necessary and appropriate to effectuate the policies of the Clayton Act.

(2) The application of Section 1111(a) of the Internal Revenue Code of 1954, as amended, is required in order to reach an equitable antitrust order in this proceeding.

(3) The time for the complete divestiture fixed in this order is the shortest period within which such divestiture can be executed with due regard to the circumstances of this particular case.

D. In effecting the divestiture required by this Article VIII du Pont shall notify the Assistant Attorney General in charge of the Antitrust Division seven (7) business days in advance of any disposition (except a disposition made by sales on any registered stock exchange or by public offering), or, in the case of any proposed disposition by exchange seven (7) business days in advance of making of the exchange offer. Such notice shall include, to the extent then known by du Pont, the terms and conditions of the disposition, and the identity of the prospective purchaser or transferee, provided, however, that in the case of disposition by distributions or the making of exchange offers to stockholders, a notice shall be sufficient which includes, to the extent then known by du Pont, the terms and conditions of the distribution or exchange offer and the identity of the class or category of stockholders to whom the distribution or exchange offer is to be made. In the event that the Assistant Attorney General in charge of the Antitrust Division interposes an objection, such disposition or exchange offer shall not be made until it has been first approved by the Court. No information as to any proposed disposition or exchange offer supplied to the Assistant Attorney General in charge of the Antitrust Division pursuant to this Paragraph D shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in connection with proceedings in which the United States is a party in which objection is made to such proposed disposition or exchange offer, or as otherwise required by law.

E. Du Pont shall, within thirty (30) days after each anniversary date of the effective date of this Judgment, until it shall have divested itself of all General Motors stock as required by this Article VIII, and within thirty (30) days after the completion of the required divestiture, file with the Clerk of the Court and serve upon the Assistant Attorney General in charge of the Antitrust Division a report showing the number of shares of General Motors stock divested during the period reported and the means of divestiture employed.

IX

A. Christiana shall, within three years from the date on which this Judgment becomes final (appeal time having run or appeal having been completed), divest itself of all the General Motors stock specified and itemized in Paragraph B of this Article IX in the following manner:

(1) Christiana may sell such number of shares of General Motors stock as, in the judgment of its Board of Directors, is necessary to provide net proceeds sufficient to pay the taxes imposed upon the receipt by it of General Motors stock from du Pont and any expenses and taxes incurred upon the sale of the shares to be sold.

(2) Christiana shall distribute to its shareholders (including non *pro rata* distributions in redemption of its own stock) the remaining shares of General Motors stock required to be divested by it.

B. The General Motors shares which shall be divested by Christiana pursuant to Paragraph A of this Article IX are:

(1) The 535,500 shares of General Motors stock now owned by Christiana;

(2) Any shares of General Motors stock received by Christiana from du Pont pursuant to Paragraph A of Article VIII of this Judgment:

(3) Any additional shares of General Motors stock which Christiana may acquire in respect to the General Motors shares specified in Paragraphs B(1) and B(2) of this Article IX as provided in Article III of this Judgment.

C. Each person listed in Appendix A to this Judgment having signed and filed, or hereafter signing and filing, with the Court a Submission to Jurisdiction in the form attached as Appendix B to this Judgment, and each other person

and organization signing and filing with the Court such a Submission to Jurisdiction with respect to a transfer of Christiana or General Motors stock by a person listed in Appendix A, is hereby ordered and directed to take the actions specified in, and otherwise to comply with the orders and directions of this Court contained in, such Submission to Jurisdiction.

D. Certificates representing shares of General Motors stock (excluding fractions) transferred pursuant to Paragraph A(2) of this Article IX to each Christiana stockholder listed in Appendix A who has not signed and filed with the Court a Submission to Jurisdiction in the form attached as Appendix B in respect of the shares of Christiana stock specified in Appendix A shall be registered in the name of the Custodian to be appointed by the Court within thirty (30) days from the effective date of this Judgment or its nominee (unless the Christiana stockholder entitled to receive such shares shall deliver to the Custodian duly executed stock powers satisfactory to the Custodian relating to such shares of General Motors stock so as to make such certificates good delivery, together with an irrevocable direction to General Motors to deliver certificates representing General Motors stock that may be distributed by General Motors with respect to such shares to the Custodian, in which event such certificates shall be registered in the name of such stockholder) and shall be delivered by Christiana to the Custodian for the account of such Christiana stockholder, unless such stockholder has filed with this Court, with copies to the Assistant Attorney General in charge of the Antitrust Division and to Christiana, either (i) a sworn statement by the person listed in Appendix A as owning such Christiana stock or by the then record holder of such Christiana stock that the shares of Christiana stock are no longer owned by or held in trust for any person listed in Appendix A, a close relative of any such person, or an organization controlled by any such person or persons, or (ii) a Submission to Jurisdiction, by the record holder of such Christiana stock, substantially in the form attached as Appendix B to this Judgment, which Submission to Jurisdiction shall thereupon become a part of this Judgment and shall have the same force and effect as an order of this Court directed to such stockholder; in which event such stock certificates shall be delivered to such stockholder registered in his name. In the event such sworn statements or Submissions to Jurisdiction are filed with this Court in respect of all shares of Christiana stock specified in Appendix A, the provisions of Paragraphs E and F of this Article IX shall thereupon terminate and be of no further effect.

E. The Custodian shall hold the shares of General Motors stocks delivered to it by Christiana pursuant to Paragraph D of this Article IX for the individual account of the Christiana stockholder entitled to receive such shares, and up to the ninth anniversary of the effective date of this Judgment shall deliver to any such stockholder the shares of General Motors stock held for his account upon the filing with this Court, with copies to the Custodian and to Christiana, of a Submission to Jurisdiction by such stockholder substantially in the form set forth in Appendix B, which Submission to Jurisdiction shall thereupon become a part of this Judgment and shall have the same force and effect as an order of the Court to such stockholder. Up to the ninth anniversary of the effective date of this Judgment any person for whom the Custodian holds certificates for General Motors stock may direct the Custodian (i) to deliver certificates for any such shares upon a sale or donation thereof and upon receipt by the Custodian of a sworn statement that the transferee is not a person listed in Appendix A, a close relative of any such person, an organization controlled by any such person or persons, or a trust in which any such person, relative or organization has a beneficial interest, or of a Submission to Jurisdiction from the transferee substantially in the form set forth in Appendix B, the Custodian shall make such delivery, or (ii) to deliver any such shares for pledge for a debt due not later than such ninth anniversary with a financial institution, other than one listed as a fiduciary in Appendix A, and the Custodian shall make such delivery with a direction to such financial institution to redeliver such shares to the Custodian upon termination of such pledge. The Custodian shall give General Motors timely notice before each annual or special meeting of General Motors stockholders, or any other occasion on which such stockholders vote, of the record holders of the shares of General Motors stock held in its custody in each case with the number of such shares and the serial numbers of the certificates representing the same. All shares of General Motors stock remaining in the custody of the Custodian on the ninth anniversary of the effective date of this Judgment shall be sold by the Custodian in any manner in its absolute discretion within

the next following twelve-month period, subject to the terms and conditions of the custodian agreement to be defined in the order to be entered by this Court appointing the Custodian, and the total net proceeds of all such sales, less expenses, shall within thirty (30) days after the completion of all such sales be paid pro rata to the persons for whose individual account such shares of General Motors stock were held by the Custodian.

F. General Motors is hereby directed to disqualify any holder of General Motors stock named in the notice received from the Custodian as required in Paragraph E of this Article IX from voting, either in person or by proxy, the shares of General Motors stock identified therein at any annual or special meeting or other occasion for which such notice is given. General Motors shall be entitled to rely exclusively in complying with this Article IX upon the notice to be furnished to it by the Custodian.

G. Christiana is hereby directed to furnish to each of its officers and directors and to each person and institution listed in Appendix A a copy of this Judgment, with all appendixes, within thirty (30) days following the entry of this Judgment. Any person listed in Appendix A who has not signed and filed his Submission to Jurisdiction in substantially the form of Appendix B may, on or before one hundred and twenty (120) days from the date of the entry of this Judgment, file with the Court, with a copy to the Assistant Attorney General in charge of the Antitrust Division, a petition that his name be removed from Appendix A. Upon the expiration of the one hundred and twenty (120) days, the Court will set all such petitions for prompt hearing, at which each petitioner may show cause why he should be removed from Appendix A in respect of all or any part of the shares of Christiana stock listed therein opposite his name. If the Court shall find, on the evidence tendered by any petitioner and by plaintiff herein in opposition thereto, that the inclusion of such petitioner in Appendix A is unnecessary and inappropriate to the antitrust purposes of this Judgment, and is inequitable, an order modifying Appendix A as to that petitioner will be entered.

H. The Court makes the following findings with respect to the application of the provisions of Public Law 87–403, enacted February 2, 1962, to this Judgment:

(1) The divestiture by Christiana of all of the General Motors stock which it now has, or which it may acquire as provided in this Judgment, in the manner described in this Judgment is necessary and appropriate to effectuate the policies of the Clayton Act.

(2) The application of Section 1111(a) of the Internal Revenue Code of 1954, as amended, is required in order to reach an equitable antitrust order in this proceeding.

(3) The time for the complete divestiture fixed in this order is the shortest period within which such divestiture can be executed with due regard to the circumstances of this particular case.

I. In effecting the divestiture required by this Article IX, Christiana shall notify the Assistant Attorney General in charge of the Antitrust Division seven (7) business days in advance of any disposition (except a disposition made by sales on any registered stock exchange or by public offering), or, in the case of any proposed disposition by exchange seven (7) business days in advance of the making of the exchange offer. Such notice shall include, to the extent then known by Christiana, the terms and conditions of the disposition, and the identity of the prospective purchaser or transferee, provided, however, that in the case of disposition by distributions or the making of exchange offers to stockholders, a notice shall be sufficient which includes, to the extent then known by Christiana, the terms and conditions of the distribution or exchange offer and the identity of the class or category of stockholders to whom the distribution or exchange offer is to be made. In the event that the Assistant Attorney General in charge of the Antitrust Division interposes an objection, such disposition or exchange offer shall not be made until it has been first approved by the Court. No information as to any proposed disposition or exchange offer supplied to the Assistant Attorney General in charge of the Antitrust Division pursuant to this Paragraph I shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in connection with proceedings in which the United States is a party in which objection is made to such proposed disposition or exchange offer, or as otherwise required by law.

J. Christiana shall within thirty (30) days after each anniversary date of the effective date of this Judgment, until it shall have divested itself of all General Motors stock as required by this Article IX, and within thirty (30) days after the completion of the required divestiture, file with the Clerk of the Court and serve upon the Assistant Attorney General in charge of the Antitrust Division a report showing the number of shares of General Motors stock divested during the period reported and the means of divestiture employed.

X

A. For the purpose of securing compliance with this Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall be permitted, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice as to time and subject matter to du Pont or Christiana at their respective principal offices

(1) to inspect during office hours all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of du Pont or Christiana relating to any provisions of this Judgment, during which time counsel for du Pont or Christiana, as the case may be, may be present; and

(2) subject to the reasonable convenience of du Pont or Christiana, and without restraint or interference from them, to interview regarding any such provisions any officer or employee of du Pont or Christiana, who, together with du Pont or Christiana, as the case may be, may have counsel present.

B. The Assistant Attorney General in charge of the Antitrust Division may apply to this Court from time to time for an order, upon good cause shown and after due notice and opportunity for hearing thereon, authorizing similar inspection of records and documents of General Motors and/or similar interviewing of officers and employees of General Motors, for such purposes and within such limits as may then be reasonably necessary to enforcement of this Judgment.

C. The Assistant Attorney General in charge of the Antitrust Division may apply to this Court from time to time for an order, upon good cause shown and after due notice and opportunity for hearing thereon, requiring du Pont or Christiana to submit in writing such report or reports with respect to matters contained in this Judgment as may then be reasonably necessary to enforcement of this Judgment.

D. No information obtained by the means permitted in this Article X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

XI

Jurisdiction is retained in order to enable any party hereto, or any person enjoined or restrained hereby, to apply to this Court at any time for such further orders, findings and directions as may be necessary or appropriate: for the construction or carrying out of this Judgment; for the modification or termination of this Judgment or any of the provisions thereof; for the enforcement of compliance therewith and punishment of any violations thereof; for the determination and assessment of proper costs and allowances in this cause; and in relation to any tax legislation heretofore or hereafter enacted.

The effective date of this Judgment shall be at 12:01 A.M., May 1, 1962; provided, however, that the provisions of Articles VI and VII hereof shall become effective immediately upon the entry of this Judgment.

WALTER J. LABUY,
Judge of the United States District Court.

CHICAGO, ILLINOIS, MARCH 1, 1962.

APPENDIX A

Name	*Christiana shares*
Irenee du Pont	542,400
Irene S. du Pont May	41,799
Margaretta du Pont Greenewalt	50,977
Constance du Pont Darden	138,444
Mariana du Pont Silliman	90,518
Octavia du Pont Bredin	86,000
Lucile du Pont Flint	88,446
Irenee du Pont, Jr	175,555
Henry B. du Pont	370,499
Natalie du Pont Edmonds	44,462
Mary du Pont Faulkner	38,756
Esther du Pont Thouron	72,303
Lammont du Pont, Jr	75,491
Pierre S. du Pont, III	28,473
Edith du Pont Riegel	46,334
Reynolds du Pont	76,602
S. Hallock du Pont	135,893
Lammont du Pont Copeland	338,348
William Winder Laird, Jr	100,976
Louisa d'A. Carpenter	5,500
Renee Carpenter Draper	480
R. R. M. Carpenter, Jr	11,520
Ernest N. May	65,345
Crawford H. Greenewalt	53,015
Henry H. Silliman	1,062
John B. Bredin	1,200
Robert B. Flint	1,296
Barbara B. du Pont	410
Emily T. du Pont	560
George P. Edmonds	3,520
Mary W. du Pont	1,219
Jane H. du Pont	800
Katherine P. L. du Pont	8,000
Virginia S. du Pont	20,609
H. Rodney Sharp	5,140
Mary P. Carpenter	4,000
Walter S. Carpenter, Jr	64,233
A. Felix du Pont, Jr	20,235
E. Herbert Tinney	23
Anna M. Tinney	9

Name of stockholder (name of beneficiary)	*Number of Christiana shares*
Wilmington Trust Co Account No. 3838 (Eleanor du Pont Rust)	93,462
Wilmington Trust Co. Account No. 3018 (Philip G. Rust)	39,506
Wilmington Trust Co. Account No. 3039 (Robert B. Flint)	23,800
Wilmington Trust Co. Account No. 1780 (Emily T. du Pont)	65,843
Wilmington Trust Co. Account No. 1781 (Emily T. du Pont)	2,160
Wilmington Trust Co. Account No. 3103 (Natalie Edmonds)	1,482
Wilmington Trust Co. Account No. 2095 (Natalie Edmonds)	55,257
Wilmington Trust Co. Account No. 2085 (Natalie Edmonds)	16,000
Wilmington Trust Co. and Margaret F. du Pont Account No. 4272 (Natalie Edmonds)	11,120
Wilmington Trust Co. Account No. 3104 (Mary du Pont Faulkner)	1,482
Wilmington Trust Co. Account No. 2094 (Mary du Pont Faulkner)	55,257
Wilmington Trust Co. Account No. 2085 (Mary du Pont Faulkner)	16,000
Wilmington Trust Co. and Margaret F. du Pont Account No. 4273 (Mary du Pont Faulkner)	8,560
Wilmington Trust Co. Account No. 3105 (Esther du Pont Thouron)	1,482
Wilmington Trust Co. Account No. 2092 (Esther du Pont Thouron)	55,257
Wilmington Trust Co. Account No. 4381 (Esther du Pont Thouron)	32,944
Wilmington Trust Co. Account No. 2085 (Esther du Pont Thouron)	16,000
Wilmington Trust Co. and Margaret F. du Pont Account No. 4274 (Esther du Pont Thouron)	8,800
Wilmington Trust Co. Account No. 3106 (Lammot du Pont, Jr.)	1,482
Wilmington Trust Co. Account No. 2093 (Lammot du Pont, Jr.)	55,257
Wilmington Trust Co. Account No. 2085 (Lammot du Pont, Jr.)	16,000
Wilmington Trust Co. and Margaret F. du Pont Account No. 4275 (Lammot du Pont, Jr.)	8,960
Wilmington Trust Co. Account No. 3107 (Pierre S. du Pont, III)	1,633
Wilmington Trust Co. Account No. 2096 (Pierre S. du Pont, III)	55,257
Wilmington Trust Co. Account No. 2085 (Pierre S. du Pont, III)	16,000
Wilmington Trust Co. and Margaret F. du Pont Account No. 4276 (Pierre S. du Pont, III)	7,040
Wilmington Trust Co. Account No. 3108 (Edith du Pont Riegel)	1,482
Wilmington Trust Co. Account No. 2091 (Edith du Pont Riegel)	55,257
Wilmington Trust Co. Account No. 2085 (Edith du Pont Riegel)	16,000
Wilmington Trust Co. and Margaret F. du Pont Account No. 4277 (Edith du Pont Riegel)	9,920
Wilmington Trust Co. Account No. 3110 (Reynolds du Pont)	1,482
Wilmington Trust Co. Account No. 2098 (Reynolds du Pont)	55,897
Wilmington Trust Co. Account No. 2085 (Reynolds du Pont)	16,000
Wilmington Trust Co. and Margaret F. du Pont Account No. 4278 (Reynolds du Pont)	10,720
Wilmington Trust Co. Account No. 3318 (Katherine P. L. du Pont)	3,054
Wilmington Trust Co. Account No. 4873 (Margaret F. du Pont)	138,000
Wilmington Trust Co. Account No. 3112 (Willis H. du Pont)	1,482
Wilmington Trust Co. and Margaret F. du Pont Account No. 4270 (Willis H. du Pont)	49,040
Wilmington Trust Co. Account No. 4387 (Willis H. du Pont)	12,403
Wilmington Trust Co. Account No. 4407 (Willis H. du Pont)	9,378
Wilmington Trust Co. Account No. 4408 (Willis H. du Pont)	9,378
Wilmington Trust Co. Account No. 3221 (Willis H. du Pont)	369
Wilmington Trust Co. and Margaret F. du Pont Account No. 4280 (Willis H. du Pont)	11,120
Wilmington Trust Co. Account No. 5062 (Willis H. du Pont)	4,011
Wilmington Trust Co. Account No. 2085 (Willis H. du Pont)	16,000
Wilmington Trust Co. Account No. 2195 (Pamela C. Copeland)	66,337
Wilmington Trust Co. Account No. 1542–1 (Mary Laird Downs)	32,988
Walter J. Laird, W. W. Laird, Jr., and Joseph Chinn, Jr., as Trustees (Mary Laird Downs)	68,511
Wilmington Trust Co. Account No. 1230–2 (Mary Laird Downs)	49,350
Wilmington Trust Co. Account No. 2371 (Mary Laird Downs)	152
Wilmington Trust Co. Account No. 2371 (William Winder Laird, Jr.)	152
Wilmington Trust Co. Account No. 1542–2 (Alletta Laird Downs)	32,988
Walter J. Laird, W. W. Laird, Jr., and Joseph Chinn, Jr., as Trustees (Alletta Laird Downs)	69,290

Name of stockholder (name of beneficiary)	*Number of Christiana shares*
Wilmington Trust Co. Account No. 1230-5 (Alletta Laird Downs)	49,350
Wilmington Trust Co. Account No. 2371 (Alletta Laird Downs)	152
Wilmington Trust Co. Account No. 1542-4 (Wilhelmina Laird Craven)	32,988
Walter J. Laird, W. W. Laird, Jr., and Joseph Chinn, Jr., as Trustees (Wilhelmina Laird Craven)	71,877
Wilmington Trust Co. Account No. 1230-3 (Wilhelmina Laird Craven)	49,350
Wilmington Trust Co. Account No. 2371 (Wilhelmina Laird Craven)	152
Wilmington Trust Co. Account No. 1542-3 (Rosa Laird H. McDonald)	32,988
Walter J. Laird, W. W. Laird, Jr. and Joseph Chinn, Jr., as Trustees (Rosa Laird H. McDonald)	72,272
Wilmington Trust Co. Account No. 1230-4 (Rosa Laird H. McDonald)	49,350
Wilmington Trust Co. Account No. 2371 (Rosa Laird H. McDonald)	152
Wilmington Trust Co. Account No. 3151 (Ada B. Sharp)	3,920
Wilmington Trust Co. Account No. 3150 (Bayard Sharp)	8,000
Wilmington Trust Co. Account No. 1560 (Margaretta du Pont Carpenter)	230,449
Wilmington Trust Co. Account No. 1559 (Louisa d'A. Carpenter)	74,073
Wilmington Trust Co. Account No. 1106 (Louisa d'A. Carpenter)	32,922
Wilmington Trust Co. Account No. 1559 (Renee Carpenter Draper)	74,073
Wilmington Trust Co. Account No. 1105 (Renee Carpenter Draper)	32,921
Wilmington Trust Co. Account No. 2082 (Renee Carpenter Draper)	8,000
Wilmington Trust Co. Account No. 2886 (Renee Carpenter Draper)	24,000
Wilmington Trust Co. Account No. 1559 (Robert R. M. Carpenter, Jr.)	74,073
Wilmington Trust Co. Account No. 1107 (Robert R. M. Carpenter, Jr.)	32,922
Wilmington Trust Co. Account No. 2887 (Robert R. M. Carpenter, Jr.)	24,000
Wilmington Trust Co. Account No. 1559 (William Kemble Carpenter)	74,072
Wilmington Trust Co. Account No. 1108 (William Kemble Carpenter)	32,922
Wilmington Trust Co. Account No. 2105 (A. Felix du Pont, Jr.)	32,000
Wilmington Trust Co. Account No. 2227 (A. Felix du Pont, Jr.)	34,640
Wilmington Trust Co. Account No. 3932, A. Felix du Pont, Jr. and George S. Leisure, as Trustees (A. Felix du Pont, Jr.)	23,600
Emile F. du Pont	17,600
Henry F. du Pont	81,600
Margaret C. Peyton	480
Longwood Foundation, Inc	505,945

APPENDIX B

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

CIVIL ACTION NO. 49 C 1071

United States of America, Plaintiff, v. *E. I. du Pont de Nemours and Company, General Motors Corporation, Christiana Securities Company, and Delaware Realty & Investment Corporation, Defendants*

SUBMISSION TO JURISDICTION

The undersigned hereby submits to the jurisdiction of this Court in the above captioned cause for the purpose of becoming bound by the provisions of the Final Judgment set forth herein, and for no other purpose, *viz.:*

1. The undersigned stockholder of Christiana is hereby enjoined from voting any shares of General Motors stock such stockholder has received or may receive in respect of the shares of Christiana stock set forth opposite the name of such stockholder in Appendix A to said Judgment.

2. The undersigned stockholder of Christiana is hereby ordered to dispose, within ten (10) years after the effective date of said Judgment, of all right, title and interest, legal and beneficial, in all shares of General Motors stock (excluding fractions) such stockholder has received or may receive in respect of the shares of Christiana stock set forth opposite the name of such stockholder in Appendix A to said Judgment: *Provided, however,* That such disposition shall not be made by private sale or by gift to any member of the du Pont family listed in said Appendix A, to a close relative of any such member, to an organi-

zation controlled by any such member or members, or to a trust in which any such member, relative or organization has a beneficial interest, unless such member, relative, organization or trustee of such trust shall have signed and filed with the Court, with a copy to the Assistant Attorney General in charge of the Antitrust Division, a Submission to Jurisdiction in a form similar to this instrument.

3. The undersigned stockholder is hereby ordered, at or before the expiration of thirty (30) days after each anniversary of the effective date of this Judgment, to file with the Court a written report signed by him showing, in the case of each disposition of shares of General Motors stock pursuant to paragraph 2 above in the 12 months preceding such anniversary date, the number of shares disposed of, the nature of the transaction, the approximate date of the transaction, and the person, if known, to whom the disposition was made, with copies to the Assistant Attorney General in charge of the Antitrust Division and to Christiana: *Provided, however,* That no report shall be required if no disposition was made by the undersigned stockholder in such 12 month period.

4. The provisions of paragraphs 1, 2 and 3 above shall apply to all shares of General Motors stock (excluding fractions) which have been received or may be received by such stockholder by way of stock dividends, split-ups, or the exercise of rights issued by General Motors in each case in respect of the shares of General Motors stock referred to in said paragraphs 1, 2 and 3.

5. The undersigned stockholder is hereby enjoined, until such time as Christiana shall have disposed of all General Motors stock, from disposing by private sale or by gift of any part of the shares of Christiana stock set forth opposite the name of such stockholder in Appendix A, to any member of the Du Pont family listed in Appendix A, to a close relative of any such member, to an organization controlled by any such member or members, or to a trust in which any such member, relative or organization has a beneficial interest, unless such member, relative, organization or trustee of such trust shall have signed and filed with the Court, with a copy to the Assistant Attorney General in charge of the Antiturst Division, a Submission to Jurisdiction in a form similar to this instrument. The singular number as used herein shall include the plural.

_____,
Signature of Stockholder.

(Acknowledgment)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

CIVIL ACTION NO. 49 C 1071

United States of America, Plaintiff, v. *E. I. du Pont de Nemours and Company, General Motors Corporation, Christiana Securities Company, and Delaware Realty & Investment Corporation, Defendants*

STIPULATION

It is hereby stipulated by and among the United States of America, E. I. du Pont de Nemours and Company and Christiana Security Company that they will join in preposing to the Court the attached Order amending the final Judgment entered herein on March 1, 1962, and the entry thereof without further notice.

PAUL A. OWENS,
For the United States of America.
C. A. HERLY,
For E. I. du Pont de Nemours and Company.
WILLIE BUSHLY,
For Christiana Securities Company.

No Objection:

_____
For General Motors Corporation.
Dated:
_____

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

CIVIL ACTION NO. 49 C 1071

United States of America, Plaintiff, v. *E. I. du Pont de Nemours and Company, General Motors Corporation, Christiana Securities Company, and Delaware Realty & Investment Corporation, Defendants*

ORDER

On the consent of all parties it is hereby

Ordered, adjudged and decreed that the Final Judgment entered in Civil Action No. 49 C 1071 on March 1, 1962, be amended as follows:

Article IX, Paragraph C to read:

"Each person listed in Appendix A or Appendix C to this Judgment, having signed and filed with the Court a Submission to Jurisdiction substantially in the form of Appendix B to this Judgment, and each other person signing and filing with the Court a Submission to Jurisdiction with respect to a transfer of du Pont, Christiana or General Motors stock by a person listed in Appendix A or Appendix C, is hereby ordered and directed to take the actions specified in, and otherwise to comply with the orders and directions of this Court contained in, such Submission to Jurisdiction."

Article IX, Paragraphs D, E, F and G to be deleted from said Judgment.

Article IX, Paragraphs H, I and J to be redesignated as Article IX, Paragraphs D, E and F, respectively.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that said Final Judgment be amended by the addition thereto of the attached Appendix C.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that except as modified above the provisions of the aforesaid Final Judgment are hereby expressly reaffirmed, in the light of the modifications ordered above, and remain in full force and effect.

/s/ WALTER J. LABUY,
United States District Judge.

Dated: April 26, 1962.

APPENDIX C

Name of stockholder (name of beneficiary)	*Number of Christiana shares*
Bank of Delaware Acct. No. 5188 (H. R. Sharp, Jr., Bayard Sharp and Univ. of Delaware)	329,212
Bank of Delaware Acct. No. 5189 (H. R. Sharp, H. R. Sharp, Jr., and Bayard Sharp)	230,449
Bank of Delaware Acct. No. 6629 (Crawford H. Greenewalt)	1,610
	561,271
* * * * * *	*

	Number of Du Pont shares
Delaware Trust Co. Acct. No. TA 218 (William du Pont, Jr.)	98,800
Delaware Trust Co. Acct. No. TA 219 (Marion du Pont Scott)	154,000
Delaware Trust Co. Acct. No. TW 246 (William du Pont, Jr. and Marion du Pont Scott)	1,162,588
Longwood Foundation, Inc	11,525
	1,426,913
* * * * * *	*

	Number of General Motors shares
Longwood Foundation, Inc	322,224

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

CIVIL ACTION NO. 49 C 1071

United States of America, Plaintiff, v. E. I. du Pont de Nemours and Company, General Motors Corporation, Christiana Securities Company, and Delaware Realty & Investment Corporation, Defendants

SUBMISSION TO JURISDICTION

The undersigned hereby submits to the jurisdiction of this Court in the above captioned cause for the purpose of becoming bound by the provisions of the Final Judgment set forth herein, and for no other purpose, viz.:

1. The undersigned is hereby enjoined from voting any shares of General Motors that are set forth opposite its name in Appendix C to said Judgment or that it may receive in respect of the shares of du Pont or Christiana stock set forth opposite its name in said Appendix C.

2. The undersigned is hereby ordered to dispose, within ten (10) years after the effective date of said Judgment, of all right, title and interest, legal and beneficial, in all shares of General Motors stock (excluding fractions) that are set forth opposite its name in Appendix C to said Judgment or that it may receive in respect of the shares of du Pont or Christiana stock set forth opposite its name in said Appendix C: *Provided, however*, That such disposition shall not be made by private sale or by gift to any person listed in Appendix A or Appendix C to said Judgment, to a close relative of any such person, to an organization controlled by any such person or persons, or to a trust in which any such person, relative or organization has a beneficial interest, unless such person, relative, organization or trustee of such trust shall have signed and filed with the Court, with a copy to the Assistant Attorney General in Charge of Antitrust Division, a Submission to Jurisdiction in a form similar to this instrument.

3. The undersigned is hereby ordered, at or before the expiration of thirty (30) days after each anniversary of the effective date of this Judgment, to file with the Court a written report signed by it showing, in the case of each disposition of shares of General Motors stock pursuant to paragraph 2 above in the 12 months preceding such anniversary date, the number of shares disposed of, the nature of the transaction, the approximate date of the transaction, and the person, if known, to whom the disposition was made, with copies to the Assistant Attorney General in charge of the Antitrust Division: *Provided, however*, That no report shall be required if no disposition was made by the undersigned in such 12 month period.

4. The provisions of paragraphs 1, 2 and 3 above shall apply to all shares of General Motors stock (excluding fractions) which have been received or may be received by the undersigned by way of stock dividends, split-ups, or the exercise of rights issued by General Motors in each case in respect of the shares of General Motors stock referred to in said paragraphs 1, 2 and 3.

5. The undersigned is hereby enjoined, until such time as Christiana shall have disposed of all General Motors stock, from disposing by private sale or by gift of any part of the shares of Christiana stock set forth opposite its name in Appendix C, and until such time as du Pont shall have disposed of all General Motors stock, from disposing by private sale or gift of any part of the shares of du Pont stock set forth opposite its name in Appendix C, to any person listed in Appendix A of Appendix C, to a close relative of any such person, to an organization controlled by any such person or persons, or to a trust in which any such person, relative or organization has a beneficial interest, unless such person, relative, organization or trustee of such trust shall have signed and filed with

the Court, with a copy to the Assistant Attorney General in Charge of the Antitrust Division, a Submission to Jurisdiction in a form similar to this instrument. The singular number as used herein shall include the plural.

By ——— ———.

STATE OF DELAWARE,
County of New Castle, ss:

Be it remembered that on the _____ day of April, 1962, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid _____, _____, Trustees as described in the foregoing instrument, known to me personally to be such, and acknowledged that he duly executed said instrument on behalf of _____ as such Trustee.

In Witness Whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

———— ————,
Notary Public.

(Whereupon, at 5 p.m., the committee adjourned, subject to the call of the Chair.)

DU PONT—CHRISTIANA

WEDNESDAY, MARCH 24, 1965

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

The committee met, pursuant to notice, at 10 a.m., in room 2221, New Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Long, Smathers, Douglas, Gore, Talmadge, Williams, Bennett, and Morton.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The first witness is the former Commissioner of Internal Revenue Mortimer Caplin.

STATEMENT OF MORTIMER CAPLIN, FORMER COMMISSIONER OF INTERNAL REVENUE

Mr. CAPLIN. Mr. Chairman, it is a privilege to be back before this committee again.

I have no formal statement. I received word that the committee was anxious to discuss the Du Pont and Christiana ruling and I am available to you, Mr. Chairman.

Mr. Chairman, needless to say I have been back in private life since July 10, 1964, and have no official connection with the Government. I am engaged in the practice of law here in Washington.

Senator LONG. May I say, Mr. Caplin, I think you did a fine job while you were there. I was sorry to see you leave and am glad to have you back.

Mr. CAPLIN. Thank you, sir.

The CHAIRMAN. I am very proud that Mr. Caplin is a Virginian who made a great record.

Mr. CAPLIN. Thank you, sir.

The CHAIRMAN. Do you desire, Senator Gore, to make a statement?

Senator GORE. I wanted to ask him some questions. I will wait until my turn.

The CHAIRMAN. If it meets with the approval of the committee Senator Gore is recognized at this time.

Senator GORE. Mr. Caplin, have you had an opportunity to refresh your memory concerning the letter ruling made by you in 1962 with respect to the distribution of General Motors stock by Christiana Corp.?

Mr. CAPLIN. I have to a limited extent, Senator.

I have tried to locate the key documents. I have checked them. I had an informal discussion with some of the people in Internal Revenue Service about my participation in that ruling.

Senator GORE. In your letter you wrote that you had construed it to be the legislative intent that the distribution of General Motors stock by Christiana Corp. to be on a pro rata basis, that is in accordance with the number of shares owned by stockholders of Christiana.

Mr. CAPLIN. I don't think the statement was made that flatly.

Senator GORE. Will you—if I have misstated it——

Senator SMATHERS. Albert, what date is that letter?

Senator GORE. This letter is dated October 10, 1962. Rather than my describing your letter, will you tell us your holding?

Mr. CAPLIN. The ruling in the *Christiana* case was unusual in the sense that the Treasury Department was contacted. Normally under the procedures that Secretary Dillon had established and which was meticulously followed both by him and Under Secretary Fowler, the Internal Revenue Service would go forward with a ruling without consultation with the Treasury.

In this case, however, a very significant amount of revenue was involved and it was under a special statute. We knew that the Treasury had been involved in the legislation from a policy standpoint and we thought it advisable and proper to contact the Treasury Department.

Robert Knight was the then General Counsel. He had been representing the Treasury during the hearings on the bill, and was more familiar than anyone else with the background. We consulted with Mr. Knight just as we would consult with the Chief Counsel of the Internal Revenue Service.

The Chief Counsel, as you know, is an Assistant General Counsel, and we asked for Mr. Knight's advice on the background leading up to the legislation.

In the course of these conferences he was very clear that the underlying assumption of the legislation was that there would be a pro rata distribution of General Motors stock and he based this upon the revenue estimate in the neighborhood of $470 million.

Later, we had some conferences with representatives of the taxpayer on this point. It was rather hotly contested. They made an analysis of the record, the debates, the hearings, the language in the committee reports in an effort to demonstrate that there had been no such representation. Mr. Knight and his staff, primarily through a lawyer named Arnold Fisher who prepared a detailed memorandum on this with excerpts from the record, took the contrary position.

We had a major meeting in the Internal Revenue Service with a series of lawyers representing the taxpayers, and this particular issue was put right before them. We wanted to give them an opportunity to discuss and present their evidence on what was the true understanding of the Congress at the time of the legislation.

In the midst of this discussion I offered them the opportunity of having the issue presented to the joint committee. I had indicated that we planned to condition our ruling on a pro rata distribution; and that, if they felt this was unfair, I was prepared to present the issue before the joint committee. At that time the taxpayers' representatives indicated that they did not think this was necessary. They

were prepared to accept that first ruling with the condition in it and asked us to include a sentence about their right to come back at a later time. This was something any taxpayer could do as a matter of right.

Senator GORE. Whether you included the sentence or not?

Mr. CAPLIN. Whether we did or not.

Senator GORE. So they accepted the ruling?

Mr. CAPLIN. Yes, sir.

Senator GORE. To that extent.

And it was your holding, upon the advice of Mr. Knight, that this ruling was in accord with the intent of the Congress in this respect?

Mr. CAPLIN. I suppose the language used was that this was the underlying assumption of the legislation. We had some ambiguity inasmuch as the Congress and the various committees were extremely cautious about prejudging what the court was then considering. I think everyone was concerned—the Attorney General, I believe the President in his statement at the time he signed the bill, the committee reports—all were concerned about not interfering with the judicial discretion. For conceivably the court might have required some redemption or something other than pro rata distribution.

So, the statement was made that Congress was not prejudging the manner of divestiture. But again as I read the record, the thought was, if the court didn't prevent this, there was an assumption there would be a pro rata distribution.

Senator GORE. As a matter of fact, the revenue estimates used by the chairman of the committee, and by other members of the committee in debate, would not have been correct had there been a nonpro rata distribution?

Mr. CAPLIN. I think that is correct.

The estimators were in the Treasury Department, and Mr. Knight was in consultation with them. Christiana could have merged into Du Pont and eliminated any tax involved in the ultimate distribution to them. There could have been a redemption of large amounts of stock held by tax-exempt organizations, and this, too, would have cut down on the revenue yield.

Senator GORE. Is it fair for me to conclude from your statement, is it a correct conclusion for me to reach, that this tax ruling did not follow the usual procedure, the regular procedure, which Secretary Dillon had laid down?

Mr. CAPLIN. I would say that it was irregular only in the sense that it was something that didn't occur often.

Over the years there were isolated situations of a high policy nature, perhaps involving significant amounts of revenue, where I would confer with representatives of the Treasury Department. So, it was irregular only in that sense.

Senator GORE. But to that extent it was irregular?

Mr. CAPLIN. Yes, sir.

Senator GORE. Did you have doubts about the legality of the ruling at the time you issued it?

Mr. CAPLIN. No doubts about the legality. The ruling procedure is really a discretionary function of the Commissioner. I think the United States is the only nation in the world that gives this type of ruling in advance of a transaction which becomes binding on the

Service as a practical matter. I think it is important to tax administration that these rulings be issued and, as you know, there are over 40,000 rulings issued each year.

At the same time, the Commissioner is not required to give a ruling where he feels that the revenue may be jeopardized because of an uncertainty about a legal position. He could refuse to give such a ruling or he could condition it upon a certain act, and here, too, from time to time this occurs.

The policy of the Service is to rule as frequently as possible, and not to in any way distort a statute or to try to correct a statute if there has been an error in it.

But here I think the feeling was that there was this assumption, this underlying assumption, of a certain amount of revenue, and that there was too much at stake for the Service to exercise its discretion completely in favor of the taxpayer without asking for this condition.

Now, again, I would like to mention that we did give the taxpayers the opportunity to have this issue considered by the joint committee and they did not request that.

Senator GORE. What do you mean exactly when you say that the ruling is binding on the Service?

Mr. CAPLIN. Well, as a matter of policy if the Service issues an advance ruling on a proposed transaction, and if the taxpayer changes his position based upon that ruling, we think, as a matter of fairplay and good administration, the Service should respect that ruling, even though it may have made an error.

In other words, the normal procedure is to revoke a ruling only prospectively.

Again, if there has been reliance by the taxpayer, and a change in position, the Service as a stated proposition—and this is a published procedure—will generally follow that ruling.

Senator GORE. Now, to recapitulate as briefly as possible, Christiana corporation petitioned or sought a letter ruling in 1962. Upon consultation with the taxpayers, with your own counsel, and with Mr. Knight, the General Counsel of the Treasury, you prepared a ruling which the taxpayer contested, but upon your insistence on the condition of the ruling you afforded the taxpayer an opportunity to submit the matter to the joint committee on internal revenue of the U.S. Congress.

The taxpayers declined to do so, accepted the ruling, acted under the ruling, made two distributions in accordance with the ruling.

Is that a correct statement?

Mr. CAPLIN. Yes, sir; that is correct. Of course, they did reserve the right to come back and ask for reconsideration.

Senator GORE. I understand.

That does not change the legality or substance of the matter in any respect because, as you say, whether you included that—you didn't give them anything by including that in your letter. This was a right inherent to any taxpayer who had had a ruling?

Mr. CAPLIN. That is right, sir.

Senator GORE. From your discussion with the taxpayer's representatives and from the fact that Christiana did not distribute General Motors stock as fast as received from Du Pont, would you conclude

that Christiana contemplated from the beginning that some change in the ruling would likely be made?

Mr. CAPLIN. I don't know that, Senator. I think that throughout we had the flavor that Christiana would come back again at some later date.

Senator GORE. Did you in any way indicate to Christiana or in any way commit the Bureau to a reconsideration of the matter if and when a given amount of revenue had been realized by the Treasury?

Mr. CAPLIN. No, sir. We, at that time, used a revenue figure of $470 million as a means of determining the underlying presupposition of Congress. But we did not contemplate any modification if $470 million were realized.

Senator GORE. In other words, insofar as revenue estimates played a part in your ruling, those estimates were taken as evidence of the intent of the Congress, because only through a pro rata distribution would such revenue be realized.

Mr. CAPLIN. I keep differing a little bit on words.

Senator GORE. Will you state it?

Mr. CAPLIN. Yes.

Senator GORE. You understand I am not trying to, in any way—I am stating it as best I can in my own language, but you are better qualified to be specific about it.

Mr. CAPLIN. We merely used that figure as evidence to indicate what Congress had in mind, and we assumed a pro rata distribution was contemplated to the extent that it was legal.

Now, it could be illegal if the antitrust court ordered otherwise. The district court in the antitrust decree could have asked for a different form of divestiture and I think Congress left itself free on that and, therefore, was careful not to try to influence the court.

But, so far as it was legal, we felt that the Congress assumed this sort of distribution.

Senator GORE. Was an application for change submitted to the Bureau of Internal Revenue before your retirement?

Mr. CAPLIN. Not that I know of, sir. It didn't come to my attention.

Senator GORE. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Long?

Senator LONG. Let me ask you so I understand this. I didn't know that there was any such thing. Do I understand you were laboring under the assumption or perhaps assuming correctly that there was some underlying representation that there was going to be a pro rata distribution, distribution on a pro rata basis of this Christiana stock? And if so, was that in the act?

Mr. CAPLIN. No, it wasn't.

Senator LONG. Or the committee report?

Mr. CAPLIN. It was in the various presentations on the floor of the Senate. We have a whole series of excerpts here. Various figures were used by different Senators projecting the amount of revenue that would be produced.

Senator LONG. That was my impression.

Mr. CAPLIN. Yes, sir.

Senator LONG. My impression was that the bill for which I voted meant that if these people dissolved in about the way that they

hoped to dissolve that we were going to get for the Government about—did you use a figure of $479 million?

Mr. CAPLIN. $470 million. But that figure changed and I think it depended upon the fluctuation of the stock of Du Pont. But again the Treasury estimators told us that, to get that amount of revenue there would have to be a pro rata distribution from Du Pont to Christiana and from Christiana to its shareholders.

Senator LONG. To get that much money.

Mr. CAPLIN. Yes.

Senator LONG. I am frank to tell you when I voted on the bill I had the impression we were going to get $470 million. That is about what this bill would make possible. How much did we get?

Mr. CAPLIN. I don't know whether the Government collected that full amount as yet, but I think the projection is it will probably get more than that.

Senator LONG. So you expect to get more than that?

Mr. CAPLIN. Yes, sir.

Senator LONG. I am frank to say as one who voted for the bill if you hadn't gotten $470 million I would have been disappointed. If you had come in here with $200 million when you talked about $400 million.

But do I understand the estimates are that you are going to get more?

Mr. CAPLIN. Yes, sir; in 1962 when we issued the original ruling we din't know what we would get and I didn't want to disappoint you. [Laughter.]

Senator LONG. You say, Mr. Caplin, that this thing was irregular only in the sense that you don't usually go to the Treasury for their opinion except in matters where you have large amounts of money and policy matters involved?

Mr. CAPLIN. That is true, sir.

Senator LONG. Well now, didn't this situation almost by definition involve just that, large amounts of money and policy questions?

Mr. CAPLIN. I think it would really have been almost improper for the Commissioner to have ignored the Secretary's office in this case. As a matter of the standing procedure which was again left usually to the discretion of the Commissioner, we would call upon the Treasury in a case like this.

Senator LONG. Let me ask you also just as a practical matter about laying it before the joint committee. Do you think, having represented taxpayers from time to time and having previously had some experience in matters of this sort, that you ask to put your problem before the joint committee if you had any prospect of getting the Treasury to agree with you on a ruling?

Mr. CAPLIN. No, sir. Only if I feel that I am going to get some advantage for my client in going before the committee would I ask it.

Senator LONG. Let me tell you the kind of thing that happens when you go before the joint committee and some fellow like John Williams says, "I think what the Treasury is recommending is all right, but it seems to me rather than our taking the responsibility the Congress ought to pass a law to say that."

If you are on the joint committee, if you think the committee members are right, then you do as I did in the Rothschild case. You try to pass a bill through Congress and then you run into somebody else, not on the joint committee, who wants to get into the act. So by the time you get through, you have to satisfy 100 Senators and 435 Congressmen.

I would say as a taxpayer if you have some opportunity to get a Government official to stand up and if you think you can convince him you are right, and you wind up going to the joint committee and then going back to the Congress with it again after you have already been to the Congress once, I think you would be sort of foolish to think you could get these people to rule what you thought the law was.

This is all I have to say.

The CHAIRMAN. Senator Williams?

Senator WILLIAMS. Mr. Caplin, as I understand it, you used the word "irregular" but you did not intend it to be considered improper.

Mr. CAPLIN. That is correct, sir.

Senator WILLIAWS. It is your interpretation that this ruling was handled very properly throughout?

Mr. CAPLIN. I think so, completely.

Senator WILLIAMS. Did you consider that the second ruling was likewise handled very properly?

Mr. CAPLIN. From everything I know I think it was proper.

Senator WILLIAMS. Yes. There is nothing at all unusual in your consulting the Treasury Department on these rulings as they are being approved when they involve major changes in revenue and maybe on occasions even discussing them with the White House, is that not correct?

Mr. CAPLIN. That is true, sir.

Senator WILLIAMS. In fact, just a few weeks ago we had a ruling involving $700 million, a change in the interpretation of a depreciation allowance and this was announced by the President of the United States, wasn't it?

Mr. CAPLIN. That is my recollection.

Senator WILLIAMS. So this is not at all unusual that the Treasury Department in making these rulings confers not only with others in the Treasury Department but with the White House.

Mr. CAPLIN. Of course, that was not a ruling in the sense we are discussing today. It was a changed procedure of general application.

Senator WILLIAMS. Interpretative ruling?

Mr. CAPLIN. It would be extraordinary to consult with the White House on a ruling.

Senator WILLIAMS. I would agree it is extraordinary, yes, but I just point out these are rulings and they do affect major revenues, and there have been others. We had a ruling affecting the electrical companies and the manner in which their rebates were to be taxed. It was handled through a ruling, and it is usually the policy of the Department for taxpayers to ask for an interpretation and a ruling as to how they will be treated; this is customary procedure, is it not?

Mr. CAPLIN. That is right; yes, sir.

Senator WILLIAMS. Thank you.

The CHAIRMAN. Senator Smathers?

Senator SMATHERS. Mr. Caplin, you said in your first statement that it was legal. As I understand what you mean by that it is legal and within the discretion of Commissioner and the Treasury to limit the distribution to a pro rata distribution if the court had not ruled otherwise, is that correct?

Mr. CAPLIN. I stated it this way, that it was legal for the Commissioner to condition a ruling on a pro rata distribution unless the court directed otherwise.

Senator SMATHERS. Now, you are familiar, of course, with the report filed by the Senate Finance Committee. Am I correct in the statement of the Senate committee report they specifically stated that the bill we passed did not in any way attempt to tell the court what manner of divestiture should take place.

Mr. CAPLIN. That is correct.

I think both the House and the Senate were extremely cautious about interferring with the court's discretion.

Senator SMATHERS. Was it not also true that when President Kennedy signed the bill into law that he specifically stated that one of the reasons he was signing the bill into law was that it in no way attempted to tell the court what manner of divestiture should take place with respect to Du Pont getting rid of General Motors' stock?

Mr. CAPLIN. That is correct, sir.

Senator SMATHERS. And it, therefore, was perfectly proper and legal then for the court to make a ruling such as it did in 1962 in which, and if I am incorrect I would like to be corrected, it said in substance that Du Pont could exchange, could divest itself of this stock either on a pro rata basis or on an exchange basis, is that not correct?

Mr. CAPLIN. That is correct.

I think that Senator Long pointed out that Congress was, as we read the record, in somewhat of a dilemma.

First, it didn't want to interfere with the discretion of the court, but secondly, it seemed interested in $470 million of revenue. As we read the legislative history we thought Congress was saying that to the extent that the court doesn't interfere with this we would hope to realize $470 million.

Senator SMATHERS. Is this a correct statement that I am making and if not, I wish you would correct me, that actually after the bill had been passed in view of statements which had been made during the course of the debate by various Senators, I being one, I think Senator Williams being another, and I don't know who else, that there was a figure mentioned of $470 million that would be raised from this divestiture and that is actually what you people endeavored to do. In others words, you feel that it was the congressional intent to collect that amount in taxes.

Mr. CAPLIN. Yes. In 1962 all we had to consider was, with that figure, what type of distribution would be sufficient to reach that point.

In 1962 all we had to say was it would have to be pro rata at that point of time.

Senator SMATHERS. In order to——

Mr. CAPLIN. To reach that figure.

Senator SMATHERS. $470 million?

Mr. CAPLIN. What I would have done in 1964 I really don't know. I would have had to reconsider the entire record carefully.

Senator SMATHERS. Of course, at that time, as you know, the stock was selling at from somewhere between $45 and $55 a share, and that subsequently, of course, it went up to $99 or $100 a share.

May I ask you this question: Are you aware of the fact after your first ruling was made, that the Justice Department went to the court in Chicago on, I think, two occasions and recommended to the court that this divestiture be brought about and that the Du Pont Co. be permitted to either divest on a pro rata basis or an exchange basis. Are you familiar with the fact?

Mr. CAPLIN. I heard something to that effect; yes, sir.

Senator SMATHERS. Was there anything, so far as you knew, or that you now know in your reading of this case and what you have subsequently heard about it, which in any way precluded or made it improper for the court to rule as it did first, and secondly, the Internal Revenue Commissioner, who succeeded you to write the type and character of letter which he did which authorized Christiana to make not only a pro rata distribution but an exchange distribution as well?

Mr. CAPLIN. I see nothing improper in the action taken.

Senator SMATHERS. All right, I think those are all the questions I have.

The CHAIRMAN. Senator Bennett?

Senator BENNETT. No questions, Mr. Chairman.

The CHAIRMAN. Senator Douglas?

Senator DOUGLAS. Mr. Caplin, there is a good deal of confusion about the rulings and the amounts involved because of the lapse of time and the increase in the price of General Motors stock during this period of time. I think we can develop principles out of the figures.

Du Pont owned approximately 63 million shares of General Motors stock, isn't that true?

Mr. CAPLIN. Yes, sir.

Senator DOUGLAS. When the bill was under consideration in the committee, the price of General Motors stock was approximately $43, isn't that true?

Mr. CAPLIN. I think that is correct, sir.

Senator DOUGLAS. The stock had been purchased during World War I at $2.16 a share, isn't that true?

Mr. CAPLIN. I think that is correct.

Senator DOUGLAS. So there was an apparent capital gain roughly of $41 a share.

Now, if my multiplication is right that amounted to a capital gain of approximately $2½ billion as of that time.

Application of the ordinary capital gains tax at 25 percent would have netted about $625 million to the Government, is that true?

Mr. CAPLIN. On your figures, that is correct, sir.

Senator DOUGLAS. I think that is right.

If the total capital gain was $2½ billion.

Mr. CAPLIN. This assumes sales of the stock.

Senator DOUGLAS. I understand.

Now, the estimate was that the bill as passed would probably yield that and in the main the discussion considered was not the current price of the stock but the price of the stock when it was before us in

committee, $470 million, which would be about $7¼ dollars a share tax.

Now, Senator Gore and I opposed that. I opposed it on the ground that I thought the ordinary capital gains tax should be applied which would have netted $155 million more.

Now, can you explain to me the provisions of the bill which permitted less than the 25 percent capital gains tax to be assessed?

Mr. CAPLIN. Well, you have both individual and corporate shareholders, and the corporate shareholders would generally treat this differently than an individual shareholder. The corporate shareholder would get an 85 percent dividend deduction, which would help to dilute the amount of the tax payable by the normal corporation.

Of course, Christiana was treated specially under the new legislation, and they had a heavier tax. But, it is the other corporate shareholders which would make the difference.

Senator DOUGLAS. Was the estimate of $470 million based in any degree upon the possibility that other organizations besides the charitable trusts would exchange their shares for shares in DuPont or Christiana?

Mr. CAPLIN. It is my understanding that to reach the $470 million it would be necessary to make a pro rata distribution across the board.

Senator DOUGLAS. With no allowance for——

Mr. CAPLIN. Redemptions.

Senator DOUGLAS. For redemption through exchange?

Mr. CAPLIN. That is right, sir.

Senator DOUGLAS. Well, that was my understanding.

Now, it is being whispered in defense of the 1964 ruling that other corporations inside Christiana or inside Du Pont, could similarly have reduced their taxes by the process of exchange rather than pro rata distribution, and that this would have been perfectly legal.

What is your comment on that?

Mr. CAPLIN. I think that would follow if you had charitable organizations making the exchange but I don't think this would be so if it were a taxable corporation.

I think the revenue would be higher if the taxable corporation made an exchange. It would lose the 85 percent dividend received deduction, and would be subject to a tax on capital gains.

Senator DOUGLAS. Then the most that the stockholders of Du Pont could have avoided in taxation would have been the permission given to the charitable organizations to exchange rather than to take pro rata distribution.

Mr. CAPLIN. That is right—that and the possibility of a Christiana merger into Du Pont.

Senator DOUGLAS. Between the time of the 1962 act and the 1964 ruling, of course, there was a great increase in the price of General Motors, and last week the price of General Motors was slightly over $100 a share, so that the capital gain would have been approximately $98 a share instead of $41 a share. This has resulted in an increase in total tax paid, but I don't see that this has anything to do with the case as to whether the 1964 ruling was correct because the increase in General Motors stock proceeded outside of the act and has proceeded outside of your ruling of 1962.

Mr. CAPLIN. I think we had an easier task in 1962 than the Commissioner had in 1964.

Senator DOUGLAS. What was involved?

Mr. CAPLIN. We didn't have to face the question of what we would do with $470 million either in hand or about to be in hand.

We knew in 1962 that we had to condition the ruling to pro rata distributions to even begin to reach this revenue.

Senator DOUGLAS. If you had anticipated that in, or if the advocates of the bill had anticipated in 1962 that the charitable foundations would be permitted to exchange their holdings in Christiana of General Motors stock you wouldn't have netted $470 million, would you?

Mr. CAPLIN. That is correct, sir.

Senator DOUGLAS. What?

Mr. CAPLIN. That is correct, sir.

Senator DOUGLAS. So the $470 million was contingent upon pro rata distribution.

Mr. CAPLIN. That was our feeling in 1962.

Senator DOUGLAS. Well, it was, wasn't it? That is exactly how you got the $470 million?

Mr. CAPLIN. That is correct, sir, on the then prices.

Senator DOUGLAS. I understand.

Well, presumably you were operating not on the basis of prices but on the basis of law, were you not?

Mr. CAPLIN. We were trying to plumb the thinking of Congress at that time. We felt that the law was very loose on this point, but in exercising our discretion to rule we felt that we ought to strive to meet the underlying assumption of the Congress.

Senator DOUGLAS. Well, the underlying assumption of the Congress was based upon the then market price of General Motors?

Mr. CAPLIN. That is right, sir.

Senator DOUGLAS. But it wasn't conditioned upon the price of General Motors remaining at that point in the future?

Mr. CAPLIN. No, sir; because both sides of the equation would be involved. If the price of stock went up, the potential revenue loss under the new legislation would also have gone up.

Senator DOUGLAS. I asked a question, Is there anyplace in the record a statement by Du Pont that they would pay $470 million and no more?

Mr. CAPLIN. No, sir.

Senator DOUGLAS. Nowhere in the record?

Mr. CAPLIN. Not that I know of.

Senator DOUGLAS. If the price of General Motors had fallen, so that the capital gain would have been less and the tax less than $470 million, possibly as low as $250 million, would General Motors then have been obligated to pay the difference between $250 million and $470 million or $220 million?

Mr. CAPLIN. Obviously not, Senator.

Senator DOUGLAS. Well, why should the Treasury officials consider that General Motors would be absolved from paying more than $470 million if the price of General Motors stock subsequently rose above the $43 when the act was before this committee or the $45 when the bill was before the Senate?

Mr. CAPLIN. I think it is a question that I am not qualified to answer, not having been in the seat of responsibility at that time.

Senator DOUGLAS. Well, this is the basic issue which Senator Gore is raising.

Mr. CAPLIN. Yes; I think it is.

Senator GORE. Will the Senator yield?

I did not request that Mr. Caplin appear today to express an opinion upon a ruling in 1964 in which he took no part and for which he has no responsibility.

As a private citizen he may or may not wish to express an opinion. He just said he did not wish to do so. My purpose in requesting him to testify was to shed light on the ruling which he made in 1962. Now, he has confirmed my understanding of the ruling and the reasons for it. The one thing that he has added in his testimony which I think is a matter of considerable importance, one thing he has added to my understanding, is that the taxpayer was given an opportunity to go with him to the Joint Internal Revenue Committee of the U.S. Congress to ascertain further the Congress' legislative intent, if the taxpayer so desired. But the taxpayer declined to do so and accepted the ruling.

It seems to me that is the one important new thing he has added.

Mr. CAPLIN. Senator, I would like to refine that a bit. I don't think we offered the taxpayer an opportunity to make a personal appearance. We put it generally that we were prepared, if the taxpayer desired, to present the issue to the joint committee. This might have been just the Government presentation. It would have been up to the chairman of the joint committee.

Senator GORE. I see.

Mr. CAPLIN. Whether he wanted to see the taxpayer.

Senator GORE. In any event you offered to refer the matter specifically to the Congress for its further elucidation on the case?

Mr. CAPLIN. Yes, sir.

Senator SMATHERS. Was there at that time the time element involved in the light of what Congress had done and the Supreme Court ruled that Du Pont divest itself of General Motors stock which might or might not explain why these people did not want to take it back before the Congress?

Mr. CAPLIN. I don't really know, Senator. This was in September of 1962, and I believe they were anxious to make a distribution during calendar year 1962. This may have been a consideration.

Senator SMATHERS. Yes.

Senator LONG. May I clear this thing up for one moment? Speaking of precedents, is it not completely unprecedented that you would offer a taxpayer an opportunity to present his case to the joint committee when he disagrees with you? It is my understanding that when you propose to make a settlement you come before the joint committee and say, "Here is a settlement that involves a lot of money that we are proposing to make," and you are recommending that settlement and so is the taxpayer and you are before the committee more or less to give us a look at this thing to see if we think we ought to go along with it. But my thought would be if you are recommending against a taxpayer's position and he goes before that joint committee, that the odds are a hundred to one that the joint committee is not going to vote as a committee to overrule the Treasury. I think the taxpayer would be foolish in such circumstances to accept an opportunity to appeal to the committee.

Mr. CAPLIN. I think you are right, Senator, we would never——

Senator LONG. I think he would prejudice his case to ask for that.

Mr. CAPLIN. We never would suggest that he take an appeal to the joint committee. I think that would be highly irregular and I doubt as you pointed out, that the committee would entertain the jurisdiction.

Senator DOUGLAS. Mr. Chairman, I don't want to be severe on my colleagues but I would like to be permitted to continue.

Mr. CAPLIN. Senator, if I could clear up this point, the opportunity we had in mind really was to request information from the joint committee. As I viewed it, it would have been the Government coming forward for advice, not the taxpayer petitioning for any form of review. I was merely affording them, as a matter of courtesy, the alternative to have us go forward on a pro rata ruling, or to have the Government go back to the committee if they felt we were being unreasonable in this approach. This was a large matter. It involved more than the companies alone. You had many shareholders who were concerned about this issue. It was most unusual to offer to have the issue presented to the joint committee. But we felt it was warranted in this case, particularly as it concerned special legislation.

Senator DOUGLAS. Mr. Chairman.

The CHAIRMAN. Senator Douglas?

Senator DOUGLAS. I had not intended to broaden the scope of the questioning quite in the manner it has been carried out and I would like to get back, if I may to the original arithmetic.

Did anyone in the Internal Revenue Service or in the Treasury warn the members of the committee that possibly we might have an exchange of stock rather than a prorated distribution and that the revenue would be correspondingly reduced?

Mr. CAPLIN. I haven't studied the record that closely, Senator.

Senator DOUGLAS. I found no indication of that. Do you know whether that possibility was contemplated inside the Treasury or the Internal Revenue Service?

Mr. CAPLIN. As I recall the Treasury tried to stand on the sidelines in this legislation. They were neither for nor against it, and that is about the extent of my recollection. I didn't participate in the legislative contacts so I am not familiar with that.

Senator DOUGLAS. It was entirely over in the Treasury?

Mr. CAPLIN. Yes.

Senator DOUGLAS. I would like to have the record searched, but I cannot remember any warning that the Treasury gave to the Senate, at least. I thought the full extent of any possible favor granted to Du Pont consisted in the tax of about $7.25 a share rather than a capital gains tax of around $10 a share.

Now, if the Treasury thought of that possibility I think they should have warned the Senate of what we were possibly getting into, and perhaps Senator Gore was aware of the possible danger, I certainly was not aware of the danger. I thought it was a bad bill as it was and this would have made it still worse, but the warning didn't come.

May I ask this: Is there any possibility that this ruling can be expanded, that there will be future exchanges of stock which will still further reduce the share of the Government?

Mr. CAPLIN. Senator, I suggest you might put that to the Internal Revenue Service.

Senator DOUGLAS. I guess I should do that, and not to you. I will ask one question: The figure of $470 million was merely an estimate; was it not?

Mr. CAPLIN. That is correct, sir.

Senator DOUGLAS. It was not a statement by Du Pont that this was the limit of their obligations.

Mr. CAPLIN. No, and I don't think they made any formal presentation on the point. Mr. Greenwalt of Du Pont made certain statements relating to the revenue impact.

Senator DOUGLAS. That was based on the assumption of $43 or $45 a share?

Mr. CAPLIN. That is right.

Senator DOUGLAS. And presumably discussing the deduction caused by the difference between corporate payment of taxes by corporations and payment by individuals if they finally received all these sums.

Mr. CAPLIN. I think he used his own personal situation as an illustration of the impact of the tax.

Senator DOUGLAS. But when the price of General Motors went up, when the capital gains were increased, then despite the fact there had been some distribution of stock on a pro rata basis, then in the case of charitable trusts the exchange theory was advanced and this reduced the taxes on individuals, isn't that true?

Mr. CAPLIN. That is right. By making an exchange with charitable organizations you would reduce the number of shares to be distributed pro rata and as a result the tax on the individual shareholders and on the corporate distributees would be less.

Senator DOUGLAS. Thank you.

That is all, Mr. Chairman.

The CHAIRMAN. Senator Morton?

Senator MORTON. Mr. Caplin, getting back to this question of a ruling, a ruling from the Internal Revenue Service might in some ways be considered, I suppose, a green light. In other words, you say in your ruling to any taxpayer on any matter, "You can go this far without fear of any action on our part. If you go beyond this particular point we reserve the right to drag you into court if necessary."

Mr. CAPLIN. At least to raise the issue.

Senator MORTON. Yes, to raise the issue.

Mr. CAPLIN. Yes.

Senator MORTON. A ruling is not law, it is merely an interpretation saying, "You can go so far."

Mr. CAPLIN. That is right.

Senator MORTON. I had an experience once trying to get a green light from the Federal Trade Commission in a merger case. I never got it. We got a caution light. This was 12 years ago and we are still in court.

I remember at the time when the processing taxes were declared illegal in the mid-1930's we, who were paying these taxes, asked for certain rulings and the Department was very cautious. They said, "If you impound the money or deposit it with the court we will see how this whole question is going to come out in the courts."

Some of us went beyond that. The largest company in the industry even distributed the money to its own customers, but they took their chances.

Now, in this case the court decision certainly did not proscribe a non pro rata distribution or an exchange distribution.

Mr. CAPLIN. No, that was entirely open.

Senator MORTON. The Du Pont Co. or Christiana was not bound by this ruling if they wanted to take a chance?

Mr. CAPLIN. That is right. They could have withdrawn the application for a ruling and proceeded as they saw fit.

Senator MORTON. I got an opinion from my son whom you taught in the University of Virginia, and he is almost near starving to death now, but that is not a reflection on your teaching. [Laughter.]

Mr. CAPLIN. I am sure it must be a sound opinion, Senator. [Laughter.]

Senator MORTON. I am no lawyer. He felt that Du Pont at the time of your 1962 ruling could have ignored it and probably won the case.

Mr. CAPLIN. I think other attorneys may feel the same way.

Senator MORTON. You know this company has a good many stockholders in my State, not as many as in the State of the Senator from Florida, I don't think, but a good many, and plants there, and it has always impressed me as being a somewhat hypersensitive company. I don't know why, perhaps because of the old gunpowder background many years ago, perhaps because for a period they were a giant in the chemical industry, and there are others who are almost equally large today, of course, and I must say that I feel that the fact that they followed your rulings, the rulings of the Internal Revenue Service, and paid what I consider to be about probably 150 or 200 million more than if they had gone to court, or they and their stockholders paid more than if they had gone to court, is no reason to pillory this matter.

I don't happen to be a stockholder. If I were I might be critical of them for just going along with that ruling which to me is a ruling that was made in perfectly good faith by you at the time, your associates, because you did feel that we in the Congress, whether we were right or wrong, voted for this measure thinking it would yield approximately a half billion dollars to the Federal Treasury, and I think they are to be commended for the attitude that they took in this matter.

Back to my original question again, a ruling is really a green light. If you say that, under a ruling, "If you stay within the confines of this ruling we will go along, we are not going to drag you into court. If you go beyond this we reserve the right to take any action that we think is appropriate"——

Mr. CAPLIN. That is correct.

Senator MORTON. The ruling is not a law.

Mr. CAPLAN. No, it is an important administrative procedure which helps to grease the wheels of tax administration.

Senator MORTON. That is all, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Caplin.

Mr. CAPLIN. Thank you, Mr. Chairman.

Senator GORE. Mr. Chairman, certain references were made in the previous day's hearing to conferences with and statements by Mr. William H. Orrick, Jr., Assistant Attorney General, Antitrust Division. I have written a letter to him which I ask unanimous consent to have printed in the record at the conclusion of the testimony and that the record be held open for Mr. Orrick's reply and that his reply be printed.

The CHAIRMAN. Without objection that will be done.

(The letter referred to by Senator Gore and the reply received from Mr. Orrick appear at the end of the hearing.)

The CHAIRMAN. The next witness is the Commissioner of Internal Revenue, Sheldon S. Cohen.

STATEMENT OF SHELDON S. COHEN, COMMISSIONER OF INTERNAL REVENUE

Mr. COHEN. Mr. Chairman, I am glad to be here today to tell you about the part the Internal Revenue Service has made in both of the rulings.

I should preface my remarks by saying I have been the Commissioner of Internal Revenue since January 25 of this year.

Prior to that I was Chief Counsel of the Internal Revenue Service from January 6, 1964, until the time I took office as Commissioner.

In order that the issues and the position of the Internal Revenue Service in this matter may be clearly understood, it is necessary to briefly summarize the facts——

Senator LONG. May I just get this thing straight?

Mr. COHEN. Yes, sir.

Senator LONG. Where were you at the time that the 1962 ruling occurred and where were you at the time that the ruling complained of here by Senator Gore——

Mr. COHEN. In 1962 I was in private practice of law, sir. And in 1964 I was the Chief Counsel of the Internal Revenue Service.

Senator LONG. You were Chief Counsel of the Internal Revenue Service at the time of——

Mr. COHEN. The second ruling.

Senator LONG. The second ruling.

Mr. COHEN. I can briefly summarize the facts leading to our supplemental letter of December 15, 1964, to Christiana Security Co.

Complaints charging that the E. I. du Pont de Nemours & Co. had violated sections 1 and 2 of the Sherman Antitrust Act were filed in the U.S. District Court for the Northern District of Illinois on June 30, 1949. This action culminated on March 1, 1962, when the district court, pursuant to a mandate of the Supreme Court of the United States, entered a final judgment ordering both Christiana and Du Pont to completely divest themselves of their common stock interest in General Motors Corp.

At that time, Du Pont and Christiana owned 63 million and 535,000 shares of General Motors, respectively. Under this court order, Christiana, which owns approximately 29 percent of Du Pont's outstanding stock, has received from Du Pont, and subsequently sold or distributed, approximately 18.5 million shares of General Motors stock.

Prior to the March 1, 1962, court order, Congress passed H.R. 8847, which became Public Law 87–403 on February 2, 1962, when the late President Kennedy signed the bill into law. Public Law 87–403 was enacted principally to aid in the execution of the then forthcoming district court order to Du Pont, for at the time of its enactment, Christiana was not required by the Supreme Court mandate to divest itself of any General Motors stock.

This law was believed necessary by Congress in order to eliminate undue hardship to both the Du Pont and General Motors shareholders. And, because the Department of Justice was then seeking a court order to require Christiana to divest itself of all General Motors stock owned by it or received from Du Pont, the law, in effect, provided that the individual shareholders of Christiana would be treated in the same manner as the individual shareholders of Du Pont.

Prior to the enactment of Public Law 87–403, an individual Du Pont or Christiana shareholder receiving General Motors stock in a pro rata distribution to all shareholders would have included the fair market value of such stock received in his income as a dividend.

Under the public law, the receipt of General Motors stock by an individual shareholder would be treated as a return of capital to the extent the fair market value of such stock was equal to the basis of the Du Pont or Christiana stock upon which it was received. The new law provided that, to the extent the fair market value of the General Motors stock exceeded the basis of the Du Pont or Christiana stock upon which it was received, there would be a recognized capital gain to the shareholder.

Except for Christiana, upon which a special and somewhat higher rate of tax was established, all corporate shareholders of Du Pont or Christiana were allowed to treat the receipt of General Motors stock in the same manner as prior to Public Law 87–403. This permitted a deduction under section 243 of the code, which basically allows a deduction of 85 percent with respect to dividends received from domestic corporations.

Subsequent to the enactment of Public Law 87–403, both Du Pont and Christiana submitted requests for certain rulings to the Internal Revenue Service. Among other rulings, both corporations requested the Service to rule that a distribution of General Motors stock to their respective individual shareholders would qualify as a distribution of divested stock within the meaning of the public law.

I think Mr. Caplin has given you a fair statement of our rulings process. As the Secretary indicated last week in a given year we issue between 30,000 and 40,000 rulings of which about 20,000 are substantitive and about 20,000 are procedural. This is the only country, I think Mr. Caplin has missed, that Canada is now on a limited ruling procedure, that issues this type of ruling. It has been a very successful operation. The whole business community is geared to it.

Our field operations are geared to it since these are advisory upon our people in the field and they don't have to go into some of these very technical problems which can be handled by our experts here in Washington.

Senator SMATHERS. May I ask a question right there, Mr. Chairman, just for general information: Are those rulings made public in any way or are they kept solely between the Department of Internal Revenue and the shareholders?

Mr. COHEN. Since rulings were first initiated there has been a publications policy back to the early twenties, when the Service first started going into this.

In 1952 there were some complaints by the professional societies that there were a number of rulings that had not been published and were

not public information and that the Revenue Service was relying on in the disposition of cases.

At that time the Service undertook an expanded publication policy whereby any ruling which was considered precedentmaking and had application generally would be considered for publication and if there were no general rule issued in that area, if it was not redundant, it would be published, and that the field forces of the Revenue Service were only to rely on the published material. They were not to rely on any private ruling.

So, that since that time we have had a very much-expanded policy which continues today, whereby we publish 500, 600 rulings a year in an expanded form. Many of the rulings we publish—they are called Revenue rulings—are the syntheses of several private rulings issued in a similar vein.

Senator DOUGLAS. Mr. Cohen, were the 1962 and 1964 rulings published?

Mr. COHEN. No, sir.

I should say they were not published in the general sense because they had very limited application to one taxpayer, and would not be of any benefit to any other.

However, I should add that as often happens with a private ruling that has application to only one taxpayer, the private taxpayer very often would like it published, and releases it to the press, usually the technical press, and in this case the General Motors ruling was picked up by the tax services and published by the tax services.

Senator DOUGLAS. Both 1962 and 1964?

Mr. COHEN. Well, I don't know whether they picked up the 1964 yet, but I know they have picked up the 1962 because I have seen it printed in the tax service.

Senator DOUGLAS. That was not officially published.

Mr. COHEN. No, sir. Likewise in making a distribution of this sort, and we issue hundreds of reorganization or distribution rulings in a year, it is generally required that these distribution rulings be filed with the SEC, and I suspect that this one is probably filed with the SEC, and at least summarized in the registration statement that accompanies——

Senator SMATHERS. I wish you would explain why you did not feel it was desirable or necessary to publish this particular ruling with respect to this divestiture.

You say that the 1962 ruling was picked up by the tax services.

Mr. COHEN. Because it was necessary for the corporation to distribute the contents of this ruling to every affected taxpayer; the SEC required that.

Senator WILLIAMS. And it was distributed, as I understand it.

Mr. COHEN. The substance of it, yes.

Senator SMATHERS. So what you are saying in point of practical fact is it was published, but you people did not publish it.

Mr. COHEN. To all interested parties.

Senator WILLIAMS. It was distributed in 1964 to all of their stockholders and also filed with the Securities and Exchange Commission, was it not?

Mr. COHEN. Yes, sir.

Senator WILLIAMS. Was there not also a reason to prevent the premature release of this ruling, for once it was announced, it would have a decided effect on the market value of the stock in question?

Mr. COHEN. Well, I should add that we don't publish these rulings simultaneously with their issuance to the private party. We normally would take the ruling and eliminate any features of it which would identify the taxpayer or which would identify trade secrets or problems that did not have anything to do with the tax consequences, and it might take us several months to a year before we would publish that as a general publication.

Senator GORE. Mr. Chairman, I would like to say something about this particular point. I received private advice that this kind of ruling was in the making. My staff tried to obtain information from the Bureau of Internal Revenue and the Treasury Department and was advised that this information could not be discussed with anyone except the taxpayer.

I tried to get the ruling, and if the Chair will recall, it was only when he himself placed the letter ruling in the record of this committee hearing that I was at liberty even to use it. It was given to the committee but under the law of confidence. So there has been no rush to make this public. Fortunately, it is now public, but not by desire of certain people involved.

Senator SMATHERS. Mr. Chairman, may I make one self-serving statement right here? I introduced a bill last year, and this year, which would provide for a tax commission, which nobody thought would be a very good idea but me. Nobody has thought very much of it since, I regret to say. It would provide that there would be somebody selected that would take these kinds of rulings and make them public immediately, and would, as a matter of fact, serve as a commission before which certain taxpayers and others could appear in order to try to determine what was the intent of the Congress rather than to leave it, and I say this without any criticism directed at the Internal Revenue Service as such, to the policymakers and the policemen at the same time.

I thought it was a good idea, and I still do, in order to get away from this particular point.

Mr. COHEN. Senator, I do not mean to be combative, but we are restrained by certain statutory restraints as to the release of private tax information.

In the application for a ruling, the taxpayer, in effect, bares his financial soul; this taxpayer, and thousands of others. We will stifle the ruling process completely, it will dry up to dust, if we are going to publish each and every one of those ruling requests even before we have decided what the answer to the question is.

If this committee in its good judgment decides that we should, and the Congress so ordains, we would. But——

Senator LONG. Don't you just have a lot of situations where the law has good reason to make it that way, where the taxpayer owes you some money, but he would be embarrassed to disclose why he owes it?

Mr. COHEN. Well, even more so in this area because, for example, take a reorganization situation, Senator. If the taxpayer puts in an application for his approval of his reorganization before he has even announced it to his own stockholders, he wants to know, "When

I announce it to my stockholders what will the tax consequences be," you can imagine the effect on the market, on other taxpayers, on competitors if such information were revealed in advance. We do not feel it is in our discretion to do that.

Senator LONG. May I just get this straight, is this correct: Not only is it not in your discretion, it is against the law to do it. The law won't let you do it, or will it?

Mr. COHEN. Some of this information is not strictly within that prohibition, Senator. The prohibition relates to information related to a tax return. Some of this information on the ruling request does relate to that, some does not. But, as a general matter, we treat it all in the same vein as a confidential communication.

Senator LONG. Is there any of it with regard to which the law requires you to treat as confidential?

Mr. COHEN. Some of it; yes, sir.

Senator LONG. So with regard to some of it, the law requires you to treat it as confidential.

Mr. COHEN. Yes, sir.

Senator LONG. But you feel that beyond that point that for various other reasons, it is wise to treat the whole thing as confidential while you are dealing with the taxpayer's individual liability to his Government?

Mr. COHEN. That is right; and we treat all taxpayers in that respect alike.

Senator LONG. There are procedures where it can be obtained.

Mr. COHEN. The only way the information may be obtained in regard to private dealings of a private taxpayer in this country, is by power of attorney issued from that taxpayer. He authorizes those individuals that he will to deal with us or to obtain information from us in regard to his own personal tax affairs, and we deal with no one else.

Senator LONG. Well, there have been these situations where someone gets an Executive order out of the President or where you get an order out of this committee or the joint committee asking you to bring it up here, and you bring it.

Mr. COHEN. Yes, sir. Of course, the statute, of course, specifically provides that we shall provide certain information to the chairman of the Ways and Means Committee, to the chairman of the Finance Committee, and to the chairman of the joint committee, and on such requests we supply such information.

The letter that the Senator refers to contained a paragraph that said that "Pursuant to your request under the authority of the statute which grants the authority for the request of the information, we hereby submit the information to the committee."

The committee at that point is free to do with the information what it will. I think someone on the committee staff stamped that information "confidential." It was not stamped "confidential" in our building.

Senator GORE. You are not implying then that it would have been illegal for you to have published this letter ruling?

Mr. COHEN. No, sir.

Senator GORE. Yet, as the chairman of this committee and other members know, I received a letter ruling under the restraint of con-

fidential matter, and I suggested a public hearing. Some members of the Senate objected to a public hearing. Fortunately we have had a public hearing.

Mr. COHEN. Nobody in the Revenue Service objected, Senator.

Senator GORE. I did not say you did. It was the only way I had of bringing this to public attention.

Mr. COHEN. As I say, the Senate committee——

Senator GORE. But you could have supplied me a copy of the letter, indeed you could have sent a copy of the letter to the Associated Press and United Press, couldn't you?

Mr. COHEN. We——

Senator GORE. There was no legal restraint upon your publishing this ruling?

Mr. COHEN. No, sir, except it is violative of our procedure that we do not publish private rulings.

Senator GORE. I am not talking about your general procedure. I am asking if it would have been illegal for you to have published this ruling.

Mr. COHEN. No, sir.

Senator GORE. All right.

The CHAIRMAN. Proceed, Mr. Cohen.

Senator LONG. May I just respond to one other thing? In deference to myself, I would like to make this statement, that I personally do not feel that this committee has any business holding a public hearing on a taxpayer's private business unless we have some reason to believe that there is some misconduct somewhere, and I have no objection to the President doing what he did for former Senator Estes Kefauver, authorizing him just to go out and take everybody's tax returns he had reason to think was a racketeer, and drag those tax returns all up and down and look into their business and ask them any information based on it, and make them divulge it if he could.

But where you have no basis to conclude that the taxpayer has done anything wrong or anything that is violative of the law, this Senator is inclined to feel that that information should remain confidential, and that is the attitude taken on that paper stamped "Confidential" by the staff secretary. It was judged by this Senator that we should not be dragging a taxpayer's business out into public, divulging things he might want known and might not want known, and which ordinarily would be his own private business unless we had some reason to believe that the fellow had done something wrong.

I know the Senator from Tennessee feels the taxpayer has done something somewhere wrong. I know that. But I am not convinced of that, and until I am personally convinced of that, I do not feel we ought to release this information that is otherwise confidential between him and the Government.

Senator GORE. Will the Senator yield? I have not suggested the taxpayers have done anything wrong. I think public officials have acted wrongly in the matter.

Senator LONG. I would include that within the generality of my statement, if you conclude that the public officials have done something wrong.

Senator GORE. I never saw a case——

Senator LONG. Of which I have never been persuaded.

Senator GORE. If I ever saw a case of favoritism, this is it. A ruling was changed which cost the Treasury of the United States, by the Treasury's own statement, $56 million, which constituted a gain to a comparatively few people. A former public official in my State has been indicted and convicted for failure to report $7,000, or some such amount as that. The Government can be merciless on the little taxpayer. I represent a lot of little taxpayers. They find the burden of taxes heavy, and I do not think it is fair, I do not think it is equitable, for a few wealthy taxpayers to have the privilege of private negotiation, to receive preferential treatment, to be the beneficiaries of favoritism by a change in ruling which benefits them in the amount of $56 million.

Senator SMATHERS. May I ask a question right there?

The CHAIRMAN. Senator Smathers?

Senator SMATHERS. Mr. Cohen, do you consider, having read all the record in this case, that there has been any preferential treatment given?

Mr. COHEN. I can say right now that it is my judgment as a lawyer that there is no special treatment here.

Senator SMATHERS. Is it not a fact that the U.S. district court in Chicago ruled in very specific language that Du Pont Corp. and Christiana could divest itself of this stock either through pro rata or an exchange?

Mr. COHEN. Yes, sir.

Senator SMATHERS. Is it not a fact that even the President of the United States, the then President of the United States, when he signed the bill, indicated that this bill had nothing to do with the court and that the court could make any ruling it wanted?

Mr. COHEN. He did, sir.

Senator SMATHERS. Is it further not a fact that if the Congress had not acted in this case that the corporate shareholders would have come out at a much greater advantage than the individual shareholders?

Mr. COHEN. Actually, the major benefit, if the Congress had not acted, would have been to Christiana, who would have had a much lower tax in this situation.

Senator SMATHERS. Is it not a fact that in forced divestitures such as this, the Congress has acted previously in a manner like this in bank holdings?

Mr. COHEN. There is a similar provision both in bank holding companies and FCC forced divestiture.

Senator SMATHERS. Is it not a fact that the Internal Revenue Service, whether we like it or not, and I happen to lean more on the side of the Senator from Tennessee on this matter, it is a customary practice to sit down with taxpayers who are involved, and issue them what amounts to advanced rulings, which average 30,000 to 40,000 a year?

Mr. COHEN. This is a very well recognized, well published procedure. The procedure is published in the Code of Federal Regulations, and we must adapt ourselves to the code for publishing.

Senator SMATHERS. In order to get this kind of ruling do you have to be a big taxpayer or can you be a little taxpayer?

Mr. COHEN. Some of these rulings involve $25 to $50, some of them involve reorganizations of small closely held corporations, and some of them involve multimillion-dollar transactions.

Senator SMATHERS. But that is the practice?

Mr. COHEN. Yes, sir.

Senator DOUGLAS. Mr. Chairman, if I may follow that one phase of the questioning, do I understand that in the decision of the Internal Revenue Service about publication or nonpublication of rulings, that where the ruling is of a general nature you feel it should be published; but where the ruling is confined to a specific individual or corporation you feel that that is privileged and should not be published?

Mr. COHEN. Yes, sir; that is the general criteria.

Senator DOUGLAS. Now, in the act, Public Law 87-403, do you find any mention of the Du Pont Corp.?

Mr. COHEN. No, sir.

Senator DOUGLAS. Wasn't that a general law?

Mr. COHEN. It was. But, as I think we all recognize, we could not find another corporation that it will fit. There is only one.

Senator DOUGLAS. But might it not fit future corporations where antitrust rulings are issued by the courts, and the problem of taxation of the resultant capital gains would be considered?

Mr. COHEN. I believe there are some critical dates in the statute which would almost preclude any other taxpayer from fitting the situation, sir.

Senator BENNETT. Mr. Chairman, if this is a general law, doesn't it put it in the same class with the basic Revenue Code, and when a taxpayer comes for a ruling under the basic Revenue Code, you protect the details of that ruling, and you do not publish that ruling if it applies to that particular taxpayer; is that a fair parallel to draw?

Mr. COHEN. Yes, Senator Bennett.

Senator BENNETT. We do not write laws and say unless the taxpayer's name is in the law, the ruling will be published. As an officer of a corporation, I have participated in decisions to have our corporation ask for a ruling. The fact that rulings were asked for under the law before it was amended by this particular law, doesn't change the situation, it seems to me.

Senator LONG. It seems to me as though the whole thing gets down to, and I am just reading ahead of your statement, but as I understand it, you concluded that you had no right to insist that Christiana could not exchange shares of General Motors stock; that is about the size of it?

Mr. COHEN. Well, I think——

Senator LONG. For its own stock.

Mr. COHEN. It would be more orderly, sir, if I might suggest that I finish the statement, and then I think we can refer to some or all of the portions of the statement, and I believe my thinking might be a little straighter. I do not know whether it would help the committee or not.

Senator LONG. As I understand it though, you felt the Government was insisting upon a condition which the law did not support.

Mr. COHEN. I think, as Mr. Caplin said, there were many people in the Revenue Service, in fact I would say most of the people in the Revenue Service, who would not have put that condition in this ruling. It was at Mr. Knight's insistence—Mr. Knight having been involved in the development of the legislation—it was at Mr. Knight's insistence that it was put in, and it was put in, as Mr. Caplin says, solely that

Senator Long and other Senators would not be embarrassed by having had some idea in their heads.

As Mr. Caplin said, and as Mr. Knight said the other day, there were many lawyers, both in and out of the Government, in fact most of the lawyers in and out of the Government, who believed that had the corporation chosen to ignore the condition—now, the condition didn't say that if you ignore it we will tax you in such and such a way—if they had chosen to ignore the condition, most of the lawyers in the Government, and I am one of those who believed that we could not have won the case.

Senator DOUGLAS. Well, I want to make two comments. If most of the Government lawyers believed this at the time the hearings were held on the bill, I think they had on obligation to inform the Senate of the possible dangers contained within the bill.

Mr. COHEN. Senator, Mr. Greenewalt, when he testified, mentioned this.

Senator DOUGLAS. You were a lawyer for the Government.

Mr. COHEN. Mr. Greenewalt mentioned the fact they were contemplating exchanges, and there is a discussion in the hearings—this particular set is dated September 13, and on pages 78, 79, and 80, there is a discussion between Senator Long and Mr. Greenewalt in which Mr. Greenewalt suggests that the corporation would like to engage in certain exchanges, and he says, and said very flatly, that the corporation could engage in these exchanges regardless of whether the bill was enacted or not.

Senator DOUGLAS. Of course, these statements were made in general terms, and Mr. Greenewalt is not a Government official.

I had always thought that the attorneys of the Treasury and, indeed, the attorneys of the Internal Revenue Service, were, in a sense, lawyers for the people, and as lawyers for the people. I think they had an obligation to inform the Senate as to what some of the possible traps in the bill were. I don't think any such warning came from the attorneys for the Treasury.

Mr. COHEN. Mr. Knight was representing the Treasury at that time, sir, and I was not.

Senator DOUGLAS. I do not think any warning came from him.

There is a second point I should like to mention, and that is on the quesion of publication or nonpublication. You are one of the experts in the country on the Revenue Code, both as attorney and student, and you know that a great deal of what is in reality special legislation is passed under the fiction that it is general legislation.

Mr. COHEN. Yes, sir.

Senator DOUGLAS. Now, is it your position that if it is primarily something which affects an individual company, even though it is smuggled into the code under the pretense that it is general legislation, that this removes the obligation to publish? If so, you throw a veil of secrecy around the administration of special legislation.

Mr. COHEN. The interesting thing about this provision, sir, is, as I understand it, most of the people in the Revenue Service wondered why they came in, in the first instance, since the bill was tailored to them very closely, almost like a glove, and could not fit anybody else, and had covered the points that they were asking, whether their stock would be defined as——

Senator DOUGLAS. You mean you wondered why they came in?

Mr. COHEN. They questioned why they came in in the first place. I suppose they came in only as an excess of caution.

Senator DOUGLAS. Historically you remember they came in after their first bill had been defeated by a very narrow margin. The first bill, as I understand it, applied to individuals the same standards that would be applied to corporations; namely, that they would be taxed on 52 percent of 15 percent of the original price. The original price was $2, and 16 cents a share; 52 percent of 15 percent of this amounted to 16 cents a share. That was the bill which very nearly passed this committee.

It was defeated only by a vote of 8 to 7, and it had been passed by the House of Representatives, and in all probability would have passed the Senate if this committee had approved it.

Now, very frankly, once the facts in that bill became evident, it was obvious that to avoid having the gains received by individual stockholders taxed as ordinary income which, in most cases would probably have amounted to a 90-percent tax because they were people in the upper brackets, they then sought this special legislation which applied a modification of the capital gains principle.

I was for the capital gains principle rather than the tax on ordinary income. I objected, however, to this bill because it did not apply the capital gains principle in its full form, and instead of levying what would have been a tax of approximately $10, perhaps $10.25 a share, it levied a tax purportedly of only $7.25.

I thought it was capital gains and should have been taxed as such. That was the reason why the second bill was attempted, and a much closer approximation to justice than the original bill of only a 16 cents tax on a capital gain of $41 a share and of what would now be a capital gain of $98 a share.

That was so unconscionable that it could not be defended in the court of public opinion, although I suppose tax lawyers could spin metaphysics to justify it. That is why Du Pont came in with this bill.

But I tried to follow the discussion very closely, and I do not think the record shows a single warning issued by any attorney for the Government that by an exchange of stock this figure of $7.25 might be reduced still more below the $7.25 a share with the market price, as I have said, of $43.

Mr. COHEN. I cannot say one way or the other, sir, since no one in our organization was represented at the time.

Senator DOUGLAS. I would like to have you consider very much this question of publication, because if you apply the practice which you apparently followed in the Du Pont case, to all matters of ostensible general legislation which is, in reality special legislation, great abuses can creep in.

It is hard to detect special legislation concealed in vague general legislation. That is hard enough. If on top of that you put the cloak of silence around any further interpretations by the Internal Revenue Service, you have sealed them off from public scrutiny. I would just like to have you consider this question as to whether this should be permanent policy. I do not think it should be.

The CHAIRMAN. Proceed, Mr. Cohen.

Mr. COHEN. I think that, perhaps, in the interest of time I will try to skip those portions of this that may appear redundant.

Senator LONG. May I make this point: When the Secretary sent us this letter that was discussed here, it came up with the last paragraph saying "This is furnished to you as chairman of the U.S. Committee on Finance in accordance with section 6103(d) of the code." I won't read all of the number of the Code of Internal Revenue, of the income tax regulations.

That section says that the Service shall furnish information requested by this committee, and here are the words "sitting in executive session with any data of any character contained in or shown by any return." So that was furnished to us in executive session. It is within our power to release it all right.

Mr. COHEN. That is what I said, sir.

Senator LONG. But when it came to our committee, the staff very properly marked this as "confidential" because that was for the use of the committee members and not to be released until the committee said to release it because it is furnished to us in executive session, and that is the basis upon which the law requires it.

The CHAIRMAN. Proceed, Mr. Cohen.

Mr. COHEN. In most instances a taxpayer is not obligated or required to request a ruling letter from the Service. However, a taxpayer desiring a determination of the Federal tax consequences of a proposed transaction may submit a request for a ruling letter to the Service. When a request is submitted, the Service will reply as to the tax effect of the transaction, based on the facts submitted by the taxpayer, whenever it is in the interest of sound tax administration to do so. The ruling letter is an opinion of the Service. It is not binding on the taxpayer.[1]

Neither Du Pont nor Christiana was required to file a request for a ruling on the subject matter before us. As a result of the requests, ruling letters dated May 28 and October 18, 1962, were issued to Du Pont and Christiana, respectively. In these ruling letters, we determined that both corporations would be distributing "divested stock," as defined in the public law, to "qualified shareholders," as also defined in the new law.

During the course of our consideration of the ruling letters, it was observed that when Congress was considering this legislation, Du Pont had made representations which were mentioned in the debates and which contemplated a revenue yield of approximately $350 million to $470 million as the result therefrom. The revenue estimates were based upon the understanding that under the legislation somewhat more tax would be imposed on Christiana, which would receive antitrust stock as defined in Public Law 87-403 than under then existing law, and that the only tax on individual shareholders would be the capital gains tax due the return of capital treatment provided for individual shareholders. The revenue estimates were based upon the then fair market value of General Motors common stock. At the time of the 1962 ruling letters, it was doubtful that the contemplated congressional revenue yields would be met if the corporations distributed the General Motors stock through exchanges rather than through pro rata distributions.

[1] Excerpt from Introduction to each Internal Revenue Bulletin.

Accordingly, upon the advice of the then General Counsel of the Treasury Department, Mr. Robert H. Knight, who had represented the Treasury Department in the hearings on the bill, the rulings issued to Du Pont and Christiana stated that Congress contemplated that the General Motors stock would not be exchanged for stock of either corporation, and the rulings were conditioned upon the fact and assumption that neither corporation would distribute the General Motors stock through such exchanges.

Christiana, at the time, informed us of its disagreement with the conclusion that Congress contemplated a pro rata distribution of the General Motors stock owned or to be received by it. At the same time, Christiana advised us that it might seek a reconsideration and modification of the findings at a later date. In August 1964, Christiana did submit a request for reconsideration of the 1962 ruling letter. This request was granted under the standard ruling procedures of the Service, which permits any taxpayer to request a reconsideration of a ruling.

During our reconsideration of the 1962 ruling letter to Christiana, former General Counsel Robert Knight was employed as a consultant to the then Acting Commissioner of Internal Revenue because of his intimate knowledge of events leading to the enactment of Public Law 87–403 and his participation in the consideration of the 1962 ruling requests. Mr. Knight recommended that, provided the maximum revenue estimate of $470 million considered by Congress at the time of enactment of Public Law 87–403 was reached, there would be no justification for a denial of Christiana's request for modification of the 1962 ruling letter, and he submitted an opinion which I believe was introduced to the committee the other day, an opinion letter to the Commissioner, Acting Commissioner, at the time, so stating.

On December 15, 1964, the Service issued a ruling letter to Christiana, removing the condition that the 1962 ruling letter would be of no force or effect in the event any of the General Motors stock owned or received by it was exchanged for Christiana stock. The elimination or modification, if you will, of this condition had the general effect of assuring Christiana that it might exchange shares of General Motors stock for shares of its own stock with those Christiana shareholders who desired such an exchange without affecting the rulings, other rulings, granted in the 1962 ruling letter. Even without such an assurance, we believed the law clearly permitted such exchanges without affecting the application of Public Law 87–403.

This condition was inserted in our ruling letter solely because of the revenue considerations discussed above. It was and is the position of the Service that no particular method of distribution of the General Motors stock by Christiana was intended or specified by Public Law 87–403. This conclusion is clearly indicated by the following passage appearing on page 5 of Senate Report No. 1100, 87th Congress 1st session:

"* * * Your committee wishes to make it very clear that it expresses no opinion as to what particular method of divestiture of General Motors stock by Du Pont or by Christiana is appropriate. It is contemplated by your committee that all issues dealing with the manner of divestiture are to be determined judicially, solely with reference to

the antitrust principles announced by the Supreme Court in the *Du Pont* case."

It also should be noted that Public Law 87–403 contains no provision, and there is no indication in the congressional hearings or congressional debates, precluding the application of relevant sections of the Internal Revenue Code which might be brought into application to reduce the tax consequences to Du Pont, Christiana, and their respective shareholders. Moreover, sufficient evidence is available in the Congressional Record to reach the conclusion that there was no congressional intention to determine, as a matter of law, how the distribution should take place.

For example, in a letter dated January 13, 1962, to the chairman of the Senate Finance Committee, the Attorney General stated that the Department of Justice was—

> * * * concerned that, unless the legislative history of the bill (Public Law 87–403) is kept quite clear, the provision for special tax treatment for distributions of General Motors stock to Christiana stockholders could be cited as an indication that Congress intended the courts to decree such a distribution.

Upon presenting this letter to the Senate on January 15, 1962, the chairman of the Senate Finance Committee stated as follows:

> * * * The bill does not express an opinion as to the appropriate method of divestiture of General Motors stock by Du Pont or by Christiana. This is a matter solely for the courts. I desire the Senate to understand clearly that the proposed legislation will leave the courts free to determine the appropriate methods of divestiture without regard to the proposed legislation. This determination, of course, will be made by applying established antitrust principles. Thus, the court will make such determination without regard to the proposed legislation.

The Senate was fully aware that the then proposed legislation did not purport to determine the manner in which any distributions by Christiana should be made. This awareness is borne out by remarks on the floor by various members of the Senate as late as January 23, 1962, the date H.R. 8847 (Public Law 87–403) was passed by the Senate, the date the bill was passed.

Subsequent thereto, the district court rendered its decision on the divestiture of the General Motors stock by Du Pont and by Christiana. Article IX of the final judgment of the U.S. District Court for the Northern District of Illinois, Eastern Division (Civil Action No. 49 C 1071), specifically authorized non pro rata distributions in the divestiture of the General Motors stock by Christiana. In ordering Christiana to divest itself of all General Motors stock specified therein, the judgment in part provided:

> (1) Christiana may sell such number of shares of General Motors stock as, in the judgment of its board of directors, is necessary to provide net proceeds sufficient to pay taxes upon the receipt by it of General Motors stock from Du Pont and any expenses and taxes incurred upon the sale of the shares to be sold.
>
> (2) Christiana shall distribute to its shareholders (including non pro rata distributions in redemption of its own stock) the remaining shares of General Motors stock required to be divested by it.

Christiana did not need any special legislation such as Public Law 87–403 to provide favorable tax treatment for the non pro rata distributions in redemption of its own stock which the judgment authorized it to make. Such favorable tax treatment had already been pro-

vided for in the Internal Revenue Code of 1954 as in effect prior to the enactment of Public Law 87–403.

Distributions of General Motors stock to organizations exempted from income taxes by section 501 of the code could of course be made without any tax consequences to such organizations whether the stock were distributed as an ordinary dividend or through non pro rata distributions in redemption of Christiana stock. That is true even as regards the tax under section 511 of the code on unrelated business income since paragraphs (1) and (5) of section 512(b) of the code excludes from the base of that tax both dividends and gains and losses from the sale, exchange, or other disposition of property other than stock in trade or property held primarily for sale to customers in the ordinary course of trade or business.

Distribution in redemption of stock are subject to the rules of section 302 of the code. Such distributions are required by section 302(a) to be treated as in part or full payment in exchange for the redeemed stock if the distribution is substantially disproportionate with respect to the shareholder under the rule of section 302(b)(2), if the distribution is in complete redemption of all of the stock of the corporation owned by the shareholder under the rule of section 302(b)(3), or if the redemption is not essentially equivalent to a dividend under the more general rule of section 302(b)(1). These provisions, all in effect prior to the enactment of Public Law 87–403 and not in any way amended by that public law, made it possible for either individual or corporate shareholders of Christiana to obtain capital gain treatment in respect of General Motors shares distributed in redemption of Christiana stock. The attractiveness of such distributions of General Motors shares in redemption of Christiana stock, of course, necessarily depended upon the basis of Christiana stock in the hands of the shareholder since even at the capital gain rate a relatively high tax liability would be incurred on a considerable number of General Motors shares received in redemption of Christiana stock held at a low basis.

It was mainly the availability of these provisions of the code, which were in no way affected by the enactment of Public Law 87–403, which convinced the Service last December that we could not justify a refusal to remove the condition as to distributions of General Motors stock in exchange for Christiana stock from the 1962 ruling as soon as the request for reconsideration of that ruling had been modified in such a way as to assure that the maximum revenue estimate of $470 million contemplated at the time of enactment of Public Law 87–403 would be raised.

Not only were these provisions unaffected by the enactment of Public Law 87–403 but, as stated above, there was nothing in Public Law 87–403 or in its legislative history to indicate that the general relief provisions which that public law brought into the code were not to be available in the event non pro rata distributions of General Motors shares in redemption of Christiana stock should be effected prior to a final distribution of the remaining General Motors shares pro rata to the remaining Christiana shareholders.

Senator LONG. May I just ask a question, Mr. Cohen? If I recall, I think you made reference to this. When Mr. Greenewalt testified before us on the so-called Du Pont bill, I, perhaps, asked a question, not of him, but I think he had already explained it, that there were

ways available to Du Pont and Christiana where they could reduce their Government tax liability if they wanted to do just the type thing that they did right here. Do you have that available to you?

Mr. COHEN. Yes, sir.

Senator LONG. I believe he explained that if they did, that while they were not anxious to do business that way, if they did, they would greatly reduce their Government tax liability, and you would get a lot less than if you passed the Du Pont bill, and they dissolved as the bill authorized them to dissolve.

Mr. COHEN. That's right. You were asking a question, and Mr. Greenewalt said Du Pont also offered to exchange [reading]:

> Senator LONG. Let me just take that point. What did you say, it is within the power of your company to adopt the plan under which the Government would not receive any additional revenue so far as Du Pont is concerned, is that correct?
>
> Mr. GREENEWALT. That is correct only in theory. I want to impress the committee with the magnitude of this problem.

Then he went on to discuss that it might take some great length of time, and that the distributions could be made in dividends or in exchange and could, in effect, probably not eliminate the problem but could reduce it greatly.

Senator LONG. In other words, it was explained to us at the time, and nobody contested that, I can't even recall that anybody even from the Internal Revenue Service contested that either in the hearings or even those who opposed the bill contested that point at that time, that there were measures available, such as you have discussed in the law where that company could by such a measure such as this greatly reduce the amount of tax that they would owe if they chose to comply with the court decrees in that fashion.

Wasn't that pretty well understood down at the Treasury as well as those of us on the Hill at the time?

Mr. COHEN. Well, I cannot speak for anybody in the Treasury since I was not there at the time, sir. But it appears he said that, and at one point he indicated that approximately 10 million shares could have been exchanged tax free.

Senator LONG. If that were the case, can you give me some idea as to how much that would have reduced their liability below what these people estimated it would be?

Mr. COHEN. He indicated at that time that he thought the liability would be about $330 million if he went about this particular procedure.

Senator LONG. So that by what their estimates were, that they would, if they used that procedure they would, owe about $140 million less than they would owe if they would use the procedure that the so-called Du Pont bill authorized.

Mr. COHEN. There were exchanges, sir, and I do not want to be held to anything along that line. The only point I wanted to make in mentioning that is that he did, at that point, mention the possibility of exchange.

Senator LONG. Was there not other legislative history where some of us, in explaining this bill, explained, either on the House side or Senate or both, that this procedure was available to these people under existing law?

Mr. COHEN. Well, almost every statement that you find in the legislative history indicates it can be any type of distribution and, as

I say, many of them indicate pro rata or non pro rata. In fact, at one time, I understand the Department of Justice was pushing in the courts toward a non pro rata distribution as being the most favorable from an antitrust standpoint.

When Mr. Knight checked this out with Mr. Orrick at the time of the second ruling in 1964, the 1964 ruling, Mr. Orrick indicated that as far as the antitrust laws were concerned, the answer was neutral. It did not really make any difference once the court had included the Christiana shareholders and some of the large Du Pont shareholders within its ambit. So that there was a determination—we wanted to make sure that we were not running afoul of the antitrust laws, and the answer came back that it is neutral. It said, "You do as you see fit under the tax laws."

Senator LONG. All right.

The CHAIRMAN. Thank you very much.

Any further questions?

Senator SMATHERS. I would like to ask a couple of questions.

The CHAIRMAN. Senator Smathers.

Senator SMATHERS. Mr. Commissioner, will you describe for the committee in what manner this whole proposition first came to your attention.

Mr. COHEN. I might say that the first time I met Mr. Knight was last week, which was Wednesday or Thursday when the hearing was in this room. I never met Mr. Knight before that.

The first time this came to my attention was when I was in the Chief Counsel's office, I got a call one day from Treasury. I do not recall who the call was from, it was not from Mr. Knight. It was from one of the staff of people who was working with him, and I was asked to give a legal opinion on whether the placing of the condition in the ruling was legally valid, and I replied really that was the wrong question. "You shouldn't ask me that question because really the answer is if we put a condition in could we hold to it."

But I was not asked that question. I was told only to answer whether the placing of the condition in the ruling was valid.

I rendered a legal opinion to Mr. Knight which said that since it was discretionary on the Commissioner to rule or not to rule, then he could rule subject to any condition he saw fit, and that is all I said, that was the only thing that that memorandum took, the only position it took.

Ultimately, Mr. Knight met with members of the Commissioner's staff, and one or two members of my staff to advise him on the legislative history and the procedures.

Some members of my staff attended the hearing with Christiana representatives, lawyers for Christiana. I did not personally attend that.

Senator SMATHERS. Do you recall when that was?

Mr. COHEN. It was, this was, about the middle—well, my memorandum to Mr. Knight was dated, I believe, November 9. Those discussions with my staff took place in the next few weeks.

Then ultimately when the ruling letter was prepared, a member of my staff walked into my office and said, "Mr. Cohen, the ruling letter is here. Do you want to personally sign it?"

I said, "This is a routine case as far as I am concerned. Has this been handled in the normal procedure?" The answer came back, "Yes."

I said, "Will you feel more comfortable if I sign it?" He said no, he would be glad to handle it in the routine way.

I said, "You have my authority to go ahead and sign it." It was initialled, and it was sent to the Commissioner, and ultimately it was issued by the Acting Commissioner.

Senator SMATHERS. Mr. Cohen, did any official of Christiana or any lawyer representing Christiana ever discuss this matter with you?

Mr. COHEN. No, sir. I have never met any of them in regard to this. I personally am acquainted with several of them, Mr. Watts, I have met at bar association functions, and so forth, but with none of the other gentlemen am I personally acquainted.

Senator SMATHERS. But you never discussed it prior or during or after this whole matter?

Mr. COHEN. No, sir.

Senator SMATHERS. Those are all the questions I have.

The CHAIRMAN. Senator Williams?

Senator Gore?

Senator DOUGLAS. I have no questions.

Senator GORE. The 1964 ruling did not remove the condition of the 1962 ruling, did it?

Mr. COHEN. No, sir; it only modified it. The $470 million remained as an unspoken premise throughout the whole thing. That again was at the request of Mr. Knight.

Senator GORE. When a request was made of you, as counsel for the Internal Revenue Service, to express an opinion as to the validity of the inclusion of the conditions, you replied, if I recall correctly your words, that since such an action was discretionary on the part of the Commissioner of Internal Revenue he could issue such a ruling, decline to issue such a ruling, or issue such a ruling based upon whatever condition he might choose.

Mr. COHEN. He might think appropriate. I think that is correct.

Senator GORE. Is that a correct statement?

Mr. COHEN. Yes, sir.

Senator GORE. Then I take it, it would follow that since it was again discretionary on the part of the Internal Revenue Service to issue or not to issue, to modify or not to modify, to rescind or not to rescind, to amend or not to amend the 1962 ruling, that the Commissioner had the choice of issuing such a ruling upon whatever new or modified condition he might choose?

Mr. COHEN. Yes, sir.

Senator GORE. Then your opinion of the validity is that it is within the discretion of the Commissioner to condition a ruling in such manner as he may choose?

Mr. COHEN. Yes, sir. That does not hold to the legal validity of the ruling if tested in court though. It only holds to the administrative action that we might take following the ruling.

Senator GORE. Well, the taxpayer requested a ruling in the first place.

Mr. COHEN. Yes, sir.

Senator GORE. It was the taxpayer who desired a ruling.

Mr. COHEN. Yes.

Senator GORE. The ruling was given at the taxpayer's request.

When the taxpayer raised objection to the condition of the ruling, the then Commissioner agreed to take the matter before the Joint Committee on Internal Revenue for its opinion and advice. The taxpayer declined to avail himself of that opportunity, accepted the ruling, made two distributions under the ruling, and then, General Motors stock having risen from $45 to around $100 per share, petitioned for a change.

And, as you say, I believe, it was entirely within the discretion of the Commissioner as to whether the ruling be changed or modified.

Mr. COHEN. Yes, sir.

I might say that in word of explanation as to Mr. Caplin's prior position, Mr. Caplin, I think, indicated that having been informed by Mr. Knight of the $470 million figure, he would not personally OK a ruling that would bring in less than that amount unless he brought the matter to the attention of the committee.

Still upon the same premise, because you have to understand, I think, that the Revenue Service, having not participated in this legislative history, was relying on the Treasury person involved here, Mr. Knight, for his intimate knowledge of what was or what was not intended.

Senator DOUGLAS. Will the Senator permit me to ask a question?

Senator GORE. Yes.

Senator DOUGLAS. Just this basis that I think makes the 1964 ruling very questionable, with great legal precision you said that the "unspoken premise"—those were your words—of the 1962 act and the 1962 ruling, was that Du Pont should not pay more than $470 million.

Mr. COHEN. I hope I did not say that. I said that was Mr. Knight's premise. I cannot adopt it one way or the other. I do not know; I was not there.

Senator DOUGLAS. I know. But that was Mr. Knight's basis, and that has become the official ruling of the Internal Revenue.

Mr. COHEN. Yes, sir. As I indicated, there were a number in the Service who had doubts about that.

Senator DOUGLAS. I think this basis is more than questionable. What is an "unspoken premise"? It is something not stated but inferred. In your testimony you made it clear that Du Pont never explicitly said they would not pay more than $470 million. There has never been any evidence to indicate that Congress thought that under all conditions Du Pont should not pay more than $470 million. This is a guess after the fact based on the belief in what was in people's minds that the then existing price of the stock, $43 to $45 to $47 a share.

Now, after that General Motors had terrific earning records—we do not question that, and we are not trying to take it away from them in any way—but as a result the capital gains which were originally enormous became still more enormous, on the basis of 63 million shares, the capital gains became something over $6 billion, not $2.5 billion, as originally.

Now, I see no evidence, unless there was a secret arrangement between Treasury and Du Pont, I see no evidence that there is a limitation in the act that $470 million should be the maximum paid by Du Pont.

Instead the legislation purports to be general legislation, pro rata distribution was approved and carried through on a considerable portion of the stock, but an exception was made on the charitable holdings on the ground, and Mr. Knight himself admitted this was the central consideration, that the liability of Du Pont should be restricted to $470 million although in practice it was not restricted to this.

I think when you make tax rulings on the basis of "unspoken premises" that this is a very dangerous principle because it permits a surmise to be substituted——

Mr. COHEN. I would agree with you.

Senator DOUGLAS (continuing). For fact and for legal documentation.

Mr. COHEN. I would agree with you, and I have pledged to this committee on my confirmation hearings, we will follow the law as best we can glean it without regard to the dollars involved.

We came on a situation here where we were not directly involved in the legislation. The party who was involved gave us his impression. Many of us could not find full support for holding Christiana to any line——

Senator DOUGLAS. I am not blaming you, Mr. Cohen.

Mr. COHEN (continuing). And, therefore, we took the modification because it led us more toward what we could glean from an objective legislative history.

Senator DOUGLAS. Mr. Cohen, I am not blaming you in the slightest, and you are not on trial.

Mr. COHEN. I am not trying to justify it, sir, but only trying to say what we did.

Senator DOUGLAS. I think Senator Gore is right. This is a most anomalous situation. The former General Counsel is called in on election day, I think, November 4. Wasn't that election day?

Mr. COHEN. I think the 3d was.

Senator DOUGLAS. The day after election, when the results had become manifest. There is an Acting Commissioner of Internal Revenue. Mr. Caplin has gone out, and you have not yet gone in. There is an administrative vacuum. Into that administrative vacuum Mr. Knight is propelled.

Senator GORE. During the Christmas holidays and the inaugural period.

Senator DOUGLAS. I think the ruling was after Thanksgiving.

Then there was the ruling, and I think you have used accurate terminology in saying that it was based on the "unspoken premise." It resembles a person in a dark room conjecturing about the presence of a black cat which is not there.

Senator BENNETT. Mr. Chairman?

Senator SMATHERS. Mr. Chairman, I wonder if I might ask this question? The Commissioner has sat here and listened to this testimony, as I have, during a period of a day and a half. I did not get the impression that Mr. Knight or anyone else stated that they should not pay more than $470 million. I rather understood it as saying that they would pay under this arrangement at least $470 million.

I think there is a distinction as to whether or not they should pay, the understanding was that they should pay, not more than $470 million or they should pay at least $470 million.

Mr. COHEN. I believe he said at least, but I am not sure.

Senator SMATHERS. At least $470 million.

As a matter of fact, is it not the estimate that they now will pay or have paid, shortly will pay $612 million?

Mr. COHEN. That is correct, sir.

Senator SMATHERS. I would like to ask this question for the benefit of the Senator from Arkansas who is not able to be here, and he asked me to ask it for him. He was particularly interested in knowing what Christiana Securities Co.'s tax would have been under the prior law as contrasted to what is actually has been under Public Law 874.

Mr. COHEN. I do not know what the figure is, but the dividend tax to them would have been, I think, a tenth of what it was.

Senator SMATHERS. It would have been much less?

Mr. COHEN. Much less.

Senator DOUGLAS. Sixteen cents a share.

Mr. COHEN. Sixteen cents as against several dollars.

Senator DOUGLAS. That was so unconscionable——

Mr. COHEN. But that was the general rule.

Senator SMATHERS. That was the rule.

Mr. COHEN. That was the general rule.

Senator SMATHERS. And if Congress had not acted that would have been the case?

Mr. COHEN. That still is the general rule as to all other corporations.

Senator SMATHERS. Is there any question in your mind that the total revenue to the Federal Government had Christiana so acted would have been substantially less than $612 million?

Mr. COHEN. I have been so informed, yes, sir, by our revenue estimator. I am not a revenue estimator.

Senator SMATHERS. Inasmuch as Christiana had a legal right in 1962 to make an exchange offer which you indicated in your statement which they did, but not exercise it, is it not fair, therefore, for me to state, and correct me if I am wrong, that because Christiana waited until 1965 to make the exchange offers that there has been no lessening of Federal revenue?

Mr. COHEN. I thing that is correct, sir, but I am not certain. I do not know who would have accepted an exchange at that time against who would now, and I think that is rather speculative, so it is hard to say.

Senator SMATHERS. All right.

I think those are all the questions I would like to ask.

Senator BENNETT. I have not been able to ask a single question all morning. May I get into this while we are at it?

Senator GORE. I yield. I thought I had been recognized.

Senator BENNETT. I hope the Senator from Illinois will remain for just a minute. The Senator from Illinois has implied that the purpose of this ruling was to enable Christiana and General Motors and Du Point, but Christiana particularly, to distribute a stock worth $100 a share at a lower rate. I think the record should be corrected.

There was not available $6 billion worth of profits. At most there was available $4.6 billion because Christiana and General Motors both distributed stock in July 1962 equal to a third, approximately a third, of the issue at, in the case of General Motors, $47 a share, and in the case of Christiana $54 a share; and then in January 1964 they dis-

tributed a little less than a third, Du Pont at $79 a share, Christiana at $79 a share.

In their final distribution in January 1965, the price was $96 a share, but they had only 23 million instead of 63 million shares left to distribute.

So that to imply that this whole thing was being held back in order to take advantage of the price rise from something like $50 to something like $100——

Senator DOUGLAS. I want to say to the Senator from Utah he is very uncharitable in implying that that was the purpose of my statement. I was trying very hastily to indicate what the probable capital gain had been because of the rise in the price of General Motors stock, and I think the technical correction which the Senator makes is true; that because of the prior distribution at lower prices that the gain of $98 a share was not realized on all of the 63 million shares.

I am very glad to accept his correction that the total capital gains were not $6 billion but $4.6 billion. I did not say there had been delay. I simply said it was an extraordinary situation in which in an administrative vacuum a former official was called in who reverses his previous ruling, and I am not blaming Mr. Cohen at all in this matter. I want the record to be clear on that.

Senator BENNETT. Let me finish this one correction. The figures I have quoted are $4.6 billion for Du Pont, and I will quote the figure of $653 million total value, this is the value received for this stock when it was distributed, and the net profits are these figures minus whatever the basis was of the various stockholders to whom it had been distributed.

Senator DOUGLAS. The base price was well established at $2.16 a share.

Senator BENNETT. This is with respect to the man who owned Du Pont or Christiana at the time that General Motors was acquired. A lot of people bought stock in both these companies over the years, and their value was much higher.

That is all, Mr. Chairman.

The CHAIRMAN. Senator Gore?

Senator GORE. In view of what you, Mr. Knight, and Mr. Caplin have said about the discretionary authority of the Commissioner with respect to a ruling, I am at a loss to know why reference is made to court test, and I particularly would like to ask you why you recommended a ruling in 1964 which contained a modification of the ruling to which you refer as possibly subject to court test.

Mr. COHEN. Well, I should answer the first one—the reason I mention court test is that to a lawyer the ultimate test of a legal judgment is what will a court do with it.

Senator GORE. That is a matter of conjecture.

Mr. COHEN. Sir, any opinion a lawyer gives is a matter of conjecture. You make your best judgment on the facts known at the time.

Senator GORE. Yes. But under the law, the Commissioner had discretionary authority to issue or not to issue the ruling, and to issue it under such conditions as he chose.

Mr. COHEN. Yes, sir; and you asked me why did I, as chief counsel, authorize from our standpoint the issuance of a new ruling. We did it

on the same grounds that we would have OK'd the first ruling. As a matter of discretion in the Commissioner, the condition was put in there. As a matter of his discretion he could take it out of the order, he could modify it to such extent as he thought appropriate.

The Commissioner, the then Acting Commissioner, then operating within his framework of reference, and within the advice given to him by the consultant, Mr. Knight, who was the man who originally insisted on the condition, thought that he could modify it.

As a lawyer, I thought that that modification was proper, just as I would have thought any restriction he wanted to put in there probably would have been proper and I, therefore, OK'd it.

Senator GORE. As I understand you, you think the modification was legally proper, and you also think that the condition in the 1962 ruling was legally proper?

Mr. COHEN. Yes, sir. But that does not mean that necessarily the Revenue Service would win the case if they chose to litigate.

Senator GORE. Let me state my question. I want the record to show my question and then I want the record to show your answer.

As I understand you, and I would like for you to say whether I understand you correctly, you said that you recommended the conditions in the ruling made on November 15, 1964, as being within the legal authority of the Commissioner?

Mr. COHEN. I initiated on the basis of that yes, sir. Thee ruling date was December 15.

Senator GORE. And you say you would have so initialed the condition of the ruling made in 1962?

Mr. COHEN. Yes, sir; and I should add that if the ruling letter, the last ruling letter, had not had the condition I probably would have initialed that also.

Senator GORE. Well, I daresay.

Senator SMATHERS. Will the Senator yield at that point for clarification?

Senator GORE. Yes.

Senator SMATHERS. Am I correct in stating it this way, that as you interpreted this whole problem, that the Commissioner had the authority, within his discretion, to do what he did, but you, as a lawyer, did not believe that his first ruling would stand up in the court if tested?

Mr. COHEN. That is right, sir.

Senator SMATHERS. That is the basis upon which you gave your second ruling in 1964 was as a lawyer, you are now the Commissioner.

Mr. COHEN. It should be clear that I was operating as a lawyer at that time, not as the man with the administrative discretion.

Senator SMATHERS. Right.

Mr. COHEN. I do not think a lawyer should interject himself into his client's administrative discretion. He is there to advise his client on what he may do if the client so wills, and I thought that the Commissioner's discretion was entirely proper.

Senator SMATHERS. So while the Commissioner had the discretion, in an effort to try to get as much money from the taxpayer he felt he could get or at least as Senator Douglas has said, $470 million plus, nevertheless, as a lawyer, you would have to say that that decision would not have stood up, in your judgment, before a court?

Mr. COHEN. Yes, sir.

Senator SMATHERS. Thank you.

Senator GORE. Well, what you recommended was a ruling which did not remove the condition, but instead only modified the condition?

Mr. COHEN. That is correct, sir.

Senator GORE. As a lawyer——

Mr. COHEN. Stating a premise that the Commissioner, in his discretion, might put a condition in there; having stated that to Mr. Knight first, I think that it was incumbent on me to accept a condition having been retained in modified form.

Senator GORE. Well, as one lawyer with limited learning, to another, permit me to suggest to you, sir, that the taxpayer requested the ruling, that the taxpayer received certain benefits which he desired as a result of the ruling. The ruling was only available and those benefits only available to him on the condition stipulated in the ruling.

He accepted it with those stipulations. Two divestitures were made in consequence thereof.

So it seems, as one lawyer to another, that we could be in court a very long while on this subject.

Secretary Dillon stated that it was "conjectural" that the $470 million referred to in revenue estimates would be realized. Now, as matters have developed, what revenue would have been realized at a price of General Motors stock of $55 per share?

Mr. COHEN. Assuming what, sir?

Senator GORE. Assuming——

Mr. COHEN. I do not know whether these 4 million people would have exchanged at $55 per share. I do not know what the exchange ratio would have been. Would it have been three and a quarter to one? Five to one? Or two to one? I think it is conjecture, that is pure conjecture, I am afraid.

Senator GORE. Well, assuming a pro rata distribution in accordance with the ruling of 1962.

Mr. COHEN. Then, I think we have stated that the—I do not know. Do we have—we can have somebody make that figure available to you, sir.

Senator GORE. Will you supply it for the record?

Mr. COHEN. This is a rather complex arrangement, and we have an estimator here from the Treasury. But I am afraid off the top of his head he cannot make the calculation.

Senator GORE. You will supply it for the record at this point?

Mr. COHEN. Yes, sir.

Senator GORE. Thank you, Mr. Chairman.

(The following insertion was subsequently furnished by Mr. Thomas Leahy, Assistant Director of the Office of Tax Analysis of the Treasury Department.)

It is estimated that revenue in the range of $430 to $470 million would have been realized by the Government on the following hypothetical assumptions: (1) General Motors stock at the time of any sale or distribution had a value of $55 a share; (2) Du Pont and Christiana made sales in the amount of 1,855,159 shares of General Motors stock (this is the amount of sales actually made); (3) all remaining shares of General Motors stock held or received by Du Pont or Christiana were distributed pro rata. This estimate varies slightly from that accepted in 1962 because of changes in tax rates and other relatively minor factors.

Senator LONG. Mr. Chairman, I have discussed this matter with a number of lawyers who do not represent Du Pont. In fact, I have not discussed this matter since this point was raised with anybody who does represent Du Pont.

Let me tell you what each one of them has advised me, that Mr. Cohen's ruling here was correct. That when he said in his statement here that the Senate was fully aware that the then proposed legislation did not purport to determine the manner in which any distribution by Christiana should be made, that that was our understanding in the committee, and he said in his statement that this awareness is borne out by remarks on the floor by various Members of the Senate as late as January 23, 1962.

Now, I have discussed this matter and sought the advice of staff, and I am still of that opinion, and I do not know of anybody who disagrees with it. Now, furthermore, he said—

> Christiana did not need special legislation such as Public Law 87-403 to provide favorable tax treatment for non-pro-rata distributions in redemption of its own stock which the judgment authorized it to make.

Now, my understanding, and I know no lawyer with whom I discussed this matter who has refuted that statement, that they did not need even the law we passed to authorize them to do this.

Now, my understand is that it was well understood that Du Pont was expected to distribute their stock pro rata, and they did.

Mr. COHEN. Yes, sir.

Senator LONG. So there is no quarrel about that. That was understood, and that was done.

It was furthermore my understanding, and I have consulted with the staff and confirmed my judgment of this, and my recollection, that it was understood that Christiana could distribute either way, but apparently there seems to have been some confusion about that.

The best advice I can get was that we understood that Christiana had that right, they had that right before we passed the law; they had the right after the law. Is that the way you understood it?

Mr. COHEN. That was my best understanding. I was not there, of course. I can only read the record.

Senator LONG. The law did not change that. But apparently there arose some confusion as to whether Christiana had that right, and if Christiana exercised that right, it was going to make some difference in the revenue estimate that we had in mind when we passed the so-called Du Pont bill up here.

Mr. COHEN. That is right.

Senator LONG. And Mr. Knight wanted to be sure we collected that amount of money that that revenue estimate said.

Mr. COHEN. Yes, sir.

Senator LONG. And that is why he put that condition in there.

Mr. COHEN. That is what he stated.

Senator LONG. But in doing so he put a condition down that I did not understand, and I do not think we understood that to be the condition, and the debates on the Senate floor indicated that is not the condition; isn't that about the size of it? You had lots of support for that revenue estimate of $470 million.

Mr. COHEN. Yes, sir.

Senator LONG. But you could not find anything in the record to support you that Christiana did not have the right to do this.

Mr. COHEN. That is right, sir.

Senator LONG. And that having been your opinion from the beginning, it remains your opinion still, I take it?

Mr. COHEN. Absolutely.

Senator LONG. May I just say this, since this point came up, Mr. Cohen, I have been a lawyer myself, and I know what it is to sign opinions. Some of them have been good, and some of them weren't worth the paper they were written on. But if I sign an opinion, and I was subsequently persuaded I was in error, I think I would be man enough to admit my error when I was persuaded that I was in error or when I made a mistake.

Apparently you did not make a mistake.

Mr. COHEN. I am the first one to say that I am or—that I am fallible. We may be fallible, but I do not think we were wrong.

Senator LONG. Doesn't the Supreme Court give you certain rights under certain circumstances if you have doubts about that matter to give them a rehearing and to hear them a second time in the event you decided against them?

Mr. COHEN. Yes, sir.

Senator LONG. Weren't there doubts about it in your department at the time you gave that decision?

Mr. COHEN. Administratively we always had some doubts about it.

Senator SMATHERS. As to the first letter?

Mr. COHEN. Yes, sir.

Senator LONG. As a practical matter, if you conclude this is wrong, do you feel it would be your duty, if you conclude the thing is wrong, to give them a ruling that is right?

Mr. COHEN. To the best of our ability.

Senator LONG. Let me say this: With all this talk about the inauguration or 2 days thereafter, in my judgment a taxpayer or citizen is entitled to justice whether he is asking for it in January or July. It should not make any difference, and if you are a lawyer and you concluded that he was entitled to that right, I think you ought to give it to him, and I commend you for it.

Senator GORE. Mr. Commissioner, what do you know about this advice to Mr. Knight that Senator Byrd was going to write a letter recommending this deal?

Mr. COHEN. I know nothing of it, sir.

Senator GORE. Were you present the other day when there——

Mr. COHEN. I was present when the discussion went on, but I have no firsthand knowledge. I know exactly what I heard in this room.

Senator GORE. Well, let me read you what you heard:

"It was briefly mentioned that a letter would be made available on this matter from the chairman of the Senate Finance Committee."

Now, as Commissioner, since you heard that, have you made any move to find out who gave that erroneous advice?

Mr. COHEN. No, sir.

Senator GORE. Do you think you would be well advised to so inquire?

Mr. COHEN. It did not enter into my judgment as Chief Counsel. I do not know that I am saying it entered into anybody's judgment at the time.

Senator GORE. You are Commissioner now?

Mr. COHEN. Yes, sir.

Senator GORE. You heard Senator Byrd say that he had written no such letter?

Mr. COHEN. I do not know that anyone in the Service relied on whether he would or would not write the letter so, therefore, it became——

Senator GORE. That is not the question I asked you. You heard a memorandum prepared by an employee of the Internal Revenue Service which purported to relate to Mr. Knight that a letter would be made available from the chairman of the Senate Finance Committee on this subject?

Mr. COHEN. Indicating that someone at the meeting said that.

Senator GORE. And you heard Chairman Byrd say that he had written no such letter?

Mr. COHEN. Yes, sir.

Senator GORE. Hasn't it occurred to you to find out who——

Mr. COHEN. No one in the Revenue Service relied on the fact that a letter would or would not be written; therefore, it did not enter into the judgment———

Senator GORE. Mr. Knight was not in the Internal Revenue.

Mr. COHEN. And I would——

Senator GORE. He was at the hearing, he was called down as a consultant to render an opinion on changing this ruling. It hadn't occurred to you to find out who gave to him this erroneous information?

Mr. COHEN. We have questioned people at the hearing and no one seems to remember whether it was said or not. It is in one man's recollection someone must have said it. But we don't know which of the gentlemen attending the hearing might have said it.

Senator GORE. Did you inquire of the man who wrote the memorandum?

Mr. COHEN. Yes, sir. He doesn't recall.

Senator GORE. So you have made some inquiries?

Mr. COHEN. In the sense of "does anybody know why this is in here," yes, sir.

Senator GORE. Well, I congratulate you. I think it is properly the subject of an inquiry. But you did not learn who so advised Mr. Knight?

Mr. COHEN. No, sir.

The CHAIRMAN. I repeat for the record, I neither wrote a letter nor was requested to write a letter. If such a letter had been written it would certainly be in existence.

Mr. COHEN. We would have it in our files, I presume, and we do not have such a letter, and we have not relied on the existence of or nonexistence of it.

(The following letter from Mr. Kenneth W. Gemmill, of Dechert, Price & Rhoads, Philadelphia, Pa., was subsequently received by the

chairman and made a part of the record:)

DECHERT, PRICE & RHOADS,
Philadelphia, Pa., March 29, 1965.

HON. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Room 209, Senate Office Building,
Washington, D.C.

MY DEAR MR. CHAIRMAN: On page 180 of the typewritten transcript of the hearing held on March 17 before the Senate Finance Committee there appears the following statement: "It was briefly mentioned that a letter would be made available on this matter from the chairman of the Senate Finance Committee."

This statement was supposed to have been made at a meeting held on November 10, 1964, in the Bureau of Internal Revenue. At the meeting of November 10 I was the chief spokesman for Christiana Securities. I have my notes of my opening statement and the notes which I took of the various points made at the meeting. Nowhere in those notes do I find any reference to the chairman of the Senate Finance Committee. In addition, I have no recollection that there was any such reference.

Moreover, I have asked the other representative of Christiana who were at the meeting; namely Messrs. Scott, Watts, Shapiro, Grimes, and Sharon, if anyone has any notes or any recollection of the mention at this meeting of the chairman of the Senate Finance Committee. I am assured by each of the above-mentioned persons that he does not have any notes or recollections of any mention of the chairman of the Senate Finance Committee.

We do not know of the existence of any letter, or of any request for any letter from the chairman of the committee. We, therefore, believe that the above reference must have originated as the result of a misunderstanding.

Sincerely yours,

KENNETH W. GEMMILL.

Senator GORE. How do you know what Mr. Knight relied upon?

Mr. COHEN. I have no idea what he relied on, except insofar as his written recommendations made to the then Acting Commissioner were made available to me, and I have read that letter.

Senator GORE. You said earlier that one of your assistants, or members of your staff, said that the ruling letter "is here, do you wish to sign it." I believe I am quoting you correctly.

Mr. COHEN. Yes, sir; or words to that effect.

Senator GORE. You suggested that your staff member initial it. My question is, who wrote the letter?

Mr. COHEN. That letter was written in the technical organization of the Commissioner's Office. It was drafted by a technician who was assigned the case. It was then reviewed in the technical organization, it was reviewed by the Assistant Commissioner, Technical, and as many rulings are forwarded to the Chief Counsel for concurrence. It was then forwarded to my Interpretive Division for concurrence.

Having been reviewed in the Interpretive Division, it was either the head of the Division or one of my assistants who walked into the office and asked this question, and it was initialed with my initials, sir. I take full responsibility for it. I authorized him to sign my name.

Senator GORE. To whom was it referred for the actual draftsmanship?

Mr. COHEN. One of the technicians in the Tax Rulings Division, sir.

The CHAIRMAN. Senator Long?

Senator LONG. May I ask you this: Do you feel you have to have a letter from Senator Byrd in order to make a ruling when you are the Commissioner?

Mr. COHEN. No, sir. I do not think I should. I would like to know more about the objective basis of the record.

The CHAIRMAN. Who was it who said I had written a letter?

Mr. COHEN. I wish I knew.

The CHAIRMAN. I write a lot of letters, some to my own constituents and elsewhere, and I reply to letters that come to me as chairman of the Finance Committee, and I have no recollection whatever of writing a letter.

Now, as I understand it, somebody said that I was expected or they could get me to write a letter. What was it?

Mr. COHEN. That was evidently the way it was stated.

The CHAIRMAN. What was the way it was stated?

Senator LONG. Someone, as I understood it, had a note which indicated that Senator Byrd might write a letter, and Mr. Knight knew nothing about the letter.

Mr. COHEN. The gentleman you are referring to, Mrs. Springer, is just the technician who wrote the notes.

Mrs. SPRINGER. That is what I mean, that is the only mention made in there about this, and it is just Mr. Gabig's memorandum, and no one else seems to remember anything about the letter.

Mr. COHEN. Most likely someone said like that.

Senator LONG. You will find a few requests down in the Treasury Department from Senator Long from time to time, somebody writing about some constituent's desire for you to recommend a law or recommending one position or another. I do not know what you do with them or whether you file them. But from time to time they are acknowledged "we have received your letter." I assume that is about the size of it.

Mr. COHEN. They receive the same treatment as they would have received had the letter not come in, sir.

The CHAIRMAN. Is there anything further?

Senator GORE. I would like to ask the Acting Commissioner some questions.

The CHAIRMAN. If the mysterious letter turns up let me know. I cannot recall any such letter.

Senator BENNETT. Mr. Chairman, are these hearings going to continue further this morning?

The CHAIRMAN. We are going to adjourn.

STATEMENT OF BERTRAND M. HARDING, DEPUTY COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. HARDING. I am Mr. Harding, Mr. Chairman, the Acting Commissioner at the time of the issuance of the 1964 letter.

The CHAIRMAN. Your name was not on the schedule today.

Senator WILLIAMS. Who asked you to come?

Senator GORE. I requested it.

Mr. HARDING. Senator Gore.

Senator GORE. I requested that he come, the man who actually signed the ruling.

Senator WILLIAMS. It is usually the chairman who calls witnesses.

Senator GORE. I thought it was proper that he testify.

Mr. HARDING. I am happy to be here, Mr. Chairman, and Senators.

The CHAIRMAN. Proceed.

Senator GORE. Mr. Knight stated in his testimony—he was testifying with respect to a telephone call from Secretary Dillon, and my recollection is that he said that whoever was considering the matter was "having difficulty" with it.

Were you the proper person to issue or not to issue this ruling?

Mr. HARDING. Yes, sir; at that time.

Senator GORE. Did you accept the position of Acting Commissioner?

Mr. HARDING. Yes, sir.

Senator GORE. And you undertook the full responsibilities of the office?

Mr. HARDING. That is correct, Senator.

Senator GORE. Were you having difficulty in making a ruling on this issue?

Mr. HARDING. I was not personally having difficulty, Senator. The matter had not come to my attention at that time.

Senator GORE. Then you do not know then to whom the reference was made that someone handling the matter was having difficulty with it?

Mr. HARDING. No, sir; I do not know.

Senator GORE. You were not having difficulty?

Mr. HARDING. I was not, sir, personally.

Senator GORE. You were prepared to exercise the responsibility of the office which you held with or without the advice of a consultant?

Mr. HARDING. Yes, sir; I was prepared to act on the basis of the recommendations of my staff, and the concurrence of the Chief Counsel.

Senator GORE. Well, the responsibility was yours, was it not?

Mr. HARDING. Correct, sir.

Senator GORE. And you were prepared to exercise it?

Mr. HARDING. Yes, sir.

Senator GORE. Did you request the appointment of a special consultant?

Mr. HARDING. No, sir; I did not.

Senator GORE. What information can you give to the committee within your knowledge of the selection of Mr. Knight as a consultant? Before you answer, let me state that you have stated, I think properly, that you accepted the responsibility of the office, that you were prepared to discharge that responsibility, that you did not request a consultant.

Can you advise the committee now, if I may restate my question, the extent of your knowledge of the selection of Mr. Knight as a special consultant?

Mr. HARDING. The extent of my knowledge, Senator Gore, is all secondhand. I did not participate in the selection of Mr. Knight for that position; however, I thoroughly concurred in the suggestion of the Treasury Department that Mr. Knight be appointed as a consultant on this matter. As a matter of fact, I felt it was absolutely necessary to our proper conclusion of the matter that we consult in an informal or a formal manner with Mr. Knight.

Senator GORE. Who first mentioned to you the possibility of the selection of Mr. Knight as a consultant?

Mr. HARDING. Mr. Knight.

Senator GORE. When did he mention this to you?

Mr. HARDING. As I recall, I received a telephone call from him on the 4th of November 1964.

Senator GORE. What did he say to you?

Mr. HARDING. He told me that he had been requested by the Secretary to assist the Treasury and the Revenue Service in the resolution of the request from Christiana, and that with my concurrence the Secretary proposed to appoint him as a consultant to the Revenue Service for this purpose.

Senator GORE. This was the first knowledge you had of it?

Mr. HARDING. Yes, sir.

Senator GORE. Obviously you made no recommendation with respect to it?

Mr. HARDING. No, sir. I concurred, however, in the recommendation that the Secretary made.

Senator GORE. Were you actively considering the application for change in ruling at the time?

Mr. HARDING. No, sir. I personally was not. The Revenue Service was.

Senator GORE. And you accepted the ruling as written when presented to you? Did you make changes?

Mr. HARDING. As I recall, Senator, the ruling came to me in earlier drafts, was discussed with the Chief Counsel and with the Assistant Commissioner, Technical, who is responsible for ruling operations within the Service. I did look at some earlier drafts of the ruling before the final ruling was prepared, and I signed it.

Senator GORE. Mr. Chairman, I think this will conclude. I expressed the opinion earlier that this matter had irregular treatment in both 1962 and 1964.

We have now the unusual revelation that the Acting Commissioner of Internal Revenue did not request the aid of a consultant, did not recommend it, indeed the first knowledge that he had of it, as he has testified, came from Mr. Knight himself. So I conclude.

Mr. HARDING. May I state, Mr. Chairman, that Secretary Dillon testified that he received the suggestion for the appointment of Mr. Knight from his tax staff in the Treasury Department, and I presume from that he referred to Mr. Surrey and his staff.

Therefore, what I responded to the Senator is entirely consistent with what Secretary Dillon testified to before this committee.

Senator LONG. May I just say this: It would seem to me if you are going to grant any dispensation from a condition that Mr. Knight had insisted upon, he would be the most appropriate person to call in as the devil's advocate to say why you should not do that, and I do not know a better man to call in and say, "Look, now, I am going to look at this matter, but I want you to consult with me and let me know what your views on the subject are."

He was insisting on $470 million, as I understand it, and also a condition here, and you said, "I would like to discuss this matter with you," and it seems to me that he would be the most appropriate consultant as a man, if you were going to give any relaxation of that original condition, you would say, "What are your views on it?"

Senator GORE. But he testified he hadn't felt any need of consulting. This order came on from on high, and this establishes that definitely.

Mr. HARDING. Senator, I testified that I was not involved in Christiana, in the Christiana matter, at the time that Mr. Knight was selected. I personally was not.

However, our Rulings Division was, and Mr. Swartz, the Assistant Commissioner, Technical, had told me that he could not have properly concluded the resolution of the request by Christiana without some form of consultation at some point with Mr. Knight.

Senator GORE. Thank you, Mr. Chairman.

The CHAIRMAN. All right. The committee is adjourned.

Thank you.

(The letters previously referred to follow:)

U. S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
March 23, 1965.

Mr. WILLIAM H. ORRICK, Jr.,
Assistant Attorney General, Antitrust Division,
U.S. Department of Justice, Washington, D.C.

DEAR MR. ORRICK: During the course of the hearing held on March 17, 1965, before the Committee on Finance concerning the Du Pont-Christiana divestiture of General Motors stock, Senator Williams introduced for inclusion in the record of the hearing your letter of January 18, 1965, addressed to Mr. F. J. Zugehoer, general counsel for the Du Pont Co. (See p. 38.)

Although the Finance Committee is not directly concerned with the antitrust aspect of this divestiture, in order to complete the record, and because your letter has been included in the record of the hearing, I would appreciate your furnishing answers to the following questions on this divestiture:

1. Now that the divestiture has been completed, what percentage of General Motors stock remains in the hands of the Du Pont family as defined by the Justice Department in 1961 and 1962?

2. What antitrust effect may the non pro rata distribution by Christiana, which resulted in some 3 million General Motors shares going to tax-exempt organizations, have?

3. Did you express to Mr. Robert Knight the view that no "adverse effect from the standpoint of antitrust enforcement" would result from the December 15, 1964, modification of the Internal Revenue Service's ruling letter of October 10, 1962? (See p. 177 of the transcript of the March 17, 1965, Finance Committee hearing. The statement herein quoted is Mr. Knight's, with which, according to him, you agreed.) (See p. 100.)

4. Did you express the official position of the Antitrust Division, or your own personal view? Was this position "staffed"?

5. Did you, or anyone from the Antitrust Division, participate in, or were you consulted with respect to, the 1962 ruling?

6. What was the extent of your participation in the 1964 modification?

I shall ask the chairman to hold the record of the hearings open so that your reply to this letter may be included. In order, therefore, that the transcript may go to the printer as soon as possible, I would appreciate a reply at your early convenience.

Sincerely yours,

ALBERT GORE.

DEPARTMENT OF JUSTICE,
Washington, March 31, 1965.

Hon. ALBERT GORE,
U.S. Senate, Washington, D.C.

DEAR SENATOR GORE: This is in response to your letter of March 23 posing six questions relating to the divestiture by E. I. du Pont de Nemours & Co. and Christiana Securities Co. of the common stock of General Motors Corp.

You inquire, "Now that the divestiture has been completed, what percentage of General Motors stock remains in the hands of the Du Pont family as defined by the Justice Department in 1961 and 1962?" As you know the judgment allows 10 years for the members of the Du Pont family to complete the required divesti-

ture. The limited submissions to jurisdiction signed by these persons and others require reports to be filed annually within 30 days after the anniversary of the effective date of the judgment, May 1, 1962, reporting any transfers of General Motors stock. We have received several hundred such reports during May of 1963 and 1964. Those covering the year ending May 1, 1965, are not yet due. Your question seeks up-to-date information which we are unable to provide. If you wish, we will gather the data from the 1963 and 1964 reports, but in order to reply promptly we have not undertaken this task. It would appear, from the reports now available and from press releases concerning secondary distributions of General Motors stock, that a very substantial portion of the stock required to be divested has already been disposed of by the members of the Du Pont family.

Your second question is, "What antitrust effect may the non pro rata distribution by Christiana, which resulted in some 3 million General Motors shares going to tax-exempt organizations, have?" We have at present no information indicating that the transfer of these shares of General Motors stock to tax-exempt organizations will have any antitrust significance.

Your third question is, "Did you express to Mr. Robert Knight the view that no 'adverse effect from the standpoint of antitrust enforcement' would result from the December 15, 1964, modification of the ruling letter of October 10, 1962?" I and members of my staff have taken the position with Mr. Knight and with various other officials of the Department of the Treasury that modification of the ruling of October 1962 would have no adverse effect upon antitrust enforcement. In answer to your fourth question, this position is that of the Antitrust Division and was developed as a result of staff review of the problem.

In your fifth question you inquire, "Did you, or anyone from the Antitrust Division, participate in, or were you consulted with respect to, the 1962 ruling?" I was not in charge of the Antitrust Division in 1962. However, my predecessor and members of his staff were generally advised as to the contents of the 1962 ruling. The Division at that time took a position similar to that in 1964 with respect to the antitrust implications of non pro rata distributions by Christiana Securities Co.

Your sixth question is, "What was the extent of your participation in the 1964 modification?" I and members of my staff were aware of the issue raised by Christiana's request for the 1964 modification. Since, in our view, the question raised was one of interpretation of the tax laws and did not have appreciable antitrust implications, we so advised the Treasury. We took no position on the other questions raised by Christiana's request for the modification.

Do not hesitate to contact this Department if we may be of further assistance in this matter.

Sincerely yours,

WILLIAM H. ORRICK, JR.,
Assistant Attorney General, Antitrust Division.

(Whereupon, at 12:50 p.m., the committee was adjourned.)

○