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March 23, 2017

Hon. Steven T. Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Hon. Mick Mulvaney
Director, Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Secretary Mnuchin and Director Mulvaney:

On behalf of the Officers and the Board of Regents of the American College of Tax Counsel, I write to express our concerns with the Executive Order of January 30, 2017, titled "Reducing Regulation and Controlling Regulatory Costs" (the "Executive Order"), as it may apply to federal tax regulations and other published guidance.

In recent decades, the federal tax law has grown exponentially and now affects virtually every socio-economic issue in the country, ranging from health care to the environment, retirement, education and public assistance. While many of the programs Congress has chosen to implement through the tax law are well-founded, their growth imposes a significant compliance burden on businesses and individuals alike, diverting time and resources that would be better spent on substantive social and economic activity, rather than filling out tax forms. For this reason, we strongly support the Administration's efforts to work with Congress on simplification of the tax law. Until that goal is achieved, however, it is critical for taxpayers and their advisors to have the guidance needed to comply with the tax law as currently in effect. Guidance is also necessary to ensure that the tax laws Congress has enacted are not taken advantage of in order to achieve unintended results. If applied broadly to federal tax regulations and other published guidance, the Executive Order may frustrate these objectives.

Each year, the Treasury Department and Internal Revenue Service solicit input from taxpayers and their advisors on areas of the tax law that could benefit from further guidance and clarification. This effort, along with new statutory directives to issue regulations, culminates in publication of an annual "Priority Guidance Plan," which serves as an important tool for Treasury and the IRS to measure their progress in implementing and clarifying the tax law. We recognize that there have been situations in the past where Treasury and the IRS have been seen as overreaching in their use of regulatory authority to address perceived problems with the tax law that might more appropriately be addressed through legislation. These situations are, however, relatively unusual. Far more common are situations where Congress has enacted a tax law that taxpayers and their advisors need published guidance in to properly interpret and apply that law. These issues that make up the vast majority

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of the items listed on the Priority Guidance Plan and they make up the vast majority of the published guidance issued by the Treasury Department and IRS each year. By limiting the flexibility of Treasury and the IRS to issue such guidance, the Executive Order risks shifting the interpretive burden onto taxpayers, who must hire accountants, lawyers and other advisors to guide them. Taxpayers also risk expensive and protracted audits and litigation by taking return reporting positions in the absence of published guidance. Moreover, by requiring Treasury and the IRS to identify two "deregulatory" actions for each new guidance item, the Executive Order risks imposing additional burdens on taxpayers if it results in the elimination of existing rules that taxpayers and their advisors have come to rely on.

We respectfully request that the Administration consider the unique role that the tax law plays in the lives of every American and provide the Treasury Department and the IRS with appropriate flexibility in issuing guidance that taxpayers and their advisors need in order to comply with the tax law. While all regulations and guidance should be carefully vetted to ensure that, on balance, they benefit rather than hinder economic activity, unless clarified to exclude interpretive regulations, we are concerned that the Executive Order may have the opposite effect.

Very truly yours,


Robert E. McKenzie
President

cc: Thomas West, Acting Assistant Secretary for Tax Policy
William Paul, Acting IRS Chief Counsel