

FEDERAL TAX LEGISLATION

The first session of the 87th Congress adjourned without enacting any significant tax legislation. However, it is expected that the "Revenue Bill of 1961," when put into final form, will be introduced in the Second Session, after Congress convenes on January 10, 1962. The bill is the embodiment of most of the tax recommendations sent to Congress by President Kennedy on April 20, 1961.¹ The Committee on Ways and Means has published its tentative decisions in a discussion draft included in which are two significant proposals: an investment credit and a new treatment of gains recognized from the disposition of depreciable personal property.²

THE INVESTMENT CREDIT

An investment credit was proposed to stimulate this country's rate of economic growth by encouraging capital investment.³ It was urged that increased productivity would promote a rise in per capita income, full employment and stable prices.

The President's plan called for a fifteen percent credit which would have been available for plant and equipment expenditures but only in excess of current depreciation allowances, *i.e.*, the credit would have applied to the difference between the cost of new capital investment and the total depreciation allowances for the year. It was hoped that this formula would concentrate the stimulant among those industries and companies which would be increasing their rate of investment above normal replacement. The restriction would also serve to eliminate additional tax benefits to those concerns which would already be gaining tax advantages through high depreciation allowances. A six percent credit would have been available for certain investments below the level of allowances, but this credit would

¹ 107 Cong. Rec. 5992 (H. Doc. No. 140); 7 U.S. Code Cong. & Ad. News 1425 (1961).

² The following are the remaining proposals contained in the discussion draft which would make substantive amendments to the Internal Revenue Code of 1954:

- (1) Tightening of allowable entertainment and travel expenses deductions [§§ 274 and 162(a)(2)].
- (2) Taxation of mutual fire and casualty insurance companies [§§ 821-24, 831, 832 and 809(d)(6)].
- (3) Inclusion of income earned from sources outside the United States [§§ 911 and 72(f)].
- (4) Treatment concerning domestic corporations receiving dividends from foreign corporations [§§ 902 and 78].
- (5) Taxation of cooperatives and patrons [§§ 1381-88].
- (6) Withholding system on interest, dividends, and patronage dividends [§§ 3451-91 and 39].
- (7) Fuller information with respect to certain foreign entities [§§ 6038 and 6046].
- (8) "Tax haven" legislation [§§ 951-59].

The sections pertaining to the investment credit would be §§ 38 and 46-8 and to the gains treatment, §§ 1245, 167(f) and 170(e). House Committee on Ways and Means, 87th Cong., 1st Sess., "General Explanation of Committee Discussion Draft of Revenue Bill of 1961."

³ The President's message urged that modernization and expansion of the nation's productive plant and equipment are essential to raise productivity, to accelerate economic growth, and to strengthen our competitive position in world markets.

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apply only in excess of fifty percent of depreciation.⁴ The idea behind the dual credits⁵ was to encourage firms to make more capital investments in order to take advantage of the larger credit.⁶ In order to remain a real incentive and make a maximum contribution to those areas of capital expansion and modernization where it was most needed, eligible investment expenditures were further limited to outlays on new plant and equipment, on assets located in the United States, and on assets with a life of six years or more.⁷

Although this differential rate might provide incentive to strive for the larger credit, the executive proposal was felt to have ignored the need to finance the remaining eighty-five per cent of the purchase. It would appear that unless a particular taxpayer already had these funds or was able to raise them, the capital purchase would not be undertaken.⁸ Most companies

⁴ The application of the 15% and 6% computations is shown in the following example taken from 39 Taxes 558 (1961):

Investment in new plant and equipment is \$150,000; depreciation deduction for the year is \$110,000.	
15% credit on \$40,000, expenditures in excess of depreciation (\$150,000 minus \$110,000)	\$6,000
6% credit on \$55,000, expenditures between 50% and 100% of depreciation	\$3,300
Total credit	<u>\$9,300</u>

⁵ It was actually a three-bracket device since, in the alternative, a minimum 10% credit was provided for the first \$5,000. The application of this credit is shown in the following example also taken from 39 Taxes 558 (1961):

Investment in new plant and equipment, \$15,000; depreciation \$35,000	
(15% and 6% computations are not applicable)	\$0
Minimum credit, 10% of first \$5,000 of expenditures	\$500
Total credit	<u>\$500</u>

⁶ The President stated that the 6% credit was designed "... to afford some substantial incentive to the depressed hesitant firm which knows it cannot yet achieve the 15% credit." 7 U.S. Code Cong. & Ad. News 1425, 1427 (1961).

⁷ It should be noted, in regard to this statement by the President, that the discussion draft has adopted this domestic asset restriction. "Property used predominantly outside of the United States is excluded since income from sources outside of the United States generally is subject to taxation only to the extent that the United States rates exceed the applicable foreign rates." Discussion Draft 2, at 8-9. The discussion draft also has adopted the useful life restriction of six years or more. In addition, it has provided that "... where the property with respect to which the investment credit was taken is disposed of within six years, the credit may be disallowed if the Secretary of the Treasury determines that the allowance of the credit in such case is inconsistent with the purposes for which it was allowed." Discussion Draft 2, at 7.

⁸ The President's proposal to repeal the present 4% credit on dividends would be expected to have a direct effect on the availability of funds for investment purposes. "[T]o repeal this tax credit at this time would be a step backwards and would seriously lessen the inducement or the ability of the investors to furnish the capital necessary for the expansion of our economy." 107 Cong. Rec. 10009 (1961) (remarks of Senator Williams). The administration also sought to repeal the stockholder exclusion of the first \$50 of dividend income from the income tax. This action would also tend to reduce the supply of investment capital. The repeal of the \$50 dividend exemption and the 4% tax credit have not been adopted by the Committee on Ways and Means. The New York Times reports that the administration is planning to fight for restoration of these omitted items in the Senate. New York Times, Dec. 4, 1961, p. 61, col. 5 (city ed.).

which have a projected program for modernization and expansion would rarely bypass the opportunity to initiate innovations if they had the available funds.⁹

The Committee's recommendations provide an investment credit which is not dependent upon the rate of investment in the past. Depreciation allowances are not considered in the determination of the credit.¹⁰ This deviation from the President's plan appears to have resulted from major criticism leveled at the discriminatory aspects of the original proposal which denied comparable benefits to all segments of the economy. It was pointed out that the limitation of credit to that portion of investment in excess of depreciation accruals would concentrate the benefit in rapidly growing companies and industries and that the credit would largely benefit expansion rather than modernization and improvement of existing facilities. The older industries have the most difficulty in financing new capital outlays; the rapidly expanding industries seem able to raise new capital funds through new stock issues and borrowing.¹¹ Since the economy would have little difficulty financing added capacity in growing industries, the real problem would lie in modernization and improvement. It is in this area that capital outlays of "underspending" companies are largely made.¹² Thus, the investment credit, as originally proposed, would not help these older capital-strained industries needing funds for modernization and cost reduction. Also, the original credit would not help large business operations which were going through a period of low earnings or which carried on operations in an area characterized by over-capacity, as their capital expenditures would naturally be below depreciation allowances.¹³ It was forcefully argued, therefore, that the credit was in effect a tax reduction for certain fortunate groups.

Further criticism has been directed at the denial of eligibility to companies with capital expenditures currently below their depreciation levels. It was felt that this denial was based on the mistaken belief that these companies would have the necessary capital funds with the result that their expenditures would not respond to an increase in available funds. The mistake lies in the fact that the "underspending" of depreciation does not necessarily imply the availability of sufficient capital funds. It is more likely to be the case that such "underspending" is the result of a variety

⁹ Hearings on the President's 1961 Tax Recommendations before the House Committee on Ways and Means, 87th Cong., 1st Sess. (1961), at 975; George Terborgh, Research Director of Machinery and Allied Products Institute.

¹⁰ Continuing with the example, *supra* note 5:

8% credit applied on \$15,000	\$1,200
Total credit available under the draft	\$1,200

¹¹ Hearings, *supra* note 9, at 952; Professor Dan Throop Smith, Harvard Graduate School of Business Administration. Senator Schoeppel, speaking before the Senate, remarked that the impact of economic hardship affecting the business community was particularly severe on small businesses since they often lacked the capital reserves which are available to larger firms. "Time to Modernize Our Antiquated Depreciation Policies," 107 Cong. Rec. 18504 (1961).

¹² Terborgh, *supra* note 9, at 976.

¹³ Williams, *supra* note 8.

of factors such as low earnings, heavy debt amortization or absorption of funds by working capital requirements. Thus, it appears incorrect to assume that capital outlays were free of financial limitations or that they would not respond to an increase in available funds.¹⁴

The application of the investment credit to all new investments¹⁵ without consideration of depreciation had been directly opposed by the administration.¹⁶ It had been feared that a much larger revenue loss would result unnecessarily as those expenditures below the normal depreciation level would still have been undertaken, and therefore represented no new level of effort. The objective was to provide the largest possible inducement to new investment which would not otherwise have been taken. This point should not be disregarded since President Kennedy hopes to submit a balanced budget for the 1963 fiscal year.

The inclusion of used property to the extent of \$50,000¹⁷ is contrary to the President's desire to limit the investment credit to purchases of new capital equipment (and plants). This modification does eliminate some of the undue hardship on small business which could not afford new equipment.¹⁸ The discussion draft properly excludes from its definition of used property that which is leased back to the person from whom it was acquired and that which is leased to a corporation which controls, or is controlled by, the organization from which the property was acquired.¹⁹ This exclusion appears to be designed to prevent those taxpayers who normally lease productive facilities from becoming "purchasers" in order to be eligible for the investment credit, to prevent the formation of leasing corporations for the purpose of "harvesting" the credit, and to prevent taxpayers eligible for the credit from purchasing and leasing assets to others not eligible.²⁰

Closely allied with these provisions is a "recapture" clause which provides needed protection against a quick turnover of new or used property

¹⁴ This conclusion is in substance that adopted by George Terborgh, *supra* note 9, at 975. The President stated that "... depreciation allowances themselves in effect supply tax free funds for investment up to this level (average level of investment over the past)." The credit "... would help secure funds needed for additional investment beyond that level." *Supra* note 6, at 1428.

¹⁵ The discussion draft extends the application to include used assets up to \$50,000. See *infra* note 17.

¹⁶ It appears that this aspect of the discussion draft will no longer be opposed by the administration. In a speech before the Annual Meeting of American Institute of Certified Public Accountants on November 1, 1961, Stanley S. Surrey, Assistant Secretary of the Treasury, indicated Treasury approval of the credit rate as embodied in the draft. He did mention that Canada, in adopting an incentive for investment in its 1961 tax changes, chose the administration's form for the same reasons that prompted its suggestion by the President—it provides the maximum incentive at the least revenue cost. 7 CCH Stand. Fed. Tax Rep. ¶ 6602 (1961).

¹⁷ This amount is extended to \$100,000 on joint returns. In the case of partnerships the \$50,000 limit is applied to the partnership and a further equivalent amount is applied to the partner level where a partner, either from another partnership or as a sole proprietor, has made additional investments.

¹⁸ 39 Taxes 558 (1961).

¹⁹ It is apparent that this provision will be extremely effective due to imposition of a 50% test of common ownership rather than the normal 80%.

²⁰ Terborgh, *supra* note 9, at 973.

to obtain multiple credits. If the property is disposed of or otherwise ceases to be section 38 property²¹ (such as through use predominantly outside of the United States) or is leased within six years from the time of acquisition, the property is excluded from qualified investment back in the year in which the credit was taken.²² This clause has been strongly criticized because of the belief that it would penalize many legitimate disposals occasioned by unexpected obsolescence or by unforeseen changes in the taxpayer's operations. The discussion draft appears to have answered this objection by limiting the clause to apply only when the Secretary of the Treasury or his delegate determines "... that the allowance of the credit ... would confer a benefit which is inconsistent with the purposes of the investment tax credit provision." This conferment of discretion, however, will certainly create much uncertainty sufficient to decrease the incentive value of an investment credit in this area.

Another possible area of uncertainty in the discussion draft arises from an expressed policy not to construe narrowly the term "tangible personal property"²³ so as to exclude property which is affixed to a building or to land so long as the property is used in the operation of a trade or business. This liberality appears to stem from the elimination of buildings and certain other real property from inclusion in the credit scheme. This is a substantial deviation from the President's proposal in which he included such property. It appears incongruous to provide incentive for the purchase of new equipment without a corresponding incentive for the construction of appropriate buildings. Although the term "tangible personal property" may be broadly defined to include certain plant additions, it does create additional uncertainty which perhaps can be effectively eliminated by the promulgation of revenue rulings.

Substantial criticism was directed at the President's dual percentage rate resulting in the inclusion in the discussion draft of a flat eight percent rate. The major complaint is concerned with the complexity of the President's proposal.²⁴ Due to the necessity of segregating the accrued depreciation of assets eligible for the credit, accounting difficulties would undoubtedly arise to offset the advantages of the proposal as additional records and new methods of accounting classification would be required. Complicated safeguards, moreover, would be necessary to prevent certain adverse effects such as "bunching of expenditures" in order to obtain the larger credit. However, a minimum of complexity must be expected to insure the desired result of the investment credit. It also must be recognized

²¹ Section 38 property is the only property (whether new or used) which can qualify for the investment credit under the discussion draft. Such property must be either tangible personal property, or other property, except buildings, which is used directly in manufacturing, production, extraction, transportation, or communications. Section 38 property must be depreciable and is limited to that which has a useful life in the hands of the taxpayer of 6 years or more. Certain categories of property are excluded from inclusion in this section. See Discussion Draft, at 7-9.

²² Discussion Draft, at 10.

²³ *Supra* note 21.

²⁴ Hearings, *supra* note 9, at 1002; Joel Barlow, Chamber of Commerce of the United States; see also Terborgh, *supra* note 9, at 973-74.

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that a framework of administrative safeguards is required to prevent the addition of "loopholes" to this novel area.

The provisions against artificial scraping and leasing arrangements and the recapture clause, as contained in the discussion draft, with their resulting complexities are necessary. But, the credit should never approach the point where it becomes a hindrance to proper managerial planning and an impediment to correct business decisions. The flat rate applicable to all new investments seems to offer needed simplicity which will present fewer difficulties for either the taxpayer or the Treasury. It should be noted, moreover, that the actual complexity within the discussion draft is now due to the necessary regulatory provisions, for part of the complexity inherent within the President's proposal, namely the tax credit itself, has been removed.

THE ALTERNATIVE

There appears to be little doubt as to the need for an investment incentive—the problem being the best manner in which it can be obtained. Although modernization and expansion of plant and equipment are the primary means of creating employment opportunities for our growing labor force and providing formidable competition in world markets, there is strong feeling that the investment credit is the worst possible way to achieve this desired result. Present depreciation policies do not encourage expansion and the impact of inflation and technological obsolescence has resulted in inadequate allowances for outmoded plant and equipment.²⁵ Therefore, a more liberal approach to depreciation allowances is thought to be the solution.²⁶ A general authorization for depreciation which recognizes the high rate of technological obsolescence, but which is still realistic and acceptable for a company's own accounting records, would give simplicity and certainty where there could be confusion.²⁷ Other countries have used credits but usually only after their depreciation allowances have been put on a reasonable basis. This basic reform is needed before a supplementary device such as the investment credit is superimposed upon a defective foundation.

Realizing that there is an alternative "strongly argued by some"—a revision permitting more rapid depreciation²⁸—the President has asserted

²⁵ Supra note 11. Senator Schoeppel's speech as recorded in the Congressional Record lists the findings of various groups and committees on depreciation reform and the methods employed in many foreign countries. See Senate Select Committee on Small Business, Tax Depreciation Allowances on Capital Equipment, S. Rep. No. 1017, 86th Cong., 2d Sess. 10 (1960).

²⁶ See Williams, supra note 8.

²⁷ Smith, supra note 11, at 953. The Select Committee on Small Business made three basic recommendations: first, it proposed that the period of depreciating property should be shortened; secondly, it suggested that greater depreciation be permitted in the years immediately after purchase of property, and thirdly, that the depreciation of property on a basis other than original cost should be considered in order to combat the effect of inflation. Supra note 25, at 11.

²⁸ The Presidential message briefly mentioned another alternative, an outright reduction in the rate of corporate income tax. The inferiority of such a proposal was adequately pointed out in the message; the benefits would be distributed very narrowly since the reduction would only affect corporations. The President felt that much of the revenue loss under a general corporate rate reduction would be diverted into raising the profitability of old investments. Supra note 6, at 1428.

persuasive reasons for the superiority of his proposal (which also apply to the discussion draft). He believes that the determination of an asset's life and proper methods of depreciation have a normal and important function in determining taxable income which should be wholly apart from any consideration of incentive, and that depreciation allowances should not be "manipulated" for purposes that would interfere with this function. The President also realizes that some of the existing depreciation rules may be outmoded and inequitable yet he still chooses to separate this problem from investment incentives.²⁹

There are those who tend to disagree with the belief that depreciation is a separate question. The effects of tax depreciation policies on capital investment are considered significant since capital investment is not only financed through sales of securities, borrowing and retained earnings, but also through depreciation allowances.³⁰ Even though one may disagree with this theory, it still appears unrealistic to consider depreciation a separate question when the original proposal was based upon a direct relationship to such allowances.

In further support of his proposal, President Kennedy has asserted that an increase in tax depreciation would tend to be recorded in a firm's accounts, thereby raising costs and acting as a deterrent to price reduction.³¹ An investment credit would not contain this defect since it would be offset against taxes on income and not a deduction from income. Although this point is somewhat persuasive at first glance, it would be desirable to consider an argument to the contrary. Many decisions about the replacement of capital equipment are influenced by the extent of depreciation already taken on existing equipment. A fully depreciated machine is presumptively ready for replacement; a partially depreciated machine is not.³² This approach is admittedly unscientific but still should be considered when dealing with investment incentive. Furthermore, it is the actual cost incurred that must enter into the computation of price. Since actual depreciation is frequently less than tax depreciation, the actual costs would not be the costs shown on the tax return. Therefore, more liberal tax depreciation would not necessarily affect the determination of price.³³

The final argument advanced by the President was that the tax credit would be more effective in inducing new investment for the same revenue loss.³⁴ He has stated that the entire credit would be reflected immediately and would increase funds available for investment without increasing the company's future tax liability. The President feels that the speedup in depreciation would only postpone the timing of tax liability on profits from the investment to a later date. However, one substantial disadvantage pertaining to the after-effect of the tax credit becomes apparent. The funds made available by this credit would be general funds, and as such, available

²⁹ Supra note 6; Hearings, supra note 9, at 25; C. Douglas Dillon, Secretary of the Treasury.

³⁰ See Powell, Depreciation; Useful Life and Salvage Value, 19 N.Y.U. Inst. on Fed. Tax. 1303, 1317 (1961).

³¹ Supra note 6, at 1428; Dillon, supra note 29.

³² Smith, supra note 11, at 953-54.

³³ Barlow, supra note 24, at 1005.

³⁴ Supra note 31.

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for dividends or working capital. These funds would not be automatically channeled into capital investment. It would seem to be unfortunate not to take advantage of a tax relief which would afford this opportunity. Faster depreciation conditioned on faster book depreciation would achieve this result. As previously mentioned, from the standpoint of management decisions, it is common to regard funds arising through depreciation as automatically available for new capital expenditures.³⁵ Although it can be argued that such "availability" is not important since the purchase which qualifies for the investment credit will have already absorbed existing general funds, this same result will naturally occur under either type of incentive. Under faster depreciation, not only will general funds have been channeled into the purchase of capital equipment, but also internal funds made available by depreciation will be automatically available for further capital investment.

In spite of the fact that President Kennedy has stated that the investment credit would in no way foreclose later action, it is strongly believed that any credit plan would further delay the necessary basic revision and liberalization of tax depreciation. It is feared that once Congress has passed new tax provisions or the Internal Revenue Service has adopted new tax regulations these bodies may become complacent and consequently less willing to consider basic reform in the same area.³⁶ The efforts seem almost patchwork in effect rather than a concentrated effort at overhaul. Although the discussion draft does remove much unnecessary complexity and other disadvantages under the President's proposal and further eliminates the dependence on depreciation allowances, it still does not approach the need for basic and meaningful depreciation reform. The credit is again simply superimposed upon the present law which is indeed inadequate.

GAIN'S TREATMENT OF DEPRECIABLE ASSETS

Closely related to the investment credit is the proposal concerning capital gains on the sale of depreciable business property. The general explanation of the Committee on Ways and Means is summarized as follows:

Any gain on the sale of most types of depreciable personal property is to be treated as ordinary income to the extent of any depreciation deductions previously taken. For this purpose only depreciation deductions taken in 1961 and subsequent years will give rise to this ordinary income treatment. This . . . treatment is to be applicable only in the case of sales and certain other dispositions of depreciable personal property. Taxpayers will be permitted to change to more conservative forms of depreciation if they

³⁵ Professor Smith pointed out that this ". . . may not be altogether logical but it is nonetheless a fact, and if facts and theories differ it would seem desirable for legislation to take account of the facts." *Supra* note 11, at 953.

³⁶ Mr. Barlow questioned before the Committee on Ways and Means: "With this built-in subsidy for investment, who will be able to justify a completely realistic upward adjustment in depreciation rates to fully recoup costs when this would duplicate the intended benefit of the tax credit? . . . When are taxpayers likely to get depreciation allowances on a realistic basis if the tax law encourages them to minimize their annual depreciation accrual so as to maximize their tax credit?" *Supra* note 24, at 1004.

desire to do so in order to minimize the possibility of realizing ordinary income under this provision.³⁷

The President considered the taxing as capital gains in this area as a flaw in our system. Under the present law the taxpayer may write-off the cost or other basis of his property over the period of its useful life,³⁸ and such depreciation is deducted from ordinary income. The "gain" occurs on the resale in which the amount of depreciation allowable exceeds the decline in the actual value of the asset. The administration felt that the capital gains concept should not encompass this kind of income. The President indicated that this change would be especially needed in view of the proposed investment credit which would encourage further acquisition of such property. In one respect, however, the implied connection appears to be non-existent. Since the credit does not effect the cost basis of capital assets, it should have no effect on the determination of capital gains and losses from disposition.³⁹ Furthermore, the President's point of view can be challenged in that much of the difference producing the gain is inflationary-caused capital appreciation. It would appear that these increments, which are largely illusory, should not be considered income, or at least the proposal should adjust for such appreciation in value.

The treatment under the discussion draft will not apply to real property as originally included in the President's proposal. This defeats the efforts of the administration to eliminate the advantage attached to investment in "depreciation shelters"⁴⁰ which exist primarily in the real estate area. There is some belief that the fault actually lies in the improper tax depreciation scheme which has not become an allowance for decline in actual value of the assets.⁴¹ Nevertheless, it is strongly maintained that this proposal should especially include the real estate area. Some justification is found in the difference in the reasons for the sale and exchange of real estate as compared with machinery and equipment. The latter is normally used so long as it is technologically effective and until it is replaced with a better item. In comparison, buildings are often bought, sold and exchanged for tax advantages rather than to secure properties which are inherently more productive from an economic viewpoint.⁴² But, in the final analysis, it must be realized that the cause here is again outmoded depreciation allowances.

³⁷ Discussion Draft, *supra* note 2, at 4.

³⁸ See Int. Rev. Code of 1954, § 167(b). Section 179 of the 1954 Code provides a 20% additional first-year depreciation allowance for small business with a \$10,000 limitation. See also Powell, *supra* note 30.

³⁹ Terborgh, *supra* note 9, at 977.

⁴⁰ Secretary Dillon, in his testimony before the Committee on Ways and Means, *supra* note 29, described this term—

[D]uring the first few years after acquisition of a building by a real estate syndicate the total depreciation allowances and mortgage interest will often exceed rental income, so that distributions of income during this period are tax exempt in the hands of an investor. When distributions substantially cease to be tax exempt, the building is sold, a capital gains tax is paid on the gain attributable to depreciation allowances, and another building is acquired to provide another depreciation shelter.

⁴¹ Hearings, *supra* note 9, at 1057-58; Richard H. Swesnik, National Association of Real Estate Boards.

⁴² Smith, *supra* note 11, at 955.

It should finally be noted that the elimination of the capital gains treatment would conflict with the purpose of the investment credit—to dispose of old equipment and invest in new equipment. The high tax resulting would perhaps discourage the sale and exchange of old equipment, and the incentive value of the investment credit would thus be greatly handicapped.⁴³

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LABOR LEGISLATION

The House Committee on Education and Labor appointed a subcommittee, under the chairmanship of Roman C. Pucinski of Ohio, to investigate the procedural ineffectiveness of the National Labor Relations Act. The subcommittee was to determine why collective bargaining has so often been fruitless and why unfair labor practices have shown a marked increase. The greater portion of the testimony heard by the subcommittee presented the "labor view" since management's response to the subcommittee's invitations to appear was very poor. The scope of this discussion is restricted to a treatment of the more important problems dealt with by the subcommittee.¹

By far the most serious problem facing labor today is the delay in achieving enforcement of its federally granted rights. This problem primarily arises either in the context of representation or unfair labor practice cases. In these areas, speedy settlement of disputes is essential to insure justice to the parties and vital to the effective administration of the National Labor Relations Act. Delay has all too often diminished the effectiveness of many remedies on which labor can no longer rely with assurance. In representation cases, the prejudicial effect of delay has been summed up by the statement of Alvin Ackerman of the Baltimore Retail Clerks:

What does delay mean to an employer? It means that he has time to engage specialists in union busting, who can mount a full-fledged propaganda campaign against the union. He has time to hire new employees to pad the eligibility list. He has time to get rid of employees who are active union leaders. He has time to raise wages. He has time to shorten hours. He has time to make endless promises about what he will do for his employees, if they vote against the union. He has time to make dire predictions about the jobs which

⁴³ Section 1231 of the Internal Revenue Code of 1954 came into the law in 1942 to relieve taxpayers of ordinary income tax rates on gains resulting from involuntary conversions, sales and exchanges prompted by the circumstances of the war effort [See H.R. Rep. No. 2333, 77th Cong., 1st Sess. (1941)]. This provision compensated for the rise in prices of used machinery during the war. This aspect of the problem still is with us today in the form of inflation.

¹ The committee took up ten areas in all: the problem of delay, enforcement of NLRB orders, the General Counsel, issuance of complaints, inequities in the use of injunctive remedies, free speech, community pressures, NLRB determination of the appropriate bargaining unit, the Board's policy-making function, changes in rules of practice, and organization and management of the Board. This study will discuss the first six.