

For Immediate Release
Thursday, June 25, 2009

Grassley works to safeguard rail transit dollars for equipment upgrades,
where tax shelter corporations may be involved

WASHINGTON – Senator Chuck Grassley is urging House Majority Leader Steny Hoyer to include language in any proposal to give the Washington Metropolitan Area Transit Authority necessary additional funds for maintenance and upgrade of subway equipment to make sure the money would be used for safety improvements and not to pay off transit agencies' obligations to corporations, including foreign corporations, who use the agreements as tax shelters.

Grassley also has written to the American Public Transportation Association to ask how many other public transit systems may be constrained from making equipment upgrades by tax-advantaged leases.

“In addition to safeguarding additional dollars to improve the subway system in Washington in the wake of this week’s tragedy, it’s very important that any restraints created by SILO deals be dealt with at transit agencies nationwide,” said Grassley.

Hoyer said earlier this week that Congress might consider providing more money to modernize Washington’s subway system, if a funding shortage was a factor in the fatal crash on Monday.

Grassley said the leasing transactions in question are known as SILOs, where transit agencies have sold public transportation assets such as railcars, only to lease them back from purchasers, with the result of providing tax depreciation deductions to the purchasers. Such transactions were motivated solely by collection of fees on one side and tax benefits on the other, rather than any change to the services provided by transit agencies. While he was Chairman of the Senate Committee on Finance in 2004, Grassley won passage of bipartisan legislation to shut down these kinds of tax shelters. His original reform was retroactive but was watered down during conference negotiations to apply only prospectively.

In 2006, the Washington Metropolitan Transit Authority rejected recommendations made by the National Transportation Safety Board to retire or do a heavy overhaul on the 1000 Series, Rohr railcars because “WMATA is constrained by tax advantage leases, which require that WMATA keep the 1000 Series cars in service at least until the end of 2014.” The recommendations came after a 2004 crash involving the series at the Woodley Park metro station. The railcars are said to be among Metro’s oldest cars and are reported to have been involved in Monday’s fatal crash near the Fort Totten station.

There was an effort late last year to secure a tax shelter bailout for transit agencies as part of the auto bailout that failed to pass in the Senate. Grassley and others opposed a bailout for the transit agencies because it would have perpetuated the tax shelter. “I don’t want any new money

in the pipeline for Metro today to potentially go to a foreign bank using a SILO deal as a tax shelter.”

The legislation enacted in 2004 established section 470 of the Internal Revenue Code. Section 470 effectively shuts down the tax benefits of entering into SILO transactions. Separate, subsequent legislation established Internal Revenue Code Section 4965, which designates certain transactions as prohibited tax shelter transactions and includes new entity-level and manager-level excise taxes and disclosure rules applicable to prohibited tax shelter transactions to which a tax-exempt entity is a party.

In between these two acts of Congress, the Internal Revenue Service issued Notice 2005-13, Tax-Exempt Leasing Involving Defeasance. The Notice describes “transactions in which a taxpayer enters into a purported sale-leaseback arrangement with a tax-indifferent person in which substantially all of the tax-indifferent person’s payment obligations are economically defeased and the taxpayer’s risk of loss from a decline, and opportunity for profit from an increase, in the value of the leased property are limited.” The Notice identifies these transactions, and substantially similar transactions, as listed transactions for purposes of section 1.6011-4(b)(2) of the Income Tax Regulations and IRC sections 6111 and 6112. In August 2008, the IRS announced a settlement initiative for parties to these transactions to unwind the tax benefits from these transactions.

The Washington Metropolitan Area Transit Authority and the foreign bank with which WMATA entered into the tax shelter entered into a settlement agreement regarding the fees owed by WMATA to the foreign bank as a result of WMATA’s default on its tax-shelter contract. Published reports indicate that the terms of the settlement have not been disclosed.

The text of Grassley’s letters to the House Majority Leader and the American Public Transportation Association is below.

June 24, 2009

The Honorable Steny H. Hoyer
Majority Leader
U.S. House of Representatives
H-107, The Capitol
Washington, DC 20515

Dear Majority Leader:

I understand that you are considering legislation to provide additional funding to the Washington Metropolitan Area Transit Authority (WMATA). In light of this week’s tragedy, such funding may be appropriate. However, I am troubled by WMATA’s response to a 2006 National Transportation Safety Board (NTSB) recommendation.

The NTSB, in its 2006 report on the 2004 Metrorail crash at the Woodley Park metro station made the following recommendation.

“Either accelerate retirement of Rohr-built railcars, or if those railcars are not retired but instead rehabilitated, then the Rohr-built passenger railcars should incorporate a retrofit of crashworthiness collision protection that is comparable to the 6000-series railcars.” (R-06-2)

WMATA’s response was:

“WMATA does not plan to do a heavy overhaul on the 1000 Series, Rohr railcars. Instead WMATA plans to replace these railcars with the 7000 Series railcars on which design has already started. WMATA is constrained by tax advantage leases, which require that WMATA keep the 1000 Series cars in service at least until the end of 2014. The 296 Rohr railcars make up over a third of WMATA’s current rail fleet and have performed well for over thirty years. The railcars will be replaced around 2014.”

It would seem from this response that WMATA disregarded risks to passenger safety in order to fulfill a contract entered into as an accommodation party to a tax shelter. By entering into tax shelter contracts, the WMATA appears to have allowed banks – rather than experts on passenger safety -- to dictate what kind of trains Metro riders use and for how many years they are in service.

As you may know, Congress shut down the Sale-In-Lease-Out (SILO) transactions in the American Jobs Creation Act of 2004 and the Internal Revenue Service shut down the Lease-In-Lease-Out (LILO) transactions several years earlier. In the fall of 2008, several public transit agencies, including WMATA, sought bailout money to make payments to tax shelter participants under these same transactions. I was opposed then, as I am now, to taxpayer dollars being used to pay off the counterparties to these transactions.

All WMATA funding, including any new funding, should be dedicated to improving the safety and reliability of the public transit system. As you contemplate providing WMATA with \$3 billion of funding, I ask that you prohibit payments to the bank with which WMATA entered into the tax shelter from any WMATA funds.

Thank you for your consideration.

Sincerely,

Chuck Grassley of Iowa
United States Senator
Ranking Member of the Committee on Finance

June 24, 2009

William W. Millar
President

American Public Transportation Association
1666 K Street, NW
Washington, DC 20006

Dear Mr. Millar:

This week's accident involving the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system is very tragic. What is just as troubling is that WMATA appears to have disregarded risks to passenger safety in order to continue providing tax benefits to tax shelter participants.

The National Transportation Safety Board, in its 2006 report on the 2004 WMATA Metrorail crash at the Woodley Park metro station, made the following recommendation.

“Either accelerate retirement of Rohr-built railcars, or if those railcars are not retired but instead rehabilitated, then the Rohr-built passenger railcars should incorporate a retrofit of crashworthiness collision protection that is comparable to the 6000-series railcars.” (R-06-2)

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As you may know, Congress shut down the Sale-In-Lease-Out (SILO) transactions in the American Jobs Creation Act of 2004 and the Internal Revenue Service shut down the Lease-In-Lease-Out (LILO) transactions several years earlier. However, it appears that many of these transactions are still in place and may be the reason that public transit agencies are not making safety upgrades. Since these agencies are also your members, I am requesting that you provide a list of agencies that have participated in SILO-LILO transactions, the counterparties to these transactions, the payments agencies have made and continue to make to these counterparties, and a list of safety and reliability projects identified by these agencies that have not been funded.

While transit agencies requested federal bailout assistance last fall, which I opposed, it was not apparent that such funds would be used for actual system improvements or maintenance. It appeared the agencies sought funds to pay off the tax shelter accommodating parties in light of AIG's collapse, not to buy new equipment. If transit agencies are allowing banks – rather than experts on passenger safety -- to dictate system upgrades and maintenance, Congress may need to legislate further.

Thank you for your prompt attention to this matter.

Sincerely,

Chuck Grassley of Iowa
United States Senator
Ranking Member of the Committee on Finance