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July 1, 2004

The Honorable Charles E. Grassley
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable William M. Thomas
Chairman
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Max S. Baucus
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles B. Rangel
Ranking Member
House Committee on Ways & Means
1106 Longworth House Office Building
Washington, DC 20515

Re: Whistleblower Rewards Provision

Gentlemen:

I am writing on behalf of the Section of Taxation of the American Bar Association concerning section 488 of S. 1637, the Jumpstart Our Business Strength (JOBS) Bill, passed by the United States Senate on May 11, 2004. The views expressed in this letter represent the position of the Section of Taxation and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Section 488 would provide a new IRS whistleblower rewards program as well as a new IRS office to administer the program. The Section of Taxation is concerned that this provision has not been available for public comment for a sufficient period of time to allow a fair assessment of whether the proposal would aid or hinder fair enforcement of Federal tax laws. Accordingly, we urge that action on this provision be deferred until there has been an opportunity for hearings and comment on so fundamental a change.

While we intend to study the proposal further with a view toward providing more comprehensive comments, in addition to our fundamental concern that the provision may impair rather than enhance tax administration, we note the following additional concerns at this time:

1. The bill would apparently permit an individual who participates in implementation or design of the transaction giving rise to the tax deficiency (perhaps even the person primarily responsible for the transaction) to receive a reward of up to 30% of revenue that would otherwise be paid to the Government, despite such person's own role in bringing about the deficiency.
2. The bill would apparently authorize the IRS to deputize whistleblowers and their representatives to receive confidential taxpayer return information and to conduct inquiries on behalf of the Government. In the course of doing so, whistleblowers and their representatives would be authorized to exercise a level of discretion in the determination of a taxpayer's liability that would be unprecedented in tax administration.

3. There are apparently no sanctions for filing meritless whistleblower claims.
4. Conversely, there are apparently no protections from retaliation for whistleblowers who provide information on meritorious claims.
5. The bill would require the IRS to make awards to whistleblowers as a percentage of the total amount of revenue collected (i.e., tax plus interest and penalties), which will alter collection incentives. While the objective of the IRS is to collect the proper amount of revenue, the incentive for whistleblowers would be to collect the maximum amount of revenue.
6. The bill does not provide clear standards for determining when a whistleblower award is appropriate. For example, information provided with respect to a transaction likely to be reviewed by the IRS may be helpful but probably does not merit the large deflections of public revenue to private persons contemplated by the provision. The bill fails to provide clear standards for assessment of whether whistleblower information resulted in additional revenue that otherwise would not have been collected or merely represents an unwarranted diversion from the fisc of revenues likely to have been generated by the IRS's own audit actions.

For all these reasons, we believe that section 488 should not be enacted at this time, and urge that it not be enacted until appropriate hearings have been conducted and opportunity for public comment has been provided.

We appreciate your consideration of these comments. Representatives of the Section would be pleased to discuss them in further detail with you or members of your respective staffs. Please contact Stuart Lewis, the Section's Vice-Chair for Government Relations, at (202) 452-7933 if that would be helpful.

Sincerely,



Richard A. Shaw
Chair, Section of Taxation

cc: Hon. John Snow, Secretary of the Treasury
Gregory Jenner, Acting Assistant Secretary of the Treasury (Tax Policy)
George Yin, Chief of Staff, Joint Committee on Taxation
Kolan Davis, Republican Staff Director and Chief Counsel, Senate Finance Committee
Russ Sullivan, Democratic Staff Director, Senate Finance Committee
Robert Winters, Republican Chief Tax Counsel, House Ways and Means Committee
John Buckley, Democratic Chief Tax Counsel, House Ways and Means Committee