October 23, 2003

President George W. Bush
The White House
Washington, D.C. 20005

Dear President Bush:

On behalf of the Section of Taxation of the American Bar Association, we write to express our concern as to the process by which existing Tax Court judges may be reappointed to the court. This letter represents the views of the Section of Taxation. It has not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the Association.

The Tax Court, created under Article I of the Constitution, fulfills an important role in tax administration. The Tax Court provides an independent judicial forum for the resolution of disputes between taxpayers and the Internal Revenue Service, while fostering a uniform interpretation of our complex tax laws. Tax Court Judges are appointed for a term of fifteen years.

Over the Tax Court’s history, a Tax Court Judge whose term is expiring has almost always been re-appointed upon notifying the President of his or her continued willingness to serve. We fully understand that the prerogative of appointment is yours, with the advice and consent of the Senate. While we strongly urge that the practice of re-appointing Tax Court Judges who wish to continue to serve and who have diligently fulfilled their judicial duties continue, the problem we are addressing arises not from a Presidential decision to appoint someone new, but rather from simple failure of the re-appointment process to be completed on a timely basis.

Under 26 U.S.C. section 7447(b)(3), upon the completion of his or her term, a Tax Court Judge may serve notice of the Judge's willingness to accept re-appointment not less than six nor more than nine months preceding the expiration of the Judge's initial term. Any Tax Court Judge who is not then re-appointed is eligible to retire.

Beginning in the last Administration, the re-appointment process began to slow down. While Judges who desired to continue to serve were, in almost all cases, ultimately re-appointed, the re-appointment itself did not occur on several occasions until several weeks or months following the expiration of the Judge's first term. The resulting hiatus between the end of the Judge's first term and the beginning of the re-appointment term has caused significant difficulties for the Tax Court and for tax administration generally. These have included requiring the election of an interim Chief Judge and temporary exclusion from the Court's internal conferences that consider opinions that are reviewed by the full Tax Court. The hiatus also affects the Judge's staff since the Judge's entitlement to law clerks and administration personnel is affected by whether he or she is a "regular" Judge or a "retired" Judge, recalled by the Chief Judge.
We are pleased that the Tax Court's Chief Judge was recently re-appointed expeditiously. We urge you and those who advise you concerning such re-appointments to devise procedures to assure that the process is completed on a timely basis so that there is no "gap" in a re-appointed Tax Court Judge's active service.

Very truly yours,

Richard A. Shaw  
Chair

cc: Honorable John Snow  
Secretary of the Treasury

Honorable Pamela Olson  
Assistant Secretary of the Treasury

Honorable Alberto Gonzales  
Assistant to the President and  
Counsel to the President