NOVEMBER 9, 1979

TESTIMONY BY CONGRESSMAN LES AuCOIN
HR 4503
SUBCOMMITTEE ON SELECT REVENUE MEASURES
COMMITTEE ON WAYS AND MEANS

Mr. Chairman, thank you for the opportunity to testify today on HR 4503, which provides that certain indebtedness incurred before 1965 will not be treated as acquisition indebtedness for purposes of applying section 514 of the Internal Revenue Code of 1954 to certain sales during 1976.

This, quite frankly, is narrow legislation, which does not amend the Code itself, but which will rectify a unique situation involving a YMCA in a rural city in my Congressional District, Tillamook, Oregon. The situation is this:

> The Tillamook YMCA purchased in 1949 a city block of property, containing an abandoned school facility, from the local school district for $75,000. The YMCA used the gymnasium for Y activities, and leased the remainder of the facility as a grocery store. In 1964, the YMCA incurred a $104,000 loan to pay for demolition of the old school/grocery store and construct a modern supermarket, which it in turn leased.
>
> Subsequently, the YMCA began raising funds for a new facility, including a community swimming pool. By June of 1976, the YMCA had raised some $100,000. The YMCA board decided to use that money, plus the proceeds of the sale of the supermarket it had been leasing, to pay for construction of its new YMCA facility.
>
> In selling debt-financed property, the YMCA unknowingly incurred a tax liability of some $28,000 under the so-called Clay Brown provisions of Section 514 of the tax code covering tax-exempt organizations. This provision was enacted in 1969 after the 1965 Clay Brown ruling by the U.S. Supreme Court and was aimed at businesses manipulating relationships with tax-exempt organizations to increase after-tax income.

The Tillamook YMCA's situation, which will be described in further detail by Mr. Jerry Pogue and Mr. Tom Waud, both members of the YMCA board of directors who will testify in a moment, clearly differs from those that prompted the Clay Brown provisions of Section 514.

The Tillamook YMCA, when it originally purchased property in 1949, bought an abandoned school and sought to make it a commercially viable property to help sustain its recreational facilities. It incurred debt in 1964 to maximize its earlier investment, not in collusion with a business with the objective of avoiding taxation.

Admittedly, the YMCA board of directors, made of unpaid volunteers who dedicate many hours to the community through service to the YMCA, erred by not seeking expert tax advice before disposing of its debt-financed property in 1976.

But the real question today is whether that error of omission justifies a $28,000 tax liability. I think not.

I should further note that the YMCA itself, following an internal audit of its records, discovered the tax liability and reported it to Internal Revenue officials. It was the IRS which urged the Tillamook YMCA to seek relief from its Congressman.

Mr. Chairman, I am not here today to argue in favor of excusing someone or some organization because it was ignorant of the law. That would set a precedent unacceptable to this subcommittee, to the Congress and to the Federal government.

What I am saying is that the law from which this tax laibility flows was never aimed at situations such the Tillamook YMCA, and that if we would have anticipated situations such as this in 1969 when current provisions of law were enacted, we would have exempted them.

The facts I have laid out clearly demonstrate there was no intent on behalf of the Tillamook YMCA to deprive the government of rightful taxes. No individual taxpayer will benefit if the YMCA's tax liability is lifted.

The truth is that the Tillamook YMCA had the wherewithal, through its community fund-raising success, to comply with the actual letter of Section 514. It could have repaid its outstanding loan, waited approximately a year, then proceeded.

Whether a further delay in providing suitable recreational and community facilities in this remote rural city would have been served any public good is debatable. But that misses the real point, which is: Do we want our tax policy to constrict the legitimate activities of community-minded volunteers? If no action is taken by your subcommittee, Mr. Chairman, that surely will be the case in Tillamook, Oregon.

To raise the $28,000, plus whatever penalties have been incurred, the Tillamook YMCA will have no choice but to appeal to the community for more funds. In a small community, hard hit by chronicly high unemployment and now the ravages of inflation, that will be a very large order.

My staff and I explored a number of options in seeking a limited, but effective remedy for the situation faced by the Tillamook YMCA. The bill before you today is my best effort to keep the applicability of the solution as narrow as possible, and yet provide relief to the Tillamook YMCA. All my bill does is to allow for an exception in certain limited circumstances for tax-exempt organizations which incurred indebtedness with respect to income-generating property prior to 1965.

Let me assure you I am most willing to explore with you and your staff other approaches to this problem. My objective is simply to remove what I view as an unfair tax liability from the Tillamook YMCA.

It is in the best interests of the Federal government to take this action because it will show we are not so inflexibile in our ivory towers in far off Washington, D.C. that we can't recognize and solve a problem in tiny Tillamook, Oregon.

And it is in the best interests of Tillamook, Oregon, where the people have troubles enough already without adding another one unncessarily.

Let me conclude my testimony by thanking my Colleague and good friend, Congressman Ullman, for his special attention to this problem, and by thanking you, Mr. Chairman, and members of this subcommittee, who have larger fish to fry, for taking the time to consider this unique situation.