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

Dear Senator Leahy:

On behalf of the 780 members of the Vermont Society of CPAs, I am writing to ask you to champion an issue that is a top legislative priority for the accounting profession: limiting the patenting of tax planning methods. In particular, we are asking you to include a ban on tax planning method patents as part of any patent reform legislation that you bring to the Senate floor. It is critically important that this problem is resolved for taxpayers and their advisers.

Our members have extensive experience in rendering advice to taxpayers on matters of tax planning and compliance. From this unique vantage point, we have considered the broad impact of tax planning method patents on taxpayers, professional tax advisers, and the public interest. The patentability of tax strategies is a growing concern among tax practitioners and taxpayers.

As you know, in 1998, the U.S. Federal Circuit Court of Appeals, in *State Street Bank & Trust v. Signature Financial Group, Inc.*, held that business methods could be patented. Since then, 82 patents for tax strategies have been granted and over 120 more applications are pending.

Patents for tax planning methods have been granted in a variety of areas, including the use of financial products, charitable giving, estate and gift tax, pension plans, tax-deferred exchanges, and deferred compensation. One patent already granted is for the process of computing and disclosing the federal income tax consequences involved in the conversion from a standard Individual Retirement Account (IRA) to a Roth IRA. Lawmakers surely never contemplated that taxpayers would have to be experts in patent law or potentially subject to royalty litigation as they plan for their personal retirement!

We expect more tax planning method patents to be issued, directly targeting average taxpayers in a host of areas including: (1) income tax minimization; (2) alternative minimum tax (AMT) minimization; and (3) income tax itemized deduction maximization.

There is simply too much at stake for taxpayers and their advisors to allow the patenting of tax planning methods to continue. We remain extremely concerned about this problem for a number of reasons. In particular:

- The issuance of tax strategy patents continues to undermine the ability of taxpayers to pay their taxes in any legally permissible manner;
- The challenges of compliance and the legal jeopardy for taxpayers associated with tax strategy patents are severe and daunting;
- There is little doubt that tax planning method patents undermine lawmakers' intent when our tax laws were passed.
- As long as patents for tax planning methods are allowed, it is quite possible that taxpayers will find themselves paying more than Congress intended;
- And finally, simply because the Patent and Trademark Office has issued a patent does not mean a tax strategy would be found to be legal by the Internal Revenue Service. A patent imparts a false sense of security about a particular tax strategy.

As you know, last Congress, a legislative solution to this growing problem was included as part of the House-passed Patent Reform Act (H.R. 1908, Section 10). In the Senate, Senators Max Baucus and Charles Grassley also introduced a similar freestanding bill (S. 2369), which garnered 30 co-sponsors, including then-President Barack Obama. Unfortunately, the Senate did not take up comprehensive patent reform before the Congress ended, and there was not an opportunity to attach S. 2369 to the larger patent bill. However, Senators Baucus and Grassley have indicated that a bill similar to S. 2369 will be re-introduced shortly in the 111th Congress.

Already, in the House, Congressmen Rick Boucher and Bob Goodlatte have reintroduced freestanding legislation (H.R. 2584) which they have indicated they want to attach to patent reform legislation when it moves in the House.

The Vermont Society of CPAs, working with CPAs, taxpayers, and other concerned parties around the country is working now to build off the momentum from the last Congress and ensure that a ban on the issuance of tax strategy patents is a part of any comprehensive patent reform legislation. We respectfully ask that, as the Chairman of the Judiciary Committee, you support the efforts of Senators Baucus, Grassley and the other supporters of this legislation and work to make sure that a legislative ban on tax strategy patents is included in any patent reform bill passed by the full Senate.

Finally, I should note that, as you are aware, the U.S. Supreme Court recently decided to hear the *Bilski* case. Some may argue that this case may be an alternative way to address the problem of tax strategy patents. While this case is indeed important to the larger debate over the patentability of business methods, it should not deter the Senate from passing the Baucus-Grassley language. Even if the *Bilski* decision is upheld by the Supreme Court, that decision, itself, is likely to be only a narrowing of the patentability of business methods. Absent congressional action, we believe that tax strategy patents will be still permissible, and the PTO will continue to grant them in a post-*Bilski* environment.

Thank you again for your consideration of this issue. With your leadership, the Vermont Society of CPAs is confident that we can fix this problem for taxpayers and their advisers. Please contact the Society if we can be of any assistance as the Senate moves forward on patent reform legislation or any other issue.

Sincerely,

Peter G. Moino, CPA, Chairman