



# Committee On Finance

Max Baucus, Chairman

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Statement of Senate Finance Committee  
Chairman Max Baucus  
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Today, we will consider the issue of corporate tax shelters. I imagine that, as long as there have been taxes, there have been tax shelters. But there's a difference. We're seeing increasingly complex transactions that take tax shelters to a new, and disturbing, level.

Each day, the newspapers run stories about various tax motivated transactions designed to cut corporate tax bills. We've read press reports about Enron setting up hundreds of offshore entities. About Global Crossing incorporating overseas to escape U.S. tax.

Recently, we've even learned that some prominent U.S. companies are literally re-incorporating in off-shore tax havens in order to avoid U.S. taxes. They are, in effect, renouncing their U.S. citizenship to cut their taxes.

A partner in one of the firms marketing these so-called "inversion" deals admitted that some companies may be concerned that it is unpatriotic to abandon their U.S. corporate citizenship. But he went on to say that "the improvement on earnings is powerful enough ... that maybe the patriotism issue needs to take a back seat...." You heard me right. "Maybe the patriotism issue needs to take a back seat."

This is very troubling. Especially now, as we all try to pull together as a nation. These tax shelters can do serious harm. They undermine public confidence in the tax system. They make average taxpayers feel like chumps, who have to pay more because the big guys are paying less.

And there's another important point. Tax shelters are bad for the economy. Professor Michael Graetz once defined a tax shelter as a "deal done by very smart people, that, absent tax considerations, would be very stupid."

Here's why. Abusive corporate tax shelters create a tax benefit without any corresponding economic benefit. There's no new product. No technological innovation. Just a tax break. This can have a pervasive effect, forcing perfectly honest companies to consider setting up a shelter of their own to avoid being placed at a competitive disadvantage. That, in a nutshell, is the problem.

With all modesty, I can say that this Committee has been working hard to find a solution. In May 2000, under the leadership of Senators Roth and Moynihan, the Committee first issued draft legislation to limit aggressive tax shelters. Since then, Senator Grassley and I have issued two further drafts, which respond to comments from the Treasury and the public. We issued the most recent draft in August.

For a time, the Treasury Department was also hard at work on the tax shelter problem. Secretary Summers called it our most significant tax compliance problem. I was disappointed that, initially, the new Administration did not seem to share the concern. Well, better late than never. Recently, Treasury Secretary O'Neill announced that the Administration will aggressively address this issue and is working on both administrative and legislative proposals to curtail abusive tax shelters.

This announcement is a good step in the right direction. Yesterday's more detailed announcement was another. I commend the Secretary, and I hope that our witnesses will provide further insights today.

With that background, let me turn to the details of today's hearing. We will hear from three distinguished Administration witnesses: Assistant Secretary of Tax Policy, Mr. Mark Weinberger; IRS Chief Counsel, Mr. B. John Williams; and IRS Commissioner of Large and Mid-Size Businesses, Mr. Larry Langdon.

I will have three main questions.

- First. Do we have a tax shelter problem? If so, what is the nature of the problem? What do we think about the recent court decisions? What about corporate inversions?
- Second. What should we do? A few years ago, some people said we should wait for the new disclosure regulations to take effect. Now, we're getting data on the operation of the regulations. It appears that compliance with the regulations are, to put it bluntly, a joke. What does the Treasury Department propose, both administratively and legislatively?
- Third, how can we work together? How can we cooperate to write meaningful and effective legislation this year?

Let me explain my own view. With respect to tax shelters, my hope is that, with the Administration's cooperation, we can refine the various proposals and quickly develop anti-shelter legislation.

I also think that we should consider legislation to put a brake on the potential rush to move U.S. corporate headquarters to tax havens, through corporate inversions. I understand that the corporate inversion issue is complex. I also understand that, over the long term, we may need to consider whether the structure of the U.S. international tax rules creates an incentive for U.S.

corporations to shift their operations abroad in order to remain competitive.

But, in addition to the long term, we also have to think of the short term. At the same time that we study the issue, we may need to limit companies' ability to engage in these transactions. Otherwise, we'll be giving an advantage to the companies that decide, to quote again, that "maybe the patriotism issue needs to take a back seat."

Therefore, Senator Grassley and I plan to work together to develop two bills, for introduction shortly after the recess. One on tax shelters, the other on corporate inversions. I hope that both can be enacted into law this year.

One final point. As the April 15th tax filing deadline approaches, most Americans will sit down at the kitchen table, or at their home computer, and figure out their taxes. Sure, they'll grumble a little. We all think taxes are too high. We all think the forms and calculations are too complex. But, by and large, with quiet patriotism, average Americans will step up and pay their fair share. They're counting on us to make sure that sophisticated corporations pay their fair share, as well.