



Media Advisory

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Consumer and Taxpayer Rights Groups Seek Ban on Tax Patents

A broad coalition of consumer organizations, taxpayer rights groups and financial planners is calling on Congress to ban people from obtaining patents on strategies for complying with U.S. tax law. With the coalition's support, proponents expect it will be more likely that a ban on tax patents will be included in a larger patent reform bill moving through Congress.

Seventeen organizations signed an Oct. 20 [letter](#) to congressional leaders in support of a ban on patents, which unfairly seek to control the ability of all Americans to comply with U.S. tax laws. Among the new supporters of a tax patent ban are the Consumer Federation of American, U.S. PIRG, and the Financial Planning Association. The American Institute of Certified Public Accountants has been at the forefront of a two-year effort to ban tax patents.

In the previous Congress, the House of Representatives passed a patent reform bill that included a ban on tax patents, but a similar provision was not included in the Senate's version of the bill, which never came to a floor vote. Members of the House and Senate Judiciary Committees are now working on a new bill that will be acceptable to both chambers. The Senate is expected to act first on patent reform legislation this Congress and the House may accept the Senate bill without amendments so it is important to include a ban on tax patents in the Senate bill.

Tax patents are a growing problem for taxpayers. The Patent and Trademark Office has issued 82 tax strategy patents and 133 applications are pending. Tax patents may limit taxpayers from using tax laws as they were intended by Congress, may cause taxpayers to pay more taxes than necessary and do not guarantee that the underlying strategy is valid.

The letter to Congress is pasted below and attached. Please contact Shirley Twillman, senior manager – AICPA media relations, at 202-434-9220 if you would like to talk to someone about tax patents.

October 20, 2009

The Honorable John Conyers, Jr.
Chairman, Judiciary Committee
United States House of Representatives
Washington, DC 20510

The Honorable Charles B. Rangel
Chairman, Ways and Means Committee
United States House of Representatives
Washington, DC 20510

The Honorable Rick Boucher
United States House of Representatives
Washington, DC 20510

The Honorable Lamar S. Smith
Ranking Member, Judiciary Committee
United States House of Representatives
Washington, DC 20510

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

The Honorable Bob Goodlatte
United States House of Representatives
Washington, DC 20510

Re: Tax Strategy Patent Legislation

Dear Chairman Conyers, Ranking Member Smith, Chairman Rangel, Ranking Member Camp, Mr. Boucher, and Mr. Goodlatte:

We applaud your leadership on the critically important issue of tax strategy patents. The on-going, serious concerns associated with these types of patents pose a significant threat to taxpayers and their advisers, and we believe that quick legislative action to prohibit them is essential.

During the prior Congress, thanks to your efforts, freestanding legislation by Messrs. Boucher and Goodlatte, H.R. 2365, garnered an impressive 40 co-sponsors, including Mr. Camp. As you know, the House then ultimately passed a ban on tax strategy patents as part of the larger House patent reform effort (Section 10 of H.R. 1908). This, of course, would not have been possible without the leadership of Chairman Conyers and Ranking Member Smith. As the legislation was moving forward, Chairman Rangel, along with then-Ranking Republican Jim McCrery, were also extremely helpful by writing a Dear Colleague letter to the entire House calling for inclusion of the provision in any final patent reform package. Your combined efforts during the last Congress were the key to the great success we saw in making progress to advance this legislation.

Now that we are in a new Congress, we want to reiterate our gratitude for your work on this issue and to ask for your continued help to pass the Boucher-Goodlatte bill, H.R. 2584.

Our coalition of consumer organizations, taxpayer rights groups and tax planners understands the need for action. Like the National Taxpayer Advocate, Nina Olson, who has previously called for such legislation, and like President Barack Obama, who co-sponsored legislation on this topic when he was a Senator, we want to see Congress resolve this problem once and for all.

As you know, the problems associated with tax strategy patents are multiple and complex. First, we believe that they may limit the ability of taxpayers to utilize fully interpretations of tax law intended by Congress. Barriers to compliance caused by these patents may also cause some taxpayers to pay more tax than Congress intended and may cause other taxpayers to pay more tax than others similarly situated. This is simply unfair. Not to mention, tax strategy patents complicate the provision of tax advice by

professionals and create a new burdensome level of compliance and cost, ultimately borne by taxpayers. Finally, as you know, issuance of a patent is no guarantee that the underlying strategy is valid under our tax code. The Patent and Trademark Office is not an expert on tax law, nor is it charged with its enforcement. Tax strategy patents may mislead taxpayers into believing that a patented strategy is valid under the tax law simply by virtue of it being patented.

With all of the momentum of the last two years, it seems that Congress would be well poised to act quickly to ban tax patents. Some have asked, however, whether the need for legislation is as great in light of a recent Federal Circuit decision in a case called *Bilski*, which addresses the broader question of the patentability of business methods. The *Bilski* case is currently pending before the Supreme Court, so the final outcome is unknowable. While many are watching the implications of this case on business methods patents closely, we do not believe that it will prevent the further issuance of tax strategy patents, and it should not, in any way, delay legislative action on this problem. Meanwhile, the Patent and Trademark Office has continued to grant tax strategy patents, and new tax strategy patent applications have continued to be filed. Indeed, as of our sending this letter, 82 tax strategy patents have been issued, and 133 are pending. A legislative solution remains absolutely necessary.

We strongly endorse H.R. 2584 and want to work with you to see this legislative language enacted into law. We thank you for your leadership and ask you to work together and with us to fix this problem for taxpayers. Thank you, again.

Sincerely,

Barry Melancon
President and Chief Executive Officer
American Institute of Certified Public Accountants

Leonard Weiner, JD, CPA, MBA
American Association of Attorney CPAs
Representative to the Synergy Summit

Richard M. Lipton
Chair
American College of Tax Counsel

Jay E. Fishman, FASA
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American Society of Appraisers

Roger Gordon
Executive Director
Center for Legal Empowerment, Accountability
And Reform (CLEAR)

Kevin R. Keller
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Certified Financial Planner Board of Standards

Robert S. McIntyre
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Citizens for Tax Justice

Linda Sherry
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Partnership for Philanthropic Planning

Sherwin Siy
Deputy Legal Director
Kahle/Austin Promise Fellow
Public Knowledge

Keith Hickerson
Senior Strategy Consultant
The American College

Nicole Tichon,
Federal Tax and Budget Reform Advocate
U.S. PIRG

cc: Senator Patrick J. Leahy, Chairman, Judiciary Committee
Senator Jeff Sessions, Ranking Member, Judiciary Committee
Senator Max Baucus, Chairman, Finance Committee
Senator Charles E. Grassley, Ranking Member, Finance Committee