

For Immediate Release

Tuesday, December 9, 2008

Grassley says auto bailout bill also would bail out tax shelter participants
Senator protests investment of tax dollars where private equity owner of Chrysler has declined to
invest

WASHINGTON --- Senator Chuck Grassley said proposed legislation to help American automakers would put tax dollars on the line to assist participants in controversial tax shelters which have been shut down by both the IRS and Congress.

Grassley said the tax shelter bailout within the auto bailout is related to abusive leasing transactions called SILOs, where transit agencies have sold public transportation assets like rail lines, only to lease them back from purchasers, with the result of providing tax depreciation deductions to the purchasers. Such transactions were motivated solely by collection of fees on one side and tax benefits on the other, rather than any change to the services provided by transit agencies. While he was Chairman of the Senate Committee on Finance in 2004 and 2006, Grassley won passage of reform legislation to shut down these kinds of tax shelters.

Grassley voiced his opposition to the tax shelter bailout in a letter sent today to congressional leaders. Grassley also took issue with the fact that the private equity firm that owns Chrysler isn't itself taking steps to help Chrysler. This firm, Cerberus Capital Management LP also owns GMAC, which has requested bailout funds through the \$700 billion Troubled Assets Relief Program being run by the Treasury Department and Federal Reserve.

"Taken together, these issues are a one-two punch. They insult the taxpayer by propping up tax evasion, and they insult every American feeling the brunt of the economic crisis by putting tax dollars on the line where private equity investors refuse to put any of their own money at risk," Grassley said.

Below is the text of Grassley's letter to Senate Majority Leader Harry Reid and House Speaker Nancy Pelosi.

December 9, 2008

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Majority Leader Reid and Speaker Pelosi:

In my November 14 letter to you, I expressed my concerns about providing financial assistance to the major auto manufacturers unless any legislation providing such assistance contained adequate protections of taxpayer dollars. I have attached that letter for your convenience. I am now writing to express two specific concerns about the proposed Auto Industry Financing and Restructuring Act (“AIFRA”). While I have concerns about other provisions in the bill, these are the most significant.

First, I do not support Chrysler Corporation receiving any federal dollars until its owner, Cerberus Capital Management L.P. (“Cerberus”), explains why it cannot provide the \$8 billion loan Chrysler has requested. Cerberus’ public statement about its fiduciary duty to other investors is not sufficient. It is public knowledge that Cerberus is one of the largest private equity firms in the country. Due to its private nature, there is no public information about its financial position. However, you can find on Cerberus’ website a list of some of its investments. These investments include several foreign corporations. Congress should demand an accounting of Cerberus’ assets and why those assets cannot be used to bail out Chrysler Corporation before using taxpayer dollars. If Congress does award taxpayer funds to Chrysler, it must ensure that Cerberus and its other investors are not able to access those funds.

I also bring to your attention that Cerberus’ investments include GMAC. Cerberus formed a coalition of investors, with PNC Financial, Citigroup and others to purchase a 51% controlling interest in GMAC from General Motors in 2006. As you may know, GMAC recently applied for assistance under the Troubled Assets Relief Program (“TARP”) authorized under the Emergency Economic Stabilization Act of 2008 (“EESA”). If Treasury approves GMAC’s application for TARP funds, it would seem that Cerberus would be benefiting under both AIFRA and EESA.

Second, I do not support the provision in AIFRA that would bail out certain state departments of transportation and public transportation agencies (“Transit Agencies”). These Transit Agencies had requested that Treasury guarantee certain financial instruments with respect to lease in/lease out and sale in/sale out transactions (“LILO/SILO”) under the TARP. While Treasury denied that request, it appears that Congress is ready to provide assistance.

As Chairman, and now Ranking Member, of the Finance Committee, I have worked with Senator Baucus to lead the charge in combating abusive tax avoidance transactions. Our efforts culminated in the enactment of section 470 of the Internal Revenue Code (“IRC”) in the American Jobs Creation Act of 2004. Section 470 effectively shuts down the tax benefits of entering into SILO transactions.

We then spearheaded enactment of IRC section 4965 in the Tax Increase and Prevention Act of 2005, signed into law in May 2006. Section 4965 designates certain transactions as prohibited tax shelter transactions and includes new entity-level and manager-level excise taxes and disclosure rules applicable to prohibited tax shelter transactions to which a tax-exempt entity is a party.

In between these two acts of Congress, the Internal Revenue Service issued Notice 2005-13, *Tax-Exempt Leasing Involving Defeasance* (“Notice”). The Notice describes “transactions in

which a taxpayer enters into a purported sale-leaseback arrangement with a tax-indifferent person in which substantially all of the tax-indifferent person's payment obligations are economically defeased and the taxpayer's risk of loss from a decline, and opportunity for profit from an increase, in the value of the leased property are limited". The Notice identifies these transactions, and substantially similar transactions, as listed transactions for purposes of section 1.6011-4(b)(2) of the Income Tax Regulations and IRC sections 6111 and 6112. In August 2008, the IRS announced a settlement initiative for parties to these transactions to unwind the tax benefits from these transactions.

Since our actions, along with the IRS' actions, clearly indicate these transactions are tax shelters for all intents and purposes, I do not support the Transit Agencies' request for a guarantee. I appreciate that denying their request could result in technical defaults by the Transit Agencies and that such defaults may result in the Transit Agencies paying parties to the LILO/SILO transactions the economic equivalent of the tax benefits that were the reason for entering into these transactions in the first place.

Because I have fought so hard to eliminate the benefits of LILO/SILO transactions, allowing parties to these transactions to reap these benefits with taxpayer dollars would be a perverse result. It is even more offensive that many of the corporations that would benefit from the guarantee proposed in AIFRA are foreign corporations. Taxpayer dollars certainly should not be used to bail out foreign corporations who knowingly entered in questionable transactions for the sole purpose of tax evasion.

Sincerely,
Chuck Grassley
Ranking Member

cc: The Honorable Max Baucus
The Honorable Christopher Dodd
The Honorable Richard Shelby
The Honorable Henry Paulson