



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release

Friday, Jan. 28, 2005

Grassley, Baucus Send Inquiry on Advanced Pricing Agreement

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, today sent the following letter to the Internal Revenue Service on the Advanced Pricing Agreement program.

January 28, 2005

The Honorable Mark Everson
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Mr. Everson:

We applaud you for seeking constructive discussions regarding the Advanced Pricing Agreement (APA) program, including the hearings you have scheduled in February. Concerns have been raised about the IRS administration of the program. We know you share our view that participants must price their intercompany transactions at arm's length, in accordance with the tax law, and pay their fair share of taxes. We anticipate these hearings will serve as a step forward in looking substantively at the APA program. We also hope certain issues raised by the Committee's ongoing review could be discussed at the hearings, as follows:

(1) What are the methodologies, practices and procedures on how a case is handled to ensure consistency (ex. administrative, tracking, timelines, contacts, documentation, recordkeeping, pricing and valuation methods)?

(2) Current APA procedures require the IRS to consider a taxpayer's proposal on its individual merits. Given that taxpayers in the same line of business may make different proposals to the Service, how does the APA program ensure that "similarly situated" taxpayers are treated

consistently?

(3) How does the APA program plan to work through the backlog of cases in its inventory, while ensuring that each agreement protects the interests of all taxpayers and the proper amount of tax is paid?

(4) How does the APA program handle issues involving global business for which U.S. law, code and regulation conflict with international law?

(5) Does the APA program allow foreign subsidiaries to “buy-in” to U.S. technology transferred offshore after the risks of investment/development have been borne by the U.S. parent (and subsidized by the U.S. taxpayers) when it is already clear that the technology is likely to be successful in the marketplace? If so, what is the policy for supporting it? How does the APA program ensure that the “buy-in” price yields an arm’s length result?

(6) How does the APA program ensure that prospective pricing models are appropriately applied and comply with the arm’s length standard?

(7) When is it not in the interest of tax administration to continue negotiating or agreeing to an APA?

We think it would be beneficial for these matters to be discussed at the February hearing, and we would also appreciate your responses to these points. The APA program provides multinational taxpayers the opportunity to negotiate an agreement with the IRS on the future prices of their intercompany transactions and the associated taxable income. Given the increasing number of APAs in recent years, the billions of dollars worth of transactions covered, and the discretion granted to the IRS in these matters, the Finance Committee is encouraged to see the IRS recognizing the need to review the program. We look forward to working with you to improve this program in the months to come.

Sincerely yours,

Charles E. Grassley
Chairman

Max Baucus
Ranking Member