

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 |
| Grassley | Landrieu | Shelby |
| Gregg | Lieberman | Smith (NH) |
| Hagel | Lott | Smith (OR) |
| Hatch | Lugar | Snowe |
| Helms | Mack | Specter |
| Hutchinson | McCain | Stevens |
| Hutchison | McConnell | Thomas |
| Inhofe | Moseley-Braun | Thompson |
| Jeffords | Moynihan | Thurmond |
| Kempthorne | Murkowski | Torricelli |
| Kerrey | Nickles | Warner |
| | 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

and the IRA's in the following circumstances: First, if the estimated loss as a result of the tax cuts exceeds our current expectations; and second, if the Treasury Department says we are running a deficit in the previous fiscal year.

My point is very simple. If we begin to run a deficit, and if running a deficit is because the cost of these tax cuts exceeds what we now think it will be, I would like us to trigger them off so we can get the budget back in balance. I just do not want to get into a circumstance that we have found ourselves in previously. We do not want to think we will turn out all right, and find 7 years down the road a huge Federal deficit.

I point out that the tax cuts in this bill are fairly well backloaded, and the upper-income tax cuts, just as an example, \$17.8 billion in 2002, the same tax cuts will cost nearly \$100 billion in the year 2007. My fear is because the tax cuts are backloaded we could find ourselves in a circumstance where we are right back into a deficit.

Again, the two points are this: If the cost of the tax cuts significantly exceeds what we estimated them to be, and if we have had a deficit in the previous fiscal year, then my motion would trigger a repeal, temporary repeal, of four provisions of the tax cut dealing with capital gains and IRA's.

I reserve the balance of my time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. At the appropriate time I will make a point of order against the motion to refer on two grounds.

Let me point out in the beginning that this is a matter that was not included in the budget agreement. It introduces a new aspect to the agreement that is not consistent with what we have discussed before.

I yield 2 minutes to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, first of all, we discussed all of these issues in the very lengthy negotiation with the White House. Their packages in the past have been gifted by having the tax cuts be temporary. That is the way the President's budgets have been in the past. He finally came to the realization that that was not fair to the American taxpayers. So that concept was eliminated from the budget agreement. We are going to give taxpayers a tax cut, period.

But also the argument that is being made that this may somehow explode in the outyears, we have an agreement that for the first 10 years it will not exceed \$250 billion. I understand the valuation of this package is that we have done that in this finance bill. It is only \$247 billion over 10 years. That is the best we can do. We are right on the money.

I believe we ought to leave the agreement alone and leave this very good tax bill alone.

Mr. ROTH. I yield the remaining time to the Senator from Oklahoma.

The PRESIDING OFFICER. There are 3 minutes and 17 seconds remaining.

Mr. NICKLES. I urge my colleagues to vote no on this motion. This motion basically says if we do not meet the targets we will have automatic tax increases. You did not hear it the other way around—you did not hear if we do meet the targets, we will have automatic decreases.

The question is, are we spending too much, or are we taxing too little? The Senator from North Dakota obviously thinks if there is a deficit we need more taxes. We need to reach in and take more away from taxpayers. I disagree with that. That is the President's position.

As the Senator from New Mexico said, he had automatic tax increases in the outyears. We did not agree with that in the leadership package with the President. We said no, the tax cuts will be permanent. They will be real, and they are not stacked toward higher income. Despite what some of my colleagues said, 82 percent of tax cuts are directed towards families with children and for education. That is family friendly.

So I will just urge my colleagues, if we are going to have an automatic deficit reduction, make sure we meet the targets. Let's work on the spending side. Let's have something automatically that will reduce Government spending. I really do believe the problem is not that we are undertaxed. I really believe that the problem is we are overspent.

I urge my colleagues to vote no on this motion.

Mr. ROTH. Has all time been yielded back?

The PRESIDING OFFICER. All time has not been yielded back. The Senator from Delaware has 1 minute and 45 seconds and the Senator from North Dakota has 2 minutes, 54 seconds.

Mr. DORGAN. Mr. President, I say to the Senator from Oklahoma, I am not suggesting that we should increase taxes. I am saying to the extent that we now reduce taxes and reduce revenue, and to the extent that that helps cause another Federal deficit in the second 5 years because the cost of those tax cuts explodes, I say we should put an insurance or safety mechanism in this bill to prevent us from running a deficit again.

Now, I hope that we will have learned from the last decade. There is merit, and I compliment the Members of this Congress who care about the Federal deficit, there is merit in fiscal discipline in dealing with the deficit. I just urge if we have a circumstance where we can provide protection in the outyears against an exploding of the Federal deficit, again we try to do that.

I am somewhat concerned that the chairman will make a point of order against my motion. I understand that there will be a budget enforcement mechanism offered by the Senator

from New Mexico. Will a point of order will be made against them? Enforcement mechanisms that provide protection against an explosion of the Federal deficit make great sense to me. That is the proposal that I offer with this trigger.

I reserve the balance of my time.

Mr. NICKLES. Mr. President, again, I just say that there are two sides to the question. We started some new spending programs. We have a program called Kid Care, and the agreement was for it to be \$16 billion. It has grown already to \$24 billion. Guess what? That additional \$8 billion is only for 5 years. We do not even pretend it goes the next 5 years. So what about if that program explodes?

My point being, the motion of the Senator from North Dakota is if we do not meet deficit targets we have automatic tax increases, or we will tell people they can have capital gains for 5 years but not beyond, or tell people they can have an IRA this year, but not in the future?

I think we should restrain spending, not increase taxes. I urge my colleagues to vote no on this motion.

I yield the balance of my time.

Mr. DORGAN. Well, let us suppose that in 7, 8, or 9 years we see the deficit begin to explode on us. Is the Senator suggesting that we cut health care for kids, but that we retain tax cuts that are backloaded, that are six and eight times as large in the year 2007 than in the year 2002, and are for the largest income earners in this country? I would like to see us vote on that in the U.S. Senate.

My point is we are making deliberate decisions about the Tax Code here, some good decisions, some I think are not so good.

We need to think about the consequences of these decisions. This motion would help us do that. If the tax cuts exceed the expected amount and if we are also running a deficit in the outyears, four provisions of this tax cut bill would be temporarily suspended.

That is my motion to refer today. I hope the Senate would consider it favorably.

I yield back the balance of my time.

The PRESIDING OFFICER. All time has expired. The Senator from Delaware.

Mr. ROTH. Mr. President, I make a point of order against the motion to refer on two grounds. First, that it is not germane to the bill under section 305 of the budget, and second that the motion includes budget process matters not reported from the Budget Committee, in violation of section 306.

Mr. DORGAN. Mr. President, pursuant to Section 904(c) of the Congressional Budget Act, I move to waive Section 305(b) to Section 306 of that act with respect to my motion.

I 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 to waive the Budget Act. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS] and the Senator from New York [Mr. D'AMATO] are necessarily absent.

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

The yeas and nays resulted—yeas 34, nays 64, as follows:

[Rollcall Vote No. 133 Leg.]

YEAS—34

| | | |
|----------|------------|---------------|
| Akaka | Feinstein | Levin |
| Biden | Ford | Moseley-Braun |
| Bingaman | Glenn | Murray |
| Boxer | Harkin | Reed |
| Bumpers | Hollings | Reid |
| Byrd | Inouye | Robb |
| Conrad | Johnson | Sarbanes |
| Daschle | Kennedy | Torricelli |
| Dodd | Kerry | Wellstone |
| Dorgan | Kohl | Wyden |
| Durbin | Lautenberg | |
| Feingold | Leahy | |

NAYS—64

| | | |
|-----------|------------|-------------|
| Abraham | Frist | McCain |
| Allard | Gorton | McConnell |
| Ashcroft | Graham | Mikulski |
| Baucus | Gramm | Moynihan |
| Bennett | Grams | Murkowski |
| Bond | Grassley | Nickles |
| Breaux | Gregg | Rockefeller |
| Brownback | Hagel | Roth |
| Bryan | Hatch | Santorum |
| Burns | Helms | Sessions |
| Campbell | Hutchinson | Shelby |
| Chafee | Hutchison | Smith (NH) |
| Cleland | Inhofe | Smith (OR) |
| Coats | Jeffords | Snowe |
| Cochran | Kempthorne | Specter |
| Collins | Kerrey | Stevens |
| Coverdell | Kyl | Thomas |
| Craig | Landrieu | Thompson |
| DeWine | Lieberman | Thurmond |
| Domenici | Lott | Warner |
| Enzi | Lugar | |
| Faircloth | Mack | |

NOT VOTING—2

D'Amato Roberts

The PRESIDING OFFICER. On this vote the yeas are 34, the nays are 64. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained on both grounds.

The motion to refer is not in order.

The Senator from New York.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

BALANCED BUDGET ACT OF 1997—
EXTRANEOUS MATERIAL

Mr. ROTH. Mr. President, pursuant to section 313(b)(1)(c) of the Congressional Budget Act, I submit a list on behalf of the Committee on the Budget of the extraneous material in S. 947 the, Balanced Budget Act of 1997, as reported. I ask unanimous consent that the list be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BALANCED BUDGET RECONCILIATION ACT OF 1997—EXTRANEOUS PROVISIONS

| Senate | |
|--|---|
| Provision | Comments/Violation |
| AGRICULTURE, NUTRITION, AND FORESTRY | |
| Sec. 1001 | Hardship waiver continues after 2002 which means title has a net cost. Byrd rule (b)(1)(E): Increases outlays or decreases revenues for a year after 2002 and the title results in a net increase in outlays or net decrease in revenues in that year. |
| BANKING, HOUSING, AND URBAN AFFAIRS | |
| There are no extraneous provisions in this title. | |
| COMMERCE, SCIENCE, AND TRANSPORTATION | |
| Sec. 3002 where it adds "(15)(A)(iii)" p. 110 lines 1–25, p.111 lines 1–4. | Report to Congress on digital TV conversion, Byrd rule (b)(1)(A). |
| ENERGY AND NATURAL RESOURCES | |
| Sec. 4001—first proviso | Funds resulting from the leasing or other use of a reserve facility on or after October 1, 2002 shall be available to the Secretary of Energy without further appropriation, for the purchase of petroleum products for the reserve. Byrd rule (b)(1)(A): Produces no change in outlays or revenues during the fiscal years covered by the reconciliation instructions. |
| FINANCE—DIRECT SPENDING | |
| Medicare: | |
| Sec. 5013 | Requires Secretary of HHS to study PACE Program. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5015(c) | HHS Study of Social HMO Integration into Medicare Choice. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5021 | Authorization of the Nation Bipartisan Commission on the Future of Medicare. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5022 | Authorization of the Medicare Payment Advisory Commission to replace the Prospective Payment Assessment Commission and the Physician Payment Review Commission. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5153(a) & (b) | Authorization and study of Rural Hospital Flexibility Program. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5156(c) and (d) | Reports related to telemedicine. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5217 | GAO fraud and abuse report date due amendment. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5302 | Study on Payments for Long-Term Care Hospitals. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5364 | Study on Definition of Homebound. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5366 | Inclusion of Costs of Service in Explanation of Benefits. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5521(c) | Study and Report on Clinical Lab Payments. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Medicaid: | |
| Sec. 5701(b) | Reports on Medicaid Managed Care. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5711(b) | Study and Report on the Boren Amendment. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Welfare: | |
| Sec. 5821 | Evaluations of Welfare to Work program and Report to Congress. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5823 | Clarification of states ability to sanction an individual receiving TANF for noncompliance. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5871 | Sense of the Senate regarding the correction of Cost Living Adjustment. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| GOVERNMENTAL AFFAIRS | |
| There are no extraneous provisions in this title. | |
| LABOR AND HUMAN RESOURCES | |
| Sec. 7001(a)(4) | Allows guarantee agencies to use earnings from excess guarantee agency reserves placed in restricted accounts for limited purposes. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| VETERANS' AFFAIRS | |
| There are extraneous provisions in this title. | |

REVENUE RECONCILIATION ACT
OF 1997

The Senate continued with the consideration of the bill.

Mr. ROTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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