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The Honorable Lamar Smith
Chairman
U.S. House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
Ranking Member
U.S. House Judiciary Committee
2142 Rayburn House Office Building
Washington, DC 20515

February 10, 2011

Dear Chairman Smith and Ranking Member Conyers:

As the House Judiciary Committee begins deliberations on patent reform legislation in the 112th Congress, I commend you for your past leadership in addressing the problem of tax strategy patents, and I encourage you to remain steadfast proponents of this important pro-taxpayer issue. There is enormously broad and bipartisan support for resolving this threat to taxpayers and their advisers, and the AICPA believes it is an **absolutely essential** component of any patent reform legislation.

I hope that you will continue to build on the significant and growing momentum for legislative action. In the 110th Congress, thanks to your critical support, the House of Representatives passed a patent reform bill which included a tax strategy patents provision. In addition, in both the 110th and 111th Congresses, Intellectual Property, Competition, and Internet Subcommittee Chairman Bob Goodlatte, along with your former colleague, Congressman Rick Boucher, introduced freestanding legislation on this issue. In the Senate, Finance Committee Chairman Max Baucus and Judiciary Committee Ranking Member Charles Grassley have also been outspoken advocates on this issue. In the 110th Congress, they introduced freestanding legislation that garnered 30 co-sponsors, including then-Senator Barack Obama. The National Taxpayer Advocate, Nina Olson, has also called for a legislative solution to this problem.

Most recently, in the 112th Congress, Senators Baucus and Grassley have again introduced freestanding legislation, S. 139 to address this problem. Concurrently, Senate Judiciary Committee Chairman Patrick Leahy, in collaboration with Senator Grassley, and outgoing Ranking Member Orrin Hatch, included a similar provision, Section 14, in S. 23, a comprehensive patent reform bill recently reported out of the Senate Judiciary Committee.

The latest Senate provision, which the AICPA supports, takes a slightly different approach from past legislative efforts. It states that any “strategy for reducing, avoiding, or deferring tax liability, whether known or unknown at the time of the invention or application for patent, shall be deemed insufficient to differentiate a claimed invention from the prior art.”

The AICPA believes that this new approach helps to address the prior concerns raised by opponents of tax strategy patents legislation (e.g. compliance with the Agreement on Trade-Related Aspects of Intellectual Property or TRIPS Agreement). One of the first arguments against legislation is often whether it is appropriate to ban the patenting of tax strategies. This new Senate language is not an

explicit ban. Rather it simply precludes patent applicants from using a tax strategy as the point of novelty in their claims for an invention. Patent applicants can make any other argument about the novelty, non-obviousness, usefulness, or commercial applicability of their invention, but not to the exclusion of other taxpayers complying with the Federal tax code.

As you know, lawmakers have previously looked at the issue of limitations on certain patents when there is a compelling policy reason, such as in regards to medical procedures or nuclear technology. Although the arguments for protecting tax payers from monopolies, royalties, lawsuits and a more complicated, unfair tax code are compelling enough reasons to ban tax strategy patents, there is more than one way to solve this problem.

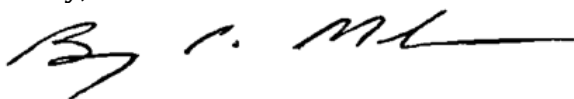
Regardless of if someone discovered a truly novel and non-obvious form of compliance, it is difficult to imagine that there is a single lawmaker who thinks that that person should be able to hold exclusive rights over the usage of that strategy to the detriment of tens of millions of other U.S. taxpayers. Every taxpayer ought to be able to use any legal means available to him or her to find the best way to comply with the Code and mitigate his or her tax burden.

I understand, in preparation for tomorrow's hearing, that you have heard some concerns about the potential effects of this pro-taxpayer provision on tax preparation software. This Senate language is not, in any way, intended to harm that line of business, as Senator Grassley made clear in his introductory statement at the Senate Committee's meeting to report out S. 23. Enactment of the Senate provision will not affect the copyright protection available to tax preparation software companies for their products, nor will it preclude those companies from obtaining patent protection on their products. Instead, the effect of the provision is to preclude patent claims on tax strategies in the absence of some novel innovation in the claims. As the provision makes clear, any such proprietary claims of a tax preparation software company should not extend to a claim to an exclusive right to a particular form of tax compliance. In moving this legislation forward, I believe that there are ways to make these protections for tax preparation software companies explicitly clear, through report language and through engagement with the staff of the Patent and Trademark Office, who are well aware of these concerns.

Because of your leadership, we are better positioned than ever to solve this problem for taxpayers and their advisers. I urge you to include a tax strategy patents provision in comprehensive patent reform and oppose any efforts through the legislative process to weaken or remove that provision. The AICPA stands ready to assist you in any way we can as you move forward on this issue. We also are working closely with a broad and diverse national coalition representing consumer, taxpayer, charitable, financial planning, and tax adviser groups all committed to the passage of this legislation. (For your information I have attached a recent letter from the coalition sent to Senators Leahy and Grassley prior to the recent Senate Judiciary Committee mark up of S. 23.)

Again, thank you for all you are doing on behalf of taxpayers and their advisers to ensure that our tax code is fair, simpler, and accessible to everyone.

Sincerely,



Barry C. Melancon, CPA
President and CEO

cc: Members of the House Judiciary Committee