



November 10, 2009

The Honorable Patrick J. Leahy
United States Senate
Washington, DC 20510

Re: Tax Strategy Patent Legislation

Dear Chairman Leahy:

We are writing to make you aware of our concerns regarding the critically important issue of tax strategy patents. We believe that legislative action to prohibit them is necessary as these types of patents pose a significant threat to taxpayers and their advisers.

During the prior Congress, the House passed a ban on tax strategy patents as part of the larger House patent reform effort (Section 10 of H.R. 1908). The Senate, however, did not take up this legislation, and we are left with addressing this issue again in this Congress. In May 2009, Messrs. Boucher and Goodlatte introduced a freestanding bill, H.R. 2584, which mirrors the provisions that were included in last year's H.R. 1908. Thus far, H.R. 2584 has gained over 30 cosponsors. As in the last Congress, we anticipate that Senators Baucus and Grassley will introduce the same bill very soon, and expect it to gain a significant number of bipartisan cosponsors like S.2369 did (29 cosponsors) in the prior Congress. We believe that this legislation is essential, and are asking that you include these provisions in any patent overhaul bill to be considered in the Senate this Congress.

Our national organization, U.S. PIRG, recently joined a coalition of consumer organizations, taxpayer rights groups and tax planners that are speaking out on the need for action. The National Taxpayer Advocate, Nina Olson, has called for such legislation. President Barack Obama also co-sponsored this legislation when he was a Senator. Like them, Vermonters want to see Congress permanently resolve this problem. Given the strong support from so many, we hope you will agree that this issue is both of national significance and of great importance to Vermonters.

Not surprisingly, tax strategy patents can create significant problems for both taxpayers and their advisers. Because of these patents, we believe taxpayers are having difficulty complying with the tax law and fully utilizing interpretations intended by Congress. These patents may also cause some taxpayers to pay more tax than Congress intended and may cause some taxpayers to pay more tax than others similarly situated. In addition, issuing patents for methods that may in the end help businesses or individuals avoid or evade their taxes cannot be justified. When individuals and corporations are able to use tricks and schemes to hide their money, the rest of the taxpayers, including small businesses, must take on the burden.

Vermont Public Interest Research Group

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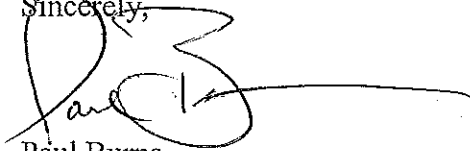
We believe that this is both inequitable and unreasonable. Additionally, the Patent and Trademark Office (PTO) is not an expert in tax law, nor is it charged with its enforcement. Significantly, the existence of a patent is no guarantee that the patented strategy is valid under the tax code. Taxpayers may believe that using a patented tax strategy is akin to having the government's seal of approval on the tax planning method, which is not the case.

Finally, the requirement to determine whether a patent has been issued, and if its use requires a royalty payment, is both beyond the scope and reasonableness of the kind of research that should be required of a taxpayer or an advisor. This new burdensome cost of compliance is ultimately borne by taxpayers: any royalty payment is effectively an additional toll just to pay one's taxes.

With its significant bipartisan support, we believe Congress is well poised to act quickly to ban tax patents. Some have asked, however, whether the legislation is necessary as a result of the recent Federal Circuit decision, *In re Bernard L. Bilski and Rand A. Warsaw*, which addresses the broader question of the patentability of business methods. Because the *Bilski* case is currently pending before the Supreme Court, the final outcome is unclear. Regardless of the Court's decision, however, we do not believe that it will prevent the PTO from issuing additional tax strategy patents, and that legislative action on this problem should not be delayed. The PTO continues to grant tax strategy patents, and new tax strategy patent applications continue to be filed since the Federal Circuit decision in October 2008. Indeed, as of the date of this letter, 86 tax strategy patents have been issued, and 134 additional are pending. We consider legislation absolutely essential.

We strongly endorse this legislation and want to see it enacted into law this Congress. Thank you in advance for your leadership, and we that ask you to work together with us to fix this problem for Vermonters and all taxpayers.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Burns", with a long horizontal line extending to the right.

Paul Burns
Executive Director