Wednesday, September 17, 1997
Mr. Chairman and Members of the Committee:

My name is Phillip L. Mann. I appear before you today in my capacity as Chair of the American Bar Association Section of Taxation. This testimony is presented on behalf 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 position of the Association.

The Section appreciates the opportunity to appear before the Committee today to discuss the report of the National Commission on Restructuring the Internal Revenue Service (the "Commission"). Although I will refer most frequently to the Commission's report, our comments also have been influenced by our review of H.R. 2292, the "Internal Revenue Service Restructuring and Reform Act of 1997," introduced on July 30, 1997, by Messrs. Portman and Cardin, and by our brief review of H.R. 2428, the "Internal Revenue Service Improvement Act of 1997," introduced on September 8 by Messrs. Rangel, Coyne and Matsui and others.

Because of the limited scope of today's hearing, our testimony focuses solely on issues of Executive Branch governance, Congressional oversight of the Internal Revenue Service ("Service" or "IRS") and certain recommendations regarding efforts to simplify future tax legislation. At an appropriate time, we would be pleased to present our views on other issues addressed in the Commission's report.

Since the creation of the Commission, the Section of Taxation has been privileged to have had the opportunity to consult with certain of its members and members of its staff as they reviewed issues and developed the Commission's report. We particularly appreciate the courtesy that Congressman Portman has extended to us during this process and his willingness to consult with us. During the same time period, the Section also has consulted with representatives of the Treasury Department, including Secretary Rubin, and we likewise appreciate the willingness of the Treasury to consider our views.

We believe the Commission report identifies crucial issues regarding the management of the Internal Revenue Service and attempts to deal constructively with those issues. While the Section does not agree with all of the solutions proposed by the Commission, we believe the thoughtful way in which the
Commission presents the issues will aid the Congress in designing a workable solution. We also have been impressed with the attention to IRS management issues given by Secretary Rubin and others within the Treasury Department, and we hope their efforts also will be productive. And, of course, we hope the testimony we present today contributes to the goal of a better tax system for our country.

As a preliminary matter, we wish to emphasize and forcefully endorse the conclusions reached by the Commission on the relationship between the complexity of the tax law and the difficulty of tax administration. As we will discuss in greater detail, there is little question that many of the perceived failures of the Service are closely linked to the complexity of the Internal Revenue Code. Unless there are meaningful legislative and administrative efforts to simplify the tax law, any changes in IRS governance that may result from the Committee's efforts will lose their effectiveness.

I. GOVERNANCE

Principles and Predicates
In reaching the conclusions and developing the recommendations on governance of the Service that we present today, we have been guided by the following principles:

1. **Clear Accountability**
   Clear lines of authority and accountability must be established both within the Internal Revenue Service and within the Executive and Legislative Branches to whom IRS management is responsible.

   We indicated in our April 17, 1997 testimony before the Commission (in the context of the Administration's management proposal) that we welcome the concept of institutionalization of IRS oversight within the Treasury Department. Inconsistent attention has been devoted by Treasury to tax administration in the past. Understandably, Secretaries of the Treasury have been required to devote far more attention to matters of economic and tax policy, international finance, and other fiscal matters. As a result, all too often, the Service's management issues have received short shrift, with the Service gaining correspondingly greater degrees of independence.

   The present Administration has done a laudable job of reversing this pattern. We note, however, that this reversal came about in part because of the perception that some problems within the Service had reached crisis proportions. We are concerned that the pattern of inattention could return in succeeding Administrations.

   The Tax Section agrees with the Commission that the lack of consistent management on the part of Treasury cannot be allowed to continue. In order to assure IRS accountability, there must be a strong authority within the Treasury Department, reporting directly to the Secretary, specifically charged with management oversight responsibility.

2. **Oversight**
   Adequate and continuous oversight of the Internal Revenue Service must be established.

   We believe adequate and continuous oversight is a necessary corollary to the accountability discussed above. To be effective, oversight must be exercised proactively and continuously, rather than only in reaction to crisis or scandal. Moreover, it must be carried out in a coordinated and integrated manner, rather than being diffused among multiple entities and individuals within the Administration and in Congress.

   To date, oversight has been anything but continuous and coordinated. Both within the Treasury and Congress, attention seems to be paid to the Service primarily when a problem arises. Problems in an agency the size of the Service are inevitable, and lack of effective oversight will only make matters worse. Therefore, the Section believes that it is appropriate and timely to revisit the means by which oversight of the Service is carried out.
3. **Continuity**
   *There must be continuity both in the management of the Internal Revenue Service and among those charged with oversight.*

   The Commission identified lack of continuity in the management of the Service as one of its principal problems. We concur.

   It is the nature of a bureaucracy to resist change and to move glacially once change has been decreed. In order to overcome this natural tendency, it is crucial that those with the vision to initiate and implement change remain in their roles long enough to see the change carried out. The difficulty in assuring continuity has been compounded by the inconsistency of Congressional oversight, especially with respect to long-term goals. By shifting its focus from year-to-year, Congress has been unable to ensure that important goals identified one year are implemented within the next few years.

   To counteract this tendency, it is important that there be a long-term commitment on the part of the top management of the Service and those charged with IRS oversight. Any restructuring initiative must try to ensure that those who propose and institute changes will be present to achieve their completion. To ensure continuity, there also should be overlapping tenures among those involved in the management review and oversight processes.

4. **Integrity**
   *The Internal Revenue Service must be free from improper political influence and the potential for corruption.*

   Compliance with our voluntary self-assessment system will erode rapidly if taxpayers perceive that those individuals with the "right connections" receive favorable treatment from the tax collector. Whatever structure is created must assure that the Service is sufficiently insulated to avoid any perception of such favoritism or from political and economic coercion and corruption. Adequate checks and balances must be in place so that any attempts to induce the Service to deviate from the "straight path" are promptly detected and stopped.

   Almost as important is the avoidance of any structure that creates an appearance of political influence. Little will be gained from management or oversight changes if the public perceives, even if incorrectly, that the potential for influence exists.

   The Section believes that the Service generally has maintained a high level of integrity throughout its history. We would be concerned with any proposal that could weaken this standard.

5. **Maintenance of Presidential Authority**
   *Ultimately, the Internal Revenue Service must remain the responsibility of the President of the United States.*

   The President is the one official charged with ultimate responsibility for administering the laws and the Executive Branch of the Federal Government. There can be no more fundamental aspect of such administration than collection of the government's revenues. Any diminution or shift of the President's authority, we believe, would diminish accountability, rather than strengthen it.

   In addition, we are not convinced that such a fundamental shift of power, with its uncertain effect on our political institutions, is necessary to achieve the ends sought by the Commission. As we will discuss below, the Section believes the goals identified by the Commission can be achieved in another way. Conversely, we are convinced that any effort to separate day-to-day management authority from the overall authority of the President over the Service is neither necessary nor wise.

6. **Assistance from the Private Sector**
   *The Service's senior management and the oversight process will benefit from private sector input.* Substantial benefits could be achieved by making available to the Service highly-qualified
individuals from the private sector. The Commission makes a compelling case that bringing the appropriate expertise from the private sector to bear on major management issues could greatly assist the Service. As we noted in our testimony before the Commission, private sector individuals could provide invaluable help to the Service, including access to resources; differing world views; technical expertise; creativity, judgment, and wisdom; and legitimacy. We believe the key issue is whether such input can be integrated into IRS management in a positive way and in a manner that does not compromise integrity, fairness, or the ultimate authority of the Executive Branch for operation of the Service.

Private sector participation in the oversight process also is very important. Individuals with substantial management experience and relevant technical expertise who are not affiliated with the Administration or the Congress may be expected objectively and candidly to evaluate the Service's plans and performance. Such evaluations should substantially aid the Congressional oversight process and, by making these individuals available to all relevant Congressional committees, should contribute to coordinating the legislative oversight process.

7. Integration of Administration and Tax Policy
Management issues relating to tax administration, enforcement of the tax laws and tax policy should not be separated.

We do not believe it is possible to separate successfully the fiscal management of the Service from tax administration, law enforcement, and tax policy. Management of the tax administration and collection functions is fundamentally and inextricably linked to fiscal, personnel, and information technology issues. Any major management decision -- such as allocation of resources among functions -- necessarily involves important policy choices. It simply is impossible to make business-type management decisions regarding information systems development; selection, training, compensation and deployment of personnel; or appropriate National Office, Regional, Service Center, and District structures, without affecting revenue collection and law enforcement. Conversely, changes in tax policy cannot be made without a significant impact on the administration of the tax laws.

Accordingly, we believe it is unwise to create a structure that has, as its fundamental premise, the notion that overall governance of the Service should be split from responsibility for tax policy, including specific matters in the areas of interpretation or enforcement of the tax laws. Instead, any legislation should seek to create a stronger link between the two.

Proposals
Based on the foregoing principles and predicates, the Section recommends the following management and oversight structure:

1. The Service should remain an agency within the Treasury Department.

As we have indicated, we believe the President is, and should remain, the ultimate authority over the Internal Revenue Service. Management of the agency charged with collection of virtually all of the revenues of the Federal Government is, fundamentally, an Executive Branch function. We believe this is consistent with the Constitutional notion of separation of powers and the management notion of accountability.

Moreover, we believe it is impossible, as well as unwise, to split the fiscal management of the Service from other issues involving tax administration, enforcement and policy. Therefore, these functions should be retained by the only branch of government capable of carrying out both simultaneously -- the Executive Branch -- and should continue to be lodged in the Treasury Department, the Cabinet department charged with administering the Government's fiscal affairs.

2. The President should appoint the Commissioner and Chief Counsel.
If the American people are to hold the President ultimately responsible for the performance of the Service, then the President must have the authority to appoint the Commissioner and the Chief Counsel, subject to Senate confirmation. Moreover, both officials should continue to serve at the will of the President.

We agree with the Commission that a statutorily fixed term for the Commissioner is desirable. While not binding on any individual, a fixed term may have the practical effect of achieving more of the continuity we think would be desirable.

3. **The President should retain control over IRS budgeting.**

   Control over an agency of government necessarily requires control over its budget. Indeed, the Commission recommended leaving the ultimate budget authority in the Executive Branch, although it did recommend giving the Commission's proposed Oversight Board a form of approval authority over the budget. Our recommendation that the President retain responsibility for operation of the Service makes it appropriate that the President also retain control over the Service's budget.

4. **Congress should establish an Internal Revenue Service Board of Review.**

   Consistent with our opinion that private sector expertise should be made available to the Service's senior management and should be involved in the oversight process, we recommend that Congress create an Internal Revenue Service Board of Review. This Board would be made up exclusively of private sector members. No government officials would be permitted to serve on the Board, nor would any government official serve in an ex officio capacity. We suggest that the size of the Board be kept relatively small; five or six members would seem optimal.

   As recommended by the Commission with respect to its proposed Oversight Board, members of the Board would serve staggered terms and would receive appropriate compensation (including reimbursement of expenses). We recommend that Board members be appointed by the President, confirmed by the Senate, and removable at the will of the President, although an equal number of Presidentially- and Congressionally-appointed members would not be objectionable. The members would be subject to existing laws relating to disclosure, recusal and conflicts of interest. In general, the Board should not be governed by the Federal Advisory Commission Act and should not have access to confidential taxpayer return information.

   The role of the Board would be specified by Congress in the implementing legislation and would be somewhat similar to the role recommended by the Commission. For example, the Board would be expected to review the Service's proposed budget, short-term and long-range strategic and operational plans, and major proposed management initiatives. In addition, the Commissioner would be expected to consult with the Board regarding the appointment, evaluation, and compensation of the Commissioner's senior management team. The Board also would be expected to recommend to the President qualified candidates for the positions of Commissioner and Chief Counsel.

   The Board would meet regularly, at least quarterly. Service and Treasury officials would be required to be available to meet with the Board to discuss any proposals or plans within the Board's statutory review authority. Proposals and other decisions subject to Board review would be required to be submitted to the Board prior to implementation. The Board would be provided access to the Service's annual financial audits and other non-taxpayer specific data needed to evaluate matters under consideration. The Board should be assigned a small staff that would report exclusively to the Board. In addition, the Board should have access to other IRS resources on an as-needed basis.

   The most important power of the Board would be its duty to make periodic (probably semi-annual) independent reports directly to the President and the Congress concerning its assigned tasks. It would be expected that such reports deal in a candid and uncensored fashion with the successes and problems of the Service, as well as any management initiatives which Congress must approve.
Members of the Board would be available to consult directly with, and testify before, the Congress on successes and problems of the agency.

Finally, and as importantly, we visualize the Board's role to include bringing to bear the relevant expertise of private sector professionals as a consultative resource for the Service and the Treasury on major management matters. This role should be specified in the implementing legislation. A properly recruited Board could make considerable resources available to the Service and could complement the management skills of the Commissioner by making available expertise in areas with which the Commissioner may be less familiar.

The authority of the Board would flow from its statutory mandate and the direct reporting responsibility to the President and the Congress provided by the enabling legislation. Through such legislation, Congress, in effect, would set the Board's agenda and require that the agenda be fulfilled. Rather than involve the Board in direct management of the Service, we conceive of its role as an extension of Congressional oversight. It would serve as the eyes and ears of Congress with respect to the Service, directly involved in reviewing the major management decisions affecting the Service without disrupting the normal Executive Branch authority.

Importantly, creation of a Board with oversight responsibility, but no direct approval authority over management matters, would eliminate any concern about perceived conflicts of interest on the part of Board members. We believe it is crucial that the public view the operation of the Service as untainted by the potential for corruption, partisanship or partiality. We fear that any management board with members drawn from the private sector, which has approval authority over certain IRS actions or functions, would be hard pressed to avoid the appearance of potential conflict, whether or not any real conflict exists. That appearance of conflict will not exist where, as we suggest, the Board exercises statutorily mandated oversight responsibilities and must regularly report in some detail to Congress.

We are convinced that a Board of Review, operating as we propose, would attract very high caliber members from the private sector. We are confident that ultimately the Service and the Treasury would recognize the substantial value these individuals could add to the analysis and review of management issues, and Congress would view the Board's role as an adjunct to its oversight responsibility. Because of the important impact the Board of Review will have on improved management and oversight of the Service, we think there will be no shortage of top quality private sector individuals willing to serve.

The Section believes that day-to-day management functions should remain within the Treasury Department, and that the Board of Review should function in review and oversight capacities only. Consequently, we do not support the Commission's recommendation that approval of certain management decisions be shifted to the Board. By retaining all such authority within the Executive Branch, clear management accountability will be maintained.

Neither do we support membership on any board by Executive Branch personnel from outside the Treasury and IRS. It is not clear to use what such individuals would add, particularly when compared to the potential contributions of private sector members, and, we believe, they would raise serious concerns about potential political influence, as well as confused loyalties. As a result, we do not support the Internal Revenue Service Management Board created in President Clinton's recent Executive Order and proposed in H.R. 2428.

5. Congress should establish the position of Undersecretary of Taxation

As noted earlier, we concur in the Commission's assessment that Treasury oversight of the Service has been "limited and uncoordinated." We propose that this problem be addressed directly by creating within the Treasury Department a new Undersecretary of Taxation charged specifically with
that responsibility, together with the task of coordinating the entire tax system, both tax administration and tax policy. The scope and importance of this new position dictate that it should be filled only with an individual having significant experience with the tax system.

The Undersecretary would be responsible for Treasury Department oversight of the Service and would be answerable to the Secretary. In addition, the Undersecretary would be required to assure Treasury's participation with the Commissioner and other IRS management in the development of long-range planning for the Service. The Commissioner and the Assistant Secretary of the Treasury for Tax Policy would report directly to the Undersecretary. The Chief Counsel of the Internal Revenue Service, who currently reports directly to the Treasury Department General Counsel and has dotted-line reporting responsibility to the Commissioner, also would have dotted-line reporting responsibility to the Undersecretary, as would the Assistant Secretary for Management and others as deemed necessary and appropriate.

In this way, the Undersecretary would serve as the point of intersection between tax administration and tax policy, with the clear mandate to coordinate these functions. In turn, the Undersecretary would report directly to the Secretary, the individual charged by the President with overall responsibility for the Treasury's tax function.

The Undersecretary would be required to make periodic reports to the Secretary, who in turn would be required to report regularly to the Congress. The Undersecretary and the Commissioner would be required to attend meetings of the Board at such times as the members of the Board determine, and would be responsible for reporting to and advising the Board about impending management proposals. The Undersecretary also would be available to the relevant Congressional committees to report and consult on matters relating to the Service.

The statutorily-mandated job description of the new Undersecretary that we have in mind differs from those of prior Treasury undersecretaries. For example, early in President Reagan's administration, an Undersecretary for Economic Policy had supervisory authority over the Assistant Secretary for Economic Policy and the Assistant Secretary for Tax Policy. We do not envision the proposed position as involving economic policy. Rather, the tasks assigned to the new Undersecretary should be limited strictly to those relating to the management of the Service and those relating to tax policy.

Creation of the position of Undersecretary of Taxation would assure clear, continuing and coordinated accountability within the Treasury Department that, to date, has been absent. This would avoid not only the prospect of management by committee, but also assure the greater coordination of fiscal management of the Service, tax administration and tax policy that we believe is essential. Together with a Board of Review reporting directly to Congress, the Undersecretary will provide a clear focus of responsibility, authority and accountability.

II. CONGRESSIONAL OVERSIGHT

We strongly agree with the Commission's conclusions that, within both the Executive Branch and the Congress, the proliferation of entities responsible for some aspect of the tax system makes the development of coherent legislative, administrative and budgetary planning virtually impossible. To this point, we have focused on suggestions for dealing with this and other issues within the Executive Branch. We turn now to the Congress.

As the Commission noted, there are seven Congressional committees (and their respective subcommittees) with responsibility for oversight over various components of the tax system. The jurisdiction of each of these committees differs, and it is not practical to suggest a solution that would place all tax system matters within the jurisdiction of a single committee. Nonetheless, it is abundantly clear that the tax system in general, and the Service in particular, would benefit from a structure and
process that would make relevant information available to all of the committees of jurisdiction on a timely basis and with procedures to ensure better coordination among the various committees.

The Commission has suggested the creation of a new joint committee to coordinate IRS oversight. This committee would be comprised of a limited number of members of the existing committees with jurisdiction over the Service. The Commission envisions that this new committee would hold hearings on matters of importance to tax administration, and that such hearings would serve as the primary forum for interaction between the Congress and whatever body or individual is responsible for IRS administration. This new committee would be directed to issue annual reports on Service budgets and operations to assist the committees of jurisdiction in making decisions about IRS issues. The Commission Report suggests that much of the staff work for this new committee would be performed by the staff of the Joint Committee on Taxation, together with the staffs of the existing committees.

We endorse the Commission's proposal to establish a Congressional entity to coordinate IRS oversight efforts. A joint panel, composed of members from the various committees of jurisdiction, would provide a focal point for examining the full scope of IRS management and budget issues. In addition, it would coordinate the sharing of information on Service operations among the committees of jurisdiction. Finally, a joint entity could play a constructive role in providing a forum for enhanced communication among the various committees of jurisdiction and between the Congress and the IRS and Treasury.

The existence of a new joint committee will aid the Service by avoiding duplication and overlap in oversight among the existing committees of jurisdiction. A tremendous amount of IRS resources is devoted to addressing oversight issues. To the extent that duplication of effort can be avoided, more Service resources will be available for its primary missions of taxpayer service and collection of revenue.

While this new entity will require its own staff, we agree that members of this joint panel should rely primarily upon the expertise found within the staffs of the committees of jurisdiction, and the Joint Committee on Taxation, in particular. As the Commission has recommended, the new joint panel would expect the staff of the Joint Committee on Taxation to resume its statutory responsibility for IRS oversight. Under this structure, the primary responsibility for preparing the reports envisioned by the Commission would fall on the staff of the Joint Committee on Taxation. Obviously, sufficient financial resources must be given to the Joint Committee to enable it to meet these broadened responsibilities.

Finally, we also endorse the idea of requiring that all requests to the GAO for investigations of the Service be reviewed by this joint panel. In this manner, Congress can better manage the effectiveness of GAO investigations and the ability of the Service to respond to such inquiries.

III. TAX SIMPLIFICATION AND COMPLEXITY ANALYSIS

The Commission has focused on tax simplification as a major step in improving the administration of the tax law. We strongly agree.

The Commission proposed a Tax Complexity Analysis be required as a formal part of the legislative process. The Section shares the Commission's objective of providing relevant information with respect to the complexity of tax legislative proposals to those responsible for their enactment. Indeed, we suggested a similar process in our testimony before the Commission.

In our view, the specifics of the Commission's proposal are not as important as assuring that, with respect to provisions of broad incidence, members of the tax-writing committees in particular, as well as other members of Congress, be informed, in understandable, descriptive terms, of the complexity and compliance burdens associated with proposed legislation. We believe any such analysis should be prepared by the staff of the Joint Committee on Taxation because such an analysis complements the traditional role of that staff in the legislative process.
We acknowledge that there may be concerns about the scope of the Commission's proposal. For example, the Commission's recommendation would require a Tax Complexity Analysis for every legislative proposal formally considered. If this recommendation is determined to place an unacceptable workload burden on the Joint Committee staff, consideration could be given to limiting the analysis to provisions of more general applicability, determined by one or both of a combination of revenue or affected taxpayers.

It also should be emphasized that the analysis contemplated by the Commission is not quantitative, and it should not be. It is much more important to require the staff to provide a well-informed qualitative analysis of the administrability and complexity of a proposal.

The Commission also has recommended that the complexity analysis be incorporated formally into the tax legislative process so that Budget Act enforcement mechanisms (including a Budget Act point of order) would apply to the failure to comply with the requirement. On further reflection, we have some concern about the wisdom of this requirement. While it would formalize the requirement, it also would create one more procedural issue that could result in more friction in the legislative process. It might be sufficient to have the requirement adopted as a committee procedural rule, leaving enforcement with respect to floor amendments in the hands of the manager of the bill.

Finally, there is the question whether a complexity analysis requirement should be imposed solely on the Congress. Since the Treasury has recognized the importance of tax simplification, it should not be too much to expect a similar analysis to be performed by the Executive Branch with respect to its own proposals as well as those emanating from the Congress.

We recognize that no procedure automatically guarantees that simplification objectives actually will be achieved in the legislative process. However, we think the Commission's recommendation, modified as the Committee deems appropriate, will increase the public focus on tax law complexity. We are confident that such focus will have a positive effect on efforts to simplify the tax law.

IV. CONCLUSION

We have attempted to set out for the Committee a plan for the future governance and oversight of the Service that we believe will be most successful and suggestions regarding efforts to monitor the complexity of the tax law. We do so with only one objective -- to improve the Nation's tax system for the benefit of all Americans. We will do our best to assist the Ways and Means Committee as it works to craft a plan for the future of the Internal Revenue Service.

Mr. Chairman, thank you for the opportunity to appear before the Committee today. I will be pleased to respond to any questions.