



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 105<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 143

WASHINGTON, THURSDAY, JUNE 26, 1997

No. 92

## Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today's prayer will be offered by a guest Chaplain, the Reverend Dr. Charles E. Poole, First Baptist Church, in the city of Washington, DC.

We are pleased to have the reverend with us.

### PRAYER

The guest Chaplain, Dr. Charles E. Poole, pastor of First Baptist Church, Washington, DC, offered the following prayer:

Eternal and Almighty God, we give thanks for these, Your children, who gather in this place, day after day, to invest their best energies in shaping the life of the Nation.

We pray, O God, that You will bless the men and women who serve in this Senate. Give them wisdom and insight from beyond themselves. Give them the abiding patience that lasts longer than mere tolerance, the embracing perspective that sees larger than simple partisanship, and the enduring peace that goes deeper than outward circumstance. Hold each of them, and their families, in Your strong hands. Bless them, O God, with quiet spaces and restful moments in the midst of their very public lives in this very noisy world.

We pray in the quiet assurance that You are with us, and in the abiding hope that we will be with You. Amen.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator COCHRAN from Mississippi, is recognized.

### WELCOME, DR. CHARLES E. POOLE

Mr. COCHRAN. Mr. President, it gives me a special pleasure this morn-

ing to welcome our guest Chaplain who has delivered the opening prayer, Dr. Charles E. Poole.

He is currently serving as pastor of the First Baptist Church of the city of Washington, DC, but he and his family will be moving soon to Mississippi where he has accepted the call to serve as pastor of my church, Northminster Baptist Church in Jackson, MS. We are delighted to have this very special person come to our State and serve in this way. We appreciate very much his being our guest Chaplain this morning and delivering such a fine prayer.

Dr. Poole earned his undergraduate degree from Mercer University in Macon, GA, and graduate degrees in divinity from the Southeastern Baptist Theological Seminary in Wake Forest, NC.

Before he became pastor of the First Baptist Church in Washington, he served for several years as the pastor of the First Baptist Church of Macon, GA. He was also on the board of trustees of Mercer University in Macon for 5 years. He is an outstanding clergyman who is well respected here in the Washington area. His sermons and other writings have been published and very favorably received.

He and his wife Marcia have two children, Joshua and Maria. We are looking forward to getting to know all of them better.

We thank him, on behalf of all Senators, for his contribution to today's session.

### SCHEDULE

Mr. COCHRAN. Mr. President, at the request of the majority leader, I am pleased to make the following announcement relating to the schedule of the Senate. For the information of all Senators, this morning the Senate will resume consideration of S. 949, the Taxpayer Relief Act of 1997. By previous consent, there will be 20 minutes for debate equally divided between

Senator MURKOWSKI and Senator BUMPERS, with a vote occurring in relation to the Bumpers amendment at approximately 9:50 a.m. Following the vote on the Bumpers amendment, there will be 20 minutes of debate equally divided in the usual form with a vote on or in relation to the Dorgan amendment No. 517 regarding capital gains. Following that vote, there will be 10 minutes of debate equally divided in the usual form on the Dorgan motion to refer. The Senate then will proceed to a vote in relation to the DORGAN motion.

All other amendments offered last night and amendments offered during today's session will be subject to roll-call votes throughout the day as we make progress on the Taxpayer Relief Act. Therefore, Senators can anticipate numerous rollcall votes on this bill during today's session of the Senate.

### REVENUE RECONCILIATION ACT OF 1997

The PRESIDING OFFICER (Mr. COATS). Under the previous order, the clerk will report S. 949.

The assistant legislative clerk read as follows:

A bill (S. 949) to provide revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998.

The Senate resumed consideration of the bill.

Pending:

A motion to waive the Congressional Budget Act with respect to consideration of Section 602 of the bill.

Dorgan motion to refer the bill to the Committee on the Budget, with instructions.

Dorgan Amendment No. 515, to authorize the Secretary of the Treasury to abate the accrual of interest on income tax underpayments by taxpayers located in Presidentially declared disaster areas if the Secretary extends the time for filing returns and payment of tax (and waives any penalties relating to the failure to so file or so pay) for such taxpayers.

Dorgan Amendment No. 516, to provide tax relief for taxpayers located in Presidentially declared disaster areas.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S6393

Dorgan Amendment No. 517, to impose a lifetime cap of \$1,000,000 on capital gains reduction.

Bumpers Amendment No. 518, to repeal the depletion allowance available to certain hardrock mining companies.

Durbin Amendment No. 519, to increase the deduction for health insurance costs of self-employed individuals, and to increase the excise tax on tobacco products.

Roth Amendment No. 520, to provide for children's health insurance initiatives.

Jeffords Amendment No. 522, to provide for a trust fund for District of Columbia school renovations.

The PRESIDING OFFICER. Who yields time?

AMENDMENT NO. 518

Mr. BUMPERS. I yield 5 minutes to my coauthor of this amendment, Senator GREGG.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized to speak for up to 5 minutes.

Mr. GREGG. Mr. President, just to recap where we are, basically, the Senator from Arkansas has authored an amendment to end the ability to take the depletion allowance for mining companies for that part of their mining activity which occurs on public land.

Now, let's understand the facts here. A mining company comes along and it buys the right to mine on public land for the value of, I think, \$2.50 an acre. For example, in 1995, ASARCO bought 349 acres for \$1,745, which had 3 billion dollars' worth of assets on it. Public land, public land. And then a Danish company came along, and for \$275 bought 110 acres, which had 1 billion dollars' worth of assets on it. Then a Canadian company came along and spent \$9,000 for 1,800 acres which had 11 billion dollars' worth of assets on it.

That, in and of itself, is a bit of an affront to the American taxpayer. That is not what we are debating here. We are debating an even greater affront—an even greater affront—because after they bought this land for \$2.50 an acre, they then go out and take a depletion allowance against that land. Now, it is not against the equipment they are using to mine the land. They can deduct that. They have a right to do that. No, it is a depletion allowance against land which is publicly owned, taxpayers' land. It is not their land. It is taxpayers' land which they bought for \$2.50 an acre, and now they get to take a depletion allowance which costs \$400 million over the next 5 years.

Excuse me, what dinner party am I at? Is the Mad Hatter here? Is the Queen of Hearts here? What is this? We have the taxpayers first subsidizing an \$11 billion, a \$1 billion, and a \$3 billion asset purchase which flows to these companies, and then we have the taxpayers subsidizing a depletion allowance which flows to these mining companies. And what does the taxpayer get back for all of this? \$2.50 an acre. It is corporate welfare, corporate pork. The term can be applied at a variety of different levels.

What it is, is wrong. It is wrong that the depletion allowance should be

available for land which is public land that is purchased at these outrageously low prices. It doubles up the insult. It doubles up the insult to the American taxpayer.

I strongly support the initiative of the Senator from Arkansas. I cannot understand how anyone who would believe that the American taxpayer deserves some modicum of respect would not also support this proposal. It simply is an attempt to try to correct just a small sliver of what is a very significant and inappropriate affront to the American taxpayer. It is costing us a lot of money, money that we should not have to pay.

I heard somebody say, well, this is a tax increase. My goodness, how could you argue that? A tax increase? What we are doing is hammering the taxpayers, expecting the American taxpayer to pick up a depletion allowance on top of having already picked up a loss for having sold this property at a ridiculously low price in light of what the value of the asset being conveyed is. It is not a tax increase. What it is is an attack on the taxpayer. It should not occur any longer.

The Senator from Arkansas is right in his amendment. I am happy to join him.

I yield back the remainder of my time.

Mr. REID. Does the Senator from Alaska yield?

Mr. MURKOWSKI. I am happy to yield to my friend from Nevada 3 minutes.

Mr. REID. Mr. President, last evening we talked about the price of gold based upon a Wall Street Journal article earlier this year. Let me advise all my friends here in the U.S. Senate that last Friday gold hit a 4-year low, \$336 an ounce, which basically means companies are laying people off and some companies are going out of business. That is a fact.

Mr. President, as I stated last night, this amendment is an ill-conceived and ill-advised attempt to circumvent congressional efforts to reform the current mining law.

The U.S. mining industry is in agreement that the mining law is due for some changes. Serious efforts to accomplish such a result have taken place over the last several years.

In 1990 and 1991, efforts were made here to have a patent moratorium. That failed. Following that, though, Senators DOMENICI and REID offered an alternative to a patent moratorium. We required payment of fair market value for the surface of the land. We said any land that was patented that was not used for mining purposes would revert to the Federal Government. We also required compliance with state reclamation laws. This was in an amendment offered here that passed this body by a vote of 52 to 44.

It went to the House, and they knew their argument that they use here every day, about the patents being offered for nothing, would be taken

away. They rejected this good-faith effort of the U.S. Senate to reform the mining law. It was rejected in conference. We tried.

We came back later on, Mr. President, in 1993, and imposed a maintenance fee on unpatented claims of \$100 per claim. The Government collected over \$50 million in 1 year for that. It is not as if we have not sought change.

In the Senate and the House, in 1993, bills passed. They were killed in conference because it was not perfect. There is now in effect and has been since 1995 a moratorium on the issuance of further patents. The only ones that patents could be issued upon were those that were in the pipeline. That has been in effect since 1995. There has been reform of the mining law.

In 1995 and 1996, there was legislation offered to reform the law. We have run into roadblocks from people who want to kill the good because they want the perfect.

I suggest this amendment unfairly targets the Western mining industry. We have sought reform. There has been reform that has taken place. This amendment is an attempt to do mining law reform, and this is not the place or time for such an effort. It should go through the committee process that is led by the able chairman of the committee, the Senator from Alaska.

If this Congress wants to change the current mining law, then it should begin its efforts in the Energy and Natural Resources Committee and not in the reconciliation bill.

Mr. MURKOWSKI. I yield 1 minute to the Senator from Utah.

Mr. HATCH. Mr. President, I rise today to oppose the amendment by my colleagues, Senator BUMPERS and Senator GREGG. This amendment would repeal the percentage depletion allowance for mineral extraction. It would, however, only repeal this allowance for minerals extracted from any land obtained pursuant to the provisions of the mining law of 1872. This amendment is discriminatory and bad policy.

Minerals are not free for the taking or inexpensive to mine just because they are on land obtained from the 1872 mining law. In truth, significant capital is invested during the development of a mine. Capital costs often reach close to \$400 million to develop a major mine.

In addition, there is a lot of time invested in the development of any mine, and it has increased even more in recent years. Just getting a permit for a new mine on Federal lands has increased from a 1-year time frame to 3 or 5 years over the last 4 years.

The rationale for the depletion allowance provisions in the Tax Code are not just targeted to mineral extraction. They are the same for oil and natural gas, coal, and metals extraction as well. This allowance recognizes the unique nature of resource extraction. It is designed to provide a practical method of measuring the decreasing value of a deposit as the materials are

extracted. It recognizes that the replacement cost of new mines are always higher in real terms. This allowance helps the mining industry to generate the capital needed to bring new mines into production.

Mr. President, mines mean jobs. They are not just vacuums sucking our minerals out of the land at a low cost. They are economic entities that extract valuable resources for circulation in the economy and provide millions of jobs for American citizens. These are direct jobs. But, mining produces essential raw materials for manufacturing in other industries. Think about the untold number of jobs that are indirectly linked to mining.

Moreover, jobs in the mining industry are not just minimum wage jobs, either, Mr. President. The Bureau of Labor Statistics tells us that the average mining wage is \$45,270 per year. This is significantly higher than the average national wage of \$27,845.

This amendment would have a severe effect on the mining industry. It means thousands of lost jobs. These jobs are high-paying jobs that raise the standard of living of millions of workers.

This amendment means a significant reduction in mining activities all over the Nation. This will have a corresponding effect on the tax base and economies of the areas dependent on a sound and viable mining industry.

The effects of this amendment will not only be felt in Western States, where mining is abundant, but will be felt across the Nation.

This amendment destroys more than just the economics of mining communities. It also harms the stewardship of our national mineral wealth. Companies will be encouraged to spend their scarce exploration and development funds in an atmosphere more favorable to them. The political and regulatory climates overseas already beckon to our mining companies. By making our tax climate so unfavorable for these mining companies, we are practically giving them the push they need to move overseas.

Make no mistake about it, this amendment will have an effect on our national production. Imports will replace the loss of domestic production, moving high-paying jobs and economic activity to other countries. This is not the way to ensure a stable economy in the United States.

Mr. President, let's put aside the fact that this is such bad tax policy. This amendment is an administrative nightmare. Most mining projects consist of land and rights obtained from a variety of sources. For example, a large open pit mining operation may include private property acquired through homestead laws, patented mining claims, unpatented claims, State lands, and 1872 mining law land. How is a company supposed to figure out where a mineral comes from?

This amendment would require mining companies to find some way of tracing the ore extracted just from the

mining rights obtained from the 1872 mining law. This would often mean that the depletion allowance would apply to a shovel of ore from one location, but not to a shovel of identical ore from 10 feet away. This is ridiculous.

This amendment does not appear to be an attack on the percentage depletion allowance for mineral extraction. It is only targeted at a specific segment of this industry relating the 1872 mining law.

I do not disagree that this mining law should be debated and reformed. I do not agree that it should be reformed using a piecemeal approach through the Tax Code. If we are going to reform the 1872 mining law, let us do it in a thoughtful, comprehensive manner.

I urge my colleagues to join me in opposing this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI. I yield 1 minute to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 1 minute.

Mr. CRAIG. Mr. President, several assertions have been made on the floor this morning that this is not a tax increase if we repeal this depletion allowance. It was also suggested that mining companies don't pay taxes. Wrong, wrong, and wrong again.

The average mining company pays 32 percent tax with minimum alternative. This would increase it to over 42 percent. I would like to inform the Senator from New Hampshire that mining companies invest about \$400 million in each mining operation. He is raising taxes on mining companies that employ thousands of people, in one of the highest paid wage industries in the Nation. He is also attacking the very industrial base of our country. When you come from a State where you have to pledge not to raise taxes, I guess you can raise them if there is some political advantage to do so. That appears to be the case here this morning.

It is all politics, with no sensitivity toward the strength of the industrial base of this country and the opportunity to continue to provide strong high-paying jobs in the public land States of our Nation.

Mr. MURKOWSKI. Mr. President, I yield 2 minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 2 minutes.

Mr. BRYAN. I thank the Chair. Mr. President, this is the wrong place and the wrong time to be considering an amendment of this nature. This would make a fundamental change in the tax law with respect to the percentage depletion for the recovery of mineral deposits, a provision that has been in the Tax Code for more than six decades. It would discriminate against only one type of mining activity—that which occurs on the public lands.

The proponents of this amendment really are debating today changes they

want to seek in the mining law of 1872. I do not disagree that changes need to be made. We are prepared, in representing a State in which this is such an important industry, to provide for royalty provisions, fair market value of the surface, as well as reclamation efforts. The ore body itself is a wasting asset. So a depletion allowance for mineral recovery is analogous to depreciation permitted on the improvements on real property. So this is not some exotic provision in the Tax Code. It recognizes that the ore body itself will be exhausted in a finite period of time, and it seeks to provide that kind of tax coverage.

Finally, I want to point out, as my colleague from Utah pointed out, that this would be an administrative nightmare. At least one particular mining activity in my own State is derived at the source of title or possession of the land from six different sources. So you would have to identify where the minerals recovered are from six different sources in order to apply the provisions of the law.

I urge its rejection.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, I yield myself such time as I may use.

The PRESIDING OFFICER. The Senator from Arkansas has 5 minutes 45 seconds remaining.

Mr. BUMPERS. Mr. President, I have never heard so many stale arguments in my life. This is like saying we will give General Motors the steel to build cars if they will hire some people to do it. This is a simple question of giving the biggest mining companies in the world the taxpayer's resources. That is who we are talking about. This doesn't belong to the 10 Senators from the Western States. This gold and silver belongs to the taxpayers—the people I have heard talk about so many times on this tax bill, that “we are going to give a tax cut to the long-suffering taxpayers” and, at the same time, give away billions of dollars worth of gold, silver, platinum, and palladium that belongs to the taxpayers.

This amendment has nothing to do with the gold companies' depletion, even on private lands. It has nothing to do with depletion on State lands. It has to do with the lands they got from the U.S. Government for nothing. And we are paying them to take it. We are giving them a depletion allowance to mine gold that we gave them.

There is a lot more mining that goes on on private and State lands than goes on on Federal lands. They are not going offshore. They are not going broke. Here is the big ad by Barrick Mining Co. in the Mining World News: “Developing Your Gold Property to its Full Potential.”

Work with a new partner, Barrick Gold. You may not have dealt with us before, but you should know we are the world's most profitable gold producer.

And well they should be; they don't pay anything for it. This means \$400

million to the taxpayers of this country over the next 5 years. They are perfectly willing to pay an 18 percent royalty on private lands. They are perfectly willing to pay 5 to 18 percent on State lands. They pay severance taxes, reclamation fees, and royalties to everybody under the shining Sun—except the taxpayers of the United States, who own it.

Let me say to my colleagues. Each one of you who are defending this proposition, let me ask you this: You go home and tell your friends, your supporters—I am not talking about the mining companies, I am talking about the taxpayers—I want you to tell the people back home that if you had 500 acres of land and had \$18 billion or \$11 billion worth of gold under it—or in the case of Stillwater Mining Co. in Montana, \$38 billion worth of palladium and platinum on 2,000 acres—if you owned it, and I came to you and I said that I am going to relieve you of all these billions of dollars worth of gold, I will get rid of it for you, what would you pay me? We can't pay you for it. We are just going to get rid of the gold for you. You would say, get thee hence to the nearest psychiatrist for a saliva test. I cannot believe that, year after year, we listen to these stale arguments about how people are going offshore, and they create jobs. So does some small struggling businessman that hires 10 people in your State, but you don't give him all of his resources to produce something with.

Mr. President, it is time that this body stood up to its duty. This is not about the mining law. This is simply saying, in those narrow cases, where we gave them the land, and they are mining it and not paying a dime to the taxpayers of this country in any kind of a fee, we are saying, for God's sake, let's not pay them to take it. At least take the depletion allowance from them.

I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI. I yield myself the balance of the time on our side.

Mr. President, is there any question about whether this is a tax increase or not? Let's recognize what the Joint Tax Committee has said. They said it is a tax increase. It raises \$686 million. If that isn't a tax increase, I don't know what is. What we have here, Mr. President, is not a new proposal, but a punitive proposal that was offered earlier this year and rejected by the Finance Committee, rejected by the House Ways and Means Committee, and it should be rejected by the full Senate.

When you strip away all the rhetoric, this issue boils down to whether or not we are going to place a \$700 million tax increase on the domestic mining industry. This proposal, as it stands, will speed up the departure of the mining industry from our shores.

Let's look at this chart briefly. It shows what is happening with employment in the mining industry for metal,

iron ore and copper. Let's look a little more closely at metal mining, which includes gold, silver, lead, and zinc from 1980 to 1995. In 1980 there were 98,000 jobs; by 1995 that had dropped to 51,000 jobs. In copper, it went from 30,000 jobs in 1980 to 15,000 in 1995. These numbers show what is happening to the mining industry in this country. What will happen if we place an additional \$700 million in tax burden on them? They have to sell their gold, silver, copper, lead, and zinc at the world prevailing price, not the price in the United States. So where are the good-paying jobs going to go? They are going to go to Canada, Latin America, and Indonesia.

We pride ourselves on cutting taxes and yet this amendment would throw a \$700 million tax increase at the American mining industry. That is what the Bumpers amendment would do. It adds \$700 million to the cost of producing minerals in the United States. Every Member of this body can figure out for themselves what effect this would have on the American mining industry. If you can't produce your product for a profit, for the price that is offered, you are out of business, that is what happens.

Finally, Mr. President, let's make no mistake about it, this amendment is not about depletion on lands obtained under the Mining Act of 1872. The amendment is about the law itself. This is just an overt attempt to gain negotiating leverage on the industry. The U.S. mining industry agrees with Senator BUMPERS, as do I, that this law is long overdue for overhaul. Let's sit down with the administration and reform the 1872 mining law, but let's not impose a punitive \$700 million tax on the industry merely to gain negotiating leverage at the bargaining table. As a consequence, I urge my colleagues to oppose this punitive tax and vote against waiving the Budget Act.

Mr. President, at the conclusion, I am going to raise a point of order that the amendment is not germane under section 305 (b)(2) of the Budget Act.

The PRESIDING OFFICER. The Senator from Alaska has 6 seconds. The Senator from Arkansas has 40 seconds.

Mr. MURKOWSKI. I yield back our time.

The PRESIDING OFFICER. The Senator from Alaska yields back his time.

Mr. BUMPERS. Mr. President, I ask unanimous consent that Senator AKAKA and Senator FEINGOLD be added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, this is the ninth year I have stood on this floor and tried to prick the conscience of the Members of this body about this last remaining egregious scam on the American people. Next year, when some of you are up for reelection, I expect you are going to see some 30-second spots on this. What is it your opponent will say? What is it that makes you want to give away billions and bil-

lions of dollars of the taxpayers' money and us get nothing in return? Why do you tell your Chamber of Commerce you will handle their money like it was your own? Anybody in this body would be disqualified from being a Senator if he answered the question I posed a moment ago, "Yes, I will let them come and take gold off my property for nothing." Why, of course, you would not.

This is a very narrowly drafted amendment. It is crafted not to discriminate. It simply says that if you mine gold on private lands, fine, get a depletion. Oil companies, coal companies, and gas companies are entitled to a depletion. But when you give resources of the U.S. taxpayers away for nothing, and then allow them to take a 15 percent depletion, which is worth \$400 million of the taxpayers' money, and you turn around here in this tax bill and say we are going to give it back to you, don't give it away in the first place. For God's sake, colleagues, do your duty.

I yield the floor.

The PRESIDING OFFICER. All time has expired.

Mr. MURKOWSKI. Mr. President, I raise a point of order that the amendment is not germane under section 305(b)(2) of the Budget Act.

Mr. GREGG. Mr. President, I move to waive the Budget Act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO WAIVE THE BUDGET ACT

The PRESIDING OFFICER. The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS] is necessarily absent.

The yeas and nays resulted—yeas 36, nays 63, as follows:

[Rollcall Vote No. 131 Leg.]

#### YEAS—36

Akaka	Graham	Mikulski
Biden	Gregg	Moseley-Braun
Boxer	Harkin	Murray
Bumpers	Jeffords	Reed
Chafee	Kennedy	Robb
Coats	Kerrey	Rockefeller
Collins	Kerry	Sarbanes
Dodd	Kohl	Smith (NH)
Durbin	Lautenberg	Snowe
Feingold	Leahy	Torricelli
Feinstein	Levin	Wellstone
Glenn	Lieberman	Wyden

#### NAYS—63

Abraham	Coverdell	Hatch
Allard	Craig	Helms
Ashcroft	D'Amato	Hollings
Baucus	Daschle	Hutchinson
Bennett	DeWine	Hutchison
Bingaman	Domenici	Inhofe
Bond	Dorgan	Inouye
Breaux	Enzi	Johnson
Brownback	Faircloth	Kempthorne
Bryan	Ford	Kyl
Burns	Frist	Landrieu
Byrd	Gorton	Lott
Campbell	Gramm	Lugar
Cleland	Grams	Mack
Cochran	Grassley	McCain
Conrad	Hagel	McConnell

Moynihan  
Murkowski  
Nickles  
Reid  
Roth

Santorum  
Sessions  
Shelby  
Smith (OR)  
Specter

Stevens  
Thomas  
Thompson  
Thurmond  
Warner

## NOT VOTING—1

Roberts

The PRESIDING OFFICER. The Senate will be in order.

On this vote, the yeas are 36, the nays are 63. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to. The point of order is sustained. The amendment falls.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AMENDMENT NO. 517

The PRESIDING OFFICER. The pending issue, under the previous order, is amendment No. 517.

Mr. MOYNIHAN. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate will be in order.

Under the previous order on amendment No. 517, time is 20 minutes under the control of the Senator—time is equally divided on the amendment of the Senator from North Dakota. No. 517 is the pending business. Who yields time?

Who yields time?

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. MOYNIHAN. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Is it the case that we have agreed to 20 minutes equally divided so that the time is automatically provided Senator DORGAN?

The PRESIDING OFFICER. The Senator is correct.

Mr. MOYNIHAN. I thank the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have offered an amendment that is relatively simple and it deals with the issue of capital gains. Capital gains, as most of us know, has long been a controversial issue here in the Congress.

Some will remember, if they relate back to the good old days of the Tax Code—I call the good old days those old days in which there were people in this country who would do things not because the market system suggested they should do them, but because the Tax Code provided incentives to do them. I do not think they were good old days, but there was created in this country an army of people whose lives were devoted to figuring out how you can convert ordinary income to capital gains and make money off the Tax Code, and how you can decide to build what the market system says you should not build but still make money because the Tax Code provides the incentives to build it.

Well, we got rid of that army of accountants and lawyers and others in the tax shelter industry with the 1986 Tax Reform Act.

The proposal for a capital gains tax preference in the bill that comes to the floor of the Senate has no limitation. I did not take Latin so I don't know if "totus porcus" means whole hog, but I certainly think the term applies to this capital gains tax proposal. You can convert unlimited amounts of ordinary income to capital gains and have the tax break that is imbedded in this bill forever.

I propose the following. If a capital gains tax break truly is proposed in order to help those families who save for their kids' college education, to help a small business, to help a family farm that might sell the business or the farm, then let us have at least some reasonable limitation on the capital gains tax benefit.

It is interesting; in this country we have two different philosophies of taxation. One says let us tax work. If you are on a payroll someplace and working, let us tax work. And nobody worries much about the consequence of that. Nobody worries about the impact of inflation on the wage and says let us index work salaries for inflation. Nobody says that.

If you work and you take a shower at the end of the day after you work because you worked hard and you sweat, you earned an honest wage, you pay a tax up here and nobody is running around this Chamber saying, gee, let's index that for inflation. Let's talk about a work gains index. Nobody talks about that.

But then others say let us tax work, but let us exempt investment. Somebody else is an investor, takes a shower in the morning, does not get dirty during the day, does not sweat, sits in a chair someplace and invests, we have all kinds of folks running around the Capitol saying, oh, we have to do something to provide incentives for people who get their income that way.

Let us tax the income from work and let us exempt the income from investments, that is what is at the root of this debate. Now, the question is, who gets what and who has what?

Here is a chart that describes very well why I have offered this amendment. The bulk of the capital gains go to those in the very upper income bracket. One-half of 1 percent of the taxpayers of this country have gains of \$200,000 or more, and they get fully half of the capital gains that people get in this country. So when you say let us give a tax benefit through capital gains and have no limit on it, what you are saying is let us provide an enormous benefit to the upper income folks. Eighty-nine percent of the taxpayers that have capital gains have very small capital gains, under \$10,000. And all of that in aggregate, 90 percent of the taxpayers have 15 percent of the dollar amount of the capital gains in this country.

So, to repeat, one-half of 1 percent of taxpayers get half of the Nation's capital gains, the bulk of the capital gains. And nine-tenths of the taxpayers get about one-sixth of the capital gains. It is clear that any attempt to give a tax break to capital gains income will disproportionately benefit folks in the very upper income bracket.

My proposal is very simple. It says let us limit the capital gains tax preference in this bill to \$1 million in a taxpayer's lifetime, \$1 million. We will give you a tax preference on capital gains for a million dollars. Isn't \$1 million enough? Should there not be some limitation? Is there no end? Is there no bottom to this pot? Or do we just insist that somehow investment has greater merit than work and we will continue to fight and struggle to reward investment and penalize work by saying let us tax work and exempt investment.

This is a painfully simple amendment. I have offered it previously here in the Congress. I hope that as we now begin this effort to restore a capital gains preference, we at least will have the good sense to limit it.

So that is the amendment I have offered. I reserve the remainder of my time. I would like to respond to some of the comments that are made, but, Mr. President, this amendment will have a significant impact on the construction of a capital gains tax preference. I do not propose we abolish it. I propose instead we limit it to \$1 million per taxpayer in the taxpayer's lifetime.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Delaware is recognized for 3 minutes.

(Mr. GREGG assumed the chair.)

Mr. ROTH. Mr. President, I rise in strong opposition to the amendment that is offered by my good friend and colleague from North Dakota, but I do first want to commend him for his perseverance on this issue. I know it is a matter of great interest to him, a matter that he feels very strongly about. As he said in yesterday's statement, he has been sponsoring this type of legislation for many years.

Mr. President, I must oppose this amendment for several reasons. First of all, let me point out that the principle purpose for reducing the capital gains tax is to encourage more investment. In this competitive world of today and in this global economy, it is critically important that we make the best utilization of the capital we have so that we are in a strong competitive position. A lower capital gains tax will encourage greater investment. It will encourage better utilization of our assets.

Why would we want to impose some kind of arbitrary limit that will have the effect of limiting investments? We

are trying to free up hundreds of millions, if not billions, of dollars to the best investment available to help ensure that we are creating in this country an environment of growth, jobs, and opportunity.

Let me just look at this matter from another point of view; from the standpoint of small business. I know my distinguished friend from North Dakota is, indeed, a friend of small business. The tax laws currently provide a 50 percent capital gains exclusion from investments in qualifying small business stock. Currently, the tax laws provide that an investor who has gained from qualifying small business stock can exclude up to \$10 million of capital gains from a single investment—10 times more than the \$1 million cap. I understand that in the Democratic substitute amendment that is ultimately going to be offered, it is provided that we should double this limit; this \$10 million limit should become \$20 million from a single investment. So the question I must ask my friends on the other side of the aisle who argue a \$20 million capital gains exclusion is appropriate from a single small business investment yet, at the same time, argue to limit capital gains from all other investments to only \$1 million over a taxpayer's lifetime—the two provisions are totally inconsistent, in my judgment they make no sense, and I hope the Senate will agree with my concern.

Let me make one further observation. This amendment also raises some very significant administrative problems. Under the amendment, individuals will have to keep track of all their investment gains, not for 1 year, not for 5 years or 10 years, but for decades—a tremendously burdensome matter. Think of how this amendment would affect the Internal Revenue Service. I doubt the IRS has adequate resources to administer the voluminous information that would have to be maintained if this amendment becomes law. It would be an administrative nightmare for the IRS to have to try to enforce this provision.

But let me go back to the first point which I think is most important, that the reason we are reducing the capital gains tax is to encourage more investment. To try to limit it to \$1 million makes no sense and is in conflict with the basic purpose of the agreement that was reached by the Senate Finance Committee. It makes no sense. It is inconsistent with the provisions now contained in the law for small business stock, which can be excluded for up to \$10 million of capital gains; and, as I already pointed out, it is proposed in the so-called Democratic substitute that this limit be doubled to \$20 million.

So I oppose this legislation and hope the Senate agrees with this opposition.

Mr. President, at this time I am happy to yield 7 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Chair will advise the Senator from

Delaware that he only has 2½ minutes remaining on the amendment, and the Senator from North Dakota has 4 minutes 42 seconds.

Mr. BENNETT. In that case, Mr. President, I ask I be recognized for 2½ minutes.

Mr. ROTH. Mr. President, I yielded myself, I think it was 3 minutes. Is it not normally the practice to advise the speaker when he has come to that?

The PRESIDING OFFICER. Regrettably, the Chair did not hear the reference to 3 minutes. We will restore the time if the Senator so desires.

Mr. DORGAN. Mr. President, the Senator did ask to be notified after 3 minutes. I have no objection to that.

Mr. ROTH. I thank the distinguished Senator from North Dakota for his courtesy. I yield such time as is remaining to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 7 minutes.

Mr. BENNETT. Mr. President, I have addressed this issue before and do not want to spend a great deal of time in repetition. But I think we should focus on what we are really talking about when we talk about capital gains tax. There are many who say, "Well, the people who have a capital gain are wealthy and we are letting them off the hook if we do not tax that wealth." What we are really talking about, in accumulated capital, is where will that capital be deployed?

Recently there have been studies as to the number of millionaires in the United States and how they got their money. Overwhelmingly, the money comes from one of two sources: They inherit it or they start businesses. You do not become a millionaire by saving your wages. You become a millionaire by creating something in the form of a company and then seeing it grow. When you die your children inherit it, and then they fall into the first category. That has to do with death taxes.

But millionaires come from risk-taking, millionaires come from entrepreneurial activity. Where do jobs come from? They come from risk-taking, they come from entrepreneurial activity. As I have said here on the floor, in the real world as opposed to the classroom, millionaires who are the result of entrepreneurial activity have an itch to stay entrepreneurial. Once they have seen their investment become what they call on the market a mature investment, many, many times they want to move on. They want to take their money out of a mature investment and put it into another entrepreneurial activity. But the present level of capital gains taxation prevents them from doing that, at least psychologically.

Again, on the floor I have given examples of people who have seen their investment grow tremendously in a high-risk circumstance. They got the rewards that came from taking that risk and now they want to move on and take another risk, create more jobs and

accumulate capital and wealth in this country. When they calculate what happens to them under the capital gains tax they say, "I am not going to do it. I can't afford it." And they leave their money tied up in a mature investment, whereas the opportunity in an entrepreneurial investment is denied them by the capital gains tax.

There is one thing that they do, and I have seen this—indeed, if I may, Mr. President, I have done this myself, to my sorrow. With the entrepreneurial itch saying let's put some money in a new startup circumstance, but feeling that your own money is locked up because of the capital gains tax, the itch becomes so strong that you put money into the entrepreneurial activity anyway, only you borrow it. And now the entrepreneurial activity has to carry not only the responsibility of a fair return, but enough money to pay the interest.

I will not belabor it because I have given major speeches on this issue before. But I think the cap proposed by my friend from North Dakota, while well-intentioned, would in fact impede the flow of capital, it would move us in a direction that would ultimately rebound to the disadvantage of the economy. I remind you once again, the Chairman of the Federal Reserve Board, who is concerned with watching money move around the economy and would like to see as much money as possible into entrepreneurial activity, has recommended to us that the ideal capital gains rate for this country should be zero. I am not bold enough to propose that on the floor because I know it would not pass. But I always remind people of that because that is the direction in which I think we ought to go.

For that reason I oppose this amendment.

The PRESIDING OFFICER. Who yields time? The Senator from North Dakota.

Mr. DORGAN. Mr. President, I was staying right with the Senator from Utah until he mentioned the Chairman of the Federal Reserve Board. In ancient Rome they used to have augurs, and the practice of augury was to read the flight of birds and the entrails of dead cattle in order to predict the future.

I have said perhaps the Fed could use some augurs, given their recent performance. They indicated that if unemployment ever fell below 6 percent we would have a brand new wave of inflation. Unemployment has been under 6 percent for 38 months and of course inflation is down, way down. But that is another subject for another day.

The folks at the top of the income structure in this country already have a 30-percent tax differential on capital gains. They pay 30 percent less on capital gains than ordinary income tax rates. My proposal to limit to \$1 million for a lifetime the capital gains tax benefits in this bill will effectively relate to about 1 percent of the taxpayers.

I do not disagree with the comments by the Senator from Utah about the germ of an idea and the spark of interest to own a business and that is where success is developed and that is where millionaires come from. I do not disagree with that at all.

I would make this point, however. There are people out here working today who have that same instinct inside of wanting to own their own business and wanting to build a business. Their only stream of income is a wage, and they pay a higher tax on that wage than is being proposed for capital gains. Because of that higher tax they may not be able to accumulate the capital to invest in the business and become the entrepreneur and become successful and make a lot of money.

So my suggestion is this. We have other streams of income in this country which we measure for tax purposes. We have rents, we have salaries, we have capital gains, we have a range of interests, we have a range of incomes. And there are those who take out one stream of income, one kind of income called capital gains and say let's give a tax break to capital gains.

I am not opposed under any circumstance to a tax break for capital gains. We now have one, the 30 percent tax preference. What I oppose is a circumstance where the bulk of the tax preference goes to such a few in the population. I am saying we ought to do this differently, and I have felt that way for 10, 15 years. I think it would be good for the country to do it differently.

I say this finally. If we go back to the "totus porcus" approach for capital gains—buy a share of stock, hold it 6 months and 1 day and get a tax preference—go back to the broad approach, much of which is proposed here, we will resurrect the tax shelter industry, resurrect an army of people in the tax shelter industry, and we will rue the day we do it.

The tax shelter industry is to productive enterprise like professional wrestling is to the performing arts. I defy anyone to tell me one good thing that comes from the tax shelter industry in this country. We largely got rid of it in 1986 with the 1986 bill, and I am worried very much we create now a new set of circumstances to allow taxpayers of this country to hire the best minds in America, not for productive enterprise but to tell them how can they create, from their stream of income, capital gains by which they can make money off the Tax Code. That is my great concern. So I propose we limit the capital gains treatment for a taxpayer to \$1 million during the taxpayer's lifetime.

Mr. BENNETT. Mr. President, will the Senator yield for a question? Does the time permit that?

Mr. DORGAN. How much time do I have?

The PRESIDING OFFICER. The Senator from North Dakota has 1 minute.

Mr. BENNETT. I shan't intrude further. I thank the Senator.

Mr. DORGAN. We will have an opportunity to discuss this further. I respect the views of the two Senators who spoke in opposition to this amendment. I would say we are talking in the out-years about \$4 billion to \$5 billion a year without my limitation. That \$4 billion to \$5 billion I would like to use to reduce taxes on wages to the extent we can.

The tax increases in this country have come from payroll taxes now. Two-thirds of the American workers pay more in payroll taxes than they do in income taxes, and I would have structured the tax bill completely differently than it is now structured. I would have addressed the issue of burgeoning payroll taxes which tries to be a clothes hanger on all of the acts of creating a job to say, "By the way, we are going to hang all of these social obligations on the act of creating a job."

I am very concerned about that in terms of the disincentive it gives to someone in business to create new jobs. I don't want to go far afield, but there is no social program we discuss in Congress that is as important or effective as a good job to cure what ails this country.

So this \$1 million limitation makes good sense. I hope Members of the Senate will consider it and hope that we will have a chance to vote on it.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Delaware has 2 minutes and 55 seconds.

Mr. ROTH. Mr. President, I yield back the remainder of the time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 517. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 24, nays 75, as follows:

[Rollcall Vote No. 132 Leg.]

YEAS—24

Akaka	Ford	Levin
Boxer	Harkin	Mikulski
Byrd	Hollings	Murray
Conrad	Inouye	Reed
Daschle	Johnson	Robb
Dorgan	Kennedy	Rockefeller
Durbin	Lautenberg	Sarbanes
Feingold	Leahy	Wellstone

NAYS—75

Abraham	Bryan	Craig
Allard	Bumpers	D'Amato
Ashcroft	Burns	DeWine
Baucus	Campbell	Dodd
Bennett	Chafee	Domenici
Biden	Cleland	Enzi
Bingaman	Coats	Faircloth
Bond	Cochran	Feinstein
Breaux	Collins	Frist
Brownback	Coverdell	Glenn

Gorton	Kerry	Roth
Graham	Kohl	Santorum
Gramm	Kyl	Sessions
Grams	Landrieu	Shelby
Grassley	Lieberman	Smith (NH)
Gregg	Lott	Smith (OR)
Hagel	Lugar	Snowe
Hatch	Mack	Specter
Helms	McCain	Stevens
Hutchinson	McConnell	Thomas
Hutchison	Moseley-Braun	Thompson
Inhofe	Moynihan	Thurmond
Jeffords	Murkowski	Torricelli
Kempthorne	Nickles	Warner
Kerrey	Reid	Wyden

NOT VOTING—1

Roberts

The amendment (No. 517) was rejected.

Mr. ROTH. I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

#### VISIT TO THE SENATE BY THE PRIME MINISTER OF AUSTRALIA

Mr. MOYNIHAN. On behalf of the distinguished chairman of the Committee on Foreign Relations, Mr. HELMS, I ask unanimous consent that the Senate stand in recess for 3 minutes that we might greet our distinguished visitor, the Honorable John Howard, the Prime Minister of Australia.

[Applause.]

RECESS

There being no objection, the Senate, at 11:10 a.m., recessed until 11:14 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. BURNS].

#### REVENUE RECONCILIATION ACT OF 1997

The Senate continued with the consideration of the bill.

MOTION TO REFER

The PRESIDING OFFICER. The order of business is the motion made by the Senator from North Dakota, a motion to refer to the Budget Committee with instructions.

I believe 10 minutes of debate, equally divided, are in order, am I not correct?

Mr. MOYNIHAN. The Chair is always correct.

I yield 5 minutes to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I will be brief. This motion is relatively simple.

My concern about where we are heading is this. I am concerned that we will decide to have balanced the budget and provided substantial tax cuts. And then, because the tax cuts are so backloaded, in the second 5 years our country will find itself back in a deficit.

I propose that we remedy that by having a trigger mechanism that would sunset the provisions of capital gains