Grant Thornton

February 21, 2008

The Honorable Eric Solomon
Assistant Secretary (Tax Policy)
Department of the Treasury
Room 3120 MT
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Ms. Linda E. Stiff
Acting Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

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RE: Grant Thornton LLP Comments on Proposed Regulations Relating to Patents as Reportable Transactions Under Sections 6011and 6111 (REG-129916-07)

Dear Assistant Secretary Solomon and Acting Commissioner Stiff:

The purpose of this letter is to provide the comments of Grant Thornton LLP ("Grant Thornton") on proposed regulations under Internal Revenue Code sections 6011 and 6111. These proposed regulations add a patented transactions category to the list of reportable transactions, and also make conforming changes to the disclosure rules applicable to material advisors.

Grant Thornton shares the concern of the Internal Revenue Service ("IRS") and the Department of Treasury ("Treasury") regarding patenting tax advice and tax strategies. Our view is that permitting tax advice or tax strategies to be patented undermines confidence in the tax system and should be legislatively precluded. Tax advice and tax strategies are rooted in public law. Allowing a person or entity to control or charge another taxpayer for applying law enacted for the potential benefit of every taxpayer is both unfair and contrary to public policy supporting the equitable administration of the tax system. We also believe that attempts to regulate the use of tax patents through additional disclosure obligations will introduce inefficiencies, uncertainties, and considerable taxpayer burdens into the tax compliance process. We urge the IRS and Treasury to delay finalizing the proposed regulations, to allow for an appropriate legislative solution to be considered.

Grant Thornton appreciates your consideration of these comments. If you have any questions, please contact Melbert Schwarz, National Tax Office partner, Tax Legislative Affairs at (202) 521-1564, or Jeffrey B. Frishman, National Managing Principal, Tax Practice Policy & Quality at (312) 602-8810.

Sincerely,

Mark Stutman
National Managing Partner, Tax Services
Grant Thornton LLP

Enclosure

Grant Thornton

Comments by Grant Thornton LLP on Proposed Regulations, REG-129916-07 Relating to the Disclosure of Patented Transactions as a Reportable Transaction Under Internal Revenue Code Sections 6011 and 6111

The IRS has proposed regulations under Internal Revenue Code sections 6011 and 6111[1] that add a patented transactions category to the list of reportable transactions and make conforming changes to the disclosure rules applicable to material advisors.

In the background description to the proposed regulations, the IRS and Treasury express their concern with the patenting of tax advice or tax strategies, particularly those that have the potential for tax avoidance. The proposed regulations address this concern by treating patented tax advice and strategies as reportable transactions and subjecting patent holders, as well as taxpayers who knowingly use (or have reason to know that they are using) patented tax advice and strategies, to the disclosure requirements and enhanced penalty structure that accompany treatment as a reportable transaction.

Our view is that permitting tax advice or tax strategies to be patented undermines confidence in the tax system and should be legislatively precluded. Tax advice and tax strategies are rooted in public law. Allowing a person or entity to control or charge another taxpayer for applying law enacted for the potential benefit of every taxpayer is unfair and contrary to public policy supporting the equitable administration of our tax system. Accordingly, we support resolving tax patent concerns with legislation precluding tax patents, such as in Section 10 of H.R. 1908, the Patent Reform Act of 2007, passed by the House of Representatives on September 7, 2007, and in S. 2365).

Assuming that patenting tax advice or tax strategies remains permissible, we think that attempts to regulate the use of tax patents through disclosure obligations will introduce inefficiencies, uncertainties, and considerable taxpayer burdens into the tax compliance process. To minimize such burdens and address IRS and Treasury concerns that tax patents present potential for tax avoidance, the focus of any additional disclosure requirements should be on the patent holder, not on the taxpayer. Disclosure by the patent holder should provide the IRS and Treasury with information to determine whether the tax advice or planning strategy is abusive or potentially concerning enough to be designated as a transaction of interest Patent holders receiving royalties for the use of tax patents could also be required to maintain lists of such patent users, providing the government with a direct link to the taxpayers and returns likely to reflect the tax consequences of patented tax advice or a tax strategy.

If information developed by requiring tax patent holders to disclose the subject matter of their patents is insufficient, or if IRS and Treasury are concerned that the government

[1] REG-12991607, 72 Fed. Reg. 54,615 (Sept. 26, 2007)

lacks authority to require such reporting without linking the use of the tax strategy or advice to a specific tax return, the need to address patented tax advice through legislation rather than regulation is made clear. Requiring taxpayers to report whenever they know, or have reason to know, that they are employing tax advice or a tax strategy that is the subject of a patent seems likely to yield little additional information at a potentially significant increase in compliance cost and inefficiency.

It may be that the IRS will be lenient in enforcing the "reason to know" standard in the case of taxpayers who do not employ large numbers of in-house tax professionals. However, this does not guarantee that such taxpayers can avoid the increased costs and inefficiencies inherent in making all tax patents reportable transactions. Such taxpayers typically rely on outside tax professionals, such as Grant Thornton, to advise them and assist in the preparation of their returns.

Outside tax professionals might be expected to be aware of what tax strategies are the subject of patents, and to understand the scope of the patent protection, but it is not a certainty that tax return preparers will be aware of or otherwise discern in the compliance process the existence of patented tax advice or a tax strategy requiring disclosure. Although taxpayers may take some comfort from example 7 of the proposed regulations, where a transaction is not treated as reportable if the taxpayer did not know or have reason to know that a tax planning method was patented, this protection was not extended to paid tax preparers who recommend such planning method, even though they did not know or have reason to know that the method was patented.

Grant Thornton shares the concern of the IRS and Treasury regarding patenting tax strategies, but we do not believe that implementing a disclosure regime is the appropriate solution to the issue. We urge the IRS and Treasury to delaying finalizing the proposed regulations in order to allow for an appropriate legislative solution to be considered.

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