



SUMMARY OF SEN. CHUCK GRASSLEY'S NON-PROFIT OVERSIGHT
November 20, 2007

INTRODUCTION

For the last five years, Sen. Chuck Grassley, Iowa Republican, has reviewed and worked to reform various shortcomings and abuses in the tax-exempt arena, as well as worked to increase charitable giving incentives. His goals are to ensure that non-profits are protected from money-making opportunists; that donors feel confident that their money is well-spent; and that taxpayers are assured that the billions of tax dollars foregone by the government also is money well-spent. Sen. Grassley's work has taken place as then-chairman, now ranking member, of the Committee on Finance, which has exclusive Senate jurisdiction over all tax policy. His oversight has involved some legislation, encouragement of the IRS to offer more guidance to taxpayers and shut down abuse, and several instances in which non-profit entities have self-corrected their questionable behavior. A summary of Sen. Grassley's non-profit work in each category follows here.

LEGISLATION

American Jobs Creation Act of 2004, Public Law 108-357, Oct. 22, 2004

Intellectual property donations. Corporations had been reducing their tax bills by hundreds of millions of dollars each year by taking intellectual property of little to no value and donating it to a charity. The Grassley provision ends this abuse while still encouraging the donation of legitimate intellectual property that has real value for actual development.

Junker car donations. The law ends the shady practice of a donor giving a junker car to charity and claiming thousands of dollars for it as a deduction on his income tax. The reforms place no additional burden on the donor.

Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109-222, May 17, 2006

Involvement by exempt organizations in tax-shelter transactions. This subjects certain tax-exempt entities to penalties for participating in a prohibited tax-shelter transaction as accommodation parties. A prohibited tax-shelter transaction is generally any transaction that the

Treasury Secretary determines is a listed transaction or a certain kind of reportable transaction as defined under current law.

Pension Protection Act of 2006, Public Law 109-280, Aug. 17, 2006

Tax breaks for taxidermy. This shuts down a practice in which a donor receives big tax breaks for the cost of his African safari while a museum receives a nearly worthless, dusty boar's head sitting in a railway car.

Insurance contract in which tax-exempt organizations hold an interest (CHOLI or IOLI). This provision requires reporting and transparency on practices in which charities purchase insurance policies on the lives of donors and then those life insurance policies become part of a larger investment providing significant benefits to individuals and for-profit companies.

Increase in penalty excise taxes relating to public charities, social welfare organizations, and private foundations. In general, this doubles the amount of excise taxes applicable to certain activities – such as high salaries and living allowances – by private foundations and private foundation managers, and increases the dollar limitations applicable to excise taxes on managers of public charities, private foundations, and social-welfare organizations.

Charitable contributions of facade easements. This curbs the practice of individuals taking an excessive tax deduction for agreeing not to change the facade of an historic building and donating that facade to preservation groups.

Donations of clothing and household items. This puts forth limits and standards for the deductions of donations of clothing and household items that taxpayers can take. This was in response to inflated donations.

Partial interest in donated property such as a painting to a museum. This provision helped to address abuses by taxpayers who donated a fractional interest in an item of tangible personal property such as art work to a museum without being required to give up possession of the item.

Supporting organizations. This applied anti-abuse rules to supporting organizations and required the IRS to establish pay-put requirements for certain types of supporting organizations. This came after the IRS identified supporting organizations as one the top areas of abuse in the entire tax code.

Recapture of tax benefit for charitable contributions of exempt use property not used for an exempt use. Different tax treatments are provided for charitable contributions of personal property, depending on whether the property is used by the charity for its exempt purpose. This provision helped to enforce the tax law in this area.

Provisions relating to substantial and gross overstatements of valuations. This lowers the thresholds for imposing accuracy-related penalties on a taxpayer who claims a deduction for donated property and imposes a new penalty on appraisers for inflated valuations. It also provides definitions of a qualified appraiser and qualified appraisals.

Additional standards for debt management plans. This imposes certain restrictions on tax-exempt organizations that offer debt management. To stem abusive situations, the restrictions are on fees, solicitation of contributions from consumers receiving counseling, and the portion of the organization's total activities committed to debt management.

Donor-advised funds. This provision defined donor-advised funds and took steps to address abuses in the area, especially donors to a donor-advised fund using the donations for personal benefit. These reforms came after the IRS identified donor-advised funds as one of the top areas of abuse in the entire tax code.

Notification requirement for entities not currently required to file. This requires certain organizations to file an annual notice with the IRS including basic contact and financial information. The requirement applies to organizations that currently do not have an annual filing requirement because their gross receipts are less than \$25,000.

Information sharing with state attorneys general. This allows the IRS to share information about exempt organizations with state attorneys general to enhance enforcement of the law.

Make UBIT return public. This requires the organization to make its tax return on unrelated business income publicly available. The Form 990T (separate from the Form 990) shows a tax-exempt group's for-profit activities, thus providing a much more complete and open picture of the operations of a charity.

The American National Red Cross Governance Modernization Act of 2007, Public Law 110-26, May 11, 2007

Senator Grassley began hearing concerns about the Red Cross after Sept. 11, when some donors expressed concern that the organization was not using their donations to help Sept. 11 victims' families. After Hurricane Katrina in 2005, he heard concerns from some volunteers that the Red Cross' treatment of volunteers was lacking and that it wasted some donated materials because of bureaucracy with chapters. The Red Cross launched an independent review of its governance, included its board of governors' role, and concluded that changes were necessary. Legislation to enact some of the changes was needed because the organization was congressionally chartered. Sen. Grassley sponsored the legislation.

WORK WITH THE IRS

Over the last five years, Sen. Grassley has worked to bring problems to the IRS' attention and ask the IRS for information on problem areas that require congressional attention. Sen. Grassley wants the IRS to offer useful guidance to taxpayers to help increase compliance with non-profit laws and to enforce existing laws to shut down abuse. Throughout Sen. Grassley's review of non-profit practices, it became clear that more transparency from non-profits would help the public and potential donors understand individual non-profits, and greater transparency would encourage accountability from non-profit entities to the public.

On June 14, 2007, the IRS released a significantly revised draft Form 990, the annual return required

to be filed by tax-exempt organizations to report information about their operations. The IRS hopes to have the form ready for use for the 2008 filing year (returns filed in 2009). Sen. Grassley, along with Sen. Max Baucus, chairman of the Committee on Finance, had urged the IRS to update this form.

As part of the revised discussion draft of the Form 990, the IRS released a new Schedule H, where hospitals will report how they provide community benefit and charitable care. The agency also released an interim report summarizing responses to a questionnaire about how tax-exempt hospitals provide and report benefit to the community. Providing community benefit is required for hospitals to be tax-exempt charitable organizations under section 501(c)(3) of the Internal Revenue Code. The report determined that a lack of uniformity in definitions and reporting called for a separate schedule for hospitals on Form 990.

Separately, on July 18, 2007, Sen. Grassley released a staff discussion draft of potential reforms to ensure an adequate level of charitable care from the nation's non-profit hospitals. On Oct. 24, 2007, at his direction, his staff held a roundtable to discuss the committee minority staff discussion draft of potential reforms involving non-profit hospitals. Sen. Grassley spoke at the event.

SELF-CORRECTION OR SELF-ANALYSIS BY NON-PROFIT GROUPS

The Nature Conservancy

In May 2003, The Washington Post ran a series about the Nature Conservancy, a large, well-financed non-profit group, describing problems including the sale of ecologically sensitive land to its trustees as home sites and a \$1.55 million loan to its president. After the media scrutiny, the group suspended several controversial practices and the president repaid the loan.

Sen. Grassley, then chairman of the Finance Committee, and then-ranking member Sen. Max Baucus of Montana asked the group a series of questions. Ultimately, they issued a Finance Committee report on the Nature Conservancy and convened a hearing in June 2005 to explore land donations and the tax code in general. The examination of the Nature Conservancy made clear that many non-profit groups run like big corporations and control a big portion of the economy. In response to the committee's inquiries, the Nature Conservancy conducted its own internal review that led to significant reforms in board governance and the conduct of its conservation program.

The Smithsonian Institution

Sen. Grassley initiated an inquiry into the Smithsonian Institution, especially the secretary, based on the findings of an inspector general report that was done at his request. In February 2007, The Washington Post, based in part on the findings of the inspector general and Sen. Grassley's inquiry, detailed a generous compensation package, including a significant housing allowance and travel, and perks including significant office redecorating expenses by the Smithsonian's secretary at the institution's expense. The secretary resigned in March. The resignation prompted both the institution and Congress to examine management practices and the structure of the Smithsonian's board of regents. The institution commissioned an independent review of governance and committed to

making lasting changes that will restore the museum complex's value to the public and nation.

The Panel on the Non-profit Sector

Then-Chairman Grassley and Ranking Member Baucus wrote to the Independent Sector, asking the organization to form a working group to look at issues facing the non-profit sector. The Independent Sector, a well-respected umbrella group for many non-profits, convened a special Panel on the Nonprofit Sector to improve non-profit governance. The Panel on the Nonprofit Sector presented its final report to Congress in June 2005. The final report contains a carefully integrated set of recommendations for actions to improve and strengthen the sector's transparency, governance and accountability. Some of these recommendations can be acted upon by the sector itself without waiting for legislative or regulatory action. Other recommendations require Congress to make changes in the law, while still others encourage the IRS to strengthen and improve enforcement of laws and regulations.

The Catholic Health Association

The Catholic Health Association of the United States supports a large network of non-profit hospitals and health care facilities. In September 2006, the Catholic Health Association announced that its revised guidelines released in May for planning, measuring, and documenting community benefits had been formally adopted by 95 percent of its member health systems and 90 percent of the member hospitals. Sen. Grassley praised this effort by a large non-profit hospital association to adopt voluntary guidelines for best practices to care for the uninsured and under-insured Americans. He urged other hospital associations to follow suit.