September 28, 2010

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

The Honorable Max Baucus, Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable John Conyers, Jr., Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

The Honorable Sander M. Levin, Chairman
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

The Honorable Rick Boucher
United States House of Representatives
Washington, DC 20515

The Honorable Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley, Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Lamar S. Smith, Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

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

The Honorable Bob Goodlatte
United States House of Representatives
Washington, DC 20515

Re: Legislation to Ban Tax Strategy Patents

Dear Gentlemen:

On behalf of our eighteen national organizations representing consumer, taxpayer, charitable, financial planning, and tax advisor groups, we urge you to enact legislation to ban tax strategy patents in these final days of the 111th Congress. The ongoing, serious concerns associated with these types of patents pose a significant threat to American families and businesses, and we believe that quick legislative action to prohibit them is essential. We cannot afford to postpone addressing this problem until the 112th Congress.

As you know, the problems associated with tax strategy patents are multiple and 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, which is known for its expertise in engineering rather than tax law, will expand the scope of these 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 117 issued and 151 pending. We fear an even greater explosion in both applications and patents issued over the next several years. A legislative solution must be pursued immediately if we are to provide taxpayers with equal access to all available avenues of federal tax compliance. Congress must protect taxpayers from the risk of lawsuits and the burden of paying royalties for taking steps to minimize their tax burdens.

As you know, currently in the House, a bill to ban tax strategy patents, H.R. 2584, by Representatives Boucher and Goodlatte, is pending with 45 co-sponsors, including Representative Camp. In the Senate, a similar bill was introduced in the last Congress, S. 2369, by Senators Baucus and Grassley, and garnered 29 cosponsors from both sides of the aisle, including then-Senator Barack Obama. During this Congress, we understand that there have been ongoing conversations between senior Finance and Judiciary Committee staff about how best to resolve this issue as a part of comprehensive patent reform. This legislative activity builds upon passage of the tax strategy patent ban that was included in the House-passed Patent Reform Act (H.R. 1908, Section 10) last Congress.

We strongly believe that legislation to ban tax strategy patents must be enacted before the 111th Congress adjourns. Since the patent reform bill is unlikely to be considered in the few remaining weeks, we encourage you to include a tax strategy patent ban in a tax bill, the continuing resolution, or any other appropriate piece of legislation before the 111th Congress concludes. We thank you for your leadership and ask that you work together and with us to resolve this problem for taxpayers without delay. 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
Federal Tax and Budget Reform Advocate
U.S. PIRG

John Akard Jr., JD, CPA
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Richard M. Lipton
Chair
American College of Tax Counsel

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

Jay E. Fishman, FASA
Chair, Governmental Relations Committee
American Society of Appraisers
Kevin R. Keller  
Chief Executive Officer  
Certified Financial Planner Board of Standards

Linda Sherry  
National Priorities Director  
Consumer Action

Richard Salmen, CFP®, CFA, EA  
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Chairman and Chief Executive Officer  
International Association for Registered Financial Consultants

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

Tanya Howe Johnson, CAE  
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Partnership for Philanthropic Planning

Robert S. McIntyre  
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Mark Silbergeld  
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Raymond W. Baker  
Director  
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H. Stephen Bailey  
President  
International Association for Registered Financial Consultants

Jo Marie Griesgraber  
Executive Director  
New Rules for Global Finance Coalition

Jack Blum  
Chair  
Tax Justice Network U.S.A.
Keith Hickerson
Senior Strategy Consultant
The American College

cc:
The Honorable Harry Reid, Senate Majority Leader
The Honorable Mitch McConnell, Senate Minority Leader
The Honorable Nancy Pelosi, Speaker of the House
The Honorable John Boehner, House Minority Leader