U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

http://finance.senate.gov

For Immediate Release
Thursday, April 21, 2005

Grassley Seeks Information on Leasing Tax Shelters in Under the Wire

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, has asked the Transportation Department for details of any corporate tax shelters involving the leasing of bridges and sewer systems that might be grandfathered under the *American Jobs Creation Act* of 2004.

Grassley has worked for years to shut down LILOs – an abbreviation for "lease-in-lease-out" transactions, and SILOs – the successor to LILOs called "service-in-lease-out" agreements. He succeeded in outlawing these proposals through the *American Jobs Creation Act* last fall, but the shelter promoters won considerable concessions during the bill's conference proceedings. The promoters were able to protect certain schemes that were being set up when Grassley got them outlawed. Grassley now wants to know who they are and where they are.

In a letter to Transportation Secretary Norm Mineta, Grassley asked for details of all pending requests for approval of such tax shelters. Grassley also urged the secretary to discourage these deals.

"We exerted great effort in Congress to shut down this abuse, but the transition relief in the American Jobs Creation Act is a sop to shelter promoters and an insult to the American taxpayer," Grassley wrote. "Corporations have no right to claim tax deductions for bridges, subways, and sewage pipes that were built with taxpayer dollars."

The text of Grassley's letter follows.

April 20, 2005

Norman Y. Mineta
Secretary of Transportation
Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Mr. Secretary:

On November 17, 2003, I wrote to you to enlist the assistance of the Department of Transportation in the Committee on Finance's ongoing investigation of an abusive tax shelter that has come to be known as LILOs – an abbreviation for "lease-in-lease-out" transactions, and SILOs – the successor to LILOs called "service-in-lease-out" agreements. Other variations on these transactions have involved qualified technology equipment (QTE). A copy of our November 17th letter is attached.

On January 20, 2004, you responded to our inquiry by advising us that after the release of Revenue Ruling 99-14 in March 1999, the Department of Transportation's Federal Transit Administration (FTA) has not received, reviewed, or concurred in any LILO transaction. You indicated, however, that LILO promoters mutated those transactions into SILOs, and the first notice received by your department that SILO transactions were under challenge by the Department of Treasury was a November 26, 2003, letter from Treasury's Assistant Secretary for Tax Policy. Presumably, the Department of Transportation ceased reviewing and approving SILO transactions on the receipt of Treasury's letter, although your response did not confirm this to be the case. In February 2004, the staff of the FTA provided the Committee on Finance with a list of leveraged lease transactions submitted to and reviewed by the FTA from June 1988 though September 2003.

Subsequent to our exchange of letters, Congress enacted the American Jobs Creation Act of 2004, which outlawed LILOs and SILOs, albeit not without considerable concessions to the interests of shelter promoters that were in the process of setting up these abusive schemes. Under the Senate-passed version of the American Jobs Creation Act of 2004, LILOs and SILOs would have been shut down as of November 17, 2003, the day that I sent you the letter. For LILOs and SILOs involving public assets of foreign jurisdictions, U.S. tax deductions would have ended on February 1, 2004, regardless of whether the foreign lease was entered into before November 17, 2003. In conference, however, these tough effective dates were watered down and delayed.

The enacted bill doesn't take effect until March 13, 2004, nearly 4 months later than the Senate bill. Incredibly, the enacted bill gave leasing shelter promoters more than a year to get their deals-in-process approved by your department. The bill grandfathers domestic property leases if 1) the leases had been submitted for approval by the FTA after June 30, 2003, and before March 13, 2004; 2) the FTA approves the leasing shelter arrangement before January 1, 2006; and 3) the FTA application includes a description and the fair market value of the property.

We exerted great effort in Congress to shut down this abuse, but the transition relief in the American Jobs Creation Act is a sop to shelter promoters and an insult to the American taxpayer. Corporations have no right to claim tax deductions for bridges, subways, and sewage pipes that were built with taxpayer dollars. As part of our continuing effort to stop this abuse, I ask that the Department of Transportation submit to the Committee on Finance copies of all LILOs, SILOs, QTE leases, and similar transactions that had been submitted for approval by the FTA after June 30, 2003, and before March 13, 2004. I also request a list of all such transactions that have been "approved" by the FTA as of the date of your response.

Notwithstanding the grandfathering provisions of the American Jobs Creation Act, we would welcome assurances that FTA no longer approves SILO transactions, effective as of the date of the letter you received from the Assistant Secretary of Tax Policy. We also seek assurances that FTA has not approved any LILO transaction since the release of Revenue Ruling 99-14 in March 1999.

I also request documentation regarding any other LILO, SILO, QTE or similar transactions that have been approved, funded, or otherwise reviewed by the Department of Transportation from the date of the FTA's last response to the Finance Committee to the date of your response to this letter, provided that any such transactions is not otherwise covered by the above request.

I appreciate your cooperation in our ongoing efforts to combat abusive tax shelters and look forward to receiving these materials within the next three weeks.

With best personal regards,

Charles E. Grassley
Chairman

-30-