

and say, well, let us tax him more because he has been successful.

I was talking to a group of people one time, I said, "When you die, should your house be cut in half and part of it go to the Government? If you have two cars, for example, should one go to your children and the other one go to Uncle Sam?" They said certainly not. I said, "You realize," and maybe the gentleman could correct me if I am wrong, but I believe the threshold is \$3 million, "if you have an estate of \$3 million, the tax rate becomes 53 percent, I believe, or thereabouts."

Mr. COX of California. Fifty-five percent, actually.

Mr. KINGSTON. OK, 55 percent. So if you have an estate of \$3 million, when you die Uncle Sam is going to get half of it. Not your children, not your grandchildren, not your friends, not a charity, but Uncle Sam. You talk to people about that, they do not realize that, because most of us will not accumulate \$3 million, unfortunately. But still, just because they have been successful, they have to have a 55 percent tax rate when they die.

Mr. COX of California. If the gentleman will yield, it is very important to stress this point. It is the one that my colleague from Arizona just made a moment ago. This is not a tax on estates as in mansions or what have you.

Imagine, for example, a real-life example of a tree farm. Let us imagine that the land that underlies the tree farm is worth \$3 million. But let us imagine that this tree farm, as it currently exists, has been very carefully husbanded by, as is true in this case of the Mississippi tree farmer, the grandson of slaves, who has gotten not only his family but a whole lot of the people in the area employed there.

And then let us imagine that this man is getting on in his years, and he is beside himself because he cannot think of any fancy estate planning technique that will keep that tree farm alive. When he dies, he is looking death in the eyes now because he is on in years, he knows that his family, his sons and what he considers to be his extended family, the people who work on that farm, are going to lose their opportunity to run it, the thing that he built up throughout his life, because they are going to have to liquidate it, sell it, put it on the auction block in order to pay the tax man, and there will be no more tree farm.

Do you know what is going to happen to that land? It is going to be developed. It is going to be subdivided, it is going to be purchased by somebody who is going to put houses on it, a shopping center, a strip mall or whatever it takes commercially to take advantage of the fact that after capital gains taxes, after death taxes and so on, this has some economic viability. So somebody who buys this property is going to want to make money on it, because that is life, and we now have, with death taxes, an additional casualty.

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Not just Mr. Thigpen, the name of the man in this real life example, and his family and the people who work there who pay 100 percent tax when they lose their jobs, not just the loss to society of this tree farm, which has won environmental awards, not just the fact that the whole business is going to be wiped out, not just the unfairness of it all, but environmental destruction on top of it, improper stewardship of our natural resources, because the Government is so ham fisted and foolish about the way it collects revenue.

Mr. EHRLICH. Mr. Speaker, the gentleman from Georgia brings up a really interesting point which was really part of our earlier discussions concerning how we got here, how we got to where we punish people who go out and take risks and accumulate capital and create jobs. And the gentleman talked about class jealousy, class warfare, and is it not true that unfortunately in American politics today class warfare, successfully argued, leads to votes? Is that not a proven formula? Is that not unfortunate? Is that not an unfortunate comment about the state of debate in our country today when it comes to what should be relatively—and I understand the gentleman from Arizona talked about earlier there are philosophical differences, legitimate philosophical differences, on the other side, but the fact is and the evidence, as the gentleman from California has articulated tonight, the evidence is such that decreasing taxes, ceasing the punishment of success results in economic growth, but not necessarily votes.

Mr. COX of California. If I might just interject, one of the reasons you see some Californians out here on the floor is that California repealed our death tax by the initiative of the people, and every time you hear somebody say class warfare, you know only some small segment of the population will go for repealing death taxes, do not believe it. The most populous State in the Union repealed our death taxes by an initiative of the people, and we can do it in the people's House.

Mr. KINGSTON. If the gentleman will yield, you know what this is about, as Mr. COX just said, this is not about protecting the assets of wealthy families so that when the oldest person or whoever dies that it can be passed on and then the rich can remain rich. This is about economic prosperity, creating an American dream that is accessible for everybody where the unemployed can get a job, get on the economic ladder and go out and share in the American dream through upward mobility. We are talking about a tax system not to protect the rich but to create opportunities for everyone so that the American dream is accessible.

Mr. EHRLICH. I thank the gentleman from Georgia.

The last word goes to my colleague from Arizona.

Mr. HAYWORTH. I thank my colleague from Maryland for organizing this special order this evening, Mr. Speaker. I would simply point out another real life example that reaffirms the fact that this even affects working families.

Once on national television, on C-SPAN I, one morning one of my constituents called in discussing his situation in Pinetop/Lakeside, the fact that he was a working man, and as my colleague from California pointed out, because of inflation involving some of his land holdings, land that he had invested in, pinching pennies, if you will, trying to take care of his family and also provide for them. When he chose to sell that land, he was penalized; he remained in essence cash poor. That is the unfairness of the success and inflation tax otherwise known as the capital gains tax.

I thank my colleague from California for giving us a real life example of what happens when a group of people say death to the death tax. It can provide new economic life and vitality for scores of Americans. It offers true compassion not through the radical redistribution of wealth, executed by Washington bureaucrats, but through the drive, energy, tenacity, and ingenuity of the American people who are willing to save, spend, and invest in their own families, give of their own hearts to charity and in essence help provide for the next generation.

Mr. EHRLICH. Mr. Speaker, I thank all my colleagues.

TIME TO END CORPORATE WELFARE AS WE KNOW IT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

Mr. OWENS. Mr. Speaker, it is time to end corporate welfare as we know it, and many of the kinds of tax cuts we are talking about before for individuals, certainly the capital gains tax on homes, would be eliminated or could be eliminated if we were to go after our Tax Code and make the necessary adjustments and close the loopholes and end corporate welfare. It is time to end corporate welfare as we know it. Great injustices have been done over the past 2 years as we have sought to cut back on expenditures. We have gone after the poor, we have used a microscope and focused it on the weakest and poorest of Americans.

A great injustice has been done in the welfare cuts. It is estimated that as many as 2 million children will go hungry as a result of welfare cuts. A great injustice has been done in the immigration reform. The cuts that take place as a result of immigration reform are elderly people who are not citizens, who in large numbers will end up going hungry, and some will starve, you know. And now we have a situation where we place a microscope on the poor who receive Social Security and

other groups that receive a cost of living index increase from year to year, but mostly it is people on Social Security.

A lot of us worry about tampering with Social Security. Yes, they are tampering with Social Security, they have already tampered with it when they made a great cut and took away the entitlement for Aid to Families with Dependent Children. That is part of the Social Security Act.

Now the CPI discussion, the discussion about how to change or tamper with, sabotage, the Consumer Price Index is another method, another tool, for oppressing the poorest and the weakest people in our society. The microscope is now on the poor people who receive cost of living increases. Most of those people are on Social Security.

So instead of doing that, you know, why do not we go after the really big money? Instead of squeezing the little people, you know the cuts in welfare produced small amounts of money because you were dealing with 1 percent of the total Federal budget. If you go after corporate welfare cuts, you are dealing with the really big money. The big money is in corporate welfare. The big money is in the Tax Code, the tax giveaways, and today I am going to talk about the big money is there because the Internal Revenue Service refuses to enforce the Tax Code properly.

Mr. Speaker, their refusal to enforce the Tax Code properly wastes large amounts of money. We can get as much as \$70 billion in this present year if they would just enforce the Tax Code properly. We can realize a \$70 billion windfall as a result of enforcing the Tax Code properly. That 70 billion or more, I am going to talk about that in a minute.

I want to emphasize two important dates. One date is March 12, tomorrow, Wednesday, when the progressive caucus will launch the war against corporate welfare. We are being joined by members of the Black Caucus. There are a number of other Members that do not belong to any caucus. We are being joined in launching a full-scale war against corporate welfare. That is going to take place tomorrow with a press conference to start the process where we will list 15 items, 15 corporate welfare items, items where large amounts of money will be generated.

Now, we are doing this under the aegis of the Progressive Caucus, but we are happy to announce and would like to call the attention to everybody that the chairman of the Committee on the Budget, Mr. KASICH, is also waging his own small-scale war on corporate welfare. At least he is using the right language, but he does not want a real war; he wants a few brush fights. We want to go further and lay it out for the American people: Yes, your taxes ought to be cut.

I agree with the substance of what the gentlemen were saying before. We ought to cut taxes for ordinary individ-

uals, we ought to cut taxes for families. The problem is that the swindle comes when you have had over the last 20 years a tremendous increase in the taxes on families and individuals while corporate taxes have gone way down. Corporate taxes were almost at 40 percent at one time while individual taxes were 27 percent. Now corporate taxes are down to the level of about 11 percent, and individual taxes and individual family taxes are up at 44 percent.

So one of the days that we want you to watch is tomorrow when we launch the war against corporate welfare, and we will lay out the details as to where you can get billions of dollars from the loopholes that will be closed and the various other programs that will be eliminated that constitute corporate welfare.

We are going to add to that, and part of that list is a step to enforce the Tax Code that exists now which does not require any legislation.

The other day I want you to remember, and you cannot forget it, is April 15. April 15 is the deadline for filing income tax returns. Nobody forgets that. Most Americans, vast number of Americans, the great majority, obey the Tax Code. We have more tax compliance in this country than we have in most other industrialized nations.

Americans obey the Tax Code; they respect the law. Individuals and families respect the law, and they obey the Tax Code.

On the surface corporations obey the Tax Code, but if you look closely, there are some instances where not only are the corporations not obeying the Tax Code, the Tax Code that already exists, but they are also not being bothered by the IRS.

The Internal Revenue Service is not seeking to enforce the Tax Code. We are going to talk about that.

Why is the focus always on the poor and extracting more from the poor, and we never seem to see the obvious, and that is that great amounts of money are being wasted in the Tax Code. Great amount of moneys are not being collected. We are giving a free ride to corporations.

Now I have sent out, and this is complicated. I intend to take it slow and submit for the RECORD, for those who are interested, a number of documents that will help you if you want to find out what the background is all about. I have sent a letter to my colleagues asking all of my colleagues who are interested to sign this letter to the Internal Revenue Commissioner. We have sent out a letter to the Honorable Margaret Milner Richardson, and we are going to send a letter out as soon as we get some additional signatures, and this letter is just saying Dear Commissioner Richardson, please enforce the law; please read the Tax Code and enforce the law. There is a simple section of the Tax Code, Sections 531 to 537 of the Internal Revenue Code, which deals with violations related to unreasonable accumulation of surplus, and that is

the part we want you to enforce, and if you enforce that, we will realize a minimum of \$70 billion in this year because we are talking about the law not being enforced for the past 3 years.

If you go back and look at the failure to enforce the law, you will find that a number of corporations have violated in large numbers, and if you apply a penalty, and it is a pretty stiff penalty, the penalty is 39.6 percent. That is a penalty. If you apply the penalty for the people who have violated it, it will generate a windfall of \$70 billion.

This is a letter to my colleagues asking them to sign on, and I hope that those who are listening will take a look at the letter to Commissioner Richardson and will sign the letter.

Needless to say, we are preparing detailed proposals for the expenditure of this windfall of revenues resulting from enforcement of the law and the collection of the penalties. We want to deal with this year's budget in the process of balancing off expenditures against revenue.

The progressives and liberals have not dealt with revenue in a proper fashion over the last 50 years. We have always been concerned with how will the Government take care of the needs of the people in terms of expenditures. We have not looked enough at how the revenue side works, where the taxes are coming from and what the injustices are there.

The pattern I have described repeatedly here is that over the years because of the fact the progressives and liberals and people who care about the majority of Americans have not looked at the tax side, they have swindled us by steadily reducing the tax burden of corporations while they steadily raise the burden on individuals.

So I want to call this letter to your attention, and for those who are interested I want to submit it in its entirety. Mr. Speaker, I want to submit 2 items for the RECORD. One is a Dear Colleague letter to my colleagues in the Congress asking them to join me in this communication with the Tax Commissioner, and the other is the letter, the actual text of the letter to Internal Revenue Service Commissioner Margaret Milner Richardson.

Now this is part of the opening war against the war that will begin tomorrow against corporate welfare. Mr. Speaker, I submit in its entirety for the RECORD, these two documents:

FEBRUARY 12, 1997.

DEAR COLLEAGUE: I am writing to request your support and signature for a letter to the Commissioner of the Internal Revenue Service which may immediately generate more than 70 billion dollars in revenue. No legislation is required. No new rule-making is required. This effort only requires the Department of Internal Revenue to enforce existing law.

Please read the attached letter. In summary, it contends that many corporations have been acting in violation of the law. Since these corporations have been purchasing large quantities of their own stock, they have been acting in violation of the "unreasonable-accumulation-of-surplus" provisions

of sections 531-537 of the Internal Revenue Code. At present these violations are accelerating.

Please read the attached letter thoroughly. Within five days we will be forwarding it to the Internal Revenue Commissioner and we need your signature. To offer your support please call Kenya Reid or Jack Seder at (202) 225-6231.

Needless to say, we are preparing detailed proposals for the expenditure of the windfall revenues resulting from an enforcement of the law and a collection of the penalties. Probably we will propose that one half of all such penalty revenues collected should be used to reduce the deficit. The remaining half should be used for one-time capital expenditures for education, job training and job producing work projects.

A clearly enunciated, innovative but practical tax and revenue policy is a long overdue need for Progressives, Liberals and all others who represent the Caring Majority in America. Before the completion of the budget and appropriations process we must enunciate such a policy. While a wise, compassionate and practical spending program must remain a priority, we must elevate our advocacy of tax and revenue measures to the same priority level.

At the center of the Caring Majority's policy must be the commitment to significantly reduce taxes for middle and low-income families and individuals in America. To offset such reductions in the overall income tax revenues we must increase income taxes paid by corporations.

It must be noted that the overwhelming reliance on income taxes is a subject that deserves thorough discussion. It is time to examine more closely the possible revenues that might be derived from selling and/or leasing the spectrum which is owned by all Americans. Greater revenues from the sale and/or lease of other citizen owned property must also be on the agenda of prospective sources. A "value added" or some similar big ticket item consumer tax must not be ruled out.

These are all tax and revenue considerations to be discussed over the next few weeks. The business at hand now is the enforcement of the present tax code. This should be the core of our 105th Congress budget and appropriations program. I look forward to hearing from you.

Sincerely Yours,

MAJOR R. OWENS,
Member of Congress.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 12, 1997.

Hon. MARGARET MILNER RICHARDSON,
Commissioner, Internal Revenue Service,
Washington, DC.

DEAR COMMISSIONER RICHARDSON: My colleagues in Congress who have joined me in signing this letter are very much concerned about a major loss of federal tax revenue resulting from the failure of the Internal Revenue Service to apply against giant corporations the unreasonable-accumulation-of-surplus provisions of sections 531-537 of the Internal Revenue Code.

We believe that the IRS could—and should—immediately assess section 531 penalties on the more than \$275 billion that America's largest corporations have spent to buy their own stock in 1994, 1995, and 1996. These penalties at 39.6% would total over 100 billion dollars. Stock buybacks by America's great public corporations are all the rage these days, according to the financial media. Total buybacks by corporations are reported to have risen from \$20-35 billion per year in 1990-93 to \$70 billion in 1994, just under \$100 billion in 1995 and probably over \$110 billion in 1996.

These enormous buybacks demonstrate clearly that America's largest corporations are accumulating profits and earned surplus far beyond the reasonable needs of their businesses, and in virtually every case they are paying dividends that are a very small fraction of their earnings, often less than 20%. For example, in the two years 1955-56, IBM earned about \$9 billion, or \$21.00 plus per share. Of this amount, it paid out common dividends of only about \$1.4 billion (2.80 per share). All of the rest—and then some—went to buy its own stock * * * \$5.5 billion in 1995 (\$4.6 billion common and \$870 million Preferred) and \$2.3 billion in the first half of 1996, with the two-year total probably \$10-11 billion. (True, IBM has a multi-billion capital spending program, but this is much more than on amply covered by its huge additional cash flow of \$10-12 billion for the two years, from sale of capital assets and from items that are deducted on the earnings statement but do not involve cash outlays, principally depreciation, amortization and deferral of income taxes.)

We ask you this. Is there not here, and in dozens of similar cases, a clear cut case for immediate assessment of the 39.6% penalty on all amounts used for stock buybacks? Is there any need to get into an elaborate discussion of reasonable needs of the business as envisioned by sections 533 and 537?

To be specific:

(1) These corporations are paying very small dividends, amounting to a small fraction of their earnings.

(2) Therefore, since *prima facie* the surplus they have used to buy their own stock has been accumulated beyond the reasonable needs of the business, the 39.6% penalty should be assessed. Our study of earnings statements, cash flow statements, and balance sheets leads us to conclude that in many cases the 39.6% penalty might reasonably be applied to even larger amounts than the stock buyback amounts. But that would trigger an extended discussion of needs of the business and other considerations.

It seems to us that our suggestion has the virtue of elegant simplicity: "You spent a billion dollars on stock buybacks. Your penalty is 39.6% or \$396 million." We suspect that the Commissioner could do this in a one-page notice * * * or two pages at most.

We suggest penalties for 1994-96 because it was during this period that public company stock buybacks exploded to 12-figure totals. In addition, we are not clear as to whether the statute of limitations would bar these penalties for 1993 and earlier years. Even if it does, we suspect that many 1993-and-earlier corporate returns are still open while other issues are being discussed and negotiated. In this connection, we ask you to take note of the fact that, while the dramatic surge in stock buybacks began in late 1994, some very large amounts were spent many years earlier.

Several giant corporations have been buying back their stock for ten years or more.

As you know, the unreasonable-accumulation-of-surplus penalty provisions have been in the income tax law since it was adopted in 1913. Despite the fact that the statute as originally enacted (and re-enacted a couple of dozen times in successive revenue acts) made absolutely no distinction between publicly-owned and private companies, the practice and the general understanding was otherwise. As Mr. Justice Harlan put it in 1969, quoting (or paraphrasing) Bittker and Eustice, "In practice, the provisions are applied only to closely-held corporations, controlled by relatively few shareholders." (U.S. v. Donruss, 393 U.S. 297).

However, this *de facto* moratorium on application to public companies ended abruptly in 1985. Congress in the Revenue Act of 1984

amended the statute by adding section 532(c), "The application of this part to a corporation shall be determined without regard to the number of shareholders of such corporation."

Please understand, Commissioner, that this is a simple request from elected representatives of the American people that your office immediately take steps to enforce the law.

We look forward to an early response from the Internal Revenue Service.

Sincerely Yours,

MAJOR R. OWENS,
Member of Congress.

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Mr. Speaker, I am one of those who is not ashamed to be called a liberal. In fact, I am proud of it. I am a liberal, I am progressive, all of those kinds of things that people seem to shrink away from. Our group has not disappeared. Contrary to rumor and some of the talking heads on TV, we are alive and well and there are more of us than some people think.

We really represent the majority of Americans. If you care about people, if you want to see the wealth of America distributed in a way that benefits all Americans, if you want to see our society hold together, the society, if it holds together, will protect everybody, and the people that have the most to gain from a society that holds together are the rich. The rich have the most to lose if our society breaks apart as a result of extremism and rampant injustice.

What is happening now in Albania, the society is about to fall apart because the government did not regulate the capitalists. It is as clear as that. The Communists had been ruling in Albania for all of those years, and finally the poor people of Albania had a break, they had democracy, they had capitalism, and they allowed swindlers to come in with pyramid schemes that probably most Americans would clearly understand. But these people were new to capitalism, and the new pennies they had, they put them into pyramid schemes. And they were swindled to the point where we had a revolution break out, a violent upheaval break out in Albania.

So it is to the benefit of everybody that the society hold together and, therefore, a just system of taxation is very important for that to happen.

The Soviet Union's economy is collapsing because nobody wants to obey the Tax Code. When the big corporations stop paying and they cannot collect from them, we have chaos. So if they cannot pay the Social Security, equivalent of Social Security in the Soviet Union, pensions, they cannot pay it, they cannot pay government workers.

Mr. Speaker, the head of the Soviet Nuclear Science Development recently committed suicide because this man who headed a very prestigious organization, guided his country into the pin-nacles of nuclear war weaponry, was a person with great status among other scientists with great status, found himself in a position where he could not

get his scientists paid, his technicians; the whole establishment could not get paid. They were behind many months in pay and they were promised that they would be paid. And when the paycheck finally arrived, it was 1 month only. He took out a gun and blew out his brains. It is that bad in the Soviet Union.

When you have a complete collapse of a society because there is no respect for the Tax Code, no respect for the tax laws, that is what happens. There is a great danger, if you let any segment of the society ignore the tax laws, there is a great danger that you will get into a situation where you cannot enforce any of them. The little guys, the people out there who would be rushing to pay their taxes on April 15 or before April 15 obeying the law would not like to see the situation mushroom that I am going to talk about tonight, and that is a part of the Tax Code is being totally ignored and no effort is being made to enforce it.

Mr. Speaker, we are calling on the Commissioner of the Internal Revenue Service to enforce the law. We do not need legislation, we do not need any hearings, just enforce the law that already exists.

It is not true, it is a bum rap that liberals have a one-track mind. We are accused of wanting only for the Government to spend more. We want to end waste, we want to trim the budget, we want to streamline government, we want the most efficient and the most effective government.

I am profoundly troubled by our huge deficits and the fact that, although they have declined in the last few years, it looks as though they will start growing again in the next century. What kind of national debt will we leave to our grandchildren? We hear a lot of talk about this from the other side of the aisle, but we are all concerned. Some wild guesses from the right are that we will leave a \$6 trillion or maybe even a \$10 trillion debt. When these people talk about leaving this debt, they do not talk about excesses of the kind that we have experienced over the last 2 years where \$13 billion was added to the Department of Defense budget, \$13 billion more than the President had requested.

I think the President had requested too much. The cold war is over, but we are still spending at an enormously high rate for our defense. We still have the same size operations for the CIA. The CIA budget has not been reduced. It is a secret budget, of course, so I cannot stand here and say that I definitely know that to be a fact. The budget is still secret, which is one more indication of how backward we are. The cold war is over, but the CIA budget remains secret.

We have evidence cropping up all the time, evidence being revealed that there is a great deal of waste at the CIA. The people that are being paid to spy are selling the secrets of the people they are spying on. And as a result, not

only are we wasting money, but people are dying. Lives are being lost as a result of our inefficient, ineffective CIA that will not even reveal its budget to us.

So we want to end the waste. Liberals want to end the waste. Progressives want to end the waste. We need the money in Brownsville, a part of my district that is the poorest district, we need the money in Flatbush, we need the money in Flatbush, we need the money back in the district to rebuild schools. We need the money in 1,000 different ways which will benefit the society far more than pouring it down the drain through corporate welfare and unnecessary expenditures for the CIA and for the Department of Defense.

Mr. Speaker, I am disturbed and troubled by this, and so are many more of my fellow liberals in Congress and elsewhere. But something else that disturbs me and troubles me is the view that the entire burden of balancing the budget should be borne by children whose parents happen to be drawing welfare checks. I am pleased and delighted to hear my colleague, the gentleman from Ohio [Mr. KASICH], tell us again and again that, if we are going to cut back on aid to dependent children, we should go after corporate welfare too.

I congratulate Mr. KASICH, the Republican chairman of the Committee on the Budget. That takes a lot of guts. He is willing to at least fight a brush war with the corporate welfare people. That is a beginning. With his powerful voice, we hope that he will continue to forge forward and begin to listen to what we have to say to him as we launch our war against corporate welfare from the level of the Progressive Caucus and the Black Caucus and others who want to finally see some justice take place in our revenue system.

In fact, corporate welfare costs the taxpayers much, much more than personal welfare. If we add together the amount the Government spends for various corporate subsidies and the amounts of revenue that the Government loses through all kinds of varieties of tax breaks and loopholes for business, the total of corporate welfare takes a much larger part of the Federal budget than income support for the very small, those people who are under 65 and who need it.

Also, we might add to that the people who are going to suffer as a result of Medicare cuts and Medicaid cuts. If you have the CPI, if you bring in changes to the Consumer Price Index, which eliminates or reduces the cost-of-living increase, the COLA, for the elderly, we are making them suffer unnecessarily, and the amount of money that is involved there is far less than the amount of money that is going to waste via corporate welfare.

Mr. Speaker, I am deeply concerned about how much corporate welfare is costing the taxpayer. I will be joining with the other 56 Members of the House progressive caucus tomorrow, as I said

before, March 12. I will be joining with them to present a plan for eliminating, or at least cutting back, 10 of the most egregious and outrageous budget-busting corporate welfare programs. I think we raised that number to about 15. We are going to add a few items, about 15 items that are budget-busting corporate welfare programs that we will describe. We will lay out a plan for reducing them tomorrow at the progressive caucus press conference to launch our war against corporate welfare.

Our caucus has been researching and putting together a program to cut back on corporate welfare and save the taxpayers billions of dollars in 1 year and over \$250 billion to \$300 billion in 5 years. I am proud to say that we have now added to our program, as I said, my own corporate welfare measure that would save the taxpayers maybe \$60 billion to \$70 billion in the first year of savings. Within that amount, it will be \$60 billion to \$70 billion of that total, and over the total program it will save far more, twice as much as that.

One of the most flagrant examples of corporate welfare results from a failure of the Internal Revenue Service, as I said before, to enforce a provision of the corporate income tax law that is already on the books. It does not take a new bill in Congress or a new law. All it takes is for the IRS to obey the mandate of the present law.

By the way, I am not talking about something that is new in the present law or was recently added to the present law. This is a provision that was adopted in 1913. It was adopted in 1913 as an integral part of the basic income tax law. I am saying that the taxpayers have lost over \$60 billion through its failure to enforce the law. This is over the past 3 years. It should assess at least that amount against dozens of large corporations right now in 1997.

The corporate income tax law mandates a very heavy tax penalty on corporations that let their profits pile up far beyond the reasonable needs of their businesses instead of paying dividends to their stockholders or owners. The law mandates a penalty of 39.6 percent of the amount involved. That is the same as the top personal income tax rate on those with incomes well over \$100,000.

This is a very stiff penalty, 39.6 percent. That is how you will realize a great amount of money if that penalty is invoked. If it is utilized, that weapon of the Internal Revenue Service is applied, if the corporations are forced to obey the law, we are going to have those kinds of payments coming due.

Let me just read that again: The corporate income tax law mandates a very heavy tax penalty on corporations that let their profits pile up far beyond the reasonable needs of their businesses instead of paying dividends to their stockholders or owners. The law mandates a penalty of 39.6 percent of the amount involved. That is the same as

the top personal income tax rate on those with incomes well over \$100,000.

Hundreds of corporations have adopted the practice of letting their profits accumulate, and then, instead of paying dividends, as they should, using the accumulated millions or tens of millions, or in some cases billions, to buy back their own stocks on the New York Stock Exchange or the over-the-counter market.

The amounts involved are in the billions of dollars, in fact probably at least \$300 billion in the 3 years, 1994, 1995, and 1996. Hundreds of corporations have adopted the practice of letting their profits accumulate, and then, instead of paying dividends, as they should, using the accumulated millions or tens of millions, or in some cases, billions, to buy back their own stock.

Mr. Speaker, one huge corporation, whose name is a household word known to every American, earned over \$5 billion, or \$10 per share, in 1996; earned over \$5 billion, or \$10 per share, in 1996, but it paid its common stockholders only about 14 percent of that amount in dividends, \$700 million, or \$1.30 per share. It has used most of its earnings, upwards of \$3.5 billion, to buy back its stock on the New York Stock Exchange.

I hope my colleagues are listening to these numbers. I hope my colleagues heard the previous discussion about spreading the wealth, how people should get their taxes back, more money in the pockets of Americans to generate a more vigorous economy.

Would we not generate a more vigorous economy in America if we had the stockholders pay their dividends? Huge profits are made. Instead of taking those profits and hoarding them in the corporate structure, buying back the stock, why not spread the money out into the economy, give it to the people who deserve the dividends, have earned the dividends, and let them invest the money as they see fit. We could have a more diverse, more vigorous economy if the corporations paid dividends instead of hoarding the money in these buy-backs.

Why did the corporations do this? Well, they do not invite me to their board meetings, and they are very careful not to say much about what they are doing in their earnings reports or in their press releases or other communications to their stockholders and the public. That includes they do not say much to the SEC, the Securities and Exchange Commission, about this either. The agency that regulates them does not get much information of this kind.

The reason seems fairly obvious. It is amazing that there is no discussion of the press, that some of these Senators and Members of Congress are not talking about the problem of buy-backs where billions of dollars are being hoarded and the economy is being adversely affected and the tax law is not being obeyed. They are not talking about it. Instead, they focus on the

Consumer Price Index. People who ought to know better are turning away from a discussion of where the real money is to a discussion of how can we squeeze more money out of the poor, how can we change the Consumer Price Index, how can we tamper with that in a way which will produce savings on the backs of the poorest people in America?

□ 2215

Buying back their stock supports the price of the stock when a corporation does that. Maybe it moves it higher. It makes the stockholders happy, those who do not exactly know what is happening and would prefer to have the stock. Nobody gives them the choice of whether they would like to have their stocks at a higher level or the dividends. Nobody really gives them that choice, but it does make them happy to see the stocks rise. It also gives the executives bigger profits on their stock options and maybe they get bigger bonuses as a result.

It makes some of the stockholders happy for another reason. It saves them from having to pay taxes that they would have to pay on large dividends that the company paid to them. Thus, many companies are using accumulated profits to buy back the stock in order to protect their stockholders from income taxes that they would pay if the company gave them a decent dividend instead of a tiny one.

The law says when a corporation does this it must pay a penalty, a high 39.6 percent penalty. Listen carefully. What I am saying is that it is against the law. It is against the law to plot to assist the stockholders in avoiding the payment of income taxes. It is against the law. That is what this is all about. The law says when a corporation does this it must pay a penalty, a high 39.6 percent penalty.

All it takes to inspire greater respect for the law is for the IRS to assess these penalties on several hundred corporations, but it does not seem to be doing this, as far as I can find out. If you would enforce the law on some corporations the word would go out, because over the years they have stayed away from doing this; but in the last 10 to 15 years there has been a gradual increase of corporations hoarding their money, buying back their stock, watching over their shoulder to see if the IRS would do anything about it, probably. They have the best legal minds, so it is not by accident they are doing what they are doing.

But it is against the law. You pay your income taxes on April 15. You obey the law. I am sure you want everybody else to obey the law. Yes, the law can be changed. Often it is changed in favor of the people who have the most clout, the most money.

We have a big scandal raging with a focus on the White House, and excessive taxes being used to solicit contributions, collect contributions. All kinds of things are happening. They

focus it on the White House, but if you have an objective study and you focus it in other directions, you will find it is also happening in the other party, also.

It happens that there is too great an amount of money that is required to run for office. We know that. We are too cowardly to do anything about it. We need a constitutional amendment which definitely allows Congress to set limits on the amount of money spent for campaigns.

This is a problem that we can solve, but nobody has the guts to really go after it. Anybody who talks about the problem and does not want to go all the way to a constitutional amendment to limit the amount of expenditures on campaigns is a hypocrite. They really do not want to solve the problem. They want to play games with the American people. Too much money is needed to run for office. There are too many opportunities to bribe anybody running for office indirectly. Legal bribery is taking place all the time. We need to deal with that.

Corporations certainly have a lot of money. They are able to lobby hard. They are able to influence how the Tax Code is written. If they won through that avenue, we have to wave a white flag and surrender. But they did not win that way. I am sure they tried to change the law. The law has not been changed.

I want to make it clear that I have not seen any corporation's income tax return and I do not ever expect to. Not only the tax returns themselves, but also all discussions and negotiations between the IRS and any taxpayer, corporate or individual, are totally private and secret. That is the way it should be. I do not speak from knowledge of having examined anybody's tax returns anywhere.

But large publicly owned companies do publish their financial statements. My staff has examined hundreds of quarterly and annual earnings reports for 1994, 1995, and 1996. We have found more than two dozen companies with stock buy-backs amounting to \$1 billion. Over the 3 years a dozen corporations have over \$2 billion of buy-backs, and a handful over \$5 billion in buy-backs. These are the buy-backs which are not legal.

If the IRS were to assess the 39.6 percent penalties against these dozen corporations, the tax penalties would amount to several hundred million dollars in almost every case, and well over \$1 billion for a few of the individual corporations.

As I said before, I estimated the total for all corporations would be at least \$60 billion in penalties, \$60 billion or more in penalties that would be collected over a 3-year period. So even though I have not been privy to any discussion between the IRS and any corporation, it seems very clear that the IRS is not assessing these unreasonable accumulations of surplus penalties against large publicly owned corporations. That is what the penalty is.

It is called an unreasonable accumulation of surpluses. You cannot do that.

There are two requirements for this penalty to apply. One is that the earnings and the profits of the corporations are permitted to accumulate beyond the reasonable needs of the business. The penalty will apply if you have permitted the earnings and profits of corporations to accumulate beyond the reasonable needs of the business.

The other is that the accumulation is "for the purpose of avoiding the income tax with respect to its shareholders." I am quoting from the Tax Code. For the benefit of anybody who might have just joined us and is listening, this is very technical. I realize that. It is something which is very simple in the law. A few simple sentences say clearly what has to be done, but I am going through this long explanation because of the fact that for some reason the law is not being enforced.

I do not want to have a situation where people are able to pretend that the simplicity is not there. It is there. I am describing something which does not require hearings. It does not require more legislation. It is right there already in the law.

Mr. Speaker, I submit for the RECORD a document entitled "Tax Penalty on Corporations that Accumulate Surplus Profits in Excess of the Reasonable Needs of the Business, Legal Background." I want it in the RECORD so anybody who wants to look at it in great detail may examine it. It will be in the CONGRESSIONAL RECORD. Members may read it if they want to go into deep details.

The material referred to is as follows:
TAX PENALTY ON CORPORATIONS THAT ACCUMULATE SURPLUS (PROFITS) IN EXCESS OF THE REASONABLE NEEDS OF THE BUSINESS
LEGAL BACKGROUND

One of the basic principles of the tax law in the U.S. is that a corporation is a legal entity that is separate and distinct from its stockholder-owners. It is sometimes called a "fictitious person."

Thus, the shareholder-owners are not personally liable for the debts and liabilities of the corporation. This distinguishes a corporation from a sole proprietorship or partnership, where the owners of the business share all of the assets, liabilities, debts and obligations of the business. Limited liability is one of the most important and most advantageous characteristics of the corporate form of doing business and is the principal reason that the corporate form is used by virtually all businesses, large and small, in the U.S. and throughout the world.

Because the corporation is a separate and independent entity, its profits are subject to a corporate income tax. Then, when profits are distributed to the stockholder-owners as dividends, the stockholders pay a personal income tax on those dividends. This so-called "double tax" is vigorously and bitterly opposed by the business and investment communities, but it is a basic part of our tax law.

The so-called "double tax" provides a powerful incentive for corporate business managements to let profits pile up in the corporation, rather than distribute them as taxable dividends. In order to prevent this, the U.S. tax law imposes a severe penalty on corporations that accumulate surplus (profits)

in excess of "the reasonable needs of the business."

This penalty on accumulations of corporate surplus (profits) in excess of the reasonable needs of the business is not something new—it is a fundamental part of our tax law and has been since the income tax was first adopted in 1913.

In the original 1913 income tax law, the penalty was applied against the stockholder-owners. Then, in 1921, the law was changed so that the penalty applies (and has applied ever since) against the corporation itself.

Since its adoption in 1913, the Internal Revenue Code has been reenacted many times. The rate of penalty has been changed a number of times, and various amendments have added relatively technical provisions involving notice to taxpayers, burden of proof and the like. Otherwise, the penalty provision has remained in the tax law since 1913 without interruption and with only two significant changes. One changed the application from the stockholders to the corporation itself, and the other in 1984 made clear that the penalty applied to large public corporations. (See below.) The penalty provision is found in Sections 531-537 of the Internal Revenue Code.

The penalty tax rate is 39.6% of surplus accumulated in excess of the reasonable needs of the business; it was increased from 28% to 39.6% in 1993.

CONSTITUTIONALITY, VALIDITY AND ENFORCEABILITY OF THE PENALTY

This penalty tax provision has been before the U.S. Supreme Court three times. The first time was in 1938, when corporate taxpayers challenged the penalty and alleged a number of reasons why it believed it was unconstitutional, invalid and unenforceable. The Supreme Court dismissed all of these challenges summarily and without serious discussion, and it unequivocally affirmed the constitutionality and enforceability of the penalty. (*National Grocery Co.*, 38-2 USTC 9312, 304 U.S. 282, 58 Sct. 932.)

The U.S. Supreme Court considered the penalty provision again in 1969 and in 1975. In one case the issue was the motive or purpose for accumulating surplus. (*U.S. v. Donruss*, 393 U.S. 297.) In the other, there was a dispute about how to calculate the amount of accumulated surplus. (*Ivan Allen Co.*, 422 U.S. 617.) The constitutionality and enforceability of the penalty provision was taken for granted in these cases. It was never mentioned in either of the opinions.

APPLICABILITY OF THE PENALTY PROVISION TO LARGE, PUBLICLY-OWNED CORPORATIONS

There is nothing in the Internal Revenue Code or regulations that exempts publicly-owned companies from the penalty for unreasonable accumulation of surplus (profits). However, the legal community somehow developed the notion that the penalty was intended to apply only to closely-held or family companies. An exemption for publicly-owned companies evolved, even though it has no support in the statute itself.

In a case that became a landmark, *Golconda v. Commissioner*, 507 F.2d 594, the Ninth Circuit Court of Appeals held that the penalty should not be applied against publicly-owned companies unless a small group controlled 50% or more of the stock. The Court said, "There is, of course, no distinction in the statutory language between publicly and closely held corporations . . . [but] Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially re-enacted statutes, are deemed to have received Congressional approval and to have the effect of law."

The Internal Revenue Service responded to the *Golconda* decision by announcing that it

did not agree with it and would not follow it. (Revenue Ruling 75-305). The IRS stated, "The position of the Service is that there is no legal impediment in applying, in an appropriate case, the accumulated earnings tax to a publicly held corporation."

The IRS never gave any support to the theory of an exemption for publicly-owned companies. True, it did not (as far as can be determined) to try appeal the *Golconda* decision to the Supreme Court. But, that may be because it was afraid it would lose. Despite the 1974 *Golconda* decision, the IRS pursued another publicly-owned company successfully; it obtained a brief opinion by the Court of Claims that "the accumulated earnings tax can apply to publicly-held corporation" (*Alphatype Corp. v. U.S.*, 10/21/76, 76-2 USTC 9730). In its opinion, the Court stated that there is not the slightest evidence that the Commissioner has by ruling, regulation or official policy exempted such (publicly owned) corporations from liability for the accumulated earnings tax.

In 1954, in one of the periodic re-enactments of the tax code, including the penalty provision, the House attempted to add a provision exempting publicly-owned companies if no group controlled more than 10% of the stock. This proposed amendment was dropped in conference.

In 1985 the world changed. The Revenue Act of 1984, effective in 1985, amended the law by adding section 532(c). The relevant section of the Revenue Act of 1984 is as follows:

"Section 58. Amendments to the Accumulated Earnings Tax.

(a) CLARIFICATION THAT TAX APPLIES TO CORPORATIONS WHICH ARE NOT CLOSELY HELD.—Section 532 (relating to corporations subject to accumulated earnings tax) is amended by adding thereto the following new subsection:

"APPLICATION DETERMINED WITHOUT REGARD TO NUMBER OF SHAREHOLDERS.—The application of this part to a corporation shall be determined without regard to the number of shareholders of such corporation."

The above section, which remains in the law, effectively and permanently ended the de facto exemption for publicly-owned companies.

In 11 years since the law was changed, the IRS appears to have failed to apply the penalty to publicly owned companies that are buying back their own stock.

The change in the law in 1985 eliminated any doubt as to whether publicly-owned companies were exempt from the penalty—they are not. Yet, there appears to be only one court case on the matter. In 1993, the Tax Court resoundingly affirmed the opinions stated here; namely, that the 1985 tax law change "nullified" the earlier *Golconda* decision and made completely clear that publicly owned companies are not exempt from the penalty (*Technalysis v. Commissioner*, 101 TC 397).

Discussions and negotiations between the IRS and a corporate or individual taxpayer are extremely confidential, and it is not possible for outsiders to know whether the IRS has raised the issue, unless and until a particular taxpayer takes the IRS to court. However, the amounts of money involved here—the penalties may measure in the billions—are such that the matter would surely have come to public attention if the IRS were active in any significant way.

For example, if a publicly owned company is hit with a multimillion dollar tax penalty that will significantly affect its earnings, financial position, net worth and dividend policy, it is required to make that information public immediately, under rules of the Securities and Exchange Commission, the New

York Stock Exchange, and also the National Association of Securities Dealers (NASD) which regulates companies with stocks traded over-the-counter.

The penalty should be applied against publicly-owned companies that pay small dividends and spend large amounts to buy back their own shares if the buy back amounts far exceed the amounts needed for employee stock purchase plans, executive stock options, and so forth.

The tax law, in section 531-537 of the Internal Revenue Code, provides that the accumulated earnings tax will apply to any corporation . . .

"Availed of for the purpose of avoiding the income tax with respect to its shareholders . . . by permitting earnings and profits to accumulate instead of being distributed." (Section 532.)

" . . . the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation . . . shall prove to the contrary." (Section 533.)

Thus, for the penalty to apply, two tests must be met:

1. there must be an intent or purpose to save the shareholders from income taxes on dividends, and

2. the accumulation of earnings must exceed the reasonable needs of the business.

"Reasonable needs of the business" is a factual test involving a number of factors: the amount of earnings, future plans that require large capital investment, the amount of dividends paid, etc.

The argument is made here that many large publicly owned companies are accumulating profits far in excess of the reasonable needs of the business, evidenced by the following:

consistently, they are paying out in dividends 20% or less of their earnings, AND

consistently, they are accumulating cash far in excess of their needs for capital expenditures, AND

consistently, they are passing up opportunities to borrow money on very favorable terms or are even reducing outstanding debt, AND

consistently, they are using accumulated earnings not to pay dividends but to buy back their own shares at prices far in excess of book value. (Thus, if the book value of their net assets, as shown on their own published balanced sheets is, for example, \$10 per common share, and if they are buying back their stock at \$20 or \$30 per share, they are reducing the book value of their remaining shares.)

It is argued there that this pattern of behavior clearly indicates that the earning used for stock buy backs were accumulated in excess of the reasonable needs of the business.

Corporate managements will argue that, "Well, we have to buy shares back because at the same time are selling shares through employees stock purchases plans, executive stock options and dividend reinvestment plans available to stockholders, and we also (in some cases) need shares for conversion of convertible preferred stock or debentures.

These arguments are absolutely valid but many large companies are buying back twice or three times or five times or eight times as many shares as they need for these purposes.

Under Section 533, quoted in above, if a corporation fails the "reasonable needs of the business" test the burden of proof is on the corporation to show that it did not meet the other test, namely, intent to protect the stockholders from dividends.

Thus, the Internal Revenue Commissioner can reasonably take the following position:

Corporations that have failed the "reasonable needs of the business" test on the fact will be assessed a penalty of 39.6%; and the burden of proof is on the corporation to show that it did not have the intent to protect stockholders from dividends.

Sections 531-537 of the Internal Revenue Code must be enforced immediately.

These are the actual words of the statutes I have read before. It is sections 531, 532, and 533 of the Internal Revenue Code. As we move toward April 15, make a note to go and examine sections 531, 532, and 533 of the Internal Revenue Code.

Accumulation of profits is OK for the reasonable needs of businesses, even in large amounts. Whether the accumulation is justified is a factual question. It depends on an analysis of the particular situation of each corporation. There is no formula or rule that applies to every business.

A corporation may be justified in accumulating profits without paying them out as dividends to finance the planned building of a new plant, the purchase of new equipment, to replace old items or to expand the business, to finance other kinds of expansion, such as the launching of a new product or the entry into new markets in other parts of the country or in other countries.

They may do it for working capital needed to carry the inventories and receivables of a growing business. They do it to retire debt incurred in the course of a business or to make loans and advances to customers or suppliers to enable them to continue doing business with the corporation; to buy another business, to build reserves for product liability losses or reserves for property losses from storm damage; to finance expenditures required to meet environmental regulations; to finance research for the development of new products. They may accumulate capital. Nobody is talking about the government interfering with the amassing of large amounts of capital for business needs.

It goes on and on. There are many good, justifiable reasons of a business which can justify the accumulation of profits. These have been examined and ruled upon in hundreds of cases in tax court and other courts in the 80 years-plus since the income tax and tax penalty were adopted.

But buying back the stock just to run its price up and to protect the stockholders from income taxes on dividends, these are prohibited actions. You cannot do that legally. If the corporations want to pay the profits available to the stockholders, paying dividends is the way they should do it. If you want them to get the benefit of the profits, pay them the dividends; do not protect them by holding onto the money and lowering their own tax bill. That is clearly prohibited.

Mr. Speaker, let me now take a few minutes to examine the reasons for and the history of this provision for a heavy tax penalty on the unreasonable accumulation of corporate profits and

surplus. One of the very basic provisions of law and tax law in our country and throughout the world relates to the fact that a corporation is a legal entity that is distinct and separate from its owners, the stockholders.

A corporation has been called a fictitious person. This separateness is crucially important to the stockholders, because it insulates them from the debts and obligations and liabilities of a corporation and its business. If a corporation has problems, loses money, and eventually goes bankrupt or out of business, the stockholders may lose everything they invested in the stock, but that is all they will lose. The creditors cannot come after their personal assets. This is a device which has worked over a long period of time, and it is a device which you have to pay a price for.

This limited liability distinguishes an incorporated business from a partnership or a proprietorship, sole proprietorship. If those businesses go under, the owners may lose not only the amounts they invested but also their cars, their homes, their savings, and any other investment or assets.

This lesson was painfully learned by many wealthy Americans, British, and others who invested in the unincorporated Lloyds of London. Many of these names, people who were the investors in Lloyds of London, had to file personal bankruptcy when Lloyds incurred huge insurance losses for several years in a row and assessed those losses against the investors personally.

Because of this limited liability feature of the corporations, however, virtually all businesses are incorporated. Lloyds is one of the few huge operations in the world that operates that way. Even the law firms and accounting firms have recently figured out a way to organize professional corporations so that the partners can avoid unlimited personal liability.

Because of the separate identity of a corporation, it is required to file its own income tax return and to pay a corporate income tax on profits. The corporation, for all the reasons I have just given you, is treated as an individual and is required to file its own income tax return and pay a corporate income tax on its profits.

To prevent the excessive pileup of earnings, Congress established the tax penalty in the original Internal Revenue Code adopted in 1913. The code has since been renewed and revised and overhauled and amended many times.

The penalty tax rates have changed a number of times, but the basic provision has remained in the law every year without significant change, with the sole exception of an amendment in 1984. That amendment only strengthened the law. It was an amendment to make clear that the penalty provision applies to publicly owned companies.

The only big amendment recently was in 1984, when they amended the Tax Code to make it clear that the provision applies to publicly owned companies. There was a time when they

said it was only privately owned companies, closely held corporations. But now it is quite clear as of 1984.

This tax penalty is somewhat unusual in that the law does not say that excessive accumulation of corporate profits is a crime. You know, a lot of individuals that I know are in serious trouble with the IRS. The last time I was in an IRS office I saw the place full of people who were obviously poor people, and they were not being allowed to get away with anything. They were going to have to do whatever was necessary to pay the taxes that they owed. If they did not do that, if they told some lies, they would end up in jail. I know of a situation now where there is a guy who told a few lies, and they have got the U.S. attorney investigating him now. He may go to jail.

But this tax penalty is unusual. The law does not say that excess accumulation of corporate profits is a crime. The law does say instead that corporations should not do it. If they do it they will have to pay a penalty. In other words, no corporation, executive board, or anybody is going to jail for violating this part of the Tax Code. It is very interesting. But they do assess a very heavy penalty.

In the early days of the income tax, the IRS was diligent in applying this tax penalty to closely held or family companies, as I pointed out. It sometimes lost in court, but in hundreds of cases it did collect the penalties, in hundreds of cases.

But for some strange reason, in the early days the IRS rarely applied the penalty to publicly owned companies. Perhaps the reason was that it was customary in those days for large companies to pay out good-sized dividends rather than using their profits to buy back their own shares. There is nothing in the Internal Revenue Code or regulation that gives publicly owned companies an exemption from this penalty on accumulation of profits in excess of reasonable needs of business.

The notion sort of grew up like Topsy, but it has no basis. Somehow, perhaps because it was thought smaller companies were the worst offenders, it became customary for the IRS to leave large corporations alone, and so without any support in the language of the law, a de facto exemption for public companies evolved and eventually took on the force of law.

The IRS never agreed to it, they never agreed to it, and indeed it went out of its way to publicly state its disagreement with the appellate court decision that confirmed the exemption in the landmark *Golconda* case in 1974.

□ 2230

There was one case that did go to the Supreme Court, the *Golconda* case in 1974, where they, the Court ruled that it did not apply to publicly owned large corporations. That was 1974.

However, all that is history, all that is irrelevant now because in 1984, Congress amended the basic penalty provi-

sion to make it clear that it applied to all corporations regardless of the number of stockholders. Congress looked at what happened with the case in 1974 and Congress 10 years later amended the law to make it clear that this provision applies to all corporations regardless of the number of stockholders.

In other words, the amendment eliminated an exemption that had previously been thought to apply to large publicly owned corporations with dozens or hundreds or even thousands of stockholders.

Mr. Speaker, I would like to explain why I believe this 39.6-percent penalty should be applied against these huge corporations that are buying back their own stock in huge amounts.

Again, for the benefit of anybody who just joined us, I am concerned about the fact that the Congress of the United States, the CBO, the Office of Management and Budget, great Senators, some of them from New York State, have focused their attention recently on gaining more revenue, gaining more money to save through an adjustment of the Consumer Price Index, lowering the cost of living increases for everybody on Social Security in order to help balance the budget.

My question is, why do you not look at the Internal Revenue Code and demand that the Commissioner enforce the law that already exists and tomorrow, March 12, Wednesday, we are going to talk about other corporate loopholes, other corporate welfare that ought to be closed.

Why is it that everybody in Washington who is in high places, leadership, the White House, why are they blind to the existence of great abuses that are being committed by corporations? Why are they instead focusing their microscopes on programs that serve poor people and squeezing everything they can, every dollar they can out of those programs.

Mr. Speaker, I would like to explain why I believe, why I believe this 39.6-percent penalty should be applied against these huge corporations that are buying back their own stock in huge amounts. The law mandates that the penalty should be assessed if two tests are met. First, that profits are permitted to accumulate beyond the reasonable needs of business and, second, that this is done, quoting again from the statute, for the purpose of avoiding the income tax with respect to the shareholders.

In other words, there has to be the fact of the accumulation, also the intent to protect the stockholders from income taxes. The officers and directors of large American corporations can read the statute as well as I can or better. They are way ahead of me in having platoons of well-paid lawyers to advise them and keep them out of trouble. I suspect, although I cannot prove it, that these high-priced lawyers have advised them that they are vulnerable to this penalty. I suspect that the lawyers have told them to be very careful

in their public statements and to avoid bragging to the stockholders that they are protecting them from income taxes by using accumulated profits to buy back stock rather than paying dividends.

My staff and I, as I said before, have examined literally hundreds of quarterly and annual earnings reports of publicly owned corporations from 1994, 1995, and 1996, and we were struck by how very little these corporations had to say about their stock buyback programs and the reasons for them.

Here is one exception, one example we found of an exception. This is a case where the lawyers probably fell down on the job and let the veil slip. A very large American corporation, the name is a household name known to everybody, but it said, I will not name the corporation, but it said in its 1995 annual report, quoting from the report, "some shareholders have asked us why we are repurchasing shares rather than increasing our dividend as we did in years past. We believe that most shareholders prefer gains in stock price to receiving dividends because those payments are taxable annually."

There is a clear statement by a corporation of their intent to violate the law. They are not supposed to help shareholders escape paying more taxes. The management of this large corporation made a mistake. They let the veil slip. They let the real truth come out and, as I said, this is one of the rare exceptions, one of the few instances we were able to find where they admitted the real reason for buying back their stock. Of course, the Wall Street community and the business community will put the opposite interpretations on all of these earnings reports. They will say, we did not have an intent or a motive to protect the stockholders from income taxes. That is not why we were buying back the stock. The proof is that none of our earnings reports will mention such a thing. That proves that the intent is not there, except for one unfortunate company that slipped.

I am sorry but I have to say that that comes under the heading of very sophisticated baloney. This is one of those situations where everybody knows what they are doing and the reason they are doing it but nobody will say, nobody will speak the real truth. The point I am making here is that the Commissioner of Internal Revenue, if she considered assessing these unreasonable accumulations of surplus penalties, as I am urging her to do, she might conclude that there was not sufficient proof of intent to protect the stockholders from income tax. It is hard to prove intent, hard to prove what is in someone's mind. This is something that comes up often in our legal system.

I am very pleased to be able to say that the Internal Revenue Commissioner does not have to prove intent. The Internal Revenue Commissioner does not have to prove intent. Rather the way the law is written, the burden

of proof is on the corporation to disprove intent. The corporation must disprove that it intended to save money for its stockholders.

Here is the actual language of section 533 of the Internal Revenue Code. "The fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders unless the corporation by the preponderance of the evidence shall prove to the contrary." Reading from section 533 of the Internal Revenue Code: "The fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders unless the corporation by the preponderance of the evidence shall prove to the contrary."

Mr. Speaker, we have seen that there are two tests for this penalty to apply. The first test is the fact of an unreasonable accumulation of earnings. The second test is the intent to protect the stockholders from income taxes. But the Internal Revenue Commissioner does not have to prove the second test, the intent. If the first test, the fact test, is met, the Commissioner does not have to prove intent. Rather it is up to the corporation to disprove intent. It might be hard for the Commissioner to prove intent. That is true, but she does not have to prove intent. The burden of proof as to intent is on the corporation, not the IRS. That is what the clear language of the statute says.

Of course, Mr. Speaker, any corporation and any taxpayer has a right to object to any tax or tax penalty and to attempt to show that it has not been properly assessed. Discussions and negotiations between a corporation and the IRS are private and they are confidential. And if the discussions reach an impasse, the corporation can sue the IRS in tax court or Federal district court and let the court determine whether the tax is properly assessed. The penalty would have to be reduced or even dropped. Maybe a corporation could show that it was justified by the reasonable needs of its business in buying back its stock.

But I believe the Commissioner of Internal Revenue should find out if the penalties are justified and the way to do that is to assess the penalties, let the corporations protest, and to settle the matter in the course of negotiations the IRS normally conducts with individuals and taxpayers.

Treat the corporations the way they treat millions of Americans who file their taxes on April 15. Enforce the law. Enforce the law and let them deal with the attempt of the IRS to enforce the law. It certainly looks as though large penalties are justified based on my examination of the public financial statements of dozens of large American corporations and probably hundreds of others, too.

Many large corporations have now established a pattern that includes most or all of the following: Consistently year after year they pay dividends on their common shares that amount to only 15, 20, or 25 percent of their earnings. And consistently year after year, their accumulated earnings together with their cash-flows outside the earnings statement, from depreciation, amortization, deferred income taxes, provide far more cash than they need for capital spending and other necessary programs. And consistently year after year they do not use excess cash to pay down debt. Indeed in some cases, they actually increase debt by borrowing additional money and using it for the stock buy backs. And consistently year after year they accumulated large amounts of cash and profits far beyond the dividends they pay and the reasonable needs of the business, and they use large amounts of this money to buy back their common shares.

For dozens of corporations, probably hundreds of corporations this pattern has been present in 1994, 1995, and 1996. I believe the Commissioner of Internal Revenue, Margaret Milner Richardson, should assess 39.6 percent tax penalties as mandated by sections 531 to 537 of the Internal Revenue Code, not on all the accumulated profits but on the amounts of accumulated profits used for net buy backs of stock.

I believe that the amounts involved for all publicly owned American corporations are at least \$200 or \$300 billion or more. The 39.6-percent penalty on these amounts will total at least \$60 billion and possibly \$70 or \$80 billion of additional Federal tax revenue in this year fiscal 1997, ending September 30, 1997.

Mr. Speaker, I have said that I believe the penalties should be applied to the amount of the net buy backs which is smaller than the amount of the total buy backs. Let me discuss this point for a moment because it is a very important one and it involves the counterargument that corporations make and will make against the charge that they are accumulating profits beyond the reasonable needs of the business.

Many, in fact most publicly owned corporations have employer stock purchase plans, stock options for executives, key employees and directors, and dividend reinvestment plans for stockholders. In addition, some corporations have convertible preferred stocks or debentures which can then be converted at the option of the holder to common shares. All of these programs involve the sale or issuance of additional common shares which may be shares held in the corporate treasury or newly issued shares.

As a result, they are selling and issuing other shares under these options, purchase and conversion programs. Indeed, this is the reason that they often give for their buy-back program.

Mr. Speaker, this argument is absolutely valid. I agree that if a corpora-

tions buys back its shares, it is justified in doing so, if it issues or sells the same number of shares under these various programs. Unfortunately for their argument we have found that for many corporations the stock buy backs far exceed the number of shares issued.

In examining the published financial statements of large American corporations, we found many that bought back in 1994, 1995, and 1996, they bought back 2 or 2½ times as many shares as they issued; we have found several that have bought back 5 or 6 or 7, 8 times as many shares as they issued; we even found that one bought back over 16 times as much as they issued.

I think clearly we cannot expect the Commissioner of Internal Revenue to assess the penalties on amounts of stock bought and then reissued in the same year on option and purchase programs. It is for that reason that I am asking the Commissioner to assess penalties on the amounts of the net buy backs rather than the total buy backs.

Finally, Mr. Speaker, I would like to address the question of how much money is involved here, how much corporate tax revenues could be raised if the Internal Revenue Commissioner assesses the penalties that I believe she should. I cannot estimate the amount with any kind of real accuracy, but I am absolutely certain that the amount is huge. It is enormous.

I want the Congressional Budget Office to take a look at this. I would like the Congressional Budget Office to give us a reading on exactly how much money is involved here. In fact the Progressive Caucus budget, the combination Black Caucus and Progressive Caucus budget will include this as one of the items in the budget. And we will, our alternative budget will ask for an assessment, a reading of the Congressional Budget Office on exactly what amounts will be generated.

Those who read the financial press and watch business programs on TV or surf the Internet are well aware of the amount of buy-back activity that is increasing all the time. We have asked the people in the Congressional Research Service to help us. So far we were not able to accumulate a tabulation, but there are people who are looking at this for commercial purposes. There is a buy-back letter that a California man puts out. There is all kinds of activity going on showing that this is a profitable activity.

Let me conclude by saying that I have given a rather lengthy treatise here on a subject that I am not an expert in. I serve on the Committee on Education and the Workforce. I do not serve on the Committee on Ways and Means. I am puzzled and baffled by the failure of members of the Committee on Ways and Means to see the obvious. I am baffled and puzzled by the failure of the CBO, the Office of Management and Budget to see the obvious. Why are we studying ways in which we can cut programs for the poor? Why are we looking at the CPI and hoping to cut

the cost-of-living increases for people on Social Security in order to help balance our budget when we have abuses of this magnitude? Why? Why is there a strain on the American character which allows leadership to always prey upon the poorest and the weakest? That strain was evidenced in the way we handled Native Americans, the people who owned this land when we got here. They were weak and we outmanned them and our weapons were superior and we took advantage of the weak.

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We took advantage of slaves that we transported here from Africa. For 232 years we held them in bondage. Why is there a strain that goes after the weakest people in a merciless way?

In this sophisticated day, when we assume that we are more moral, that we have higher standards of morality and we assume that we are the indispensable Nation for the rest of the world and we set standards for the rest of the world and we talk about human rights, why are the people in our leadership focusing on ways to squeeze the poor while there are obvious ways to raise the necessary revenue?

Progressives, liberals, have not paid enough attention to the revenue side of the budget process. We have not paid enough attention to the fact that the Internal Revenue Code is where we have the largest amount of giveaways. Corporate welfare is the biggest welfare program in America. We must end corporate welfare as we know it. We must end corporate welfare.

We will begin our process tomorrow when the Progressive Caucus announces its war against corporate welfare. We welcome the gentleman from Ohio [Mr. KASICH], and all the other elements in this Capitol on the Senate side or the House side, wherever there are people who want justice; people who recognize that the place where there is the greatest amount of prosperity, where people are making money in great amounts right now is in the corporate world.

Our corporations are not suffering. If we need to balance the budget, the steps to balancing the budget should be taken in the effort to end corporate welfare. Corporate welfare should be our target. Those who have the most and who have had the greatest number of advantages are also guilty of the greatest abuses.

The corporate segment, the corporate proportion of the income tax burden fell to the present 11 percent. The total income tax burden. Only 11 percent of that is borne by corporations, while 44 percent now is borne by families and individuals. I have given one of the reasons that is true: these kinds of abuses, this kind of failure to enforce the law. We do not need hearings. We do not need legislation. All we need to do is tell the Internal Revenue Service to enforce the law.

April 15 is the date that we all go out and obey the law. Why not have the

law apply to all Americans at every level, including corporations that are treated as individuals for their own profit and economic sake?

THE POOR AND NEEDY WITHIN OUR SOCIETY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, the gentleman from Missouri [Mr. HULSHOF] is recognized for 60 minutes.

Mr. HULSHOF. Mr. Speaker, I hope in the moments that I have in this late hour to answer part of the debate and some of the questions that the distinguished gentleman from New York has asked, specifically regarding the poor and the needy within our society.

Mr. Speaker, many of us who have run for office, in fact our own elected President, has oft quoted the statement that the era of big Government is over. I believe that the last Congress, the 104th Congress, helped make that claim a reality when it began to wrest away control from the Federal bureaucracy and began to send power and control back to State governments and city councils and county commissions and local school boards.

One of the major accomplishments of the last Congress was the end to the Federal entitlement to welfare. And I recognize that there are many skeptics, many doomsayers who wail and lament and beat their chests and say that society, specifically those poor and needy in our communities, that they are doomed. Mr. Speaker, just as the era of big government is waning, volunteers and faith-based charities and community outreach are moving in to fill that void.

Of course, we recognize how tough it is. There are single parents. There are two-income families that are struggling to juggle family and jobs. There are businesses that are swimming mightily against the tide of regulation and bureaucracy which often dissuades them from getting involved in community outreach. But I believe we must begin to forge a new vision, and our vision in this new era must be to empower communities to address the needs and problems within those communities.

We have to reignite volunteerism among the young and among the young at heart. Yes, the Government will continue to provide a safety net, but individuals helping individuals is the kind of positive action that weaves a strong social fabric.

Mr. PAPPAS. Mr. Speaker, if the gentleman would yield.

Mr. HULSHOF. I would be happy to yield to my friend and colleague from New Jersey.

Mr. PAPPAS. I thank the gentleman, Mr. Speaker, for raising this issue and would like to just add my thoughts to what I think is an exciting time to be here in the Congress and talk a little bit about my service to my constituency, or a portion of my present con-

stituency, prior to the time I came to Congress.

I served as a local and county official and was exposed to many examples of how our Nation's communities have been able to find creative solutions to the issues facing those neediest citizens that we represent.

Back in New Jersey, a constituent of mine, Rev. Buster Soaries of Franklin Township, is blazing a trail of progress in Somerset County. Reverend Soaries has been able to mobilize thousands of members of his church as well as two communities, New Brunswick and Franklin Township, to work together to develop a project known as Renaissance 2000.

That vision for the program combines economic and community development, neighborhood revitalization, community and business partnering, housing rehabilitation, and a commitment of both youth and the adult members of these two communities to take what many consider to be a blighted and underutilized area and turn it into a thriving and successful new community center.

I have worked and watched Reverend Soaries take the kernel of a dream and begin to turn it into a model, a model that could very well be used in other parts of our Nation.

Additionally, prior to my election to Congress, I served as the chairman of my county, Somerset County Board of Social Services, which in New Jersey, the county boards of social services are the major organizations that oversee the majority of the welfare programs. In that capacity I was proud to have been involved in an initiative in which we successfully tapped our religious communities to work along with county government to reach out to families on welfare and provide that extra element of assistance.

Many churches, synagogues, and other religiously based organizations back home agreed to lend a hand in many ways, and they include an agreement or a desire to mentor families on welfare in an effort to keep them together and to help them find gainful employment.

In some instances there were churches that have been asked or have stepped forward to provide scholarships for doing. Many of these religious institutions, churches and some synagogues, operate and house day care facilities. And now many clients on welfare are being matched with one of these facilities, and these congregations are granting free scholarships, quote end quote, to these, in many instances, single parents, single women with one or more children on welfare, and allowing them to move off of welfare, have gainful employment, and have that assistance in the form of free day care which is so important.

Lastly, a coordination with some business owners from one particular congregation has stepped forward, and many of these individuals who are business owners are now wanting to make