

1 EXECUTIVE COMMITTEE MEETING REGARDING A CONTINUATION OF  
2 THE CHAIRMAN'S MARK ON TAX INCENTIVES TO ENCOURAGE  
3 CHARITABLE GIVING

4 TUESDAY, JUNE 18, 2002

5 U.S. Senate,  
6 Committee on Finance,  
7 Washington, DC.

8 The meeting was convened, pursuant to recess, at  
9 2:34 p.m., in room 215, Dirksen Senate Office Building,  
10 Hon. Max Baucus (chairman of the committee) presiding.

11 Also present: Senators Rockefeller, Breaux,  
12 Jeffords, Bingaman, Lincoln, Grassley, Hatch, Nickles,  
13 Gramm, Snowe, and Thomas.

14 Also present: John Angell, Staff Director; Mike  
15 Evans, Chief Counsel and Deputy Staff Director; Kolan  
16 Davis, Republican Staff Director and Chief Counsel; Carla  
17 Martin, Chief Clerk.

18 Also present: Russell Sullivan, Chief Tax Counsel;  
19 Dean Zerbe, Tax Counsel, Minority; Pamela Olsen, Acting  
20 Assistant Secretary for Tax Policy; Lindy Paull, Chief of  
21 Staff, Joint Tax Committee; Elizabeth Paris, Tax Counsel,  
22 Minority; Dr. Elizabeth Fowler, Chief Health Policy  
23 Director.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM  
2 MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

3

4 The Chairman. The committee will come to order.

5 We will now resume the mark-up of the Chairman's mark  
6 for H.R. 7, the CARE Act, a bill to promote increased  
7 charitable giving.

8 There are two amendments yet to dispose of, deal  
9 with, whatever way we think most appropriate, Senator  
10 Grassley's amendment on IDAs, and Senator Lincoln's  
11 amendment to modify the stockholding limitation for  
12 private foundations.

13 I am not aware of any other amendments that Senators  
14 plan to offer. It is the Chair's intent that we proceed  
15 to consider these two amendments and then move favorably  
16 to report the Chairman's mark, as modified. We will also  
17 separately report out the bills on tax shelters and  
18 havens.

19 Under the committee's rules, we need 7 members to  
20 consider amendments and 11 members to report a measure.  
21 To accommodate Senators' schedules, we will dispose of  
22 amendments now to the degree we can, depending upon the  
23 number of Senators present, then hold the votes necessary  
24 to report the bills at 3:15 today. I hope we can report  
25 the bills out by voice vote.

1 Senator Grassley?

2 Senator Grassley. Yes. Thank you, Mr. Chairman. I  
3 thought I would take just a minute to update everybody on  
4 my amendment. We had a pretty good discussion about it  
5 when we adjourned last week.

6 So, I would say that this amendment, if you will  
7 remember, is co-sponsored by Chairman Baucus and Senator  
8 Hatch in conjunction with Senator Grassley. I think we  
9 had a very useful discussion about the individual  
10 development accounts.

11 Senator Kyl and Senator Nickles did a good job of  
12 highlighting legitimate concerns about the IDA program.  
13 I share those concerns, and that is reflected in this  
14 amendment.

15 This amendment is a very scaled-back version of the  
16 \$12.5 billion proposal originally championed by Senator  
17 Santorum and by Senator Lieberman, and is also greatly  
18 reduced from the CARES Act, \$2.10 billion IDA proposals  
19 supported by the President.

20 This amendment is for a trial program of IDAs of \$450  
21 million, and it does have a sunset. The amendment  
22 imposes significant new tests and restrictions on the IDA  
23 program. Now, there is no question that the IDAs are  
24 going to have to prove themselves, and that is why this  
25 was sunsetted. That is why it was a cut-back from other

1 original proposals.

2 I know that my colleagues will be, and ought to be,  
3 watching this program closely. They know my long-time  
4 commitment to oversight, so obviously I will be watching  
5 it.

6 That said, this amendment gives the IDA program a  
7 limited opportunity. As my colleagues know, the IDA  
8 program provides encouragement to low-income families and  
9 individuals to save for a home, a small business, or  
10 secondary education.

11 IDAs achieve this by providing a dollar-for-dollar  
12 match, up to \$500 a year, for families who save money.  
13 The families can save up to \$2,500 in savings, matched  
14 over a 5-year period of time.

15 The funds for the program are provided in a tax  
16 credit to banks, or a transferrable credit in the case of  
17 credit unions. The banks and credit unions receive  
18 credits only to the extent that families are  
19 participating in the program.

20 IDAs provide a real opportunity for low-income  
21 families to realize the dream of a home, small business,  
22 or education. All of us believe in those and all of us  
23 have supported programs along that line.

24 But this is targeted towards people that otherwise  
25 would not have an incentive to save, or even the

1 capability of saving, giving that incentive, and  
2 consequently, the capability.

3 Finally, my colleagues should know that the IDA  
4 program is supported by the administration as if of great  
5 importance to our colleagues, Senators Santorum and  
6 Lieberman, the authors of the CARE Act.

7 So, I urge my colleagues to support. Thank you.

8 The Chairman. Thank you, Senator. I particularly  
9 thank you for all of your hard work on this.

10 I would like to mention three improvements that we  
11 have made. First, the amendment is significantly smaller  
12 than the administration's \$1.7 billion proposal in terms  
13 of costs, and also number of accounts. We have also made  
14 sure that accounts will be apportioned across the  
15 country, assuring that rural States will get their fair  
16 share as well.

17 Third, we have beefed up the reporting requirements  
18 for financial institutions. This is designed to help  
19 make sure that account holders are withdrawing their  
20 money for legitimate purposes, helping to prevent any  
21 abuse.

22 I think that IDAs can help low-income Americans, can  
23 help them save for the future, and I encourage Senators  
24 to support the amendment.

25 Seeing there are an insufficient number of Senators

1 to act on it, unless Senators wish to speak on it--I see  
2 Senator Lincoln.

3 Senator Lincoln. Yes, Mr. Chairman.

4 As you mentioned earlier, before the Finance  
5 Committee adjourned last week, I had proposed an  
6 amendment that would increase from 2 percent to 5 percent  
7 the amount of stock a private foundation can hold in a  
8 publicly traded corporation.

9 The amendment would result in substantial and  
10 immediate increases in the amount of charitable dollars  
11 flowing to private foundations, which I think is  
12 ultimately one of our main objectives in dealing with  
13 this initiative.

14 The current 2 percent limitation, I feel like, is  
15 arbitrarily low and restricts the ability of family  
16 business owners and others to make substantial and  
17 permanent contributions of stock for charitable  
18 activities through a private foundation.

19 As Senator Grassley mentioned last week when we were  
20 discussing it, it may be the only way that family members  
21 have to give, or what they have to give.

22 Last week when we were debating it, the Treasury  
23 Department raised some technical concerns to my  
24 amendment, and subsequently I know that my staff has been  
25 working with the Treasury Department and with your staff

1 to incorporate adequate safeguards that would ensure that  
2 the modest increase to 5 percent will not allow any  
3 opportunities for abuse. Obviously, we want to ensure  
4 that that is the case.

5 I believe that we are all very close to coming to an  
6 agreement and a resolution that everybody can feel  
7 comfortable with on the language, Mr. Chairman.

8 I would hope that, if you would be willing to agree  
9 to continue working with me to clarify that amendment as  
10 the bill moves onto the floor, I would be willing to  
11 withdraw the amendment that I have offered here, again,  
12 if we can get the commitment that the committee is  
13 willing to work with us.

14 I know Treasury has, and we certainly want to come up  
15 with something that everybody seems comfortable with,  
16 particularly in terms of any abuse that they feel like  
17 might be out there.

18 The Chairman. Well, I appreciate your very hard  
19 work, Senator. I know you are working to get the  
20 provision passed. It helps the general purpose of the  
21 underlying bill.

22 I would be more than happy to work with the Senator  
23 on this matter and see what modifications we can come up  
24 with to make the bill acceptable for inclusion on the  
25 floor. I know the Senator's good, hard work, and how

1 industrious she is, how creative she is, and will in the  
2 same vein try to see if we can figure out some solutions.

3 Senator Lincoln. We will continue to be industrious  
4 and creative in working towards finding the solution, and  
5 I appreciate your willingness, and Senator Grassley's  
6 willingness, as well as the Treasury's, to work with us  
7 to come up with any safeguards that need to be there in  
8 order to make sure everybody is comfortable with what we  
9 are trying to do, which ultimately is to give individuals  
10 the opportunity to be able to give more in terms of  
11 charitable giving to their foundations. I think we can  
12 do that.

13 The Chairman. Thank you.

14 Senator Lincoln. So, I thank you, Mr. Chairman.

15 May I just add one thing? I understand from the  
16 staff that you and Senator Grassley are working to  
17 reinstate the mark's original food donation provisions  
18 once the CARE Act reaches the Senate floor. I was an  
19 original co-sponsor, or original sponsor, of the food  
20 donations bill and I strongly support your commitment to  
21 working on that.

22 So, I am confident that this change will help in our  
23 fight against hunger by redirecting a portion of the 96  
24 billion pounds of food that are wasted every year in the  
25 U.S., and redirecting that to food banks.



1 I know in my own State, even though we are a  
2 breadbasket of the world, we rank, I think, in the top  
3 three or four in terms of hunger among children, and it  
4 is definitely something we could be doing more to solve.

5 The Chairman. Yes. The Senator is correct. We are  
6 trying to work out the amendment to add back some of the  
7 amounts that were, unfortunately, reduced when we were  
8 marking up the bill. But we are working with the Senator  
9 to accomplish just that purpose.

10 Senator Lincoln. We applaud your efforts and  
11 encourage you to do so. Any way that I can be helpful, I  
12 certainly will.

13 The Chairman. Thank you.

14 Senator Lincoln. Thank you, Mr. Chairman.

15 The Chairman. And Senator Grassley is echoing the  
16 refrain.

17 Senator Lincoln. Thank you.

18 The Chairman. Last Thursday, Senator Thompson  
19 raised an important issue regarding the enforcement of  
20 the conservation capital gains exclusion proposal. I  
21 would like to ask the staff for an update on this,  
22 please.

23 Mr. Sullivan, would you inform the committee on the  
24 latest development?

25 Mr. Sullivan. Yes, Mr. Chairman. Senator Thompson

1 expressed concern about the enforcement mechanism to  
2 ensure that any land that is sold to a qualified charity  
3 remains to be used exclusively for conservation purposes.

4 We took a look at the Chairman's mark, and there is  
5 some silence in some areas about how this would be  
6 enforced. So, today we would request drafting authority  
7 to add rules to strengthen the requirement that the  
8 property be dedicated to conservation purposes in  
9 perpetuity.

10 Specifically, we would propose that if the  
11 conservation restriction is removed or the property is  
12 transferred to a non-qualified organization, then a 20  
13 percent excise tax would apply to the proceeds, or in  
14 certain cases the fair market value, and that the gain  
15 would be treated as unrelated trade or business income.

16 In addition, the qualified conservation organization  
17 will be required to make periodic reports to the IRS as  
18 to the use of the property.

19 The Chairman. Thank you, Mr. Sullivan. Frankly,  
20 when Senator Thompson raised this issue, I thought he had  
21 a point because it looked a little bit loose here. I am  
22 glad that he kept probing and pushing. I think that you  
23 are making a good clarification.

24 I assume there is no objection from the committee  
25 here, so without objection the staff will have the

1 authority to clarify this as outlined in the briefing.

2 Since fewer than 11 Senators are present, and fewer  
3 than 7 are present to dispose of the amendment offered by  
4 Senator Grassley, the committee will now recess until the  
5 time when we expect a quorum to be present, and we expect  
6 that time to be 3:15.

7 The committee is in recess.

8 [Whereupon, at 2:45 p.m. the meeting was recessed.]

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## AFTER RECESS

[3:26 p.m.]

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The Chairman. The committee will come to order.

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There are 7 Senators present, which, under the committee rules, is enough to conduct business.

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There is one amendment pending before the committee, and that is the amendment offered by the Senator from Iowa, Senator Grassley.

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Is there any further discussion on the amendment?

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Senator Nickles. Mr. Chairman?

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The Chairman. Senator Nickles?

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Senator Nickles. Mr. Chairman, I am trying to remember. The Grassley amendment applied to, what, a couple hundred thousand?

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Mr. Zerbe. To 300,000, Senator.

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Senator Nickles. To 300,000. For what period?

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Mr. Zerbe. Approximately 9 years, with a sunset provision at the end, Senator.

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Senator Nickles. For how many years?

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Mr. Zerbe. Nine years, Senator.

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Senator Nickles. Nine years. But I thought it was like two years.

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Mr. Zerbe. I think there was some earlier confusion on that, Senator. It is 300,000 blocks of authorization of IDA accounts, broken up into three 100,000 periods.

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1 The first one is from 2003 to 2007.

2 Senator Nickles. And each one of those individuals  
3 could save how much that would be matched by the  
4 government?

5 Mr. Zerbe. Senator, each individual or a family  
6 could save \$500 per year, up to a total of \$2,500.

7 Senator Nickles. And the estimated revenue impact  
8 of this 300,000 would be how much?

9 Mr. Zerbe. It would be \$450 million, Senator.

10 Senator Nickles. And if it was available to all  
11 eligible--and eligible being defined that they would meet  
12 the income criteria, not have the 300,000 cap--what would  
13 this cost to the program be?

14 Mr. Zerbe. The initial proposal of Senators  
15 Santorum and Lieberman were within \$12.5 billion, and  
16 that would have covered everybody, all eligible  
17 populations.

18 Senator Nickles. \$12.5 billion?

19 Mr. Zerbe. Yes, Senator.

20 Senator Nickles. Over 10 years?

21 Mr. Zerbe. Yes, sir.

22 Senator Nickles. I appreciate it.

23 Mr. Chairman, I just have some reservations about the  
24 cost of this. I do not know how, when you start it, you  
25 could limit it. I understand Senator Grassley's and

1 Senator Santorum's interest in it. I just have some  
2 reservations.

3 The Chairman. I appreciate that, Senator.

4 Is there any further discussion on the amendment?

5 [No response]

6 The Chairman. If not, all those in favor vote aye.

7 [A chorus of ayes]

8 The Chairman. Those opposed, no.

9 [A chorus of nays]

10 The Chairman. The ayes have it. The amendment is  
11 carried.

12 Senator Grassley?

13 Senator Grassley. Mr. Chairman, I move that the  
14 committee adopt the Chairman's mark, as amended, and  
15 report the bill favorably as a substitute for H.R. 7.

16 The Chairman. We have heard the motion. All those  
17 in favor say aye.

18 [A chorus of ayes]

19 The Chairman. Those opposed, no.

20 [A chorus of nays]

21 The Chairman. The ayes have it. The amendment is  
22 agreed to, as modified.

23 We now briefly turn to two other bills, S. 2498 and  
24 S. 2119. The first, is the tax shelter bill, the other  
25 is a corporate inversion bill. In each case, the

1 provisions have already been approved as an offset for  
2 the charitable bill, but we wish to report them as  
3 separate measures.

4 Senator Grassley?

5 Senator Grassley. Mr. Chairman, I move that we  
6 favorably report S. 2119.

7 The Chairman. All those in favor say aye.

8 [A chorus of ayes]

9 The Chairman. Those opposed, no.

10 [No response]

11 The Chairman. The ayes have it. The measure is  
12 passed.

13 Senator Grassley. I move that we favorably report  
14 S. 2498.

15 The Chairman. All those in favor say aye.

16 [A chorus of ayes]

17 The Chairman. Those opposed, no.

18 [No response]

19 The Chairman. The ayes have it. The measure is  
20 passed.

21 For the record, I note the following Senators voted  
22 not to report favorably the CARE Act.

23 Senator Bingaman. Mr. Chairman, I did not want to  
24 vote for it unless we could pay for it. And we have not  
25 found a way to do that, so I would just as soon not vote

1 for it.

2 The Chairman. All right.

3 I ask that the staff have the authority to draft  
4 necessary technical and conforming changes to the bills.

5 If there is no further business before the committee,  
6 the committee stands adjourned.

7 [Whereupon, at 3:37 p.m. the meeting was concluded.]

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MAX BAUCUS, MONTANA, CHAIRMAN  
 JOHN ROCKEFELLER, MISSOURI  
 TOM DASCHLE, SOUTH DAKOTA  
 JOHN BRADY, LOUISIANA  
 KENT CONRAD, NORTH DAKOTA  
 BOB CRAMER, FLORIDA  
 JOHN CORNYN, TEXAS  
 JOHN EDWARDS, MICHIGAN  
 ROBERT G. TORRACELLI, NEW JERSEY  
 BLANCHETT LINCOLN, ARKANSAS  
 CHARLES E. GRASSLEY, IOWA  
 SPRIN G. HATCH, UTAH  
 FRANK H. ALASKA  
 DONN CARLES, OKLAHOMA  
 JIM CRAMM, TEXAS  
 JIM COCHRAN, MISSISSIPPI  
 JIM W. COOPER, ARIZONA  
 CRAIG THOMAS, WYOMING  
 JOHN ANGELL, STAFF DIRECTOR  
 COLAN DAVIS, REPUBLICAN STAFF DIRECTOR AND CHIEF COUNSEL

*Bob: Please file w/ report.*

*Thx. C.*

# United States Senate


COMMITTEE ON FINANCE  
 WASHINGTON, DC 20510-6200

July 26, 2002

Mr. President:

The Committee on Finance filed a legislative report on S. 2498, the Tax Shelter Transparency Act on June 28, 2002. At the time the report was filed, the Congressional Budget Office cost estimate was not available. The cost estimate has been finalized by the CBO and is attached for public review.

I ask unanimous consent that the enclosed cost estimate for S. 2498 be printed in the Congressional Record.

  
 Max Baucus  
 Chairman



CONGRESSIONAL BUDGET OFFICE  
U.S. CONGRESS  
WASHINGTON, DC 20515

Dan L. Crippen  
Director

July 15, 2002

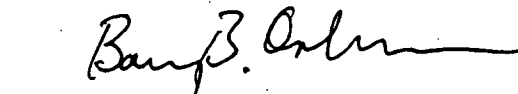
Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for S. 2498, the Tax Shelter Transparency Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Erin Whitaker and Annie Bartsch, who may be reached at 226-2720.

Sincerely,

  
Dan L. Crippen

Enclosure

cc: Honorable Charles E. Grassley  
Ranking Member



CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE

July 15, 2002

**S. 2498**

**Tax Shelter Transparency Act**

*As ordered reported by the Senate Committee on Finance  
on June 18, 2002*

**SUMMARY**

S. 2498 would create new penalties and expand existing penalties that may be applied to taxpayers who fail to disclose certain types of information on their tax returns. In particular, the bill would allow the Department of the Treasury to impose penalties on taxpayers who failed to report certain information for reportable transactions, modify the penalties for inaccurate returns if the inaccuracies had a significant tax avoidance purpose, and modify the definition of "substantial understatement" of tax for corporate taxpayers for purposes of imposing a penalty. It also would repeal the current rules regarding registration of tax shelters and instead require persons who assist with transactions in such shelters ("material advisors") to report certain information to the Secretary of the Treasury. The bill would impose a penalty on those material advisors who fail to file the information completely and accurately.

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimate that enacting the bill would increase governmental receipts by \$17 million in 2002, by \$601 million over the 2002-2007 period, and by about \$1.5 billion over the 2002-2012 period. Since S. 2498 would affect receipts, pay-as-you-go procedures would apply.

JCT has determined that the bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. JCT has determined that the provisions of the bill relating to reportable transactions and tax shelters contain private-sector mandates, and that the cost of complying with these mandates would exceed the threshold established by UMRA (\$115 million in 2002, adjusted annually for inflation) in 2005 and 2006.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the bill is shown in the following table.

	By Fiscal Year, in Millions of Dollars					
	2002	2003	2004	2005	2006	2007
<b>CHANGES IN REVENUES</b>						
Estimated Revenues	17	59	102	134	140	147

### BASIS OF ESTIMATE

All estimates were provided by JCT. The provisions relating to reportable transactions and tax shelters would compose a significant portion of the effect on revenues if enacted. These provisions would increase revenues by \$17 million in 2002, \$547 million over the 2002-2007 period, and about \$1.3 billion over the 2002-2012 period.

### PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects through 2006 are counted.

	By Fiscal Year, in Millions of Dollars										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in receipts	17	59	102	134	140	147	155	163	174	187	203
Changes in outlays	Not applicable										

## **IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

JCT has determined that the bill contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

## **IMPACT ON THE PRIVATE SECTOR**

JCT has determined that sections 101, 102, 104, 201-203, and 215 of the bill contain private-sector mandates. JCT has determined that the cost of complying with these mandates would exceed the threshold established by UMRA (\$115 million in 2002, adjusted annually for inflation) in 2005 and 2006.

### **ESTIMATE PREPARED BY:**

Erin Whitaker and Annie Bartsch (226-2720)

### **ESTIMATE APPROVED BY:**

G. Thomas Woodward  
Assistant Director for Tax Analysis