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Please Address Reply to:

October 21, 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:

I am writing to you as the President of the American College of Trust and Estate Counsel (the "College"), a professional association of over 2,500 lawyers from throughout the United States who are elected to membership by their peers on the basis of professional reputation and ability in the fields of trusts and estates law. As leaders in the estate planning community, we have considered the significant problems related to the patenting of tax strategies and are convinced that prompt legislative action to prohibit tax strategy patents is imperative.

As evidenced by my testimony before the Subcommittee on Select Revenue Measures of the House Committee on Ways and Means on July 13, 2006, and the College's October 23, 2007 letter to many of you supporting legislation to prohibit the patenting of tax strategies, the College has long been concerned about the negative impact that the patenting of tax strategies is having on taxpayers and their advisors, and on our system of taxation in general. Among other problems, tax patents limit taxpayers' ability to interpret tax laws and, in effect, grant private licenses to use the Internal Revenue Code to patent

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holders. And, as has been noted by the Treasury, such patents mislead taxpayers into believing that a patented tax planning strategy is automatically valid under tax law.

Some have asked whether tax patent legislation should be postponed while the *Bilski* case is pending before the Supreme Court. Since this case does not involve a tax strategy patent, the Court's decision will not prevent the further issuance of tax strategy patents, and it should not, in any way, delay your legislative efforts. With the Patent and Trademark office continuing to grant tax strategy patents (83 have been issued and 134 applications are pending as of the date of this letter), a legislative solution remains an absolute necessity.

I have attached a copy of a letter dated October 20, 2009, which was recently sent to you by a coalition of 16 consumer organizations, taxpayer rights groups and tax advisors applauding your leadership on the critically important issues of tax strategy patents and asking for your continued help to pass the Boucher-Goodlatte bill, H. R. 2584. The College hereby joins the coalition in applauding your efforts and expressly endorses the views of the coalition as expressed in their October 20 letter.

We strongly endorse H.R. 2584 and urge you to see that this legislative language is enacted into law, either as a separate bill or as part of broader patent law reform legislation.

Sincerely

Dennis I. Belcher
President
The American College of Trust and Estate Counsel

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

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October 20, 2009

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Chairman, Judiciary Committee
United States House of Representatives
Washington, DC 20510

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United States House of Representatives
Washington, DC 20510

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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,



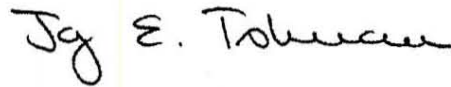
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American Association of Attorney CPAs
Representative to the Synergy Summit



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American College of Tax Counsel



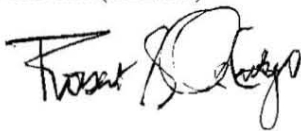
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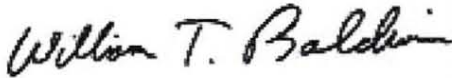
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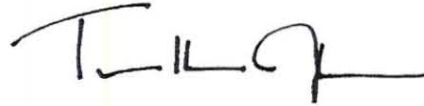
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Nicole Tichon,
Federal Tax and Budget Reform Advocate
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cc: Senator Patrick J. Leahy, Chairman, Judiciary Committee
Senator Jeff Sessions, Ranking Member, Judiciary Committee
Senator Max Baucus, Chairman, Finance Committee
Senator Charles E. Grassley, Ranking Member, Finance Committee