

APRIL 28—WORKERS' MEMORIAL  
DAY UNDERLINES IMPORTANCE  
OF OCCUPATIONAL SAFETY

**HON. JAMES T. WALSH**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 5, 1999*

Mr. WALSH. Mr. Speaker, today I ask my colleagues to join me in recognizing April 28 as Workers' Memorial Day in the State of New York. This is a wonderful opportunity for us to remember an important issue in today's workplace, occupational safety.

Every city, town and village in this country was built by the proud efforts of working people. They have contributed to our Nation's wealth and reputation, our national defense and quality of life.

In some instances in the past, they have endured harsh and even perilous conditions in pursuit of excellence and their livelihood.

Today, we must continue the fight to ensure the safety of all workers. The sacrifices of the past will not be forgotten as we strive to eliminate dangers at the workplace.

I want to thank the working men and women of Central New York in particular for their invaluable contributions to our community.

CONSTRUCTIVE OWNERSHIP  
TRANSACTIONS

**HON. RICHARD E. NEAL**

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 5, 1999*

Mr. NEAL of Massachusetts. Mr. Speaker, today I am introducing legislation to prevent a transaction the goal of which is tax avoidance by means of converting ordinary income or short-term capital gains into income eligible for long-term capital gains rates.

Since Congress enacted legislation to lower the capital gains tax below that of ordinary income, the press has written about a number of transactions that have been developed to recharacterize income primarily for the avoidance of tax. Congress closed one loophole in 1997 involving constructive sales or so-called "short-against-the-box" transactions. In those transactions investors were effectively selling an asset and receiving the benefits of a sale without calling it a sale for tax purposes. The Taxpayer Relief Act of 1997 termed these transactions constructive sales and restored the appropriate tax treatment, determining that if it looks like a sale and acts like a sale, it should be treated as a sale for tax purposes.

Consistent with that approach, our former colleague Barbara Kennelly developed additional legislation in 1998 that could be termed "constructive ownership" legislation. In this case, an investor effectively purchases an asset and has the benefit of ownership, but does not pay taxes on income from the asset in the same way as if the investor owned it directly. The solution that was proposed was to treat that investment no more favorably than the treatment ownership in the underlying asset would have received. In addition, while this treatment would assure appropriate capital gains treatment, these transactions could still be attractive for deferring the recognition of ordinary income—in contrast to direct owners

who pay taxes annually on ordinary income. To correct this, the bill imposes a deferred interest charge to recapture the benefits of deferral.

As many in the industry will recognize, the legislation I am introducing today is based on the Kennelly bill, but makes several technical improvements which were suggested last year, primarily by the New York State Bar Association. Additional comments, of course, are certainly in order.

Investors in a hedge fund (and other pass through entities) are required to pay taxes annually on their share of the income from the fund regardless of whether they receive a distribution. In the transaction covered by the bill, investors indirectly invest in the fund through a derivative that is economically equivalent to a direct investment. However, the derivative allows the investor to defer his tax liability. Invest in a hedge fund, and you pay taxes every year, and those profits are taxed at the higher short-term capital gains rate. Place that same money in a derivative wrapped around a hedge fund, and you pay taxes only at the end of the contract, and the profit is taxed at the lower long-term capital gains rate. The bill I am introducing today states that if an investor indirectly owns a financial asset like a hedge fund through a derivative, they cannot get more long-term capital gain than if they owned the investment directly. In addition, there is an interest charge to offset the additional benefit of the deferral.

The effective date for this legislation is for gains realized after date of enactment. This is a more generous effective date than that contained in the Administration's budget. Still, some would argue that this is retroactive, because they signed contracts prior to the date of introduction of the Kennelly Bill and therefore were not on notice that a change in the law might occur.

Since I announced my intention to reintroduce the Kennelly bill, it is my understanding that a number of contracts have been, and continue to be, signed under the theory that the legislation may not pass Congress, and if it did the transaction could simply be unwound. This may explain the recent comments of Robert Gordon, President of 21st Securities, as reported in this month's edition of MAR/Hedge, which states: "Gordon says that the penalty is so low (in my legislation) that he would advise clients thinking about *synthetic hedges* (italics are mine) to go ahead. "There is not a lot of cost if the bill does become retroactive, you just unwind the swap." The penalty is the difference between the two interest rates—the one charged in the swap by the dealer and the interest rate earned by money in the investor's hands. Because the interest today and the interest rate when the law changes, say several months from now, will be relatively small, it is a small penalty to pay."

It is hard to be sympathetic to an investor who enters into a particular so-called "synthetic" transaction purely for purposes of tax avoidance. It is even harder to be sympathetic when the investor signs a contract after he was on notice that there was a legislative change under consideration. It is hardest of all to be sympathetic to an investor who deliberately signs a contract betting that the potential for tax avoidance far outweighs a potential loss attributed to unwinding a contract if the law does change, and then claims "retro-

activity" in a last attempt to secure the benefits of tax avoidance.

Nonetheless, the fact remains that some contracts were signed prior to the date of introduction of the Kennelly bill. I have therefore added a grandfather clause to this legislation that exempts all contracts from changes in this bill if the contracts were signed prior to the date of introduction of her bill on February 5, 1998. The grandfather clause would cease to exist if the contract was extended or modified.

Mr. Speaker, all capital gains differentials invite attempts to recharacterize ordinary income or short-term capital gains into long-term capital gains. The transactions I am talking about are, of course, not available to the ordinary investor who must pay his fair share of taxes, but only to a small number of sophisticated wealthy investors. Any perception that being sophisticated and wealthy enough allows some to avoid paying their fair share of tax undermines the entire tax system, as well as the capital gains differential. I believe it is important to shut down tax shelters as we uncover them, and if we in Congress do not have the courage to do that, then maybe allowing the Department of the Treasury to have broader power to characterize tax shelters and shut them down through the regulatory process needs to be seriously considered.

RECOGNIZING THE IMPORTANCE  
OF SMALL BUSINESS AND PAY-  
ING TRIBUTE TO THIS YEAR'S  
SMALL BUSINESS AWARD RE-  
CIPIENTS IN NEW HAMPSHIRE

**HON. CHARLES F. BASS**

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 5, 1999*

Mr. BASS. Mr. Speaker, I am pleased to have this opportunity to recognize several small business leaders from my home state of New Hampshire. As we all know, small businesses in the United States serve as the backbone of our economy, accounting for more than ninety-nine percent of America's employers and employing fifty-three percent of America's workforce. The role of small businesses, especially in New Hampshire, is essential in strengthening our economy, expanding opportunities for employers and employees, and providing goods and services that are second to none.

This year, five individuals from New Hampshire have been recognized by the U.S. Small Business Administration for their exemplary contributions to small business in New Hampshire. In addition, 1999 marks the thirty-fifth anniversary of the Service Corps of Retired Executives (SCORE) and the fifteenth anniversary of the New Hampshire Small Business Development Center. At the annual "New Hampshire's Salute to Small Business" dinner and awards ceremony, these two groups and the following individuals will be honored for their overall promotion of small business and for their individual successes during the past year:

Frederic A. "Rick" Loeffler, CEO of Shorty's Mexican Roadhouse in Manchester, will be presented with the New Hampshire Small Business Person of the Year Award;

Christine Gillette, business and economic development editor of the Portsmouth Herald,

will be presented with the Media Advocate of the Year Award;

Jeffrey M. Pollock, president of the New Hampshire Business Development Corporation in Manchester, will be presented with the Financial Services Advocate of the Year Award;

Arlene Magoon, owner of American Nanny & Family Care Services in Amherst, will be presented with the Woman in Business Advocate of the Year Award; and

William T. Frain, Jr., president and chief operating officer of the Public Service Company of New Hampshire, will be presented with the Special New Hampshire District Advocacy Award.

Mr. Speaker, I am extremely pleased that Rick, Christine, Jeff, Arlene, and Bill have been recognized for their contributions to small business in New Hampshire. As a small business owner myself, I clearly understand how necessary small business is to our economy, our community, and, most important, to our way of life. New Hampshire is indeed fortunate to have individuals of this exceptional caliber as members of the small business community. I hope that the House will join me in extending our congratulations to this year's small business award recipients.

#### HIGH ODYSSEY II: THE SIERRA IN THE WINTER OF 1999

### HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 5, 1999*

Mr. RADANOVICH. Mr. Speaker, seventy years ago, while Californians were experiencing the security and success of the roaring twenties, a lone mountaineer was skiing his way up the 300 mile crest of the Sierra Nevada from south of Mount Whitney toward Yosemite Valley. This little known feat in the annals of American Mountaineering was accomplished prior to the existence of the John Muir Trail, the advent of organized search and rescue teams, or cell phones.

Orland Bartholomew carried a 70-pound pack, a folding bellows camera and a double bit ax. He skied on custom made wooden skis without metal edges with only a crude wax system for climbing. He slept in a down robe with a half-tent and no stove. Fortunately, Orland wrote extensive journal entries and shot over 320 photographs of his adventure. Thanks to his son, Phil, these documents have been preserved.

This spring, to celebrate this historic trip, a team of four skiers recreated this great adventure. In completing this trip they were successful in drawing attention to the legacy of this lone skier's accomplishment and its proper place in the history of mountaineering. Their stated goal was to encourage the U.S. Geological Survey to name a peak for Orland. By taking over 2,000 photographs and keeping detailed journals they also documented the state of the High Sierra during the last winter of the 1900's.

The Fresno Bee has established a website to provide information on both of the trips and to report on the findings from their research. ([www.fresnobee.com/man/trek](http://www.fresnobee.com/man/trek))

The High Odyssey II team followed as accurately as possible the original route of Orland Bartholomew based upon his original journals

and photographs. They were assisted in their research by Phil Bartholomew and Sierra historian Gene Rose. The Team left Cottonwood Creek on April 2, 1999 and arrived in Yosemite Valley on April 28 after skiing 290 miles and crossing 20 passes over 10,000 feet.

The four members of the Team are accomplished ski mountaineers and climbers with extensive winter experience in the areas in which Orland Bartholomew skied. They crossed high passes, did winter ascents of peaks en route, including Mt. Whitney, and forded rushing streams.

At 17, Fritz Baggett represents the next generation of mountain adventurers. He has grown up in El Portal, the gateway to Yosemite, where he has climbed and skied since a babe in the backpack. He recently earned his Eagle Scout badge as a member of Yosemite Troop 50. As a musician and writer in the punk/shredder genera his contributions, like his skiing, are full of the zest and drive of true youth.

Tim Messick has spent his adult life teaching others the joys of skiing the Sierra backcountry. As a guide for the Yosemite Mountaineering School and Yosemite Cross-County School since 1980, Tim has skied and guided extensively in the Sierra. He skied one of the first three-pin descents of LeConte Gully at Glacier Point and the Y notch on Mount Conness. His classic book, "Cross-Country Skiing in Yosemite" (now in its second printing), is a tribute to his skills as writer, teacher, and skier.

Art Baggett has spent the past 25 years living in the Yosemite community. His mountain adventures include hiking the 2,040-mile Appalachian Trail from Georgia to Maine in 1973, a 21 day ski of the Sierra Crest on wooden Bonna 2000 skis with a makeshift three pin set up, and numerous big wall climbing ascents. Art's background as a teacher-naturalist, field biologist, small town attorney and former Mariposa County Supervisor provides another unique perspective from which to view the terrain. Art's published works include papers and lectures on the public policy and legal conflicts between the practice of prescribed burning and the Clean Air Act.

The team would not be complete without a true historian and mountain sage. Howard Weamer brings not only the wisdom of a lifetime spent traversing the Range of Light on skis and on foot, but the keen eye of one of the best known Sierran photographers. His book, "The Perfect Art," the history of the Ostrander Ski Hut and skiing in Yosemite is a tribute to those that have gone before and the 25 years he has spent as the hutkeeper of this Yosemite institution.

I commend the courage and resolve of these present-day mountaineers to help us to learn more of those that came before and that are part of the heritage of the great state of California and the United States frontier. Further, based upon their efforts, I will renew my efforts to ensure that the United States Geological Survey name a Sierra peak in honor of Orland "Bart" Bartholomew, a Sierra High Adventurer.

MS. KINYA EFURD WINS THE VOICE OF DEMOCRACY SCRIPT-WRITING CONTEST

### HON. TOM A. COBURN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 5, 1999*

Mr. COBURN. Mr. Speaker, each year the Veterans of Foreign Wars of the United States and its Ladies Auxiliary conduct the Voice of Democracy script-writing contest. This year more than 80,000 secondary school students across the nation competed for fifty-six national scholarships by writing about the theme "My Service to America." It is with great pleasure that I announce that the winner from the State of Oklahoma is Ms. Kinya Efurd, a Junior at Eufaula High School in Eufaula, Oklahoma. Kinya, the daughter of Jerry and Vicki Efurd, is active in the Honor Society, Student Council, Band, and Future Farmers of America. Kinya's description of how her uncle, a veteran of World War II and the Normandy Invasion, served our country and her vision of personal service to America is both a reminder of those who have sacrificed so much and a call to all Americans to strive to continually serve our great nation. I am submitting Ms. Efurd's essay for the RECORD, so that my colleagues may have the opportunity to review and reflect upon her inspirational comments.

#### "MY SERVICE TO AMERICA"

Like many other Saturday nights, I was on my way to the theater and decided to see the new hit movie "Saving Private Ryan." My parents stopped me before I went in and warned me that what I was about to see was extremely graphic and violent. Evidently, they were visibly shaken by what they had just viewed. My parents were unsure if they wanted me to see what some say is the most accurate portrayal of war ever filmed. I told them I would be fine because I had seen those other bloody movies before, so in fact, I thought I had seen it all.

From the very beginning this became more than just a movie to me. I immediately remembered the story of my great-uncle being part of the Normandy Invasion. I have been told that he was awarded the bronze star, for an act of bravery, during that battle. No one knows what he did to gain that district honor. He has never told anyone about the horror that he experienced. After seeing this movie I feel I have a stronger appreciation of not only what my uncle did, but also the thousands of others who have served America.

Perhaps, I may never serve my country in headed battle. However, I know other ways to serve with honor and dignity. I strongly believe that as an American citizen I can and must serve my country in my own way to benefit future generations.

As a teenager what can I do now to serve my country? The answer to this question is as simple as getting an education. This means going, participating, and believing that this is not a right, but a privilege. Attending school and filling my head with knowledge that will prepare me for the real world is critical. Undoubtedly, school and education will give me the values and knowledge I need to reach my goals. Also, education has given me the power to believe that I can become whatever my heart leads me to be. I may want to be a doctor, a teacher, or even a social worker. I might even become the best stay-at-home mom there is. My parents have always told me that education is the key to success.