



U.S. SENATE COMMITTEE ON

# Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release

Thursday, March 11, 2004

## Senators Expand Leasing Tax Shelters Probe to Energy Department

WASHINGTON -- Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, have expanded yet again their inquiry into federal agencies that may have played a role in approving abusive tax shelter leases using infrastructure assets. Today, the senators wrote to the Energy Department asking for details of any such deals those agencies have approved. A review of recent documents indicates taxpayer-funded power plants may have been leased for corporate deductions.

Today's letter follows similar letters last week to the Federal Aviation Administration and the Environmental Protection Agency and an earlier letter to the federal Transportation Department, the results of which the senators released last week. The senators also have shared their findings so far with the leaders of the Senate budget and appropriations committees and the House Appropriations Subcommittee On Transportation, Treasury, and Independent Agencies. They have expressed concern that at least \$2 of federal tax revenues is lost for every \$1 of benefit that is received by a municipality or government agency in the form of a shelter promoter accommodation payment. States also lose significant revenue from these arrangements.

Grassley and Baucus have included their leasing loophole closer in the foreign sales corporation/extraterritorial income bill -- the *Jumpstart Our Business Strength (JOBS) Act* -- pending before the full Senate. Grassley hopes for Senate completion of the bill, and approval of the leasing loophole closer, by the month's end.

Following is the text of today's letter.

March 11, 2004

The Honorable Spencer Abraham  
Secretary of Energy  
U.S. Department of Energy  
Forrestal Building, Room 7B138  
Washington, DC 20585-0800

Dear Secretary Abraham:

We are writing to enlist the assistance of the Department of Energy in our ongoing investigation of abusive tax shelters. On October 21, 2003, the Committee on Finance held a hearing regarding the continuing proliferation of abusive tax shelters. During that hearing, we learned that shelter promoters are engaging in transactions with U.S. municipalities and other state and local governmental units, which allow major U.S. corporations to depreciate state and local infrastructure assets, such as railways, subways, dams, water lines, power plants, and electrical transmission systems. Our subsequent investigations have disclosed that federal agencies have endorsed these transactions, even though the Department of the Treasury had classified them as abusive tax shelters.

Under this scheme, municipalities are paid an up-front cash fee to enter into a long-term lease of their infrastructure to the tax shelter promoters. The cash received by the municipality, however, pales in comparison to the federal tax benefits received by the corporations, which will be able to depreciate taxpayer-funded bridges, subways, and rail systems as a result of the lease. As part of the same agreement, the promoters will agree to simultaneously lease the assets back to the municipality. The obligations of the promoters and municipalities are prepaid through "phantom" debt, and neither the tax promoters nor the municipality assumes any credit or ownership risk. At the end of the lease term, the infrastructure assets revert back to the municipality through a pre-funded repurchase arrangement. In reality, nothing changes regarding the ownership or use of the infrastructure. One municipal manager described these transactions as "people giving him money which he never had to pay back, for doing something that he was already doing."

In March 1999, the Department of the Treasury under the Clinton Administration initiated enforcement actions against these transactions, which are called LILOs - an abbreviation of their industry name "lease-in-lease-out" transactions. We have further learned that these transactions have continued, albeit in a different form, and that other federal agencies may be approving these transactions. The LILO transactions have now been replicated through service agreement contracts and transactions called SILOs -- "sales-in-lease-out." Other variations on these transactions have involved qualified technology equipment (QTEs). We have been advised that state and local infrastructure projects which receive federal funding must obtain the review and approval of the Department of Energy in order to enter into these transactions.

We are certain that you share our concern that water lines, waste treatment plants, power plants, and electrical transmission systems constructed with taxpayer dollars are being used by big corporations to shelter billions of dollars in taxes through bogus depreciation deductions. In order to assist us in assessing the scope and scale of this problem, we request that the Department of Energy submit to the Committee on Finance copies of all documents relating to LILOs, SILOs, QTEs, and similar transactions that have been approved, funded, or otherwise reviewed by the Department of Energy from the year 1995 to present.

We appreciate your cooperation in our ongoing efforts to combat abusive tax shelters, and look forward to receiving these materials as soon as possible.

With best personal regards,

Charles E. Grassley  
Chairman

Max Baucus  
Ranking Member