PRESS RELEASE

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HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

Carl Levin, Chairman

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Levin: Tax Patents Finally Outlawed

WASHINGTON – After years of work to ban patents on tax shelters, Sen. Carl Levin's legislative efforts became law when, on Friday, September 16, 2011, President Obama signed the America Invests Act and cited U.S. patent reform as a key component in job growth.

"Issuing patents on methods to minimize or evade taxes not only violates common sense, it actually threatens U.S. job growth since tax patents can be used to increase the cost of tax planning, undermine competition, and disadvantage honest taxpayers," said Levin, D-Mich.

After federal courts ruled that some business methods were eligible for patent protection, the U.S. Patent and Trademark Office (PTO) began approving patents on methods to reduce, avoid, or defer the payment of taxes. By the time the patent reform bill was signed into law, PTO had issued over 161 tax patents, with another 167 tax patent applications pending.

Levin was the first Member of Congress to introduce legislation, in 2007, to ban tax patents and prevent them from being used to limit access to lawful tax reduction strategies or promote illegal tax schemes. President Obama was a cosponsor of that first bill, S. 681.

In explaining his opposition to tax patents, Levin noted that if a tax practitioner were the first to discover a legitimate method for reducing taxes and secured a patent for it, that person could then charge a toll for all other taxpayers to use the same method, even though as a matter of public policy all persons ought to be able to minimize their taxes. He noted, "A company could even patent a legal method to minimize its taxes, refuse to license the patent to its competitors to ensure they had higher operating costs, and end up hindering productivity and competition. That doesn't do anyone any good."

Levin also explained that issuing tax patents could provide "unintended support for abusive tax shelters" that the Internal Revenue Service had not reviewed. He stated, "Allowing persons to patent tax strategies is not only a waste of government resources needed elsewhere, but an invitation to wrongdoers to misuse those government resources to promote tax evasion."

In January, along with Senators Baucus, Grassley and others, Levin cosponsored the "Equal Access to Tax Planning Act," S. 139, banning tax patents and guaranteeing equal access to legal tax strategies. That bill, which was incorporated into the America Invests Act, provides:

"[A]ny strategy for reducing, avoiding, or deferring tax liability, whether known or unknown at the time of the invention or application for patent, shall be deemed insufficient to differentiate a claimed invention from the prior art."

Levin observed, "Minimizing taxes is its own reward, and there is no need, and a lot of downside, to using the patent system to promote tax strategies."

The law halts the issuance of new tax patents but does not directly revoke the 161tax patents already issued. Levin stated, "If someone were to try to enforce one of those tax patents in court by demanding that taxpayers pay a fee before using the same method to reduce their taxes, I hope the judge would consider that Congress had found such patents to be against public policy by enacting the new patent reform law and refuse to enforce that existing patent."

As Chairman of the Permanent Subcommittee on Investigations, Levin has spent over a decade investigating and exposing abusive tax shelters and offshore tax schemes.