



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

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Audit - Tax - Advisory

Grant Thornton LLP
1250 Connecticut Ave NW Ste 400
Washington, DC 20036-2660

T 202.296.7800
F 202.833.9165
www.GrantThornton.com

February 24, 2011

RE: Tax strategy patent legislation

Dear Gentlemen:

I am writing to offer Grant Thornton's strong support for the tax strategy patent provision included in the patent reform legislation (S. 23) recently approved by the Senate Judiciary Committee and now poised for full Senate consideration. I would like to commend you for your commitment to addressing the problems created by tax strategy patents and for including the tax strategy patent provision in S. 23.

Patents on tax strategy methods threaten the integrity, fairness, and administration of the tax system, and Grant Thornton believes resolving this problem must be an essential component of any patent reform legislation. Grant Thornton wants to encourage you to aggressively oppose efforts to remove or weaken the tax strategy patent provision in S. 23.

Tax strategy patents grant private legal parties virtual 20-year monopolies over particular methods of compliance with U.S. tax laws. Taxpayers cannot satisfy their legal obligations using a patented interpretation of the tax code, allowing patent holders to privatize tax provisions that Congress intended for everyone. This makes a uniform application of the U.S. Tax Code impossible, potentially forcing taxpayers to pay more tax than Congress intended and more tax than similarly situated taxpayers. Tax strategy patents threaten to undermine public confidence in the nation's tax laws, hinder compliance, and mislead taxpayers into believing that a patented strategy has been approved by the IRS solely because a patent was granted. In addition, tax strategy patents increase the costs and burdens of compliance. Preparers and taxpayers must not only determine the proper tax treatment of an item, but also whether that treatment is covered by a patent, whether the patent might be infringed by properly reporting the item, and whether the patent is valid.

Grant Thornton believes that no one should have a patent on the application of the law to the facts and that the granting of tax strategy patents should be prohibited by legislation. Grant Thornton supports the provision in Section 14 of S. 23, which is based on the freestanding legislation S. 139. The new provision builds on previous legislative efforts that enjoyed wide bipartisan support in both chambers. In the 110th Congress, the House passed a patent reform bill that would have barred tax strategy patents.

The new language in S. 23 would designate any claim on a patent application for a "strategy for reducing, avoiding, or deferring tax liability" as indistinguishable from prior art, and thus preclude applicants from using a tax strategy as the point of novelty. Grant Thornton believes

this provision needs to be enacted quickly. Over 130 tax strategy patents have already been approved and more than 150 are currently pending.

Grant Thornton agrees that patents should continue to be available for tax preparation software, so long as the patent does not extend to tax strategies embedded in the software. Grant Thornton believes the bill sufficiently addresses the serious concerns raised by tax strategy patents without infringing on the rights of others to copyright, trademark or patent software that assists in the implementation of tax planning.

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Sincerely yours,



David B. Auclair
Managing Principal
Washington National Tax Office
Grant Thornton LLP