

8 **SEC. 303. PROHIBITION ON TAX SHELTER PATENTS.**

9 (a) **IN GENERAL.**—Section 102 of title 35, United
10 States Code, is amended—

11 (1) by redesignating subsection (g) as sub-
12 section (h); and

13 (2) by inserting after subsection (f) the fol-
14 lowing:

15 “(g) the invention is designed to minimize, avoid,
16 defer, or otherwise affect the liability for Federal, State,
17 local, or foreign tax, or”.

18 (b) **EFFECTIVE DATE AND APPLICATION.**—The
19 amendment made by this section shall take effect on the
20 date of the enactment of this Act and apply to any applica-
21 tion for a patent that has not been granted by that date.

Prohibition on Tax Shelter Patents

Section 303 of our bill addresses the growing problem of tax shelter patents, which has the potential for significantly increasing abusive tax shelter activities.

In 1998, a federal appeals court ruled for the first time that business methods can be patented and, since then, various tax practitioners have filed applications to patent a variety of tax strategies. The U.S. Patent Office has apparently issued 49 tax strategy patents to date, with more on the way. These patents were issued by patent officers who, by statute, have a background in science and technology, not tax law, and know little to nothing about abusive tax shelters.

Issuing these types of patents raises multiple public policy concerns. Patents issued for aggressive tax strategies, for example, may enable unscrupulous promoters to claim the patent represents an official endorsement of the strategy and evidence that it would withstand IRS challenge. Patents could be issued for blatantly illegal tax shelters, yet remain in place for years, producing revenue for the wrongdoers while the IRS battles the promoters in court. Patents for tax shelters found to be illegal by a court would nevertheless remain in place, creating confusion among users and possibly producing illicit income for the patent holder.

Another set of policy concerns relates to the patenting of more routine tax strategies. If a single tax practitioner is the first to discover an advantage granted by the law and secures a patent for it, that person could then effectively charge a toll for all other taxpayers to use the same strategy, even though as a matter of public policy all persons ought to be able to take advantage of the law to minimize their taxes. Companies could even patent a legal method to minimize their taxes and then refuse to license that patent to their competitors in order to prevent them from lowering their operating costs. Tax patents could be used to hinder productivity and competition rather than foster it.

The primary rationale for granting patents is to encourage innovation, which is normally perceived to be a sufficient public benefit to justify granting a temporary monopoly to the patent holder. In the tax arena, however, there has historically been ample incentive for innovation in the form of the tax savings alone. The last thing we need is a further incentive for aggressive tax shelters. That's why Section 303 would prohibit the patenting of any "invention designed to minimize, avoid, defer, or otherwise affect the liability for Federal, State, local, or foreign tax."