

AMERICAN COLLEGE OF TAX COUNSEL

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March 24, 2009

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Chair, Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

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Ranking Member, Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

1ST CIRCUIT
DAVID L. RAISH
BOSTON, MA

2ND CIRCUIT
CARLYN S. MCCAFFREY
NEW YORK, NY

Dear Senators Baucus and Grassley:

3RD CIRCUIT
WAYNE R. STRASBAUGH
PHILADELPHIA, PA

On behalf of the American College of Tax Counsel, a non-profit organization comprised of the leading tax lawyers in the United States, I am writing to urge you not to enact any legislation which uses the Internal Revenue Code to impose a special tax on bonuses paid to individuals employed by companies that receive TARP funds. We understand the anger that is directed at the companies (and their employees) that have lost billions of dollars and have borrowed or received billions more from the Federal government, but as President Obama said, we cannot govern out of anger. Furthermore, anger cannot justify using the taxing authority of the United States to punish these companies and their employees.

4TH CIRCUIT
W. CURTIS ELLIOTT
CHARLOTTE, NC

5TH CIRCUIT
ROBERT R. CASEY
BATON ROUGE, LA

6TH CIRCUIT
THOMAS J. CALLAHAN
CLEVELAND, OH

7TH CIRCUIT
ROBERT E. MCKENZIE
CHICAGO, IL

8TH CIRCUIT
WILLIAM H. LYONS
LINCOLN, NE

9TH CIRCUIT
GERSHAM GOLDSTEIN
PORTLAND, OR

10TH CIRCUIT
RICHARD B. ROBINSON
DENVER, CO

11TH CIRCUIT
MORTON A. HARRIS
COLUMBUS, GA

For almost a century the Internal Revenue Code has been used to provide revenue to the government in a fair and equitable manner. Retroactive taxation, let alone tax legislation targeted at a limited number of individuals or companies, has been avoided except in rare situations involving abuse of the tax system. The Code has sometimes been used to discourage certain conduct, but never in a manner similar to H.R. 1586. Furthermore, the Code should not be used to make an end run around the potential application of the due process requirements in the Constitution.

We express no opinion as to whether the government should prohibit the prospective payment of bonuses to individuals employed by companies that receive TARP funds – that is a political question beyond the scope of our expertise. However, any such prohibition should not be implemented through the tax system, which is intended to raise revenue and not for making political statements or to punish people. H.R. 1586 which recently passed the House, as well as the Compensation Fairness Act of 2009 currently pending in the Senate, cannot be defended from a tax policy perspective. We urge you to put this proposed legislation aside.

DC CIRCUIT
CECILIA A. ROADY
WASHINGTON, DC

FEDERAL CIRCUIT
PAMELA F. OLSON
WASHINGTON, DC

AT LARGE
MICHAEL L. COOK
AUSTIN, TX

EMILY PARKER
DALLAS, TX

ADMINISTRATION MANAGER
PENNY ALSTON

cc: Hon. Charles Rangel
Hon. Dave Camp
Hon. Timothy Geithner
President Barack Obama

Sincerely,



Richard M. Lipton
Chair, American College of Tax Counsel