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Lewis D. Solomon

Roger Luchs

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. . . AND THIS LITTLE PIGGY WENT TO CONGRESS: THE REVENUE ACT OF 1978 AND THE INVESTMENT TAX CREDIT FOR SINGLE-PURPOSE AGRICULTURAL AND HORTICULTURAL STRUCTURES

by

Lewis D. Solomon and Roger Luchs***

AS commentators and the public demand more equity¹ in the nation's tax laws, the use of the Internal Revenue Code to benefit particular, narrowly defined groups of individuals and corporations has drawn increasingly critical attention.² Since the mid-1960's, farmers and organizations representing agricultural interests have been consistently frustrated in their efforts to insure the eligibility for investment tax credits of certain single-purpose agricultural structures, such as modern facilities used to raise hogs and poultry. Until the passage of the Revenue Act of 1978, both the Internal Revenue Service and the courts had held that most special-purpose agricultural structures were ineligible for the investment credit. As a result, farmers and lobbyists from organizations representing both agricultural and horticultural interests turned to Congress for a solution to the problem.

This Article explores the process whereby the frustration resulting from the IRS's negative stance and the incomplete judicial relief from that intransigence resulted in specific action by Congress on behalf of a select group of taxpayers. Indeed, an initial, unsuccessful attempt by the Senate Finance Committee in 1971 to solve the problem set the groundwork for

* B.A., Cornell University; J.D., Yale University. Professor of Law, The George Washington University National Law Center.

** B.A., Williams College; M.S.W., Washington University. Second Year Law Student, The George Washington University National Law Center. Formerly member of staff of Representative Charles E. Grassley (R Iowa).

1. Equity focuses on neutrality as applied to taxpayers. Equity is both horizontal (taxpayers with the same amount of income should pay the same amount of taxes) and vertical (taxpayers with higher incomes should pay higher taxes).

2. For a useful discussion on the interaction between special interest groups seeking tax advantages, Congress, and the Treasury, see Surrey, *The Congress and the Tax Lobbyist—How Special Tax Provisions Get Enacted*, 70 HARV. L. REV. 1145 (1957). A more philosophical discussion of special tax legislation is contained in Note, *Tax Equity and Ad Hoc Tax Legislation*, 84 HARV. L. REV. 640 (1971). See also Surrey, *The Federal Tax Legislative Process*, 31 REC. B.A. CITY N.Y. 515 (1970).

the inclusion of a provision in the Revenue Act of 1978 to settle the issue.³ The provision, which encompasses a greater variety of structures than was originally contemplated by its backers in Congress and the agricultural community, is expected to reduce tax revenues by approximately \$50 million per year.⁴ Although press criticism of this provision was widespread,⁵ it is evident that in a clash between the "public interest" and the interests of specific, vocal, and well-organized groups of taxpayers sharing a common goal, years of frustration and dissatisfaction may ultimately tilt the legislative process in favor of the latter.

I. INVESTMENT TAX CREDIT: ADMINISTRATIVE INTERPRETATION AND CONGRESSIONAL RESPONSE

The Revenue Act of 1962 included an investment tax credit provision, now embodied in section 38 of the Internal Revenue Code. The investment tax credit was designed "to encourage modernization and expansion of the Nation's productive facilities and to improve its economic potential by reducing the net cost of acquiring new equipment, thereby increasing the earnings of the new facilities over their productive lives."⁶ Section 48 defines the type of property that will trigger the credit. Specifically excluded from the definition of eligible property is "a building and its structural components."⁷ The Regulations define a building as "any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example, to provide shelter or housing, or to provide working, office, parking, display, or sales space."⁸ The Regulations limit this definition by stating,

Such term does not include (i) a structure which is essentially an item of machinery or equipment, or (ii) a structure which houses property used as an integral part of an activity specified in section 48(a)(1)(B)(i) if the use of the structure is so closely related to the use of such property that the structure clearly can be expected to be replaced when the property it initially houses is replaced.⁹

The treatment of agricultural structures was first interpreted by the Internal Revenue Service in Revenue Ruling 66-329, in which it ruled that

3. I.R.C. § 48(p); *see note 93 infra*.

4. S. REP. NO. 1263, 95th Cong., 2d Sess. 117, *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 6761.

5. *See, e.g.*, Washington Post, Oct. 1, 1978, § C, at 6, col. 1.

6. CONF. REP. NO. 2508, 87th Cong., 2d Sess., *reprinted in* [1962] U.S. CODE CONG. & AD. NEWS 3732, 3734.

7. I.R.C. § 48(a)(1)(B). Buildings were excluded because Congress chose not to provide for the recapture of depreciation on them through § 1245, added to the Code in this same Act. Section 1245 does provide for a recapture on the disposition of other kinds of property eligible for the § 38 credit. S. REP. NO. 1881, 87th Cong., 2d Sess., *reprinted in* [1962] U.S. CODE CONG. & AD. NEWS 3304, 3398. In the Revenue Act of 1964, Pub. L. No. 88-272, 78 Stat. 19, § 1250 was added to the Code to provide for the recapture of accelerated depreciation taken on real property, including buildings.

8. Treas. Reg. § 1.48-1(e)(1) (1964).

9. *Id.* The activities specified in I.R.C. § 48(a)(1)(B)(i) include "manufacturing, production, or extraction" or "furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services."

one special type of agricultural structure, an "integrated hog-raising facility,"¹⁰ was not eligible for the investment tax credit. The Service reasoned: "Although special design of a structure for an intended purpose such as an integrated hog-raising facility is significant in limiting its use for other purposes, this factor is not controlling in terms of excluding the structure from its broad definition as a building."¹¹ Three years later, however, the issue became moot when the Tax Reform Act of 1969¹² terminated the investment tax credit, with certain exceptions not relevant here.

In the Revenue Act of 1971, Congress restored the investment tax credit for property constructed or acquired after August 15, 1971.¹³ In its report on the Act, the Senate Committee on Finance concluded that a "unitary system for raising hogs," the same type of structure excluded by Revenue Ruling 66-329, should receive the benefit of the investment tax credit. The report stated:

The committee also desires to make it clear that the term "building" is not intended to include a structure which houses property used as an integral part of a manufacturing or production activity (or other activity referred to in sec. 48(a)(1)(B)(i)) if the use of the structure is so closely related to the use of the equipment it houses that the structure clearly can be expected to be replaced when the property it houses is replaced. . . .

One example of a type of structure closely related to the product it houses which was called to the attention of the committee is a unitary system for raising hogs. . . . The structure which can be added to, according to the number of hogs raised, is no more than a cover and way of tying together the specially designed pens, automatic feed systems, etc. There is no other practical use for the structure and it can, therefore, be expected to be used only so long as the equipment it houses is used. Such a structure would be eligible for an investment credit.¹⁴

The inclusion of this language in the legislative history of the Revenue Act of 1971 was the first shot in a seven-year battle involving the IRS, hog producers, members of Congress and, ultimately, producers of other agricultural and horticultural items, over precisely what type of agricultural structures are eligible for the investment tax credit.

10. An "integrated hog-raising facility" was described as "an elliptical steel building containing automatic equipment for feeding, farrowing, and raising hogs through maturity." Rev. Rul. 66-329, 1966-2 C.B. 17. In Rev. Rul. 66-89, 1966-1 C.B. 7, the IRS indicated that various kinds of farm structures, including poultry houses, fall within the category of a "building." In Rev. Rul. 66-156, 1966-1 C.B. 11, the Service ruled specifically against the credit allowance for structures in which mushrooms are grown.

11. Rev. Rul. 66-329, 1966-2 C.B. 16, 17.

12. Tax Reform Act of 1969, Pub. L. No. 91-172, § 703, 83 Stat. 487.

13. Act of Dec. 10, 1971, Pub. L. No. 92-178, § 101, 85 Stat. 497.

14. S. REP. NO. 437, 92d Cong., 1st Sess., *reprinted in* [1971] U.S. CODE & AD. NEWS 1918, 1936-37. Neither the House Report nor the Conference Report on the measure contains such language.

II. LITIGATING THE ELIGIBILITY OF SINGLE PURPOSE AGRICULTURAL STRUCTURES FOR THE INVESTMENT TAX CREDIT

It seems that the IRS took the Senate Finance Committee's use of the words "one example" quite literally, for the Service continued to take a very restrictive view of just which facilities would receive the credit. Only certain hog-raising facilities were allowed the credit.¹⁵ Taxpayers ultimately turned to the courts to obtain what the IRS, even after direction by the Committee on Finance, would not give them. Though the decisions split as to whether certain types of agricultural structures, particularly greenhouses and poultry houses,¹⁶ were eligible for the investment tax credit, the IRS's firm stance against such allowances was slowly but surely shaken by the courts.

The IRS scored an early victory when the Tax Court concluded in *Sunnyside Nurseries v. Commissioner*¹⁷ that petitioner's greenhouses were, indeed, buildings and therefore ineligible for the credit. The determination was made on the basis of the appearance of the structures and the amount of human activity taking place within them. The court stated: "In terms of their physical appearance and function, petitioner's greenhouses were certainly 'buildings' in the ordinary sense of the word."¹⁸ Building on this "ordinary" meaning approach, the court further adopted the Service's reasoning in the Regulations under section 48 that classified a structure providing workspace as a building.¹⁹ After briefly describing the physical characteristics of petitioner's greenhouses, the court noted:

A corps of petitioner's employees regularly spent full workdays inside the structures, engaging in a broad range of activities related to the processing of commercially marketable plants. As many as 50 persons sometimes worked in a greenhouse at once, often making use of an assortment of machinery and equipment. All of these characteristics are associated with "buildings" as that term is commonly understood.²⁰

Finally, the court cited language from the House and Senate Reports on the Revenue Act of 1962: "The term 'building' is to be given its commonly accepted meaning, that is, a structure or edifice enclosing a space within its walls, and usually covered by a roof."²¹

A few years later, however, another owner of greenhouses achieved a significant victory in the Ninth Circuit Court of Appeals. In *Thirup v. Commissioner*²² the court rejected both the Tax Court's appearance-oriented test and its reliance on the construction of the term "building" according to ordinary usage. Instead, the Ninth Circuit adopted a

15. See notes 34 & 35 *infra* and accompanying text.

16. Curiously, there were no court battles between hog producers and the I.R.S., although many producers were being denied the credit.

17. 59 T.C. 113 (1972).

18. *Id.* at 119.

19. *Id.*; see Treas. Reg. § 1.48-1(e)(1) (1964).

20. 59 T.C. at 119-20.

21. *Id.* at 120.

22. 508 F.2d 915 (9th Cir. 1974).

“functional” test and concluded that the greenhouses in question did not function as buildings.²³ The court contrasted the two approaches:

Considering the Congressional history as a whole . . . it is hardly deniable that the intent of Congress in its creation of the investment tax credit was to encourage improvements in the quality and quantity of American industrial products. We think that the appearance test is too imprecise to achieve this Congressional purpose.²⁴

The functional test carves out those types of general purpose buildings, such as “apartment houses, factory and office buildings, warehouses, barns, garages, railway or bus stations and stores,” Treas. Reg. § 1.48-1(e)(1), that we think Congress intended to exclude from the investment tax credit. But the test preserves for the credit those specialized structures whose utility is principally and primarily a significantly contributive factor in the actual manufacturing or production of the product itself.²⁵

The court also rejected the Tax Court’s emphasis in *Sunnyside Nurseries* and *Thirup* on the amount of employee activity taking place inside the greenhouses²⁶ and instead focused on the nature of that activity. The court concluded that the activities of the Thirup’s greenhouse employees were “merely supportive of, and ancillary to” the commercial production of flowers.²⁷

In contrast to the checkered litigation pattern with respect to greenhouses, the Tax Court looked more favorably on structures used in the poultry and egg production processes. In *Satrum v. Commissioner*²⁸ a majority of the Tax Court held that petitioners’ structures for chickens used in “egg-producing facilities” were eligible for the investment tax credit. Although the court noted that petitioners’ facilities bore a “striking resemblance”²⁹ to the hog-raising facility considered in Revenue Ruling 66-329, the majority was clearly influenced by the legislative history of the Revenue Act of 1971. The Tax Court relied on the explicit language of the 1971 Finance Committee Report referring to hog-raising facilities and concluded:

In light of Congress’ expressed intentions, and because we believe that each facility is designed to function as one integrated unit, we find that they qualify as “other tangible property” used as “an integral part of production [of eggs] . . .” as contemplated by section 48(a)(1)(B), and therefore do not fall within the nonqualifying cate-

23. The “functional test” inquires whether the “structures provide working space for employees that is more than merely incidental to the principal function or use of the structure.” If so, the structure is a “building” within the ambit of § 48, and therefore is ineligible for the tax credit. *Id.* at 919-20.

24. *Id.* at 918.

25. *Id.* at 919.

26. *Id.*

27. *Id.* The phrase “merely supportive of, and ancillary to” was taken from a Tax Court decision allowing the credit for certain poultry structures. *See Satrum v. Commissioner*, 62 T.C. 413, 417 (1974), discussed at text accompanying notes 28-33 *infra*.

28. 62 T.C. 413 (1974).

29. *Id.* at 417.

gory of "building[s]." ³⁰

The dissent in *Satrum* was not impressed. Judge Dawson quipped:

Yes, Chicken Little, the sky is falling! The majority of this Court has just declared that the "building" in which you live will no longer be called "henhouse." Henceforth it will be known as "other tangible property" so that your two-legged unfeathered friends might reap the benefit of an investment credit. ³¹

In a more serious discussion Judge Dawson focussed on the amount of human activity that took place in the poultry structures and concluded that such structures should not be granted the credit. ³² He indicated: "The [Senate] committee obviously was of the impression, whether rightly or wrongly, that the structure did not involve any human activity of consequence—a situation different from that in the present case The facts herein call for the opposite conclusion." ³³

The Internal Revenue Service remained unmoved by the *Thirup* and *Satrum* decisions. Republican Representative Charles Grassley of Iowa, as a representative of the nation's largest pork-producing state, had inquired about the Service's position on the status of agricultural structures. The Service responded in a letter that "the [Tax] Court's factual determination [in *Satrum*] that the poultry houses would be retired or replaced simultaneously with the retirement or replacement of the interior cages and watering system is erroneous." ³⁴ As to the Finance Committee's language, the Service noted in the same letter:

In looking to the Committee Report for guidance, the Service feels that Congress was quite explicit in its example of a unitary system, which is no more than a cover and a way of tying together the specially designed pens and other equipment. The Service contends that the language of the Committee Report is certainly not broad enough to encompass all structures used for the raising of hogs, or other live-stock confinement. ³⁵

A few days after sending this letter, the Service issued a letter ruling stating that it would not follow the *Thirup* decision. ³⁶

30. *Id.* at 418; see text accompanying note 14 *supra*.

31. 62 T.C. at 418-19 (footnote omitted).

32. *Id.* at 419.

33. *Id.* at 419 n.2.

34. Letter from Leland E. Moore, Acting Chief, Engineering and Valuation Branch, to Representative Grassley (Sept. 15, 1977). Although the Tax Court noted that it expected the structure to be "retired or replaced" at the same time as the equipment therein, it is curious that this was not the primary focus of the court's opinion. Furthermore, the letter suggested that the IRS would approach each claim on a case-by-case basis and thus would not accept court rulings for taxpayers as statements of general policy. The IRS position was confirmed in S. REP. NO. 1263, 95th Cong., 2d Sess. 121, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 6761, 6761.

35. Letter to Representative Grassley, *supra* note 34, at 2.

36. IRS Letter Ruling 7752005, Sept. 19, 1977. The Service never officially expressed nonacquiescence with the court of appeals' decision in *Thirup*. In *Starr Farms, Inc. v. United States*, 447 F. Supp. 580 (W.D. Ark. 1977) (poultry houses), and *Endres Floral Co. v. United States*, 450 F. Supp. 16 (N.D. Ohio 1977) (greenhouses), the IRS position was sustained.

III. SINGLE-PURPOSE LIVESTOCK AND HORTICULTURAL STRUCTURES AND THE REVENUE ACT OF 1978

Tracing the interaction of these affected taxpayers and their lobbyists with members of Congress and their staffs reveals how tax policy decisions are made in practice. The continuation of an already extended confrontation between the Internal Revenue Service and owners of agricultural structures seemed likely after the varying court decisions and IRS response. Articles in farm publications heightened farmers' awareness of the problem. For instance, in July 1977, *Wallace's Farmer*, an important farm journal in Iowa, ran an article entitled "Fight for Investment Credit on Hog Confinement."³⁷ Additionally, the Iowa Pork Producers Association published a brochure for embattled farmers entitled "The Battle of Investment Credit: A 'Layman's Brochure' for Dealing with the Internal Revenue Service Concerning Investment Credit."³⁸ In 1977 and 1978 members of Congress heard with increasing frequency from farming constituents expressing disgruntlement with the Service's position.³⁹ Letters were also received from organizations and attorneys representing agricultural interests.⁴⁰ But until 1978 Congress made no serious effort to clarify what specific types of agricultural facilities would be eligible for the investment credit.

At hearings held in March 1978 on President Carter's proposals regarding the investment tax credit, a panel of representatives from several interested organizations presented testimony in support of extending the credit to certain agricultural structures.⁴¹ The most explicit and detailed statement was delivered by George Wolfe, Jr., a representative for the Society of American Florists and Ornamental Horticulturalists. Mr. Wolfe's testimony equated greenhouses with the "unitary system for raising hogs"

37. Dunaway, *Fight for Investment Credit on Hog Confinement*, *Wallace's Farmer*, July 25, 1977, at 8.

38. Iowa Pork Producers Association, Iowa State Fairgrounds, Des Moines, Iowa. No publication date is given.

39. In 1977 and 1978, Representative Grassley received about 25 letters on the subject.

40. For instance, Representative Grassley received letters from the Iowa Farm Business Association (Aug. 1977), the Iowa Pork Producers Association (Aug. 1978), and two law firms with clients desiring the investment credit for their agricultural structures (Oct. 1978).

41. *The President's 1978 Tax Reduction and Reform Proposals: Hearings Before the Comm. on Ways and Means, House of Representatives, 95th Cong., 2d Sess. 4627* (1978). The President's proposals, made public on Jan. 21, 1978, included extending the investment credit to "new industrial buildings" and to investments made to rehabilitate "existing industrial buildings." These proposals were ultimately incorporated into H.R. 12078, introduced by Representative Al Ullman (D Or.), chairman of the Ways and Means Committee, on behalf of the President on Apr. 12, 1978. The panel consisted of Thruston Morton, President, American Horse Council; Latimer Turner, Chairman, Tax Committee, National Cattleman's Association; George Wolfe, Jr., Society of American Florists and Ornamental Horticulturalists; and M.H. Collet, Forest Farmers Association, Forest Industries Committee on Timber Valuation and Taxation. The nation's most broadly based organization representing farmers, the American Farm Bureau Federation, also submitted a letter in support of H.R. 12846. See note 51 *infra*. Letter from John A. Datt, American Farm Bureau Federation, to Joe D. Waggoner, Jr. (Aug. 10, 1978), reprinted in *Miscellaneous Tax Bills: Hearings Before the Subcomm. on Miscellaneous Revenue Measures of the House Comm. on Ways and Means, 95th Cong., 2d Sess. 83* (1978).

noted in the 1971 Finance Committee Report.⁴² Shortly after these hearings, numerous bills were introduced to provide an investment credit for various sorts of agricultural facilities, including poultry and hog facilities and greenhouses.⁴³

Indeed, it was early in 1978 when lobbyists for agricultural organizations made a full scale behind-the-scenes push to secure the investment credit on behalf of their clients. Notable among these was Edwin S. Cohen, counsel to a Washington firm of attorneys. Cohen, who had served as Assistant Secretary for Tax Policy from 1969 to 1973, had been contacted early in 1977 by Delmarva Poultry Industry, Inc., a trade organization representing poultry farmers in the Delmarva peninsula.⁴⁴ Their commission had been clear—secure the investment tax credit. One of Cohen's first stops was the staff of the Joint Committee on Taxation, a body that reviews the tax system on an on-going basis and provides technical assistance to the House Ways and Means and the Senate Finance Committees. Cohen felt that a discussion with staff members would give him a better grasp of the entire problem. Cohen learned that a Texas attorney, Sander Shapiro, was girding for a battle with the IRS over its assessment of a deficiency against his client, the Walter Sheffield Poultry Company, for an investment credit taken on its poultry houses.⁴⁵ Cohen phoned the attorney to discuss the case. Although the particular nature of these poultry houses was ultimately to qualify them for the investment credit,⁴⁶ the case-by-case adjudication of such structural distinctions was creating unpredictable standards that would be difficult to apply by individual farmer taxpayers.

42. *The President's 1978 Tax Reduction and Reform Proposals: Hearings Before the Comm. on Ways and Means, House of Representatives, 95th Cong., 2d Sess.* 4641 (1978).

43. In the House, H.R. 12846, 12686, and 13982 were most prominent. The first, introduced by Representative Pickle (D Tex.) on May 24, addressed the needs of poultry producers. It became the vehicle for House action on the issue. H.R. 12686, introduced on May 11 by Representative Richard Kelly (R Fla.), addressed the needs of greenhouse operators, and H.R. 13982, introduced on Sept. 6 by Representative Charles Grassley (R Iowa), was introduced to assist pork producers.

44. Mr. Cohen was interviewed at his office in Washington, D.C., on Jan. 25, 1979.

45. The decision in *Walter Sheffield Poultry Co. v. Commissioner*, [Current] TAX CT. REP. (CCH) ¶ 35,325 (Aug. 8, 1978), provides some amusing insights on a case in which the taxpayer was ultimately successful. For instance, at a hearing held in San Antonio on Mar. 29, 1978, a government witness, Mr. W.S. Allen, an agricultural engineer, was cross-examined. The conversation is revealing:

Q. Well, are you familiar with dog houses?

A. Yes sir.

Q. Would you consider a dog house a building?

A. It's placed in that terms [*sic*] in the profession.

Q. It is a building in the profession?

A. Yes. Birdhouses are too, sir.

Record at 76-77.

The language of the Tax Court's ultimate decision also struck an amusing chord. The court stated: "In this case respondent makes a valiant, though unsuccessful, attempt to remove Chicken Little from that structure known as 'other tangible property' and put her back in the 'henhouse.'" [Current] TAX. CT. REP. (CCH) ¶ 35,325, at 1284.

46. *Walter Sheffield Poultry Co. v. Commissioner*, [Current] TAX. CT. REP. (CCH) ¶ 35,325 (Aug. 8, 1978). The decision turned on distinctions such as the height of the roof, the slope of the floors, and the structure's uselessness for other purposes.

Cohen ultimately decided that legislation was the only way to reverse the IRS position. Court battles were simply too slow and too costly. He thus contacted staff members of the Senate Finance Committee, encouraging them to include more favorable language with respect to the investment credit in their report on the bill that ultimately became the Tax Reduction and Simplification Act of 1977.⁴⁷ Cohen met resistance, however, and backed off to await a better opportunity.

That opportunity came late in 1977 when certain aspects of the President's tax proposals to be sent to Congress in 1978 were leaked. One leak was that the President intended to extend the investment credit to certain business structures. When the President's proposals were finally incorporated into legislative form in House Bill 12078,⁴⁸ it appeared that the investment credit language was broad enough to cover agricultural structures of all sorts.⁴⁹ Leaving little to chance, Cohen encouraged staff members of the House Ways and Means Committee to include specific language providing the investment tax credit for poultry structures within any final version of the President's bill that the committee might adopt. But Representative Al Ullman (D Oregon), chairman of the committee, refused to follow this suggestion.⁵⁰ Cohen once again contacted Shapiro and together they drafted legislation to "clarify" the eligibility of certain poultry structures for the investment tax credit. A draft was delivered to Representative J.J. Pickle (D Texas), a long-time friend of Shapiro and the representative of Shapiro's district. Representative Pickle agreed to introduce the legislation, and on May 24, with Representative Ed Jenkins (D Georgia) as a co-sponsor, Pickle introduced H.R. 12846.⁵¹

On the Senate side, similar legislation was introduced by Senator John Tower (R Texas) on July 13.⁵² Cohen had been in touch with Senator Tower's staff when he contacted Representative Pickle, but apparently Tower had already become aware of the problem from prior contacts by the agricultural community.⁵³ Tower had decided, however, that pork producers were as deserving of the credit as were poultry producers; therefore, he also provided for them in his bill. Although he had considered going even further and including structures used for raising cattle, the lack

47. See note 44 *supra*.

48. See note 41 *supra*.

49. H.R. 12078, 95th Cong., 2d Sess. 154-58 (1978).

50. Mr. Cohen surmised that turbulence surrounding the President's overall tax package was responsible for the cold shoulder received by his suggestion. See note 44 *supra*.

51. Representative Pickle's bill was "to clarify the application of the investment tax credit to certain enclosures or structures used for the housing, raising, or feeding of poultry or their produce." H.R. 12846, 95th Cong., 2d Sess. 1 (1978). It should be noted that Representative Pickle had earlier expressed an interest in this issue. During House consideration of the conference agreement on the Tax Reduction and Simplification Act on May 16, 1977, he and Chairman Ullman carried on a prearranged colloquy in which the chairman expressed his opinion that poultry structures were eligible for the investment credit. See 123 CONG. REC. H4480 (daily ed. May 16, 1977). Such colloquies, however, are of little legislative import.

52. S. 3285, 95th Cong., 2d Sess., 124 CONG. REC. 10683 (1978).

53. Interview with Jim Bayless, legislative counsel to Senator Tower (Jan. 11, 1979).

of any judicial or legislative history in support of their inclusion apparently dissuaded him.⁵⁴ Tower circulated a letter to other Senators asking for their co-sponsorship of his measure and, by July 13, seven others had agreed to support S. 3285.⁵⁵ Curiously, within a few minutes after the introduction of Tower's bill, Senator Carl Curtis (R Nebraska) submitted his own bill on behalf of pork producers.⁵⁶ And just a few minutes later, Senator William Roth (R Delaware) introduced a bill on behalf of poultry producers.⁵⁷ The investment tax credit had indeed become a hot legislative item.

The scene then shifted to the Subcommittee on Miscellaneous Revenue Measures of the House Ways and Means Committee. On August 11, 1978, the subcommittee began hearings on eleven miscellaneous revenue proposals, including H.R. 12846. At the August 11th hearing, a Treasury official expressed the Department's view regarding the allowance of the investment tax credit for agricultural facilities.⁵⁸ The official delivered a printed statement to members of the press, which stated:

We have proposed expanding the investment credit to all industrial structures. Under our proposal these poultry structures would be eligible for the credit. However, we do not support H.R. 12846 since we believe that extension of the credit to industrial structures should be done on a general, rather than piecemeal basis. Also, from the standpoint of equity, we do not consider it appropriate to favor investments in buildings used to house poultry raising facilities, over investments in other industrial structures.⁵⁹

Testimony was also received from several members of Congress, including Representative Pickle, and from representatives of organizations representing florists, poultry producers, and cattle producers.⁶⁰ Edwin Cohen appeared on behalf of Delmarva Poultry Industries, Inc., along with the executive secretary of that organization, Edward Ralph.

54. *Id.*

55. These were Richard Lugar (R Ind.), Robert Morgan (D N.C.), Dick Clark (D Iowa), Lloyd Bentsen (D Tex.), S.I. Hayakawa (R Cal.), Charles Percy (R Ill.), Maryon Allen (D Ala.), and Jesse Helms (R N.C.).

56. S. 3287, 95th Cong., 2d Sess., 124 CONG. REC. 10683 (1978).

57. S. 3289, 95th Cong., 2d Sess., 124 CONG. REC. 10683 (1978). The coincidence of the subsequent introduction of legislation by Senators Curtis and Roth is perhaps explained by the fact that each probably received a copy of Senator Tower's letter seeking co-sponsors and simply decided to drop in bills on their own. Neither co-sponsored Tower's bill, nor had co-sponsors on their own bills.

58. *Hearings on Miscellaneous Tax Bills Before the Subcomm. on Miscellaneous Revenue Measures of the House Comm. on Ways and Means*, 95th Cong., 2d Sess. 16 (1978). The statement was delivered by Daniel I. Halperin, Acting Deputy Assistant Secretary, Department of the Treasury, Office of Tax Policy.

59. Dep't of Treasury News, Aug. 11, 1978, at 2; see *Hearings on Miscellaneous Tax Bills Before the Subcomm. on Miscellaneous Revenue Measures of the House Comm. on Ways and Means*, 95th Cong., 2d Sess. 16 (1978) (statement of Daniel I. Halperin). For a discussion of the possibility of a disparity between the positions of IRS and Treasury, see note 87 *infra*.

60. Representatives Thomas Evans, Jr. (R Del.) and Richard Kelly (R Fla.) testified, as did representatives from the Society of American Florists and Ornamental Horticulturalists, numerous groups representative of poultry producers, and the National Cattleman's Association. One week later, on Aug. 17, at a continuation of the hearings, testimony was received on H.R. 12686, discussed at note 41 *supra* and accompanying text.

Despite Treasury's opposition, the subcommittee scheduled mark-up⁶¹ on H.R. 12846 for September 15. On learning of the scheduling of the mark-up, an aide to Representative Grassley urged an aide to Representative Pickle to have the provisions of a bill the Iowa representative had introduced on September 6 incorporated into H.R. 12846.⁶² Representative Grassley's measure sought to achieve for hog producers what Pickle's bill was designed to accomplish for the producers of eggs and poultry. Grassley felt that a single bill assisting both hog and chicken farmers would receive more support on the House floor than a measure serving poultry producers only. Grassley's aide made it clear that if hog structures were not covered in Representative Pickle's bill by the time it left the Ways and Means Committee, every effort would be made to amend the measure on the House floor. This, it was implied, would only lengthen debate and thus increase interest among nonfarm state representatives who might decide, in a fit of antifarm fury, to vote down the entire measure. Representative Pickle balked at this strategy. He felt that if a measure assisting chicken farmers only could clear the Ways and Means Committee and reach the House floor, it could be scheduled for consideration under House Rule 27, which provides a special method whereby noncontroversial pieces of legislation can be passed expeditiously.⁶³ Pickle obviously felt that the broader the scope and coverage of his bill, the more controversial it would be.

In response to Pickle's strategy, Grassley made an extra effort to ensure that the subcommittee would act on his proposal to include hog structures within H.R. 12846. Various farm organizations in Iowa and Washington, D.C., were encouraged by Grassley's office⁶⁴ to urge members of the Subcommittee on Miscellaneous Revenue Measures to support an amendment to H.R. 12846 covering hog producers.⁶⁵ Grassley also wrote members of the subcommittee and included with his letter a memorandum prepared by the legal division of the Congressional Research Service that outlined the problem, the *Satrum* holding, and the key language from the 1971 Finance Committee Report.⁶⁶ Finally, Representative Grassley personally approached Representative William Frenzel (R Minnesota), a member of the

61. "Mark-up" is the session of a subcommittee or the full committee during which a bill is amended and either passed or rejected.

62. Interview with Barbara Ruud, legislative assistant to Representative Pickle, in Washington, D.C. (Sept. 1, 1978); see note 41 *supra* and accompanying text.

63. W. BROWN, CONSTITUTION, JEFFERSON'S MANUAL, AND RULES OF THE HOUSE OF REPRESENTATIVES, H.R. DOC. NO. 663, 94th Cong., 2d Sess. 623-34 (1977). House Rule 27 authorizes a procedure known as "suspension of the rules," whereby measures may be considered without amendments being allowed. But a two-thirds vote of the House is required to pass bills under this rule.

64. These included the Iowa Pork Producers Association, the National Pork Producers Association, the Iowa Farm Bureau, and the American Farm Bureau Federation.

65. The members of the subcommittee were Representatives Joe Waggoner, Jr. (D La.), chairman, Omar Burlison (D Tex.), Kenneth Holland (D S.C.), Raymond Lederer (D S.C.), Ed Jenkins (D Ga.), Bill Frenzel (R Minn.), and Richard Schulze (R Pa.).

66. Memorandum from Howard Zaritsky, Legislative Attorney, American Law Division, Investment Tax Credit: Application to Certain Animal Confinement Structures (Aug. 8, 1978) (Congressional Research Service, The Library of Congress).

subcommittee, and asked him to introduce an amendment to H.R. 12846 to include hog facilities.

On the morning of September 15, the day the mark-up was scheduled, the *Wall Street Journal* published the following: "A tax subcommittee led by Louisiana Rep. Waggonner is dubbed 'Santa's Workshop'—a reference to the practice of turning a tax bill into a 'Christmas tree' by adding breaks for many taxpayers."⁶⁷ This comment may have been auspicious. In mark-up, after initial discussion of H.R. 12846 had taken place, Representative Richard Schulze (R Pennsylvania) introduced an amendment to include greenhouses. Following minimal discussion, the amendment was adopted by a voice vote.⁶⁸ When Representative Frenzel introduced the Grassley amendment, however, there was some resistance to its adoption. Arguments against the amendment's acceptance focused on the prospect that it might "weigh down" the measure, and that hog producers had never testified at hearings on the bill. Representative Frenzel was not dissuaded, however, and after further discussion, the amendment was adopted on a three-to-two vote.⁶⁹ The entire bill was passed within a few minutes and sent on to full committee.

The bill was taken up by the Ways and Means Committee on October 11 in a meeting marked by lively discussion.⁷⁰ Harry Gutman of the Office of Tax Policy of the Department of Treasury attended, as several bills Treasury considered important were scheduled to be taken up that day. When the committee finally reached H.R. 12846, Representative James Corman (D California), who had two years earlier played a key role in securing the investment credit for certain motion picture equipment, questioned Gutman regarding the investment credit and agricultural structures. Apparently, Corman thought it unfair that some taxpayers were winning in court, whereas others who were reluctant to incur the expense of litigation were deprived of the credit. Corman was also dubious of the IRS's decision to appeal the *Walter Sheffield* decision,⁷¹ while agreeing to the dismissal of its appeal in the *Satrum* case.⁷² Finally, the committee approved H.R. 12846 on a voice vote.

67. Wall St. J., Sept. 15, 1978, at 1, col. 5.

68. The junior author was present at the mark-up and took notes on the meeting. It should be noted that the Ways and Means Committee, by vote of its members, had decided not to make public the transcripts of any of its committee or subcommittee meetings. This posture was confirmed by a phone call to John Martin's chief counsel to the committee on Jan. 16, 1979.

69. Representatives Burleson, Schulze, and Frenzel voted for the amendment, and Representatives Waggonner and Jenkins opposed it. Representatives Lederer and Holland were not present.

70. As the transcripts of this meeting were not public, the authors relied on the interview with Edwin Cohen (*see note 44 supra*), and a conversation with Mary Biesenbach, legislative aide to Representative James S. Corman (D Cal.), both of whom were present at the meeting, to convey what went on. Representative Corman, a member of the committee, participated in the discussion of H.R. 12846.

71. *See note 45 supra* and accompanying text.

72. Department of Justice Brief for Appellee 43, *Endres Floral Co. v. United States*, 450 F. Supp. 16 (N.D. Ohio 1977), stated that the *Satrum* appeal was dropped because of the Ninth Circuit's decision in *Thirup*.

Within a week of the Ways and Means Committee's approval, the Senate Finance Committee adopted the counterpart to H.R. 12846. It was, however, neither the Tower, Roth, nor Curtis bill. On August 18, Senator Herman Talmadge (D Georgia), chairman of the Senate Committee on Agriculture and second highest ranking Democratic member of the Senate Finance Committee, had introduced his own bill⁷³ on behalf of agricultural interests, to "clear the general problem."⁷⁴ Talmadge's bill was therefore the broadest of all, covering special-purpose structures used in the production of eggs, poultry, and livestock. At the August 23 Senate hearings on H.R. 13511, the measure that ultimately would become the Revenue Act of 1978, representatives of horticulturalists and Delmarva Poultry Industry, Inc., including Edwin Cohen, testified in support of broadening the investment credit.⁷⁵ On September 21, as the Finance Committee was considering amendments to H.R. 13511, Senator Talmadge offered his bill as an amendment. Talmadge advanced judicial support for his amendment by citing the Ninth Circuit's decision in *Thirup*.⁷⁶ Talmadge's remarks struck a responsive note in Senator Russell Long (D Louisiana), chairman of the committee. Long remarked:

It seems to me if Treasury cannot win a lawsuit, they are hard put to say the law is other than what the Judge says it is. Mind you, it is one thing for Treasury to say that the law is not what Congress says it is, but when they tell us that the law is not what the Judge says it is—I know when you lose in court that that is the end of it, you have lost.⁷⁷

After further discussion, in which it was pointed out that some cases had been decided against the taxpayer, Long retorted: "It seems to me that we have a right to say that the Judge is saying it our way If we have at least half the courts on our side I'll be darned if we have to say the courts are wrong."⁷⁸ The amendment was adopted on a voice vote, without opposition, and on October 1 the committee issued a report on its version of H.R. 13511.⁷⁹ In the report, the committee noted:

When the investment tax credit was restored in 1971 it was the intention of the committee, as expressed in its report on the Revenue Act of 1971, to make it clear that the credit as restored was to apply to special purpose agricultural structures. Despite this expression of intent, the Internal Revenue Service has denied the credit to special purpose agriculture structures and enclosures used for raising poultry, livestock, horticultural products or for producing eggs. Taxpayers' litigation to establish their right to these credits is both expensive and trouble-

73. Senate Bill 3433, introduced Aug. 18, 1978. See 124 CONG. REC. S13,769 (daily ed. Aug. 18, 1978) (remarks of Senator Talmadge).

74. Interview with W. Russell King, chief legislative assistant to Senator Talmadge (Jan. 12, 1979).

75. *Revenue Act of 1978: Hearings on H.R. 13511 Before the Senate Comm. on Finance*, 95th Cong., 2d Sess. 726 (1978).

76. Unpublished transcript from notes taken by the author at the Finance Committee executive session, Sept. 21, 1978, afternoon session.

77. *Id.*

78. *Id.*

79. S. REP. NO. 1263, 95th Cong., 2d Sess. 116, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 6761, 6879.

some, particularly in cases involving small farmers with limited amounts of eligible property. As a result of this continuing controversy, the committee has decided to specifically provide that these agricultural structures are eligible for the investment credit.⁸⁰

Both the Senate Committee on Finance and the House Committee on Ways and Means provided that the investment tax credit for new construction of single-purpose livestock and horticultural structures and enclosures be retroactive to August 15, 1971, the date when the investment credit was restored.⁸¹ That both committees made the eligibility for the credit retroactive indicates that they had intended all along that certain single-purpose livestock and horticultural structures be allowed the credit. Clearly, it was now time for those who had been denied the credit to reap their reward.

IV. IN THE PUBLIC EYE

Despite the apparent innocuousness of the tax provision, several of the nation's newspapers expressed a keen interest in it. *The Wall Street Journal*, on the front page of its September 27 edition, was the first to comment: "The Senate Finance Committee voted to extend the 10% investment tax credit to 'unitary hog raising facilities,' known to some folks as pig pens."⁸² The *Washington Post* followed the *Journal's* lead with an editorial entitled "The Oink-Oink Tax Bill,"⁸³ castigating the Finance Committee for granting numerous "special breaks, dodges and intensely lobbied privileges."⁸⁴ The tax break for owners of agricultural facilities was specifically listed among these. Senator Long responded with a letter to the editor in which he criticized the *Post's* apparently simplistic view of the legislative process, and then concluded:

The *Post* apparently feels pig farmers and chicken farmers are undeserving of the attention of a congressional committee. Pig farmers and chicken farmers are kind, considerate people, who work very hard and produce something more beneficial, wholesome and certainly more digestible than some of your editorials.

Pig farmers are not the only people who have problems. Newspaper and magazine publishers also have problems. There is pending in the Senate a tax bill, already passed by the House, to ease some of the problems of publishers. Perhaps it is of no concern to *The Washington Post*—since it enjoys enormous resources and reports great profits.⁸⁵

The following day, the *Washington Star* joined the fracas with an editorial entitled "Old MacDonald's Taxes" a more sophisticated and accurate account than the *Post's*, explaining why the amendment providing the in-

80. *Id.*

81. H.R. CONF. REP. NO. 1800, 95th Cong., 2d Sess. 227, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 7198, 7228.

82. *Wall St. J.*, Sept. 27, 1978, at 1, col. 5.

83. *Washington Post*, Oct. 1, 1978, § C, at 6, col. 1.

84. *Id.*

85. *Id.*, Oct. 5, 1978, § A, at 18, col. 4.

vestment credit to farmers was under consideration. The *Star* first noted: "As is often the case in taxation the truth is, in a word, complicated. In that complication it offers an intriguing glimpse at the eye-straining legislative needlework that composes the giant tapestry of a tax bill. If you seek simplicity, neighbor, seek it elsewhere."⁸⁶ The *Star* then made an interesting observation:

So the purpose of the "fiscal outrage" of 1978 is to bring the IRS into line and spare court expenses to farmer-folk seeking to vindicate their entitlement to tax credits. But even here, if you can believe it, the plot further thickens. The Treasury is opposed, feeling that investment credits "should not be extended to structures on a piecemeal basis." Which is curious, inasmuch as it is the IRS position (we quote the Finance Committee report again) "that eligibility of special purpose farm structures must be approached on a case-by-case basis."

It would appear, then, that Senator Long's committee, while flying nimbly to the rescue of the kindly, considerate people who grow pigs and chickens, is also playing mediator between the Treasury and IRS which, at last notice, were theoretically parts of the same outfit.⁸⁷

Midwestern observers were not amused by the coverage of this issue by the Eastern papers. The *Des Moines Register*, an editorially liberal newspaper, had the last word in its article entitled "'Pig Pen' Tax Break is Ridiculed, but It's No Joke to Iowa Farmers."⁸⁸ The closing paragraph of the article begins: "The Washington Post was right in objecting to the outrageous fashion in which the Senate Finance Committee approved scores of special-interest tax amendments. The amendment concerning hog confinement facilities, however, has merit."⁸⁹

It is probable that few members of Congress were aware of the investment tax credit provisions for special-purpose livestock and horticultural structures approved by the House Ways and Means and Senate Finance Committees. The debate, however, that took place on the House floor when H.R. 12846 came up for a vote in 1978 seemed inspired by previous press comments on the subject. After a brief discussion of the measure's contents, Representative Otis Pike (D New York) queried:

"The unitary hog raising facility, is that a unit of production which sometimes is more colloquially known as a pigpen?"

Representative Joe Waggoner (D Louisiana) responded:

86. *Id.*, Oct. 6, 1978, § A, at 10, col. 1.

87. *Id.* The Finance Committee Report noted in the editorial is cited in note 79 *supra*. In a conversation on Jan. 30, 1979, with Ted Sims, Office of Tax Policy, Department of Treasury, the role of Treasury vis-à-vis IRS decision-making was clarified. Apparently, Treasury never formulated a general policy against the granting of the investment credit for agricultural structures, though, as noted in their testimony before the Subcommittee on Miscellaneous Revenue Measures, they did oppose its extension on a "piecemeal" basis. As a result, the IRS acts independently from Treasury in deciding whether to prosecute cases. This is also true of the Justice Department, which handles government appeals from Tax Court rulings. In short, these agencies do not receive policy directives from Treasury before deciding whether to prosecute cases focusing on a specific issue.

88. *Des Moines Register*, Oct. 7, 1978, § A, at 6, col. 3.

89. *Id.*

"Well, I guess some people call them pigpens just like some people refer to special-purpose poultry structures as chicken coops."

Pike would not back off:

"And the special-purpose structure is a pigpen or a chicken coop; is that a fair statement?"

Waggoner:

"The gentleman is streetwise in New York. I hope I am streetwise down in hog and chicken country. Sometimes we jokingly refer to them as 'chicken coops' and 'pigpens.'"

Pike:

"When the gentleman is not jokingly referring to them, does he really call them 'unitary hog-raising structures?'"

Waggoner:

"They really are."

Pike:

"And that is the way the people refer to them in their normal day-to-day conversation down in Louisiana . . . ?"

Waggoner:

"One has to do that when he is discussing it on a serious basis with somebody like the IRS, which does not understand."⁹⁰

This enlightened debate was finally concluded and the measure was passed on a voice vote under House Rule 27 procedures.⁹¹ The Senate equivalent, buried in the Revenue Act of 1978, received no attention on the Senate floor and was adopted as part of that measure on October 10.⁹²

The House and Senate conferees worked into the morning of October 15 to ensure an already-delayed adjournment only three weeks before elections. Few people were aware of the background or existence of the investment tax credit provisions, and the conferees themselves worked out the contents of the final investment credit provision. The Ways and Means Committee agreed upon the language of H.R. 12846, as redrafted by the counsel of the Ways and Means Committee, as the basic structure for inclusion as section 314 of the Revenue Act.⁹³ One notable addition, however, was coverage for structures "specifically designed, constructed, and

90. 124 CONG. REC. H12,784 (daily ed. Oct. 13, 1978).

91. *Id.*

92. In fact, the lack of attention on the Senate floor was surprising. On Oct. 2, Senator Kennedy (D Mass.) listed in the *Congressional Record* "Recommended Amendments" to the Revenue Act. One called for the deletion of the investment credit for "pig pens and similar structures." But no more was ever heard from the Senator on this subject. The authors were unable, after numerous calls, to find out why the amendment was not offered. See 124 CONG. REC. S16,882 (daily ed. Oct. 13, 1978).

93. Revenue Act of 1978, Pub. L. No. 95-600, § 314, 92 Stat. 2827 (to be codified at I.R.C. § 48(p)). To qualify for the credit, the livestock structure or enclosure must be specifically designed, constructed, and used for the housing, raising, and feeding of a particular type of livestock (including poultry) and their produce. The structure must contain equipment necessary for the provision of water and feed and, if necessary, temperature control. Horticultural structures eligible for the credit are limited to greenhouses specifically designed, constructed, and used for the commercial production of plants or mushrooms. Even if the structure provides working space, the credit is still available if the working space is devoted solely to the single purpose of the structure.

used for the commercial production of mushrooms."⁹⁴ This addition came about as a result of last minute efforts by lobbyists with Ralston-Purina and Castle and Cooke who had learned only a few days prior to conference that certain agricultural and horticultural structures had been granted the investment credit.⁹⁵ These corporate lobbyists had contacted an attorney on the staff of the Joint Committee on Taxation and several conference committee members whose districts contained facilities owned by the companies.⁹⁶ As a result, language favorable to mushroom producers appeared in the conference report, although mushroom facilities had not been mentioned in either House or Senate committee discussions of, or documents on, the investment tax credit provision.

V. CONCLUSION

Although numerous trade organizations and their representatives pressured elected officials in Washington to include a provision covering special-purpose structures in the Revenue Act of 1978, such a provision would not have been adopted without strong grassroots support and a history of favorable court decisions. Moreover, the inclusion of language addressing the issue within the 1971 Finance Committee report was clearly a significant factor in the adoption of the 1978 amendment.

It is noteworthy that partisan politics did not play a role in this fairly typical political scenario surrounding the adoption of a special-interest amendment to tax legislation. Equally worthy of note is that press criticism of the amendment did not hinder its passage. Members of Congress familiar with the amendment believed that it had a legitimate purpose and did not feel that their constituents should be denied its relief on the grounds that it would serve "special interests" only. By specifying the eligibility of certain single-purpose livestock and horticultural structures for the investment credit, Congress was not passing the classical type of "special interest" legislation that would benefit only one or two individuals or entities.

At first blush, the provisions do not seem to achieve the desired goal of equity. But equity is a two-edged sword. While equity between taxpayers receiving special treatment and general taxpayers is one edge, consideration must also be given to whether taxpayers who fall within the same special category are treated equitably. The action of Congress in specifically providing the investment tax credit for the new construction of single-purpose livestock and horticultural structures may be viewed as a means of ensuring that all taxpayers with such structures benefit from the credit.

94. *Id.*

95. Telephone conversation with Judy Pond, Assistant Director of Government Affairs, The Ralston-Purina Company (Feb. 12, 1979).

96. The committee members were Representative John Duncan (R Tenn.), and Senators Lloyd Bentsen (D Tex.) and Robert Packwood (R Or.).

VI. EPILOGUE

Once congressional conferees have met and reached agreement, the law-making process usually has ended. But this is not always the case. Malthouse operators had also approached the conferees but had failed to get malthouses included in the conference language.⁹⁷ As a result, they have since approached the staff of the Joint Committee on Taxation, who are working on the "General Explanation"⁹⁸ of the new tax law, attempting to obtain inclusion of language referring to malthouses within the explanation of the investment credit provision. Even if these efforts fail to produce the desired results, malthouse operators will not necessarily be foreclosed from benefits of the investment tax credit. As one analyst noted shortly after the release of the conference report:

Keep an eye, for example, on a piece of legislation that may end up being called the Technical Corrections Act of 1978, even though it hasn't been introduced yet and won't be passed before 1979, at the earliest. Nevertheless, the Technical Corrections Act of 1978 already is attracting the attention of groups dissatisfied with the 1978 Revenue Act.⁹⁹

Despite the change in the law, the IRS may in some instances still prevail. Sections 6511 and 6513 of the Internal Revenue Code place a limit on the time within which a tax refund may be sought. That limit is three years from the date a return is filed, or two years from the date the tax is paid. Taxpayers who file for a refund for a credit for structures built between 1971 and 1978 may find themselves cut off by sections 6511 and 6513 of the Code. Once again, Congress may be called to the rescue.¹⁰⁰

97. H.R. REP. NO. 1800, 95th Cong., 2d Sess. 226, *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 7198, 7227.

98. STAFF OF JOINT COMM. ON TAXATION, 95TH CONG., 2D SESS., GENERAL EXPLANATION OF THE REVENUE ACT OF 1978, at 151 (Joint Comm. Print 1978). A "general explanation" is eventually written for each Revenue Act. It is a nonlegislative, explanatory document. The general explanation to accompany the Revenue Act of 1978 was finally published on Mar. 12, 1979. No mention was made in it of malthouses.

99. Pierson, *Tax Bill Has Passed but Tax-Break Game Goes into Overtime*, Wall St. J., Dec. 7, 1978, at 1, col. 4.

100. On Mar. 6, 1979, legislation was introduced to correct the oversight. *See* 125 CONG. REC. E913 (daily ed. Mar. 6, 1979).

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