



For Immediate Release
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BAUCUS, GRASSLEY APPLAUD IRS SUSPENSION OF CERTAIN PENALTIES ON SMALL BUSINESSES

Finance leaders pledge to fix undue penalty regime, expect continued IRS cooperation

Washington, DC — Senate Finance Committee Chairman Max Baucus (D-Mont.) and Ranking Member Chuck Grassley (R-Iowa) commented today after receiving notice from the Internal Revenue Service (IRS) that the agency is suspending collection of certain penalties to allow Congress time to work on legislation that would help small businesses that inadvertently invested in listed tax shelters, resulting in tax penalty assessments much greater than the amount of tax benefits received from the transaction. Baucus and Grassley, along with Ways and Means Oversight Subcommittee Chairman John Lewis (D-GA) and Ranking Member Charles Boustany (R-LA), sent a letter to IRS Commissioner Douglas H. Shulman on June 12, 2009 requesting assistance while Congress works to address the issue.

“I’m pleased the IRS complied with our request so that Congress can do its part to ensure the tax code treats small businesses fairly. We are working – both sides of the aisle and the Capitol – to ensure assessed tax penalties fall in line with received tax benefits. Until we reach that goal, we require cooperation from the IRS so that millions of American small businesses don’t get another chip stacked against them in the lagging economy,” said Baucus. **“Make no mistake, I will continue to go after tax cheats and tax shelter investments, but these are disproportionate and undue penalties on honest, hardworking American business owners and their employees. I appreciate the IRS’ help on this, and I will move this forward until the issue is resolved.”**

“It’s good to have the reprieve from the IRS, though the suspension will probably need to be longer in order to get necessary changes through Congress,” Grassley said. **“The IRS should also do the right thing by studying why only small businesses have been hit with the penalties since they’re less likely to have the expensive lawyers that big corporations do. It’s a matter of tax fairness for both the IRS and Congress.”**

The original letter sent by lawmakers to IRS Commissioner Shulman is available here:
<http://www.finance.senate.gov/press/Bpress/2009press/prb061509.pdf>.

Full text of the IRS response letter follows here:

July 6, 2009

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter is in response to your letter of June 12, 2009, on the penalties assessed under section 6707A of the Internal Revenue Code. As I have stated before, I am concerned that because the current statute applies uniformly without exceptions and without regard to the amount of tax in question, some taxpayers are caught in a penalty regime that the legislation did not intend.

While the Congress enacted the penalty in 2004, and as you note, with the intent of helping us detect and deter abusive tax shelter activity, many of the transactions now under examination involve tax benefits that are minor when compared to the statutory penalty amounts of \$100,000 (for individuals) and \$200,000 (for other taxpayers) per year. I am dismayed by the feedback that I have received from some of the most seasoned IRS examination professionals that this statutory provision, in certain cases, requires them to assess penalties that are way out of line with penalties for other similar cases of non-compliance.

You noted that a bipartisan, bicameral commitment exists to enact legislation that will modify the law so that penalty amounts will be more in a line with the tax benefits resulting from the transaction. Because of this legislative effort, you asked me to suspend collection efforts in cases where the tax benefits resulting from the listed transactions are less than \$100,000 for individuals and \$200,000 for other taxpayers while the Congress acts to remedy this situation.

Given your indication of a commitment to enact legislation to address this issue, and to provide the Congress that opportunity, we will not undertake any collection enforcement action through September 30, 2009, on cases where the annual tax benefit from the transaction is less than \$100,000 for individuals or \$200,000 for other taxpayers per year. Because the penalty determination is related to the underlying transaction, and we can only determine the amount of tax benefit through examination, we will continue our examination on these cases. This practice will allow us to identify cases meeting the collection suspension threshold and will not delay the information gathering and review process.

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Finally, while this letter relates to certain taxpayers who were caught up in a penalty regime in a way that the legislation did not intend, the basic underlying premise of the statute applying severe penalties where taxpayers employ abusive tax shelters in an attempt to avoid paying tax remains sound and critically important to the IRS.

I am sending a similar letter to your colleagues. I hope this information is responsive, and I would be happy to meet with you to further explore the issue. If you have questions, please contact me or have your staff contact Floyd Williams, Director, Office of Legislative Affairs at (202) 622-4725.

Sincerely,

Douglas H. Shulman

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