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# Grassley Advances Priorities on Charities, Corporate Expatriation

WASHINGTON – Proposals from Sen. Chuck Grassley on giving more tax incentives to encourage charitable giving and preventing corporations from nominally moving overseas to avoid taxes, among others, are scheduled for Committee on Finance consideration this week. Grassley, ranking member of the Committee on Finance, worked to include his priorities in comprehensive legislation to receive committee votes on Thursday.

"I appreciate Chairman Baucus' attention to key tax priorities," Grassley said. "I think the package includes items that deserve quick consideration and I hope, enactment."

Grassley priorities in the chairman's comprehensive package include:

**Charitable giving**. Grassley's interest in legislation to increase the number of tax breaks for charitable donations stems from March 2001, when as then-chairman he convened a Finance Committee hearing to explore charities' extensive needs and the best way to adjust the tax code to meet those needs. Witnesses included Dr. Mary Sue Coleman, president of the University of Iowa, who expressed support for the President's plan to allow tax-free charitable gifts from individual retirement accounts, and a representative from America's Second Harvest, a national network of food banks, who expressed support for legislation that would provide a tax incentive for family farmers and businesses to donate food for humanitarian aid. At Grassley's encouragement, the chairman's mark includes:

- allowing age-qualified individual retirement account owners to roll over their account money to charity without paying taxes;
- an enhanced tax deduction for the contribution of food to food banks and other charities;
- an increased tax incentive to encourage the donation of books to schools, libraries and literacy programs;
- increased tax incentives to encourage the donation of land for conservation;
- increased tax incentives to encourage the sale of land for conservation purposes, because the sale of land for conservation under current law triggers a huge capital gains tax and for farmers in Iowa and nationwide, greatly discourages land conservation and diminishes their retirement income;
- and increased tax incentives to encourage landowner participation in the federal Partners for Fish and Wildlife program to conserve and restore fish and wildlife habitat, a program that is increasingly popular in Iowa.

"Charities have a lot of needs, and many Americans have a lot to give," Grassley said. "It makes perfect sense to make sure the tax code eases the flow of generosity from taxpayers to worthy causes."

Grassley said that while Congress works to provide new incentives for charitable giving, it also must help ensure that charities are accountable to donors and taxpayers. Toward that end, Grassley has requested a series of General Accounting Office reviews of charities' financial practices. He also is seeking comprehensive financial information from the American Red Cross, including its distribution of financial relief to the Sept. 11 victims.

Grassley secured "sunshine" provisions in the chairman's mark that would improve the usefulness and accessibility of information included in the tax returns of tax-exempt organizations to the public and to states, which police fraudulent charities.

**Corporate expatriation**. The chairman's mark generally follows the provisions of the *Reversing the Expatriation of Profits Offshore* (REPO) Act (S. 2119), which Grassley and Baucus introduced in April. The legislation reins in companies that set up nominal operations overseas, such as in Bermuda, to avoid paying millions of dollars of federal taxes. A detailed explanation of modifications follows.

"The average individual taxpayer can't skip out on his tax bill. He doesn't have the luxury of setting up a filing cabinet and a mail box overseas to escape his federal taxes. The same should be true for corporations," Grassley said.

Grassley said the overseas deals draw attention to the shortcomings of international tax rules. Many companies that rejected these deals and stayed in the United States have to struggle with the complexity and burdens of international tax rules. The flaws often hurt these companies' ability to compete in the global marketplace. The U.S. international tax system should be in line with the nation's open market trade policy, and the committee should reform that system as soon as possible, Grassley said.

**Abusive tax shelters**. The chairman's mark includes a technically refined version of the *Tax Shelter Transparency Act* (S. 2498), which Baucus and Grassley introduced last month. The measure is meant to rein in abusive tax shelters designed to avoid paying taxes. For many years, tax shelter promoters and participants have played a game of hide-and-seek with the Internal Revenue Service, burying their shelters in layers of detail or simply sealing off detection through a web of conspiracy, Grassley said. This legislation will flush out tax shelters so the IRS can identify them and shut down illegal operations.

"Average working Americans can't pull up stakes and move to Bermuda or set up a fancy tax shelter to avoid paying taxes," Grassley said. "Companies that do this make a sucker out of working Americans and companies that stay in the United States and pay their fair share of taxes."

*Note: A description of the chairman's mark will be available at http://www.house.gov/jct/ later today*.

Modifications of the *REPO Act* in the Chairman's Mark

The mark generally follows the provisions of S. 2119, the *Reversing the Expatriation of*

*Profits Offshore (REPO) Act*, with certain modifications concerning "limited" inversions. The REPO Act addresses two classes of inversions – "pure" inversions and "limited" inversions. The REPO Act only applies if the foreign parent corporation is a "shell" corporation that does not have substantial business activities in its country of incorporation.

Inversions occur when a U.S. corporation becomes a subsidiary of, or otherwise transfers substantially all of its properties to, a foreign corporation that was previously a subsidiary of the U.S. corporation. A "pure" inversion occurs when the shareholders of the U.S. corporation end up with 80% or more of the vote or value of the stock of the new foreign parent corporation immediately after the inversion. For pure inversions, the new foreign parent corporation will be deemed a domestic corporation for U.S. tax purposes. By dragging the foreign shell corporation back onto U.S. shores, the anticipated benefit of escaping U.S. tax on foreign operations will be completely denied.

Limited inversions are similar to pure inversions, except that the shareholders of the U.S. corporation end up with more than 50% and less than 80% of the vote or value of the stock of the foreign corporation. Limited inversions capture inversion transactions that are structured to evade the 80% test of the pure inversion provisions, while at the same time allow the U.S. shareholders to effectively control the new foreign parent corporation.

As under the REPO Act, the chairman's mark will not disregard the foreign parent corporation created by limited inversion transactions. Similarly, the current law provisions that impose tax on the U.S. corporation when it transfers its foreign assets and foreign subsidiaries to the newly formed foreign parent corporation would be strengthened. Specifically, the REPO Act would not allow the tax imposed on the untaxed earnings and appreciation in value of foreign properties to be reduced by any corporate tax attribute, credit, or other means. This is intended to strengthen the current law provisions that impose the corporate-level "toll charge" for moving assets out of the U.S. taxing jurisdiction.

The procedure for monitoring income stripping under limited inversions is modified by the chairman's mark to conform with the approach applicable to individual expatriations. The mark will require the inverting corporation to submit an annual pre-filing application to the IRS which describes in detail all related party transactions between the U.S. corporation and any foreign related entities, including the newly formed foreign parent corporation. Within 90 days of receiving the application, the IRS must either (a) accept the related party transactions described in the application, (b) accept the application as good faith substantial compliance with the pre-filing requirement, but reserve its views on the related party transactions until the normal examination process is complete, or (c) make a determination that the application is frivolous or insubstantial, which will result in the disallowance of deductions for related party transactions. If the IRS does not respond to the application within 90 days, the service will be deemed to have accepted the application as good faith substantial compliance with the pre-filing requirement, reserving its right to challenge the related party transactions during the normal examination process. Correspondingly, if an inverting corporation fails to submit the required pre-filing application, all deductions for related party transactions will be disallowed. The mark will require these pre-filing agreements for 10 years following the inversion and will cover all related party transactions, including intangibles transfers, cost sharing arrangements, and similar transactions.

As a further measure to prevent income stripping, the mark adopts the REPO Act provisions to substantially reduce the amount of interest expense that may be deducted by a U.S. corporation for interest payments remitted to a related foreign party after an inversion transaction.

The inversion provisions are generally effective for inversions occurring on or after March 21, 2002. Numerous U.S. companies engaged in inversion transactions prior to March 21, 2002. The mark would not reverse those transactions, even if they were pure inversions. However, concern remains that certain of those prior inversions were structured to inappropriately strip-out the earnings of the U.S. company that is now a subsidiary of a foreign corporation. Accordingly, companies that completed their inversions after 1996 will be subject to the 10-year pre-filing process otherwise imposed on limited inversion transactions. In addition, any asset transfers by those companies on or after March 21, 2002, will be subject to the limited inversion provisions prohibiting reduction of the corporate-level tax "toll charge" for moving assets out of the U.S. taxing jurisdiction.