Patenting Tax Ideas

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Executive Summary

- TSPs have been issued in many areas, and many applications are currently pending.
- Such patents thwart Congressional intent and undermine the integrity of, and the public's confidence in, the tax system.
- The AICPA will continue to work with the IRS, USPTO, Treasury and Congress to handle—and hopefully resolve—this emerging issue.

One of the greatest challenges tax practitioners face in providing quality tax services to clients is to keep abreast of the ever-changing complexity of the tax law. Added to this challenge is the burden of determining whether the chosen advice is another party's exclusive property. While this may seem absurd, in the real world of tax consulting, tax advisers must now contend with certain practitioners and companies seeking patents to protect their exclusive right to use various tax planning ideas and techniques they claim to have developed.

Tax practitioners may be surprised to find that tax strategies they have used routinely in practice are now patented and unavailable for use without the patent holder's permission. The trend of patenting tax strategies is on the rise. This article explores tax-strategy patenting. It provides an overview of the issue and discusses the AICPA's concerns and activities to keep its members informed, as well as its attempts to seek a legislative remedy that will stem the tide of these types of patents.

Background

The Patent Act of 1952[1] provided that patents may be granted for innovations that are useful, novel and nonobvious. Under 35 USC Section 271, a patent gives its holder the exclusive right to make, use and sell the patented idea. The consequences of infringing a patent can be substantial. The remedies for patent infringement under 35 USC Sections 283 and 284 include injunctive relief and money damages equal to lost profits or a reasonable royalty. Money damages can be tripled in cases of willful infringement, as authorized under 35 USC Section 284; under 35 USC Section 285, attorneys' fees can be awarded to the prevailing party in exceptional cases. Issued patents are presumed valid; under 35 USC Section 282, an accuser must overcome this presumption with clear and convincing evidence to invalidate a patent. Even if an accused is not found liable, defending a lawsuit can be costly.[2]

In 1998, the Federal Circuit, in *State Street Bank & Trust*,[3] held that business methods are patentable. Since this decision, patents for business methods have flourished. In some cases, these patents involve processes that would seem to be neither novel nor nonobvious (i.e., other reasonably intelligent people would come to the same or a similar conclusion when confronted with the same or similar issue).

Recently, the Supreme Court held[4] that the long-standing test used by the lower courts to determine whether an idea was nonobvious was not being applied correctly (and, in fact, was being applied too strictly). The opinion stated that for an idea to be nonobvious, it must be (1) one that would not have occurred to persons of ordinary skill and intelligence in the field of endeavor involved; or (2) previously available knowledge that would have caused a person of ordinary intelligence to affirmatively believe that the idea would not work. Since this decision was just handed down, it remains to be seen what effect it will have on the proliferation of patents for business methods in the future.

The patenting of business methods has recently crept into the practice of tax planning. At press time, 60 tax-strategy patents (TSPs) have been granted; 86 are pending.[5] There may be additional TSPs; about 10% are generally unpublished, because applicants can elect not to publish a patent if no protection is being sought in a foreign jurisdiction.[6] Also, it can take up to 18 months for a patent application to be published and listed on the USPTO website. As discussed below, many of these patents deal with planning techniques routinely used by tax practitioners in delivering tax services to clients.

Reasons for Concern

SOGRAT patent: The primary catalyst for the concern of the AICPA and other tax practitioners was a 2006 infringement suit over the "SOGRAT patent." Awarded by the USPTO on May 20, 2003, to Robert C. Slane of Wealth Transfer Group LLC, the SOGRAT patent describes an estate planning technique that uses grantor retained annuity trusts (GRATs) to transfer nonqualified stock options (NQSOs) to younger generations, with few or no gift tax consequences.[7]

GRATs are permitted under Sec. 2702 and the regulations there under. Many estate planners are familiar with, and routinely use, GRATs to shift a variety of different types of assets to younger generations. Thus, it came as quite a surprise to many estate planners when an article touting the estate tax benefits of placing NQSOs into a GRAT noted that the technique had been patented by one of that article's authors.[8] This surprise grew into concern when the patent holder instituted the above-mentioned patent infringement suit against a taxpayer who implemented the technique without its permission.

Warning letters: As previously stated, money damages can be tripled in cases of willful infringement (which requires knowledge of the patent). Some patent holders have resorted to mail campaigns and/or press releases touting their patents and warning other tax practitioners that they may be infringing on said patents. For example, one patent infringement warning letter addressed a method for financing future needs of an individual or future intentions on the death of such person, and a method for investing long-term assets of tax-exempt charities. The letter noted that the allowed claims in the patent involve investments used for charitable remainder trusts, pooled-income funds, charitable gift annuities, charitable lead trusts and permanent endowment funds.[9]

Part of this patent resembles the facts and results of Letter Ruling 9009047[10] and TAM 9825001.[11] In those rulings, the IRS permitted a net-income charitable remainder unitrust to invest in a tax-deferred annuity contract for the purposes of controlling the timing and amount of income distributions and to otherwise provide a guaranteed death benefit payable to the charitable remainder interest holder. The patent purports to achieve a similar result through the use of tax-deferred arrangements.

The patent holder also sent a press release to the Planned Giving Design Center (PGDC), a professional organization that provides advice on charitable planning and taxation. An article[12] written by the PGDC's editor noted that the letter ruling and TAM are well known to members of the insurance community in particular, "which have since facilitated thousands of annuity invested charitable remainder trusts since 1990." The article further noted that these rulings are also well known to the IRS, which issued them and subsequently discussed such arrangements in its 1999 Continuing Professional Education text. The IRS also added these rulings to its annual "no-ruling" list as it studied whether they conveyed an inappropriate tax benefit to taxpayers. The article noted that all of these events occurred well in advance of the date the holder applied for his patent (2004).

In light of that patent, the AICPA and American Bar Association (ABA) asked the USPTO whether IRS rulings were considered "prior art" (and, thus, not novel) if they were not listed in the "Other References" section of a patent application. The patent application did not contain a reference to either ruling. The USPTO replied that, although it had not required such information in the past, it would start requesting it for financial-type patents under its Rule 105 (which is used to ask applicants for more information).

Sec. 1031: A patent relying heavily on Sec. 1031 has also drawn tax advisers' attention. The "Section 1031 deedshare patent" involves a method and investment instruments (deedshares) for performing tax-deferred real estate exchanges.[13] The patent follows the result in Rev. Proc. 2002-22.[14] Its exclusive licensee, CB Richard Ellis Investors, L.L.C., has publicized and warned that it will aggressively pursue patent enforcement.[15]

Deferred compensation: A patent on hedging liabilities associated with a deferred-compensation plan was granted and assigned to Goldman Sachs & Company.[16] The patent purports to provide a mechanism to hedge the compensation expense liabilities of an employer providing deferred compensation to one or more employees.

IRAs: A patent has been granted to evaluate the financial consequences of converting a traditional IRA to a Roth IRA.[17] It describes a computer-implemented process for computing the tax consequences of converting to a Roth IRA and various options for funding the taxes, such as term insurance to fund the Federal tax liability of early withdrawal for premature death, calculating the entire rollover amount and financing the tax and insurance premium.

FSAs: A patent has been granted on flexible spending accounts (FSAs).[18] The patent sets forth a method to calculate costs using a "health cost calculator" and "flexible spending account calculator."

FOLIOfn: The trend to patent tax ideas is only in its infancy; however, several individuals and companies already have applied for multiple patents. For example, FOLIOfn, Inc., a brokerage and investment solutions company, holds three TSPs. It has developed methods for tracking and organizing investments and has patented mechanisms and processes that allow users to view and manipulate potential tax consequences of investment decisions. Several of FOLIOfn's other business-method patents are in practice via large licensing agreements. The company is similarly looking for licensing opportunities for its three TSPs but has not yet secured any deals.[19]

As far as the AICPA is aware, only one of its members (a sole practitioner) has applied for a TSP. The AICPA Tax Division staff discussed the issue with that member. The AICPA has confirmed that, currently, none of the "Big Four" accounting firms holds TSPs.

AICPA Issues

In a Feb. 28, 2007, letter[20] to Congress, the AICPA outlined its concerns and position on patenting tax strategies. Its position is that TSPs:

- Limit taxpayers' ability to use fully tax law interpretations intended by Congress;
- May cause some taxpayers to pay more tax than Congress intended or more than others similarly situated;
- Complicate the provision of tax advice by professionals;
- Hinder compliance by taxpayers;
- Mislead taxpayers into believing that a patented strategy is valid under the tax law; and
- Preclude tax professionals from challenging the validity of a patented strategy.

The AICPA is concerned about patents for methods that taxpayers use in arranging their affairs to minimize tax obligations. TSPs may limit taxpayers' ability to use fully interpretations of law intended by Congress. As a result, they thwart Congressional intent and, thus, undermine the integrity of, and the public's confidence in, the tax system. TSPs also unfairly cause some taxpayers to pay more tax than (1) intended by Congress or (2) others similarly situated. The AICPA believes that the conflict with Congressional intent highlights a serious policy reason against allowing patent protection. Allowing a patent on a strategy for complying with a law or regulation is not sound public policy because it creates exclusivity in interpreting the law.

The AICPA is also concerned with tax law simplicity and administration. TSPs greatly complicate tax advice and compliance. Tax law is already quite complex. The AICPA believes that the addition of rapidly proliferating patents on tax-planning techniques and concepts will render tax compliance much more difficult.

Because TSPs are granted by the Federal government, the AICPA is concerned that they pose a significant risk to taxpayers. Taxpayers may be misled into believing that a patented tax strategy bears the approval of other government agencies (e.g., the IRS) and, thus, is a valid and viable technique under the tax law. However, this is not the case; the USPTO does not consider the viability of a strategy under the tax law. The USPTO is authorized only to apply the criteria for patent approval as enacted by Congress and as interpreted by the courts. The IRS is not involved in the USPTO's consideration of a TSP application.

The AICPA is concerned that tax professionals also may be unable, as a practical matter, to challenge the validity of TSPs as being obvious or lacking novelty, due to their professional obligations of client confidentiality. Tax advisers may also find it difficult to defend patent-infringement lawsuits due to client confidentiality. The USPTO will also find it difficult, if not impossible, to determine whether proposed tax strategies meet the statutory requirements for patentability because tax advice is generally provided on a confidential basis.

The usefulness of TSPs is also questionable. The AICPA believes that some of these patents may be sought to prevent tax advisers and taxpayers from using otherwise legally permissible tax-planning techniques, unless they pay a royalty.

The AICPA is concerned that both tax practitioners and taxpayers may be sued for patent infringement, whether or not the infringer knew about the patent. A taxpayer can infringe a patent without intent or knowledge of it; ignorance of an applicable patent is not a defense.[21] Practitioners must be aware that once they know that a particular tax strategy is patented, using that strategy without the patent holder's permission may expose them to claims of willful infringement and triple damages. Unfortunately, the current environment may leave some practitioners with no recourse, other than engaging patent counsel to review and monitor techniques they routinely use.

Advocacy Efforts and Communications

Background: In November 2005 and February 2006, the AICPA Trust, Estate & Gift Tax TRP discussed this emerging issue with IRS representatives. In addition, AICPA President Barry Melancon discussed this issue with then-IRS Commissioner Mark Everson on Oct. 17, 2006, advising him of the AICPA's concern and desire to take legislative action.

In January 2006, the AICPA Tax Division's Tax Executive Committee (TEC) decided to form the PTF. This article's authors chair and staff that task force, respectively. The PTF was formed with both large- and small-firm members, from various technical areas of the AICPA Tax Division, including individual, international, partnership, S corporation, tax policy and legislation, and trust, estate and gift taxes. The task force held several conference calls and meetings, including one call with a patent expert who explained the basis for patents and the application process.

In June 2006, the TEC authorized some PTF members to participate in a joint multi-professional organization task force (including the AICPA, the ABA's Real Property, Probate and Trust Law Section and Tax Section, the American College of Trust and Estate Counsel and the American Bankers Association) on the issue. The joint task force had several conference calls; its chair attended a PTF meeting in November 2006.

In July 2006, prior to the Congressional hearings on the issue, the PTF discussed its concerns with Capitol Hill staff. This article's authors attended the hearing, then updated AICPA Tax Division members about the issue and hearing via an electronic alert (e-alert) in August 2006.

In October 2006, the AICPA up-dated members via an update to state CPA societies. In February 2007, the AICPA sent to the leadership of the House and Senate tax-writing and judiciary committees its position on tax-strategy patenting, including legislative proposals. E-alerts went out to the AICPA membership and were included in the April 2007 issue of the AICPA's The CPA Letter.[22] In addition, PTF members authored Journal of Accountancy articles on the subject.[23]

In March 2007, the PTF drafted and submitted comments[24] to Treasury on the regulations for "reportable transactions." These comments recommended that Treasury not require taxpayers to report patented transactions as reportable transactions, but require the patent holder or USPTO to disclose when the patent is issued.

The AICPA Congressional and Political Affairs group has made TSPs a top priority and is in discussions with Congress and its staffs, as well as the USPTO's General Counsel and Director of Business Method Patents, to develop and enact legislation designed to bar grants of, or provide immunity for taxpayers and practitioners from liability related to, such patents. Currently, the AICPA's legislative efforts are focused on the judiciary committees, which consider and vote on any patent legislation.

Action: The AICPA has taken a pro-active role against the patenting of tax ideas. Most of its efforts are reflected in a website it has created on the subject,[25] which contains:

- AICPA comments to Congress, Treasury and the IRS, updates to members, and its PTF roster;
- Comments of other groups and the Joint Committee on Taxation;
- USPTO links;
- Information on specific TSPs;
- Related articles and other information; and
- Links to additional resources.

Recommended Steps

To minimize potential liability until a legislative solution is enacted, tax practitioners should take the following steps, as appropriate, in response to TSPs:

1. Stay current on matters regarding TSPs by continually visiting the AICPA website on the subject.
2. Read articles and attend conferences about TSPs.
3. Continually visit the USPTO website to determine if a tax idea, technique or strategy that a tax practitioner intends to recommend to a client has been issued a patent or if one is pending.[26]
4. If a strategy is either already patented or is similar to a patented strategy:

- Advise the client about the patent's existence, the options available and the associated risks;
- Determine whether patent counsel is needed to further investigate the patent; and
- If there is a relevant patent, determine whether to negotiate with the patent holder to be able to use the strategy.

Proposed Legislative Solution

The AICPA has considered various administrative solutions to this issue and concluded that they are insufficient. In its Feb. 28, 2007, letter, it encouraged Congress to develop legislation to eliminate the harmful consequences of TSPs by either (1) restricting the issuance of such patents[27] or (2) providing immunity from patent infringement liability for taxpayers and tax practitioners.

HR 2365, legislation sought by the AICPA to limit damages and other remedies with respect to patents for tax-planning methods, was introduced by Rep. Rick Boucher
(D-VA) on May 17, 2007, with initial co-sponsors Reps. Bob Goodlatte (R-VA) and Steve Chabot (R-OH). Reps. Boucher, Goodlatte and Chabot are senior members of the House Judiciary Committee, which has jurisdiction over patent legislation. The bill was referred to that committee. As of May 30, 2007, 14 cosponsors had signed onto the bill. AICPA efforts and discussions continue with other members of Congress, including members of the Senate Judiciary Committee. On May 16, 2007, Reps. Lamar Smith (R-TX), Boucher and Goodlatte sent a letter requesting a hearing on the issue to Howard Berman (D-CA), chairman of the House Judiciary Committee Subcommittee on Courts, the Internet, and Intellectual Property.

The Future

The AICPA continues to work with Congress to make legislative changes regarding the patenting of tax strategies. It is also currently working with the USPTO to determine how both organizations might work together to better scrutinize such patent applications. The AICPA will continue to focus its legislative efforts on the judiciary committees and to work with the USPTO, IRS and Treasury, as well as other professional groups, to educate tax advisers on TSPs and to enhance the flow of information among the groups. The PTF and the AICPA will continue to update its website with additional resources for members, develop other educational and practice-oriented tools and study and address related professional ethical issues.

Conclusion

Practitioners and taxpayers need to (1) be aware that TSPs are being granted and (2) review planning approaches and consider consulting with patent counsel, if appropriate. Tax advisers should ask clients about their use of tax strategies, as they may be unknowingly using patented ones. The AICPA will continue to work with the IRS, USPTO, Treasury and Congress to handle—and hopefully resolve—this emerging issue.

For more information about this article, contact Ms. Sherr at ***esherr@aicpa.org***

Notes

Editor's note: Mr. Ransome chairs the AICPA Tax Division's Tax Strategy Patent Task Force (PTF), and vice chairs the AICPA Tax Division's Trust, Estate & Gift Tax Technical Resource Panel (TRP). Ms. Sherr is Technical Manager of that task force and TRP.

[1] P.L. No. 82-593, 82d Cong., 2d Sess. (1952); see 35 USC Sections 101–103 and 112.

[2] In 2005, it was reported that the average patent infringement case typically costs $650,000 per party when the amount at risk is under $1 million, and $2 million per party when the amount at risk is $1 million to $25 million; see American Intellectual Property Law Association, "Report of the Economic Survey 2005," p. 22, available at www.aipla.org/Content/NavigationMenu/Professional_Development/Law_Practice_Management/Law_Practice_Management.htm. See also *Statement of Ellen Aprill, Testimony Before the Subcommittee on Select Revenue Measures of the House Committee on Ways and Means* (7/13/06), at fn. 4.

[3] *State Street Bank & Trust v. Signature Fin'l Group*, 149 F3d 1368 (Fed. Cir. 1998). Business methods include business practices in many fields, including healthcare management, insurance and insurance processing, reservation and booking systems, financial market analyses, point-of-sale systems, tax processing, and inventory, accounting and financial management.

[4] *KSR Int'l Co. v. Teleflex Inc.,* S. Ct., Dkt. No. 04-1350, 4/30/07.

[5] The U.S. Patent and Trademark Office (USPTO) classifies TSPs as subclass 36T in Class 705, "Data Processing: Financial, Business Practice, Management, or Cost/Price Determination"; see http://www.uspto.gov/go/classification/uspc705/sched705.htm. As of May 31, 2007, the USPTO's website listed 60 patents issued in that subclass and 86 pending applications (i.e., published applications not yet examined/granted); see http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&u=/netahtml/PTO/searchadv.htm&r=0&p=1&f=S&l=50&Query=ccl/705/36T&d=PTXT and http://appft1.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&u=%2Fnetahtml%2FPTO%2Fsearchadv.html&r=0&f=S&l=50&d=PG01&OS=ccl%2F&RS=CCL%2F705%2F36T&PrevList1=Prev.+50+Hits&TD=81&Srch1=705%252F36T.CCLS.&StartNum=&Query=ccl%2F. There are also two other possible tax-related patent subclasses, 36R (related to portfolio selection, planning or analysis) and 31 (related to computerized arrangements for determining or submitting a tax or tax form to a governmental entity). For an assignment listing of these patents, see http://www.uspto.gov/patft/class705_sub36t.html.

[6] See Stamper, "Tax Strategy Patents: A Problem without a Solution," 78 *Tax Notes 3* (4/23/07).

[7] On Jan. 6, 2006, Wealth Transfer Group LLC filed a complaint in a Connecticut Federal district court against John W. Rowe, alleging that he infringed its SOGRAT patent; see *Wealth Transfer Group LLC v. John W. Rowe*, Dkt. No. 3:06-cv-00024-AWT. Wealth Transfer Group LLC sought an injunction and damages against Rowe after discovering (through Securities and Exchange Commission filings) that he funded a GRAT with NQSOs. On Feb. 6, 2007, the parties filed a joint motion to stay the case, stating that they have agreed in principle to resolve the matter. On March 9, 2007, the court approved a confidential settlement to end the litigation, without Rowe admitting liability. The SOGRAT patent is at http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=/netahtml/PTO/search-bool.html&r=1&f=G&l=50&co1=AND&d=PTXT&s1=SOGRAT&OS=SOGRAT&RS=SOGRAT.

[8] See Slane, Freeman and Simmons, "Efficient Use of Non-Qualified Stock Options as a Wealth Transfer Vehicle," 32 *Est. Pln'g* 9 (September 2005).

[9] Patent number 7,149,712 was issued to Alan J. Lang, a financial adviser at Cantella & Co., Inc., on Dec. 12, 2006; see http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/PTO/srchnum.htm&r=1&f=G&l=50&s1=7,149,712.PN.&OS=PN/7,149,712&RS=PN/7,149,712.

[10] IRS Letter Ruling 9009047 (12/5/89).

[11] IRS Letter Ruling (TAM) 9825001 (6/19/98).

[12] Hoffman, "Investment Strategy Patents for Charitable Vehicles?" (3/12/07), available at mari.

[13] The Section 1031 deedshare (patent number 6,292,788 B1) was issued on Sept. 18, 2001, to Neal Roberts, Michael Franklin, Charles Runnels and James Andrews. The patent is assigned to American Master Lease, LLC, which has granted an exclusive license to CB Richard Ellis Investors, L.L.C.; see http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/PTO/srchnum.htm&r=1&f=G&l=50&s1=6,292,788.PN.&OS=PN/6,292,788&RS=PN/6,292,788.

[14] Rev. Proc. 2002-22, 2002-1 CB 733.

[15] See Lederman, "Tax-Related Patents: A Novel Incentive or an Obvious Mistake?" 105 *J Tax'n* 325 (December 2006), at p. 327; see also "CB Richard Ellis Investors Patents $73 Million Tenancy-in-Common Structure" (9/25/03), available at http://netleasenews.blogspot.com/2003_09_01_archive.html, a press release on the announcement of CB Richard Ellis Investors' tenancy-in-common (TIC) offering (known as the 1031FORT). Valued at $73.5 million and primarily targeting Sec. 1031 exchangers, it is one of the largest offerings of TIC real estate interests.

[16] Patent number 6,766,303 was issued on July 20, 2004, to David J. Marshall and assigned to Goldman Sachs & Co.; see http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/PTO/srchnum.htm&r=1&f=G&l=50&s1=6,766,303.PN.&OS=PN/6,766,303&RS=PN/6,766,303.

[17] Patent number 6,058,376 was issued on May 2, 2000, to David A. Crockett; see http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netahtml/PTO/srchnum.htm&r=1&f=G&l=50&s1=6,058,376.PN.&OS=PN/6,058,376&RS=PN/6,058,376.

[18] Patent number 20020147617 was issued on Oct. 10, 2002, to Michael Schoenbaum, Mark Spranca, Jayanta Bhattacharya and Neeraj Sood; see http://appft1.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&u=/netahtml/PTO/search-adv.html&r=1&p=1&f=G&l=50&d=PG01&S1=20020147617&OS=20020147617&RS=20020147617.

[19] FOLIOfn, Inc., was assigned three patents developed by Steven M. H. Wallman. Patent number 6,996,539 was issued on Feb. 7, 2006, for a method and apparatus enabling smaller investors or others to create and manage a portfolio of securities or other assets or liabilities. Patent number 6,161,098 was issued on Dec. 12, 2000, for a method and apparatus enabling small investors with a portfolio of securities to manage taxable events in the portfolio. Patent number 6,516,303 was issued on Feb. 4, 2003, for a method, system and apparatus for managing taxable events in a portfolio; see http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&u=/netahtml/PTO/searchadv.htm&r=3&f=G&l=50&d=PTXT&p=1&S1=6,996,539&OS=6,996,539&RS=6,996,539; http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&u=/netahtml/PTO/search-adv.htm&r=13&f=G&l=50&d=PTXT&p=1&p=1&S1=6,161,098&OS=6,161,098&RS=6,161,098; and http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&u=/netahtml/PTO/search-adv.htm&r=11&f=G&l=50&d=PTXT&p=1&p=1&S1=6,161,098&OS=6,161,098&RS=6,161,098.

[20] Available at /InterestAreas/Tax/Resources/TaxPatents/Pages/default.aspx AICPA+Urges+Congress+to+Address+Tax+Strategy+Patents.htm.

[21] See *Statement of Ellen Aprill*, note 2 supra.

[22] See "AICPA Tells Congress to Restrict Tax Strategy Patents," available at www.aicpa.org/Magazines+and+Newsletters/Newsletters/The+CPA+Letter/April+2007/AICPA+Tells+Congress+to+Restrict+Tax+Strategy+Patents.htm.

[23] See "AICPA Criticizes Tax Patents" (May 2007), available at www.aicpa.org/pubs/jofa/may2007/taxcases.htm#AICPA; "Washington Reports: Tax Patents" (June 2007), available at www.aicpa.org/pubs/jofa/jun2007/wr.htm; and Cathey, Godfrey and Ransome, "Tax Patents Considered" (July 2007), available at www.aicpa.org/pubs/jofa/jul2007/cathey.htm.

[24] See http://tax.aicpa.org/Resources/Tax+Advocacy+for+Members/IRS+Regulation+and+Administration/AICPA+Comments+on+Proposed+Reportable+Transaction+Regulations.htm.

[25] See /InterestAreas/Tax/Resources/TaxPatents/Pages/default.aspx.

[26] For TSPs issued, see http://appft1.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&u=/netahtml/PTO/search-adv.html&r=0&f=S&l=50&d=PG01&OS=CCL/705/36T&RS=CCL/705/36T&TD=85&Srch1=705/36T.CCLS.&NextList2=Final+35+Hits&StartNum=&Query=CCL/705/36T. For tax-strategy patents published but not yet issued, see http://appft1.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&u=/netahtml/PTO/search-adv.html&r=0&p=1&f=S&l=50&Query=ccl/705/36t&d=PG01. Alternatively, tax advisers can go to the USPTO website (www.uspto.gov/patft/index.html) and, in either the "Issued Patents" or "Published Applications" area, click on "Advanced Search," enter in the query box the search code "CCL/705/36T" and click "Search."

[27] S 681, the Stop Tax Haven Abuse Act, introduced by Sens. Carl Levin (D-MI), Barack Obama (D-IL) and Norm Coleman (R-MN), and companion bill HR 2136, introduced by Rep. Lloyd Doggett (D-TX) (with 40 co-sponsors), each contain Section 303, which is consistent with the AICPA position. Section 303 of each bill would amend 35 USC Section 102 by prohibiting patents on inventions "designed to minimize, avoid, defer, or otherwise affect the liability for federal, state, local or foreign tax." This provision would be effective on enactment and applicable to patents that have not yet been granted.