



September 2, 2003

The Honorable Charles E. Grassley
Chairman, Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable William M. Thomas
Chairman, House Ways & Means Committee
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Max Baucus
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles B. Rangel
House Ways & Means Committee
1106 Longworth House Office Building
Washington, DC 20515

Dear Messrs. Chairmen and Ranking Members:

The American Institute of Certified Public Accountants has a clear position on abusive tax transactions – they should be eradicated. They insult the large majority of honest taxpayers and their CPA advisers who strive every day to obey increasingly complex tax laws. We therefore strongly support your approach to curtailing abuse, as expressed in the tax shelter subtitles of Chairman Thomas’s introduction of H.R. 2896, the *American Jobs Creation Act of 2003*; and Chairman Grassley’s reported intent to offer an amendment that contains a tax shelter subtitle (S.A. 1424) to the Senate-passed energy bill (H.R. 6, the *Energy Policy Act of 2003*) when the bill goes to conference with the House. We urge expeditious action on such legislation.

We note that earlier proposals – which would have (1) codified the economic substance doctrine and (2) raised the tax return standard (for both taxpayers and preparers) to “more likely than not” for **all** tax return positions – were not included in the bill or the draft amendment. We strongly support their elimination. Doing so would provide a more sound basis for tax administrators to move forward productively to curb abuses of our tax system while retaining taxpayers’ respect for that system. We firmly believe these provisions would have had long-term, negative effects on both taxpayers and the government.

In our view, deterrence from and the eventual eradication of abusive transactions are best accomplished through disclosure, higher non-disclosure penalties, clearer standards for reasonable cause penalty relief and opinion letters, aggressive enforcement, and continued evolution of appropriate solutions by an informed judiciary.

Two areas remain in these proposals, however, that we believe could be improved to work more effectively from a tax administration viewpoint. We share our concerns in hopes of advancing the goal of eliminating abuse while protecting taxpayers’ rights to more clear and objective rules and appropriate due process. Our first concern relates to promoting due process throughout the tax system, particularly given that system’s

complexity. For example, a proposed new section 6707A penalty would apply for failing to disclose reportable transactions, including transactions that are “substantially similar” to listed transactions (see H.R. 2896, section 3001, and S.A. 1424, section 801); but this penalty would lack the traditional “reasonable cause” exception. The limited rescission authority given could be exercised only by the Commissioner of Internal Revenue or, under S.A. 1424, the director of the Office of Tax Shelter Analysis. (S.A. 1424 would also require an annual report to Congress detailing the number and nature of such rescissions.) The practical effect of such clearly-stated Congressional limitation on such waivers ensures that there will be very few, if any, waivers given.

The extreme difficulty of obtaining a rescission, the magnitude of the penalty (with a range, in the two proposals, of \$10,000 to \$200,000), and the discretion given to the IRS to interpret when a transaction is “similar” to a listed one, make it essential that a workable reasonable-cause regime exist that allows taxpayers with a good-faith belief that a transaction is not “reportable” to avoid penalties.

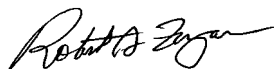
Our second concern relates to the amendment of section 6662 regarding substantial understatements for items attributable to a tax shelter. (See H.R. 2896, section 3002; and S.A. 1424, section 802.) We have continuing reservations about relying on “a significant purpose” of tax avoidance to define tax shelters in this context, and we would be pleased to continue our discussions with you on this topic.

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We appreciate the opportunity to continue working with Congress, the Treasury Department, and the IRS to reach our common goals of eliminating abuse of our tax laws and insuring that sanctions will be imposed appropriately on abusive transactions. Taxpayers deserve to pay only their fair share of taxes and should not have to assume the cost of abuse. At the same time, we must assure the system operates equitably and with adequate due process.

Again, we commend you for the significant efforts made, and sincerely endorse your efforts to provide a more equitable system of tax administration for taxpayers and the government. We would be pleased to discuss our thoughts with you or others at any time. If you have any questions, please contact me at (202) 414-1705, or robert.zarzar@pwc.com; or Edward S. Karl, AICPA Director, at (202) 434-9228, or ekarl@aicpa.org, if we can assist you in any way.

Sincerely,



Robert A. Zarzar
Chair, AICPA Tax Executive Committee