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## Patenting Tax Planning Strategies

To what extent can tax planning strategies be patented? That's the issue facing the U.S. Supreme Court. Two recently-issued Congressional Research Service (CRS) reports look at some of the issues surrounding the controversial subject of patenting tax planning strategies.

These strategies claim a system or method of reducing or deferring taxes and are generally traced to a 1998 Federal Circuit Court of Appeals decision. In the *State Street* case, the court held that business methods may be patented if they comply with other Patent Act standards, such as novelty and nonobviousness. As of January 2010, the United States Patent and Trademark Office (USPTO) identified 90 issued patents and 136 published applications relating to tax strategies.

In the 2008 *Bilski* case, the Federal Circuit court placed significant limits on the ability to patent business and tax planning methods. *Bilski's* patent application involving a method of hedging risk in the field of commodities trading was rejected because it did not claim patentable subject matter. The decision in the *Bilski* case is being reviewed by

the U.S. Supreme Court, which should rule no later than July 2010.



Congress has also shown legislative interest in the area of patenting tax strategies. Three bills were introduced to Congress in 2009 that aim to prevent the patenting of any tax planning methods. The legislation would apply to any application filed at the USPTO on or after the date of enactment.

The American Institute of Certified Public Accountants (AICPA) has lobbied Congress to prohibit the patenting of tax planning strategies. The AICPA feels that these patents creates an exclusivity on interpreting tax law and may limit the ability of taxpayers to fully utilize interpretations of the law as intended by

Congress. Also, the AICPA thinks that taxpayers may be misled into believing that a patented tax strategy is automatically valid under the tax law. Since patents are issued by the USPTO and are not reviewed by the IRS, this may not be so. **h**

*For more information, contact Senior Tax Manager Jason Chin at (631) 719-3261, [JChin@hrrllp.com](mailto:JChin@hrrllp.com).*

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1430 Broadway  
New York, NY 10018  
212-697-6900

125 Baylis Road  
Melville, NY 11747  
631-752-7400

To change contact  
information, please contact  
[info@holtznews.com](mailto:info@holtznews.com)

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