

**Text of Letter from SFC/W&M Members
Regarding Small Business Tax Shelter Penalty Relief**

June 12, 2009

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

Dear Commissioner Shulman:

We are writing to request your assistance with respect to a tax matter affecting small businesses throughout our nation. It has come to our attention that many small business owners who thought they were investing in legitimate benefits plans unknowingly have invested in listed tax shelter transactions. They were not advised by the parties selling them the benefits packages that the plans had been identified by the Internal Revenue Service (IRS) as abusive transactions. They did not learn of this status until they were examined by the IRS and assessed substantial penalties for failing to disclose the transactions on their tax returns. The penalties, authorized by IRC section 6707A, are significantly larger than the tax benefits the small business owners received from their investments. This result was not anticipated at the time the penalty was enacted and we are seeking to modify the law so that the penalty amounts are more commensurate with the amounts of the tax benefits.

Internal Revenue Code section 6707A was enacted in the American Jobs Creation Act of 2004 as part of a package of provisions intended to help the IRS detect, deter and shut down tax shelters. Treasury regulations require taxpayers to tell the IRS if they invest in "listed" tax shelter transactions, and Section 6707A imposes large strict liability penalties on taxpayers who fail to disclose this information to the IRS. For listed transactions, the penalties are \$100,000 for natural persons and \$200,000 for others, including Subchapter C and Subchapter S corporations.

At the time the penalty was enacted, "listed" tax shelters involving hundreds of millions of dollars were prevalent and the size of these transactions influenced the size of the disclosure penalty. The penalty resulted in substantially higher disclosure rates to the IRS, which helped to shut down many abusive deals. For that reason, we do not want to relax the disclosure standards. However, we recognize that many of the shelters now being examined by the IRS involve significantly smaller dollar amounts, and the \$100,000/\$200,000 penalty levels may be excessive in some circumstances.

There is now a bipartisan, bicameral commitment to enact legislation that will modify the law enacted in 2004 so that reduced penalty amounts will apply in cases with more modest tax benefits. In light of that commitment, we are writing to ask you to use the discretion provided to the IRS with its effective tax administration authority to suspend efforts to collect IRC section 6707A liabilities in cases where the annual tax benefits resulting from the listed transactions are less than \$100,000 for individuals and \$200,000 for other cases while Congress acts to remedy this situation.

We would very much appreciate your acquiescence with our request.

Sincerely,

Max Baucus
Chairman, Senate Committee on Finance

Charles Grassley
Ranking Member, Senate Committee on Finance

John Lewis
Chairman, House Committee on Ways & Means
Subcommittee on Oversight

Charles W. Boustany, Jr.
Ranking Member, House Committee on Ways & Means
Subcommittee on Oversight