November 6, 1979

Congressional Record — Senate

EC-2431. A communication from the Department of the Treasury, through the Bureau of Engraving and Printing, to use recording clocks to record time and attendance of employees, to the Committee on Governmental Affairs.

EC-2432. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on the disposal of excess property in a foreign country for fiscal year 1979; to the Committee on Governmental Affairs.

EC-2434. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of legislation adopted by the Council of the District of Columbia on October 9, 1979; to the Committee on Governmental Affairs.

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with a recommendation that they be printed in the Record at this point.

H. R. 1543. An act to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment and an amendment to the title:

S. 6. A bill to amend the Agricultural Act of 1949, and for other purposes (Rept. No. 96-400).

By Mr. KENNEDY, from the Committee on the Judiciary, without amendment:

S. J. Res. 107. A joint resolution authorizing and requesting the President to issue proclamations designating the weeks of January 21 through January 27, 1979, and January 20 through January 26, 1980, as “Junior Achievement Week” (Rept. No. 96-401).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LONG, from the Committee on Finance:

John Zeldes Bernstein, of Maryland, to be General Counsel of the Department of Health, Education, and Welfare, N. Jerold Cohen, of Georgia, to be an Assistant General Counsel in the Department of the Treasury (Chief Counsel for the Internal Revenue Service).

(STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS)

By Mr. HATCH (for himself, Mr. THURMOND, Mr. COCHRAN, Mr. HELMS, and Mr. LAXALT):

S. 90. A bill to provide for more expeditious, effective, and equitable enforcement of the antitrust laws; to the Committee on the Judiciary.

By Mr. DECONCINI:

S. 981. A bill to strengthen judicial machinery by amending the jurisdiction and venue requirements and damage provisions in all suits involving the False Claims Act, and for other purposes; to the Committee on the Judiciary.

By Mr. BENTSEN:

S. 982. A bill to amend the Internal Revenue Code to extend in certain cases the six month deadline for exempting exports from the manufacturers excise tax; to the Committee on Finance.

By Mr. MATHIAS (for himself, Mr. MITZENBAUM, Mr. KENNEDY, and Mr. JVSTIS):

S. 983. A bill to amend section 1979 of the Revised Statutes to provide that States, municipalities, and agencies or units of government thereof, may be sued under the provisions of such section; to establish rules of liability with respect to such States, municipalities, and agencies or units of government thereof; and for other purposes; to the Committee on the Judiciary.

By Mr. WALLOP:

S. 984. A bill to amend the Internal Revenue Code of 1954 to provide an unlimited marital estate and gift tax deduction, to modify provisions relating to special valuation of marital property, for other purposes; to the Committee on Finance.

The following communications from the Chairmen of the Committees of the Whole of the Senate were reported:

By Mr. HATCH (for himself, Mr. METZGER, Mr. JAVITS, Mr. SMITH, Mr. HATZIS, Mr. MATHIAS, Mr. JAVITS, Mr. SMITH, Mrs. STEIDER, and Mr. WILLIAMS):
(b) for the purposes of obtaining or aid­
ing to obtain the payment or approval of such a claim, is fraudulent. Any additional par­ties in such counterclaim all persons who may be jointly and severally liable with such original defendant; and the claim is as­
serted by reason of having violated sections
3490 through 3494 of the Revised Statutes,
as amended, proceed or state, that no cross­
claim or counterclaim shall be asserted
among such additional parties except as such
claims may otherwise be within the jurisdic­
tion and scope of the action.

(b) By adding new subsections G, H, I, and
J, as follows:

"(G) In any action hereafter brought un­
rather than the United States District Court for
the United States, the United States District Court for
the Virgin Islands, the United States District Court for
Puerto Rico, the Virgin Islands of the United States, or in
any foreign court or tribunal, the United States shall be
liable to the United States District Court for
the United States as pro­

vided in the next subsection.

(2) By adding new subsections (a) and
(b), as follows:

"(a) Any person who shall do or commit any
of the acts prohibited by any of the
provisions of the preceding subsection shall
for each such claim, make or give to the United
States the sum of $5,000, and in addi­tion thereto,

"(1) double the amount of its damages, in­
cluding double the amount of its conse­
quence which the United States would not have sustained but for
for the doing or commission of any of the acts set forth in the preceding section;

or

"(3) double the amount of its damages and costs of suit, including, but not lim­
ited to, such attorney fees, and any losses which the United States would not have sustained but for
for the doing or commission of any of the acts set forth in subsection (3) above.

Such forfeiture or forfeitures and damages shall be sued for in the same suit.

(b) The term 'knowingly' or 'knowingly,' as used in this Act, shall mean either that the defendant:

"(1) had actual knowledge;

"(2) had constructive knowledge in that

"(3) any credits to which the defendant may estab­lish entitlement, which credits shall be deducted only after the damages
would have been doubled as set forth in subsection (2) above.

(c) for the purpose of obtaining or aiding to obtain the payment or approval of such a claim, is fraudulent. Any additional parties in such counterclaim all persons who may be jointly and severally liable with such original defendant; and the claim is as­
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be assembled and made available for inspection and copying or reproduction; and

"(c) identify the custodian to whom such material shall be made available.

"(A) propound with definiteness and certainty the written interrogatories to be answered;

"(B) prescribe a date or dates at which time answers to written interrogatories shall be served; and

"(C) identify the False Claims Act investigator to whom such answers shall be submitted.

"(4) When the testimony is fully transcribed, the False Claims Act investigator or the officer or False Claims Act investigator shall promptly deliver it or send it by registered or certified mail to the custodian.

"(A) delivering a duly executed copy thereof to the person to be served; or

"(B) depositing such copy in the United States mails registered, return receipt requested, and duly addressed to such person at his residence or principal office or place of business.

"(4) When the testimony is fully transcribed, the False Claims Act investigator or the officer or False Claims Act investigator shall promptly deliver it or send it by registered or certified mail to the custodian.

"(A) delivering a duly executed copy thereof to the person to be served; or

"(B) depositing such copy in the United States mails registered, return receipt requested, and duly addressed to such person at his residence or principal office or place of business.

"(1) The examination of any person pursuant to a demand for oral testimony shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically. The testimony shall be transcribed, and the person conducting the examination may, for good cause, limit such witness to the transcription of the testimony to the custodian.

"(2) The False Claims Act investigator or investigators conducting the examination shall exclude from the place where the examination is held all other persons except the person being examined, his counsel, the business or in such other place as may be agreed upon by the False Claims Act investigator and the witness. The False Claims Act investigator shall be accompanied, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or by the court's own motion, with respect to any question asked of such person. Such person or counsel may object on the record to the question, in whole or in part, and shall not be required to answer any question the court determines to be irrelevant or at variance with the provisions of this section.

"(3) Any person or persons appearing or examined pursuant to a demand shall be entitled, with the same fees and mileage which are paid to witnesses in the district courts of the United States, to compensation for their services.

"(A) delivering a duly executed copy thereof to the person to be served; or

"(B) depositing such copy in the United States mails registered, return receipt requested, and duly addressed to such person at his residence or principal office or place of business.

"(1) The examination of any person pursuant to a demand for oral testimony shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer shall afford the witness (who may be accompanied by counsel) a reasonable opportunity to examine the transcript; and the transcript shall be returned to the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires shall be submitted to the court for the purpose of producing such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the right to affix his signature to the transcript. If the transcript is not signed by the witness within 30 days of being offered for signature, the court shall direct the custodian to examine it, the officer or the False Claims Act investigator shall sign it and state on the record the fact of the waiver. Unless such witness shall otherwise agree, the court shall refuse to sign, together with the reason, if any, given therefor.

"(B) Upon payment of reasonable charges therefor, the False Claims Act investigator shall furnish a copy of the transcript to the witness only, except that the Assistant Attorney General in charge of the Civil Division may, for good cause, limit such witness to inspection of the official transcript of the testimony.

"(C) depositing such copy in the United States mails registered, return receipt requested, and duly addressed to such person at his residence or principal office or place of business.

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"(A) delivering a duly executed copy thereof to the person to be served; or

"(B) depositing such copy in the United States mails registered, return receipt requested, and duly addressed to such person at his residence or principal office or place of business.
(b) Within 20 days after the judicial district within which such persons assembled in the course of such investigation, pursuant to subsection (c) of this section

(1) The custodian to whom any documentary material, answers to interrogatories, or transcripts of oral testimony provided pursuant to any demand issued pursuant to this Act, or the official relief of such custodian from responsibility for the custody and control of such material may be used by any such official or employee in connection with the taking of oral testimony pursuant to this section.

(2) The custodian may cause the preparation of such copies of documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any duly authorized official or employee of the Department of Justice, or an advisory committee, or any other Federal administrative or regulatory agency in connection with the taking of oral testimony pursuant to this section.

(3) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, so produced shall be available for examination, without the consent or order of the court, except that such person refuses to surrender such documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, to the custodian a petition for an order of such court for the introduction thereof into the record of such case or proceeding.

(4) While in the possession of the custodian and under such reasonable conditions and terms as the Attorney General shall prescribe, documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, so produced shall be available for examination by the person who produced such material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, or any duly authorized representative of such person; and (B) transcripts of oral testimony shall be used by the attorney who produced such testimony, or his counsel.

(d) Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such material, answers, or transcripts for official use in connection with the case or proceeding, subject to the approval of the court, except that such person refuses to surrender such material, answers to interrogatories, or transcripts of oral testimony, or copies thereof to the custodian a petition for an order of such court for the introduction thereof into the record of such case or proceeding.

(e) If any documentary material has been developed under any demand issued pursuant to this Act, the Attorney General, through the custodian of such material, shall serve upon such False Claims Act investigator a petition for an order of such court for the introduction thereof into the record of such case or proceeding.

(f) Any documentary material, answers to interrogatories, or transcripts of oral testimony provided pursuant to any demand issued under this Act shall be exempt from disclosure under section 552 of title 5, United States Code.

Sec. 4. This act, and the amendments made by this act, shall become effective upon enactment and shall not be applicable to cases pending on that date.

By Mr. BENTSEN:

S. 1982. A bill to amend the Internal Revenue Code to extend in certain cases the 6-month deadline for exempting exports from the manufacturers excise tax; to the Committee on Finance.

MANUFACTURERS' EXCISE TAXES—12-MONTH EXTENSION OF CURRENT 6-MONTH EXPORT EXEMPTION

Mr. METZENBAUM, Mr. KENNEDY, Mr. JAVITS:

Mr. President, I am today introducing a bill to give the Secretary of the Treasury discretion to extend for an additional 12 months certain excise tax deadlines with respect to exempting goods which will be exported within 6 months from the date of sale by the manufacturer (or if earlier, on the date of shipment by the manufacturer.) If the goods are not exported within this 6-month period the excise tax must be paid. However, if the excise tax is subsequently refunded upon the export of the goods.

Earlier this year many American firms purchased goods for export to Iran. Due to the civil unrest in that nation the shipment of many of these goods has been delayed. These delays necessitate the payment of the excise tax even though the tax will be refunded later when the goods are exported. The Secretary of the Treasury discretion to extend the deadline an additional 12 months in situations involving civil unrest.

In light of our current trade deficit of some $30 billion, it is essential that Federal law provide greater flexibility for exporting firms.

We cannot expect to reverse our trade deficit unless our Government assists U.S. exporters to the same extent that foreign governments assist their own exporters. There is substantial precedent in current tax law to give IRS discretion in these types of cases. For example, penalties for late filing of tax returns can be waived for exceptional circumstances.

Mr. President, I urge the Senate to enact this technical tax proposal which would simply help recognize the added risks of engaging in export activities.

By Mr. MATHIAS for himself, Mr. MYER, Mr. KENNEDY, and Mr. JAVITS:

S. 1983. A bill to amend section 1979 of the Revised Statutes to provide that States, municipalities, and agencies or