The Honorable Lloyd Doggett  
United States House of Representatives  
328 Cannon House Office Building  
Washington, DC 20515-4310  

RE: H.R. 2255  

Dear Congressman Doggett:  

On behalf of the Section of Taxation of the American Bar Association, comprised of approximately 20,000 tax lawyers throughout the United States, I write to comment on H.R. 2255, the Abusive Tax Shelter Shutdown Act of 1999. These comments have 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.  

As you know, the Tax Section expressed its concern about the increased use of tax shelter products by business taxpayers in testimony before the Oversight Subcommittee on April 27, 1999. Our testimony offered specific recommendations that we believe will aid in addressing our concern with the aggressive marketing of tax shelter products that have little or no purpose other than the reduction of Federal income taxes.  

We are pleased that H.R. 2255, which you introduced in the House of Representatives on June 17, 1999, contains in Section 4 proposals regarding tax return disclosure requirements that we presented to the Subcommittee, including specifically the requirement of a separate, sworn verification of the facts, assumptions and conclusions relied upon by the taxpayer for the desired tax result. We commend you for your willingness to expose these recommendations to public comment and debate in the form of specific statutory language, and we look forward to working with you and the other Members of the Ways and Means Committee as consideration of possible disclosure legislation moves forward.  

We also commend your leadership in seeking to develop a statutory codification of an economic substance rule. As you may know, in testimony before the Senate Finance Committee on May 10, 1999, the Tax Section recommended a modest legislation codification of an economic substance test. Our recommendation would make it clear that, in instances where a court otherwise would apply the economic substance doctrine, a taxpayer would be required to demonstrate the existence of "meaningful," as distinguished from de minimis, economic substance. The proposal contained in Section 3 of H.R. 2255, relating to the disallowance of noneconomic tax attributes, is much broader than the Section's recommendation. Although we are not presently in a position to advocate its enactment, we think introduction of the proposal serves a very useful role in encouraging a serious examination of the economic substance doctrine and a thoughtful determination by the tax-writing committees of whether some form of legislative codification of the doctrine is appropriate.  

We appreciate the confidence you reflected in the Tax Section's disclosure recommendations, and we are prepared to provide any technical assistance that may be helpful to you and your staff.  

Sincerely,  

Paul J. Sax  
Chair, Section of Taxation