Recommendations on Various Proposals

Mr. Chairman and Members of the Committee:
My name is Stefan F. Tucker. I appear before you today in my capacity as Chair-elect 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 various proposals to restructure the Internal Revenue Service. Because of the limited scope of today's hearing, our testimony focuses principally on issues of Executive Branch governance, Congressional oversight of the Internal Revenue Service ("Service" or "IRS") and certain other proposals contained in the House bill. When appropriate, we would be pleased to present our views on other issues to the Committee.

We have been privileged to consult with the Commission, members and staff of the tax writing committees, and representatives of the IRS and Treasury as they developed first the Commission's report and then the House bill. We particularly appreciate the courtesy that Senator Kerrey extended to us during this process and his willingness to consult with us.

In general, we support the House bill's approach to addressing crucial issues arising out of the Commission's report. While the Section does not agree with some important details of the solutions proposed by the Commission and the House, we believe the thoughtful way in which the issues have been presented will permit the Congress to fashion a workable framework for restructuring the IRS. We hope the testimony we present contributes to that goal.

I. GOVERNANCE AND OVERSIGHT

1. Governance
The House bill would create an IRS Oversight Board (the "Board) within the Treasury Department. The Board would be charged with oversight of IRS "administration, management, conduct, direction, and supervision of the execution and application of" the tax laws. Specifically, the Board would have the authority to: review and approve IRS strategic plans, review operational functions of the IRS, provide for review of the Commissioner's selection, evaluation and compensation of senior managers, and review and approve the Commissioner's plans for major reorganizations.

a. Oversight Board
The Tax Section is concerned with the House proposal to vest in the management board direct approval authority over certain functions of the IRS. We believe the President is, and should remain, the ultimate authority over the IRS. 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. 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.

We are concerned that a Board with substantive authority over IRS operations could be an impediment, rather than an aid, to better management. Much of the criticism directed at the Service in recent months has, at its core, been about lack of control and accountability. The Service is a huge organization which, like most bureaucracies, tends to function with or without top-down leadership. Any restructuring
The Section urges that day-to-day management functions remain within the Treasury Department. Consequently, we do not support the House proposal to shift approval of certain management decisions to the Board. By retaining all such authority within the Executive Branch, clear management accountability will be maintained.

Having said this, we believe the creation of a Board without management authority could serve a useful purpose. Consistent with our view that private sector expertise should be made available to the Service's senior management and that such individuals should be involved in the oversight process, we recommend that Congress create an IRS Board of Review, made up exclusively of private sector members. No government officials would serve on the Board, either directly or ex officio. We suggest that the size of the Board be kept relatively small -- five or six members would seem optimal. Their appointment, compensation, etc. would be as proposed by the House.

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 and provide input to 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.

A Board constituted in this way would have the duty to make periodic (preferably semi-annual) independent reports directly to the President and the Congress concerning its assigned tasks. Such reports would be expected to 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 the successes and problems of the agency. Rather than being involved in direct management of the Service, we conceive of the Board's 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.

Some might contend that a Board constituted in this manner would lack any authority. We clearly disagree. The authority that the Board would have would come not from direct management responsibility but, rather, from its reporting responsibility to Congress. The Board would have a direct link to the Congress that could not be circumvented by IRS or Treasury management. As a result, such management would, in all likelihood, seek to work with the Board.

As importantly, the Board would contribute the relevant expertise of private sector professionals as a consultative resource for the IRS and the Treasury on major management matters. This role should be specified in implementing legislation. A properly recruited Board could make considerable resources
available to the IRS and could complement the management skills of the Commissioner and senior IRS officials by making available expertise in areas with which they may be less familiar.

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 these individuals would add substantial value to the analysis and review of management issues, and Congress would view the Board's role as an integral part of 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.

b. Congress should establish the position of Undersecretary of Taxation

We concur in the assessment that Treasury oversight of the Service has been "limited and uncoordinated." We are concerned, however, that the House bill would not improve that Treasury oversight function. Therefore, we propose that this problem be addressed directly by creating within the Treasury Department a new Undersecretary of Taxation. The Undersecretary would be 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 report directly 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 appropriate.

We believe that creation of such a position addresses more directly than does an outside Board the concerns expressed by the Commission concerning Treasury accountability. Such a position provides a person at the highest levels of Treasury whose sole responsibility would be to manage and coordinate the tax functions of the Administration. This is, in fact, what has been lacking in past Administrations, a point emphasized by the Commission. 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 reasonable 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, and would not support, the proposed position as involving economic policy. Rather, the tasks assigned to the new Undersecretary should be limited to those relating to the management of the Service and 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 or sporadic. This would not only avoid 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.

2. Personnel Policies
The Tax Section strongly endorses the recommendations of the Commission and the proposals in the House bill that give the Commissioner more flexibility with respect to IRS personnel. Historically, civil service rules have tied the Commissioner's hands, making it extremely difficult, if not impossible, for the Commissioner to hire the best people from the private sector and pay them at appropriate levels. The Service and, indeed, the Nation, can no longer afford such inflexibility. As an agency at a crossroads, it is imperative that the IRS, through the Commissioner, be able to bring into government the best and the brightest. That cannot and will not happen unless flexibility in hiring is increased and unless the Commissioner is given the ability to pay such individuals at levels that will attract them away from high-paying private sector jobs.

3. Independent Inspector General
The Tax Section also supports the creation of an independent Inspector General within the Internal Revenue Service. At present, the Treasury IG serves as the IG for the Service as well. This relationship suffers in many ways from the same problems as that of the Service to the Treasury generally. The Treasury IG is responsible for an entire Cabinet department, which makes it exceptionally difficult for that person to devote as much attention as necessary to the Service. This would be rectified by the creation of an IG position at the Service.

In addition, we believe an independent IG at the IRS would go far to address public perceptions about an agency out of control. While we do not share the view that the IRS is a rogue agency, recent revelations make it clear that abuses are not random or isolated and should be dealt with accordingly.

4. Congressional Oversight
We endorse the Commission's proposal to establish a single Congressional entity to coordinate IRS oversight. 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 IRS operations among the committees of jurisdiction. Finally, a joint entity could play a constructive role as a forum for enhanced communication among the various committees of jurisdiction and among the Congress, the IRS and Treasury.

5. Streamlining of Penalty and Interest Provisions
We note with interest Chairman Roth's stated desire to streamline current law penalty and interest provisions. We are pleased that the Chairman has taken an interest in these provisions and wish to offer our technical assistance to him and the staff of the Finance Committee. There are many cases in which the application of penalty and interest provisions take on greater significance to taxpayers than the original tax liability itself. The Tax Section is concerned that individuals are often caught unaware by these provisions, and that the system lacks adequate flexibility to achieve equitable results. For example, there presently is little ability on the part of the Service to adjust penalties and interest after a statutory notice of deficiency has been issued. We would, therefore, support creation of such a review procedure as well as other changes to the penalty and interest provisions.

II. TAX SIMPLIFICATION

The Commission focused on tax simplification as a major step in improving the administration of the tax law. We strongly agree, and emphatically endorse its conclusions on the relationship between complexity of the tax law and administration. Unless there are meaningful legislative and administrative efforts to simplify the tax law, any changes in IRS governance will lose their effectiveness.

More specifically, tax law complexity and frequent changes in the Code mean more tax forms and instructions, more computer programming, more regulations and rulings, more training of IRS personnel,
more taxpayers requiring assistance, and more disputes with taxpayers. They also mean greater compliance burdens for taxpayers and an increased likelihood of taxpayer filing errors. Increased taxpayer errors, in turn, require the tax administrator to deal with correcting those errors.

Moreover, many of the amendments to the Code enacted since 1986 have particularly complicated tax administration and compliance. A significant reason for this is revenue considerations. The need for revenue has resulted in enactment of provisions that scale back the availability of tax benefits for taxpayers with incomes above certain levels. At the same time, revenue available for tax cuts has been limited, thus constraining the enactment of tax benefits with general applicability. Consequently, the tax benefits enacted have been carefully targeted to minimize the revenue impact. While the targeting of tax benefits may, in many cases, assist in carrying out laudable goals, the result is significantly increased complexity. The Taxpayer Relief Act of 1997 is replete with examples.

The Tax Section has long been a supporter of simplification. However, because change -- even simplification -- can be complicating, we recommend that simplification proposals only be adopted if they represent significant simplification, after they have received careful consideration, and then only if the changes are expected to remain in place for the long term.

With that background, we offer two proposals to the Committee.

1. **Earned Income Tax Credit**
   The EITC affects approximately 15 million individual taxpayers and, according to the IRS, is the source of the most common errors made by taxpayers. Its purpose is to deal with a problem -- regressive payroll taxes -- by an indirect rather than a direct solution.

   The EITC is incredibly complex. Eligibility alone is based on earned income, both taxable and non-taxable, adjusted gross income, modified adjusted gross income, and a number of other factors. The amount of the credit requires further difficult computations because it is dependent on different factors, including the number of qualifying children. This in turn depends upon whether the child lives with the taxpayer, the relationship of the child to the taxpayer, and the child's age. The test is more complicated than the test for dependency, and typically applies to a group of taxpayers who are generally unable to afford tax preparation assistance.

   We have previously recommended that consideration be given to substituting the dependent child definition for the qualifying child definition. Although further improvements should be studied, this change alone would simplify application of the EITC and eliminate the need to twice determine whether a child can be claimed on a taxpayer's return.

2. **Phaseouts**
   As noted above, many provisions of the Code are phased out over an income range. Phaseouts create a variety of computational difficulties that complicate forms and confuse taxpayers. This is magnified by the number of provisions subject to phaseouts, the different phaseout ranges, and the methods for computing the phaseouts. These phaseouts also create uncertainty for taxpayers as to whether they are eligible for certain tax benefits (and thus their ultimate tax liability). This uncertainty creates taxpayer frustration. For example, taxpayers cannot factor the Hope Scholarship Credit into their financial plans if they cannot determine whether they will be eligible for the credit.

   The simple solution for this complexity would be to eliminate these phaseouts and adjust the tax rates to compensate. Short of this, we recommend a study of whether phaseouts could be standardized and simplified to minimize computational complexity and uncertainty.

3. **Complexity Analysis**
   The House bill, based on the Commission's recommendation, proposed that a Tax Complexity Analysis be required as a formal part of the legislative process. The Section endorses 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.

We are concerned, however, that the provision included in the House bill would have little effect on the legislative process. The House bill requires that such an analysis be provided as part of a committee's report on a bill, after the committee markup has already occurred. Thus, as presently envisioned, the complexity analysis would not be available at the very time when it would be most useful: the markup.

We believe a complexity analysis can have a meaningful effect on reducing complexity. In order for this to occur, however, the analysis must be available before members of tax writing committees consider proposals rather than afterward. Therefore, we strongly encourage this committee to require a complexity analysis before a committee markup in order that it be available to members.

III. DISCLOSURE OF FIELD SERVICE ADVICE

The Court of Appeals for the D.C. Circuit recently held that field service advice memoranda issued by the IRS National Office are not exempt from disclosure under the Freedom of Information Act. Currently, there are no statutory procedures or administrative rules governing the disclosure of field service advice memoranda. The Section believes that legislation is necessary not only to provide clear guidelines to the IRS in determining the extent and timing of public disclosure but also to ensure that the process is fair to both taxpayers and the government and does not jeopardize taxpayers' privacy interests. We encourage the Congress to make clear, however, that the legislation is not intended to restrict the court's opinion.

1. Public Disclosure
The Section suggests that such legislation amend section 6110 of the Code to include written field service advice memoranda within the definition of a written determination, thus making such memoranda open to public inspection as provided in regulations. We do not believe it is advisable to constrain the ability of the field personnel to communicate orally with the National Office; however, we believe it is appropriate to adopt a rule that requires that any advice adverse to the taxpayer be rendered only in writing.

The legislation should clearly define the types information in field service advice memoranda that are subject to disclosure. For example, information providing guidance as to the interpretation of the internal revenue laws, including alternative legal theories, and the application of such laws to the facts of a particular case, should be subject to disclosure, while information that reveals the scope, direction, or emphasis of audit activity should not.

2. Taxpayer-Specific Provisions
The Section appreciates the usefulness of field service advice as a tool that permits field personnel to seek advice regarding the development of a case from the National Office at an early stage and in a relatively quick and efficient manner. We encourage the Congress to make clear that the legislation is not intended to jeopardize the efficiency of this process; however, we believe that certain safeguards are necessary to protect the interests of taxpayers and the government. We believe that an appropriate rule would provide that the taxpayer be notified that field service advice is being sought and provide the taxpayer the opportunity to request that such advice be obtained using the more formal technical advice process (if the facts are sufficiently developed and the issue is appropriate for such advice) or, if both the taxpayer and field personnel agree, through a joint informal consultation with the National Office. If the taxpayer does not wish to request technical advice (or technical advice is not appropriate), and a joint request for informal consultation is not acceptable by both parties, then the field personnel may proceed with the field service advice. Conversion to the technical advice process should be automatic, however, when a legal issue arises at a time when the facts and strategies of the case have been fully developed (e.g., at the appeals level). We encourage the Congress to direct, through Committee Report language, that these rules not be interpreted to preclude a request for both field service advice and technical advice in the same case, if both are appropriate. In addition, we recommend that the legislation require that a copy of the field service advice be promptly provided to the taxpayer.
3. Non-Substantive Tax Matters
We believe that one final point merits discussion. Neither the D.C. Circuit nor the legislative proposal that appeared in the Ways and Means Committee Chairman's mark explicitly addressed the disclosure of advice concerning non-substantive tax issues, such as collection, bankruptcy, and summons matters. We suggest that the legislation provide that the disclosure rules apply equally to information in field service advice memoranda regarding these general litigation matters.

IV. SHIFT IN THE BURDEN OF PROOF IN TAX CASES
The House bill provides that the IRS shall have the burden of proof in any court proceeding with respect to a factual issue if the taxpayer asserts a reasonable dispute with respect to any such issue relevant to ascertaining the taxpayer's income tax liability. The provision includes a number of "safeguards" that limit the scope of the shift in the burden of proof in order to create a "better balance" between the IRS and taxpayers, without encouraging tax avoidance. Taxpayers other than individuals must establish that their net worth does not exceed $7 million in order to be eligible for the benefits of this provision.

The provision specifically states that it should not be construed as overriding any requirement to substantiate an item under the Code or regulations. Accordingly, taxpayers must meet all applicable substantiation requirements, whether imposed generally or with respect to specific items. Taxpayers who fail to substantiate any item in accordance with the legal requirements of substantiation will not have satisfied all of the legal conditions that are prerequisite to claiming the item on the taxpayer's tax return, so will not be able to avail themselves of the provision's shift in the burden of proof.

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The Tax Section continues to oppose any blanket shift in the burden of proof that would apply to all tax disputes. We have expressed concern that such a radical shift would provide a disincentive to adequate taxpayer recordkeeping; would result in some taxpayers being less forthcoming in preparing and filing their returns; would increase the incidence of taxpayers taking overly aggressive positions on their returns; and would encourage the IRS to be more aggressive in collecting information from taxpayers and third parties in the administrative audit stage. In our view, enactment of a proposal to shift the burden in all cases would have a significant adverse impact on tax administration and compliance.

In contrast, the proposal contained in the House bill is narrower and more reasonable in scope. We commend the House for recognizing that any changes to the burden of proof should be carefully crafted to ensure sound administration of the tax laws without compromising compliance. In particular, the requirement that the taxpayer cooperate fully during the audit process and exhaust administrative remedies within the IRS should eliminate most of the potential for abuse. Further, the House bill makes it abundantly clear that a taxpayer will not be relieved of either the general or specific substantiation requirements imposed by the Code and regulations. Thus, it appears that the government would not be placed in the fundamentally disadvantageous position inherent in earlier proposals.

It is hard to gauge what behavioral changes would occur as a result of the House bill's proposed burden shift. We strongly encourage this Committee to be guided by the counsel provided by the judges of the Tax Court by means of a letter to Chairmen Roth and Archer from Chief Judge Mary Ann Cohen. We share the concern of Chief Judge Cohen that controversies will, undoubtedly, increase as a consequence of this provision.

Thus, while we believe the House bill provision represents a substantial improvement over earlier legislative proposals, we strongly recommend that technical modifications be made to ensure that the safeguards provided in fact are effective to limit the problems about which we have previously expressed concern. For example, the meaning of the provision's requirement that the taxpayer assert a "reasonable" dispute is not clear. Does this mean that the taxpayer can simply assert an issue in his or her pleadings or that the taxpayer must present some evidence in support of the position? Does "reasonable" mean "not frivolous" or something more? We recommend that the Congress provide additional guidance as to the
meaning of the foregoing provisions to narrow the disputes which likely will arise between taxpayers and the IRS on these matters.

V. EXTENSION OF PRIVILEGE TO OTHER TAX ADVISORS

The House bill includes a proposal to extend the common law attorney-client privilege of confidentiality to tax advice that is furnished to a taxpayer by any individual who is authorized to practice before the Internal Revenue Service.

As a preliminary matter, the Tax Section acknowledges the sensitivity of this issue. We recognize that anything that we say that raises concerns about the proposal may be dismissed by supporters as self-serving parochialism. We have attempted to put aside any self-interest and carry out our analysis from policy and technical points of view. In doing so, we have explicitly assumed that the House provision, or something similar to it, will be enacted.

First, we believe it is critical to examine the historical underpinnings of the privilege and the different roles that attorneys and accountants play in our society. The privilege developed directly out of the role of attorneys as zealous advocates for their clients. Without such a privilege, a client would never be willing to confide in the attorney. Since free and open communication between an attorney and his client is essential to zealous representation, privilege was a crucial element of that relationship. The attorney must remain free and independent of government coercion.

The privilege protects from disclosure communications to and from a client and his attorney. Where the privilege applies, it is absolute. It applies in all contexts: civil litigation, criminal litigation, administrative proceedings, and day-to-day advisory functions. It applies in both state and Federal proceedings. The privilege belongs to the client, not the attorney. It may be waived by the client, in which case the attorney may not assert it on his own. The privilege does not extend to communications between an attorney and his client, where the attorney is acting in a capacity other than as an attorney, such as a tax-return preparer or a business advisor.

The client's privilege is generally available with respect to cases pending before the United States district courts and the United States Court of Federal Claims and with respect to tax-deficiency and other non-refund cases pending before the United States Tax Court.

In contrast, accountants have served an entirely different function in our society, one that is inconsistent with the concept of privilege. Indeed, accountants that serve as independent attestors of financial statements are required to maintain their independence from their clients, in order to act as protectors of the marketplace. In rejecting the creation of an accountant-client privilege, Chief Justice Burger, on behalf of a unanimous Court in United States v. Arthur Young & Co., 465 U.S. 305 (1981), stated:

[T]he independent auditor assumes a public responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust. To insulate from disclosure a certified public accountant's interpretations of the client's financial statements would be to ignore the significance of the accountant's role as a disinterested analyst charged with public obligations.

We are concerned that extension of privilege calls this basic role of accountants into question. An accountant acting as both attestor and tax advisor faces a potential and fundamental conflict between those roles if, on the one hand, the accountant must maintain confidentiality while, on the other hand, the accountant's role as independent auditor compels or may compel disclosure of such information. We encourage this Committee to examine this conflict to determine if it may result in a weakening of the privilege and, thereby, harm to the public generally.
The Tax Section applauds Congress's attempt to broaden the number of tax professionals available to assist taxpayers in controversies before the IRS. We are concerned, however, that taxpayers who are unaware of the limited privilege being granted may be harmed. Taking a privilege that is absolute and that applies in all different situations, and engrafting on to it a new class of professional for whom the privilege will not be absolute and to whom it will apply in only limited circumstances, will, we believe, cause significant confusion.

Under the House bill, the privilege only applies to representation in civil tax cases, and then only during the administrative phase of such cases. Once any tax case reaches litigation, the privilege would disappear. That, alone, could subject the non-attorney tax advisor to being subpoenaed and the information, once confidential, being discovered. The common law attorney-client privilege, pervasive throughout the judicial system, far exceeds the breadth of any legislative privilege being granted.

Moreover, the privilege of confidentiality that extended in tax controversies would disappear once the information was sought for another purpose. Several examples will illustrate this point. By its own terms, the provision would not extend the privilege to criminal matters. Criminal tax controversies do not always begin as criminal cases. An individual may be surprised to learn that information given to his non-attorney advisor in the course of a civil tax case was not confidential once the case became a criminal one. While this would not be a common occurrence, the potential for mischief is apparent. A similar dilemma would arise in state tax cases, where the proposed privilege would not apply.

An even more likely situation is one involving domestic relations controversies. It has become increasingly common in today's world to find divorcing spouses using financial information in litigation over property settlements and alimony. We can easily envision that information disclosed to a non-attorney advisor for purposes of a tax controversy would be discoverable by one spouse or the other in divorce proceedings. No privilege would extend in that situation.

Finally, difficulties may arise in situations where an accountant is furnishing both tax advice and certified financial statements. For example, consider the situation where a small business seeks to obtain a loan or other financing. A non-attorney advisor to whom was given confidential tax information in the course of a tax controversy could not exercise the privilege to prevent disclosure of that information to potential lenders requiring certified financial statements. The advisor's duty as an independent auditor appears to conflict with any claim of privilege.

Again, mindful of our self-interest, we have attempted in good faith to bring to the attention of this Committee issues that may create problems. We do not hold ourselves out as experts on the rules governing accountants and other non-attorney advisors. We encourage the Committee to examine these issues carefully.

VI. CONCLUSION

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