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Minutes of May 8, 2004 Meeting:

Mona Hymel introduced herself and members of the committee leadership. She announced that in the fall the committee is planning to have a meeting on the party platforms since the meeting will take place in late September just before election. At the winter in San Diego, the committee is planning a panel on simplification. Mona asked for additional ideas, and then she introduced the first speaker—Nina Olson, the National Taxpayer Advocate.

First Panel: A Conversation with the National Taxpayer Advocate

Nina Olson talked about the theme for her 2004 report—complexity. She explained that it involved looking at complexity in administration, law, and people's affairs, and we are using that to use broad overarching analysis of tax system. This year—the report will identify one problem—complexity—and then will discuss 20 issues that feed into the complexity problem. Nina is hoping to get a good response with this kind of clarity of message. She has learned the impact of a clear simple message. As an example she cited the annual report's focus on AMT, which was been picked up by 340 newspapers to date. She stressed the importance of not talking about simplification in a complicated way.

Nina then discussed how the IRS's renewed focus on enforcement has changed how decisions are made in the IRS from her point of view. She expressed her belief that less openness is a result of an IRS that is largely driven by renewed focus on enforcement. She stated that there are only a few people involved in the decision making and that the national taxpayer advocate is not often at that table. Nina then spoke about RA 98 and expressed hope that most people would acknowledge that RA 98 was to create a position so that as initiatives change there would be a strong voice thinking about due process protections. Nina then talked about the fact that the IRS Commissioner likes to reference equation that service plus enforcement equals compliance. Nina explained that she had been thinking a lot about what leads taxpayers to comply with the tax law. From her thinking about the equation, she has decided that enforcement is what the IRS does to people—it is force from outside. Compliance is what taxpayers do themselves. Taxpayers comply—the IRS enforces. She explained that no matter how many resources the IRS has to conduct enforcement it will never have enough to make every single taxpayer comply and meet their tax obligations because the citizenry will not stand for an IRS powerful enough to enforce all tax laws against all taxpayers. So the IRS has to rely on something else to make taxpayers honest. Nina then referenced studies on taxpayer compliance, in particular an article by Leandra Lederman in the Kansas law review about norms of compliance.

Nina then talked about what might make taxpayers want to live up to their part of their part. Promises to give due process, treat taxpayers right, and treat them courteously help. She then talked about where horizontal equity and vertical equity fit into tax administration. To her, horizontal equity means not unfairly targeting one particular taxpayer and not getting someone else. Vertical equity means creating a balanced

program both of service and enforcement and routing examination functions of IRS or collection functions.

Nina talked about studies showing that taxpayers' sense of it being O.K. to cheat has increased over the last ten years. She also mentioned an interesting number—that somewhere between 32 and 38 percent that it mattered that their neighbor didn't cheat. Nina thought this would be higher, which demonstrates that there is something else that drives compliance—some sense that civic duty. Nina then spoke about what happens if taxpayer takes pride in complying, makes some little mistake, and then someone in IRS calls up and treats the taxpayer as noncompliant. She stated that this sends a message that will erode taxpayer's confidence. The treatment of taxpayers as either "compliant" or "noncompliant" drove lack of respect for taxpayer by IRS. RA 98 was meant to deal with this. She explained that she was not talking about enforcement for the promoters or investors who have abandoned their civic duty, but she is talking about compliance for everybody else.

One of her responses to these issues has been to integrate advocacy throughout her organization. They have created a systemic advocacy management database—one of the few electronic systems that is open to the public in the IRS because access is fundamental to taxpayer rights. If a taxpayer goes to the website, taxpayer will see "systemic advocacy" place to submit directly to National Advocates office. There is also an IRS intranet so IRS employees are able to submit. Local taxpayer advocates have each been assigned an advocacy issue so they are working systemic issues as well as working cases and overseeing their employees. Nina emphasized that advocacy is the role of every person in taxpayer advocate service, particularly in an era when IRS is being aggressive. Nina has also hired six attorneys who assist employees in advocacy portfolios and in making the annual report to Congress.

Nina then turned so some of the areas that the Advocates office is looking at and would be discussed in the June 30th report. She explained that good progress has been made on combination letters. She's maintained that the letters are very confusing and wouldn't be done this in the context of large or mid-sized exams, which goes to vertical and horizontal. She described how there is a three year cycle to some of the issues. In the first year, the position is identified. In the second year, it is talked out. In the third year, get agreement and identify the areas of fundamental disagreement.

Nina then talked offers in compromise. She explained that they are a vital part of the tax system and to treat them as an inventory management problem is to undermine what offers are about. She has been coming to realization about the centralized approach, and she has problems with what they have been seeing in the cases. She explained that the IRS does alright with offer issues that deal with mechanics of program. The IRS receives offers, takes information, and then plugs it into a full pay screen. If the screen says that the taxpayer can full pay, then the IRS returns the offer. There is big controversy surrounding this full pay screen. Her point of view is that ten years is ample time whereas the IRS position is ten years plus five. She described a recent case where 75 year old man with an illness came in. His offer was run through with ten years plus 5—so

he would be 90. She asked, what are we going to collect from this person? Did anyone bother to read cover letter? Did anybody read additional attachments? She explained that the answer to these questions is “no”—otherwise would not be in her shop. She sees this problem over and over. And it is a processing issue caused because the initial revision of this program was from inventory management point of view. She described how last month she issued her first taxpayer assistance orders. And there may be another one based on IRS interpretation of effective tax administration offers and compromising offers that deal with penalties and interest. She tried to be very clear in crafting that taxpayer assistance order to show how the 2002 regulations were incorrectly interpreted in a very narrow case and posed in that taxpayer assistance order questions that she wanted the IRS to respond to in terms of policy. She described a training video tape she created on taxpayer assistance orders—over 100 have been issued at local level.

Nina then talked about how the good news in the IRS is the earned income credit. She described a program for the Low Income Taxpayers committee about the kind of research the IRS is doing to learn about the taxpayer population that it is dealing with. They are taking a programmatic approach rather than mechanistic approach. She believes it should be a model for rest of IRS. She emphasized again her original concern about understanding what makes taxpayers comply. And that it’s important to ask them to do things that they’re capable of complying with. In order to do that, you need to know what they can do and can’t do when complying with the law.

Nina then came back to the OIC issue. She described a recent presentation on OIC by some folks in the IRS at which they were asked to give an example about the effective tax administration programs. One example involved a taxpayer who had been held hostage for three years. The second example was someone who’d been in a coma for four years and as soon as woke up, shouted—I forgot to file my taxes. Nina heard about this presentation and thought “the gloves are off.” So they’re going into a discussion in June with different parts of the IRS. She hopes Appeals will be there to talk about the cases that have been decided over the last year. In her June 30 report she’ll be laying out her roadmap.

Nina then turned to tax professionals. She reaffirmed that from her perspective, tax professionals, particularly in a tax environment that is so complex, are key partners for the IRS, and that it does no good from to tar the profession with the acts of a few. She explained that there is a need to talk about promoters as promoters first and foremost. From her point of view, it is not appropriate to be talking about attorneys and accountants who are promoters.

Nina then responded to questions. There was a question about the offer in compromise process and the rejection letters. Nina explained that there are steps in an offering. The taxpayer has to get past the full pay screen, which is where the 10 and 5 years come through. The paper says 48 months, but use 10 and 5 on full pay screen. She stated that she has no confidence that at first processing stage other special circumstances are looked at. There was also a question about the national standards. Nina explained that they are supposed to be guidelines. She described a response in which a rejection was sustained

for the reason that could not deviate from meeting the national standard guidelines. That an appeals officer was parroting this line showed her extent of that problem. She then explained that the good news about IRS is that if give clear guidance, they will do what you tell them to. If one can get to leaders, then the program will change. She said that the IRS is concerned that the floodgates will open if deviate from guidelines. But Nina thinks that this goes back to a certain point of view about taxpayers. Nina has represented so many taxpayers who would do anything to avoid bankruptcy because it offended their sense of self. She believes that the bulk of taxpayers will not abuse offers in compromise or national standards. There are always outliers—but she has more faith in taxpayers than other IRS and she wants to see that reflected.

There was then a comment from an audience member about how the full pay screen—or at least some sort of basic formula makes sense. Nina explained that she was not scorning the full pay screen; it is a good initial management device, but it has come to control the process. She believes that to rely solely on the full pay screen is the problem; there are additional inquiries to be made, including reading attached materials that show why raw numbers don't tell whole story. That is Congress's directive. Nina supported the full pay screen and thinks it is a good organizing tool, but for it to dominate the processing is to go too far in the inventory management direction and away from looking at the facts and circumstances. She stated that the IRS needs to reach a happy medium; it needs to come back to exercising some discretion.

There was then a follow up comment from an audience member about how the problem is more about whether the formula is appropriate. Having a formula encourages voluntary compliance, so perhaps just need to rewrite the formula. Nina disagreed, stating that nothing is wrong with formula. She explained as to issue of people abusing the system, it's very difficult to formulate factors. She talked about the regs, and about the need for taxpayers to be able to turn to neighbor and justify why they are getting break. Another test is to ensure that the taxpayer found themselves in a situation such that no one would voluntarily put themselves into this place. Creating facts for this is very difficult, and the full pay screen shouldn't be end all. Nina also explained that employees have not been given directive to understand the process as flexible and not mechanistic. She thinks taxpayers can deal with discretion on part of IRS as long as applied fairly. Some of this is full pay screen—but not looking at a 75 year old and saying can full pay by time 90.

There was then a question about an e-filing problem. Problem is that one person can file joint return, even if couple is in the middle of divorce and other person thought they'd agreed to file separately. Nina asked this person to e-mail her directly to see what could be done. Nina described this as an interesting issue.

There was then a question about the difference between case advocacy and systemic advocacy and about when to decide that a system is broken as opposed to normal glitches. Nina explained that she has always recognized that taxpayer advocate service receives special set of cases. So that inferring from their case load is not statistically valid, although she does believe that good indicators of issues. But then they have to ask

whether it bears out for rest of population—or if it's just a start-up problem. She has been working closely with offer folks, who she described as good people who sometimes get mixed messages from own leadership about what the program is supposed to be. She explained that Commissioner Rossotti had identified offers as being broken and began a task force, which she was on. Nina gets to hear from employees—their concerns and needs what they were seeing. She also hears from practitioners—so she is able to get a sense of where problems are and where should be focusing. Then there are also some issues—like application and return of user fee—that are purely matters of principled tax administration. In this instance, the IRS is able to determine whether to return offer without appeal rights. If the offer is returned, generally IRS will refund fee. But if the offer is rejected, then the IRS has worked, and keeps the fee. If taxpayers pass the full pay screen, and the IRS writes to the taxpayer for more information but the taxpayer doesn't responded, then the IRS don't give appeal rights but it does keep the user fee. Nina believes the fee should be returned in this case. She might have preference that reject with appeals, but that is a business decision. She believes that it is wrong as matter of tax administration to return the offer but keep the fee.

Nina tells her folks to be careful when come out and say things—to have empirical data and to know not an isolated instance. That is why her annual report is footnotes. She tells them that nothing will be published unless footnotes—she wants to know where numbers come from.

Second Panel: Alternative Minimum Tax Task Force Progress Report (Gail Richmond, Linda Beale, Chris Fairchild)

Gail Richmond introduced herself as the chair of the individual AMT task force. She introduced Chris Fairchild and Linda Beale. She explained that the task force had finished its work and that the report would be voted on in the plenary session after which the report would go to the House of Delegates. Because of House of Delegates' constraint, report was confined to 14 pages. The task force plans to create a symposium issue for a law review in addition to the report. Gail then recognized task force members that were in the audience. She explained that AMT came through from rhetoric—in 1966 over 150 people didn't pay penny of federal income tax, something which allegedly drew more hostile letters than Vietnam War. She explained that Chris as a practitioner would comment on complexity while Linda would talk about fixes.

Chris Fairchild then began his segment. Chris explained that AMT is one symptom of incredible complexity that taxpayers are faced with on a daily basis. At the same time, he stated that he was not really worried about the guy who earns \$400,000 and has to pay for tax return prep. But the AMT complexity is poised to reach lower thresholds—particularly middle class taxpayers—by the end of this decade. Chris set forth two primary arguments for repeal—functionality and simplicity. In terms of functionality, the history and purpose should be examined and then ask whether the AMT serves that intended purpose. The AMT was created in order to prevent ultra rich from taking advantage of tax-preference. It was intended to only apply to high income. But because

tax preference items—deductions, credits, exclusions, are phased out so that higher income does not take advantage (due to bracket compression)—these taxpayers will pay more under regular tax than under AMT. Instead the types of tax preference items that the AMT targets affects middle road taxpayer, and AMT has never been indexed to inflation. The second argument for repeal requires looking at compliance related issues, counter-intuitiveness, even handedness. The complexity is poised to create greater taxpayer frustration—e.g., forms and instructions when subject to AMT. The average taxpayer requires over 60 hours just for AMT worksheets and form—but this time expands if the taxpayer has any capital gain income. Taxpayers often have to fill out both worksheet and form to figure out whether AMT applies. An additional problem is predictability. It is difficult to predict whether you will be subject to the AMT—but you don't get benefit of hindsight when doing estimated taxes. Chris stated that the second most important criticism is the potential erosion of taxpayer faith in system. Adding back preference items gives rise to treating similarly situated in different way. Chris explained that state and local foreign tax are completely stripped away by the AMT, which treats people in high-tax jurisdiction different from people that aren't—and it bears no real relation to tax avoidance because taxpayers can't choose always to live in a low tax jurisdiction. Chris also explained that the standard deduction is tripped. Someone that doesn't know AMT won't know that itemizing may help—taxpayers are not poised to minimize without significant tax professional accounting. Chris stated that exemptions another hot button issue—there is a single exemption and it is not tied to marital status or number of children. Thus, someone with 5 kids is treated the same as someone without kids. Chris pointed out that taxpayers often have to seek advice simply to navigate. Finally, Chris highlighted incentive stock options and explained their treatment under AMT versus under regular system. He stated his belief that there should be strong entrepreneurial interest in workplace and pride in buying stock in workplace. He hates to see people that get stock option not really able to invest. Chris also noted that as a practitioner there are malpractice risks. He told story about putting a footnote about AMT into client document five years ago. The client ended up under AMT and called upset. Chris characterized ability to point to footnote as a hollow victory. He explained also that taxpayers may be allowed a credit, but if stock price declines then the taxpayer is economically disadvantaged. And after 1997 act when capital gains treatment afforded to AMT taxpayers, the likelihood of using credit is severely limited. Chris then turned over to Linda to talk about fixes.

Linda Beale compared the relationship between AMT and regular tax cuts as though in 2001 and 2003 Congress put itself on no carb or lowcarb diet, but kept a high carb dessert in the form of the AMT. This is because lots of tax cuts undone by AMT. Linda explained that the AMT is poised to become a mass tax and not a tax on the superrich. She then cited to an Urban Institute study showing effect of AMT on tax cuts. Ultimately, the AMT will eliminate approximately 75% of the tax cuts. She stated that we can't ignore the problem between AMT and problem of regular tax cuts—can't say that should repeal AMT at the same time that those tax cuts will be made permanent. She explained that just indexing the AMT would cost 1.76 trillion over next decade. Her position is that the AMT must be responsibly reformed and that the rhetoric and substance of both AMT and regular have to be changed. She stated that just demonizing

leads to more irresponsibility and lack of accountability. She explained that there is a responsibility to educate public and clients about AMT and regular income tax system as whole—including estate, payroll, etc. There is a need to educate people to look at overall tax system because can't be measured without looking at overall structure. If there is an overall understanding, then taxpayers can hold Congress accountable for cutting income tax, while knowing that the AMT undoes the cuts. She emphasized the need for reasonable suggestions about reform that both retarget AMT to reach the superrich and harmonize regular income tax with AMT. She emphasized more consistency, less complexity, particularly for ordinary taxpayers. Linda then suggested several ways to solve problems. For example, she suggested taking the original 1970 exemption amount, adjusting it for inflation, and saying that people under certain threshold are simply out of the AMT. She also said that the personal exemptions and standard deduction need to stay in AMT. Since they were used to determine ability to pay under the regular income tax, it makes no sense to throw them out for AMT. She also stated that we must index for inflation also the standard deduction and personal exemption. Linda also urged consideration of the medical expense adjustment. On an ability to pay basis it doesn't make sense to have difference between AMT and regular income tax. As to state and local tax burdens, she would keep the income taxes out of AMT, but for property taxes there is an ability to pay argument that comes into play—but for primary personal residence only and not for other properties owned by multi-millionaires. In order to raise the money to make these changes, she argued for taking out preference on untaxed appreciation of charitable contributions under AMT. Second, she would make a portion of capital gains—with some reasonable exception for low income—taxable under the AMT as a way to pay for indexing and getting small middle class taxpayer out of AMT. She stated that we have a choice and urged making superrich pay and not middle income taxpayers. She also highlighted need to harmonize regular income tax with AMT. As an example, she took the contingent attorney fee problem. She argued that it should be made above the line and that there was no reason to have it be a miscellaneous itemized deduction. She expressed uncertainty about whether we need to help incentive stock options. Linda said she did have sympathy for those who exercise and then the stock tanks, triggering a huge tax. She would have an exception for if stock falls to a de minimis amount before time for filing. She also stated that another thing that could help with complexity and generate income from the right group would be to make the home equity interest deduction the same for regular income tax as it is under AMT. She also believes there is a need to keep indexed income phaseouts, both for AMT and regular income tax. Although income phaseouts are complex, she doesn't think that this is a problem for super rich. Linda wants to distinguish between ordinary taxpayers and sophisticated taxpayers. As a final issue, Linda raised the whole cost recovery system and the complexity between regular income tax and AMT.

Questions were then taken by the panel. There was a comment about the failure to index being intentional and that children could be viewed as consumption goods as sort. The panel answered that this has some merit, but the rhetoric has been for a long period of time that don't want to penalize families. If state in regular income tax this policy then

this should also carry over to the AMT. Panel emphasized that once Congress makes tax policy decision it should treat the AMT and income tax consistently.

Third Panel: Middle/Upper Income Taxpayers—Part II: Careful What You Wish For: The Broader Consequences of Tax Incentives (Roberta Mann, Professor, Widener University; Mark Mazur, Director, Research, Analysis & Statistics of Income, IRS; Pamela Mooman, Joint Committee on Taxation; and Leonard Burman, The Urban Institute)

Roberta Mann began by giving an overview. She explained that they came up with this topic in thinking about how tax provisions interact with each other in unanticipated ways. This has become more and more of a problem as code gets more complex. Roberta explained that the panel was going to look at four general categories of provisions. First, there are rules that at first created the intended benefit but then a change of circumstances rendered them irrelevant or there came a point when the activity shouldn't be encouraged any more. The second type occurs when there are unintended results together with intended benefit. For example, the home mortgage interest deduction was never intended to be a stand only provision, but when general deductibility of interest was repealed, home equity interest stayed on. Arguably this provision has caused sprawl and low income housing problems. A third category is that some provisions are affected by market changes, that is, they exploit benefit under existing law. As an example, Roberta point to the availability of expensing under 179 for SUVs because they are over the gross weight limitations. As a final category, there are provisions that change an intended benefit under another provision. The AMT is striking example of this because it limited rate cuts effectiveness. Roberta then introduced Pamela as the first speaker.

Pamela Mooman first talked about the Joint Committee on Taxation. She explained that the Committee is non-partisan, so its analysis must be objective. She explained that they have to be careful what types of study they initiate because simple initiation could be viewed as partisan act. The professional staff is almost evenly divided between lawyers and accountants, and economists and statisticians. The lawyers and accountant help review tax legislation in way that tries to address the issue directly. For example, they would look at how to accomplish shutting down a particular shelter transaction without shutting down other transactions. The economists produce estimates on how much a given proposal will cost—how it will change receipts. Pamela then reviewed the formal requirements for any congressional bill. She explained that, pursuant to RA98, the committee has to provide a complexity analysis for every bill that goes through Ways and Means and through conference. Thus, complexity was identified in 1998 as being a major source of potential problem—the idea was to analyze a lot of proposals. Their rule of thumb though is to do a complexity analysis only if it affects more than 10% of particular group.

Roberta then asked how the staff determined whether a proposal affects 10% of taxpayers. Pamela explained that she thought this meant 10% of a particular population—e.g., 10% of individual, 10% of corporate. She explained that usually it's not

a close issue—that usually it is pretty obvious. She also explained that the Committee reports on unfunded mandates, which is required for Ways and Means and Senate Finance. She explained that the definition of an unfunded mandate is tricky, and they also have to report on unfunded mandates for state and local. Pamela then turned to revenue estimates. She explained that every provision of every bill that goes through one of these committees has to have a revenue cost attached to it in order to see whether it complies with budget targets. A revenue estimate is a projected change in receipts in the CBO base line—it's not a projected change in liability. She said that they do try to take into account how enforcement will work—for example, who will change timing of transactions. They do have one constraint—they assume that the total national gross product doesn't change. So for example, they don't take into account increases in jobs, which has been very controversial inside the beltway. Pamela then explained the last requirement which only applies to bills out of Ways and Means committee. The first time this was required was in 2003, and the requirement is that they have to provide supplemental analysis as to growth in economy. Or to extent—the rule is not worded as she would have chosen—committee has to explain why this can't be calculated. Pamela wouldn't have chosen word “calculate.” She explained that they approach these issues from a different standpoint than that of Nina Olson—they look at whether they are going to collect revenues that they thought. The committee looks at compliance as involving how enforceable the provision is and what incentives are created for people to avoid. And the overriding assumption is that most people don't want to pay taxes. The committee has to look at incentives, for example how an increase in tax rate may change the timing of transactions. Or if there is a tax subject to a definition that is either vague or narrow, people can change characterization. When the committee does revenue estimates, they try to take that into account. The committee works closely with attorneys to arrive at this. She explained that provisions can also effect actual economic decisions—for example, whether a taxpayer wants to make an investment this year or next if have 100% bonus depreciation. Pamela explained that several constraints affect the modeling of the macro-economy. It can not match the level of detail of tax commissions—for example, there would be no way the model would pick up effects on an adoption credit level of proposal. She also stated that there are some big transactions that couldn't be handled because the macroeconomic models not equipped to handle certain tax policy issues—for example multi-national companies. Thus, their not calculable statement covers things that are so small or too complex.

Roberta then asked about what the committee does when looking at a provision that is going to be phased out—for example, the \$250 deduction for teacher supplies that going to be phased out. She asked how these phaseouts affect the estimates. Pamela responded that this is particularly a problem in macroeconomic model. She explained that they rely on certain conventions, in order to treat every proposal the same way. The strict convention is to assume whatever the law says. For example, if the estate tax disappears in 2010 and comes back in 2011, the committee has to take that as a given. The committee has to assume that the law stays as written. Then if Congress acts to change, new revenue estimates are triggered. Pamela acknowledged that people with different views of the political agenda behind phaseouts would disagree—but she would ask how they would deal with phaseouts.

Roberta then turned to Mark Mazur for his segment: Mark reviewed the taxonomy that Roberta put together. First category is where the law created intended benefit but the provision is now counterproductive. The second category is when create unintended benefit, either on its own or in conjunction. Third happens where the law creates benefit and market changes. For example, in financial products side, one can think of this as a scale problem. Because of how market operates, transactions can be scaled up. Fourth category is when some provision changes and something totally unrelated changes. Mark stated that this is a useful way to frame the debate and understand. He would ask on the statutory side, what are the incentives, what are the interactions, and are there going to be areas affected that are not part of this area of the code. Mark pointed out that there are experts able to decide. He pointed out that there is a parallel set of analysts on the executive side and that process that feeds into OMB review. They estimate at Treasury at times the distributional effects (to give idea of which taxpayers are affected); they may also go back and review and look at statutory language itself. They will look at a burden model, out-of-pocket costs. Other federal agencies may get involved. Mark pointed out that they are not disinterested. Mark then went on to discuss what happens ex post. There are some systematic reviews—for example, tax expenditure analysis, other systemic looks at tax code (i.e., are these provisions operating as intended, lots of ad hoc reviewers. Mark then explained that his office is dedicated to getting at building blocks to analysis—that is, a lot of data.

Len (?) then commented that the analysis that is done by JCT is complete but it is subject to narrow restrictions. He pointed out that there is the same problem at the congressional budget office. He explained, that you'd pick topics and then write in code and hope that someone whose reading would realize oh this is really stupid. He explained that his group has a similar model that allows them to model how complicated tax policies can be. For example, an earlier presenter thought it would be a good idea to keep phaseouts, but one consequence is that this can cause a huge tax rate that turns out to be a great surprise. Roberta added that phaseout can also cause a bubble. Len continued stating that his concern was making sure that rates are transparent. He explained that there are supposed to be consequences, but lots of people don't know about them until fill out tax returns. As an unintended consequences example, Len raised the marriage penalty relief, but the effect of doing this before fixing AMT is that Congress is going to end up throwing a whole bunch of people into AMT. Len also talked about the president's proposal for large tax-free retirement accounts. This proposal was treated as a revenue raiser because it was anticipated that taxpayers would roll over traditional IRAs into these new accounts and pay tax on the rollover. But what this amounts to is that for every \$1 raised now we will lose \$1.30 in future. Len emphasized that this is borrowing money from the future on very unfavorable terms. Another concern is that a lot of medium sized employers will stop offering 401(k)s, which is a problem because that is the most effective tax incentive we have. The same criticism could be made of health tax subsidies. If employer's stop offering health benefits, the consequence could be that fewer people would have health insurance after subsidy. Len described what it was like when he was at CBO. He looked at the low income housing tax credit. He explained that this preference is not clear where it comes out on balance. It encourages wealthy people

to invest and increase housing supply for poor people, but it is a very expensive way to provide housing. The consequence of providing housing in this form was that it became three times as expensive as if just provided voucher. But there was a perception that the only way more money could go to low income housing was through tax system. The advocates saw this as the only game in town—alternative was nothing.

Roberta pointed out that there was also a possible policy reason of wanting to bring private people in. Len agreed, especially as to bringing in campaign contributors. Len would argue that over last twenty years, spending has largely been done through the tax system. Roberta asked a question about the effect of analysis done by partisan, ex post groups, and whether there should be a mechanism of doing this analysis in a more formal and organized way. Len explained that, in his current position, it's fine to upset people, but that it would be hard for someone in Pam's position to do so. Pam explained that they provide analysis if an issue becomes high profile enough or study is requested. Since she's been on the committee, they had issued exempt org. studies about whether audits selected on basis of being political, a simplification study, and most recently there was the Enron report. Len remarked that after he did the low income housing credit research, he got lectured two hours by Sen. Mitchell's office; somewhere in the back of his mind was always the knowledge about who is determining the budget.

An audience member asked questions about the 10 year window and revenue estimates, whether there is a 10 year balanced budget rule, and whether that is why there are so many sunsets in recent tax legislation—e.g., estate tax. Pam responded by replying that there is a ten year window, but that it was only a five year window when she first started on the committee. Her memory was that it was Clinton's health proposals that caused it to go out ten years. She recalled that it was decided that 5 year window allowed too much gaming. As to the estate tax, the ten year window and the total revenue picture can drive sun-setting. But there was also a Senate rule on point of orders that also drove the sunsets. Under this rule, if a proposal causes a reduction in revenues outside of ten years, then if a point of order is raised, it takes 60 points to prevail and keep going. There were not 60 votes—they had 51, so it was really a point of order issue than a total revenue picture. Pam also explained that when the CBO does a baseline projection, they assume that sunset will really happen.

Len then also commented on the questions. He explained that there was a 5 year window. It was expanded to 10 years—then for a very brief period of time there was a surplus. As to the big tax cuts that were enacted in 2001, the rationale was that there would be 4 trillion of surpluses in next decade. But most of this surplus was off in distant future and highly uncertain. Nevertheless, policymakers couldn't be convinced of this.

There was then a comment about how easy it has been to mislead with rhetoric and a question about how to get more information out to the public. It was commented that Len is now a commentator for Marketplace. Len explained that although he gets calls from reporters all over the country, he's not sure if it makes much a difference. Maybe if could get a reality based television program