

# *U.S. Senate Committee on Finance*

For Immediate Release

Monday, Dec. 6, 2004

## Grassley, Baucus Assert Finance Committee Jurisdiction to Appropriators

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, today expressed concern that appropriators have attempted to legislate in areas under the Finance Committee’s jurisdiction. Grassley and Baucus sent a letter to appropriators; the text follows.

December 6, 2004

The Honorable Ted Stevens  
Chairman  
Committee on Appropriations  
S-128 Capitol Building  
Washington, D.C. 20510

The Honorable Robert C. Byrd  
Ranking Member  
Committee on Appropriations  
S-126 Capitol Building  
Washington, D.C. 20510

The Honorable Richard C. Shelby  
Chairman  
Subcommittee on Transportation,  
Treasury, and General Government  
SD-133 Dirksen Office Building  
Washington, DC 20510

The Honorable Patty Murray  
Ranking Member  
Subcommittee on Transportation,  
Treasury, and General Government  
SD-144 Dirksen Office Building  
Washington, DC 20510

Dear Chairmen and Ranking Members:

We are writing to express our grave concerns regarding the inclusion of a number of provisions in the fiscal year 2005 omnibus appropriations bill that are within the jurisdiction of the Senate Finance Committee. As you know, one of those provisions – which granted the chairmen of the House and Senate Appropriations Committees unrestricted access to tax returns – jeopardized the completion of the omnibus appropriations bill. Passage of the omnibus bill was only achieved following the passage of a resolution that ensured that the bill would not be enrolled and sent to the President for his signature until the tax return access provision was removed. Fortunately, the House is expected to agree to the resolution.

On September 10, 2004, we sent you a letter asking for “renewed diligence in respecting the jurisdiction of the Finance Committee.” Prior and subsequent thereto, Finance Committee staff made regular and numerous inquiries with Appropriations Committee staff regarding the status of

appropriations legislation and specific subject matter areas which could implicate the jurisdiction of the Finance Committee. While we appreciate that Appropriations Committee staff did consult with Finance Committee staff on a preliminary basis on a number of provisions that are within the Finance Committee's jurisdiction and worked to keep several objectionable provisions out of the bill, a great deal of harm could have been avoided by communicating more openly.

There is no better example of the shortcomings in communication between our two Committees than the inclusion of section 222 in the omnibus bill. Section 222 states:

Hereafter, notwithstanding any other provision of law governing the disclosure of income tax returns or return information, upon written request of the Chairman of the House or Senate Committee on Appropriations, the Commissioner of the Internal Revenue Service shall allow agents designated by such Chairman access to Internal Revenue Service facilities and any tax returns or return information contained therein.

Essentially, section 222 gives the chairmen of the Appropriations Committees unrestricted access to tax returns, and bypasses the taxpayer protections included in tax code section 6103. Section 6103 was enacted in response to the Nixon Watergate scandal and Nixon's attempts to use the IRS to go after those on his enemies list. Section 6103 embodies the policy that returns are confidential, and provides that returns and return information may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in section 6103.

While there are exceptions to 6103, there are also many safeguards to protect taxpayer privacy. Unauthorized disclosures of tax return information under section 6103 are subject to criminal penalties of up to \$5,000 and five years in jail. These are powerful penalties that ensure powerful protections for taxpayers. The chairmen and ranking members of the tax writing committees are subject to these penalties. In contrast, section 222 gives the chairmen of the appropriations committees unrestricted access to taxpayer data, unrestricted ability to give others such access, and unrestricted ability to subsequently disclose such information. This provision severely damages the integrity of our voluntary tax system.

Unfortunately, section 222 was not the only infringement by the appropriators into the jurisdiction of the Senate Finance Committee. Specifically, the following tax, trade, and entitlement program policy provisions were also included:

Transportation Treasury Section 221 – Directing Treasury to submit a report to the Appropriations Committee describing how statutory provisions addressing currency manipulation by our trading partners can be "better clarified administratively", etc.

Transportation Treasury, Sec. 223 – Provides the Banking Committee with approval rights for Finance Committee nominations of the new Under Secretary for Enforcement and his or her new assistants.

Transportation Treasury, Sec. 643 – Original language amended Internal Revenue Code section 6402 to offset refunds to collect unemployment overpayments. As amended by H. Con. Res. 528, the final language amends 42 USC 653(j) to require the Department of Treasury (via the IRS) to share tax return information with the Department of Health and Human Services for purposes of collecting past due child support.

Labor Health Human Services, Sec. 219 – Suspends enforcement of a final rule for classifying hospitals under Medicare as inpatient rehabilitation facilities.

Other Matters, Section 110 - Amends ERISA to reverse a recent Supreme Court decision on retirement benefits paid under a multiemployer plan that primarily covers Alaskan employees.

Commerce – Providing that negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties.

Commerce – Establish a position of Chief Negotiator for Intellectual Property Enforcement.

Commerce, Sec. 623 – With the consent of the President, the Secretary of Commerce shall represent the United States Government in negotiating and monitoring international agreements regarding fisheries, marine mammals, or sea turtles.

Commerce, International Trade Administration Section – Negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties.

Congressional committees have specific jurisdictional authority. Such authority promotes expertise in specific areas by the members of those committees. For the Senate Finance Committee and the House Ways and Means Committee, this means that the members of such committees have or acquire expertise in tax, trade, and health policy. Not surprisingly, mistakes are made when jurisdictional divisions are violated without approval from the authorizing committee.

While Subcommittee Chairman Istook expressed his frustrations with an appropriations committee “chain of command problem over whether the subcommittee staff are ultimately accountable to the full committee staff—who represent the full committee chairman—or to the subcommittee chairman,” we are concerned with an apparent disregard for authorization committee jurisdiction and expertise. We have received copies of several pieces of communication dated November 18, 2004, initiated by a member of Chairman Istook’s staff, requesting inclusion of the tax return access provision. It is clear that the staff members of the full Committee and Subcommittees were aware of the provision and knew that it was a tax provision more appropriately in U.S. Code Title 26 but revised it to conceal the tax provision from the tax-writing Committees. Failure to give advance warning of the provision to Senate Finance Committee staff is inconsistent with prior oral communications between staff. The process which resulted in the fiscal year 2005 omnibus appropriations bill fiasco demands that we take tangible steps to change the process.

As such, we respectfully request that the Senate Finance Committee receive a copy of all appropriations conference reports prior to filing and with sufficient time for changes to be made to the bill. We do not intend for our request to unduly delay the appropriations process. Therefore, we give you our commitment to review each conference report within 24 hours. We hope in turn that you will give your commitment to provide the Finance Committee with the ability to ensure that tax policy is no longer changed in an appropriations measure without the authorization of the chairman and ranking member of the Senate Finance Committee.

Sincerely yours,

Charles E. Grassley  
Chairman

Max Baucus  
Ranking Member