

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.

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

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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