

February 2, 2011

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

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Tax Strategy Patents

Dear Gentlemen:

On behalf of our 15 national organizations representing consumer, taxpayer, charitable, financial planning, and tax advisor groups, we commend you for including a provision in S. 23, The Patent Reform Act of 2011, to address the serious problem of tax strategy patents. Similar to legislation recently introduced by Senators Baucus and Grassley, S. 139, we believe that this pro-taxpayer measure is a critical component of any comprehensive patent reform effort. The ongoing, serious concerns associated with tax strategy patents pose a significant threat to American taxpayers and businesses, and we believe that Congress must prioritize fixing this problem as soon as possible.

As the Senate Judiciary Committee moves to mark up S. 23, we ask you specifically to champion this provision, and aggressively oppose any efforts to weaken or remove it. There is too much at stake to allow special interests to try to monopolize methods of Federal tax compliance, leaving American taxpayers potentially subject to lawsuits, royalties, and a much more complicated, expensive tax code.

As you know, the problems associated with tax strategy patents are multiple and quite 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 may permit the expansion of these types of 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 over 130 issued and more than 150 pending. We fear this trend is likely to continue to grow exponentially without your leadership. Legislation must be passed quickly if we are to provide taxpayers with equal access to all available avenues of federal tax compliance.

As you know, there is broad, bipartisan, and growing support for this legislation. In the 111th Congress, Congressmen Rick Boucher and Bob Goodlatte introduced H.R. 2584, a similar initiative which ended the Congress with 45 co-sponsors. That legislation built off of the passage of comprehensive patent reform legislation, passed by the House in the 110th Congress, which included its own tax strategy patents provision. In addition, Senators Baucus and Grassley previously introduced legislation on this topic in the 110th Congress, garnering 30 co-sponsors, including then-Senator Barack Obama. The National Taxpayer Advocate, Nina Olsen, has also publicly stated her support for a legislative solution to this problem. Clearly, with such overwhelming support and momentum over the last several years, the time has come to finally enact this proposal and send it to the President.

Thank you again for your leadership on behalf of American taxpayers. Please contact any of us if we can assist you as you move forward on this important matter.

Sincerely,



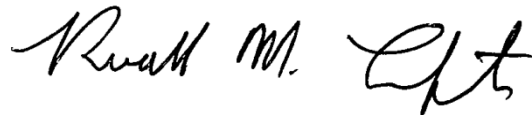
Barry C. Melancon, CPA
President and Chief Executive Officer
American Institute of Certified Public
Accountants



Nicole Tichon
Executive Director
Tax Justice Network USA



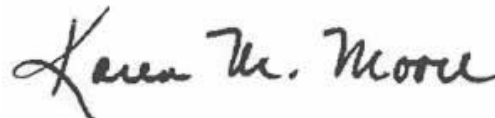
Jo Marie Griesgraber
Executive Director
New Rules for Global Finance



Richard M. Lipton
Chair
American College of Tax Counsel



Linda Sherry
National Priorities Director
Consumer Action



Karen M. Moore
President
The American College of Trust and Estate
Counsel



Tanya Howe Johnson
President and CEO
Partnership for Philanthropic Planning



Raymond W. Baker
Director
Global Financial Integrity



Edwin P. Morrow, CLU, ChFC, CFP®, RFC®
Chairman and Chief Executive Officer
International Association for Registered
Financial Consultants



H. Stephen Bailey
President
International Association for Registered
Financial Consultants



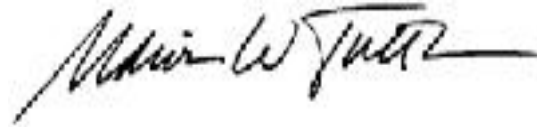
Michael Nelson
Executive Vice President & Chief Executive
Officer
National Association of Enrolled Agents



Gary Kalman
Director, Federal Legislative Office
USPIRG



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



Marvin W. Tuttle, CAE
Executive Director/CEO
Financial Planning Association



John Akard Jr., JD, CPA
President
American Association of Attorney-Certified
Public Accountants



Robert S. McIntyre
Director
Citizens for Tax Justice

cc:

The Honorable Harry Reid, Senate Majority Leader
The Honorable Mitch McConnell, Senate Minority Leader
Members of the Senate Judiciary Committee
Co-Sponsors of S. 139

- The Honorable Max Baucus
- The Honorable Jeff Bingaman
- The Honorable Kent Conrad
- The Honorable Michael Enzi
- The Honorable John Kerry
- The Honorable Carl Levin
- The Honorable Ron Wyden