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Senators Question Tax Breaks Taken by Donors to Conservation Groups

By Brad Wolverton

Washington

During three hours of intense questioning on Wednesday, key senators took aim at one of the country's best-known charities while calling into question improper practices at many organizations and laying the groundwork for legislation that could affect all types of nonprofit groups.

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Eleven members of the Senate Finance Committee -- the most who have attended any of the committee's three

nonprofit hearings in the past year -- listened closely as committee staff members detailed findings from their two-year investigation into land sales and other deals at the Nature Conservancy, the nation's wealthiest conservation organization.

The staff recommended big changes in the way conservation groups operate, urged the conservancy to take action to prevent future improper activities, and called on the Internal Revenue Service to crack down on conservation groups.

Sen. Charles E. Grassley, Republican of Iowa and the committee's chairman, urged lawmakers to abolish tax shelters resulting from the "slippery slope of the donors' own appraisals."

"I'm troubled enough when I see the words 'tax shelter' appearing in tax planning documents of for-profit corporations," Senator Grassley said, describing a Nature Conservancy document. "When I see 'tax shelter' being used in documents of charities, we ought to be really worried."

Mr. Grassley said he plans to introduce a measure in the next few weeks to fix problems he sees with donors taking inflated tax deductions for gifts of land. He says he hopes to correct the problems in part by improving the way charities and donors get appraisals for donated property.

Senator Grassley said he and the committee's senior Democrat, Sen. Max S. Baucus, of Montana, hope their legislation "will encourage land donation while addressing the abuses."

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The two lawmakers are also expected to propose legislation that would cover a range of practices at charities and foundations, such as governance, public disclosure, and spending on salaries and travel.

Conservation Easements

At the center of the committee's investigations into the Nature Conservancy and many other conservation groups is controversy over conservation easements -- a legal tool used to protect private land from development. Landowners who donate easements to nonprofit conservation groups promise that the land will not be used for development; in exchange, they are allowed to write off the value of the development rights as a charitable deduction.

Steven T. Miller, the commissioner of the tax-exempt division of the IRS, said that potential valuation problems with conservation easements have led the revenue service to start 240 examinations of donors who have taken an open-space easement deduction. The IRS is considering examinations of another 100 donors who have participated in easement transactions, he said, and is looking into the easement practices of many charities.

Some donors appear to be taking a large deduction for a conservation easement that is not used for a charitable purpose, Mr. Miller said. One popular easement abuse, he said, involves golf-course developers.

In South Carolina, a state department of revenue examination of 110 easements donated from 2001 to 2003 for properties valued at more than \$1-million found that \$125-million of the \$300-million in charitable deductions were taken by people who improperly used the easements for development of golf courses, according to Burnet R. Maybank, III, director of South Carolina's revenue department.

"If you want to have the most immediate and dramatic impact," Mr. Maybank told lawmakers, "go after golf course developers."

Mr. Maybank said he also sees appraisals that "routinely exceed" their fair market value because there are so few federal regulations governing the way real-estate appraisers do their work -- another subject that drew much discussion at the hearing.

Earl E. Devaney, inspector general for the Department of the Interior, spoke to members of Congress about a company in Florida that tried to take an improper \$120-million tax deduction after getting an inflated appraisal. Mr. Devaney said that the company, Collier Resources Company, tried to "bluff" the Department of the Interior into buying the property to protect it from drilling in the Florida Everglades. The incident led the government agency to make several significant changes to its land appraisal program.

Nature Conservancy

But for nearly two-thirds of the hearing, senators had questions about

the staff's inquiry into the Nature Conservancy. The Senate committee began its examination of the Arlington, Va., group in July 2003, following a series of reports in *The Washington Post* describing the organization's land transactions and its relationships with for-profit businesses. The newspaper said that in some cases the charity had purchased environmentally sensitive land, placed development restrictions on it, and resold it to trustees and supporters at a reduced cost. The purchasers then gave the conservancy cash donations that were about the same size as the discount they received -- an approach that allowed them to take income-tax deductions for their charitable contributions.

The Nature Conservancy has said the newspaper articles were not entirely accurate, but it has also said that since the stories appeared and the congressional investigation began, it has made dozens of changes to strengthen its governance, accountability, and transparency.

At the hearing, Steven J. McCormick, president of the conservancy, said that at times in recent years the organization "got a little outside our own headlights" by trying to engage in activities in which it has little competency. But, he said, "our mission compels us to come up with additional core competencies." He added that in an effort to make sure the organization does not participate in activities that are beyond its expertise, it has put in place a risk assessment committee.

Sen. Rick Santorum, Republican of Pennsylvania, questioned how pervasive complex land deals are at other conservation charities -- particularly smaller ones, adding that his state has 140 small conservation groups.

Dean A. Zerbe, a senior tax lawyer for the Senate Finance Committee who testified at the hearing, said that he and his Democratic colleagues are seeing "more and more" problems with large conservation charities entering complex land deals.

Senator Santorum cautioned his colleagues from making broad changes to conservation policy if it might damage the efforts of smaller organizations.

"The concern I'm hearing is that some of what is being proposed is already having a chilling effect on these small groups," the senator said. If many small groups do not participate in complex land deals, he added, "why paint this with a broad brush?"

Testimony from the hearing is available at <http://finance.senate.gov/sitepages/hearing060805.htm>.



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