



MEMORANDUM

To: Reporters and Editors  
Fr: Jill Gerber for Sen. Grassley, 202/224-6522  
Re: Small businesses, tax increases, jobs  
Da: Tuesday, Feb. 2, 2010

Treasury Secretary Timothy Geithner, in testifying before the Committee on Finance today, said that raising taxes on upper-income taxpayers would affect only 2 percent to 3 percent of small businesses. Sen. Chuck Grassley, ranking member of the Committee on Finance, made the following comment in response.

“The Administration continues to downplay the effects of raising taxes on small business owners. The 2 percent to 3 percent figure assumes a one-person hot dog stand employs the same number of people as a 100-worker metal fabrication plant. When you look at the numbers, you see there are more than 20 million workers in those firms directly targeted by the higher marginal tax rates. When looking at the impact of raising taxes on small businesses, we need to consider the number of potential jobs on the line. So far, I see a real disconnect between the Administration’s stated interest in helping small businesses and creating jobs and the response my colleagues and I get when we try to drill down on the real-world effects of Administration policies, including choking small business with higher taxes, new regulations and mandates, and restrictive lending.”

Here is some background analysis:

According to the Small Business Administration, there are almost 120 million private sector workers in the United States. Slightly more than half those workers, 60 million, work for small business. About two-thirds of the nation’s small business workers are employed by small businesses with 20 to 500 employees. According to Gallup survey data conducted for the nation’s largest small business advocacy group, the National Federation of Independent Business (NFIB), half of the small business owners in this group fall into the current 33% and 35% tax brackets. This means there is a pool of more than 20 million workers in those firms directly targeted by the higher marginal tax rates.

The 20 million worker calculation is a conservative estimate. It does not take into account the millions of regular “C” corporation small business firms. It also does not take into account the flow-through entities with one to 19 workers. Finance Committee Republican staff are working on these estimates. When these analyses are completed, they will be made available.

Moreover, data from the Joint Committee on Taxation, the nonpartisan official scorekeeper for Congress on tax issues, show that 47 percent of income from flow-through entities is subject to the tax increases resulting from the increase in the top two rates. These entities tend to be the entities of choice for small businesses.

Last December, Grassley protested the Treasury Department’s favorable tax treatment for government bailout participants, including Citigroup, while the agency was placing certain liens on small businesses contrary to congressional intent. The IRS ultimately agreed to stop placing new liens on small business in the category at issue and to review cases where liens were already placed for hardship. Details follow here.

For Immediate Release

Wednesday, Dec. 23, 2009

### Grassley Urges Fair Tax Treatment for Small Businesses Compared to Large Banks

WASHINGTON – Sen. Chuck Grassley is putting the Treasury Department, including the IRS, on notice that he will hold up all Treasury nominees until the agency treats small businesses fairly regarding certain tax penalties. Grassley’s action comes after the Treasury Department gave favorable tax treatment to government bailout participants, including Citigroup, while placing liens on small businesses contrary to congressional intent.

“Treasury is quick to help out big banks but slow to act when small businesses need fair treatment,” Grassley said. “There seems to be a double standard and a failure to recognize that small businesses are just as critical to the economy as big banks, if not more critical. Small businesses create 70 percent of all net new jobs. If we don’t recognize that, we’re shooting ourselves in the foot.”

Grassley has been working for months with Senate and House counterparts to enact legislation to moderate the amount of penalties assessed on small businesses that unknowingly invested in prohibited tax shelter transactions. Some of these businesses were assessed tax penalties as high as \$300,000 per year but received a tax benefit for as little as \$15,000 from the transaction. Grassley and his colleagues asked the IRS to provide temporary relief to small businesses facing these penalties until they can enact the bipartisan, bicameral legislation. As a result, IRS agreed to suspend collection enforcement action through December 31, 2009.

Regardless, the IRS continues to place liens on these small businesses. Even though the liens are not yet being enforced, they are a significant threat to the small businesses’ operations, Grassley said.

Meanwhile, Treasury just gave a tax break to Citigroup that may generate billions of dollars of tax savings for the bank. The tax break was said to help protect the government's interest in the company, but the decision came without public scrutiny.

In November 2008, Treasury and the IRS came under fire from Grassley and others for giving a tax break that allowed banks to acquire one another. The Treasury ruling helped to accommodate the sale of the Wachovia Corporation to Wells Fargo. Grassley questioned whether Treasury had the authority to bestow such a tax break independently of congressional action.

Grassley is ranking member and former chairman of the Committee on Finance, with exclusive Senate jurisdiction over tax policy. The text of Grassley's letter today to Treasury Secretary Timothy Geithner and IRS commissioner Douglas Shulman follows here.

December 22, 2009

The Honorable Timothy F. Geithner  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Douglas Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Secretary Geithner and Commissioner Shulman:

I am writing to express my disappointment with actions taken by both the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) with respect to Internal Revenue Code (IRC) sections 382 and 6707A.

On November 18, 2008, I wrote to then Secretary Paulson regarding Notice 2008-83, which changed the rules governing the deductibility of losses under IRC section 382(h). The facts and circumstances surrounding the issuance of that Notice raised concerns about the independence and merits of the decision.

Treasury's most recent guidance on this same issue, Notice 2010-2, raises the same concerns. Accordingly, I request that you provide the Finance Committee with all records relating to communications pertaining to the issuance of Notice 2010-2 between Treasury officials, Citigroup, Inc., or other Troubled Asset Relief Program (TARP) participants and/or their representatives. Please also provide a timeline for, and documentation of, Treasury and IRS discussions and approvals for Notice 2010-2 as well as any discussions about the impact this notice would have on the tax gap. In cooperating with the Committee's review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committee.

I understand that Treasury believes that Notice 2010-2 was justified, in part, because it would help protect the government's interest in Citigroup, Inc. Yet, it appears that Notice 2010-2 may generate billions of dollars of tax savings for Citigroup, Inc. Please provide documentation of any discussions of impact on the tax gap resulting from Notice 2010-2.

The quick and immediate relief provided to Citigroup, Inc. stands in stark contrast to Treasury and IRS's position on providing relief to small business owners who have been assessed penalties under IRC section 6707A. As you know, Chairman Baucus and I have been working throughout this year with our counterparts in the House of Representatives to provide relief that can only be accomplished through legislation and we expect that legislation to be enacted very soon. As a supporter of closing the tax gap, I very much appreciate the IRS's difficult position with respect to protecting the government's interest in collecting taxes and penalties due and appreciate the IRS's moratorium on collection enforcement activity.

However, according to Commissioner Shulman's letter to Chairman Baucus dated July 17, 2009, 72% of section 6707A penalty assessments were imposed on small businesses and small business owners. The penalty is clearly being assessed disproportionately on small businesses compared to larger taxpayers. In addition, the placement of liens on these taxpayers, even though they are not yet being enforced, is a significant threat to their operations. Many small businesses use business assets or mortgage personal residences to secure lines of credit for the businesses. Imposing liens has significant negative implications for a small business that has limited access to capital.

I discussed this issue with Commissioner Shulman last month. I understand my staff has also discussed this again with IRS staff since then but that the IRS insists that placement of liens is necessary to protect the government's interest. I am troubled and frustrated by this position. It is inconsistent with the administration's publicly expressed concern about the difficulties facing small businesses in accessing capital.

I am also concerned that there is a disconnect between what Treasury and IRS staff in Washington, D.C., think is happening and what is actually happening in the field. For example, when my staff discussed with your staff the issue of IRC section 6723 being used to justify the placement of liens, your staff denied this was happening. Yet, after providing the name of a specific taxpayer who was subject to such a lien, my staff was informed that there may be a systemic issue in either the Automated Lien System or the Integrated Collection System.

My staff has also informed me that some of the assessments and liens are the result of Treasury and IRS regulations and procedures, such as the decision to disallow disclosures on amended returns and the decision to pursue 6707A assessments while other examination issues remain unresolved. Until Treasury regulations and IRS procedures can be revised to clear up the confusion, I request that IRS remove all liens on small businesses resulting from 6707A assessments unless there is a known risk that the taxpayer will evade payment of the penalties. Since the pending legislation will significantly reduce the 6707A assessment amount, liens may no longer be necessary.

As a supporter of closing the tax gap, I very much appreciate the IRS's difficult position with respect to protecting the government's interest in collecting taxes and penalties. If the IRS believes that removal of a lien would result in the IRS being unable to collect the penalty amount as revised by the pending legislation, please provide a description of these situations. However, I ask you to consider using your discretion as was done for big financial corporate TARP participants who will benefit from Notice 2010-2.

I appreciate your prompt attention to this matter. Please contact my staff with any questions or concerns.

Sincerely,

Chuck Grassley  
Ranking Member