



AMERICAN BAR ASSOCIATION  
Reply to:

Section of Taxation

10th Floor  
740 15th Street, N.W.  
Washington, DC 20005-1022  
(202) 662-8670  
FAX: (202) 662-8682  
<http://www.abanet.org/tax>  
[tax@abanet.org](mailto:tax@abanet.org)

November 6, 1998

The Honorable Byron R. White  
Chair, Commission on Structural Alternatives  
for the Federal Courts of Appeals  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Washington, D.C. 20544

Dear Justice White:

On behalf of the American Bar Association, we respectfully submit the enclosed ABA statement on the Commission's Tentative Draft Report dated October 7, 1998 ("Tentative Draft Report"). That Report makes several recommendations and suggestions regarding the structure and boundaries of the United States Courts of Appeals. This letter focuses solely on section C.1 of Chapter 5 of the Tentative Draft Report that discusses the U.S. Court of Appeals for the Federal Circuit. In that section, the Commission states that "[f]or more than half a century, lawyers, judges, and legal scholars have urged that appeals in civil [tax] cases . . . be concentrated in one court of nationwide scope," and suggests that the U.S. Court of Appeals for the Federal Circuit would be a "readily available forum for that purpose" should Congress decide to centralize tax appeals.

CHAIR  
Stefan F. Tucker  
Washington, DC

CHAIR-ELECT  
Paul J. Sax  
San Francisco, CA

VICE CHAIRS  
Administration  
Stuart J. Offer  
San Francisco, CA

Committee Operations  
Ronald D. Aucutt  
Washington, DC

Government Relations  
Ronald A. Pearlman  
Washington, DC

Professional Services  
Dennis B. Drapkin  
Dallas, TX

Publications  
Gersham Goldstein  
Portland, OR

SECRETARY  
William M. Paul  
Washington, DC

ASSISTANT SECRETARY  
Joel D. Zychick  
New York, NY

COUNCIL

Section Delegates to the  
House of Delegates  
James P. Holden  
Washington, DC

Jere D. McGaffey  
Milwaukee, WI

Last Retiring Chair  
Phillip L. Mann  
Washington, DC

Members

Patricia L. Brown  
Las Vegas, NV

Elaine K. Church  
Washington, DC

Michael L. Cook  
Austin, TX

Charles H. Egerton  
Orlando, FL

Karen L. Hawkins  
San Francisco, CA

Kathryn G. Henkel  
Dallas, TX

Michael Hirschfeld  
New York, NY

George C. Howell, III  
Richmond, VA

Terrill A. Hyde  
Washington, DC

Donald L. Korb  
Cleveland, OH

Robert E. McKenzie  
Chicago, IL

Patricia Ann Metzger  
Boston, MA

LIAISON FROM ABA  
BOARD OF GOVERNORS  
Thomas M. Fitzpatrick  
Seattle, WA

LIAISON FROM ABA  
YOUNG LAWYERS DIVISION  
Lisa Hund Lattan  
Kansas City, MO

LIAISON FROM LAW  
STUDENT DIVISION  
S. Patrick Dray  
Miami, FL

DIRECTOR  
Christine A. Brunswick  
Washington, DC

Although the Tentative Draft Report stops short of specifically recommending that the Federal Circuit be given this additional jurisdiction, the American Bar Association is concerned that the Report may unintentionally convey the impression to Congress that there has been universal support for a national court of tax appeals. Indeed, the contrary is true. As referenced in the Tentative Draft Report, the Federal Courts Study Committee (FCSC) did recommend in 1990 that civil tax appeals be centralized in one court. That proposal, however, was opposed by the American Bar Association and the FCSC's recommendation was not pursued.

The arguments advanced against the FCSC's proposal for centralizing tax appeals are equally applicable to the Commission's summary observation that the Federal Circuit could be given exclusive jurisdiction over all tax appeals. For example, the Commission's Tentative Draft Report states that the perceived need for a centralized forum for tax appeals is based on the concern that having tax appeals handled by 12 appellate courts "works inequities, in that citizens in different parts of the country are sometimes subject to different tax liabilities, and that tax planning is made more difficult because the meaning of the tax law is often left unsettled for years." Tentative Draft Report at 64. As discussed in the enclosed ABA statement, however, these arguments can be made with respect to virtually every area of the law and do not support centralizing tax appeals, any more than any other area of the law, in one court. The American Bar Association remains of the view that the relatively

small number of conflicts in tax cases among the Circuit Courts of Appeals does not justify removing one of our most important and wide-reaching bodies of law from the mainstream of our system of jurisprudence and entrusting its development at the appellate level to a small panel of specialists whose decisions would normally be the last judicial word on the issue.

Moreover, the American Bar Association believes that centralizing tax appeals in the Federal Circuit would be inconsistent with the current Congressional efforts to reorganize the Internal Revenue Service and restore the public's confidence in the tax system. As stated in the enclosed ABA statement, we are of the view that an exclusive court for tax appeals would be distrusted by many taxpayers as subjecting their cases to judges who are remote from local law, customs and attitudes under which the taxpayers operate. Centralizing tax appeals in a single forum, especially one based in Washington, D.C., could thus have an adverse impact on the public's perception of the fairness of the tax system and thereby negatively affect taxpayer compliance.

For these reasons and others stated in the enclosed ABA statement, the American Bar Association continues to oppose centralizing tax appeals in one court. We therefore request that the Commission reconsider its observation that the Federal Circuit could be given sole jurisdiction over tax appeals or, at a minimum, that the Commission's final report discuss in more detail the historical opposition to the

The Honorable Byron R. White  
November 6, 1998  
Page 4

concept of a single national court of tax appeals.

We appreciate the opportunity to provide these comments. If you have any questions, please contact the undersigned at (202) 429-3221.

Sincerely,



Stefan F. Tucker  
Chair, ABA Section of Taxation

Enclosure

cc: Robert D. Evans, ABA Associate Executive Director, Governmental Affairs

ATTACHMENTS OMITTED - ON FILE IN COMMISSION OFFICE