February 26, 1999

The Honorable Robert E. Rubin
Secretary
Department of the Treasury
Room 3330 MT
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Rubin:

On behalf of the American Bar Association and its Section of Taxation, I am writing to express disappointment that the Administration has proposed to add a multitude of new tax credits to the Federal income tax system.

In the Internal Revenue Service Restructuring and Reform Act of 1998, the Congress emphasized that special attention would be given to reducing and forestalling tax complexity. Through the tax complexity analysis mandated in the 1998 Act, the Congress is to devote particular attention to proposals with widespread applicability to individuals or small business. We strongly support this increased focus on the problem of tax law complexity. The American Bar Association in 1976 and 1985 adopted resolutions proposed by the Section of Taxation urging tax law simplicity, a broad tax base and lower tax rates. In 1999, the American Bar Association adopted a Tax Section-proposed recommendation to repeal phaseouts of itemized deductions and personal exemptions and to replace the lost revenue with explicit rate increases.

The members of the American Bar Association and its Section of Taxation will continue, diligently, to point out opportunities to achieve simplification and prevent new complexities in the tax law. We take no position on the substance of the tax credit proposals. However, we do want to point out that increasing the number of tax credits does not represent simplification.

Most of the energy-related credits, as well as the credits relating to disability and long term care, are expressly intended to be claimed by individuals. The New Markets and Better America Bonds credits would be available to individuals, as well as businesses. Some credits would be subject to income-based phaseouts. Each, alone, and all, in combination, would add material complexity to tax forms and instructions. These proposals come less than two years after the addition of three new individual nonrefundable credits (Internal Revenue Code Sections 24, 25A and 1400C), each of which is subject to a different income phaseout; the addition of two new forms of Individual Retirement Account, also subject to income phaseouts; and the proliferation of rates applicable to various kinds of individual capital gains.

It is difficult to imagine a desirable public policy goal that would not be advanced through tax incentives. In some cases, the tax system may deliver incentives more efficiently than alternative approaches; and, in virtually all cases, beneficiaries will be pleased to have the benefit, even with the accompanying complexity. However, it is not enough for the Congress nor the Administration to weigh the nontax policy benefits of any single tax benefit proposal only against the incremental tax complexity added by that
proposal. That kind of micro-balancing inevitably leads to a Federal income tax system that is, in total, overly complex and undeserving of public respect. Complexity fosters non-compliance; simplification enhances understanding and compliance.

We urge the leaders of the tax legislative process—and in particular the executive branch, as the representative of the interests of the nation as a whole—to resist the accretion of income tax benefits and penalties that are unrelated to the administrable measurement of annual taxable income and ability to pay.

We also urge that any tax benefit proposal that includes income phaseouts receive particularly close scrutiny. A “targeted middle income tax benefit” may sound prudent and thoughtful; however, this notion has been responsible for a significant portion of the complexity imposed on individual taxpayers in the last two decades. A phaseout creates the effect of a marginal rate increase on a taxpayer as his or her income moves into the phaseout range. Phaseouts play a significant role in the creation of marriage tax “penalties”, and add significantly to the difficulty of addressing that set of issues. At this point, there can be no doubt that the growth in the number of phased-out benefits and the variance in phaseout ranges for different provisions have materially increased complexity for ordinary taxpayers.

The members of the American Bar Association and its Section of Taxation look forward to working with you to find ways to reduce tax complexity. We believe that tax policymakers, with the support of tax lawyers and other professionals, must continually maintain vigilance and focus on these issues if any progress is to be made on the complexity problem.

Sincerely,

Stefan F. Tucker
Chair

cc: Honorable Bill Archer
Honorable William V. Roth, Jr.
Honorable Charles B. Rangel
Honorable Daniel P. Moynihan
Honorable Donald C. Lubick, Assistant Secretary (Tax Policy), Department of the Treasury