

110TH CONGRESS  
1ST SESSION

# H. R. 2365

To amend title 35, United States Code, to limit damages and other remedies with respect to patents for tax planning methods.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2007

Mr. BOUCHER (for himself, Mr. GOODLATTE, and Mr. CHABOT) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 35, United States Code, to limit damages and other remedies with respect to patents for tax planning methods.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. LIMITATION ON DAMAGES AND OTHER REM-**  
4 **EDIES WITH RESPECT TO PATENTS FOR TAX**  
5 **PLANNING METHODS.**

6 (a) LIMITATION.—Section 287 of title 35, United  
7 States Code, is amended by adding at the end the fol-  
8 lowing new subsection:

9 “(d)(1) With respect to the use by a taxpayer or a  
10 tax practitioner of a tax planning method that constitutes

1 an infringement under subsection (a) or (b) of section 271,  
2 the provisions of sections 281, 283, 284, and 285 shall  
3 not apply against the taxpayer, the tax practitioner, or any  
4 related professional organization with respect to such tax  
5 planning method.

6 “(2) For the purposes of this subsection—

7 “(A) the term ‘tax planning method’ means a  
8 plan, strategy, technique, or structure that is de-  
9 signed to reduce, minimize, or defer, or has, when  
10 implemented, the effect of reducing, minimizing or  
11 deferring, a taxpayer’s tax liability, but does not in-  
12 clude the use of tax preparation software or other  
13 tools used solely to perform or model mathematical  
14 calculations or prepare tax or information returns;

15 “(B) the term ‘taxpayer’ means an individual,  
16 entity, or other person (as defined in section 7701  
17 of the Internal Revenue Code of 1986) that is sub-  
18 ject to taxation directly, is required to prepare a tax  
19 return or information statement to enable one or  
20 more other persons to determine their tax liability,  
21 or is otherwise subject to a tax law;

22 “(C) the terms ‘tax’, ‘tax laws’, ‘tax liability’,  
23 and ‘taxation’ refer to any Federal, State (as de-  
24 fined in subsection (c)(2)(G)), county, city, munici-  
25 pality, or other governmental levy, assessment, or

1 imposition, whether measured by income, value, or  
2 otherwise;

3 “(D) the term ‘tax practitioner’ means any nat-  
4 ural person who provides advice and consultation to  
5 a taxpayer with respect to a tax planning method or  
6 who is acting under the direction of such person in  
7 connection with the development or use of a tax  
8 planning method;

9 “(E) the term ‘related professional organiza-  
10 tion’ means an entity with which a tax practitioner  
11 has a professional affiliation under which the tax  
12 practitioner may provide advice and consultation  
13 with respect to a tax planning method, including a  
14 law firm, accounting firm, or a bank; and

15 “(F) the term ‘professional affiliation’ means  
16 an employment or contractual relationship or part-  
17 nership or other ownership interest.”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 subsection (a) shall take effect on the date of the enact-  
20 ment of this Act and shall apply to any action for patent  
21 infringement that is filed on or after that date.

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