

Fire Company and a regional representative of the Boy Scouts of America.

But more than all of the activities of Mr. Ciavarelli, he was someone who cared greatly for his community, his family, and for his country, and he was one proud American who really made a positive difference. So to my colleagues, he is someone special as a role model that others can look up to, not only in my community and State, but throughout the Nation.

CONTINUING RESOLUTION BEING HELD HOSTAGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [(Mr. STEARNS)] is recognized for 5 minutes.

Mr. STEARNS. Mr. Speaker, I rise today to talk about the supplemental appropriations bill; specifically, the provision of the bill known as the automatic continuing resolution, or CR.

Two weeks ago we left Washington without passing the supplemental appropriations measure. This was unfortunate. Unfortunately for all Americans, and in particular for the victims of the recent Midwestern floods, this important and well-meaning legislation has become a hostage because of the President and some Democrats who do not like this CR which was attached to this bill.

During the floor debate on the bill, the House voted overwhelmingly to amend the bill to include an automatic continuing resolution, a failsafe provision that would automatically and fully fund the 13 appropriation measures, should any or all fail to be passed into law. In other words, we added a commonsense provision to an already fair measure.

Mr. Speaker, I would like to call it an insurance policy for the American people. The provision we are talking about that the President and some Democrats object to is quite simple and generous. Should any of the bills fail to become law by the end of the fiscal year, they would be fully funded at 100 percent of this year's funding level. In other words, there are no cuts, no elimination of any programs as a result of passage of the CR.

The President objects to this. Does the President want the opportunity to spend more money? Does he want an increased level? Furthermore, the passage of this simple CR would balance the budget within 5 years set forth in the budget agreement.

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It is incredible that we have the claims that supporting a balanced budget could actually impose a problem. But simply, if the President was truly serious about balancing the budget he would support the CR provision and Congress could at long last pass a much-needed disaster relief act.

Nevertheless, Mr. Speaker, the President has promised to veto this impor-

tant legislation. It is a very unfortunate situation we have because the people in the flood-ravaged Midwest need this money. We have set aside money for them but they need this bill. But again, we have a CR attached to it and the President seems more concerned with making sure we do not pass this CR.

The troubling thing about the President's proclaimed opposition to this supplemental is that he claims to support the Republicans' efforts to preclude a Government shutdown. He has often stated publicly his desire to initiate a failsafe mechanism, but when push comes to shove and we present him with an opportunity, he refuses it.

He claims that America needs a solution. The CR is such a solution. I urge the President to support it. It is a simple and reasonable effort to protect the American people from the kind of partisan political battles that shut down the Government and suspended essential Government services 2 years ago, the kind of political battle the President claims he opposes.

Does the President want to shut down the Government? Does he want hardship and inconvenience? I do not think he does.

In other words, as if it were not bad enough to say, I am against a CR, he is also against a simple supplemental to help the flood victims. The proclaimed opposition to the CR has really nothing to do with the supplemental. Rather, the President's opposition is that he wants a fail-safe mechanism itself, and he does not think the CR does it, so he is going to veto it. But, Mr. Speaker, the majority of people on the House floor overwhelmingly supported this CR. It was a very large vote.

Let me conclude by saying to my colleagues, the Republican Party did not shut down the Federal Government in 1995, and we will not be responsible for a shutdown if it happens again. Back then the Congress sent to the President more than adequate appropriations bills, and he simply vetoed them. To preclude this from happening again we have included a simple insurance policy in the supplemental, and yet, Mr. Speaker, he is opposed to it.

In other words, we have included within this bill a provision to ensure the uninterrupted continuation of vital services like Social Security, Medicare, Medicaid, and veterans benefits. We have attempted to remove politics from the appropriations process, and yet the President unfortunately objects.

For the good of our country and the peace of mind of her citizens, we should pass into law this commonsense insurance mechanism, a CR that will keep the Government operational when partisan conflicts arise. I am an original cosponsor of this legislation and a longtime supporter of the ideals behind the CR. I urge the President to reconsider his position, not just for the immediate needs of the flood victims, but for the long-term good of the entire country.

THE INTERNAL REVENUE SERVICE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from Texas [Mr. SESSIONS] is recognized for 60 minutes as the designee of the majority leader.

Mr. SESSIONS. Mr. Speaker, tonight I rise to talk, with several of my colleagues, about the Internal Revenue Service. The Internal Revenue Service, through a series of laws that have been passed for many years, has what is called the Internal Revenue Code. What this code is is it consists of two huge books that I am showing the audience tonight that are very thick with very fine print that talk about the tax laws of this country.

Tonight myself and my colleagues stand to talk about not only the Tax Code but the application of that Tax Code by citizens of this country, and also how they are judged in that Tax Code by the Internal Revenue Service.

Tonight we stand to talk about H.R. 1145, the Home-based Business Fairness Act of 1997. It allows self-employed entrepreneurs, which are the fastest growing and most dynamic sector of our economy, and as a simple matter of fairness, to deduct the expenses of a home office and 100 percent of their health insurance costs. H.R. 1145 also provides a clear definition of an independent contractor to help entrepreneurs avoid crippling IRS costs and fines.

This year small business cited the cost of health insurance as the No. 1 concern, and tax demands accounted for 6 of the 10 most severe problems confronting small business.

H.R. 1145 deals with both of these concerns, addressing the high cost of a home office and of health care. Because many small businesses use independent contractors, their business status is critical to the success of entrepreneurs all over this country.

An independent contractor is one who does work with the help of someone but who is not under that person's control. This allows entrepreneurs to work for themselves but with the assistance of a primary contractor, as a primary contractor does not have to withhold taxes for his independent contractors, and that is why this issue is so important.

What we would like to discuss tonight is H.R. 1145 and how this is going to play out. We have any number of issues to discuss, including factors and criteria which the IRS uses to determine these independent contractors. But as I talk tonight, what we would like to do is further examine what is happening in the marketplace. As we talk about the marketplace, what we are talking about is small businesses, men and women who are attempting not only to do work out of their home, but also work in industry and work in business.

What we would like to do is to provide several examples of how the factors that are based upon the 20-point

criteria, the 20 factors, how they play out with the IRS.

Mr. HILL. Mr. Speaker, will the gentleman yield?

Mr. SESSIONS. I yield to the gentleman from Montana.

Mr. HILL. Mr. Speaker, I am proud to join with the gentleman and be a cosponsor of the Home-based Business Fairness Act, H.R. 1145. One of the saddest things I think that we have is the fact that small business owners, people who operate a business out of their home, people who are just trying to get started in business, are discriminated against in the Internal Revenue Service Code.

I think a lot of folks do not realize that today if you are an employee, if you work for someone or if you have a large corporation, you are an employee of your own corporation, you get to deduct health insurance, but if you happen to be self-employed and you want to buy health insurance for you or your family, you do not get a deduction for it. It is a discrimination against small businesses and against small business owners.

The same thing is true of the home office deduction. If you happen to keep your accounts receivable ledger in a file cabinet at home, or if, as when I started my business, if you happen to do your books at night at the kitchen table, you do not get to take a deduction for the business operating expenses that are associated with operating from your home. Again, it is a discrimination against people who are starting a business.

I think a lot of folks do not realize that Bill Gates got started with Microsoft in his garage. Henry Ford built the prototype of the Model A in his garage. Most small businesses today get started in somebody's home or in somebody's garage. The idea is that we want to encourage that, because the energy, the creativeness of our society comes from people with an idea who are willing to take a risk and get started at home.

The same thing is true with this independent contractors issue incorporated into H.R. 1145. The thing is that if you are going to get started in offering services as your business, you offer that service as an independent contractor. That is, I go out or someone would go out and contract with someone to offer a service. But today the Internal Revenue Service Code has so many tests in order to qualify as an independent contractor it is almost an absolute barrier for someone who wants to get started in the service sector of our economy.

What is the fastest growing sector of our economy? It is the service sector of the economy. So just for example, I have a list of the tests that are here, and I do not think all of my colleagues understand all the tests.

Just for example. If a person hires another person or if I wanted to offer my services, and the person I was offering them to wanted to give me some in-

structions on how to do that or wanted me to have some specific training or wanted to provide some of the tools, or wanted to tell me what hours of the day that I might be able to do those services, all of those criteria, any one of them, not in combination but any one of those criteria, would make that person ineligible to offer their services as an independent contractor. The list goes on and on. If the person doing the hiring offers tools or the place of business, it almost makes it impossible today to offer services and in starting a business.

What is worse about that is if someone takes the risk of hiring an independent contractor that has started in business and an audit is conducted 3 years later, the tax penalties can be horrendous, so it creates more risk for that business enterprise who might want to start hiring a new business enterprise.

So H.R. 1145 also redefines independent contractor. It clarifies the definition, and it creates a safe harbor. What a safe harbor means is that if somebody hires an independent contractor to help somebody get started in business and it is later determined that it did not meet all of the tests, there are not any tax penalties in the past. It is prospective.

In other words, we can say that person did not qualify as an independent contractor for the future, but there are no tax penalties going to the past. This is a really good bill, it is a good bill for America.

In Montana I have 26,000 people who are self-employed operating from their homes, trying to get started in business, trying to provide for their families. What this measure will do is it will treat them fairly, like every other business and every other worker in America.

Mr. FOX of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. SESSIONS. I yield to the gentleman from Pennsylvania.

Mr. FOX of Pennsylvania. Mr. Speaker, I must congratulate the gentleman from Texas [Mr. SESSIONS] and the gentleman from Montana [Mr. HILL] for their leadership on this issue, which is going to help small business and is going to help the economy, frankly. Ninety percent of jobs, as I understand it, are jobs through small business, from the individual talent and enthusiasm and creativity of individuals who are really trying to make a difference.

So I would urge that my colleagues on both sides of the aisle, Republicans and Democrats, support H.R. 1145. This home office deduction and assistance with health care will help more jobs be created, and with our overall goal of having more people employed, stabilizing the tax base, we know small business is the engine of our economy, and I really believe this is a step in the right direction.

Furthermore, I have to applaud the gentlemen again, because frankly, IRS reform is an idea whose time has ar-

rived, not only here as far as the home office deduction, which will create more jobs and create economic growth, but I believe it is a step in the right direction of making IRS more taxpayer-friendly, if that is possible.

I would like to see us actually change the burden of proof, that the taxpayer is presumed to be correct and the IRS commissioner would have the burden of proof. That is probably in another bill. But frankly, the American public would like to see this kind of bill move forward, and on any other sections the gentleman would identify where there is positive change making the Tax Code more clear, and maybe some day even having a flat tax would certainly be an idea we should move forward on as well.

Mr. SESSIONS. Mr. Speaker, I would like to continue this discussion so we can make sure that those people who are at home really understand what we are talking about when we talk about people who are out in the marketplace, people who are trying to comply with the law, honest Americans.

What I would like to do is, if I could, read some statements from congressional testimony that has been given one this year. It is a statement of Dale Frey. Dale Frey is a small business owner. I would like to read from that testimony, if I can.

It says,

D.E. Frey & Company, a full-service broker-dealer, was organized in 1989. The company is privately held with offices in 22 States. The company has approximately 200 registered representatives that are independent contractors. The company provides administrative support for the transactions involving bonds, equities, insurance products, mutual funds, and unit investment trusts that are initiated by registered representatives for their individual clients.

The registered representatives are individual entrepreneur business owners that are financially responsible for their own occupancy, telecommunications, information systems, registration, and all other operating expenses associated with offering their services to clients.

The Internal Revenue Service examined Mr. Frey's records for tax years 1993 and 1994. The company is a broker dealing with the Securities and Exchange Commission, known as the SEC, and a member of the National Association of Securities Dealers, NASD.

The Internal Revenue Service determined that each registered representative is an employee of the company, and that the company failed to withhold or pay taxes imposed by FICA and FUTA and income tax withholding provisions with respect to pay to such individuals. The IRS then assessed employment taxes of \$1,160,884 and \$2,113,614 for 1993 and 1994. This came on the heels of an IRS audit just 2 years earlier that determined that they were following the independent contractor status, that they were following the laws.

I also have a statement that was read by Mr. Raymond Peter Kane. Mr. Kane

gave his testimony before the Committee on Small Business and the Subcommittee on Tax, Finance and Exports on independent contractors on July 26, 1995.

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Here is what Mr. Kane said. In August 1991, he received a notice from the IRS that they wanted to conduct an audit for the fiscal year 1989. The audit took place over a period of several months and resulted in a finding on February 18, 1992 of no change, which, as we know, means that the auditor found nothing wrong. During the 6 months that the IRS auditor was in the office, the contacts between his agent, between his agency and those of his independent contractors were carefully scrutinized and found to be in compliance with IRS rules and regulations regarding independent contractor status. However, 2 years later, with no change in IRS rules and no change in any contract that he had with the independent contractors, the IRS decided that these same independent contractors were really not independent contractors all along but that they were employees, and for the years 1992, 1993 and 1994, the IRS then demanded \$274,000 in penalties.

This is the type of egregious action as a result of the IRS that we are talking about, why we have a problem, why we need 1145.

Mr. FOX of Pennsylvania. Mr. Speaker, if the gentleman will continue to yield, will H.R. 1145 ameliorate and solve the problems those two companies faced?

Mr. SESSIONS. We believe that what it will do is put very clearly and, let me get to the language, if I can, that will talk about this instance. What we are going to do is to make sure that codified within the law that we talk about what is an independent contractor, what are those tests that need to be done. How can the IRS, and should the IRS, look at an independent contractor. But what it is going to do is to reaffirm the 20-point test that the IRS has been working along this entire period of time.

Mr. FOX of Pennsylvania. Mr. Speaker, not only will it make sure that jobs are saved but they will not have needless lawsuits with the Federal Government to justify what they have been doing, which is correct to begin with under the original IRS examination; am I correct?

Mr. SESSIONS. This is correct, Mr. Speaker. So what we are talking about tonight, and I thank the gentleman for that insight that he offered, what we are trying to do is to make sure that the IRS gets it. Our independent contractors have already been following the law, people who are out conducting themselves as honest and fair Americans. Unfortunately what we are talking about tonight is an IRS that does not get it and so we are going to codify this into law, critical for the success of not only independent contractors but

all Americans who may have these type of situations where they work out of their home and work as interested contractors.

Mr. HILL. Mr. Speaker, if the gentleman will continue to yield, H.R. 1145 does two things to help those folks that wrote to the gentleman.

First, it clarifies this definition of independent contractor because now it is a very confusing thing. Obviously in the case that my colleague has just described, one IRS agent thought they met the conditions; the next agent says that they did not. But I think that one of the other elements that are so important here is the safe harbor provision, so that if people are acting under the assumption that what they are doing based upon previous decisions or previous audits or previous consultations is the appropriate thing, that someone cannot come along later and not only force them to pay the taxes but impose these dreadful penalties on top of it.

So, it is very important here that folks understand that what we are trying to do in this bill is to make a clear definition of independent contractor so that it will eliminate the confusion but also in that process eliminate a safe harbor where people can be protected from having these huge penalties that would put them out of business.

I make note of the fact that, when you start a business there are two things most important to you. The first is to get customers, to get cash flow, business coming into your business. That is, most businesses fail because they do not get enough customers. The second thing is to generate cash flow. And this bill is in its entirety intended to help those small businesses, the most vulnerable businesses, the ones that are most critical to the future economy of this country to help them secure business by clarifying this independent contractor issue and creating a safe harbor but, in addition to that, helping them with their cash flow by giving them a fair treatment on the Tax Code with regard to business deductions.

Mr. SESSIONS. Mr. Speaker, as we talk about people who are in the marketplace, this growing part of the business, and we talk about the safe harbor, I believe that what we should do as a Congress is deal with problems in America. I believe that there is no problem in America that we cannot solve. But many times, public opinion polls feel like that all Congress is trying to do is to deal with something that would help us or special interest. Do you not believe that this deals with millions of Americans and what we know as the middle class and the guts of the problem where people who are trying to comply with the law, people who are putting their own capital at risk, people who are putting their name on the door, people who are worried about whether they can pay themselves and make that home payment and whether they can pay for their

kids to go to school, this is the essence of what this is all about, that we will codify in law those things that honest, hard-working Americans want to have, wish to have and it is only fair for them to have.

Mr. HILL. Mr. Speaker, to me the American dream is the opportunity to do what you want to do or be what you want to be. And to be in business for yourself is one of those things. But we are in an economy in transition. Companies are downsizing. People are being laid off. People with a lot of skills who, if given the opportunity, can go out and start a business and often it is a service oriented business. And generally speaking they are going to operate that business from their home.

But just think about this, those people who would oppose this are the people who think that those folks ought to go on welfare or those people who think that they ought to collect unemployment benefits rather than to go out and provide for themselves and for their families on an equal basis. I hear a lot of discussion in the Congress about the lack of health insurance for families. Half of the children who are not covered by health insurance have parents who are temporarily unemployed. So what this bill would allow is important, those people who find themselves in that situation to be able to provide for their families by taking a deduction for their health insurance if they want to seek self-employment.

Mr. SESSIONS. Mr. Speaker, this deduction that I believe the gentleman is talking about is one that we would call pretax. This is the exact same pretax tax treatment that is given by corporations. So what we are trying to say is, these people who are self-employed, these people who are honest, hard-working, taxpaying families across this country would then have the advantage, the same tax advantage that would be given by law to someone who worked for a corporation.

Mr. HILL. Mr. Speaker, that is exactly right. Every employee out there whose employer offers health insurance to them receives that health insurance without paying taxes on it. The employer gets a tax deduction for that. We are talking about the self-employed.

The irony of this is that a person can be self-employed and have employees and be able to take a tax deduction for their employees' health insurance but they cannot take that tax deduction for their family's health insurance. What this would do is to make it fair so that those people who are out there taking risks, trying to develop new opportunities in the economy are treated the same as everyone else.

Mr. SESSIONS. Mr. Speaker, further, we find that another part of what this bill is to do is to clarify the definition of a principal place of business. So many times I hear people from Texas as the Representative from the Fifth District of Texas, I hear from people who are working out of their own

home, trying to honestly and legitimately make a living without being on welfare, might we add, people who are trying to contribute something back to their community and what they are asking for is, why can we not have this home mortgage deduction?

What this 1145 would do is it would clarify this place of business, this home, this person, this place or where these people might have their business. What I would like to do is clarify exactly what we are going to codify. We would talk about a principal place of business, and for the purposes we are talking about a home office that would qualify for a business deduction if the office is in the location where the taxpayer did all of their management and business activities and conducted themselves on a regular basis; and that the office is necessary because the taxpayer has no other location for the performance of essential administrative or management duties that they have in their business.

This is what happens every single day by families who by circumstances may have been laid off from their company, by circumstances may have an opportunity because of children, children that they have to take care of and watch on a regular basis. These are the kinds of things that we have got to see the tax code evolve to. We have to see the tax code become responsible, not only as it evolves into the 1990s and the year 2000, but also as we evolve around life as we know it.

Mr. PAPPAS. Mr. Speaker, if the gentleman will continue to yield, I am very encouraged by my colleagues' discussion here tonight about what 1145 would do if enacted into law.

Most of us that are here are members of the Committee on Small Business, and even those that may not be, I know, are very committed to fostering the kind of opportunities for small business men and women in our country. Later this week, on Thursday in fact, the committee that we serve on will be holding a hearing regarding yet another piece of legislation which, if this had been enacted more than 20 years ago, I believe much of what we are talking about here tonight would not have to consume our time and our attention.

The piece of legislation that I speak of is called the Small Business Regulatory Enforcement Fairness Act, [SBREFA], another acronym for us to add to our lengthy list.

What this would do for certainly the public that may not be aware of this, this would require that each Federal agency consider the effect of any proposed regulations that they would write in order to enforce this particular piece of legislation. Had this piece of legislation been in existence prior to even the last year or so, there would be a couple of examples that I would like to give that would have really made a difference in the ability of small business people to survive.

The first, it even received some attention today in some of the periodicals

that we read here, the filing of the payroll taxes electronically. Many small business people do not have the ability to do that. It is an unnecessary expense and I am very glad to see that that is at least being delayed. I certainly hope that it is going to be a permanent delay. The other is the 2.9 percent tax that limited partnerships are being expected to pay for Medicare. Some have referred to this as a stealth tax because of the way in which once again the IRS has interpreted some other actions.

Whether it is through the IRS's interpretation, through determining what an independent contractor is, then certainly the ability of that independent contractor to take a home office deduction is being determined. I would just like to comment on one specific part of this bill that was referred to a number of times that I have been active in the last several months, the home office deduction.

Again, for the benefit of those who are here in the gallery and those that are viewing, it has been just a little over 20 years since the Federal tax code was required to define the home office as a principal place of business and those people could qualify for the deduction. But through a period of time, the IRS's interpretation of what a principal place of business is, and then a subsequent court ruling by the U.S. Supreme Court, which was prompted by a specific case, I would just like to briefly describe it, a physician or an anesthesiologist by the name of Dr. Nader Soliman had obviously serviced his patients not in his home office but in various hospitals in the communities near where he resided. But his billing, the administrative part of his business was conducted from his home office. He believed, as I certainly do, that that was a part of the carrying out of his duties as an anesthesiologist, carrying out the function of his business.

The IRS challenged the interpretation that he made that that was a legitimate home based office, home based business. Through a court proceeding the Supreme Court in my opinion legislated and ruled against his ability to take that deduction. There are many other examples, there are people who are general contractors, painting contractors, that are landscapers, obviously cannot perform what most people or many people would view as their principal, the principal part of their business. Obviously a house painter has to go to someone else's home to paint their house, but who could argue that a part of his or her business is sitting in their office, sitting at their kitchen table, as the gentleman from Montana (Mr. HILL) said, and writing bills out and dealing with other paperwork, whether it is with an accountant. I am certainly hopeful and encouraged that this kind of piece of legislation would restore what I believe was the original intent.

□ 1945

Mr. HILL. If the gentleman will yield, I think it is really important for our colleagues to understand exactly this point with this physician. Had that physician had an office that he rented somewhere, the cost of the rent of that office, the utilities for that office, the telephone service for that office, the janitorial service for that office all would have been tax deductible, no question. But by virtue of the fact that that physician had that in his home, that is what brought it into question.

The important point here is that we have an economy that is moving toward services, and when we deliver services we go to other places to deliver services. So, in essence, what the IRS ruling is saying is that if we provide services at a place other than our principal office, then we cannot take a deduction for a home office. It discriminates against the greatest sector of new entrepreneurial businesses that are being created out there.

Mr. SESSIONS. If the gentleman would yield, I also believe that from what I have seen in the Fifth District of Texas, that many of the people who are at home, who are operating these home businesses, are women, women who are trying to not only make a go of it with their marriage and family and children and the needs that come upon the business, but they are upstart women who have the ability to get out and to compete in the marketplace. I think this home office deduction really finds that the people that are discriminated against most are women, women trying to do these type of things.

I believe that H.R. 1145 will offer us a clear definition, one that the IRS cannot only understand but also that these taxpayers and these people who wish to make a go of it can have and avoid the IRS coming on them.

Mr. FOX of Pennsylvania. If the gentleman will yield, I think the discussion of my colleagues, the gentleman from New Jersey and the gentleman from Texas, all center on the fact that we want a reality check for IRS when it comes to being reasonable about regulations, which will help more people be employed, to start jobs.

I know from back home in Pennsylvania the chambers of commerce everywhere support this kind of legislation, H.R. 1145, which will in fact make sure the home office deduction is taken care of and that those who are self-employed will be able to have assistance on the health care.

And everyone knows that the best job is a private sector, newly created job. If it is a government job, it will end up, maybe, possibly, not helping our economy. We have seen that in a few instances. Does not mean every job. But I know that all the chambers of commerce, NFIB, every major organization that evaluates new employment, the private sector job is one that is lasting, one that helps the economy.

And like the gentleman from Texas said before, it certainly is with many

of the new entrepreneur female-owned businesses that this will be a definite incentive for new businesses to be started.

Mr. SESSIONS. We also could, I am sure, include in there that they are doing this at their own risk. They are putting their own money right at risk. They think of that as a business. They think of that as an opportunity to go out. And it is incredible that the IRS would not even recognize this; that they would put that at risk.

Which goes back to the point that the gentleman from Montana was speaking about, this safe harbor, that is so important for people who are attempting to not only follow the law without being a tax expert, to follow the law and file complete and accurate tax records, but also to run their business. It is this huge burden that is not only on these types of people but I think upon all Americans to know and understand this magnificent document that is known as the Tax Code, but that yet is a burden to each one of us as Americans.

Mr. HILL. If the gentleman will yield on that point, having been a business owner myself, and starting in my own living room, I have some sense of this. But as the gentleman from New Jersey, Mr. PAPPAS, pointed out about business regulations, the burden of those regulations falls heavier on small businesses than it does on big business.

Big businesses can hire lawyers and C.P.A.'s and they can have full-time bookkeepers and people to understand that. This is just one volume of the Tax Code I am holding right here, and if we are starting a small business out of our living room, we do not have time to commit this to memory. Yet, if we do not, we can be at risk, at risk financially and our whole business enterprise can be at risk.

I want to give my colleagues a couple of statistics to put this in perspective. There are now 9 million, 9 million home-based businesses. Fourteen million Americans are earning their living from home-based businesses. From 1988 to 1994, the IRS retroactively reclassified 438,000 independent contractors as employees, and the fines and penalties totaled \$751 million.

I can tell my colleagues right now that I believe the majority of those businesses were put at risk, perhaps put out of business because of the level of those penalties that nobody could possibly have anticipated.

There are 5.1 million self-employed head of households with 1.4 million children who are uninsured because they cannot take a tax deduction on their health insurance. We are talking about a lot of Americans, hard-working Americans. As the President would say, these are people out there playing by the rules, but the rules are working against them.

Mr. PAPPAS. The gentleman mentioned about families, individuals with children and the pressure that they are experiencing every day. Another bene-

fit to H.R. 1145, and again the home office deduction, and before that maybe determining who is an independent contractor, which then would hopefully make them eligible for that home office deduction, but the cost of day care that so many families in our country are faced with.

The difficulty in finding adequate day care sometimes can be even more of a challenge with the many lengthy waiting lists that people encounter trying to place their children in a safe environment. But having the ability to work out of their homes, getting the deduction that I believe that these folks are entitled to, that it is not the U.S. Government doing them a favor by providing this deduction but doing something that is fair. As was said, if they had their business at another location, they would be entitled to these deductions.

But to have the flexibility to work from our home, a gentleman or a woman working from their home, being there when their kids get home from school, not having to worry about where the young people are going to go, whether there is a place for them to go, having that would be such a benefit.

Mr. SESSIONS. As we talk about these men and women who have their businesses out of their own home, I think it should be mentioned that they have to pay taxes also. They have to pay taxes as a result of being self-employed. They have to, in essence, double down, what I call double down, where they have to pay an employer's side and an employee's side: Social Security, what is known as FICA, unemployment, and all of these things.

So it is not as though this home business that we are talking about is not done within compliance of the law. In fact, there is a huge burden, I would suggest a bigger burden, that is on these people who must maintain records, must be able to run their own business while at the same time trying to survive with an onslaught of agencies and rules and regulations who are coming after them.

Mr. PAPPAS. If the gentleman would yield, just getting back to that, the gentleman from Montana holding up one of the two volumes, and people that may be watching this and contemplating their business and seeing just one of those might be discouraging them, and hopefully people will realize that people like the gentleman from Texas are trying to change that.

By putting in perspective again what it would mean, what a home office deduction could mean, using the scenario I mentioned, having the ability to take that home office deduction and saving the expense of child care, we are literally talking, for even a family or an individual with one child, several hundred dollars a month, conceivably maybe even more than that, with the potential savings from not having to place a child in day care and getting the home office deduction, it could

really make a tremendous difference in someone's ability to start a business and continue over the first year or so when it is so critical for so many businesses that are really on the edge of collapsing.

Mr. FOX of Pennsylvania. I think the gentleman from New Jersey eloquently stated the importance of H.R. 1145 with regard to the home office deduction and raises a very important point; that for many of our families that are trying to make their own businesses, who are sometimes having multiple jobs and taking care of children, that day care becomes very important.

This week we will be introducing legislation which will raise from 30 percent to 50 percent the tax credit for employers that will be providing day care for their employees, and hopefully as well for the self-employed, thus allowing people who have to be working and raising their families to be able to make sure their children are in fact in quality day care.

And this is certainly an idea that has evolved from the leadership of individuals who are sharing the time here with our colleagues this evening, and I appreciate the point the gentleman makes about day care being of great assistance.

Mr. HILL. I think it is important for us to keep in mind that one of the problems, when IRS makes one of these determinations, retroactive determinations, is that this cascades down into some State government decisions too. Because it does not just impact the Internal Revenue Service and the penalties and the taxes that could be due, it also will impact the State revenue departments, which could also then have taxes due and penalties, often the State department of labor, which usually is the mechanism to deal with unemployment insurance premiums and can even go into the workers compensation and general liability problems. So it pyramids down or cascades down on these businesses, the penalties.

One of the interesting things I wanted to point out to my colleagues, coming from Montana as I do, with agriculture our No. 1 industry, this is a particularly interesting issue for folks in agriculture, because we have people like ditch riders, who are out there making sure the irrigation ditches are clear and clean and flowing; we have farriers, those are the people who shoe horses, who often operate as independent contractors; we have what we call calf pullers, that come out in the spring and help folks pull calves during calving season; sheep shearers; custom combiners; custom farmers. Those are all examples, just in the area of agriculture, of folks who often offer their services as an independent contractor.

But under the current test of the IRS, one could hire folks to do that and not meet the test of an independent contractor because the provisions are so narrowly defined. And out of the 20-part test, if an individual misses one

part, that could disqualify them as an independent contractor.

So that is an example of one industry, a very important industry to my State, very important industry to all of America, where this independent contractor issue and the lack of safe harbor today can cause some very serious problems.

Mr. SESSIONS. So when we talk about H.R. 1145, I believe what we are taking about is that we have to codify the law, the law that is being misapplied by the IRS. We have to take into account that America has changed; that we now have not only a great amount of people who are at work either because they have been laid off or downsized or whatever the word might become associated with them leaving their work, or on their own they might have decided to do this.

So H.R. 1145 will take into account the changing climate that we have that will allow a deduction of home business expenses, that will be a safe harbor for those people who believe and expect and are trying to not only follow the law but to do that with the greatest of intent. We are going to have the law say that the IRS now would look at those people and not hit them for back taxes and penalties but rather to acknowledge that they were attempting to follow the law.

We will come in with H.R. 1145 and say that we will allow expenses related to health care to be treated as a pretax expense, which will put these people who are independent contractors and those people who work at home and those people who are self-employed with the opportunity to have health care, to have the opportunity to take care of their families, the opportunity to be able to comply with the tax law that would be consistent with what corporations are allowed.

And then, lastly, that we are going to look at the independent contractor status that would say that the 20-point test that is used by the IRS, that we are going to look at and codify that, or make changes in the law so that the IRS would have to say that what that independent contractor had been doing as they followed the law they would not be liable for taxes and penalties related to their performance under law.

Mr. FOX of Pennsylvania. If the gentleman will yield, what is the status of this legislation now within his committee?

Mr. SESSIONS. The status of this legislation is that, and I am not on the Committee on Small Business, but the status is that we are debating this tonight with the full expectation within the next week and a half or two that we will be debating this on the floor.

Mr. PAPPAS. I think what we are talking about, and was said a number of times, is that we need to be cognizant of the changes that are going on all around us in our economy. The American people certainly are aware, and maybe more than folks in Washington, DC are.

I am very encouraged by the discussion here tonight and proud to tell my colleagues a story about what is going on in my State. In the State of New Jersey, there is a member of the State legislature, the lower house, which is called the General Assembly, a legislator from my district whose name is Joseph Azzolina, a long-time businessman, very successful businessman, and he has recently introduced a bill in the State legislature that would amend the State municipal land use laws which deals with zoning.

□ 2000

What it would do is recognize that many people work from their homes, and that zoning ordinances not be a hindrance for those that would want to use a very small portion of their home in order to conduct their business from it.

Currently, many municipalities in our State have somewhat restrictive ordinances. With the changes to our economy, Joe Azzolina's initiative I think really goes hand-in-hand, or hand-in-glove, with what we are discussing here tonight. And it was very coincidental that this piece of legislation and another one that I authored dealing with the home office deduction and his introduction in New Jersey were, I think, within a couple weeks of one another.

Back home in New Jersey, people are very, very much encouraged; the chambers of commerce, the NFIB, and just independent business men and women throughout central New Jersey are very encouraged that it seems that those of us that are in Washington and those in our State capital in Trenton really seem to be getting it and coordinating their efforts to really make a difference in the lives of the business owners of our State and our Nation.

Mr. HILL. If the gentleman would yield, he knows, and he serves on the Committee on Small Business, as do I, that we have a lot of programs that we fund, advocacy programs for small business. We have small business development centers where we help people that are thinking about going into business develop business plans and understand the issues associated. We have micro business loan programs. We have got community block grant programs that are loan programs that businesses can participate in to help expand and grow their business. We have procurement provisions and rules with regard to how Government buys things that are oriented to helping small businesses participate. We have programs in the area of research to fund people who are trying to start small research companies.

There are all kinds of things that we are doing on the one hand to try to promote small businesses because it is a good thing to do. Small business, we all know it is the engine of our economy, it is what creates opportunity, it is what renews the American dream. So we have all these programs out here

that we are helping fund, that we are helping to promote small business. Then, on the other hand, we have IRS regulations and a punitive Tax Code that is making it difficult or impossible for those small businesses to succeed and prosper.

What this issue really boils down to, in my judgment, is just one word and that is "fairness." All we are asking here is that small businesses, micro businesses, the most vulnerable businesses but the most important businesses because they are new businesses, be treated fairly, that they be treated like any other business would be treated with regard to tax policy, dealing with the health insurance deduction, the deduction for legitimate business operations.

We are not suggesting here that a business would be able to take a deduction for something that is not a legitimate business expense. We are just saying that a legitimate business expense incurred in the home ought to be deductible, and that they have some clear definition they can offer to their customers and to other contractors that they might associate with or hire so that everybody can feel secure.

Mr. FOX. The fact is that everything that has been discussed certainly is key about how we are going to move forward in this country. I know in Pennsylvania, where our No. 1 business is agriculture, we also have in the Delaware Valley in southeastern Pennsylvania what we call the Ben Franklin partnership, which is the universities, the businesses, and the government working together to have business incubators, entrepreneurship, new jobs. How can we take all of that effort from the universities, the government, and the schools and industry and not save it?

We have to find ways, not only this bill, H.R. 1145, which is going to do a great deal with the business expense for home office, we also need to be looking at things that will help farmers, for instance, be able to pass their business down to the next generation without having to sell the family farm to pay for taxes. So the inheritance tax reduction that my colleague has been fighting for for his residence is going to be going a long way in the right direction, as well as H.R. 1145.

Mr. HILL. If the gentleman would yield, he is absolutely correct about agriculture. The greatest threat to agriculture, the family farm in America, is the death tax. As my colleague knows, many, many farms and ranches today cannot produce the cash flow necessary to pay the tax burden to pass that business on to another generation, whether it be done by selling it or gifting it or the death tax.

This is a tremendous threat to family agriculture in Montana. I know and my colleagues know that part of the budget agreement and part of the effort of our conference has been to put a focus on the importance of bringing the death tax down or eliminating the

death tax so that business enterprises and farms and ranches can continue to stay in business, continue to put people to work, continue to provide important products and services to build our exports, to build the strength of our economy.

Mr. PAPPAS. If the gentleman would yield, the death tax that he referred to is even important to agriculture in a State such as mine. It is the Garden State, and we are very fortunate in central New Jersey to have many very productive and active farms, and farms that are owned by families for generations.

But the elimination of the death tax, I believe, is an environmental issue, certainly in an area such as mine where there is such pressure for development, and that many of these family-owned farms where certainly it is the desire for these farms to be passed from one generation to the next, that the heirs sometimes are not in a position of determining whether they even want to continue to farm because they cannot pay the estate tax bill.

There was an instance in my district just last year that a longtime, very prominent farmer had passed away and his daughter wanted to keep the farm from being developed and she was not able to pay it. But we have a farm preservation program in our State where development rights are purchased by the counties and the State and paid to the landowner, so the farm has been preserved in perpetuity. But that is not always the case and those options are not always available.

I personally just want to conclude my participation here tonight by saying how privileged I am to be serving with these three gentlemen. I know the commitment that they have to fostering an economic environment that can help the little guy and the little gal, and that is what we are talking about here tonight. We are talking about fairness, we are talking about really helping those that just want the opportunity to pursue the American dream in their own way. That is all they are looking for. They are looking to be treated fairly, looking for the chance, and some of these things that we have spoken about tonight would just provide that chance to so many people in our great country.

Mr. HILL. If the gentleman would yield, I just want to compliment him for his work on the Committee on Small Business and his work with regard to the issue of capital gains tax. I do not know about him, but I think I have cosponsored several capital gains and death tax bills. I also am the original sponsor of one bill that would completely eliminate the estate tax and treat estates like a capital gain at a substantially reduced rate.

The key thing here is that we have got to reform our Tax Code so that it is not interfering with the decisions that people make to go into business or stay in business, so it does not discourage people from putting people to work.

One of the things as I travel about Montana, I hear small business people saying to me, "You know, I do not know that I want to hire any more employees." There are too many liabilities, too many obligations. That is the worst thing that we could have happen in this country because it is small businesses that are creating the jobs, and those businesses are growing into bigger businesses and growing into larger businesses, and they are putting millions of Americans to work and they are renewing our economy.

This is just one measure. But I know all four of us, and I want to compliment all of my colleagues here for their work in this area because we all understand that it is those small businesses that we need to help, the businesses that are most vulnerable that we need to work for.

So, as I conclude my remarks here tonight, I just want to thank all three of my colleagues for their work with me and with others in trying to accomplish that in this Congress.

Mr. FOX. If the gentleman would yield, I also want to conclude by saying that H.R. 1145 is key legislation in this Congress. It is bipartisan. It is pro business. It is pro jobs. It is pro family. And it is long overdue to be passed.

I have to give my proper gratitude to the gentleman from New Jersey (Mr. PAPPAS), the gentleman from Texas (Mr. SESSIONS), and the gentleman from Montana (Mr. HILL) for their leadership, not only on this kind of legislation and moving it forward, but as Members of the freshman class and showing real leadership within the whole body in a bipartisan fashion, which I think is going to be the kind of example for having legislation passed which is going to be not only helpful to their constituents but the whole country. I appreciate the work that the gentleman from Texas is doing on the Results Act. I think we need to come back here for further discussion on other changes to the IRS that are going to help businesses, help individuals, and help our families back home.

Mr. SESSIONS. I thank the gentleman from Pennsylvania (Mr. FOX) so much for being here, the people of Pennsylvania are well served, and the gentleman from New Jersey (Mr. PAPPAS) for his participation here tonight, the people of New Jersey have done very well, and also to the gentleman from Montana (Mr. HILL), those voters are well served, also.

I think that what our discussion tonight has been about is that we want to be probably just a beacon, albeit just a small beacon, that is speaking on the floor of the House of Representatives to try to be that voice, that voice to people, Americans, who are out there in the heartland, who are trying to make a go of it, people who do own their own business, who are independent contractors, those people who do have to worry about paying for their health insurance out of their own pocket, those people who are trying to

make a go of it that are not given a home business deduction that they should have.

We stand up tonight as a voice to those people and say, "We hear you in Washington, DC. We know what you are struggling with." I hear it in the fifth district of Texas. H.R. 1145 is not all-encompassing, it is not that magic bullet that will give tax relief to all Americans, but what it is is an opportunity for us to not only clarify and codify law but to give a reintention to the IRS and to these small business owners so that they recognize that someone does hear them in Washington, DC.

I would like to go through this, if I can, just to summarize once again what H.R. 1145 does. It allows for the deductibility of expenses for a home business deduction. It offers a safe harbor, an opportunity for those people who are attempting to comply with the law, that when they do come into contact with the IRS, that they can prove to the IRS that they are attempting to follow the law even if they might have not have done so exactly to the full intent, that they are attempting to do that. It gives them an opportunity to be safe without having these back penalties.

It will also allow for the expenses related to health care to be treated the same on a pretax basis as corporations have. And, lastly, it is going to codify rules that are related to the tax status of independent contractors.

I think this is important for America. I hope that tonight we have talked about things that represent the heart of problems in the heartland, that we are talking about important things, not talking about something that would be good just for a Member of Congress or a special interest but, rather, for the working middle class of America.

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HOURLY OF MEETING ON TOMORROW

Mr. SESSIONS. Mr. Speaker, I ask unanimous consent that when the House adjourns today, that it adjourn to meet at noon tomorrow.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

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MFN FOR CHINA AND NAFTA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from Michigan [Mr. BONIOR] is recognized for 60 minutes as the designee of the minority leader.

Mr. BONIOR. Mr. Speaker, in the coming weeks and months we will be considering two major questions in the House that will reveal a lot about how we, as a Nation, value human rights and the well-being of our workers in America.

The first question that we will answer is whether or not to extend most-