

December 1, 2009

The Honorable Charles B. Rangel
Chairman
House Ways and Means Committee
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Dave Camp
Ranking Member
House Ways and Means Committee
1139E Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman and Congressman Camp,

On behalf of the Equipment Leasing and Finance Association (“ELFA”), the trade association for the equipment leasing and finance industry, I am writing to express our strong opposition to proposed legislation that would impose a 100% confiscatory excise tax on proceeds received by certain taxpayers from any remedial action relating to sale-in lease-out (SILO) or lease-in lease-out (LILO) transactions entered into in past years.

The proposed legislation amounts to a retroactive 100% excise tax on certain SILO and LILO transactions. Moreover, it would apply indiscriminately to defeased and non-defeased structures alike, to indemnity obligations and to certain lessee payments of certain legal and professional expenses set forth in contracts consummated years earlier. In addition, the breadth and scope of this proposal also raises serious definitional issues including the applicability to proceeds related to consensual terminations, rescissions and remedial action.

Moreover, this proposal is bad tax policy in that it moves in the exact opposite direction of a recent IRS settlement initiative. In 2008, these transactions were the subject of a sweeping IRS settlement program requiring taxpayers to use their “best efforts” to wind down existing transactions. Taxpayers are currently in the process of meeting this IRS requirement. In fact, ELFA members have extended deadlines and allowed forbearance of contract terms in an effort to settle these matters.

The mere introduction of this legislation, however, has frozen efforts to wind down transactions and has created an impediment to resolve any and all issues associated with the original agreements. This runs counter to the IRS settlement program and will result an extended period of uncertainty and continued litigation as parties try to sort out the application and impact of this potential legislation.

We urge, therefore, that you reject any effort to move this proposed legislation, as it would create fundamentally bad tax policy, run counter to ongoing IRS initiatives to wind down these transactions, establish the wrong precedence, and increase costs and uncertainties to U.S. taxpayers.

Sincerely,

A handwritten signature in blue ink that reads "Ralph Petta". The signature is written in a cursive style with a blue highlight or shadow effect behind the text.

Ralph Petta
Interim President
Equipment Leasing and Finance Association