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THE TAX LAWYER

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Taxes As Seen On TV?

I'm a sucker for infomercials with gushing testimonials and staged kitchen-table amazement. I get caught up in the intoxicating enthusiasm of the [Sham-Wow](#) guy or [Ron Popeil](#) proselytizing like a responsorial minister to "Set it and Forget it." But fervently hawked [pennies-on-the-dollar tax relief](#) or patented tax reduction deals make me nervous.



If you can buy patented Ginsu knives, Sham-Wows, a Vegematic or Spray on Hair from infomercials or the internet, shouldn't you be able to satisfy your tax needs there too? Not any more.

With the stroke of a pen, President Obama [signed](#) the [Leahy-Smith America Invents Act](#), H.R. 1249, enacting comprehensive patent reform that stops the U.S. Patent and Trademark Office from issuing patents for tax strategy methods. Tax-centric groups like the [American Institute of CPAs](#), have pushed this topic for half a decade. In a recent [letter](#), AICPA President and CEO Barry Melancon called nixing tax patents a "pro-taxpayer provision that will help ensure that our tax code is fair, less complicated, and accessible to all." The AICPA also released a [statement](#) stating that "tax strategy patents are the equivalent of private tollbooths that block tax compliance options and could cost Americans more money."

Why all the fuss? The idea that someone could come up with a way to lower your taxes and patent it—preventing others from doing it without paying homage to the inventor—seems bad public policy. Patent holders would reap windfalls and it would undermine a tax system based on voluntary compliance. Our tax system is already complex enough without adding another level of gamesmanship.

Tax strategies became patentable in 1998 after a Federal Circuit Court of Appeals decision, [*State St. Bank & Trust v. Signature Fin. Group*](#). The U.S. Patent and Trademark Office has granted over 150 patents on tax strategies and more than 160 are pending. Existing patents are not affected by the new law, but applications pending on the date of enactment are covered.

The new law precludes patents for any tax strategies for reducing, avoiding, or deferring tax liability, whether known or unknown at the time of invention or the filing of a patent application. But the provision expressly excludes tax preparation inventions so tax prep software can still be protected.

Many tax patents have been in the realm of clever tax reduction strategies that may look, smell and feel like tax shelters. Shelters have a tarnished if not downright sleazy image. For that reason, a patented tax strategy makes most tax advisers queasy. See [Beware Patented Tax Strategies](#). Of course, before you can steer clear of tax shelters you must be able to identify them.

Tax shelters are defined to include any plan or arrangement having a significant purpose of avoiding or evading federal income tax. See [Section 6662\(d\)\(2\)\(C\)\(ii\)](#). Beware of transactions that promise little economic gain other than tax benefits or that seemingly disparate parts cobbled together in a way that makes little economic sense. See [“DAD” Tax Shelter Is A Deadbeat](#). This is especially true if the promoters promise multiple tax benefits for every dollar you invest. See [How Bad Is Your Tax Shelter?](#)

For more, see:

[Will Tax Strategy Patents Be Outlawed?](#)

[Tax Lady Roni Deutsch Bankrupt, Surrendering Her Bar License](#)

[President Signs Patent Reform Bill Banning New Tax Strategy Patents](#)

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