

UNITED STATES CONGRESS

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LAWMAKERS CONCERNED ABOUT UNFAIR PENALTIES ON SMALL BUSINESSES

Legislation needed to end disproportionate penalties being imposed on small businesses

Washington, DC — Bipartisan lawmakers from the Senate Finance Committee and House Committee on Ways and Means sent a letter Friday to Internal Revenue Service (IRS) Commissioner Douglas H. Shulman, requesting assistance while Congress works to address certain penalties assessed on small businesses. The lawmakers are seeking to help small businesses that invested in listed tax shelter transactions that generated modest tax benefits, but resulted in tax penalties significantly larger than the tax benefits received.

In the letter, Senate Finance Chairman Max Baucus (D-Mont.), Ranking Member Chuck Grassley (R-Iowa), along with Ways and Means Oversight Subcommittee Chairman John Lewis (D-GA) and Ranking Member Charles Boustany (R-LA) point out that such disproportionate consequences were unexpected at the time the penalty was enacted, and they expect to introduce legislation that would result in penalty amounts in better proportion to the tax benefits. While the penalty has helped IRS end many abusive deals, many of the shelters being examined by the IRS involve significantly smaller dollar amounts, and current penalty levels may be excessive in some circumstances.

“Congress needs to do its part to ensure the tax code treats these businesses fairly. We’re asking the IRS to temporarily suspend the collection of certain penalties while we work on legislation to bring the assessed tax penalties in line with the received tax benefits,” said Baucus. **“This is an issue of fairness, and making sure businesses are not forced to pay undue penalties, particularly in a struggling economy. I don’t condone investments in tax shelters, but I also want to make sure our small businesses survive and thrive. It’s important we get this done as soon as possible and I urge and expect the IRS to comply with our request.”**

“When I advanced the legislation to shut down tax shelters, I did not intend to bankrupt small businesses that had no ill intent. I was focused on the big corporations that were actively seeking to hide their participation in tax shelters,” Grassley said. **“The penalty should be commensurate with the transgression.”**

“Small businesses should not be run out of business by tax shelter penalties aimed at big corporations. These issues require tax law changes that Ranking Member Boustany and I support,” Ways and Means Oversight Subcommittee Chairman Lewis stated at a June 4, 2009 hearing raising the issue. **“This penalty has unfairly punished far too many small businesses. It is only fair that the IRS stops collecting this penalty while Congress works to resolve this issue. It is the right thing to do.”**

“I am pleased to work with my colleagues on this effort to support and protect small businesses from excessive penalties,” stated Ways and Means Oversight Subcommittee Ranking Member Boustany. **“During these economic difficulties, our bipartisan and bicameral effort is critical to maintaining small businesses and supporting their role in creating jobs and the thousands of people they employ.”**

The lawmakers indicated that, while they are committed to creating bipartisan, bicameral legislation to modify the law and make the penalties more proportional to the tax savings, Commissioner Shulman should, “use the discretion provided to the IRS with its effective tax administration authority to suspend efforts to collect IRC [Internal Revenue Code] section 6707A liabilities ... while Congress acts to remedy this situation.”

Full text of the letter follows here:

June 12, 2009

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution NW
Washington, DC 20224

Dear Commissioner Shulman:

We are writing to request your assistance with respect to a tax matter affecting small businesses throughout our nation. It has come to our attention that many small business owners who thought they were investing in legitimate benefits plans unknowingly have invested in listed tax shelter transactions. They were not advised by the parties selling them the benefits packages that the plans had been identified by the Internal Revenue Service (IRS) as abusive transactions. They did not learn of this status until they were examined by the IRS and assessed substantial penalties for failing to disclose the transactions on their tax returns. The penalties, authorized by IRC section 6707A, are significantly larger than the tax benefits the small business owners received from their investments. This result was not anticipated at the time the penalty was enacted and we are seeking to modify the law so that the penalty amounts are more commensurate with the amounts of the tax benefits.

Internal Revenue Code section 6707A was enacted in the American Jobs Creation Act of 2004 as part of a package of provisions intended to help the IRS detect, deter and shut down tax shelters. Treasury regulations require taxpayers to tell the IRS if they invest in “listed” tax shelter transactions, and Section 6707A imposes large strict liability penalties on taxpayers who fail to disclose this information to the IRS. For listed transactions, the penalties are \$100,000 for natural persons and \$200,000 for others, including Subchapter C and Subchapter S corporations.

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At the time the penalty was enacted, "listed" tax shelters involving hundreds of millions of dollars were prevalent and the size of these transactions influenced the size of the disclosure penalty. The penalty resulted in substantially higher disclosure rates to the IRS, which helped to shut down many abusive deals. For that reason, we do not want to relax the disclosure standards. However, we recognize that many of the shelters now being examined by the IRS involve significantly smaller dollar amounts, and the \$100,000/\$200,000 penalty levels may be excessive in some circumstances.

There is now a bipartisan, bicameral commitment to enact legislation that will modify the law enacted in 2004 so that reduced penalty amounts will apply in cases with more modest tax benefits. In light of that commitment, we are writing to ask you to use the discretion provided to the IRS with its effective tax administration authority to suspend efforts to collect IRC section 6707A liabilities in cases where the annual tax benefits resulting from the listed transactions are less than \$100,000 for individuals and \$200,000 for other cases while Congress acts to remedy this situation.

We would very much appreciate your acquiescence with our request.

Sincerely,

Max Baucus
Chairman,
Senate Committee on Finance

Charles Grassley
Ranking Member,
Senate Committee on Finance

John Lewis
Chairman,
House Committee on Ways & Means
Subcommittee on Oversight

Charles W. Boustany, Jr.
Ranking Member,
House Committee on Ways & Means
Subcommittee on Oversight

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