



Committee On Finance

Max Baucus, Ranking Member

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Contacts: Laura Hayes, Lara Birkes
202-224-4515

FINANCE COMMITTEE HEARING ON ENRON TAX RETURN INVESTIGATION

It was almost one year ago today when we initiated the Finance Committee's investigation of Enron's tax returns. We called on the Joint Committee on Taxation – Congress's resident tax law experts – to review the activities and transactions related to Enron's tax returns. We also instructed the Joint Committee to review Enron's pension and executive compensation programs. Though allegations flourished about the demise of the country's 7th largest company, the Finance Committee did not rush to judgment. We proceeded carefully. We wanted a thoughtful and deliberative review. Our patience has proven wise.

Your report and findings will provide countless benefit to lawmakers and academics for years. It will be pivotal to our efforts to restore public confidence in corporate America and to our voluntary tax system. All across the country, the story of Enron undermined public confidence - in business ethics, in our accounting system, in our tax laws and in our pension laws.

The Joint Committee report shows that this erosion of confidence was warranted. Enron not only engaged in accounting gimmicks to boost stock prices – but Enron repeatedly abused the tax code. And they had help from investment bankers, lawyers, and accountants.

In transaction after transaction, these advisors helped Enron carry out its tax schemes with "opinion letters." Opinion letters are supposed to serve as an independent counsel's assurance of the proper tax treatment for specific facts in a given transaction. Enron paid millions of dollars for these opinion letters. Frankly, based on Joint Committee's investigation, many of them may not be worth the paper they were written on.

The report also describes collusion among these advisors. They made sure they kept the tax opinion writing business among friends. Enron and its advisors conspired to mine the tax code for tax schemes. They concealed the schemes in a complex maze of

entities and transactions. They ensured that no one – particularly the IRS – would ever discover what they were up to.

It is abundantly clear. The IRS was kept in the dark and out-maneuvered. The lack of adequate disclosure rules – and the lack of sufficient IRS enforcement resources – clearly helped Enron and its executives walk away with millions – maybe billions.

The Joint Committee’s report raises serious concerns about corporate ethics and the ethics of tax advisors. Where was the independence? Did they meet their professions’ code of ethics? How much were they willing to let greed affect their judgment?

The Joint Committee report should serve as a wake-up call. The conduct of some advisors who call themselves “professionals” is inexcusable. At the same time Enron was engaged in this shameful conduct, senior executives were lining their pockets. The company used schemes to “juice earnings” so their stock options skyrocketed.

Enron executives rushed to the bank to take out their own deferred savings – while leaving employees holding an empty bag. The rank-and-file employees watched as a lifetime of savings in Enron’s pension plan turned to dust.

Executives also got a free ride from the Board of Directors. The Board was asleep at the wheel. According to the Joint Committee, it was anything but independent. The Board operated as a rubber stamp.

Ms. Paull, I look forward to hearing from you – and learning the answers to some specific questions.

First, what role did Enron’s advisors – their outside lawyers, accountants, and investment bankers – play in these transactions? Was their conduct appropriate?

Second, was there collaboration among these so-called “independent” advisors? That is, instead of providing checks and balances – were they more concerned with padding their own pockets – and the pockets of their friends?

Third, what went wrong with Enron’s pension plans? Last Congress, this Committee reported out a bill to give rank-and-file employees more information – and help them diversify their pension plans. Is this enough to avoid future Enrons?

Fourth, what about the interplay between executive compensation and the rank-and-file pension plan? Rank-and-file employees had their entire life savings invested in the pension plan. While at the same time, Enron’s executives had an “executive privilege” – that is their own protected pot of money.

Mr. Chairman, the Joint Committee's report provides the Committee with a unique opportunity. We now have an invaluable insight into corporate abuse of the tax code. I am more convinced than ever that the tax shelter legislation the Finance Committee approved last week must be enacted immediately. The idea that some would suggest tax shelters are not a problem, is simply without merit. The Joint Committee's report puts that notion to rest.

This report may be viewed by some as a roadmap for abusing the tax code. Rest assured that it is not a roadmap. This is the end of the road.

The Joint Committee makes specific recommendations. Mr. Chairman, I look forward to working with you to develop additional legislation based on the report. And we should act without delay.

With that in mind, I support the Chairman's statement that any legislation enacted to curb abuses – as those highlighted in this report – must have an effective date of February 13, 2003. I look forward to hearing from our other distinguished witnesses.