Thompson (CA)	Walden (OR)	Wexler
Thompson (MS)	Walsh (NY)	Whitfield (KY)
Thornberry	Walz (MN)	Wilson (NM)
Tiahrt	Wamp	Wilson (OH)
Tiberi	Wasserman Schultz	Wilson (SC)
Tierney	Waters	Wittman (VA)
Towns	Watson	Wolf
Tsongas	Watt	Woolsey
Turner	Weiner	Wu
Udall (NM)	Weldon (FL)	Yarmuth
Upton	Weller	Young (AK)
Van Hollen	Westmoreland	Young (FL)
Visclosky		

NOT VOTING—29

Aderholt	Jackson-Lee (TX)	Poe
Barrett (SC)	Johnson (IL)	Pryce (OH)
Boucher	Lampson	Renzi
Brady (TX)	Mahoney (FL)	Smith (TX)
Cubin	McCaul (TX)	Sutton
Culberson	Neugebauer	Udall (CO)
Delahunt	Paul	Velázquez
Dingell	Peterson (PA)	Walberg
Dreier	Pitts	Waxman
Ehlers		Welch (VT)

□ 1222

Messrs. DONNELLY, TIERNEY, BISHOP of New York, CLEAVER, SHADEGG, CLYBURN, CARSON of Indiana, PAYNE and DAVIS of Illinois and Mrs. MUSGRAVE, Mrs. MCMORRIS RODGERS and Ms. SCHAKOWSKY changed their vote from ''yea'' to ''nay.''

So the motion to adjourn was rejected.

The result of the vote was announced as above recorded.

PROVIDING FOR CONSIDERATION OF H.R. 6899, COMPREHENSIVE AMERICAN ENERGY SECURITY AND CONSUMER PROTECTION ACT

Ms. SLAUGHTER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1433 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1433

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 6899) to advance the national security interests of the United States by reducing its dependency on oil through renewable and clean, alternative fuel technologies while building a bridge to the future through expanded access to Federal oil and natural gas resources, revising the relationship between the oil and gas industry and the consumers who own those resources and deserve a fair return from the development of publicly owned oil and gas, ending tax subsidies for large oil and gas companies, and facilitating energy efficiencies in the building, housing, and transportation sectors, and for other purposes. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. The bill shall be considered as read. All points of order against provisions of the bill are waived. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) three hours of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Natural Resources; and (2) one motion to recommit.

SEC. 2. During consideration of H.R. 6899 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to such time as may be designated by the Speaker.

POINT OF ORDER

Mr. CANTOR. Mr. Speaker, I make a point of order against consideration of the resolution because it is in violation of section 426(a) of the Congressional Budget Act. The resolution provides that all points of order against consideration of the bill are waived except those arising under clause 9 and 10 of rule XXI. This waiver of all points of order includes a waiver of section 425 of the Congressional Budget Act, which causes the resolution to be in violation of section 426(a).

The SPEAKER pro tempore. The gentleman from Virginia makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

The gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated. Such a point of order is disposed of by the question of consideration.

The gentleman from Virginia (Mr. CANTOR) and the gentlewoman from New York (Ms. SLAUGHTER) each will control 10 minutes of debate on the question of consideration.

After that debate, the Chair will put the question of consideration, to wit: Will the House now consider the resolution?

The Chair recognizes the gentleman from Virginia.

Mr. CANTOR. Mr. Speaker, last night, the Committee on Ways and Means certified that the underlying legislation contained no earmarks, and under the rules there is no other way to challenge that certification, which is one of the reasons why I stand before you today.

Provisions in H.R. 6899 calling for the restructuring of the New York Liberty Bonds is clearly an earmark. This earmark is worth $1.2 billion and stands to benefit one entity, which is New York City.

I have a letter, Mr. Speaker, dated October 30, 2007, from the chief of staff of the Joint Committee on Taxation in which he determines that the New York Liberty Zone tax incentives is a limited tax benefit and therefore an earmark. Furthermore, Mr. Speaker, according to House rule XXI, clause 9, and the Honest Leadership and Open Government Act of 2007, this earmark should have been disclosed along with the Member that requested the same.

From all reports, Mr. Speaker, instead of going through the proper procedure, disclosing that this was going to be included in the bill, this provision was air-dropped into the bill over the weekend at the last minute without any ability for any of the Members to know that this was in the bill.

Reports say that it is the chairman of the Ways and Means Committee, Representative RANGEL, that has requested this earmark. Yet how are we to know whether Chairman RANGEL is the sponsor of this earmark, since there has been no transparency and no notification as required under the rule?

Furthermore, Mr. Speaker, this earmark produces no energy for American families, and the way that the majority plans to pay for this earmark is by raising taxes on job creation as well as energy production.

Mr. Speaker, we are going to hear a lot today during the debate about revenue sharing and the fact that many coastal States, including my State of Virginia, will not be able to share in any of the revenues resulting from energy exploration off our coast. In light of this, in light of the fact that there is no incentive whatsoever to produce energy in this bill, in light of that, when we see that the majority is channeling $1.2 billion to New York City for an earmark for a project that only benefits that locality, I think that we understand now what the intent of the majority is in bringing the bill to the floor in this form.

There is zero relationship between increasing American energy production and this earmark, Mr. Speaker, which again underlies my objection and is one of the reasons why I raise this point of order.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the point of order is about whether to consider the rule and ultimately the Comprehensive American Energy Security and Consumer Protection Act. In fact, I would say this is simply an effort to kill the bill.

In the midst of the energy crisis, the bill takes important steps towards increasing domestic energy production, encouraging the development of alternative fuels and cutting down on the corruption between the Bush administration regulators and the oil industry.

By expanding access to offshore oil reserves, the bill encourages oil exploration and could lead to increased domestic energy production.

By releasing oil from the Strategic Petroleum Reserve, the bill will lead quickly to reducing prices at the pump.

In light of an Inspector General report showing that Minerals Management Service employees were accepting gifts from the oil companies they regulate, engaging in unethical sexual and drug conduct, this bill would subject the MMS employees to higher ethical standards and make it a Federal offense for oil companies to provide gifts for MMS employees.

□ 1230

By promoting energy efficiency and conservation in buildings, through updated building codes and incentives for energy-efficient construction, this bill will lead to reduced energy use and lower utility bills. At the same time, by providing more funding for home heating assistance, we ensure that seniors and other vulnerable populations will not have to choose between food and heating oil.

By providing incentives and support for development and deployment of domestic alternative energy technologies, the bill will promote energy security for the United States. Under this bill, power companies would be required to generate 15 percent of their electricity from renewable sources by 2020, reducing air pollution from power plants and helping to address the threat of climate change.

As Americans use more public transportation in the face of high gas prices, this bill will help transit agencies deal with added costs and increased ridership by providing $1.7 billion in grants. At a time of record-breaking oil company profits, the bill will require the oil companies to pay their fair share by repealing tax subsidies that they certainly don't need, and by closing a royalty loophole in lease agreements from 1998 and 1999.

In short, the bill is a much-needed compromise approach to a widespread crisis facing our country. This is simply a case today whether we support, with our votes, the oil companies or the consumers and the citizens of the United States.

I urge my colleagues to vote ''yes'' to consider the rule and reserve the balance of my time.

Mr. CANTOR. Mr. Speaker, I would say in all respect to my colleague from New York, I still don't understand how the insertion of this earmark, this insertion of $1.2 billion, has anything whatsoever to do with this bill, has anything whatsoever to do with increasing American energy production, which is the purpose of this bill, which is the majority's stated purpose, that we want to increase American energy production.

But, instead, what the gentlelady talks about, again, is not at all responsive to what it was that I was raising. We don't have to have a vote on this issue if the gentlelady would accept unanimous consent to remove the earmark from the bill to go forward.

Again, why are we having this earmark, this $1.2 billion earmark? This is exactly what the American public is so upset with Congress about, the fact that we have a bill that is designed to increase American energy production to help us try and wean off of the incredible reliance that we have on foreign oil. Why? The public has to be asking why in the world would we be inserting $1.2 billion in directed funds to one locality. Why in the world would we be doing that?

It does not make any sense. The fact that the Ways and Means Committee has certified that this is not an earmark, to me, flies in the face of the open and honest way that the majority has said they would run this House.

Again, I have a letter from the chief of staff from the Committee on Joint Tax which says that the New York City Liberty Bonds and the provisions calling for their restructuring is an earmark. Again, I say to the majority, if we are going to be straightforward in our desire to solve the problem of American energy production, this earmark has no place in the bill.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, may I inquire how much time I have left?

The SPEAKER pro tempore. The gentlewoman has 7 minutes.

Ms. SLAUGHTER. Mr. Speaker, I would like to yield 3 minutes to the gentleman from New York (Mr. CROWLEY).

Mr. CROWLEY. I thank the gentlelady from New York for yielding me this time.

Mr. Speaker, I have often wondered what the capacity for remembering my colleagues on the other side of the aisle have. Apparently, it extends no further than 7 years and 5 days. Seven years and 5 days ago, my city, the City of New York, was attacked on 9/11. Have you forgotten that?

For the purposes of your point of order in opposition to this bill coming to the floor, it's the lack of someone taking responsibility for the $1.2 billion that you call an earmark. It's Crowley, C-r-o-w-l-e-y. It's the U.S. Congress that did this 7 years ago, after our country was attacked on 9/11, 7 years and 5 days ago.

I, 5 days ago, stood out on the steps of the Capitol and sang ''God Bless America'' with both my colleagues from the Republican side of the aisle and this side of the aisle. What we are doing today is simply fulfilling a promise, a promise.

This is not an earmark. This is already law. We are adapting it, we are changing it so New York can use the money. But I need to remind my colleagues on this side of the aisle, there is still a 16½ or 17-acre hole in lower Manhattan. We need to do all we can to help rebuild that, rebuild the economy of New York.

I daresay my colleagues from New York on the other side of the aisle, they are opposed to this point of order. They will oppose your position on this point of order, because they know this is not an earmark.

They know this is going to help rebuild New York. It's a promise that was made by the administration. The President does not call it an earmark. It is in the President's budget.

I would also object to what my friend, the colleague from Virginia, said about the chief of staff on the Joint Tax Committee. Ed Kleinbard, on May 15 of this year, stated that on the issue of limited tax benefits, the answer is that this is a matter wholly within the prerogative of the chairman. He alone decides this issue.

Mr. RANGEL does not call it an earmark; I don't call it an earmark. I daresay, many of your colleagues on your side of the aisle do not call it an earmark. This is not an earmark. This is to help New York City rebuild after 9/11.

With all that's going on, as we read in the papers today about the markets, New York City is under tremendous duress. Don't add to that. Don't add to that today by bringing up this type of tactic to limit the ability of New York City to rebuild itself.

Mr. CANTOR. Mr. Speaker, I would like to insert the letter I quoted from in the RECORD.

MEMORANDUM

To: Bill Dauster, Deputy Chief of Staff, Senate Finance Committee.
From: Ed Kleinbard.
Date: October 30, 2007.
Subject: Application Senate Rule XLIV (relating to limited tax benefits) to sec. 301 of the American Infrastructure Investment Improvement Act of 2007 (as passed by the Senate Finance Committee on September 21, 2007).

Request

You have requested that the staff of the Joint Committee on Taxation analyze the application of Senate Rule XLIV's limited tax benefit provision to section 301 of the American Infrastructure Investment and Improvement Act of 2007 (''Section 301''), as passed by the Senate Finance Committee (relating to the restructuring of New York Liberty Zone tax incentives). I offer this analysis at your request to assist Chairman Baucus in making his determination of this issue, as contemplated by Rule XLIV.

Senate Rule XLIV

Section 521 of the Honest Leadership and Open Government Act of 2007 (the ''HLOGA'') provides for ''earmark'' reform. Specifically, HLOGA adds a new Rule XLIV to the Standing Rules of the Senate. Under this rule, ''it shall not be in order to vote on a motion to proceed to consider a bill or joint resolution reported by any committee unless the chairman of the committee of jurisdiction, or majority leader or his or her designee certifies: (1) that each congressionally directed spending item, limited tax benefit, and limited tariff benefit, if any, in the bill or joint resolution, or the committee report accompanying the bill or joint resolution, has been identified through lists, charts, or other similar means including the name of each senator who submitted the request to the committee; and (2) that the information in clause (1) has been available on a publicly accessible congressional website in a searchable format at least 48 hours before such vote''. Failure to satisfy this requirement makes a bill or joint resolution subject to a point of order until these requirements are satisfied under the rule.

For purposes of the rule, the following definitions apply.

A congressionally directed spending item ''means a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.''

A limited tax benefit ''means any revenue provision that (A) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and (B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision.''

A limited tariff benefit ''means a provision modifying the Harmonized Tariff Schedule of

the United States in a manner that benefits 10 or fewer entities.''

Senate Floor Statement

A colloquy between Senators Baucus, Durbin, and Grassley provides some guidance regarding how the new rule will be applied in the case of limited tax benefits. In relevant part the colloquy states:

For more guidance, we also recommend the interpretative guidelines developed by the staff of the Joint Committee on Taxation in response to the prior-law line item veto. These guidelines may also be applicable to the interpretation of the proposed earmark disclosure rules for limited tax benefits in this bill. The Joint Committee on Taxation documents are called, first, the ''Draft Analysis of Issues and Procedures for Implementation of Provisions Contained in the Line Item Veto Act, Public Law 104–130, relating to Limited Tax Benefits,'' that's Joint Committee on Taxation document number JCX–48–96, and second, the ''Analysis of Provisions Contained in the Line Item Veto Act, Public Law 104–130, relating to Limited Tax Benefits,'' that's Joint Committee on Taxation document number JCS–1–97.

The proposed rule in this bill would require the disclosure of limited tax benefits. It would define a limited tax benefit to mean any revenue provision that, first, provides a Federal tax deduction, credit exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and second, contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision.

The proposed rule would apply in most cases where the number of beneficiaries is 10 or fewer for a particular tax benefit. But the Finance Committee will not be bound by an arbitrary numerical limit such as ''10 or fewer.'' Rather, we will apply the standard appropriately within the unique circumstances of each proposal. For example, if a proposal gave a tax benefit directed only to each of the 11 head football coaches in the Big Ten Conference, we may conclude that the rule would nonetheless require disclosure of this benefit, even though the number of beneficiaries would be more than 10.

We will not limit the application of the proposed rule to proposals that result in a reduction in Federal receipts relative to the applicable present-law baseline. We believe that the proposed rule would have application to limited tax benefits that provide a tax cut relative to present law for certain beneficiaries, like, for example, a tax rate reduction for certain beneficiaries. But we also believe that the rule would apply to limited tax benefits that provide a temporary or permanent tax benefit relative to a tax increase provided in the proposal, like, for example, exempting a limited group of beneficiaries from an otherwise applicable across-the-board tax rate increase.

For example, a new tax credit for any National Basketball Association players who scored 100 points or more in a single game would be covered by the rule. And the rule would also cover a new income tax surtax on players in the National Hockey League that exempted from the new income surtax any players who were exempted from the league's requirement that players wear helmets when on the ice.

The rule defines a beneficiary as a taxpayer; that is, a person liable for the payment of tax, who is entitled to the deduction, credit, exclusion, or preference. Beneficiaries include entities that are liable for payroll tax, excise tax, and the tax on unrelated business income on certain activities.

The rule does not define a beneficiary as the person bearing the economic incidence of the tax. For example, in some instances, a taxpayer may pass the economic incidence of a tax liability or tax benefit to that taxpayer's customers or shareholders. The proposed rule would look to the number of taxpayers. That number is easier to identify than the number of persons who might bear the incidence of the tax.

In determining the number of beneficiaries of a tax benefit, we will use rules similar to those used in the prior-law line item veto legislation. For example, we will treat a related group of corporations as one beneficiary for these purposes. Without such a rule, a parent corporation could avoid application of the disclosure rule by simply creating a sufficient number of subsidiary corporations to avoid classification as a limited tax benefit under the proposed rule.

For example, if a related group of corporations—like parent-subsidiary corporations or brother-sister corporations—owns a football team, then the related group will be considered one beneficiary. That treatment is analogous to the team being one entity, not separate entities, like the coaching staff, offensive unit, defensive unit, specialty unit, and practice squad.

The time period that we will use for measuring the existence of a limited tax benefit will be the same time period that is used for Budget Act purposes. That is the current fiscal year and 10 succeeding fiscal years. Those are also all the fiscal years for which the Joint Committee on Taxation staff regularly provide a revenue estimate.

For purposes of determining whether eligibility criteria are uniform in application with respect to potential beneficiaries of such a proposal, we will need to determine the class of potential beneficiaries. In the case of a closed class of beneficiaries—for example, all individuals who hit at least 755 career home-runs before July 2007—that class is not subject to interpretation, since only Henry Aaron satisfies this criteria. If, instead, the defined class of beneficiaries is all individuals who hit at least 755 career home-runs, then we will determine the class of potential beneficiaries by assessing the likelihood that others will join that class over the time period for measuring the existence of a limited tax benefit.

Whether the eligibility criteria are not uniform in application with respect to potential beneficiaries will be a factual determination. To continue with the previous hypothetical, a proposal that provides a tax benefit to all individuals who hit at least 755 career home-runs may still not require disclosure if it is uniform in application. If the same proposal is altered so as to exclude otherwise eligible career home-run hitters who played for the Pittsburgh Pirates at some point in their career, then that kind of a limited tax benefit would require disclosure under the proposed rule.

Some of the guidelines in the Joint Taxation Committee's reports numbered JCX–48–96 and JCS–1–97 would not be directly applicable, but may be helpful in determining the class of potential beneficiaries. For example, the same industry, same activity, and same property rules might provide useful analysis.

Provision to restructure the New York Liberty Zone tax incentives

In addition to repealing certain depreciation and expensing provisions previously available in the New York Liberty Zone (the ''NYLZ''), Section 301 provides a Federal credit against the tax imposed for any payroll period by Code section 3402 (related to withholding for wages paid) for which a NYLZ governmental unit is liable under Code section 3403. NYLZ governmental units are defined as the State of New York, the City of New York, or any agency or instrumentality of the first two.

The credit may be claimed during the 12-year period beginning on January 1, 2008 and is equal to certain amounts expended by the governmental units on a qualifying project. A qualifying project is any transportation infrastructure project in or connecting with the NYLZ that is designated by the Governor of the State of New York and the Mayor of the City of New York as a qualifying project. The Governor of the State of New York and the Mayor of the City of New York are to allocate to the New York Liberty Zone governmental units their portion of the qualifying expenditure amount for purposes of claiming the credit. The provision is effective on the date of enactment.

Congressionally Directed Spending Item or Limited Tax Benefit

The threshold question is whether Section 301 should be analyzed as a ''congressionally directed spending item'' or as a ''limited tax benefit,'' because Rule XLIV treats the two somewhat differently. It can be argued that Section 301 essentially constitutes a ''congressionally directed spending item,'' and therefore that the limited tax benefit analysis is irrelevant. The reasoning supporting this reading is that in the ordinary course, Federal withholdings on employee wages are effectively assets of the U.S. Treasury, and the tax credit made available by Section 301 may be claimed (and withholdings on wages therefore retained rather than being transmitted to the U.S. Treasury) only to the extent that the employer/governmental unit in question incurs expenditures for specifically identified projects.

Section 301 unquestionably has the economic effect of an appropriation: money otherwise due the U.S. Treasury will, by virtue of this provision, effectively fund (in light of the fungibility of money) a specific expenditure. Nonetheless, this memorandum proceeds upon the assumption that Section 301 is a ''tax benefit'' and not a ''spending item.'' We believe that this is an area where legal form, not economic substance, controls. Accordingly, we are of the view that an amendment to the Internal Revenue Code that has an outlay effect is not by virtue of that fact alone a spending item. For example, we believe that the refundable portions of the child tax credit and earned income credit should be considered tax benefits for these purposes, notwithstanding the fact that these provisions have substantial outlay effects.

Our mode of analysis is dictated by practical necessity: virtually every ''tax expenditure'' could equally well have been implemented by Congress as an appropriation. We take comfort as well in the observation made in the colloquy quoted above that, for purposes of Rule XLIV, the ''beneficiary'' of a limited tax benefit is determined by looking to the formal imposition of tax liability (i.e., by determining who is the relevant ''taxpayer''), not to the party bearing the economic incidence of the tax. The colloquy makes clear that the reason for doing so is one solely of administrative convenience (''The proposed rule would look to the number of taxpayers. That number is easier to identify than the number of persons who might bear the [economic] incidence of the tax.'')

In this case, Section 301 is structured as a tax credit made available under the Internal Revenue Code to certain employers against their otherwise-existing obligation to remit employee withholdings to the U.S. Treasury. In light of our traditional analysis summarized above, we therefore think it appropriate to proceed on the basis that Section 301 should be analyzed under the ''limited tax benefit'' leg of Rule XLIV.

Limited Group of Current Beneficiaries

A second issue is whether Section 301 currently benefits a limited group of beneficiaries. Applying by analogy the colloquy's reference to treating a related group of corporations as one taxpayer, we believe that the agencies and instrumentalities of New York State and City should be treated as at most two taxpayers for purposes of whether a limited group of beneficiaries is affected by the provision. Accordingly, we believe that the statutory incidence of the provision falls on fewer than 10 beneficiaries (i.e., the State of New York, the City of New York and agencies or instrumentalities of the State or City). The economic incidence of the provision is not determinative for these purposes.

Uniform Application to Potential Beneficiaries

Under Rule XLIV, a tax provision that in practice applies only to a limited number of current beneficiaries nonetheless is not a ''limited tax benefit'' unless in addition that provision's ''eligibility criteria are not uniform in application with respect to the potential beneficiaries of the provision.'' (Emphasis supplied.) The only direct indication of what constitutes the ''uniform application'' of a taxing statute to potential beneficiaries is the colloquy described above. In this regard, the colloquy indicates that a tax benefit that applies equally to current and potential future beneficiaries will not constitute a limited tax benefit, just because the number of identifiable beneficiaries today is fewer than 10.

We suggest that the most logical way to read Rule XLIV that is consistent with its obvious intended scope and with the colloquy is to conclude that Rule XLIV applies a two-step analysis towards ''potential'' beneficiaries. First, a sponsor of a Bill that has a limited number of current beneficiaries can rely on the existence of a sufficiently large class of reasonably-likely potential beneficiaries to demonstrate that the Bill applies to more than a limited number of taxpayers. In that case, however, Rule XLIV goes on to provide that the statute must be applied uniformly to them and to currently-known beneficiaries. This reading finds direct support in the fact that Rule XLIV's ''uniform application'' clause applies only with respect to ''potential beneficiaries'' of a statute.

In other words, a Bill that has a large number of current beneficiaries is not a limited tax benefit provision, because by definition it does not apply to a limited number of taxpayers, without regard to whether future (''potential'') taxpayers are treated differently from current ones. If, however, a Bill today applies only to a limited number of beneficiaries, then the Bill's sponsor cannot rely on a sufficient number of ''potential'' beneficiaries emerging in the future to avoid the application of the limited tax benefit rule unless the statute would treat all current and potential beneficiaries equally.

Under this reading, a statute that has no possible future (''potential'') beneficiaries and that applies today to a limited number of current beneficiaries must be a limited tax benefit. It cannot be the case, for example, that a rule identifying a class of taxpayers comprising only Hank Aaron nonetheless is not a limited tax benefit, on the theory that all those taxpayers (a single individual) are treated equally.

Following this mode of analysis, the most important analytical step in applying Rule XLIV to a case (like this) where a statute's current beneficiaries are limited in number is to determine the relevant class of potential (i.e., future) beneficiaries. The colloquy concludes that a statute's class of potential beneficiaries is to be determined ''by assessing the likelihood'' that beneficiaries beyond those to whom the benefit applies today may appear at a later date.

Thus, to continue with the colloquy's baseball analogy, a permanent tax benefit made available on a uniform basis to all individuals who hit a least 755 major league career home-runs is probably not a limited tax benefit (because the number of individuals who could qualify in the future is unlimited), but a comparable temporary provision expiring December 31, 2008, probably does constitute a limited tax benefit, because the class of individuals who could reasonably be expected to satisfy that test would come down to two identifiable individuals.

Having identified the class of potential beneficiaries, and having determined that they are sufficiently numerous as to overcome the ''limited'' nature of the tax benefit in question, the final step in the analysis is to ensure that the statute will apply uniformly to all potential and current beneficiaries. In most cases, this determination will be straightforward.

In sum, we acknowledge that the ''uniform application'' test is both vague and difficult to apply. The ''uniform application'' leg of the analysis should not be read, however, to undercut the entire purpose of Rule XLIV. If the only taxpayers that can reasonably be expected to satisfy a bill's definition of the class of beneficiaries of a tax benefit are both few in number and known to the Senator proposing the Bill at the time that the legislation is considered, then in our view that Bill must give rise to a Rule XLIV issue. Any other reading would vitiate the Rule of any meaning.

This mode of analysis leads to a straightforward resolution of the present case. In practice, only New York State and New York City (and political subdivisions thereof) can be expected to qualify for the benefits of Section 301. The fact that these two identifiable beneficiaries are treated equally is not enough, in our view, to avoid the reach of Rule XLIV.

Conclusion

While we recognize that colorable arguments can be made in support of the contrary conclusion, we believe that Rule XLIV's disclosure requirement for limited tax benefits is applicable to Section 301.

I would be pleased to discuss this issue further with you, should you wish. In any event, I hope that this memorandum is helpful to the Chairman's decision-making process.

Mr. Speaker, I would also remind my good friend from New York that Virginia, too, was attacked on 9/11. So it is not that any of us forget 9/11, but we all, in this House, still mourn the loss of the lives in New York, Pennsylvania and Virginia.

I would say to the gentleman, that's not the issue here. The issue here is about an air-dropped earmark that benefits one entity, one locality, New York City, that is reported to be requested by one Member, and that is Chairman RANGEL.

Again, I say to the gentleman, no one, no one denies the fact that this country is struggling, still struggling post 9/11. Yes, we saw the news in the markets yesterday.

Yes, I understand the gentleman represents New York City, the financial capital of the world, and is very concerned about its well-being, as we all are. But, again, I would make the point that this is not the subject of my objection.

Mr. CROWLEY. Will the gentleman yield?

Mr. CANTOR. I yield to the gentleman from New York.

Mr. CROWLEY. Thank you. Would the gentleman agree that the President has included this in his budget for this fiscal year?

Mr. CANTOR. If the gentleman says so.

But, again, reclaiming my time, I am not opining and standing up on the substance of what is behind the request for the Liberty Bonds.

What I am objecting to is the fact that this, the insertion of this item, is so far beyond the jurisdiction of a bill designed to promote American energy production that it just doesn't even pass the straight-faced test.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 3½ minutes to the gentleman from Massachusetts, the chairman of the Select Committee on Energy, Independence and Global Warming, Mr. MARKEY.

Mr. MARKEY. I thank the gentle lady.

Mr. Speaker, this is all part of an ongoing effort by the Republicans to change the subject, to have a drilling distraction, anything to get away from what their true agenda is.

This is something that should be opposed. What the Republicans are trying to do here should be opposed, because what this is really all about, and what they are trying to do now, is to avoid the real debate on the fact that this is a comprehensive energy plan that has been brought to the House floor, that this bill deals with renewables. It deals with conservation. It deals with all of these issues that we need to deal with.

We will see if they mean it when they say they want a comprehensive energy plan, because that's what we are going to be debating today, or have they been simply playing politics, which is what this motion is all about. It's intended to avoid the real debate.

We are going to see a lot of crocodile tears here, shed on the Republican side here, after 12 years of controlling the energy committees, after 8 years of having George Bush and DICK CHENEY in the White House, after the Department of Energy under Republican control, the crocodile tears are flowing with regard to all of their concern about our energy dependence.

That's what this point of order is all about. It's just another distraction, another attempt to get away from the fact that on renewable, on conservation, on efficiency they did almost nothing. It's almost 12 years that they controlled the United States Congress, until last year, in conjunction with the Bush-Cheney secret energy plan.

The Republicans say they want all of the above, but have they here produced a bill which is truly comprehensive?

No, they have not.

Because their plan is not all of the above. The Republican leadership, the White House, and Big Oil is really concerned with all that's below, not all of

the above, all that's below. Our beaches, 3 miles offshore, all of the oil that's below our national parks, all the oil that's below our most pristine wilderness areas, that's what they are in favor of.

Not all of the above, all that's below. They had 12 years controlling this institution to do something about all of the above, wind, solar, geothermal, efficiency. They did nothing.

All of this is just another attempt to get off the point, to have a distraction, which is why we should reject this point of order. America needs an oil change.

All right, we will permit some more drilling, but you also have to have a strategy for the future. They keep saying on the Republican side, drill, baby, drill.

What we are saying is change, baby, change. They can't change. They are still out here with the Big Oil agenda. They are still out here saying no to wind, no to solar, no to efficiency, no to geothermal, no to the future.

Innovate, baby, innovate. Change, baby, change. That's what this debate is all about, and that's what they are trying to do. They are trying to change the subject. They are trying to distract from the fact that they are interested in more drilling, but not a comprehensive energy plan for our country.

That's why it's great that we are having this debate. Because we see, once again, what they did for 12 years, distract the American public, allow ourselves to become more dependent on imported oil and then come out and try to wash their hands of their responsibilities. Vote ''aye.'' Vote for change.

Mr. CANTOR. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. I thank the gentleman for yielding.

Mr. Speaker, I guess that some on the majority side think that they can cover up just by yelling or by raising the volume here of debate.

The bottom line here is, and the reason for this point of order, is that the majority party thought that, all right, we can have a bill here, or we can sneak something in. Let's sneak a limited tax benefit for New York.

You can call it an earmark, that's the proper definition when you have a limited tax benefit. You can call it a banana. You can call it anything you want to. The bottom line is the majority tried to sneak something into a broader bill that's supposed to be about energy, and that's what this is about.

So nobody is trying to distract anybody, other than those who are trying to slip a provision in that doesn't have to do with any comprehensive energy plan. It has to do with New York.

You can raise your voice, and you can yell all you want. The bottom line is somebody tried to sneak a limited tax benefit into this legislation. That's why I support the point of order.

Ms. SLAUGHTER. Mr. Speaker, may I inquire how many more speakers my colleague has?

Mr. CANTOR. Mr. Speaker, I am the last speaker. I have no additional speakers.

Ms. SLAUGHTER. All right. Then I shall wait to close.

Mr. CANTOR. Mr. Speaker, may I ask, does the gentlelady have an additional speaker, or is she ready to close?

Ms. SLAUGHTER. I have one more, but I only have about half a minute left, so it is going to be very brief.

Mr. Speaker, I reserve the balance of my time.

Mr. CANTOR. Mr. Speaker, all I would say is the histrionics that we have already seen on the majority side of the aisle indicate the sensitivity of the matter of earmarks.

We, I think, all have noticed that the public has an increasing awareness of the way that this body operates, and they have a great dissatisfaction aimed towards this process. That's why we raise this issue. It is just completely unfair. It smacks of a smoke-filled room, behind-closed-doors dealings that is not befitting of this institution.

Frankly, it is not what the American people want, nor what they deserve.

□ 1245

That is the reason for raising this question surrounding the $1.2 billion that has been requested by what reports have said was Chairman RANGEL of the Ways and Means Committee.

Again, on their own, liberty bonds should stand a test of this House; but it should not be a provision inserted in a bill that is meant to increase American energy production so that we can bring down gas prices.

Mr. Speaker, with that I yield back the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield the remainder of my time to the gentleman from New York (Mr. CROWLEY).

Mr. CROWLEY. Mr. Speaker, let me just remind my colleague regarding accusations as to who is responsible for this particular piece of legislation being added to this bill. Initially this was air-dropped into the overall bill to help New York recover after 9/11 by Chairman Thomas. So I guess to some degree Chairman Thomas is responsible for this particular provision being here today, without consultation with not only the ranking member, CHARLIE RANGEL at the time, or MIKE MCNULTY from New York State. Even his own colleague from the Republican side of the aisle, Amo Houghton at the time who was a Member, was not consulted about the addition of this into the legislation.

The SPEAKER pro tempore. All time for debate has expired.

The question is, Will the House now consider the resolution?

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 230, nays 180, not voting 23, as follows:

[Roll No. 593]

YEAS—230

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd (FL)
Boyda (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson
Castor
Cazayoux
Chandler
Childers
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Doggett
Donnelly
Doyle
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Fossella
Foster
Frank (MA)
Giffords
Gillibrand
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jefferson
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
King (NY)
Klein (FL)
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McDermott
McGovern
McIntyre
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Perlmutter
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Space
Speier
Stark
Stupak
Sutton
Tanner
Tauscher
Taylor
Thompson (CA)
Thompson (MS)
Tierney
Towns
Tsongas
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NAYS—180

Akin
Alexander
Bachmann
Bachus
Bartlett (MD)
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Broun (GA)
Brown (SC)
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Coble
Cole (OK)
Conaway
Crenshaw
Davis (KY)
Davis, David
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Duncan
Emerson
English (PA)
Everett

Fallin
Feeney
Ferguson
Flake
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Hall (TX)
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Hobson
Hoekstra
Hulshof
Inglis (SC)
Issa
Johnson (IL)
Jones (NC)
Jordan
Keller
King (IA)
Kingston
Kirk
Kline (MN)
Knollenberg
Kuhl (NY)
LaHood
Lamborn
Latham
LaTourette
Latta
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy, Tim
Musgrave
Myrick
Nunes
Pearce
Pence
Peterson (PA)
Petri
Pickering
Platts
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Sali
Saxton
Scalise
Schmidt
Sensenbrenner
Sessions
Shadegg
Shays
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Tancredo
Terry
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh (NY)
Wamp
Weldon (FL)
Weller
Whitfield (KY)
Wilson (NM)
Wilson (SC)
Wittman (VA)
Wolf
Young (AK)
Young (FL)

NOT VOTING—23

Aderholt
Barrett (SC)
Brady (TX)
Brown-Waite, Ginny
Cubin
Culberson
Davis, Tom
Dingell
Dreier
Ehlers
Hunter
Jackson-Lee (TX)
Johnson, Sam
Lampson
McCaul (TX)
Neugebauer
Paul
Pitts
Poe
Spratt
Udall (CO)
Walberg
Westmoreland

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Two minutes remain in this vote.

□ 1311

Mrs. MYRICK and Messrs. BURGESS and McKEON changed their vote from ''yea'' to ''nay.''

Ms. ROYBAL-ALLARD, Ms. LEE and Messrs. ALTMIRE, CONYERS, HINOJOSA and KUCINICH changed their vote from ''nay'' to ''yea.''

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MOTION TO ADJOURN

Mr. PRICE of Georgia. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER pro tempore (Mr. JACKSON of Illinois). The question is on the motion to adjourn.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. PRICE of Georgia. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 9, noes 386, not voting 38, as follows:

[Roll No. 594]

AYES—9

Doolittle
Johnson (IL)
Linder
McKeon
Miller, Gary
Saxton
Shimkus
Waxman
Weldon (FL)

NOES—386

Abercrombie
Ackerman
Akin
Alexander
Allen
Altmire
Andrews
Arcuri
Baca
Bachmann
Bachus
Baird
Baldwin
Barrow
Bartlett (MD)
Barton (TX)
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Braley (IA)
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson
Carter
Castle
Castor
Cazayoux
Chabot
Chandler
Childers
Clarke
Clay
Cleaver
Clyburn
Coble
Cohen
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crenshaw
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis, David
Davis, Lincoln
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Doggett
Donnelly
Doyle
Drake
Duncan
Edwards (MD)
Ellison
Ellsworth
Emanuel
Emerson
Engel
Eshoo
Etheridge
Fallin
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Forbes
Fortenberry
Fossella
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gilchrest
Gillibrand
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hall (TX)
Hare
Harman
Hastings (FL)
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hobson
Hodes
Hoekstra
Holt
Honda
Hooley
Hoyer
Hulshof
Inglis (SC)
Inslee
Israel
Issa
Jackson (IL)
Jefferson
Johnson (GA)
Johnson, E. B.
Jones (NC)
Jordan
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Klein (FL)
Kline (MN)
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Lamborn
Langevin
Larson (CT)
Latham
LaTourette
Latta
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney (NY)
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McMorris Rodgers
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nunes
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Pearce
Perlmutter
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Reyes
Reynolds
Richardson
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sali
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schiff
Schmidt
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shays
Shea-Porter
Sherman
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Space
Speier
Spratt
Stark
Stearns
Stupak
Sullivan
Tanner
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Tsongas
Turner
Udall (NM)
Upton
Van Hollen
Velázquez
Walden (OR)
Walz (MN)
Wamp
Waters
Watson
Watt
Weiner
Welch (VT)
Weller
Wexler
Wilson (NM)
Wilson (OH)
Wilson (SC)
Wittman (VA)
Wolf
Woolsey
Wu
Yarmuth
Young (FL)

NOT VOTING—38

Aderholt
Barrett (SC)
Boswell
Brady (TX)
Cantor
Cubin
Culberson
Davis, Tom
Dingell
Dreier
Edwards (TX)
Ehlers
English (PA)
Everett
Holden
Hunter
Jackson-Lee (TX)
Johnson, Sam
Keller
Lampson
Larsen (WA)
Mahoney (FL)
Neugebauer
Paul
Pence
Pitts
Poe
Renzi
Sutton
Tancredo
Udall (CO)
Visclosky
Walberg
Walsh (NY)
Wasserman Schultz
Westmoreland
Whitfield (KY)
Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1331

So the motion to adjourn was rejected.

The result of the vote was announced as above recorded.

PROVIDING FOR CONSIDERATION OF H.R. 6899, COMPREHENSIVE AMERICAN ENERGY SECURITY AND CONSUMER PROTECTION ACT

The SPEAKER pro tempore. The gentlewoman from New York is recognized for 1 hour.

Ms. SLAUGHTER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Washington (Mr. HASTINGS). All time yielded during consideration of the rule is for debate only.

GENERAL LEAVE

Ms. SLAUGHTER. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to