PROVIDING FOR A CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND HOUSE OF REPRESENTATIVES

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to S. Con. Res. 95, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 95) providing for a conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table, without any intervening action or debate.

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

The concurrent resolution (S. Con. Res. 95) was agreed to, as follows:

S. CON. RES. 95

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Tuesday, January 29, 2002, it stand recessed or adjourned until noon on Monday, February 4, 2002, or until such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Tuesday, January 29, 2002, it stand adjourned until noon on Monday, February 4, 2002, or until Members are notified to reassemble pursuant to section 2 of the concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

HOPE FOR CHILDREN ACT—Continued

AMENDMENT NO. 2718

Mr. BAUCUS. Mr. President, there was a vote earlier on a small business amendment offered by the Senator from Missouri, Mr. BOND. It was adopted. That shows we are starting to make progress toward an agreement on a bill to stimulate economic recovery. That was the small business expensing amendment which increased the ceiling amount available for business as to expense.

We now have an opportunity to make even more progress by adopting the Baucus-Smith amendment. This amendment makes two important improvements: First, it strikes a balance on the bonus depreciation issue with a 2-year compromise provision. Second, it will help States by increasing the Federal matching payments for Medicaid. As a bonus depreciation, this assistance will be provided for 2 years.

Essentially, I am offering an amendment, joined by my good friend from Oregon, Mr. SMITH, to provide for a 2-year bonus depreciation, as well as a 2-year FMAP payment. I will speak first about bonus depreciation.

I think we all agree that a strong stimulus bill must create tax incentives for business to invest in new equipment. I do not think there is much doubt about that. This amendment creates jobs, lifts the economy, and also increases productivity in the long run. Chairman Greenspan and others have talked a lot about productivity. There is not much doubt that this amendment will help us move in that direction.

Everyone agrees on the concept. The debate, however, has been over the details. The proposal before us is a 10-percent bonus. We have agreed to increase that to 30 percent. The question now is how long should the incentive last.

The Democratic proposal was 1 year; the Republican proposal was 3 years. Our bipartisan compromise amendment, that is the amendment of Senator SMITH from Oregon and myself, is 2 years. This is not simply an effort to split the difference. Instead, if one steps back and thinks about it, a 2-year incentive makes good sense. Three years is too long. It will not encourage business to invest quickly enough. As a result, it will not stimulate businesses to act when we most need them to act.

On the other hand, in the debate last week, Senator SMITH and others made a very good point. They said that a 1-year bonus period might not be long enough because it does not give businesses enough time to make sound investment decisions. Let's not forget the investment to qualify has to be in place, in service within the requisite period.

We have to assume this legislation will not be enacted before March. If we were to stick to the 1-year period, companies would only have a few months left at that point to make purchases and get assets in place, as we are dealing with the calendar year. That is not time enough, especially if we think about the kinds of investments we want to encourage, which is airplanes, heavy machinery, equipment used in manufacturing, locomotives, pipelines, and refineries. In many cases, these assets may take longer to build than 1 year, or the contracts for purchase may take some time to negotiate. This is a legitimate concern.

To address it, our amendment gives companies until December 31, 2003, to make their purchases and get assets in place. Even after that, companies would have an extra year to put the assets in place if they take more than a year to build, so long as they meet a binding contract test.

The amendment will provide economic stimulus. It will work quickly, and it recognizes business realities and gives companies the time they need to make sound investment decisions. That is the first part of the amendment.

The second part relates to the States. The technical term is FMAP. What it is about is helping States by temporarily increasing the rate at which we match State payments under Medicaid. Let me explain why this is important.

Rising Medicaid costs are already contributing to the States' fiscal crisis. Health care costs are increasing rapidly, while rising unemployment is increasing the number of people eligible for Medicaid services. Medicaid spending grew by 11 percent last year. It is likely to increase even faster this year if current economic and budgetary conditions persist.

Many States have already implemented or are now considering implementing significant cuts in Medicaid and the State Children's Health Insurance Program, otherwise known as CHIP, in 2003.

These cuts would affect thousands of children, elderly, and disabled people. For example, Oklahoma and New Mexico may eliminate their CHIP-funded Medicaid expansions to children entirely.

CHIP—that is the State Children's Health Insurance Program—has been very popular. It helps low-income kids get health insurance, health insurance they did not previously have. I think it would be very unfortunate if, due to State budget constraints, they either choose to or believe they are forced to cut back and, in some cases, eliminate those programs that provide health insurance for children.

Tennessee has proposed cutting Medicaid eligibility for 180,000 low-income people in its TennCare Program. Other States will no longer cover disabled workers returning to work or low-income women with breast and cervical cancer. These budget cuts and these tax increases are based on revenue forecasts that do not assume enactment of bonus depreciation provisions. Because most States tie their own tax collections to the Federal tax system, the additional loss of revenues in 2003 that would result from a lengthy bonus depreciation period would increase the likelihood and severity of State actions to cut programs and raise taxes.

The underlying amendment would address this problem by providing a temporary 1-year increase in the Federal matching rate under Medicare. Our amendment goes a bit further by extending the period for 2 years to match the depreciation period.

By doing so, the amendment ensures the amount of aid provided both to States generally and to individual States in particular, will grow if the recession proves deeper than currently projected. That is the second part of the amendment.

All told, the amendment will help businesses, it will help workers, it will help States, and it will help families maintain Medicaid coverage.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have not fully read the FMAP part of the distinguished Senator's amendment, but I am interested in helping the States at this particular time because many of them are experiencing budget crunches, and it is really causing them a lot of difficulty.

With regard to the CHIP program, which was a Hatch-Kennedy bill that was enacted over 4 years ago, my home State of Utah has now achieved the goal of insuring 27,000 children of people who work but do not have enough money to pay for their children's health insurance. In Utah, we have covered 27,000 kids, but there are at least 3,000 more who need to be covered. Due to State budget concerns, Utah has had to cap its CHIP program at 27,000.

Now that is not right. I cannot blame my State leaders. They have to balance the budget, but it is not right that any child in our society should go without basic health care. The very poor in our society are covered by Medicaid. What we did with the CHIP bill was try to take care of those 7 million young people in the country who are children of the working poor. The parents of these children work but do not earn enough money to pay for health insurance but make too much money to be eligible for the Medicaid program. CHIP has worked immensely well. It has been one of the most successful health care programs in the country.

I have worked on a number of important issues throughout my Senate career, and I think that passage of the CHIP program was one of my top achievements as a United States Senator. Providing access to affordable and quality health coverage to the medically uninsured continues to be a high priority for me. So while I have to read the amendment language, I believe it is an important amendment, and I intend to support it as of this juncture.

With regard to bonus depreciation, I was the first Senator to file a bonus depreciation bill. My bill provided for a 50-percent bonus depreciation deduction rather than the 30 percent in this amendment. But remember, some of the other bills were only at 10-percent bonus depreciation, and I am pleased to see that this amendment would now bring it to 30 percent. I am very happy to see the work of Senator SMITH and the distinguished chairman of the Finance Committee, whom I call a friend, in bringing this bonus depreciation percentage to a reasonable level. I would prefer it to be even higher because that would be even more stimulative over this 2-year period, but this is a good move compared to where we were. If we had gone with the Daschle amendment, as I understand it, it would have been effective only from last September until next September. It would have barely had time to work. So this amendment does bring the bonus depreciation more into the realm of workability.

Bonus depreciation is one of the few things we are doing in this legislation that literally provides for an economic stimulus. It is a very good economic stimulus because a lot of companies are understandably nervous about the economic slow-down and are hesitant to invest in their equipment. With a bonus depreciation incentive, they may be able to pull out of some of their difficulties with this additional help that will be provided.

With regard to the FMAP increase included in this amendment, these provisions will assist those who are suffering in our society today due to the economic downturn. In addition, there are States that are having tremendously difficult times meeting the needs of their citizens. The FMAP increase will provide these States with valuable resources so they can meet these demands more easily.

So I want to commend the distinguished Chairman of the Finance Committee for calling up this amendment. I particularly want to commend him for working with Senator SMITH of Oregon, who brought up the original bonus depreciation amendment but who wanted the incentive to last for 3 years. We compromised on 2 years, which I believe is a decent compromise. I want to pay my respects and compliment both of them for the work they have done on this particular amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I direct a question to the distinguished chairman of the Finance Committee. I have four amendments on which I will be very brief. My intention is, if there is no objection, to offer the four amendments, debate one of them at a time, and if someone else comes and wants to offer another amendment, they can put my amendment aside.

What is the position of the chairman on that suggestion?

Mr. BAUCUS. Mr. President, the Senator from Nevada, Mr. REID, is organizing the sequence of amendments. I think it is fine for the Senator from New Hampshire to offer his package of amendments with the understanding they come up one at a time, and if there is an amendment on this side in the interim, that amendment would be offered and we would go back to one of Senator SMITH's amendments. That is fine.

Mr. SMITH of New Hampshire. I thank the chairman.

AMENDMENTS NOS. 2732 THROUGH 2735, EN BLOC

Mr. SMITH of New Hampshire. Mr. President, I send four amendments to the desk, and I ask unanimous consent that they be called up and temporarily set aside for consideration at the appropriate time.

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

The clerk will report the amendments, en bloc.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH] proposes amendment Nos. 2732 through 2735, en bloc.

The amendments (Nos. 2732 through 2735), en bloc, are as follows:

AMENDMENT NO. 2732

(Purpose: To provide a waiver of the early withdrawal penalty for distributions from qualified retirement plans to individuals called to active duty during the national emergency declared by the President on September 14, 2001, and for other purposes)

At the appropriate place in the bill, insert the following:

SEC. ____. WAIVER OF EARLY WITHDRAWAL PENALTY FOR DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY DURING THE NATIONAL EMERGENCY DECLARED BY THE PRESIDENT ON SEPTEMBER 14, 2001.

(a) WAIVER FOR CERTAIN DISTRIBUTIONS.—

(1) IN GENERAL.—Section 72(t)(2) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following:

''(G) DISTRIBUTIONS TO INDIVIDUALS PERFORMING NATIONAL EMERGENCY ACTIVE DUTY.—Any distribution to an individual who, at the time of the distribution, is a member of a reserve component called or ordered to active duty pursuant to a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, during the period of the national emergency declared by the President on September 14, 2001.''.

(2) WAIVER OF UNDERPAYMENT PENALTY.—Section 6654(e)(3) of such Code (relating to waiver in certain cases) is amended by adding at the end the following:

''(C) CERTAIN EARLY WITHDRAWALS FROM RETIREMENT PLANS.—No addition to tax shall be imposed under subsection (a) with respect to any underpayment to the extent such underpayment was created or increased by any distribution described in section 72(t)(2)(G).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to distributions made to an individual after September 13, 2001.

(b) CATCH-UP CONTRIBUTIONS ALLOWED.—

(1) INDIVIDUAL RETIREMENT ACCOUNTS.—Section 219(b)(5) of the Internal Revenue Code of 1986 (relating to deductible amount) is amended by adding at the end the following:

''(D) CATCH-UP CONTRIBUTIONS FOR CERTAIN DISTRIBUTIONS.—In the case of an individual who has received a distribution described in section 72(t)(2)(G), the deductible amount for any taxable year shall be increased by an amount equal to—

''(i) the aggregate amount of such distributions (not attributable to earnings) made with respect to such individual, over

''(ii) the aggregate amount of such distributions (not attributable to earnings) previously taken into account under this subparagraph or section 414(w).''.

(2) ROTH IRAS.—Section 408A(c) of such Code (relating to treatment of contributions) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following:

''(7) CATCH-UP CONTRIBUTIONS FOR CERTAIN DISTRIBUTIONS.—Any contribution described in section 219(b)(5)(D) shall not be taken into account for purposes of paragraph (2).''.

(3) EMPLOYER PLANS.—Section 414 of such Code (relating to definitions and special rules) is amended by adding at the end the following:

''(w) CATCH-UP CONTRIBUTIONS FOR CERTAIN DISTRIBUTIONS.—

''(1) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an applicable participant to make additional elective deferrals in any plan year.

''(2) LIMITATION ON AMOUNT OF ADDITIONAL DEFERRALS.—

''(A) IN GENERAL.—A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

''(i) the applicable dollar amount, or

''(ii) the excess (if any) of—

''(I) the participant's compensation (as defined in section 415(c)(3)) for the year, over

''(II) any other elective deferrals of the participant for such year which are made without regard to this subsection.

''(B) APPLICABLE DOLLAR AMOUNT.—For purposes of this paragraph, the applicable dollar amount with respect to a participant shall be an amount equal to—

''(i) the aggregate amount of distributions described in section 72(t)(2)(G) (not attributable to earnings) made with respect to such participant, over

''(ii) the aggregate amount of such distributions (not attributable to earnings) previously taken into account under this subsection or section 219(b)(5)(B).

''(3) TREATMENT OF CONTRIBUTIONS.—Rules similar to the rules of paragraphs (3) and (4) of subsection (v) shall apply with respect to contributions made under this subsection.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'applicable employer plan' and 'elective deferral' have the same meanings given such terms in subsection (v)(6).''.

(4) CONFORMING AMENDMENT.—Section 414(v)(2)(A)(ii)(II) of such Code (relating to limitation on amount of additional deferrals) is amended by inserting ''(other than deferrals under subsection (w))'' after ''deferrals''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to contributions in taxable years ending after December 31, 2001.

AMENDMENT NO. 2733

(Purpose: To prohibit a State from imposing a discriminatory tax on income earned within such State by nonresidents of such State)

At the appropriate place in the bill, insert the following:

SEC. ___. PROHIBITION ON IMPOSITION OF INCOME TAXES BY STATES ON NONRESIDENTS.

(a) IN GENERAL.—Chapter 4 of title 4, United States Code, is amended by adding at the end the following:

''§ 116. Prohibition on imposition of income taxes by States on nonresidents

''Except to the extent otherwise provided in any voluntary compact between or among States, a State or political subdivision thereof may not impose a tax on income earned within such State or political subdivision by nonresidents of such State.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 4 of title 4, United States Code, is amended by adding at the end the following:

''116. Prohibition on imposition of income taxes by States on nonresidents.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of enactment of this Act.

AMENDMENT NO. 2734

(Purpose: To provide that tips received for certain services shall not be subject to income or employment taxes)

At the appropriate place in the bill, insert the following:

SEC. ___. TIPS RECEIVED FOR CERTAIN SERVICES NOT SUBJECT TO INCOME OR EMPLOYMENT TAXES.

(a) IN GENERAL.—Section 102 of the Internal Revenue Code of 1986 (relating to gifts and inheritances) is amended by adding at the end the following new subsection:

''(d) TIPS RECEIVED FOR CERTAIN SERVICES.—

''(1) IN GENERAL.—For purposes of subsection (a), tips received by an individual for qualified services performed by such individual shall be treated as property transferred by gift.

''(2) QUALIFIED SERVICES.—For purposes of this subsection, the term 'qualified services' means cosmetology, hospitality (including lodging and food and beverage services), recreation, baggage handling, transportation, delivery, shoe shine, and other services where tips are customary.

''(3) ANNUAL LIMIT.—The amount excluded from gross income for the taxable year by reason of paragraph (1) with respect to each service provider shall not exceed $10,000.

''(4) EMPLOYEE TAXABLE ON AT LEAST MINIMUM WAGE.—Paragraph (1) shall not apply to tips received by an employee during any month to the extent that such tips—

''(A) are deemed to have been paid by the employer to the employee pursuant to section 3121(q) (without regard to whether such tips are reported under section 6053), and

''(B) do not exceed the excess of—

''(i) the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (determined without regard to section 3(m) of such Act), over

''(ii) the amount of the wages (excluding tips) paid by the employer to the employee during such month.

''(5) TIPS.—For purposes of this title, the term 'tip' means a gratuity paid by an individual for services performed for such individual (or for a group which includes such individual) by another individual if such services are not provided pursuant to an employment or similar contractual relationship between such individual.''

(b) EXCLUSION FROM SOCIAL SECURITY TAXES.—

(1) Paragraph (12) of section 3121(a) of such Code is amended to read as follows:

''(12)(A) tips paid in any medium other than cash;

''(B) cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more and then only to the extent includible in gross income after the application of section 102(d).'';

(2) Paragraph (10) of section 209(a) of the Social Security Act is amended to read as follows:

''(10)((A) tips paid in any medium other than cash;

''(B) cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more and then only to the extent includible in gross income after the application of section 102(d) of the Internal Revenue Code of 1986 of such month.'';

and

(3) Paragraph (3) of section 3231(e) of such Code is amended to read as follows:

''(3) Solely for purposes of the taxes imposed by section 3201 and other provisions of this chapter insofar as they relate to such taxes, the term 'compensation' also includes cash tips received by an employee in any calendar month in the course of his employment by an employer if the amount of such cash tips is $20 or more and then only to the extent includible in gross income after the application of section 102(d).''.

(c) EXCLUSION FROM UNEMPLOYMENT COMPENSATION TAXES.—Submission(s) of section 3306 of such Code is amended to read as follows:

''(s) TIPS NOT TREATED AS WAGES.—For purposes of this chapter, the term 'wages' shall include tips received in any month only to the extent includible in gross income after the application of section 102(d) of such month.''.

(d) EXCLUSION FROM WAGE WITHHOLDING.—Paragraph (16) of section 3401(a) of such Code is amended to read as follows:

''(16)(A) as tips in any medium other than cash;

''(B) as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more and then only to the extent includible in gross income after the application of section 102(d).''

(e) CONFORMING AMENDMENT.—Sections 32(c)(2)(A)(i) and 220(b)(4)(A) of such Code are each amended by striking ''tips'' and inserting ''tips to the extent includable in gross income after the application of section 102(d))''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to tips received after the calendar month which includes the date of the enactment of this Act.

AMENDMENT NO. 2735

(Purpose: To allow a deduction for real property taxes whether or not the taxpayer itemizes other deductions)

At the appropriate place in the bill, insert the following:

SEC. ___. REAL PROPERTY TAX DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.

(a) IN GENERAL.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by inserting after paragraph (18) the following:

''(19) REAL PROPERTY TAXES.—The deduction allowed by section 164(a)(1).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any payment due after December 31, 2000.

Mr. SMITH of New Hampshire. Mr. President, these amendments I have offered encompass a number of important issues, including property taxes, commuter taxes, tip taxes for those who work as waiters and waitresses for the most part, and Reservists. Those are the four categories.

Mr. President, I thank my colleagues for their courtesy in allowing me to offer four amendments. I will have a very brief discussion of each of these amendments.

AMENDMENT NO. 2735

The amendment No. 2735 is an amendment dealing with property taxes. It provides an above-the-line deduction for State and local property taxes. Right now, these taxes are only deductible for those who itemize their taxes. The nonitemizers are at the lower income levels. Therefore, this will help stimulate the economy by encouraging home purchases and home ownership for those at the lower income levels that do not itemize their taxes.

As we all know, property taxes tend to fund local education. So providing this tax deduction makes it easier for a local taxpayer to afford the quality education. As a former teacher and a parent, I believe it is very important to our economy.

It is important to understand, if a citizen makes enough money to have enough deductions to itemize taxes,

they can deduct property taxes. But what about the senior citizen who has property that has gained in value, they don't want to sell their home, and they are on a fixed income? They could be forced to sell their home to pay the property taxes—which go up every year, usually because of the schools or other costs in the community.

This gives immediate tax relief to every working American or senior citizen or anyone else who owns property, pays property taxes, but does not get a tax deduction because they do not itemize. There is a direct stimulus to the economy. Imagine being able to deduct $2,000 or $3,000 in property taxes and having that cash on hand to be used for something else, whether the purchase of a refrigerator or whatever.

If we want to stimulate the economy and help those who need it most, this is the kind of legislation that does it. I hope my colleagues will look seriously at this matter and pass it as an amendment to the stimulus package.

AMENDMENT NO. 2733

The second amendment I will speak to, No. 2733, involves a commuter tax. This prohibits the imposition of a nonresident income tax unless two States agree to a compact permitting that tax. It happens in New Hampshire; it happens in other States. A State does not have an income tax and a person who lives in a State with no income tax works in another State. That State taxes their income. It is taxation without representation. It is not fair.

This prohibits this tax from being implemented. In the long run, it is fair, and it is best for all people, no matter in what State you live. Even if you are in a State that collects those taxes, it is the issue of fairness. Is it fair for you to collect an income tax from a person who works in your State who gets no benefit? It does not mean only the interstate exchange of goods and services, it also means the exchange of labor.

One of the best ways to stimulate economic growth is allow people to work wherever they want in whatever State they want. Why make it a disincentive for the person living on the border of one State to go to another State. That is what we are doing. It is especially unfair in States such as New Hampshire, where there is no income tax, and there is no reciprocating. In the State of New Hampshire, $2 or $3 million goes out of that State into several of the surrounding States.

We all have constituents who work in neighboring States. In most cases, these constituents pay income taxes to those States; they are called commuter taxes. This is called taxation without representation, where I went to school. This is one of the issues that the colonists in our country fought over when they began to remove themselves from the authority of the King. The Declaration of Independence lists the reasons our country broke away from the Crown, and one of them was imposing taxes without our consent. That is exactly what happens in every State in America where there is an income tax for a person, say, living in Montana, who works in a neighboring State, and they have to pay the tax of that neighboring State.

It is not fair. I understand where politically it is easier for a State legislator to support an income tax on citizens who cannot vote them out of office. There is no way you can vote these people out of office for imposing these taxes, but it goes against the very principles on which our country was founded.

My amendment says if the State consents to allow its citizens to be taxed by a neighboring State, that is OK because now the constituents have an opportunity to either support or not support the legislators who imposed that. It is a very important distinction as to this amendment. If a State consents to allow citizens to be taxed by a neighboring State, fine. But right now that is not the case. They could sign an interstate compact, which would be fine, but it should be up to the States. My amendment preserves the right of citizens to be governed by their own States, not by the tax-hungry legislators of another State.

If you examine this issue, it is a States rights issue, and I urge its adoption.

AMENDMENT NO. 2734

Mr. President, the attacks of September 11 have left a great deal of devastation in their wake. Thousands perished during the attacks while tens of thousands of friends and family members are left to grieve for their loved ones. But the economic impact of those attacks continue to be felt throughout the Nation. With more than 1.6 million working men and women laid off last year, we need to look for ways to provide assistance to working individuals and their families.

The business community, particularly the travel industry, are bearing the brunt of the burden. With airline travel and hotel bookings down sharply, communities which largely depend on tourism and travel as their chief source of revenue will soon, if not already, be in the red and may soon be forced to cut vital services. It is, therefore, imperative that we pass a strong, sensible economic stimulus plan that will provide immediate relief to all Americans and stimulus to local businesses to help them weather this storm and expand employment. However, we must not overlook those who need help the most. The working poor.

Many of the these hardworking Americans supplement their often, minimum wage incomes, with tips received for their excellent service. However, this discriminatory tax is levied against those who can least afford it. Therefore, I am offering an amendment to address this unfairness in the tax code and provide direct relief to hardworking Americans. My amendment is very simple. It recognizes a tip for what it is: a gift. All tips, not exceeding $10,000 annually, would be tax-free. Result: hundreds of dollars a month remains in the pocket of hard working individuals. By exempting these monies from both income and FICA taxes, more money will be returned to the pockets of both employees and employers.

Under current law, service employees who typically receive tips are assumed to have made at least 8 percent of their gross sales in tips. Taxes are applied regardless of the actual level of the tip. The end result for these employees is that they may have to pay taxes on income they didn't receive.

By passing my amendment, the Federal Government will provide direct relief to at least 2.3 million low to middle income individuals who depend on tips to make ends meet. Industry statistics show that most of the employees that will be helped by my amendment are either students, single mothers, or employees at the beginning of their careers. My amendment will benefit millions of Americans directly, substantially, and quickly, while lifting some of the heavy burden of Government off of thousands of small businesses. My amendment eliminates the current cumbersome system under which tips cannot possibly be reported accurately. Hard working, law-abiding citizens who are given tips as a result of their extra effort do not wish to be labeled cheaters by the IRS which does not understand the realities of their work. It is time to change the tax law covering income from tips. My amendment caps the tax-free earnings at $10,000 for the small percentage who make a career of waiting on tables in high-end restaurants and resorts. For States that have a tip credit rule, this bill will not impact the employee's and employer's obligations and contributions up to the minimum wage.

Congress should show the hard working men and women of America that the Federal Government is not out of touch, and that it has some compassion for the struggle facing the millions of citizens in the service industry. By passing my amendment, we pass a common sense proposal that will directly help millions of hard-working Americans.

To reiterate, the third amendment is No. 2734, known as the tip tax. This amendment would consider tips to be gifts for income tax purposes. This would provide a great amount of much needed relief and stimulus to the hospitality and other service sectors of our economy by eliminating the tax burden imposed on these tips.

Think about the types of people who hold these jobs. There are many single mothers, working women, working hard. You have all been to restaurants and you see how hard waiters and waitresses work. Frequently these are single-income mothers who have children at home. They are working hard. This would exempt the first $10,000 of those tips from Federal income tax. That is a pretty good incentive and would help

every waitress, every waiter, every person who receives gratuities as the primary source of their income. It would help them tremendously to exempt the first $10,000.

We treat the tip income the same way—the first $10,000 a year tax free. It is good policy and good stimulus, and I urge its adoption.

In summary, again, if you work as a waitress or waiter, the first $10,000 of the money you earn in tips would be exempted from Federal taxes.

AMENDMENT NO. 2732

After the treacherous attacks of September 11, the need to increase security around the country was and continues to be imperative.

Much of the security needs were filled by National Guard and Reserve units. Many were forced to leave high or higher paying jobs than the military was able to pay. In some cases, this caused a financial burden on the men and women who were called to duty.

In order to help the Guard and Reserve units who were called up as a result of the terrorist attacks, my amendment would allow those units to access their retirement plans without paying the 10 percent penalty for early withdrawal.

The legislation would also allow them an underpayment waiver as well as a catch-up contribution without caps up to the amount they withdrew from their retirement fund.

While we have rightfully provided tax relief to the business and families involved in the September 11 attacks, we must also look for ways to provide relief to those brave men and women who have been called up to protect us from further attacks.

I ask the Senate to support the members of our National Guard and Reservists and agree to my amendment.

In conclusion—I may want to speak to these amendments a little bit later—these are four opportunities for us to help people who need help and stimulate the economy at the same time. These are working women, for the most part, single mothers, working women who have children at home, to exempt that first $10,000 in tip income; to help the reservist who is called up on active duty who has a tough time now making payments on the home; third, to help those who work in one State and have to pay taxes in that State even though they do not get any vote on it; and finally, the property tax where with the above-the-line deduction, if you don't itemize, you can deduct your property taxes.

That will help mostly seniors, those people who are on fixed incomes who are basically property poor. They do not want to sell their house. They don't want to mortgage their house. Why should they have to? They have worked all their lives for it. They can't pay the taxes on it. This will give them a chance to deduct it right off their income.

My amendment will provide tax relief to low income homeowners who do not have enough in deductions to itemize.

Giving low income working Americans an above the line tax deduction for their family home will encourage home ownership and provide a much needed economic stimulus in financially challenged neighborhoods.

School districts depend, in large part, on property taxes. Encouraging home ownership will increase greater tax dollars to these school districts and provide greater learning opportunities for our children.

As a former teacher, I believe it is very important to our children and our economy.

I ask that the Senate consider the working poor and agree to this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The amendment offered by the Senator from New Hampshire is the pending business.

Mr. SESSIONS. I ask unanimous consent to lay aside the pending amendment in order that I might introduce my own amendment, along with Senator ALLEN.

The PRESIDING OFFICER (Mr. CARPER). Is there objection?

Mr. REID. Reserving the right to object, what is the consent request?

The PRESIDING OFFICER. The Senator will repeat his request.

Mr. SESSIONS. That we lay aside the pending amendment and I and Senator ALLEN be allowed to offer an amendment.

Mr. REID. I object to that.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I announce to Members that we are trying to have a consent agreement entered into within the next few minutes to have a vote on or about a quarter to 4 today on the Harkin amendment. We have an agreement that was formalized last night to alternate amendments. And that is what we have been doing. We have a formal agreement that during this stimulus package we are alternating amendments. The next two that were to be in order were two Democratic amendments. We are going to dispose of these. We are going vote on the Harkin amendment and vote on Senator ALLEN's and work our way through this matter. Senator SMITH offered four amendments. The manager on the other side can decide how to handle those. We will do what we have been doing. Unless Senator SMITH combines those into one amendment, we will spread those out, having four amendments on the other side.

I have no objection at this time to Senator SESSIONS offering the amendment in keeping with the agreement that was entered. His amendment would be offered in the normal course of the alternating amendments.

Does the Senator from Iowa agree with me?

Mr. GRASSLEY. Mr. President, if what the Senator is saying is that when it comes to a Member who offered four amendments, we would only vote on one of his amendments and alternate back and forth. Is that your goal?

Mr. REID. Yes. It doesn't matter to me how the manager of the bill handles that. It is strictly up to him.

Mr. GRASSLEY. Since we started the other day with an agreement to go back and forth with one Democratic amendment and one Republican amendment, we will stick with that.

Mr. REID. We entered into that agreement yesterday.

I withdraw my objection to Senator SESSIONS' amendment.

I ask unanimous consent that the Senate vote at 3:45 on or in relation to the Harkin amendment, there be no amendments in order prior to that time, and the time be equally divided.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Alabama.

AMENDMENT NO. 2736

Mr. SESSIONS. Mr. President, I thank the Senator from Nevada for his courtesy which he displays so often.

The American Family Security and Stimulus Act is a stimulus package that I offered along with Senator ALLEN and Senator SMITH. Several other Senators also support it. It is designed to provide a stimulus to this economy and to middle-class working Americans, by emphasizing help to families who tend to be hurt most in an economic slowdown and by trying to get money into this economy in a way that can move us out of here. It is time to blast out of this recession—not ease out of it.

When we look at our budget numbers and our hopes for the future and jobs in America, what we know is that the sooner we get this economy humming again the better. It will even benefit the politicians because we will have more money in our Government Treasury. But, most importantly, it will help create jobs and income for American families and workers.

It is time for us to quit dawdling about and get moving on something that can be reached. I know the great leadership on both sides of the aisle has worked really hard. Sometimes I have been wont to call them masters of the universe, as they told us they were going to work out something. Sooner or later, they were going to get an agreement. But time has gone by and no agreement has been reached. So I suggest the plan that we would offer today—Senator ALLEN and I—is a bipartisan plan that can include much of what is in other people's plans. It also includes some items that would provide stimulus to the economy that are not special interest oriented but family oriented. So everybody should be able to rally behind them.

I will make a few brief remarks and then I will allow Senator ALLEN to

make some comments. I hope I might be able to speak on it as the day goes by.

The components of this plan include a number of items. I believe one of them that has not been given sufficient thought in this process is the requirement that we advance payment of the earned-income tax credit—a $31 billion program for low-income workers. They get that earned-income tax credit the year after they work as a refund on their tax return. If we could begin to put it on their paychecks now—it is 5 percent—they would receive maybe a 60-cent, 80-cent, or 90-cent-an-hour increase in their pay. It would advance payment maybe $10 billion or $15 billion in this fiscal year's economy when we need that advanced payment, and it would reduce next year's payment. It would be a one-time infusion of cash for hard-working Americans with low income with no cost to the budget over a 2-year period. In fact, I think that is the right approach.

I do not believe I sent my amendment to the desk. I send it at this time.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS] for himself, Mr. ALLEN, Mr. SMITH of New Hampshire, and Mr. HUTCHINSON proposes an amendment numbered 2736 to the language proposed to be stricken by amendment No. 2698.

Mr. SESSIONS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. SESSIONS. Mr. President, the cost is $15 billion this year, but it saves the Treasury $15 billion next year because that money would have been paid out earlier than would otherwise have been the case.

I ask that we accelerate the 25-percent individual income tax rate reduction that is now set at 27 to go to 25 by the year 2002, instead of 2006. We would accelerate that to this year providing families a break on their tax return. For example, an individual making $27,000 to $67,000 would receive a 2-percent break on their tax return.

We would allow penalty-free IRA withdrawals for health insurance premiums for unemployed workers. That has the potential to help people who are hurting and need health insurance. We would increase the child tax credit from $500, as it is today for the year 2001, to $1,000 per child, allowing families to receive an additional $500 tax credit on their tax returns for this year. We would do that just for 1 year because it is my belief that we need a stimulus in the economy now. It is going to phase into a $1,000 tax credit for families over 10 years, but for 1 year we would accelerate that in these economic times to provide relief for families.

We would increase from $3,000 to $5,000 the capital loss deduction. A number of plans have had that—both Democrat and Republican.

We provide a 3-month $500 tax credit for the purchase of computers for elementary and secondary students, for which Senator ALLEN is such a passionate proponent, and who will explain in detail.

We will extend the unemployment benefit by 13 weeks and provide the option for States to provide unemployment, if they choose, for part-time workers.

I think that goes beyond Senator DASCHLE's proposal and, I believe, would be very much a compromise that would be acceptable across the aisle.

We would provide $5 billion for national emergency grants to States for people who are hurting and provide temporary business relief by allowing an additional 2-year depreciation deduction of 30 percent of the adjusted basis of certain qualified properties. That is projected at an approximate $38 billion cost, and it would have a cost this year when the money is pumped into the economy. But by allowing people to take that depreciation deduction early, it would be something not available to them in the future, thereby saving Government expenditures or costs in income in the future.

That is a good package. I know Senator ALLEN wants to talk about it. I believe it is a step in the right direction. There is nothing in this that is not bipartisan. There is nothing in this that is special interest. Every bit of it is fair and just, which stimulates the economy, over $100 billion worth, without creating a bureaucracy, without creating a welfare program, and actually doing the things we want it to do.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Virginia.

Mr. ALLEN. Mr. President, I commend Senator SESSIONS for his leadership and echo all of the comments he made in support of this measure. I strongly support, as a cosponsor, this amendment which is entitled the American Family Economic Security and Stimulus Act.

This amendment, due to the great leadership of Senator SESSIONS, as well as his ingenuity, has provided us with what I believe to be a very common sense, compassionate, pro-family package that will help stimulate the economy and help American families and businesses get through the current economic recession.

When one thinks of stimulus or stimulus policy—I know the Presiding Officer remembers the discussion on the concept of stimulus—it should be a change in policy which will induce or spur economic activity, whether it is investment or whether it is spending, that would otherwise not occur but for the change in policy.

This amendment represents a very worker-oriented, pro-family economic aid and stimulus package that will provide immediate financial relief to working families. It will ensure more of their hard-earned money stays in their wallets, and they spend it as they see fit. There is the additional $150 a month in the hands of working Americans through advanced payment on the earned-income tax credit. That is really an immediate 50 to 60 cents per hour pay raise for workers in the lowest income levels.

It increases the child tax credit to $1,000 for the current fiscal year, and it accelerates the rate reduction for the 28 percent tax bracket to 25 percent.

I thank Senator SESSIONS for including the educational opportunity tax credit in this important legislation. This is a concept that I ran on in my campaign. It is one many have heard me discuss. What I am doing in adapting this idea, the education opportunity tax credit, to a stimulus package is to create an immediate incentive for families, parents of children who are in kindergarten through 12th grade, to buy computers, educational software, or computer peripherals. It is a technology-related amendment.

Specifically, what this amendment, the Sessions-Allen amendment, would do is provide parents who have children in kindergarten through 12th grade with an immediate $2,500 tax credit to buy computers, educational software, or peripherals. It would be for only 3 months. It would provide those families with the financial means necessary to provide their children with greater educational choice and opportunities best suited to their individual needs.

Parents know the needs of their children better than anyone. We know in studies about the digital divide that youngsters who have computers at home do better in school. They stay in school. They don't drop out. This is an important way of empowering parents to provide computers and educational software and peripherals to their children.

As far as the economic stimulus of it, if the idea of education and empowering parents is not sufficient to convince my colleagues, let's recognize what this will do for the economy. We can look at the States as our laboratories for a lot of good ideas.

Experience shows in the States that even a small temporary reduction in taxes can bring about huge increases in computer sales. In South Carolina, they had a sales tax holiday on computers for only 3 days. What was the result? Computer sales increased more than tenfold, over 1,000 percent, in those 3 days. In Pennsylvania, they eliminated the sales tax on computers for 1 week. CPU sales increased sixfold in that time.

The PRESIDING OFFICER. All time controlled by the minority has expired.

Mr. ALLEN. Mr. President, I hope the Senate will support this idea of empowering parents, helping with technology, and helping out our economy

as well. It is a good, commonsense approach. I thank the Presiding Officer for giving me the additional 30 seconds.

The PRESIDING OFFICER. Who yields time? The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I believe we have consent from the other side to let the Senator from Virginia speak longer.

Mr. ALLEN. I would appreciate that, Mr. President.

Mr. GRASSLEY. I ask unanimous consent to give the Senator 3 additional minutes, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Virginia is recognized for an additional 3 minutes.

Mr. ALLEN. Mr. President, as I was stating, the educational opportunity tax credit, empowering parents with a $500 tax credit for a 3-month period to buy computers and educational software and peripherals for their children, as we see from the States, works very well. It is not just the computers themselves. Again, South Carolina realized about a 664 percent increase in monitor sales and a 700 percent increase in printer sales, with only a 5 percent tax break. Pennsylvania had a similar experience.

The impact of this will be at least $5 billion of stimulus into this sector of the economy while also helping out the education of children in this country.

We know that this will have much more of an impact than that because whoever is fabricating the chips, the semiconductor chips, whoever the contractors and vendors may be, whoever the sales folks are, all of them, the computer software writers, all of those people will benefit from more business investment, more sales in the tech sector. This idea is supported by Information Technology Industries; Global Learning System; ITIC, which is the Information Technology Industry Council; John Chambers with CISCO, who is well known for his efforts in education and technology, Gateway Computers, who have seen the impact of this in the States, the Consumer Electronics Association, Radio Shack, and Circuit City.

This is a good, balanced, pro-family, pro-taxpayer, pro-jump starting, and ''stimulating this economy to create more jobs'' idea. I hope we will find bipartisan support for this idea that will really allow families to keep more of their money, help educate their children, and also provide the job placement and financial assistance needed to workers during this economic downturn while also making sure that businesses have the capabilities to make investments with accelerated depreciation.

I look forward to working with my colleagues as we move this country forward in a way of trusting free people and free enterprise.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. Mr. President, if I may, I ask unanimous consent to add as cosponsors of the Sessions-Allen amendment Senator TIM HUTCHINSON of Arkansas and Senator BOB SMITH of New Hampshire.

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

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment of the Senator from Virginia be set aside.

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

AMENDMENT NO. 2700

Mr. GRASSLEY. Mr. President, on behalf of Senator MCCAIN, I call up amendment No. 2700, and I ask unanimous consent that it be explained and then laid aside.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. MCCAIN, for himself, Mr. ALLARD, Mr. LIEBERMAN, Ms. SNOWE, Mr. LEVIN, Mr. MURKOWSKI, Mr. CLELAND, Mr. INHOFE, Ms. LANDRIEU, Mr. BURNS, Mr. DURBIN, Mr. SESSIONS, Mr. DEWINE, Mr. THURMOND, Mr. SHELBY, Mr. HAGEL, Mr. LUGAR, Mr. KENNEDY, Mr. WARNER, Ms. COLLINS, Mr. HATCH, Mr. HELMS, Mr. ALLEN, Mr. KERRY, Mr. FITZGERALD, Mr. STEVENS, Mr. REID, Mr. MILLER, Mr. ROBERTS, Mr. BAYH, Mr. ENSIGN, Mr. BUNNING, Mr. CAMPBELL, Mr. NELSON of Nebraska, Mr. DODD, Mr. JEFFORDS, Mr. BROWNBACK, Mr. BIDEN, Ms. STABENOW, and Mr. COCHRAN, proposes an amendment numbered 2700 to the language proposed to be stricken by amendment No. 2698.

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence)

At the appropriate place insert the following:

SEC. ___. SPECIAL RULE FOR MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE IN DETERMINING EXCLUSION OF GAIN ON SALE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Section 121(d) (relating to special rules) is amended by adding at the end the following:

''(9) MEMBERS OF UNIFORMED SERVICES AND FOREIGN SERVICE.—

''(A) IN GENERAL.—The running of the 5-year period described in subsection (a) shall be suspended with respect to an individual during any time that such individual or such individual's spouse is serving on qualified official extended duty as a member of a uniformed service or of the Foreign Service.

''(B) QUALIFIED OFFICIAL EXTENDED DUTY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'qualified official extended duty' means any period of extended duty during which the member of a uniformed service or the Foreign Service is under a call or order compelling such duty at a duty station which is a least 50 miles from the property described in subparagraph (A) or compelling residence in Government furnished quarters while on such duty.

''(ii) EXTENDED DUTY.—The term 'extended duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) UNIFORMED SERVICE.—The term 'uniformed service' has the meaning given such term by section 101(a)(5) of title 10, United States Code.

''(ii) FOREIGN SERVICE OF THE UNITED STATES.—The term 'member of the Foreign Service' has the meaning given the term 'member of the Service' by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges on or after the date of the enactment of this Act.

Mr. MCCAIN. Mr. President, I, along with 39 cosponsors, am proud to sponsor amendment 2700 to H.R. 622 to allow members of the Uniformed and Foreign Services, who are deployed or are away on extended active duty, to qualify for the same tax relief on the profit generated when they sell their main residence as other Americans. I am pleased to announce that Secretary of State Colin Powell fully supports this legislation and this legislation enjoys overwhelming support by the senior uniformed military leadership—the Joint Chiefs of Staff—as well as the Office of Management and Budget Director Mitch Daniels, the 31-member associations of the Military Coalition, the American Foreign Service Association, and the American Bar Association.

The average American participates in our Nation's growth through home ownership. Appreciation in the value of a home because of our country's overall economic growth allows everyday Americans to participate in our country's prosperity. Fortunately, the Taxpayer Relief Act of 1997 recognized this and provided this break to lessen the amount of tax most Americans will pay on the profit they make when they sell their homes.

The 1997 home sale provision unintentionally discourages home ownership among members of the Uniformed and Foreign Services, which is bad fiscal policy. Home ownership has numerous benefits for communities and individual homeowners. Owning a home provides Americans with a sense of community and adds stability to our Nation's neighborhoods. Home ownership also generates valuable property taxes for our Nation's communities.

This amendment will not create a new tax benefit. Let me say that again: this bill will not create a new tax benefit, it merely modifies current law to suspend the time members of the Uniformed and Foreign Services are away from home on active duty. In short, this amendment treats service members and foreign service officers fairly, by treating them like all other Americans.

The Taxpayer Relief Act of 1997 delivered sweeping tax relief to millions of Americans through a wide variety of important tax changes that affect individuals, families, investors, and businesses. It was also one of the most complex tax laws enacted in recent history.

As with any complex legislation, there are winners and losers. But in this instance, there are unintended losers: service members and Foreign Service Officers.

The 1997 act gives taxpayers who sell their principal residence a much-needed tax break. Prior to the 1997 act, taxpayers received a one-time exclusion on the profit they made when they sold their principal residence, but the taxpayer had to be at least 55 years old and live in the residence for 2 of the 5 years preceding the sale. This provision primarily benefitted elderly taxpayers, while not providing any relief to younger taxpayers and their families.

Fortunately, the 1997 act addressed this issue. Under this law, taxpayers who sell their principal residence on or after May 7, 1997, are not taxed on the first $250,000 of profit from the sale; joint filers are not taxed on the first $500,000 of profit they make from selling their principal residence. The taxpayer must meet two requirements to qualify for this tax relief. The taxpayer must, first, own the home for at least 2 of the 5 years preceding the sale; and, second, live in the home as their MAIN home for at least 2 years of the last 5 years.

I applaud the bipartisan cooperation that resulted in this much-needed form of tax relief. The home sales provision sounds great and it is. Unfortunately, the second part of this eligibility test unintentionally and unfairly prohibits many of our men and women in the Armed Forces and Foreign services from qualifying for this beneficial tax relief.

Constant travel across the United States and abroad is inherent in the military and Foreign Services. Nonetheless, some service members and Foreign Service Officers choose to purchase a home in a certain locale, even though they will not live there much of the time. Under the new law, if a service member does not have a spouse who resides in the house during his or her absence or the spouse is also in the military and also must travel, that service member will not qualify for the full benefit of the new home sales provision, because no one ''lives'' in the home for the required period of time. The law is prejudiced against dual-military couples who are often away on active duty, because they would not qualify for the home sales exclusion because neither spouse ''lives'' in the house for enough time to qualify for the exclusion.

This amendment simply remedies an inequality in the 1997 law. It amends the Internal Revenue Code so that the 5-year time period is suspended while the service member or Foreign Service Officer is ordered, I underscore ordered, away from their primary home of residence. In short, active and reserve service members will still be required to live in their primary residence for 2 years, but the 5-year time period is suspended while they are stationed to such places like Afghanistan, the Philippines, Bosnia, the Persian Gulf, in the ''no man's land,'' commonly called the DMZ between North and South Korea, or anywhere else on active duty orders.

In 1998 alone, the United States had approximately 37,000 men and women deployed to the Persian Gulf region, preparing to go into combat, if so ordered. There were also 8,000 American troops deployed in Bosnia, and another 70,000 U.S. military personnel deployed in support of other commitments worldwide. That is a total of 108,000 men and women deployed outside of the United States, away from their primary home, protecting and furthering the freedoms we Americans hold so dear. Since the September 11th attacks on the United States we have asked well over 110,000 service members to deploy abroad to seek out and destroy the terrorists and their supporting organizations responsible for this barbaric deed.

We cannot afford to discourage military service by penalizing military personnel with higher taxes merely because they are doing their job. Military and Foreign service entails sacrifice, such as long periods of time away from friends and family and the constant threat of mobilization into hostile territory. We must not allow the Tax Code to heap additional burdens upon our men and women in uniform.

In my view, the way to decrease the likelihood of further inequities in the Tax Code, intentional or otherwise, is to adopt a fairer, flatter tax system that is far less complicated than our current system. But, in the meantime, we must insure that the Tax Code is as fair and equitable as possible.

The Taxpayer Relief Act of 1997 was designed to provide sweeping tax relief to all Americans, including our men and women in uniform. It is true that there are winners and losers in any tax code, but this inequity was unintended. Enacting this narrowly-tailored remedy to grant equal tax relief to the members of our Uniformed and Foreign Services restores fairness and consistently to our increasingly complex Tax Code.

I ask unanimous consent that the letters of support from the American Foreign Service Association, the Joint Chiefs of Staff, American Bar Association, the Military Coalition, the Office of Management and Budget, and the Secretary of State be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE SECRETARY OF STATE,
Washington, DC, November 30, 2001.

The Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I am writing in support of the legislation you have introduced to provide members of the Foreign Service, as well as military personnel, the same relief extended to other Americans in the sale of their principal residence. Your efforts on behalf of the men and women of the Foreign Service are very much appreciated.

The Tax Relief Act of 1997 has acted to the disadvantage of many members of the Foreign Service by requiring that they must live in their principal residence for two of the five years prior to sale. Much of a Foreign Service member's career is spent serving his or her country far away from that residence, thereby making it impossible for many of them to utilize the capital gains tax exclusion. Not counting the time on extended duty away from the principal residence as part of the five-year period will give to our Foreign Service personnel and their military colleagues the same tax treatment enjoyed by their fellow Americans.

Sincerely,

COLIN L. POWELL.

JOINT CHIEFS OF STAFF,
Washington, DC, November 27, 2001.

The Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I join the Service Chiefs and strongly endorse the Military Homeowners Equity Act. This legislation would correct an inequity in the Internal Revenue Code of 1997 and would afford Service members the same opportunity to build equity in a home that most other Americans enjoy.

One of the most effective ways to maintain outstanding combat capability in our military personnel is to allow them to concentrate fully on their mission without worrying excessively about the home front. This Bill would be a major step in the right direction.

Thank you for the opportunity to review the legislation, and for your efforts on behalf of our soldiers, sailors, airmen, marines, and coastguardsmen.

Sincerely,

RICHARD B. MYERS,
Chairman.

CHIEF OF NAVAL OPERATIONS,
November 21, 2001.

The Hon. JOHN MCCAIN,
Senate Russell Office Building, Washington, DC.

DEAR SENATOR MCCAIN: Thank you for your efforts on behalf of our service members to correct the disparity created by the Tax Relief Act of 1997. I would like to extend my support for your legislative tax relief proposal, S. 1678 which would help relieve the hardships experienced by military homeowners and encourage more members to purchase homes.

Many military homeowners who sold their homes after the Tax Relief Act of 1997 have been unable to meet the two-year residency requirement. I ask that you also consider adding language to your proposal to make the tax relief retroactive to sales and exchanges that occurred after the 1997 act, adding a specific exception to the statute of limitations period for filing refund claims.

Please let me know if I may be of further assistance.

Sincerely,

VERN CLARK,
Admiral, U.S. Navy.

October 31, 2001.

The Hon. JOHN MCCAIN,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: Your efforts to improve the quality of service enjoyed by our Navy-Marine Corps team are greatly appreciated. I would like to extend my support for the legislation that you intend to introduce to correct the tax disadvantage created by The Tax Reform Act of 1997.

The Marine Corps has been tracking several bills intended to correct this tax disadvantage. As you know, The Tax Reform Act repealed certain portions of the existing law that allowed military members to maintain the status quo with other taxpayers for exclusion of capital gains. The Act provided for an exclusion, obviously not intended to disadvantage military service members or members of the Foreign Service. In order to qualify, a taxpayer must ''own and use'' the property for two of the five years preceding the sale. Since our personnel seldom remain in one location for over three years, it is difficult to qualify for the exclusion.

Please let me know if there is any way in which I can be of assistance or service.

Semper Fidelis,

J.L. JONES,
General, U.S. Marine Corps,
Commandant of the Marine Corps.

DEPARTMENT OF THE ARMY,
OFFICE OF THE CHIEF OF STAFF,
Washington, DC, November 27, 2001.

The Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I strongly support the legislation you have introduced, S. 1678, to correct the inequitable tax consequences suffered by many soldiers when they sell their principal residence.

As you are aware, under the 1997 Tax Relief Act, a homeowner who sells a principal residence can exclude gain of $250,000 ($500,000 for joint fliers) if the taxpayer owned and used the residence for two of the five years immediately preceding the date of sale. Unlike the previous law, the 1997 Tax Relief Act does not recognize an exception for military service. Accordingly, service members making frequent military moves are often unable to meet the two-year residency requirement required for the home sale exclusion.

Your legislation would correct this inequity by permitting service members to apply time served on extended active duty toward the use of a principal residence to qualify for the home sale exclusion. This change would allow many more service members and their families to take advantage of the home ownership tax incentives enjoyed by other Americans.

I greatly appreciate your commitment to enhance the quality of life for service members and their families. Thank you for your continued support.

Sincerely,

JOHN M. KEANE,
General, United States Army,
Vice Chief of Staff.

HQ USAF/CC,
1670 AIR FORCE PENTAGON,
Washington, DC, November 28, 2001.

The Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: Your consistent commitment to improving the quality of life of our Airmen is greatly appreciated. The Air Force fully supports your Military Homeowners' Equity Act—S. 1678. This bill will correct the tax disadvantaged created by the Tax Reform Act of 1997 by allowing members of the Uniformed Services who are deployed or are away on extended active duty to qualify for the same tax relief on the profit generated when they sell their main residence as other Americans. Ideally, this legislation would be retroactive to the effective date of the Tax Reform Act.

The 1997 Tax Reform Act repealed certain portions of the existing law that allowed military members to maintain the status quo with other taxpayers for exclusion of capital gains. The Act provided for an exclusion, obviously not intended to disadvantaged military service members or members of the Foreign Service. In order to qualify, a taxpayer must ''own and use'' the property for two of the five years preceding the sale. With the frequent moves required by military service, it is often times difficult for our service members to qualify for the exclusion. Your bill corrects that inequity.

Thank you again for your continuing support and leadership.

Sincerely

JOHN P. JUMPER,
General, USAF, Chief of Staff.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, November 15, 2001.

The Hon. GRANT S. GREEN, JR.,
Under Secretary for Management, Department of State, Washington, DC.

DEAR GRANT: Thank you for your letter regarding Senator McCain's tax relief proposal. After careful review, there is a case to be made that the current capital gains tax system poses a burden on servicemen and women and foreign service officers. These men and women spend much of their careers being assigned overseas and moving from post to post. We should not penalize these Americans in effect for serving their country.

The Office of Management and Budget supports Senator McCain's proposal which would allow military and foreign service personnel equitable capital gains tax treatment. I appreciate your persistence on this matter as we continue to ensure that our Foreign Service Officers and Military service men and women enjoy such benefits especially during these difficult times.

Sincerely,

ROBIN CLEVELAND,
Associate Director,
National Security Programs.

THE MILITARY COALITION,
Alexandria VA, November 6, 2001.

The Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: The Military Coalition, a consortium of nationally prominent uniformed services and veterans organizations, representing more that 5.5 million members, plus their families and survivors, is grateful to you for introducing The Military Homeowners Equity Act—a bill that would restore capital gains tax equity for military homeowners.

Your legislation is essential to correct a serious oversight in the Taxpayer Relief Act of 1997, which inadvertently penalizes servicemembers who are assigned away from their principal residence for more than three years on government orders. Very often, servicemembers keep their homes while reassigned overseas or elsewhere in the hopes of returning to their residence. On occasions when this proves impossible, and the home must be sold to permit purchase of a new principal residence, servicemembers find themselves subjected to substantial tax liabilities—all because military orders kept them from occupying their principal residence for at least two of the five years before the sale.

The 1999, both the House and Senate passed corrective legislation (H.R. 865) as part of the Taxpayer Refund and Relief Act of 1999, but the President vetoed this bill over an unrelated issue. Your new bill will be important to resurrect this fairness issue and allow servicemembers to comply with government orders and leave home to serve their country without risking a large capital gains tax liability.

The Military Coalition pledges to work with you to seek inclusion of your bill in the pending economic stimulus package so military members can once again enjoy the same capital gains tax relief already provided to all other Americans.

Sincerely,

The Military Coalition.

AMERICAN FOREIGN SERVICE ASSOCIATION,
Washington, DC, November 5, 2001.

The Hon. JOHN MCCAIN,
Senate Russell Building,
Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the 23,000 active-duty and retired members of the Foreign Service which the American Foreign Service Association (AFSA) represents, thank you for your leadership and support with your soon-to-be introduced bill extending to the Uniformed Services and Foreign Service the tax treatment enjoyed by all other Americans when they sell their principal residence.

As you know this is an important active-duty issue for the Uniformed Services and the Foreign Service. Your bill, amending section 121(d) of the Internal Revenue Code of 1986, addresses an inequity faced by our members because of the particular nature of our profession. As you are well aware, our careers require us to live for years at a time away from our homes in duty posts around the world in service to our nation. In the case of the Foreign Service, our duty assignments range from 2–4 years. Back-to-back assignments abroad are common. It is no unusual for a member of the Foreign Service to spend six or more years abroad before returning to Washington for an assignment here. With the current two-in-five year occupancy test, many of our members in both the Uniformed Services and the Foreign Service find that we do have the same flexibility in selling our homes as enjoyed by our fellow Americans. After several years abroad, there are many reasons why we may with to sell our homes upon returning home. As with other Americans, we would like our homes to reflect and be suited-to the changes in our lives—the increase or decrease in the size of our families, divorce, retirement, promotions and the ability to pay more for a house, the schools our children would attend, etc. Yet because of current law, we cannot sell our principal residences without living in them again for two years or else pay a serious tax penalty. Your bill, gratefully, addresses these problems.

The members of the Uniformed Services and the Foreign Service have been faced with this problem since the change in the tax code in 1997. We hope that your provision can become law soon. If we can be of any assistance, please do not hesitate to contact me or Ken Nakamura, AFSA's Director of Congressional Relations at (202) 944–5517 or by e-mail at nakamura@afsa.org.

Sincerely,

JOHN K. NALAND,
President.

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
November 7, 2001.

The Hon. JOHN MCCAIN,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the American Bar Association, I would like to commend you for your leadership in developing a proposal on the issue of the military homeowners capital gains exemption. Such legislation is needed to correct an inequity that occurred as a result of the Taxpayer Relief Act of 1997 (Public Law No. 105–34).

As you know, Section 121 of the Internal Revenue Code permits a single taxpayer to exclude up to $250,000 of the capital gains on the sale of a principal residence and permits a married couple filing jointly to exclude up to $500,000 on such a sale. Yet in order to qualify for such an exclusion, a taxpayer must have owned and used the home as a principal residence for two out of the five years prior to its sale. Otherwise, a taxpayer must pay taxes on all or a pro rata share of the capital gains on the sale of the home.

Unfortunately, this provision penalizes service members who are unable to use a principal residence for two out of the five years prior to its sale, because they are deployed overseas or required to live in military housing. The ABA urges Congress to amend Section 121 of the IRC to either: (1) treat time spent away from a principal residence while away from home on official active duty as counting towards the ownership and use requirement, or (2) suspend the ownership and use requirement for time spent away from a principal residence due to official active duty. Earlier this year, the ABA submitted comments to the Internal Revenue Service on proposed regulations regarding Section 121. A copy of our comments is enclosed for your review.

We want to thank you for your plans to rectify the inequity created for service members by Section 121. We look forward to working with you to establish a military homeowners capital gains exemption.

Sincerely,

ROBERT D. EVANS.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is set aside.

AMENDMENT NO. 2719

Mr. BAUCUS. Mr. President, what is the regular order?

The PRESIDING OFFICER. The time has arrived for the vote with respect to the amendment of the Senator from Iowa.

Mr. BAUCUS. Is the Chair about to put the question for a vote?

The PRESIDING OFFICER. The Senator is correct.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I raise a point of order under section 302(f) of the Congressional Budget Act against the pending amendment, which is No. 2719, for exceeding the spending allocations of the Senate Committee on Finance.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of the act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) and the Senator from Connecticut (Mr. DODD) are necessarily absent.

Mr. NICKLES. I announce that the Senator from Montana (Mr. BURNS), the Senator from New Hampshire (Mr. GREGG), and the Senator from Nevada (Mr. ENSIGN) are necessarily absent.

I further announce that if present and voting the Senator from Montana (Mr. BURNS) would vote ''no.''

The yeas and nays resulted—yeas 54 nays 41, as follows:

[Rollcall Vote No. 8 Leg.]

YEAS—54

Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Biden	Feinstein	Murkowski
Bingaman	Graham	Murray
Boxer	Harkin	Nelson (FL)
Breaux	Hollings	Reed
Byrd	Hutchinson	Reid
Campbell	Inouye	Rockefeller
Cantwell	Jeffords	Sarbanes
Carnahan	Johnson	Schumer
Carper	Kennedy	Sessions
Cleland	Kerry	Shelby
Clinton	Kohl	Snowe
Collins	Landrieu	Stabenow
Corzine	Leahy	Torricelli
Daschle	Levin	Warner
Dayton	Lieberman	Wellstone
Dorgan	Lincoln	Wyden

NAYS—41

Allard	Feingold	McConnell
Allen	Fitzgerald	Nelson (NE)
Bennett	Frist	Nickles
Bond	Gramm	Roberts
Brownback	Grassley	Santorum
Bunning	Hagel	Smith (NH)
Chafee	Hatch	Smith (OR)
Cochran	Helms	Specter
Conrad	Hutchison	Stevens
Craig	Inhofe	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Enzi	McCain	

NOT VOTING—5

Akaka	Dodd	Gregg
Burns	Ensign	

The PRESIDING OFFICER (Mr. EDWARDS). On this vote the yeas are 54, the nays are 41. 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 and the amendment falls.

The Senator from Colorado.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, for the information of Members, we are in the process of arranging a unanimous consent request to have a vote on or about 4:45 p.m. today on the Allen amendment, and the second would be on the Baucus amendment.

While we are doing that, 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. REID. I ask unanimous consent the quorum call be rescinded.

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

Mr. REID. I say to my friend from Virginia, if he could start his remarks, I ask his permission we be allowed to interrupt him to enter the unanimous consent agreement when that is ready.

Mr. ALLEN. You have my agreement.

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 2702

Mr. ALLEN. Mr. President, I wish to speak to my amendment, the Terrorist Zone Tax Exemption Act, which I believe will be the next measure on which we will be voting.

Last fall the attack on our country represented the worst of mankind, but at the same time it demonstrated the best of the American spirit.

While we as a nation are united and resolved to combat terrorism, unfortunately other things have changed as a result of these attacks. As my colleagues know, this war on terrorism has changed our definition of combatants. For terrorism targets not only military personnel and equipment but innocent men, women, and children at work in office buildings and, as we have seen, on civilian aircraft. So it is also with those tasked to respond to these attacks. Under the threat of terrorism, not only are military personnel tasked to locate and eradicate potential terrorist threats, but civilian fire, police, and rescue personnel are charged with maintaining public safety after a terrorist attack. We read about and heard about the heroic acts of firefighters, rescue personnel, and police officers—whether at the Pentagon or at the World Trade Center—who risked their lives with burning debris, toxic gases and fumes who tried and indeed did save hundreds if not thousands of lives. And like their military counterparts, they too are subject to attack and risks themselves.

As my colleagues know, our tax laws recognize that the income of those brave men and women in military uniforms fighting overseas and serving in a zone designated as a combat zone is exempt from taxation. Recognizing that the war on terrorism has sadly changed the way we look at war, and recognizing that our local and State fire police and rescue personnel are now pressed into homeland defense, we ought to similarly change our tax laws to reflect this new reality.

My Amendment would allow the income of those who are working in designated terrorist attack zones—for example, at the World Trade Center or at the Pentagon, if so designated by the President—to be exempt from Federal taxes.

The fiscal implication of this is about $205 a month for the September attack—a cost of a little over $7 million to the federal government. And it is retroactive to September 11, although we pray we will never need to use this again.

It is supported by many groups—from the International Association of Fire Chiefs, the Fraternal Order of Police with nearly 300,000 members, the National Association of Police Organizations which represents over 220,000 police officers, the Detectives' Endowment Association which represents 7,500 City of New York Detectives, and other organizations, including the Capitol Police Labor Board.

These firefighters and police and rescue personnel are heroes. They are super heroes. Let us give them this recognition to boost their morale and show our appreciation to them as they protect us here in our homeland.

I hope in a bipartisan nature we can work and vote in favor of this logical, commonsense amendment and I ask for my colleagues' support.

Mr. NICKLES. Mr. President, will the Senator yield for a question concerning the cleanup at the Pentagon or at the World Trade Center? They are still cleaning up. Under the Senator's amendment, would that still be classified as a terrorist center, and, therefore, they would still be exempt? If the cleanup lasted a year, would the cleanup crews be exempt from taxation for a year?

Mr. ALLEN. The designation of a terrorist attack zone would be made by the President. Once you get past the rescue mission, the immediate response, and when the zone is designated a recovery scene, the tax exemption ends. The intent is for this to benefit those who rush in when there is still an opportunity to save a life; those first responders who themselves are endangered by the initial attack. I would not imagine that would last for anymore than a month. And again, it is validated on a monthly basis, like the combat zone tax exemption.

Mr. NICKLES. I thank my colleague.

Mr. REID. Mr. President, I appreciate the Senator from Virginia rushing through with his presentation. It was very articulate. I appreciate his recognizing that we are trying to get this agreement before the vote.

Mr. President, I ask unanimous consent that the time until 4:45 p.m. today be equally divided with respect to the Allen amendment No. 2702 and the Baucus amendment No. 2718, that no second-degree amendments be in order to either amendment prior to the vote in relation to each amendment; that the first vote be in relation to the Allen amendment; and that regardless of the outcome there be 4 minutes equally divided prior to the vote in relation to the Baucus amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I ask unanimous consent that Senator HELMS be added as a cosponsor of amendment No. 2702.

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

Mr. ALLEN. Mr. President, does the Senator from Montana wish to discuss this amendment? I only have maybe 30 seconds, and I would be happy to yield to the Senator from Montana.

Mr. BAUCUS. I thank my good friend. I have looked at the Senator's amendment. It is a good idea. I support it. There are a few little wrinkles that I want to look at to make sure the definitions coincide with the definitions for income taxes excluded for combat zones and make sure all those declarations are the same and equitable. That is just a minor matter. We will work that out.

I commend the Senator for offering this amendment. It is a good idea.

Mr. ALLEN. Mr. President, I thank the Senator from Montana, Mr. BAUCUS, for his support. I look forward to further discussion. If there are some amendments that need to be made in the definitions, we have been working on this for several months, but nevertheless we will continue to work together on it. I conclude by saying very strongly that we need to adapt our tax policy and properly and logically provide similar tax benefits for the fire, rescue, and police personnel who are serving here in our homeland. This is where these terrorist attacks have occurred and we all agree that these heroes have responded in the true spirit of America. Please stand with our heroes, our firefighters, and police and rescue workers.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. Mr. President, we have two amendments pending and at least two votes at approximately 5:45. We have discussed the amendment offered by the Senator from Virginia, which I support.

I don't know whether the Senator wishes to discuss the amendment. If he doesn't, that is fine. Otherwise, I was going to ask my friend from Oregon, Senator SMITH, if he wishes to say a few words before the other votes that will occur following the vote on the amendment offered by the Senator from Virginia. That, of course, is up to my good friends from Virginia and Colorado.

Mr. ALLEN. Mr. President, I would rather make sure there is adequate discussion on the other votes. I believe there is complete agreement on my amendment.

I yield my time to the Senator so he may explain his amendment.

Mr. BAUCUS. I haven't heard anybody speak in opposition to the Senator's amendment. I think he is pretty close to his goal.

Mr. ALLEN. Ok. I had better sit down.

Mr. BAUCUS. Mr. President, I see my friend from Oregon in the Chamber.

The PRESIDING OFFICER. Who is yielding time?

Mr. BAUCUS. I yield such time as my friend from Oregon would desire.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 2718

Mr. SMITH of Oregon. Mr. President, I thank the Chair and I thank the chairman of the Finance Committee for yielding time.

I learned as a little boy from my mother that if you at first don't succeed you should try and try again.

I come to the Chamber to try again on the issue of accelerated depreciation. I am proud to be joined by Senator BAUCUS. This is the Baucus-Smith amendment now. The point is simply to try and bridge the difference between the two sides on the whole idea of how best to give a meaningful stimulus to business to take advantage of this accelerated depreciation, this bonus depreciation over a period of time that on the one hand will stimulate in a timely way the economy and in another way will help the States to be able to afford this action.

I believe the Baucus-Smith amendment is the compromise that will provide real stimulus to the underlying package that is offered by the majority which, I respectfully say again, is just simply too short a period of time to be meaningful to our economy.

The point was made that my amendment over 3 years was too much time. Then surely 2 years is enough. I believe Senator BAUCUS and I have provided a compromise that will give business people time sufficient—I wish it were more—to be able to buy the equipment, do the planning, do the environmental studies, and make the investments that will allow employers to call employees back to work.

In addition, we are doing something that is very much needed by the States. That is, we will provide an increase in the Federal Medical Assistance Percentage known as FMAP. Most States, mine included, are struggling with how to continue to provide the resources for Medicaid. I understand that very well in my own State. Our State has a budget shortfall that approaches $1 billion. I have been reminded by people in my State that accelerated or bonus depreciation would only make that situation worse. I am not unmindful of that, and Senator BAUCUS and I have a way in this amendment to fix that, not just for my State but for every State.

Senator HARKIN's amendment was just defeated. I suggest that what Senator BAUCUS and I are proposing is in the same spirit of that but within the realm of financial responsibility. It is the moderate view that I believe will find over 60 votes in the Senate. I certainly hope it will.

What this does specifically, the FMAP increase will provide immediate fiscal relief to States such as Oregon which are increasingly cash strapped in the current recession as the demand for State social services rises but State revenues drop.

For example, this provision would bring an additional $97 million to Oregon in the first year. Depending on certain factors, they may get in excess of an additional $105 million in the following year, for a 2-year total of more than $205 million.

I can imagine that my State, as well as the State of the Presiding Officer, could use that assistance in this time of recession. Again, I remind both sides that whether it is former Treasury Secretary Robert Rubin or Chairman Greenspan, they have both said this will be helpful to stimulate the economy. It doesn't go too far. It is not too long. I think for business people who are on their toes and trying to make plans, it will be enough time to have the economic incentives to improve our Nation's economy.

America, moreover, is hungering for a sense that the Senate can get something done. Our proposal is that middle ground that allows us to make progress and to go to the State of the Union tonight well on the way to passing a stimulus package. There is something for both sides. But more importantly, there is something for the American people that provides real health care dollars to people in need in States with shortfalls and real business stimulus to employers so that the best social welfare we could possibly foster will be available, and that is a private sector family wage job.

Again, I believe Senator BAUCUS and I have come upon the right formula to make better the underlying proposal and to find the bipartisan support which will ultimately be essential if we are to get beyond 60 votes and get something to conference and then to the desk of the President. The American people deserve that. We should do no less.

I yield back my time to the manager of this bill.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is a good example of how we should pass legislation; that is, working together. Senator SMITH from Oregon and I have come together and crafted an amendment which directly meets concerns of Senators. We have done it together. Is it perfect in the minds of everyone on one side of the aisle? No. Is it perfect in the minds of all Senators on the other side of the aisle? No. But is it good? Is it basically a good idea? I believe the answer is yes.

Essentially, we are going to provide for bonus depreciation for capital investment at 30 percent over a period of 2 years. The big question, I remind the Chair, is, should it be 1 year, 2 years, or 3 years? We have agreed on 30 percent for all intents and purposes. During private conversation on the floor on both sides of the aisle, somewhat presumptuously I will say that I heard, I believe, it should be 2 years. That is what it should be. We debated 3 years. That did not pass. We, in effect, debated 1 year. It did not quite reach fruition, but that certainly is not going to pass.

The PRESIDING OFFICER. The time controlled by the majority has expired.

Mr. BAUCUS. I thank the Chair. Might I ask who controls the remaining time?

The PRESIDING OFFICER. The Senator from Virginia or his designee.

Mr. GRASSLEY. Mr. President, I grant the Senator from Montana 2 more minutes.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I have about 4 minutes to comment on Senator MCCAIN's amendment. I was giving a speech and I could not be here when he brought it up. I would like to be able to use that time, if you don't need all the time. Otherwise, I will wait.

Mr. BAUCUS. That would be fine. I just have 2 minutes. That would be fine with me.

Mr. ALLARD. I would like to have 4 minutes whenever it works out.

Mr. BAUCUS. Mr. President, again, to remind all Senators, this is a compromise. It is an effort on the part of Senator SMITH of Oregon and myself to find the proper number of years of bonus depreciation. It is an effort to find the proper amount of reimbursement to States for lost Medicaid dollars. All Senators agree this is not only in the ballpark, it is probably so close to filling up the ballpark that it really cannot be improved upon a heck of a lot. I think it is a good amendment.

Further, I remind my colleagues, with the split in this body basically 50–50, this is the only way we are going to accomplish anything of consequence. That is, by sitting down and not engaging in rhetoric and preaching to people through the cameras, making them feel good, but, rather, working together to pass legislation that makes people's lives better and significantly better. That is what we are charged to do.

If you were to ask voters, do you want your Senator to make speeches just for the sake of making speeches or do you want your Senator to get something done that really makes sense for us in the State, it may not be all we want but he has done a pretty good job, clearly the answer is the latter. They want us to do something that makes sense. That is what the Senator from Oregon and I are doing.

I strongly urge my colleagues to take a good, strong look at it. It is a bipartisan amendment. It has bipartisan support. More than that, it has the support of the people of the country.

I yield back the remainder of my time.

Mr. HATCH. I rise in support of this amendment, recognizing the need for Congress to undertake immediate corrective measures to help those who have suffered the adverse effects of the recent economic downturn. And while I do support this amendment, there are issues associated with it that are of serious concern, issues which I hope will be addressed in conference.

As we have heard throughout this debate, most states are experiencing serious budget shortfalls. In fact, in my own state of Utah, many vital state programs are slated for reductions this year. I am very concerned about that situation, and sympathetic to the need to work with the States to alleviate these concerns where we are able.

But it is also true that the Federal budget is under severe pressure because of the economic slowdown, and we must be very careful when we move to authorize what amounts to new spending, especially in an entitlement program.

Obviously, we must carefully examine our budget constraints and balance the need to address the economy with the need to restrain the growth of spending.

But as I have said, I share the States' concern about the budgetary impact of the economic downturn. Many important programs are being cut-back, a serious concern to those of us who have worked so hard to weave a strong safety net.

In fact, the Utah CHIP program is no longer enrolling new children because it is running out of money. I cannot tell you how disappointed I am about this situation. Seeing the CHIP program become federal law in 1997 was probably one of my proudest accomplishments as a U.S. Senator.

And, as one of the principal authors of CHIP, it has been my hope that we can expand the program, not scale it back. However, my discussions with our Governor, Mike Leavitt, have made it perfectly clear that the State feels it has no alternative, and I respect that decision, however painful. But, perhaps if we are giving additional funds to the States to assist with the health care needs of the low income, those funds would be better used if they were provided to the CHIP program as well, or instead, since in many cases a CHIP dollar can go so much further than a Medicaid dollar.

I would also point out that increasing the Federal matching percentage for Medicaid is only a short-term solution to a long-term problem. Again, I heartily support efforts to provide greater assistance to families, especially low-income families, who are feeling the ill effects of the economic downturn. That being said, I do question whether expanding this entitlement program is absolutely the best way to address the health care needs of people who have been hurt by the economy. There are literally millions of persons who have no access to health care at all, and their needs must also be factored in to our overall spending plans.

Let me take a moment to address the FMAP funding formula itself.

The FMAP formula is an attempt to direct Federal resources to the States based on their populations in need. It is not a perfect formula, as many of us have widely acknowledged. These structural flaws must be addressed by

Congress, and I would not like to see action today which would lock into concrete, in reality or politically, a formula which needs to be reexamined.

As a related issue, we need to look at the effect of providing a 1½-percent across the board FMAP increase to States for a program which is certain to have a disproportionate impact in the various States given their differing matching percentages. For example, some States have a Federal matching percentage which is relatively high, as high as 76 percent. Others have a percentage as low as 50 percent. Obviously, a 1.5 percent increase is a substantially greater proportion of the 24 percent a State with the highest FMAP has to contribute, compared to 1.5 percent of the 50 percent a ''richer'' State must contribute.

The GAO has produced several reports which make recommendations on how this formula may be improved. Therefore, I believe that it would be prudent for Congress to carefully review the recommendations of the GAO before taking any final actions affecting FMAP policy.

In fact, I believe it might be prudent for the Finance Committee to hold a hearing on this important issue, and I would hope that the chairman might schedule one in the near future.

In addition, while I have not seen any figures on areas which are the most hard hit by the recession, I want to make certain that the areas in which we are targeting the greatest assistance under this amendment are the areas of greatest need during the downturn. Because of the way the formula is structured, these additional FMAP dollars may not be targeted to those whose access to health care was affected by the recession and the events of September 11.

Finally, it is my hope that this amendment does not follow the long tradition whereby Congress authorizes an extension for an entitlement program which for all intents and purposes becomes permanent. I certainly support the intention of this amendment, which is to provide temporary assistance to those who have suffered great hardships due to the recession and the terrorist attacks of last September. However, making these FMAP increases permanent would be a terrible mistake, especially since I believe that we would be, in essence, taking away dollars from other deserving Federal programs.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

AMENDMENT NO. 2700

Mr. ALLARD. Mr. President, I am pleased to join Senator JOHN MCCAIN in sponsoring amendment No. 2700, the military homeowners tax equity amendment, to H.R. 622. This amendment will correct a serious, inadvertent oversight in the Taxpayer Relief Act of 1997 and provide much needed tax equity to our members of the uniformed services and the Foreign Service. The content of this amendment is the exact language as S. 1678, which Senator MCCAIN and I introduced last year.

The Taxpayer Relief Act of 1997 exempted up to $250,000–$500,000 per couple in capital gains from federal income taxes for homes occupied as a principal residence for at least 2 of the last 5 years. Unfortunately, Uniformed and Foreign Service members may have difficulty meeting the 2 year requirement. Service members are directed to move to meet the needs of the U.S. Government and may be directed to move prior to owning a residence for 2 full years. Many service members keep their homes while reassigned overseas or elsewhere in hopes of returning to their residence. On occasions when this proves impossible, the members are subjected to substantial tax liabilities.

Prior to the 1997 law, service members who were assigned overseas or otherwise away from their principal residence on military orders for an extended period of time had a special provision that allowed them to ''rollover'' capital gains. The 1997 Taxpayer Relief Act made many improvements to the tax code by replacing the capital gain ''rollover'' rules with the tax exclusion, but failed to provide for those on military orders. This amendment will correct this oversight by providing that absences from the principal residence due to serving on a qualified official duty as a member of a uniformed service or the Foreign Service be treated as using the residence in determining the exclusion of gain from the sale of such residence.

In 1999 both the House and Senate passed the Taxpayer Refund and Relief Act which included language to correct this oversight, but that act was vetoed by then-President Clinton.

S. 1678, which as I stated earlier mirrors our amendment, has support from all four service chiefs, the Chairman of the Joint Chiefs of Staff, the 31 organization members of the Military Coalition, the American Bar Association, the American Foreign Service Association.

Our service men and women face enough challenges today. They should not have to face additional tax liabilities in return for serving their country.

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

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

VOTE ON AMENDMENT NO. 2702

Mr. ALLEN. Mr. President, I yield back whatever time remains so we can proceed with the vote on amendment No. 2702.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2702. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Connecticut (Mr. DODD), and the Senator from New Jersey (Mr. TORRICELLI,) are necessarily absent.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG), the Senator from Nevada (Mr. ENSIGN), and the Senator from Montana (Mr. BURNS) are necessarily absent.

I further announce that if present and voting the Senator from Montana (Mr. BURNS) would vote ''yea.''

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

The result was announced—yeas 92, nays 2, as follows:

[Rollcall Vote No. 9 Leg.]

YEAS—92

Allard	Edwards	McCain
Allen	Enzi	McConnell
Baucus	Feingold	Mikulski
Bayh	Feinstein	Miller
Bennett	Fitzgerald	Murkowski
Biden	Frist	Murray
Bingaman	Graham	Nelson (FL)
Bond	Gramm	Nelson (NE)
Boxer	Grassley	Nickles
Breaux	Hagel	Reed
Brownback	Harkin	Reid
Bunning	Hatch	Roberts
Byrd	Helms	Rockefeller
Campbell	Hollings	Santorum
Cantwell	Hutchinson	Sarbanes
Carnahan	Hutchison	Schumer
Carper	Inhofe	Sessions
Cleland	Inouye	Shelby
Clinton	Jeffords	Smith (NH)
Cochran	Johnson	Smith (OR)
Collins	Kennedy	Snowe
Conrad	Kerry	Specter
Corzine	Kohl	Stabenow
Craig	Kyl	Stevens
Crapo	Landrieu	Thomas
Daschle	Leahy	Thurmond
Dayton	Levin	Voinovich
DeWine	Lieberman	Warner
Domenici	Lincoln	Wellstone
Dorgan	Lott	Wyden
Durbin	Lugar	

NAYS—2

Chafee	Thompson

NOT VOTING—6

Akaka	Dodd	Gregg
Burns	Ensign	Torricelli

The amendment (No. 2702) was agreed to.

Mr. ALLEN. Mr. President, I thank my colleagues for their support of the amendment. I ask unanimous consent that Senators COLLINS, HELMS, and JOHN WARNER be added as cosponsors.

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

AMENDMENT NO. 2718

The PRESIDING OFFICER. There are now 4 minutes equally divided prior to a vote in relation to amendment No. 2718. Who yields time? The Senator from North Dakota.

Mr. CONRAD. Mr. President, could I have order in the Chamber?

The PRESIDING OFFICER. The Senate will be in order. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I support bonus depreciation. I support Medicaid assistance to the States. But I do

not support 2 years of bonus depreciation. I do not support 2 years of additional spending on Medicaid for the States.

The reason is very simple. On the question of bonus depreciation, the whole purpose of this package is to encourage economic recovery, additional economic activity now. A 2-year provision reduces the stimulus, reduces the incentive to act now. That is not only my opinion, that is the opinion of the Congressional Budget Office that examined the various options before us and said: Don't do multiple years; you reduce the incentive to act now. This is the time we need additional economic activity.

Second, the history of fiscal stimulus is always that we have acted too late. We are on the brink of doing that again. A 2-year provision falls right into that trap.

The cost of this provision is $45 billion this year; $37 billion next year. That is digging the hole deeper when we have just been informed by the Congressional Budget Office that every penny of these resources will come out of the Social Security trust fund. For that reason, I will raise a budget point of order against this provision.

The PRESIDING OFFICER. Who yields time? The Senator from Montana.

Mr. BAUCUS. Mr. President, on behalf of myself and also Senator SMITH of Oregon, let me make a couple of quick points.

No. 1, we know our country needs a boost, a shot in the arm. It is not totally clear, but it is far better to provide a little insurance because the economy might go south in the next couple of months or years—more than it has now. Various companies are going bankrupt. We all know about Enron, Kmart, and there will be other companies down the road. Many people are being laid off, particularly in the financial services industry, which we are going to find out about in February because they have 2- or 3-month contracts and they will be laid off a lot later. This is very important.

Second, many States are losing revenue because their economies are down. They will also lose more revenue as a consequence of the 2-year bonus depreciation. It is only proper with the passage of the Medicaid reimbursement amendment States are made whole so they do not have to cut Medicaid payments, so they do not have to cut payments to hospitals, to providers.

This amendment will allow States to refrain from making those cuts to doctors, to hospitals, other providers, and to Medicaid beneficiaries, and also prevent them from having to otherwise cut their budgets.

At the same time, we get a 2-year shot in the arm with bonus depreciation. It is a very modest provision. We all know bonus depreciation should be somewhere between 1 year and 3 years. This is where we all know it makes the most sense, 2 years. It should definitely be enacted.

I yield the remainder of my time to my friend from Oregon.

The PRESIDING OFFICER. The Senator has 11 seconds.

Mr. SMITH of Oregon. I am proud to cosponsor this legislation. If you want the middle ground, we are talking about it right now. This actually does stimulate the economy; it is insurance.

The chair of the Budget Committee, my friend, clearly is concerned about the budget. But if you want to help the budget get back into surplus, let's get our economy going. That is the most sure way to make this happen. What Senator BAUCUS and I have done is make sure that we do not leave the States high and dry.

The PRESIDING OFFICER. The time of the Senator is exhausted; 22 seconds remain.

Mr. NICKLES. I yield my colleague the remainder of my time, the 22 seconds in opposition to the amendment.

Mr. SMITH of Oregon. My last point was you can make these arguments against any expenditure. The point is, we can't leave the States high and dry as we try to stimulate the economy.

This is about real people needing jobs and health care. It is a win-win for Republicans and for Democrats. I urge the overwhelming passage of the amendment.

Mr. NICKLES. I compliment my colleague for making the point of order, and I wish to join him in that point.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, Senator DASCHLE has asked me to announce to the Membership that this will be the last vote of the evening prior to the State of the Union Message.

The leader has indicated there will be votes next Monday.

Mr. CONRAD. Mr. President, I raise a point of order that the pending amendment violates section 311(a)(2)(B) of the Congressional Budget Act of 1974, and I ask for the yeas and nays.

Mr. BAUCUS. Mr. President, on behalf of myself and Senator SMITH of Oregon, pursuant to section 904 of the Congressional Budget Office Act of 1974, I move to waive the applicable sections of the act for the purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) and the Senator from Connecticut (Mr. DODD) are necessarily absent.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG), the Senator from Nevada (Mr. ENSIGN), and the Senator from Nebraska (Mr. HAGEL) and are necessarily absent.

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

The yeas and nays resulted as follows—yeas 62, nays 33.

[Rollcall Vote No. 10 Leg.]

YEAS—62

Allen	Durbin	Murkowski
Baucus	Edwards	Murray
Bayh	Feinstein	Nelson (FL)
Bennett	Fitzgerald	Nelson (NE)
Biden	Grassley	Reid
Breaux	Harkin	Roberts
Brownback	Hatch	Rockefeller
Burns	Hollings	Schumer
Cantwell	Hutchinson	Sessions
Carnahan	Hutchison	Shelby
Carper	Inouye	Smith (OR)
Cleland	Jeffords	Snowe
Clinton	Johnson	Specter
Cochran	Kerry	Stabenow
Collins	Kohl	Stevens
Corzine	Landrieu	Torricelli
Craig	Lincoln	Voinovich
Crapo	Lugar	Warner
Daschle	McCain	Wellstone
DeWine	Mikulski	Wyden
Domenici	Miller	

NAYS—33

Allard	Enzi	Lieberman
Bingaman	Feingold	Lott
Bond	Frist	McConnell
Boxer	Graham	Nickles
Bunning	Gramm	Reed
Byrd	Helms	Santorum
Campbell	Inhofe	Sarbanes
Chafee	Kennedy	Smith (NH)
Conrad	Kyl	Thomas
Dayton	Leahy	Thompson
Dorgan	Levin	Thurmond

NOT VOTING—5

Akaka	Ensign	Hagel
Dodd	Gregg	

The PRESIDING OFFICER. On this vote, the yeas are 62, the nays are 33. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to. The point of order falls.

The question is on agreeing to amendment No. 2718, as modified.

The amendment (No. 2718), as modified, was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from South Carolina.

CONGRATULATING SENATOR BAUCUS AND THE MONTANA GRIZZLIES

Mr. HOLLINGS. Mr. President, I congratulate the Senator from Montana for his victory on a very important amendment.

I also congratulate him on an even more important victory of the Montana team and its engagement in the 1 AA college finals last month with my Purple Paladins at Furman University, an outstanding university. In fact, the temptation is for me to challenge him to an academic final.

As far as the football final, I can tell my colleagues, I watched the game and that is a monster team if I have ever seen one. It is well coached and had an outstanding performance.

I lost the bet. The bet was if I lost, I would sing ''Up With Montana,'' their song. Fortunately, the rules of the Senate say no singing.