DAIRY FREEDOM ACT OF 1995

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1995

Mr. PETRI. Mr. Speaker, today I am introducing the Dairy Freedom Act of 1995. This bill deregulates the diary industry within 5 years by eliminating the Federal milk marketing order system on January 1, 1996, reducing the Federal dairy price support over the next 4 years beginning January 1, 1996, and then eliminating the price support program on January 1, 2000. It also directs the first savings realized through this plan toward eliminating the current dairy assessment paid by farmers, then applies all subsequent program savings to reduce and eventually eliminate the taxpayers' contribution to the program.

Through an oppressive and costly system of Federal milk marketing orders, the Federal Government currently fixes the price of 70 percent of the raw milk produced in the United States according to how the processor intends to use it. The Federal order system also pools and then redistributes milk revenues among farmers by computing a blend price which all processors are required by law to pay to farmers. And through the dairy price support system, the Federal Government attempts to support the price of raw milk by entering dairy product markets and buying butter, cheese, and nonfat dry milk at minimum guaranteed prices. This creates artificial demand in the market for dairy products and effectively encourages overproduction of certain products due to the fact that the Government is required by law to purchase them.

The fact that this program uses centralized government planning methods in an attempt to micro-manage the dairy industry is bad enough. But what I and many, many folks in the upper Midwest find truly despicable about it is that it effectively discriminates against our dairy farmers by holding their milk prices down, while keeping prices artificially high in other parts of the country. It is ironic and sad that this program—supposedly created to help dairy farmers—is now substantially to blame for driving more than a few of them out of business.

In addition, this program continues to cost farmers, taxpayers, and consumers hundreds of millions of dollars each every year. Farmers are required to pay an assessment in order to help defray the cost of purchasing surplus dairy products through the Federal dairy price support system. Rather than allowing the free market to counter overproduction of certain dairy products, the current program effectively sets floor prices and taxes farmers for part of the cost of maintaining those prices by removing manufactured products from the market. Taxpayers pick up the tab for most of the program's cost, which is expected to total more than $370 million in fiscal year 1996 if the program remains unchanged. Finally, consumers pay for this program at the checkout counter when they purchase dairy products or other food products made with milk which has been priced artificially high by the Federal Government.

I feel very strongly that any Federal dairy policy which continues to prevent the proper functioning of the free market in the dairy industry, and which effectively discriminates among farmers on a regional basis, is unacceptable. Instead of keeping this program intact and reauthorizing some semblance of the status quo, I propose today that the Congress take action to free America's dairy industry by incorporating my Dairy Freedom Act into the agriculture reauthorization language which is to be included in this year's budget reconciliation bill. I urge my colleagues to join me in taking this bold yet long-overdue step in favor of free markets, lower prices for consumers, less waste of taxpayer dollars, and free and fair competition in the U.S. dairy industry.

TRIBUTE TO ELIZABETH KAUFMAN

HON. HOWARD L. BERMAN

OF CALIFORNIA

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1995

Mr. BERMAN. Mr. Speaker, we are honored to pay tribute to Elizabeth Kaufman, who has just completed her 1-year term as president of the San Fernando Valley Bar Association. Elizabeth, who immigrated to the United States from Poland in 1964, is the classic example of a person who became a success through hard work and perseverance.

Elizabeth began her rise as a law clerk in the Los Angeles City Attorney's Office, where she worked while simultaneously attending San Fernando Valley College of Law. She graduated from law school in 1975. After admittance to the California Bar, Elizabeth began her private law practice, emphasizing family law and personal injury. She also quickly became immersed in a wide variety of activities associated with the law.

For example, Elizabeth served as a free arbitrator for the State Bar of California and the Los Angeles County Bar Association; family law court mediator; Superior Court arbitrator; and trustee of the Los Angeles County Bar Association.

In 1988, Elizabeth was elected as a trustee of the San Fernando Valley Bar Association. Six years later she became president. Elizabeth's tenure was marked by the launching of Lawyer's World magazine, and a significant increase in membership.

Elizabeth, married to Dr. Hershell L. Kaufman and the mother of three teen-age daughters, has considerable duties outside of her home and the law. She is director of the San Fernando Valley Community Mental Health Center; director of the Northridge Chamber of Commerce; and director of the Heschel Day School.

Mr. Speaker, we ask our colleagues to join us today in saluting Elizabeth Kaufman, whose devotion to her community, profession and family is exemplary. She is an inspiration to all of us.

FOREIGN TRUSTS

HON. SAM GIBBONS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1995

Mr. GIBBONS. Mr. Speaker, I am introducing legislation today to prevent avoidance of our tax laws by individuals transferring their assets to foreign trusts. I am introducing this legislation because it responds to a real and growing abuse of our tax laws.

The legislation that I am introducing today includes several provisions similar to proposals recommended by the President in his budget submission for fiscal year 1996. My proposal contains substantial changes to the proposals recommended by the President. These changes are largely in response to concerns raised by tax practitioners. In particular, I would like to thank the New York Bar Association for its thoughtful analysis of the President's foreign trust proposals. Many of their recommendations have been incorporated into the legislation that I am introducing today. Although I have made substantial revisions to the original Treasury proposal, the Treasury has indicated that it would support my bill as a reasonable approach to the problem of tax evasion through foreign trusts.

Recently, we had a long debate over provisions designed to prevent avoidance of our tax laws by American citizens renouncing their allegiance to this country. During that debate, I became aware that many other wealthy individuals, while retaining their citizenship in this country, are abusing our tax laws by hiding their assets in offshore trusts or other accounts located in tax havens with bank secrecy laws designed to facilitate tax evasion. I feel that these individuals are worse than the expatriates because they are renouncing their responsibilities to this country while retaining the benefits of citizenship.

Mr. Speaker, there is ample evidence that trusts and other accounts in tax havens are fast becoming a major vehicle for abuse of our tax system. In the Cayman Islands alone, $440 billion are on deposit with over 60 percent of this money estimated to be from United States sources (Barron's, January 4, 1993, pg. 14). Barron's estimates that there is more American money on deposit in the Cayman Islands than in all the commercial banks in California. In addition, Luxembourg has $200 billion on deposit from United States sources and the Bahamas has $180 billion from United States sources (New York Times, October 29, 1989). Legal experts outside the United States told the Washington Post (August 7, 1993) that they were getting a 100-percent increase in the business of offshore transfers every 6 months. An article in the Washington Times (November 7, 1994) quoted a promoter of these schemes as stating ''only fools pay taxes in the United States.'' During the debate on the expatriate issue, there were constant assertions that the problem was neither large nor growing. That argument was dubious in the context of the expatriate issue but would clearly be erroneous in the context of foreign trusts. There is no question that the use of foreign trusts for tax avoidance is a problem that is both large and growing.

U.S. taxpayers are required to file annual information returns on trusts of which they are the grantor showing the aggregate amount of assets in such trusts. However, the rate of noncompliance with these requirements is staggering. The IRS estimates that in 1993 only $1.5 billion of foreign trust assets were

reported. Treasury estimates that tens of billions of dollars of assets could easily be contained in foreign trusts created by U.S. persons. It appears to me that the rate of noncompliance exceeds 85 percent. While no legislation can ensure compliance by everyone, the Treasury Department estimates that my legislation would result in $3.4 billion in additional revenues over 10 years.

Many of these trusts are asset protection trusts established to avoid our tort laws rather than our tax laws. One promoter of asset protection trusts claims to have transferred over $4 billion to offshore trusts. Although these trusts may not be established for tax avoidance, their creators quickly realize that there is no third-party reporting to the Internal Revenue Service and they conveniently fail to report the income as required. Although I question the use of these trusts for what is in effect self-help tort reform, my legislation will not stop the use of these trusts for asset protection but will ensure proper payment of tax on the income from these trusts.

Mr. Speaker, I hope that the legislation that I am introducing today will be considered on a bipartisan basis. Neither party benefits when the public perceives that our tax laws can easily be evaded by wealthy individuals through devices such as expatriation or transfers to foreign trusts. We should be united in our efforts to ensure that there is maximum compliance with our laws. I am troubled by the fact that the Republican efforts to eliminate so-called waste, fraud, and abuse seem to be limited to programs for the poor and middle class. The Republicans decry the error rates in welfare programs and the earned income tax credit but do not seem to be bothered when wealthy individuals avoid tax through foreign trusts in tax havens.

Mr. Speaker, the bill that I am introducing today responds to the problem of tax avoidance through the use of foreign trusts in four ways. First, the bill modifies the current law reporting requirements by increasing the penalties for noncompliance, by providing the Internal Revenue Service with access to information to appropriately tax the income of foreign trusts, and by requiring reporting of trust distributions and large foreign gifts. Second, the bill modifies the grantor trust rules to prevent U.S. grantors from avoiding the provisions requiring current taxation of trust income and to prevent the manipulation of the grantor trust rules by foreign grantors. Third, the bill prevents the use of foreign nongrantor trusts for tax avoidance by modifying the interest charge on accumulation distributions and by treating use of trust property as a constructive distribution. Finally, the bill provides objective criteria for determining the residence of trusts and estates and clarifies the treatment of trust migrations under current law. Following is a brief technical description of these provisions.

I. Reporting Requirements.

A. PRESENT LAW.

Under current law, any U.S. person who creates a foreign trust or transfers property to a foreign trust is required to report that event to the Internal Revenue Service. Also, any U.S. person who is subject to tax under the grantor trust rules by reason of being the grantor of a foreign trust is required to file an annual information return. Civil penalties not to exceed $1,000 are imposed for failures to comply with these reporting requirements.

B. REASONS FOR CHANGE.

Compliance with the existing reporting requirements is minimal. Also, many foreign trusts are established in tax havens with strict secrecy laws. As a result, the IRS is often unsuccessful when attempting to verify the income earned by foreign trusts.

C. DESCRIPTION OF BILL.

The bill makes the following changes to the reporting requirements applicable to foreign trusts:

1. First, the bill increases the penalty for failure to comply with the current law requirement to notify the Internal Revenue Service when transferring assets to a foreign trust. The penalty for failing to comply with this requirement would be increased to 35 percent of the value of the property involved. The penalty would be increased in the case of failures that continue after notification by the Internal Revenue Service.

2. Second, the bill makes a U.S. grantor of a foreign trust responsible for ensuring that the trust files annual information returns. The U.S. grantor would be liable for penalties in the case of noncompliance.

The bill also ensures that the Internal Revenue Service will have adequate access to information to determine the proper tax treatment of U.S. grantors of foreign trusts by requiring foreign trusts with U.S. grantors to have an agent in the United States to accept service of process. This provision is similar to a current law provision requiring foreign corporations with U.S. subsidiaries to have U.S. agents.

3. Third, the bill requires U.S. beneficiaries of foreign trusts (including grantor trusts) to report distributions from those trusts and be able to obtain sufficient records to determine the appropriate tax treatment of the distributions.

The bill would also require U.S. persons to report gifts or bequests from foreign sources in excess of $10,000.

II. Grantor Trust Rules

A. PRESENT LAW

Under current law, existence of a trust is disregarded where the grantor or other person holds certain powers over the trust assets. These rules, called the grantor trust rules, result in the grantor or other person being subject to current taxation on the income of the trust. These rules are anti-abuse rules designed to prevent to prevent shifting of income to beneficiaries likely to be taxed at lower rates.

In order to prevent tax avoidance by transfers by U.S. persons to foreign trusts, section 679 requires income from assets transferred to foreign trusts to be currently taxed in the income of the transferor even though he has no powers over the trust assets.

B. REASON FOR CHANGE

Taxpayers have avoided the application of section 679 by structuring transfers to foreign trusts as sales in exchange for trust notes. Also, foreign persons becoming residents of the United States often avoid section 679 by transferring their assets to a foreign trust before becoming a U.S. resident.

Under existing grantor trust rules, a foreign grantor can establish a trust for the benefit of U.S. beneficiaries and avoid tax on the income paid to the U.S. beneficiaries by retaining certain powers over the trust assets. The retention of limited administrative powers is sufficient for this result.

C. DESCRIPTION OF BILL

The bill makes the following changes to section 679 which requires U.S. transferors to be taxed on the income of foreign trusts:

1. In determining whether a transfer qualifies for the current law exception for sales at fair market value, debt obligations of the trust or related parties will be disregarded.

2. A foreign person who becomes a U.S. resident will be subject to tax under section 679 on the income of property transferred to a foreign trust within 5 years of becoming a U.S. resident.

(3) If a domestic trust becomes a foreign trust during the lifetime of a U.S. grantor, the grantor will be subject to tax under section 679 on the income of the foreign trust.

The bill provides that the grantor trust rules apply only to the extent they result in current taxation of a U.S. person. This provision would not apply in the case of revocable trusts, investment trusts, trusts established to pay compensation, and certain existing trusts. This provision also would not apply where the grantor is a controlled foreign corporation, personal holding company, or passive foreign investment company.

III. U.S. Beneficiaries of Foreign Nongrantor Trusts

A. CURRENT LAW

1. Accumulation distributions

A U.S. beneficiary of a foreign trust which is not a grantor trust is taxed on the income of the foreign trust only when it is distributed. If the trust accumulates income and then distributes the accumulated income, there is an interest charge imposed on the beneficiary to eliminate the benefit of the tax deferral. The interest charge is based on a 6-percent rate with no compounding and the distribution is allocated to the earliest years with undistributed income.

2. Use of trust property

Under current law, taxpayers may assert that use of trust property by a beneficiary does not result in an amount being treated as constructively distributed to the beneficiary.

B. REASONS FOR CHANGE

1. Accumulation distributions

To effectively eliminate the benefit of the tax deferral in the case of accumulation distributions, the interest charge should be based on market rates with compounding.

2. Use of trust property

If a corporation makes corporate assets available for personal use by a shareholder, the shareholder is treated as receiving a corporate distribution equal to the fair market value of that use. In the case of domestic trusts, the absence of such a rule affects only which person is liable for the tax but not the amount of income subject to tax. However, the absence of such a rule in the case of foreign trusts can result in U.S. beneficiaries enjoying the use of trust income without any tax.

C. DESCRIPTION OF BILL

1. Accumulation distributions

For periods after December 31, 1995, the interest charge on accumulation distributions would be computed using the rate and method applicable to tax underpayments. Also, for purposes of computing the interest charge, the accumulation distribution would be allocated proportionately among the prior trust years with undistributed income rather than to the earliest of such years.

2. Use of trust property

The bill treats a loan of cash or marketable securities to a U.S. beneficiary as a constructive distribution. The bill also treats other uses of trust property as constructive distributions in an amount equal to the rental value of the property

IV. RESIDENCE OF TRUSTS

A. PRESENT LAW

The Internal Revenue Code does not contain objective criteria for determining whether an estate or trust is domestic or foreign. Court cases and rulings have applied a

variety of factors in determining the residence of an estate or trust. Also, the treatment of trust migrations under current law is unclear.

B. REASONS FOR CHANGE

Because the tax treatment of an estate or trust depends on its residence, it is appropriate to provide objective criteria for this determination.

C. DESCRIPTION OF BILL

The bill would provide that an estate or trust would be treated as domestic if a domestic court exercises primary supervision over its administration and one or more U.S. fiduciaries have the authority to control all substantial decisions of the trust. In other cases the estate or trust would be treated as foreign.

The bill would also provide that, when a domestic trust becomes a foreign trust, the trust would be treated as having made a transfer for purposes of section 1491 of the Code.

INDIA SHOULD RECOGNIZE FREE SIKH NATION OF KHALISTAN

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 19, 1995

Mr. CRANE. Mr. Speaker, I rise today to bring to the attention of the House a situation in India which is very troubling. This situation involves the treatment of the Sikh people living in India.

Since 1984 over 120,000 Sikhs have been killed, and other ethnic groups have had thousands of their members killed as well. The recent abduction of Human Rights Wing leader Jaswant Singh Khalra is but the least incident of repression focused on the Sikh people.

On October 7, 1987, the Sikh Nation declared its independence, forming the separate, independent country of Khalistan. At that time, Sikh severed all political connection with India, as we did with Britain in 1776. Sikhs were supposed to receive their own state in 1947, but were deceived by Indian promises of freedom. They ruled Punjab during the 18th and 19th centuries. They have their own language, religion, and culture. Clearly, the Sikh claim to independence is a legitimate one.

I am introducing into the CONGRESSIONAL RECORD a speech given on August 15, 1995 by Dr. Gurmit Sikh Aulakh, President of the Council of Khalistan, the Khalistani Government in exile, at a conference on self-determination held at the Luther Institute. It lays out the case for Khalistan. I urge my colleagues to read it carefully and consider his claims for Sikh independence.

I certainly support the Sikhs' claim for independence and a separate nation of Khalistan.

The speech follows:

Ladies and gentlemen—I am very happy to be here today and to be given the opportunity to speak to you today on the topic of self-determination. Ironically, today is India's Independence Day. And since India continues to suppress Sikh independence while celebrating its own, I led a demonstration of Sikhs in front of the India ambassador's residence today to express our disapproval. So, forgive me if my voice is not 100 percent.

For the past decade I've been intimately involved with the issue of self-determination. As President of the Council of Khalistan, I have been charged with working in the international community to secure the independence of the Sikh nation from the brutal oppression of the government of India. In the minds of many Westerners, India is a land of peace and spiritual tranquility—the land where problems are solved not through violence but through civil disobedience. The experience of the Sikhs—to say nothing of the Muslims of Kashmir, the Christians of Nagaland, the Assamese, Manipuris and the Dalits—has been quite the opposite.

Let me provide you with a few figures. Since 1984, the Indian regime has murdered more than 120,000 Sikhs. Since 1947 India has killed over 150,000 Christians in Nagaland. The Muslims of Kashmir claim a death toll of 43,000 at the hands of Indian forces. Tens of thousands of Assamese and Manipuris have also been killed. The Dalits—the so-called ''black untouchables'' of India—are perhaps the most oppressed people on the face of the earth. Just last week newspapers and wire services carried the story of a five-year-old Dalit girl who was beaten and blinded by her teacher after she drank from a pitcher reserved for the upper castes.

Press reports state that 70,000 Sikhs are being held in detention by the Indian regime at the present time. The State Department reported that between 1991 and 1993, the regime paid more than 41,000 cash bounties to policemen for the murder of Sikhs. Human Rights Watch issued a report in 1994 which quoted a Punjab police officer as saying that ''4,000 to 5,000'' Sikhs were tortured at his police station during his five-year tenure. There are over 200 such police stations/torture centers in Punjab. Indeed, the Sikh homeland can rightfully claim the title of the torture capital of the world.

Why is there such oppression against the Sikhs and other minority nations in India? The answer brings us back to the issue before us today: self-determination. All the nations and peoples suppressed by the Indian regime have in one way or another attempted to exert their independence either politically or culturally. In the case of the Sikhs, we have demanded outright sovereignty and separation from India, having declared our independence on October 7, 1987, forming the separate country of Khalistan.

The International community upholds the right of self-determination for all nations. Here in America, the political system is predicated on the principle that when any government no longer protects the life, liberty and security of the people it rules, it is the people's right to rid themselves of that government. The principle that the consent of the governed underlies all legitimate government is fundamental to the American idea. These two principles are being exported around the world. But in too many places today, these principles are being widely violated. One such country is India.

The government of India has attempted to rob the Sikhs of our nationhood at every turn. It should be known that the Sikh nation ruled all of Punjab from 1710 to 1716 and again from 1765 to 1849. Our reign extended well into present-day Pakistan and Kashmir, stopping at the Khyber Pass.

In the mid-19th century, British power and influence expanded on the subcontinent, but the Sikhs were the last nation to fall. We were also the first to raise the cry for independence. During the struggle to oust Britain from the subcontinent, 85 percent of those hanged by the British were Sikhs; 80 percent of those exiled were Sikhs; and 75 percent of those jailed were Sikhs. And at that time, the Sikhs constituted less than 2 percent of the population of the subcontinent. The Sikh nation's contributions to the freedom of the subcontinent cannot be underestimated.

When the British first arrived on the subcontinent, they dealt with the Sikhs as a separate nation, fighting a series of three wars with the Sikhs. When the British left the subcontinent, they again dealt with the Sikhs as a separate, distinct, sovereign nation. Thus during its withdrawal, the British transferred power to three nation-groups, the Muslims, the Hindus and the Sikhs. The Muslims took Pakistan on the basis of religion. The Hindus took India, and the Sikhs took their own homeland, opting to join with the Hindus on the solemn assurances of Indian leaders like Jawarhar Lal Nehru and Mahatma Gandhi that no laws unacceptable to the Sikhs would be passed by the Indian Congress. I quote Nehru who said to the Sikhs: ''The Congress assures the Sikhs that no solution in any future constitution [of India] will be acceptable to the Congress which does not give the Sikhs full satisfaction. I also quote Mahatma Gandhi who told the Sikhs the following: ''Take my word that if ever the Congress or I betray you, you will be justified to draw the sword as taught by Guru Gobind [Singh].''

Implicit in these assurances is the recognition of that the Sikhs as a nation possess the right of self determination. Indeed, Nehru and Gandhi were not ordering the Sikhs to join their grand vision of an India encompassing the entire subcontinent. In fact they possessed no such power over the sovereign Sikh nation. Rather they were attempting to woo the Sikhs as a nation to join their union, something at which they failed with the Muslims. In retrospect, the Sikhs made the wrong decision; but having made that decision, we never forfeited our right to self determination.

Indeed, Sikh history under Indian rule is a history of constant agitation for our most basic rights as a nation, and India has betrayed its promises to the Sikhs at every turn. In 1950, when India ratified its constitution, the Sikh representatives at the Constituent Assembly refused to sign the constitution because it was inimical to Sikh interests, contrary to what both Mahatma Gandhi and Jawarhar Lal Nehru promised. Since then Sikhs have been struggling to reclaim their nationhood

In June 1984, India's attempt to suppress the Sikh nation reached a climax. The Indian army launched a military assault on the Golden Temple, the holiest of Sikh shrines. Over 20,000 Sikhs were killed. The Akal Takht, which houses the original writings of the Sikh gurus was destroyed. Thirty eight other Sikh temples throughout the Sikh homeland were also attacked. Make no mistake about it, the reason India likes to attack important temples is because it symbolically reinforces the government's total domination over a given people. To put it another way, India wanted to show the Sikhs who was the boss.

This is India's way—complete denial of self determination, even if it means military action. The Sikhs, therefore, appeal to the international community to support their right to freedom as a sovereign nation. Despite its constitution, India has proven itself anti-democratic. Despite its image as the home of spiritual tranquility, India has proven itself one of the worst violators of human rights in the world. The time has come for the world to demand that India honor the freedom of the Sikh nation and other nations that struggle against its repressive policies.

On February 22, 1995 the U.S. Congress took a step in this direction when 30 Members of the House introduced House Congressional Resolution 32, which expresses the Congress's opinion that ''the Sikh nation should be allowed to exercise the right of self-determination in their homeland, Punjab Khalistan.''