

U.S. Senate Committee on Finance

For Immediate Release

Friday, April 2, 2004

Senators Receive Leasing Response from the Federal Aviation Administration, Support from State Government

WASHINGTON -- Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, have received a response to their inquiry into whether the Federal Aviation Administration played any role in approving abusive tax shelter leases using infrastructure assets. According to the agency's response, it did not play a role in approving any such leases.

"I'm glad to see a clean bill of health for the Federal Aviation Administration," Grassley said. "This agency got the usual sales pitch from promoters and yet refused to approve any leasing deals. That was an exercise of good judgment that protects taxpayer-funded assets from abuse by leasing tax shelter promoters."

Baucus said, "Abusive leasing transactions cost U.S. taxpayers billions of dollars a year and undermine faith in our tax system, especially if they are facilitated and approved by U.S. government agencies. I am very pleased that the FAA has not been involved. Congress must act quickly -- by passing the JOBS bill -- to outlaw these deals that are done for no other purpose than to raid the Federal Treasury."

The Federal Aviation Administration was one of several agencies the senators have written to on the leasing issue. Other agencies include the Environmental Protection Agency, the Energy Department, and the Transportation Department.

Also, Grassley received a letter from the Colorado state treasurer, Mike Coffman, praising the senators' effort to shut down leasing tax shelter abuses.

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. The congressional Joint Committee on Taxation estimates that state treasuries will lose approximately \$6 billion over the next 10 years if the leasing transactions are not stopped. States without large municipal transit infrastructure suffer a disproportionate amount of this loss. "We're heartened by the support of Mr. Coffman," Grassley said. "The states are finally realizing that these abusive leases are not a win for them either."

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 as soon as possible.

Following are the text of the senators' March 4 letter to the Federal Aviation Administration; the agency's response; and the letter from the Colorado state treasurer.

March 4, 2004

The Honorable Marion C. Blakey
Administrator
Federal Aviation Administration
800 Independence Avenue, S.W. Room 1022
Washington, DC 20591

Dear Ms. Blakey:

We are writing to enlist the assistance of the Federal Aviation Administration 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, and air traffic control 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 Federal Aviation Administration in order to enter into these transactions.

We are certain that you share our concern that water lines, waste treatment plants, and air traffic control 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 Federal Aviation Administration 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 Federal Aviation Administration 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