

Lawmakers Move to Weaken Bank Secrecy, Strengthen Disclosure Tools

By Patti Mohr — patriciam@tax.org

In response to urgent requests by the administration for stricter law enforcement tools, congressional committees prepared bills that would go after some tax-advantaged jurisdictions, expand section 6103 tax information disclosure rules, and enforce compliance for reporting large cash transactions under section 6050I.

The Senate Banking Committee voted unanimously last week to approve a money laundering bill that would direct Treasury to investigate and enforce sanctions against jurisdictions believed to offer special tax or regulatory advantages to non-residents of that jurisdiction.

Senate Banking Committee Chair Paul S. Sarbanes, D-Md., drafted the bill with the approval of ranking minority member Phil Gramm, R-Texas, who had blocked a similar bill in the previous Congress. The committee agreed and dispensed with the bill on a 21-0 vote after making minor adjustments.

Cracking Down on Bank Secrecy

In addition to establishing conditions for enforcing counter-money-laundering laws and blocking terrorist finances, the Senate bill (still unnumbered) would strengthen Treasury's hand in cracking down on offshore tax havens.

The bill would direct the Treasury Secretary to take discretionary action against foreign jurisdictions or foreign financial institutions that are characterized as tax havens, offshore banking havens, or secrecy havens by credible international organizations or multilateral expert groups. Treasury would have the authority to condemn a jurisdiction that offers "bank secrecy, or special tax or regulatory advantages to non-residents" as a primary money laundering concern.

Treasury would have the authority to condemn a jurisdiction that offers 'bank secrecy, or special tax or regulatory advantages to nonresidents.'

Dan Mitchell of the Heritage Foundation argued that many of the considerations used to determine violating jurisdictions have nothing to do with money laundering and everything to do with the tax harmonization being pushed by the Organization for Economic Cooperation and Development. "People who believe in tax har-

monization are trying to piggyback their agenda onto legislation designed to fight money laundering," he said.

Mitchell said the criteria for rebuke should be whether jurisdictions — even tax havens — help other nations with the prosecution of universally recognized crimes such as terrorism, money laundering, and criminal offenses. He said he thinks the bill provides Treasury with enormous unchecked power to either take strict action against or ignore jurisdictions that may or may not foster money laundering, but may in fact maintain a higher degree of bank privacy.

Treasury would have authority to take one or more restrictive actions against jurisdictions found to be of primary money laundering concern. Less restrictive actions would include requiring U.S. financial institutions or agencies to file reports on any transactions with regard to customer information and the nature of business with that jurisdiction. More restrictive actions would include authority to sanction or prohibit transactions between domestic agencies and accounts in the jurisdiction or institution found to be at fault.

In deciding what special action to take, the Treasury Secretary would need to consult with the Chairman of the Board of Governors of the Federal Reserve System and any other appropriate Federal banking agency, the Securities and Exchange Commission, and the National Credit Union Administration Board. Within 10 days of taking action, Treasury would need to notify congressional banking committees.

Adjustments to Come

The committee made few changes to the bill. However, Sen. Charles E. Schumer, D-N.Y., plans to offer an amendment when the bill reaches the floor that would require stricter penalties against foreign countries that violate bank secrecy conditions. Gramm adamantly opposed the amendment in committee and said the bill would already empower Treasury to go after noncooperating countries. Gramm plans to offer an amendment on the floor that would punish public officials who abuse their authority for personal gain or political purposes.

Although the bill would not sunset, the committee agreed to include a mechanism that would allow Congress to rescind the legislation after a certain date. Congress could pass a joint resolution, which would have to pass both chambers and be signed by the president, that would terminate the bill at a specific time.

Senate Finance Committee ranking minority member Charles E. Grassley, R-Iowa, praised the

bill, particularly provisions that would close loopholes in current U.S. banking rules and those cracking down on money laundering havens overseas. "Serious efforts to combat international money laundering have been going on for about 15 years. . . . Shutting down the money pipeline is key to shutting down terrorist activities," he said.

House Ready to Respond

The House Financial Services Committee simultaneously prepared its money laundering bill (H.R. 3004), which Committee Chair Michael G. Oxley, R-Ohio, and ranking member John J. LaFalce, D-N.Y., unveiled at a October 3 hearing featuring Treasury Secretary Paul H. O'Neill.

"Currency can be as lethal as a bullet," O'Neill told committee members as he briefed them on Treasury's efforts to disseminate patterns of terrorist financing. He asked committee members to lift restrictions against sharing information and to give Treasury and the Department of Justice the additional authority to identify, track, and block terrorist assets.

'Currency can be as lethal as a bullet,' O'Neill told committee members.

H.R. 3004 resembles the Senate bill's language authorizing penalties against jurisdictions believed to offer special tax or regulatory advantages to nonresidents of that jurisdiction. According to the committee's summary, the Oxley-LaFalce bill would give Treasury discretionary authority to impose one of five measures against foreign jurisdictions, financial institutions operating outside the United States, and international transactions that are determined to be of primary money-laundering concern. Penalties could include any or all of the following: (1) requirements of additional recordkeeping; (2) identification of beneficial ownership of accounts held by foreign persons; (3) identification of persons permitted to use a payable-through account with a foreign-based institution; (4) identification of persons permitted to use a correspondent account with a foreign-based institution; and (5) prohibition or regulation of correspondent or payable-through accounts with foreign-based institutions.

Seeking stronger enforcement against offshore havens, Rep. Barney Frank, D-Mass., demanded that Treasury explain why the United States should not issue sanctions against foreign countries that permit bank secrecy. "Secrecy helps tax evaders," Frank asserted.

Treasury Undersecretary for Enforcement Jimmy Gurule responded that Treasury is committed to prosecuting tax fraud but does not support issuing sanctions against countries on the basis of uniform tax rates — an option favored by the OECD. He added that the OECD tax haven issue has the potential to be relevant to the fight against terrorism, and that O'Neill is in the process of forming tax-sharing agreements with his foreign counterparts in an effort to gather information that would help prosecute cases.

Follow the Money

The Oxley-LaFalce bill would also strengthen an Internal Revenue Code provision that requires businesses to report cash transactions of more than \$10,000 to the IRS on Form 8300. Businesses that do not report would be subject to forfeiture violations in addition to civil and criminal sanctions already authorized under current law. According to the committee's summary of the bill, the intent is to provide consistency in the law that authorizes forfeiture when a financial institution fails to file a Currency Transaction Report on a cash transaction of more than \$10,000.

H.R. 3004 would also clarify that cash transaction information from Form 8300 could be shared with law enforcement agencies conducting money-laundering investigations.

Coincidentally, IRS Commissioner Charles Rossotti responded last week to a request from Grassley and Senate Finance Committee Chair Max Baucus, D-Mont., that the IRS report on the effectiveness of Form 8300 compliance and IRS processing of the forms. Grassley's spokeswoman said the senator was not satisfied with the response and would continue looking into the matter with additional correspondence.

The Senate money laundering bill would set up a process to determine whether to shift IRS reporting responsibilities to other agencies that conduct anti-money-laundering programs.

The Senate money laundering bill would set up a process to determine whether to shift IRS reporting responsibilities to other agencies that conduct anti-money-laundering programs. Specifically, the bill would require the Treasury Secretary to report to Congress within six months of the bill's enactment on the role of the IRS in administering review and regulation of the Bank Secrecy Act. Treasury would need to make recommendations whether to shift information process-

ing reporting away from the Internal Revenue Service to another department.

The bill states that the Treasury Secretary would need to determine if it "remains reasonable and efficient" for the IRS to retain its authority and responsibility to audit money services businesses and gaming institutions and determine how well they comply with the Bank Secrecy Act. If Treasury recommends shifting responsibilities to another agency, it should recommend a budgetary and resources plan to "expeditiously accomplish" the transfer.

Taxpayer Disclosure

Meanwhile, the House Judiciary Committee marked up an antiterrorism bill, H.R. 2975, the PATRIOT Act, that would make it easier for law enforcement agencies to access taxpayer information. The bill would expand Treasury and Justice Department officers' authority to inspect and share taxpayer information with other agencies conducting investigations or analyses of terrorist activities.

Intelligence agencies and state and local law enforcement agencies would gain rights to obtain tax return information.

Intelligence agencies and state and local law enforcement agencies would gain rights to obtain tax return information provided it is disclosed only to those officers personally and directly involved in a terrorism investigation. The bill would provide federal law enforcement or a federal intelligence agency access to information provided by the taxpayer's own return if a federal district court judge or magistrate grants an *ex parte* order allowing it.

House Judiciary Committee Chair F. James Sensenbrenner Jr., R-Wis., and ranking minority member John Conyers Jr., D-Mich., drafted the bill with the Bush administration's input. All sides agreed the compromise would not completely satisfy everyone but would accommodate Republicans, Democrats, and the Justice Department as best it could. "Protecting civil liberties and fighting terrorism in the wake of a national tragedy is not an easy thing to do," Conyers said.

House Ways and Means Committee Chair William M. Thomas, R-Calif., and ranking minority member Charles B. Rangel, D-N.Y., cosponsored the bill and have signed off on the taxpayer disclosure language, provided that it is not amended before the bill comes up for vote on the House floor. A Ways and Means Democratic staffer said members from both parties agreed that the lan-

guage, refined by the Joint Committee on Taxation, is a "workable, reasonable approach" to Justice's request for easier access to taxpayer information.

The staffer said the tax provisions in the bill are not controversial but clarify and expand current law to respond to a specific situation. Members should be able to agree to the broader taxpayer disclosure rules without hesitation because the provisions would expire after December 31, 2003, she added.

Although H.R. 2975 specifies that taxpayer information could only be disclosed in response to or the investigation of "terrorist incidents, threats, or activities," the American Civil Liberties Union took issue with the bill for loosely defining what constitutes domestic terrorism.

The Judiciary Committee did not make any changes to the tax provisions. Among the amendments members accepted was one to allow individuals to sue for up to \$10,000 in damages if law enforcement agents misuse information obtained from the expanded surveillance authority.

Although Senate Judiciary Committee negotiators reached a tentative agreement with each other and with the White House on an anti-terrorism bill, the Senate Finance Committee is expected to handle the taxpayer disclosure provision separately.

Grassley told Tax Analysts early last week that he had no intention of giving up Finance Committee jurisdiction on the bill, and that he and Baucus would take a close look at the bill's language before signing off on it. The language concerning taxpayer disclosure would have to apply strictly to terrorism to gain his approval. "If it's tightly written according to terror and national security, I think the law ought to be modified to allow that," Grassley said.

Senate Majority Leader Tom Daschle, D-S.D., said the Senate would proceed quickly on the money-laundering and antiterrorism bills as soon as members complete work on aviation security.

While lauding the swift action of both chambers in fulfilling Justice's request for the bills, Attorney General John Ashcroft rebuked the House Judiciary Committee for sunseting many of the provisions in its bill. "No one can guarantee that terrorism will sunset in two years," he said. ■

Full Text Documents

- Testimony of Treasury Secretary Paul H. O'Neill at Hearing on Freezing Terrorists' Assets. *Doc 2001-25407 (4 original pages); 2001 TNT 193-71*
- Section Analysis of H.R. 3004, the **Financial Antiterrorism Act of 2001**. *Doc 2001-25474 (10 original pages); 2001 TNT 193-58*