

September 28, 2010

The Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Jeff Sessions, Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Max Baucus, Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

The Honorable Charles E. Grassley, Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

The Honorable John Conyers, Jr., Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

The Honorable Lamar S. Smith, Ranking Member  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

The Honorable Sander M. Levin, Chairman  
Committee on Ways and Means  
United States House of Representatives  
Washington, DC 20515

The Honorable Dave Camp, Ranking Member  
Committee on Ways and Means  
United States House of Representatives  
Washington, DC 20510

The Honorable Rick Boucher  
United States House of Representatives  
Washington, DC 20515

The Honorable Bob Goodlatte  
United States House of Representatives  
Washington, DC 20515

Re: Legislation to Ban Tax Strategy Patents

Dear Gentlemen:

On behalf of our eighteen national organizations representing consumer, taxpayer, charitable, financial planning, and tax advisor groups, we urge you to enact legislation to ban tax strategy patents in these final days of the 111<sup>th</sup> Congress. The ongoing, serious concerns associated with these types of patents pose a significant threat to American families and businesses, and we believe that quick legislative action to prohibit them is essential. **We cannot afford to postpone addressing this problem until the 112<sup>th</sup> Congress.**

As you know, the problems associated with tax strategy patents are multiple and complex. First, such patents may limit the ability of taxpayers to utilize fully interpretations of tax law intended by Congress – effectively creating a monopoly for the patent holders to determine who can and cannot utilize parts of the tax code. Furthermore, tax advisors, who generally are not patent experts, have the burden to be aware of such patents, and either provide tax advice that complies with the patent holder’s requirements, risk a lawsuit for themselves and their clients, or potentially not provide the most advantageous advice to clients. Not surprisingly, these patents create a highly burdensome level of cost ultimately borne by taxpayers.

These patents already affect a myriad of tax planning vehicles, including retirement plans, real estate transactions, deferred compensation, financial investments, charitable giving, and estate planning transfers. We are concerned that the U.S. Patent Office, which is known for its expertise in engineering rather than tax law, will expand the scope of these patents into additional areas broadly affecting average taxpayers. For example, there are pending patents that would affect taxpayers’ ability to create a financial

plan for funding college education; utilize incentive programs for health care savings account cards; insure against tax liabilities; and use life insurance to generate income.

As of now, the numbers of tax strategy patents have grown to 117 issued and 151 pending. We fear an even greater explosion in both applications and patents issued over the next several years. A legislative solution must be pursued immediately if we are to provide taxpayers with equal access to all available avenues of federal tax compliance. Congress must protect taxpayers from the risk of lawsuits and the burden of paying royalties for taking steps to minimize their tax burdens.

As you know, currently in the House, a bill to ban tax strategy patents, H.R. 2584, by Representatives Boucher and Goodlatte, is pending with 45 co-sponsors, including Representative Camp. In the Senate, a similar bill was introduced in the last Congress, S. 2369, by Senators Baucus and Grassley, and garnered 29 cosponsors from both sides of the aisle, including then-Senator Barack Obama. During this Congress, we understand that there have been ongoing conversations between senior Finance and Judiciary Committee staff about how best to resolve this issue as a part of comprehensive patent reform. This legislative activity builds upon passage of the tax strategy patent ban that was included in the House-passed Patent Reform Act (H.R. 1908, Section 10) last Congress.

We strongly believe that legislation to ban tax strategy patents must be enacted before the 111<sup>th</sup> Congress adjourns. **Since the patent reform bill is unlikely to be considered in the few remaining weeks, we encourage you to include a tax strategy patent ban in a tax bill, the continuing resolution, or any other appropriate piece of legislation before the 111<sup>th</sup> Congress concludes.** We thank you for your leadership and ask that you work together and with us to resolve this problem for taxpayers without delay. Please contact any of us if we can assist you as you move forward on this important matter.

Sincerely,



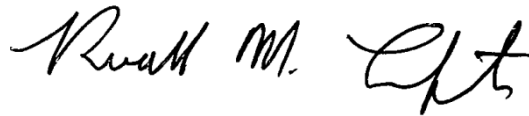
Barry C. Melancon, CPA  
President and Chief Executive Officer  
American Institute of Certified Public Accountants



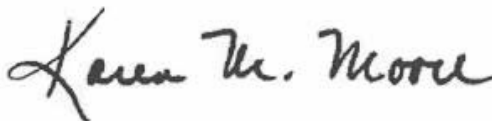
Nicole Tichon  
Federal Tax and Budget Reform Advocate  
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John Akard Jr., JD, CPA  
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Karen M. Moore  
President  
The American College of Trust and Estate Counsel



Jay E. Fishman, FASA  
Chair, Governmental Relations Committee  
American Society of Appraisers



Kevin R. Keller  
Chief Executive Officer  
Certified Financial Planner Board of Standards



Robert S. McIntyre  
Director  
Citizens for Tax Justice



Linda Sherry  
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Jo Marie Griesgraber  
Executive Director  
New Rules for Global Finance Coalition



Tanya Howe Johnson, CAE  
President and CEO  
Partnership for Philanthropic Planning



Jack Blum  
Chair  
Tax Justice Network U.S.A.



Keith Hickerson  
Senior Strategy Consultant  
The American College

cc:

The Honorable Harry Reid, Senate Majority Leader  
The Honorable Mitch McConnell, Senate Minority Leader  
The Honorable Nancy Pelosi, Speaker of the House  
The Honorable John Boehner, House Minority Leader