U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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Statement of Senator Chuck Grassley:
Finance Committee Mark-up of the *Charity Aid, Recovery, and Empowerment (CARE) Act*
Wednesday, Feb. 5, 2003

We turn now to the CARE Act, specifically the tax provisions of the CARE Act that will encourage more charitable giving by Americans. I commend the President for his strong leadership in calling Americans back to our great tradition of neighbors helping neighbors. In addition, I want to note the good efforts by Senators Santorum and Lieberman on this matter.

The legislation we review today is mostly the same as that considered by the Finance Committee last year. It contains such key provisions as:

1) a charitable deduction for those who do not itemize;
2) the rollover of IRAs, which is important to many charities;
3) provisions that support conservation of our land; and
4) provisions that encourage donations to food banks.

This bill is virtually identical to the bill I recently introduced with Senator Baucus and others.

While most of the contents of the bill before us is virtually identical to last year's bill, we have changed the offsets. The chairman's mark deletes the offset in last year's proposal, an extension of the customs user fees. Extension of these fees has proven to be unpopular with members, such as Senator Kyl. They have rightly voiced concerns about use of an offset that should be more closely tied to customs reform, especially the security aspects of customs reform.

I would like to take a few minutes to address the new revenue raiser in this mark. Under the current pay-go rules, we are required to offset any revenue reductions with revenue raisers to avoid a pay-go point of order.

I had planned to use both tax shelters and inversions for this mark, but we found that the inversions bill was not needed at this time. We do plan to reintroduce our inversion bill very soon. So, let me reiterate my warning to those companies planning an inversion: You proceed at your peril.

The new revenue raiser is an expanded tax shelter proposal that was first put forward in Sen. Baucus' mark last fall for farm and small business tax relief. This proposal is nearly identical to the *Tax Shelter Transparency Act* that this committee approved last June, with one very significant addition. We have added a provision clarifying the economic substance doctrine, which is used by courts to combat tax shelters.

Last year, there were several court rulings that, in our view, misapplied this doctrine. These rulings now stand as legal precedent that can be used to justify abusive schemes in the future. If a court finds that a shelter violates our clarification, the shelter participant would be subject to a strict 40 percent penalty on any tax due. This is a very tough anti-shelter provision.

However, I remain concerned that the definition may be too vague for taxpayers to know whether this doctrine applies to a planned transaction. If we are going to impose a strict 40 percent penalty, taxpayers need to know with certainty whether they could run afoul of it. Therefore, I have delayed the effective date for this penalty until April 15, 2004, so Treasury will have time to provide taxpayer guidance.

We may need to revisit this provision based depending on comments we receive. Moreover, we may need to revisit our entire tax shelter proposal after the Joint Committee releases its Enron report next week.

So, with those cautionary comments, we press forward. I want it to be clear that this is a fluid process, and I take this step on clarification of the economic substance doctrine with these reservations.