



ACTC Legislative Comments Policy Statement

As part of its mission to improve the nation's tax laws and the way that they are interpreted and administered, the American College of Tax Counsel provides input to (1) the Federal government by providing comments ("Legislative Comments") to tax legislation that is introduced, or otherwise pending or proposed, and (2) to multistate bodies engaged in considering or adopting model state tax legislation or state agencies or legislatures that request public comment on pending or proposed bills ("Pending Tax Legislation"). The Legislative Comments Committee of the College makes the initial determination of whether to comment on Pending Tax Legislation, which must be approved by the Board of Regents. A lead drafter together with a working group is selected to draft the Legislative Comments, which are then reviewed and approved by the Legislative Comments Committee. The Board of Regents must then approve the Legislative Comments before they are submitted to the appropriate body. Any Legislative Comments proposed by ACTC on Pending Legislation do not necessarily reflect the views of all Fellows of the College or all members of the Board of Regents.

I. Legislative Comments Committee

Makeup. Members of the Legislative Comments Committee are Fellows of the College appointed by the President of the College. The number of Fellows serving on the Legislative Comments Committee at any time is not fixed and is determined by the President of the College. It is intended that the committee will be made up of Fellows of the College with diverse subject matter expertise. If, with respect to any Legislative Comments project, additional subject matter experience is deemed necessary by the committee, the President of the College may appoint one or more additional Fellows on an *ad hoc* basis to serve on the committee with respect to the particular Legislative Comments project.

Chair of the Legislative Comments Committee. The Legislative Comments Committee will be Chaired by the immediate past-President of the College, who will serve for a one-year term.

Role of the Legislative Comments Committee. The roles and duties of the Legislative Comments Committee are set forth in this ACTC Legislative Comments Policy Statement (the "Policy Statement"). The committee is tasked with ensuring that all Legislative Comments submitted by ACTC are technically sound and of the highest quality, are nonpartisan in nature, and are consistent with the College's mission to improve the nation's tax laws and the way that they are interpreted and administered.

II. Initial Request to Prepare Comments

Initiation of Request. The request for the College to consider providing Legislative Comments on Pending Tax Legislation may be initiated by:

- (1) a request by the Federal government or relevant state or multistate quasi-governmental body for the College to comment on Pending Tax Legislation including:
 - (a) U.S. House of Representatives,
 - (b) U.S. Senate,
 - (c) U.S. Department of Treasury,
 - (d) Internal Revenue Service,
 - (e) U.S. Department of Labor,
 - (f) Pension Benefit Guaranty Corporation,
 - (g) Small Business Administration,
 - (h) U.S. Tax Court,
 - (i) The MultiState Tax Commission,
 - (j) The Uniform Law Commission,
 - (k) The National Council of State Legislatures, or
 - (l) a State legislature or revenue agency.
- (2) a request by any Fellow to have Legislative Comments prepared on Pending Tax Legislation.

How to Submit a Request to the College for Legislative Comments. To request the College to consider submitting Legislative Comments on any Pending Tax Legislation, please submit a brief letter or memorandum to the then-current Chair of the ACTC Legislative Comments Committee, whose name and email is available on the ACTC's Fellows page of the website. The letter or memorandum should contain the following:

- a.* A copy of the Pending Tax Legislation.
- b.* A brief summary of any technical concerns or questions related to the Pending Tax Legislation.
- c.* A brief statement of how the comment can assist in the improvement of the Pending Tax Legislation on technical grounds.
- d.* An explanation of how a comment by the College will make a significant contribution to consideration by the Federal government or relevant state or multistate quasi-governmental body of the Pending Tax Legislation.
- e.* Any deadlines for submitting the Legislative Comments or other timing considerations to ensure that any Legislative Comments submitted by the College have an impact on the Pending Tax Legislation. Please note that any request should be submitted to the College sufficiently in advance of this date in order to provide time for evaluation of the request as well as the preparation and submission of the Legislative Comments by skilled tax lawyers on behalf of the College.
- f.* Suggestions for any individuals associated with the Federal government or relevant state or multistate quasi-governmental body to whom the Tax Legislative Comments should be addressed or who should be copied on the same.

- g.* If the request is submitted by a Fellow, a statement that the request is not motivated by partisan considerations.
- h.* If the request is submitted by a Fellow engaged in practice at a law firm, a statement that neither the Fellow submitting the request, nor to the knowledge of such Fellow, after reasonable inquiry, the law firm where such Fellow is engaged in practice, has been engaged by a client to influence a decision or policy determination by the Federal government or relevant state or multistate quasi-governmental body, as applicable, on an issue that is impacted by the Pending Tax Legislation.
- i.* If the request is submitted by a Fellow working in-house or for any non-governmental or quasi-governmental organization, that such Fellow's employer is not actively engaged in any lobbying or other attempts to influence a government decision or policy determination on an issue that is impacted by the Pending Tax Legislation.

Approval of Request. If a request is initiated, it will require approval first by the Legislative Comments Committee and then by the Board of Regents before moving forward to the drafting phase.

Standards Applied in Determining Whether to Approve a Request to Submit Legislative Comments. In determining whether the College will approve a request to submit Legislative Comments, the Legislative Comments Committee and the Board of Regents must apply the standards in this Policy Statement. The threshold consideration is whether a particular position would improve the nation's tax laws and the way that they are interpreted and administered. Each comment submitted as part of the Legislative Comments should aim to provide the Federal government or relevant state or multistate quasi-governmental body with useful information, concerns, and proposed changes to ensure that the Pending Tax Legislation is technically sound in light of its interaction with existing tax laws. The Legislative Comments Committee and the Board of Regents will not approve any request for Legislative Comments that are materially motivated by partisan considerations.

In applying these general standards, the Legislative Comments Committee and the Board of Regents may consider whether a majority of the Fellows of the College would support the Legislative Comments to Pending Tax Legislation, keeping in mind that the Fellows include practitioners, judges, government lawyers, and academics. If the initial request is approved, the position taken by the College in the Legislative Comments will be based on independent consideration by the Legislative Comments Committee and the Board of Regents based on the standards set forth in this Policy Statement. For the avoidance of doubt, no consideration will be given to the revenue impact of the Legislative Comments on the Pending Tax Legislation.

In determining whether to approve a request to submit Legislative Comments, in addition to the general guidelines discussed above, the Legislative Comments Committee and the Board of Regents may consider the following:

- Content of the requests from Fellows or from the government or quasi-governmental agencies identified above.
- Timeline for considering the request as well as for providing a final draft to the Legislative Comments Committee and the Board of Regents for review.

- The Pending Tax Legislation, the technical legal issues presented, and the potential impact of the Pending Tax Legislation on a broad class of taxpayers or tax administration generally.
- Regarding state Pending Tax Legislation, whether the proposal would have an impact in multiple states.
- Whether any proposed comment submitted as part of the Legislative Comments should be excluded to the extent it may be viewed as partisan.
- Selection of the principal drafter(s) and the working group for the proposed Legislative Comments.
- Ensuring that the working group for drafting the Legislative Comments includes subject matter expertise with respect to all the various subject matters impacted by the Legislative Comments to the Pending Tax Legislation.

III. Drafting, Approval, and Submission of Legislative Comments

Selection of Principal Drafter(s) and Working Group. If the initial request is approved, the Legislative Comments Committee will appoint a skilled tax lawyer to lead the drafting of the Legislative Comments, together with a working group to assist the lead drafter, in each case, from among the Fellows of ACTC. The working group should include subject matter expertise with respect to all subjects impacted by the Legislative Comments, and ideally should include lawyers from multiple law firms or other employers.

Conflict Policy. If a lawyer has been engaged by a client, or is otherwise aware of such lawyer's employer's engagement by a client, to influence a decision or policy determination by the Federal government, or if applicable any relevant state or multistate quasi-governmental body, on an issue that is impacted by the Pending Tax Legislation, such lawyer shall not participate in the preparation of the College's Legislative Comments with respect to such Pending Tax Legislation. If members of the Legislative Comments Committee or the Board of Regents fall under this conflict policy, they shall recuse themselves from consideration of the Legislative Comments. Any Legislative Comments submitted to Federal government, or if applicable any relevant state or multistate quasi-governmental body, will include a list of the names of any members of the Legislative Comments Committee and the Board of Regents who were recused.

Drafting Process. The Legislative Comments Committee will appoint one member of that committee to supervise the drafting process, recommend edits to ensure substantive and stylistic guidelines are followed, and report to the Legislative Comments Committee and the Board of Regents on whether the final Legislative Comments should be approved and submitted.

The following are guidelines for drafting Legislative Comments:

- The Legislative Comments should focus on any technical concerns with the Pending Tax Legislation.
- The tone of the Legislative Comments should be neutral and courteous.
- The Legislative Comments should not make partisan arguments or take partisan positions, nor should they advocate client/taxpayer positions. The focus of the Legislative Comments should be consistent with the College's mission.

- The Legislative Comments should consider all sides of an issue and provide reasoned explanations for each recommendation. It is acceptable to provide alternative or minority positions.
- The Legislative Comments should follow the ABA COGS style manual unless the appropriate body requires otherwise.
- If the Legislative Comments are lengthy (e.g., five or more pages), they should provide an executive summary up front.

Approval and Submission of Comments. Once drafted, the Legislative Comments Committee must carefully review the Legislative Comments. Once the Legislative Comments Committee is comfortable with the Legislative Comments, the Committee will submit the Legislative Comments to the Board of Regents for approval. Once approved, the Board of Regents will submit the Legislative Comments to the Federal government, or if applicable any relevant state or multistate quasi-governmental body, together with a standard cover letter. The standard cover letter will contain the following statements: (i) the Legislative Comments do not necessarily reflect the views of all Fellows of the College or all members of the Board of Regents; (ii) the Legislative Comments are not intended to be partisan in nature; (iii) no lawyer who has been engaged by a client (or who has otherwise been involved in, or has knowledge of, such lawyer's employer's engagement by a client) to influence a decision or policy determination by the Federal government, or if applicable any relevant state or multistate quasi-governmental body, on an issue that is impacted by the Pending Tax Legislation has been involved in drafting the Legislative Comments; (iv) no lawyer who is actively engaged in, or whose employer is engaged in, any lobbying or other attempts to influence a decision or policy determination by the Federal government, or if applicable any relevant state or multistate quasi-governmental body, on an issue that is impacted by the Pending Tax Legislation has been involved in such Legislative Comments; (v) no judges have been involved in such Legislative Comments; and (vi) the Legislative Comments do not consider the revenue impact associated with such Legislative Comments.

Any questions about the ACTC Legislative Comments Policy Statement may be directed to the Chair of the Legislative Comments Committee (the Immediate Past President of ACTC), or any Officer of the College and can be sent via the following link:

<https://www.actconline.org/governance/>.