

U.S. Senate Committee on Finance

For Immediate Release

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Grassley, Baucus Release Details of Plans to Ensure Continued “Son of Boss” Enforcement

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, today released details of their plans to revise their anti-tax shelter legislation to make sure several hundred taxpayers who used the “Son of Boss” tax shelter don’t escape the taxes they rightfully owe. The senators announced their plans at a Wednesday hearing.

“The IRS gave Son of Boss participants a chance to come forward voluntarily,” Grassley said. “A large number of them didn’t come forward. They’re apparently hoping that the clock will run out on the statute of limitations, and they’ll get off scot-free. That would be unfair, both to the Son of Boss users who came forward and honest taxpayers who don’t buy into these schemes.”

Baucus said, “Taxpayers who defiantly engage in abusive transactions and then attempt to hide in the weeds should not be rewarded. We intend to give the IRS adequate time to pursue those who rejected the terms of the voluntary settlement program.”

Grassley and Baucus plan to revise provisions in the Senate-passed *Jumpstart Our Business Strength (JOBS) Act* to extend the August 15 statute of limitations for Son of Boss investors who did not participate in the IRS’s voluntary settlement program. Also, they plan to revise the interest suspension rules for Son of Boss investors and other tax shelter investors.

A detailed history of the IRS and Treasury’s Son of Boss enforcement efforts and a description of the senators’ plans follow.

In Notice 99-59, 1999-52 I.R.B. 761, the Internal Revenue Service and the Treasury Department described a transaction that was being marketed to taxpayers for the purpose of generating artificial tax losses. This transaction was known as the “bond option sales strategy” or the “BOSS” transaction. Notice 99-59 described several variations on the basic BOSS structure. The Notice advised taxpayers that the BOSS structure, the described variations, and substantially similar transactions would be considered as abusive tax shelters that would be challenged by the IRS in court. Despite these efforts, tax shelter promoters quickly modified the BOSS structure to fall outside the variations described in Notice 99-59. The promoters persisted in marketing the revised scheme, known as Son of Boss, which generated artificial tax losses designed to offset income from other transactions through a series of contrived steps involving interests in a partnership.

In response, Treasury issued Notice 2000-44, 2000-2 C.B. 255, that would deny taxpayers the purported losses resulting from the Son of Boss transaction. The notice also warned taxpayers and

promoters who participate in these transactions that they may be subject to criminal penalties if they willfully conceal their participation on tax returns. The IRS was aware that thousands of Son of Boss transactions had resulted in understatements of tax in excess of \$6 billion, not including interest and penalties.

On May 5, 2004, the Internal Revenue Service announced that taxpayers who invested in "Son of Boss" transactions would have until June 21, 2004, to accept an IRS settlement offer to resolve their tax issues. Under the terms of the agreement offer, eligible taxpayers would concede 100 percent of the claimed tax losses, must pay all applicable interest, and must accept the imposition of a penalty unless they had previously disclosed their participation in the transaction. Taxpayers not participating in the settlement would receive a statutory notice of deficiency (90 day letter) disallowing all losses and out of pocket costs and would be assessed maximum applicable penalties. According to IRS Commissioner Mark Everson the IRS was "taking this unusual step because of the severity of the abuse."

To date, over 1,500 Son of Boss investors have elected to participate in the settlement program. However, in conducting IRS promoter investigations and summons enforcement actions by the Department of Justice, the IRS recently discovered hundreds of Son of Boss investors who have refused to participate in the settlement program. The IRS has learned of at least 500 previously undisclosed transactions in the last few months and suspects hundreds more may be hiding their participation. These investors are hoping the statute of limitations will lapse before the IRS can assess tax against them.

Son of Boss transactions were aggressively marketed in the late 1990s and 2000 to companies and high net-worth individuals. Many of these transactions generated tax losses of between \$ 10 million and \$ 50 million. On August 15th, 2004, the statute of limitations for extended calendar year 2000 income tax returns will close for a significant number of non-disclosing Son of Boss investors. These investors will escape their rightful tax liability after that date.

It is the view of the Chairman and Ranking Member of the Senate Finance Committee that non-disclosing Son of Boss investors should not be allowed to "run out the clock" on the statute of limitations before the IRS finds them. The IRS and Department of Treasury have been on record in opposing these transactions since 1999. The purchase of these tax shelters in the year 2000 was an act of sheer defiance and disregard for the tax laws of the United States. The Senate and House versions of the bill to repeal the ETI regime contain a measure that would hold open the statute of limitations on a transaction listed by the Treasury Department as a tax shelter, such as the Son of Boss transaction, but this measure only applies to taxable years that are open to audit after the ETI repeal bill is enacted. This would allow the non-disclosing Son of Boss investors to escape tax on their fraudulent scheme.

Accordingly, the Chairman and Ranking Member of the Senate Finance Committee announce their intent to extend the August 15th statute of limitations for Son of Boss investors that did not participate in the IRS's voluntary settlement program.

The Chairman and Ranking Member also are aware of another problem with these Son of Boss cases

concerning the suspension of interest while the case is pending. Because of a provision enacted as part of the IRS Restructuring and Reform Act of 1998, the accrual of interest on most Son of Boss cases was suspended. This means that taxpayers who participated in these transactions and have now been caught will not have to pay the interest on their tax deficiencies, despite understatements totaling over \$6 billion. The Senate version of the ETI repeal bill contains a provision that would turn off the interest suspension in the case of listed tax shelter transactions, but this change would be effective after May 5, 2004. This would allow most Son of Boss deals to escape the interest owed on back taxes. The Chairman and Ranking Member intend to modify this effective date to repeal the interest suspension rule for transactions that are listed as of the date of enactment of the legislation, but will continue to allow suspension for taxpayers that turn themselves in under these voluntary disclosure programs.