

This was pointed out by Senator Long in the debate on the Gore amendment:

"This rule will open up difficult areas of dispute between the Internal Revenue Service and business firms over what constitutes a binding commitment. I doubt if any mechanical rule can be followed here. Each case will have to be examined on its own merits."<sup>9</sup>

When is a "firm contract" entered into? Is it on the date a purchase order is sent, or when confirmed by the equipment producer? Must the order be noncancellable? If not, what kind of cancellation penalties are required to make it "firm"? Must the delivery date be fixed, or can it be indefinite? What about supplements and amendments? Do they take the date of the original order, or must they be broken out? These and other vexing questions are bound to bedevil both industry and tax administrators, giving rise to uncertainty, controversy, and litigation.

There is another aspect of the matter. Suspension on a commitment basis will give rise to deplorable pressure on equipment suppliers for the redating of orders that fall on the wrong side of the line, the shifting of items from later to earlier orders, etc. No one will contend that this is desirable, least of all the suppliers themselves.

As a matter of fact, the administration explored very thoroughly the possibility of putting the credit on a commitment basis at the time it was first proposed. In the words of Assistant Secretary of the Treasury Surrey, "It was found not to be feasible."<sup>10</sup> If it was not feasible to *introduce* it on that basis, can it be feasible to *suspend* it in the same fashion?

#### *Timing*

Because of the long leadtime between orders and delivery, the cut-off of the investment credit at the ordering stage would obviously have a *delayed* effect on equipment production. Senator Proxmire recently commented on the point as follows:

"Because the suspension of the credit would have to provide an exception for projects already under commitment, but completed in the future, it follows that suspension would generally not alter investment expenditures or tax revenues for a substantial period of time. . . . If we repealed the credit today or tomorrow, it would be at least the middle or the end of 1967 before the real effect would be felt. If we acted next March or April, it would have no decisive effect until 1968."<sup>11</sup>

This means that the suspension should occur long *before* capital investment attains the level at which restraint is deemed desirable. It requires action on the basis of predictions and forecasts. This is not necessarily a prohibitive requirement, but past experience with the application of restrictive measures in a political environment (especially in election years) is not reassuring. The chances are that the suspension will come late, in response to *current*, rather than anticipated, conditions. In some cases, certainly, this will lock the barn door after the horse is gone. Indeed, there is always the risk that the delayed

<sup>9</sup> *Congressional Record*, Mar. 7, 1966, p. 4972.

<sup>10</sup> *Hearings before the Subcommittee on Fiscal Policy of the Joint Economic Committee*, Mar. 16-30, 1966, p. 242.

<sup>11</sup> *Congressional Record*, Aug. 23, 1966, pp. 19421, 19422.