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NOMINATIONS OF ALBERT F. LAUBER AND RONALD LEE BUCH

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF

ALBERT F. LAUBER, TO BE A JUDGE OF THE UNITED STATES TAX COURT; AND RONALD LEE BUCH, TO BE A JUDGE OF THE UNITED STATES TAX COURT

DECEMBER 11, 2012

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NOMINATIONS OF ALBERT F. LAUBER, TO BE A JUDGE OF THE UNITED STATES TAX COURT; AND RONALD LEE BUCH, TO BE A JUDGE OF THE UNITED STATES TAX COURT

TUESDAY, DECEMBER 11, 2012

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:07 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senator Orrin G. Hatch.

Also present: Democratic Staff: Russ Sullivan, Staff Director; Tiffany Smith, Tax Counsel; and Rory Murphy, International Trade Analyst. Republican Staff: Chris Campbell, Staff Director; and Nicholas Wyatt, Tax and Nominations Professional Staff Member.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The hearing will come to order.

Henry Adams, the famed writer and great-grandson of John Adams, once wrote, "All experience is an arch to build upon."

Before us today are two nominees with decades of experience: Mr. Lauber and Mr. Buch. Both of you are nominated to serve as judges on the U.S. Tax Court. Your experience will serve as an important arch to build upon in the positions for which you have been nominated.

The Tax Court gives Americans a venue to address legitimate tax problems, and it helps guarantee fair administration of our tax laws. It is the cornerstone of our tax system.

If confirmed to be judges, you will hear thousands of cases from all over the country. Each case will require your careful consideration. The President chose you to serve as judges because of the expertise you have gained during your long careers.

Mr. Lauber, you currently serve as the director of the graduate tax and securities programs at the Georgetown University Law Center. Your career in tax law has included work in private practice and the Department of Justice.

Mr. Buch, as an attorney with the Internal Revenue Service, you regularly represented the Agency before the U.S. Tax Court. Since then, you advised many taxpayers in the private sector on matters relating to tax law. You have also taught hundreds of students the

ins and outs of the tax code as a law professor at Georgetown and Capital University.

I am confident that both of you will make excellent judges on the Tax Court, and, if confirmed, you will be challenged in your new positions. I believe, in Henry Adams's words, you will build upon your extensive experience and find success.

Your experience proves you are knowledgeable, that you are qualified, so I thank you for being here and look forward to discussing your nominations.

[The prepared statement of Chairman Baucus appears in the appendix.]

The CHAIRMAN. Senator Hatch?

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

Senator HATCH. Well, thank you, Mr. Chairman. Thank you to the nominees before us today. As we all know, the Tax Court is a very important institution, and it is important that this committee keep its healthy functioning in mind. If both of you are confirmed, 17 out of the 19 Tax Court judge positions will be filled. I want to compliment the distinguished chairman for his work in this area.

The Tax Court is important because it is a venue where taxpayers can litigate issues without paying a disputed liability in advance. The tax code does not need to be a harness where the individual is yoked to the State, and, as an institution, the Tax Court helps to ensure that that remains the case.

The two nominees before us are very qualified, seem very qualified to serve. Ronald Buch is a partner at Bingham McCutchen, where he has represented clients before the IRS, the Department of Justice, and the Federal courts. He is also an adjunct professor at the Georgetown University Law Center.

Albert Lauber has also spent a significant part of his career in private practice at the firm of Caplin and Drysdale. Currently, he works as a visiting professor also at the Georgetown University Law Center, and he has served as Tax Assistant to the Solicitor General.

Both of your backgrounds seem to suggest that you have the necessary skills and experience to serve on the Tax Court, and I hope that, if confirmed, you will be able to use the practical knowledge you have gained from your law practices to apply faithfully the tax laws authored by Congress and to ensure that taxpayers are treated fairly by the system of tax administration rather than being simply subject to it.

I also want to briefly discuss a matter that is not directly related to our nominees today, but it is a matter of long-standing concern. During a hearing last May, I remarked that there appeared to be a pattern at the Treasury Department of either refusing to respond to Senators' questions, or only strategically responding the night before the Department wanted something from this committee.

At the time, it was referring to delayed responses to written questions submitted after Secretary Geithner testified before the committee about the President's budget. It appears that this trend continues. As this hearing was coming together, my staff asked the Treasury Department about two information requests, one made on

September 15 and the other on October 15. After weeks of receiving no response and then mentioning these requests in the context of a nomination hearing, lo and behold, I received responses about 2 days later.

I, and other members of this committee, have other outstanding requests for information to Treasury and other Cabinet agencies. I, along with most of my colleagues, are determined to fulfill my constitutional obligation to conduct oversight of the executive branch. Yet, at every turn, it appears that the administration is only willing to cooperate when there is something in it for them. When we are talking about confirming nominees for administrative positions, there seems to be a willingness to do, or promise to do, just enough to get a nominee confirmed.

Likewise, officials virtually always promise to be responsive to requests, but far too often these promises fall by the wayside. If the President, Cabinet secretaries, and other officers confirmed by the Senate, are unable to wade through their own bureaucracy in order to provide timely responses to requests from Congress, then they ought to change their methods for processing such requests.

On the other hand, if they are simply averse to providing answers to questions from Congress, that is a much bigger problem. Whether there is a process problem or whether there is an unwillingness on the part of administration officials to respond to requests, the current mechanisms for facilitating oversight are clearly not adequate.

I look forward to continuing to work with the chairman to address this problem. As I noted, this is not directly related to the nominees before the committee today, so I will not take up any more of the committee's time discussing the matter, but it is a matter of great concern to me, Mr. Chairman. I know it is to you as well.

Now, I just want to say, finally, that for everybody here today, it is Senator Baucus's birthday. So I think I want to pay tribute to you for living this long, especially in this hostile environment. [Laughter.] And I wish you another 71 years.

The CHAIRMAN. Well, aren't you kind? Long life is somewhat attributable to being able to work with somebody who is a really good person, like the Senator from Utah.

Senator HATCH. I hope I qualify.

The CHAIRMAN. That is very kind of you. Thank you.

I might say also, I very much agree with your last statement about the lack of responsiveness from Treasury. As you know, Senator, any request you make is a request from me too.

Senator HATCH. Vice versa.

The CHAIRMAN. And vice versa. I believe strongly that the Treasury should very efficiently expedite any requests that you might have of them, because I know they are legitimate and in good faith, and we will support you in that.

Senator HATCH. Well, thank you, Mr. Chairman.

The CHAIRMAN. It is the right thing to do. Thank you very much for your statement too. I appreciate that.

Senator HATCH. You bet.

The CHAIRMAN. And for your good wishes.

[The prepared statement of Senator Hatch appears in the appendix.]

The CHAIRMAN. I would like, now, to introduce the panel. Both of today's witnesses have been nominated to be judges on the U.S. Tax Court: Mr. Albert Lauber and Mr. Ronald Buch.

As is our regular practice—you may know, but I will remind you—we would like you to submit your prepared statements for the record and then summarize them orally in any way you want. But try to keep your remarks to about 5 minutes.

I would urge you to be candid here. Do not be too formal. Say what you think, because life is short. I just turned another year. You cannot take it with you; you might as well do the best you can right now. So, why don't you both proceed?

Before you do, though, I would like to have each of you, if you are so inclined, to introduce any friends or family who might be here with you, some people who are kind of proud to be part of your life.

So I will start with you, Mr. Lauber.

Mr. LAUBER. Thank you, Mr. Chairman. I would like to introduce two members of my family, my partner of 23 years, Craig Hoffman, who is also a professor at Georgetown Law School——

The CHAIRMAN. Is he here?

Mr. LAUBER [continuing]. And my niece, Hannah——

The CHAIRMAN. All right.

Mr. LAUBER [continuing]. Who just finished college and is now also entering public service by working for the DC public schools.

The CHAIRMAN. Well, super. Why don't you stand up so we can recognize you? Thank you very much. [Applause.]

The CHAIRMAN. All right.

Mr. Buch?

Mr. BUCH. I am thrilled that my family could be here today, my daughter Emma who is going to be starting college at the University of Washington; my wife Deb; my daughter Allison, a student at St. Stephen's; and my parents, Ron and Hella Buch, who flew up from Florida for this hearing today. Also, I am surprised to see several colleagues and friends here as well, so I am thrilled they can join us today.

The CHAIRMAN. Well, if you could all stand. All of you. Come on, stand up. [Applause.]

Gosh, Mr. Buch, your family and friends constitute half of the audience here. [Laughter.] That is pretty good.

Mr. Lauber, why don't you proceed?

STATEMENT OF ALBERT F. LAUBER, NOMINATED TO BE A JUDGE OF THE UNITED STATES TAX COURT, WASHINGTON, DC

Mr. LAUBER. Thank you, Chairman Baucus, Ranking Member Hatch, for the privilege of being here today. I am also grateful to President Obama for nominating me to the U.S. Tax Court. I am very grateful to the staff of the committee on both sides of the aisle for their diligent efforts to bring this to fruition at a very busy time for all of you here at year-end.

I have looked at tax from many vantage points during my career. As a student at Yale Law School, I studied tax under Professor Boris Bittker and Marvin Chirelstein, who are two of the leading

figures in the history of tax law. As a law clerk, I worked on several tax opinions for Justice Harry Blackmun of the Supreme Court, who was one of the few Justices who actually liked tax cases and got quite a few of them.

As a lawyer in the Justice Department, I worked under Rex Lee and Charles Fried, handling many tax appeals, and I argued 15 cases in tax in the U.S. Supreme Court. In private practice, I spent 20 years at Caplin and Drysdale, handling tax controversy matters. For the past 6 years, I have been teaching tax at Georgetown, running the graduate tax program. I have counseled about 1,000 tax students during my time there, and 30 of them have gone on to become Tax Court law clerks.

So I think, through my experience, I have come to understand what makes a good judge, and what makes a good Tax Court judge in particular. If confirmed, I will endeavor to resolve disputes between taxpayers and the Internal Revenue Service by applying the tax laws according to Congress's intent.

I am happy to answer any questions you may have.

The CHAIRMAN. Thank you, Mr. Lauber.

[The prepared statement of Mr. Lauber appears in the appendix.]

The CHAIRMAN. Mr. Buch?

STATEMENT OF RONALD LEE BUCH, NOMINATED TO BE A JUDGE OF THE UNITED STATES TAX COURT, WASHINGTON, DC

Mr. BUCH. Good morning, Chairman Baucus and Ranking Member Hatch. Thank you. It is truly a privilege to be here today. I am certainly grateful to President Obama for having nominated me to be a judge of the U.S. Tax Court. Thank you for scheduling this hearing, and thank you to the staff members who have been generous with their time in preparing for today.

A moment ago I introduced my family members, and I am thrilled that they could be here today. I suppose the purpose of a statement such as this is to tell you a bit about who I am. I am a product of the people seated behind me. My father started out as a stockroom manager in a Kresge store in the late 1950s and retired as executive vice president of K–Mart Corporation.

The CHAIRMAN. One of the first cases you read in law school is *Kresge*.

Mr. BUCH. That is correct. [Laughter.]

Sebastian Spering Kresge, the founder of the company.

The CHAIRMAN. Right.

Mr. BUCH. He rose through the corporate ranks, not because of academic pedigree, but because of hard work. My mother emigrated to this country from Germany after she met and married my father when he was stationed there with the Army.

During much of my childhood, she was not employed outside the home, but she worked harder than most people I have known, whether volunteering as a school nurse, as an AIDS counselor, as a substance abuse counselor at a church, at a museum. She tirelessly gave, and continues to give of herself, simply for the reward of having served.

If I had to point to two key values I have learned from my parents, they would be hard work and serving something greater than yourself. Rightly or wrongly, I like to think of my career as having

been guided by these values. I worked for the IRS Office of Chief Counsel, where perhaps the greatest reward was standing before the U.S. Tax Court and knowing that I was representing our country.

I have also had the pleasure of representing taxpayers in our adversarial tax system. But, in addition to representing taxpayers and the IRS, I have tried to serve the tax system. I have been an active member of the tax sections of the American Bar Association and the District of Columbia Bar Association, chairing committees of each. I have taught as an adjunct professor at Georgetown Law. I have been an active member in the Inns of Court, all of which I view as bettering our profession.

If confirmed, I hope to continue to be guided by these values, to work hard and to serve our system by fairly and impartially applying the tax law. Thank you. I look forward to any questions you might have.

[The prepared statement of Mr. Buch appears in the appendix.]

The CHAIRMAN. Thank you both.

I have three obligatory questions I will first ask, and I would ask each of you to indicate your response.

Is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated? Mr. Lauber?

Mr. LAUBER. No, sir.

The CHAIRMAN. Mr. Buch?

Mr. BUCH. No, sir.

The CHAIRMAN. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. LAUBER. No, sir.

Mr. BUCH. No, sir.

The CHAIRMAN. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Mr. LAUBER. Yes, sir.

Mr. BUCH. Yes, sir.

The CHAIRMAN. All right. Thank you.

The basic question I have—I am sure it is in the minds of a lot of people in this room—is your thoughts about how we might reform the tax code. You all are deeply enmeshed and ensconced in the code in your backgrounds. We are going through this fiscal cliff negotiation now, at least the President and the Speaker are at this point, and I suspect that, probably next year, we will spend a good bit of our time reforming the code, both individual income tax provisions as well as the corporate provisions.

My guess is there will probably be other measures as well: estate tax, for example. It is just hard to tell. So, your thoughts when you are thinking about the code. My gosh, why do they not do this, why do they not do that? Things that might come to mind just off the top of your head, or if you feel very firmly, very strongly, passionately about some part, some provision that should be changed, we would like to hear that too. But you are a resource. It is an opportunity for us to learn all we can and get the best advice we can

and do the best we can in the next year, so we probably should hear from you before you get on the Court.

Mr. Lauber?

Mr. LAUBER. Well, I think for me, and I would suspect for every tax professor in the country, the gold standard is the Tax Reform Act of 1986, which this committee is largely responsible for. That was the last real tax reform we have had in the country, and it was a wonderful example of President Reagan working with Democrats across the aisle to produce real, genuine tax reform, including lowering rates and simplification. That is the gold standard.

Now, it is harder to do that today because the key to that provision was it was revenue-neutral, and there was a time when the tax reform could be done in a revenue-neutral way. My fear is, now that is not going to be possible. It is going to have to be done in a way that will raise some revenue.

But that would be my, and I think most people's, preferred path, to try to do it through simplification, base-broadening, closing special interest loopholes. It may not be possible to lower rates much, but, if that could be done in the context of reform, I think it would be a positive.

The CHAIRMAN. Are there any provisions—umbrella-type tax expenditures, any credit exclusions or deductions—that you find either heinous or questionable?

Mr. LAUBER. Now I am answering it in my capacity as a citizen, not as a prospective judge.

The CHAIRMAN. Yes. Sure. Sure.

Mr. LAUBER. We will of course enforce the laws the Congress has enacted across the board. But I think the manufacturing deduction in section 199 is one of the most offensive provisions in the revenue code.

The CHAIRMAN. Most?

Mr. LAUBER. Offensive.

The CHAIRMAN. Offensive.

Mr. LAUBER. And it does not accomplish any good. It just throws money at—I mean, the definition of manufacturing has become so gigantic that it is not just Caterpillar tractor that is benefitting from this, but companies you would not dream of who do not manufacture anything.

The CHAIRMAN. Do you know the history of it, or do you not?

Mr. LAUBER. Pardon?

The CHAIRMAN. Do you know the history of 199? It is a follow-on to FSC/ETI.

Mr. LAUBER. Yes. Yes. Right. Right.

The CHAIRMAN. Because European countries, value-added countries, could rebate the export portion.

Mr. LAUBER. Right.

The CHAIRMAN. So we attempted our FSC/ETI, and that was ruled by WTO as not quite up to muster, so we had to find something else. I grant you that the manufacturing deduction is a poor substitute for what we otherwise were attempting to do, but I appreciate that.

Mr. Buch?

Mr. BUCH. As a controversy lawyer, I have the pleasure of dealing with the code as it is already in effect. I look at it as an

unenviable task to be placed in the position of, for example, the members of this committee to try to weigh the policy priorities of deductions that maybe have incentives included in them as weight against the other policy, the countervailing policy of simplifying the code.

Simplification certainly makes matters easier for taxpayers, but then that takes away the ability of Congress to use the code for incentives. Certainly as a tax purist, simplification is always a laudable goal from my perspective. If asked about a specific area, again, I look at my background as a controversy lawyer.

The Tax Equity and Fiscal Responsibility Act of 1982 enacted a set of procedural provisions that deal with partnerships that were extraordinarily effective and extraordinarily helpful at the time for streamlining partnership proceedings. I think there has been a fair amount of commentary out there today that those provisions add complication today rather than streamline things. So, that might be one area that I would consider looking at.

The CHAIRMAN. All right.

Senator Hatch?

Senator HATCH. Well, I think both of you are very well-qualified. Over the course of your professional careers, you have represented and worked with parties that are highly sophisticated with respect to tax matters. As a Tax Court judge, you will find yourself presiding over many cases that involve unsophisticated taxpayers with few resources to deploy in their defense. What lessons do you take from your prior professional experience to ensure that you treat these taxpayers with respect and understanding, while stopping short of awarding them an advantage? Do you want to go first, Mr. Lauber?

Mr. LAUBER. Senator, as you know, the Tax Court is unusual among Federal courts in that it has a specific procedure for smaller tax cases that taxpayers can elect.

Senator HATCH. Right.

Mr. LAUBER. If they do that, they are entitled to somewhat simplified procedures. I think it is a very, very important part of the role of the Tax Court judge to make these cases less daunting to these taxpayers who probably have never been in court before. Either they cannot afford a lawyer, or the amount at issue is not big enough to warrant the expense of hiring a lawyer.

I think the goal there is to enable them to tell their story in a layperson's manner and get at the truth and the facts and decide the case fairly, but make it as user-friendly, as it were, as possible for these less-sophisticated taxpayers.

Senator HATCH. Well, thank you.

Mr. Buch?

Mr. BUCH. I think one of the most important roles of the Tax Court is providing a forum where people feel like they have been treated fairly. For many or most taxpayers who get into controversies with the IRS, the first independent body that they deal with is the U.S. Tax Court. They may have been through an examination with the IRS or through the IRS Appeals Division, but the Tax Court is the first truly independent body.

So I think it is an important role for the Tax Court to make those people feel as though they have been treated fairly. And yes,

the Court must, at the end of the day, reach the right result. But again, simplified procedures that help those taxpayers through the system are a way that the Tax Court helps those people to ensure that they have been treated fairly, again, regardless of whether the ultimate result is in their favor or in the government's favor.

Senator HATCH. Let me just ask one other question that I would like to ask the both of you. That is, each of you has an extensive background working in tax. Given your experience working in tax matters and tax issues, to what extent do you believe that the complexity of the code contributes to the number and types of cases considered by the U.S. Tax Court? And assuming there is some type of correlation, how can we as legislators use that information to write better laws?

Mr. LAUBER. Well, I think, Senator, the more complex the tax code is, the more opportunities there are for people to try to game the system or simply be confused about what the right answer is. I mean, there are now, I think, three or four separate provisions governing education expenses, deductions, and credits. It is just mind-numbingly complex. This is an area where people are in college, going to community college.

To expect people at that level to be able to parse through three or four different ways of deducting their educational expenses, it just encourages confusion, and that will trigger audits because the computer at the IRS spots a problem and spits out a deficiency notice.

So I think it is true that if you can simplify the code, eliminate these overlapping provisions that cause taxpayer confusion, you will reduce the amount of litigation. Indeed, I think, as I recall, the Tax Court's docket of cases peaked at around 90,000, 85,000, in the early 1980s before the Reform Act was passed. In part, thanks to the Tax Reform Act of 1986, the docket is now down to 30,000 cases.

So we do have some empirical evidence that simplification does reduce litigation in the Tax Court.

Senator HATCH. All right.

Mr. Buch, do you have anything to add to that?

Mr. BUCH. Simply that simplification naturally, I think, would have a correlative effect on the workload, for example, of the Court. One would have to assume that that would be the effect down the line. There is certainly a transition. It takes time. Simplification today would, I suppose, affect the docket maybe 5 years down the road, once you get into filing seasons and returns being filed. But simplification certainly would ease the workload of the Court.

Senator HATCH. Well, I want to commend both of you. To give up your outside profession to serve is really, really commendable. We wish you the very best. Hopefully we can get these folks through.

The CHAIRMAN. Thank you, Senator.

Mr. Lauber, why do you want this job?

Mr. LAUBER. Well, I believe——

The CHAIRMAN. Why are you seeking it?

Mr. LAUBER. I have been a law clerk twice, and I have been inside courthouses, watched the work of judges, and I have always wanted to be a judge.

The CHAIRMAN. Why?

Mr. LAUBER. Well, I think I have always been regarded as a very good writer, so I think I will be a good writer of judicial opinions. I sort of—people often say being a judge is sort of a monastic existence. You are in chambers, you are in a very small law firm with two administrative assistants, a couple of law clerks, and you are not out in the public sector the way Senators are in the public eye all the time. I kind of like being on my word processor and drafting good prose. I think the lifestyle of a judge will suit me.

I think I am very fair. I think I always try to be fair and reasonable, and I think that would be a good attribute for being a judge. I like public service, I really do. I believe in public service.

The CHAIRMAN. Mr. Buch, what about you? Why do you want to be a Tax Court judge?

Mr. BUCH. It is a question I have asked myself as I have been going through this process, to be honest. [Laughter.]

The CHAIRMAN. And what is the answer? [Laughter.]

Mr. BUCH. I think different lawyers go through their profession looking at different parts of being a lawyer and view different things as the pinnacle of the profession. One of my best friends views being a solo practitioner as the pinnacle of the profession and recently went out and did that.

I work for someone who went out and started his own law firm, and I suspect he viewed that as the pinnacle of the profession. A guy who sat next to me in law school viewed the pinnacle of the profession being the managing partner of his firm, and that is what he is doing today. I have always viewed the bench as the pinnacle of the profession.

The CHAIRMAN. What do either of you want to accomplish?

Mr. BUCH. I am sorry?

The CHAIRMAN. What do either of you want to accomplish? How do you want to be known, regarded? What do you want to be known for when you retire?

Mr. BUCH. One word for me: fairness.

The CHAIRMAN. Here is Judge Buch, he is fair.

Mr. BUCH. Absolutely.

The CHAIRMAN. All right.

Mr. Lauber, are there any goals that you are going to pursue as a Tax Court judge? What do you want to be known for, the legacy? What is this all about?

Mr. LAUBER. I think judges should not become notorious. If they do, they are probably not doing their job very well. I think the job of a judge is to be fair, to act within the law. I would like to be reversed as little as possible by courts of appeals. I will try to get the answer right. I think that would be—having a low reversal percentage would be an accomplishment, I think.

The CHAIRMAN. Well, maybe they are wrong in the appellate court. [Laughter.]

Senator HATCH. You will certainly feel that way if you are reversed.

The CHAIRMAN. You are right. You are right. [Laughter.]

Well, I appreciate that. I have no further questions. I just wish you both such success. I want to just note, though, that the Tax Court Chief Judge Thornton is in the audience here today, as well

as Judge Joe Gale. I know them both and am very proud of them. They will be great colleagues of yours. I wish you the utmost success and good luck. Thank your families too, because it is a mutual joint sacrifice, public service, and families are in this together.

So, thank you all very much.

Mr. LAUBER. Thank you.

Mr. BUCH. Thank you.

The CHAIRMAN. The hearing is adjourned.

[Whereupon, at 10:38 a.m., the hearing was adjourned.]

APPENDIX

Additional Material Submitted for the Record

Hearing Statement of Senator Max Baucus (D-Mont.)
Regarding Two U.S. Tax Court Nominations
As prepared for delivery

Henry Adams, the famed writer and great-grandson of John Adams, once wrote, "All experience is an arch to build upon."

Before us today are two nominees with decades of experience. Mr. Lauber and Mr. Buch, both of you are nominated to serve as judges on the U.S. Tax Court.

Your experience will serve as an important arch to build upon in the positions for which you have been nominated.

The Tax Court gives Americans a venue to address legitimate tax problems. It helps guarantee fair administration of our tax laws. It is a cornerstone of our tax system.

If confirmed to be judges, you will hear thousands of cases from all over the country. Each case will require your careful consideration.

The president chose you to serve as judges because of the expertise you have gained during your long careers.

Mr. Lauber, you currently serve as the Director of the Graduate Tax and Securities Programs at the Georgetown University Law Center. Your career in tax law has included work in private practice and the U.S. Department of Justice.

Mr. Buch, as an attorney with the Internal Revenue Service, you regularly represented the agency before the U.S. Tax Court. Since then, you have advised many taxpayers in the private sector on matters relating to tax law. You have also taught hundreds of students the ins-and-outs of the tax code as a law professor at Georgetown and Capital University.

I am confident that both of you will make excellent judges on the Tax Court.

If confirmed, you will be challenged in your new positions. But I believe in Henry Adams' words: You will build upon your extensive experience and find success. Your experience proves you are knowledgeable, qualified nominees.

So I thank you for being here, and I look forward to discussing your nominations today.

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Opening Statement of Ronald Lee Buch
Nominee for Judge, U.S. Tax Court
Senate Committee on Finance
December 11, 2012

Good morning Chairman Baucus, Ranking Member Hatch, and distinguished members of the Committee. Thank you all; it is truly a privilege to be here. I am very grateful to President Obama for having nominated me to be Judge of the United States Tax Court.

Mr. Chairman, thank you for scheduling this hearing, and I also thank the staff members of your committee who have been generous with their time as we worked together on my nomination.

I would like to briefly introduce my family members who are with me here today. I am grateful for the support of my wife Deb and our two daughters, Emma and Allison, I am thrilled that they could be here today. And my parents, Ron and Hella Buch, were also able to travel here from Florida to join us today. Their support over the years has been invaluable, and I am grateful beyond what words can convey.

I suppose the purpose of a statement such as this is to tell you a bit about who I am. I am the product of the people seated behind me. My father started out as a stock room manager in a Kresge store in the late 1950s and retired as an Executive Vice President of Kmart Corporation. He rose through the corporate ranks not because of his academic pedigree, but because of hard work. My mother immigrated to this country from Germany after she met and married my father, who was stationed there with the Army. During much of my childhood, she was not employed outside the home, yet she worked harder than most people I have known. Whether volunteering as a school nurse, as an AIDS counselor, as a substance abuse counselor, at a church, or at a museum, she tirelessly gave, and continues to give, of herself for the reward of simply having served. If I had to point at two key values learned from my parents, it would be hard work and serving something greater than yourself.

Rightly or wrongly, I like to think that my career has been guided by these values. I worked for the IRS Office of Chief Counsel, where perhaps the greatest reward was standing before the United States Tax Court and knowing that I was representing our country. I have also had the pleasure of representing taxpayers in our adversarial tax system. But in addition to representing taxpayers and the IRS, I have also tried to serve the tax system. I have been an active member of the tax sections of the American Bar Association and the District of Columbia Bar Association, I have taught as an Adjunct Professor at Georgetown Law, and I have been an active member of the Inns of Court, all of which I view as working to better our profession.

If confirmed, I hope to continue to be guided by these values – to work hard and to serve our tax system by fairly and impartially applying the tax law.

Thank you, and I look forward to any questions that you may have.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

Ronald Lee Buch, Jr.

2. Position to which nominated:

Judge, United States Tax Court

3. Date of nomination:

September 15, 2011

4. Address: (List current residence, office, and mailing addresses.)

Residence and Mailing:

Office:

5. Date and place of birth:

September 20, 1965
Flint, Michigan

6. Marital status: (Include maiden name of wife or husband's name.)

7. Names and ages of children:

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

- Andover High School, Bloomfield Hills, Michigan
  September 1980 – November 1980

- Canadian Academy, Kobe, Japan
  November 1980 – February 1982

- Andover High School, Bloomfield Hills, Michigan
  February 1982 – June 1983
  High school diploma conferred June 1983

- Northwood Institute, Midland, Michigan
  August 1983 – May 1987
  Bachelor's Degree conferred May 1987

- Detroit College of Law, Detroit, Michigan
  August 1990 – May 1993
  Juris Doctor conferred June 1993

- Capital University Law School, Columbus, Ohio
  August 1993 – May 1994
  LL.M. in Taxation conferred June 1994

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

- Saks Fifth Avenue, New York, New York, August 1987 – August 1990
  - *Management Training Program* (Aug. 1987 – Jan. 1988)
    Attended training programs and worked in various departments as part of a training program for newly hired employees.
  - *Assistant Buyer* (Jan. 1988 – Sept. 1988)
    Assisted in product selection and financial planning for girls 7-14 and pre-teen clothing departments.
  - *Information Systems Liaison* (Sept. 1988 – June 1989)
    Assisted in the development of computer program to assist

merchandizing departments and trained merchandizing departments on the use of computer systems.
- *Assistant Manager, Statistical Department* (June 1989 – Aug. 1990) Supervised accounting clerks in the computation of gross income by merchandizing department.

Vandeveer Garzia, P.C. (May 1991 – June 1992)
Law clerk – Reviewed documents; drafted briefs and other litigation-related documents.

Dagger, Johnston, Miller Ogilvie & Hampson LLP, Lancaster, Ohio (June 1992 – August 1992)
Law clerk – Reviewed documents; drafted briefs and other litigation-related documents.

Vandeveer Garzia, P.C. (January 1993 – May 1993)
Law clerk – Reviewed documents; drafted briefs and other litigation-related documents.

Capital University Law School (August 1994 – December 1994)
Adjunct Professor – Taught Tax Research & Writing I.

KPMG LLP (April 1995 – August 1997)
- *Consultant*, Washington National Tax (Apr. 1995 – Sept. 1996 *est.*) Advised KPMG professionals on issues relating to IRS practice and procedure.
- *Senior Consultant*, Washington National Tax (Sept. 1996 *est.*– Aug. 1997) Advised KPMG professionals on issues relating to IRS practice and procedure.

IRS Office of Chief Counsel (September 1997 – November 2001)
Senior Legal Counsel (Natural Resources) (Oct. 2000 – Nov. 2001) – Advised IRS field attorneys in the Large & Mid-Sized Business Division of the IRS Office of Chief Counsel.
- *Trial Attorney (Passthroughs & Special Industries)* (Sept. 1997 – Aug. 1998).
  Advised IRS field attorneys and Exam personnel on issues relating to pass-through entities.
- *Trial Attorney (Procedural)* (Aug. 1998 – Oct. 2000)
  Advised IRS field attorneys and Exam personnel on procedural issues, and represented the IRS in the United States Tax Court.

Bingham McCutchen LLP, Tax & Benefits Group (November 2001 – Present)
- *Associate* (Nov. 2001 – Mar. 2005) – Represent clients in tax matters before the IRS, Department of Justice, and federal courts.

- *Partner* (Mar. 2005 – Present) – Represent clients in tax matters before the IRS, Department of Justice, and federal courts.

  Note: I originally joined McKee Nelson LLP in 2001, which combined with Bingham McCutchen in August 2009.

Georgetown University Law Center
August 2002 – Present
Adjunct Professor – Teach Tax Research & Writing and Tax Practice & Procedure (Administrative Practice).

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

Executive Office of the President
March 2009 – Present
Consultant – Perform occasional uncompensated work reviewing tax returns of potential nominees and nominees for federal appointments.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

None.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

American Bar Association (2001 – Present), Taxation and Litigation Sections, Member; Past Chair, Administrative Practice Committee, Taxation Section

District of Columbia Bar Association (1996 – Present), Taxation Section, Member; Past Chair, Tax Audits & Litigation Committee

Florida Bar Association, Member (1994 – Present)

J. Edgar Murdock American Inn of Court, Associate (2000 – 2005), Barrister (2005 – 2011), Master (2011-Present)

Good Shepherd Lutheran Church, Member (1996 – Present)

American Mensa, Member (1988 – Present)

Phi Delta Theta Fraternity, Member (1984 – Present)

Potomac Pedalers Touring Club, Member (2011 – Present)

USA Hockey, Member, Player, Level IV Coach (2002 – Present)

13. Political affiliations and activities:

a. List all public offices for which you have been a candidate.

None.

b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

Rudy Giuliani Presidential Committee Inc., 2007, $2,300.

Fred Thompson Political Action Committee, 2007, $1,000.

McCain-Palin Victory, 2008, $500.

Jim Gilmore For Senate, 2008, $250.

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Outstanding Mentor, Bingham McCutchen LLP (2010, 2011).

Recognition for Distinguished Service, American Bar Association Tax Section (2009).

Pro Bono Recognition, McKee Nelson LLP (2006).

Innovations Award, IRS Office of Chief Counsel (2001).

Domestic Joint Quality Counsel Recognition, IRS Office of Chief Counsel (2000).

James E. Markham Attorney of the Year Award, IRS Office of Chief Counsel, (1999) (Performance Award all other years).

Ohio Tax Review Fellow, Capital University Law School (1993-1994).

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

Practical Considerations for Schedule UTP ... an Addendum, The Tax Executive 265 (September-October 2010) (co-authored with Michael Desmond).

Practical Considerations in Preparing for the Impending Schedule UTP Filing Requirement, The Tax Executive 182 (July-August 2010) (co-authored with Michael Desmond).

The Touch and Feel of Work Product, 124 Tax Notes 915 (Aug. 31, 2009).

Contributor to Chapter 10, TEFRA Partnership Audit & Litigation Rules in William S. McKee et al., *Federal Taxation of Partnerships and Partners* (4th ed. 2007).

Board of Tax Appeals Permits Direct Consumer Sales Tax Refund, 8.1 Ohio Tax Rev. 12 (1994).

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

I have not given any formal speeches, however I have often participated in bar association panels or continuing education seminars. I have not used prepared remarks, but the discussions are often accompanied by outlines or slide presentations. Attached are the outlines and presentations that have accompanied the discussions identified below, regardless of authorship.

American Bar Association Tax Section

Panelist, *Fundamentals of Partnership Proceedings: Avoiding Common Procedural Pitfalls* (January 2006).
Moderator, *Listed Transactions and the Section 6707A Penalty* (February 2006).
Moderator, *IRS Coordination Through the Industry Specialization Program (ISP)* (May 2006).
Moderator, *Simultaneous Civil/Criminal Proceedings* (January 2008).
Panelist, *Settling TEFRA Cases* (January 2008).

Panelist, *Complex IDRs* (May 2009).
Moderator, *FOIA - It Doesn't Hurt (and May Help) To Ask* (September 2009).
Moderator, *Alamo Revisited* (January 2010).
Speaker, *Procedural/Ethical Issues Related to Series LLCs* (May 2010).
Panelist, *Regulation Validity/Judicial Deference* (January 2011).
Panelist, *TEFRA and the TMP – Too Much Power?* (January 2011).
Panelist, Common Interest Agreements (May 2011).
Speaker, *Revisiting Procedural/Ethical Issues Related to Series LLCs* (May 2011).

District of Columbia Bar Association

Moderator, *Parallel Proceedings* (April 2006).
Moderator, *A Discussion With Sarah Hall Ingram, The New IRS National Chief Of The Office Of Appeals* (May 2006) (no materials).
Moderator, *The Murphy Case: Its Implications on Audits and Litigation* (November 2006) (no materials).
Panelist, *Section 6694 Tax Return Preparer Penalties* (February 2008).
Panelist, *Deference after Intermountain and Lantz* (December 2010).
Panelist, *Deference, Part II: How Far Does Mayo Go?* (March 2011).

Federal Bar Association

Panelist, *Primer on Tax Penalties in Tax Shelters and Reportable Transactions* (May 2008).
Moderator, *Tax Practice—Views from the Bench* (February 2011).

American Petroleum Institute

Speaker, *I.R.C. § 6694: Preparer Penalties and Other Matters Affecting Tax Planning and Tax Return Preparation* (April 2008).

Tax Executives Institute

Speaker, *Is Nothing Sacred? Tax Opinions in a New Era* (April 2006).
Panelist, *FIN 48: Implications for IRS Controversies & Dispute Resolution* (November 2007).
Panelist, *When All Else Fails: Economic Substance from Gregory to Codification* (April 2008).
Panelist, *Privilege in Tax Practice: Creating It, Waiving It, and Protecting It* (May 2008).
Panelist, *The IRS Manual: There's Gold in Them Thar Pages* (March 2009).
Speaker, *Managing Your Documents and Obtaining Theirs: Five Rules To Keep In Mind* (April 2009).
Speaker, *IRS Administrative Affairs Hot Topics* (October 2009).
Panelist, *Hot Topics in International Controversy and Compliance* (February 2010).
Panelist, *Document Management: From Theory to Practice* (May 2010).

Panelist, *Drafting Key Tax-Controversy Documents: Privilege Logs, Closing Agreements, and Document Retention Policies* (February 2011).

National Institute of Tax Professionals

Speaker, *Current Developments Affecting Partnership Tax Controversies* (October 2010).
Speaker, *Regulating Tax Professionals: The Encroachment of the IRS into Tax Professional-Client Relationships* (October 2010).
Speaker, *Recent Developments in Partnership Litigation* (October 2009).
Speaker, *Recent Developments in Tax Practice* (October 2009).
Speaker, *Return Filing Issues: Preparer Penalties, Reportable Transactions, and Other Matters of Current Interest* (October 2007).
Speaker, *Recent Developments Affecting Partnership Tax Controversies: TEFRA Cases and Privilege Issues* (October 2007).
Speaker, *Tax Opinions in the Current Era: From Circular 230 to Disqualified Advisors and Requests for Tax Accrual Workpapers* (October 2006).
Speaker, *Periods Without Limitation: New Arguments Regarding Partnership Statutes of Limitations* (October 2006).

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

Over the past fifteen years, I have had the opportunity to represent both the United States and taxpayers in Federal tax disputes. While working for the IRS, I received the highest honor given to IRS lawyers, the James E. Markham Attorney of the Year Award. While in private practice, I have worked with one of the most prestigious tax groups (at McKee Nelson and now at Bingham McCutchen) where I have represented a wide array of taxpayers, ranging from Fortune 100 companies to individuals in need of *pro bono* assistance. Much of my practice has focused on the types of procedural issues that are often before the Tax Court, leading to my appointment as an Adjunct Faculty member at Georgetown University Law Center teaching both Tax Research & Writing and Tax Procedure (Administrative Practice). Lastly, I have demonstrated my dedication to the profession through my work with the American and District of Columbia Bar Associations. In sum, I believe my breadth of experience and dedication to the profession have prepared me to sit on the bench of the United States Tax Court.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes, however I anticipate maintaining active membership in bar associations and continuing to teach as an adjunct faculty member at Georgetown University Law Center. I will work to ensure these relationships are permissible under the rules of the U.S. Tax Court, the Code of Conduct for United States Judges, or 28 U.S.C. sec. 455.

2. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.**

See response to question 1, above.

3. **Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.**

No.

4. **If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.**

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.**

None, however, I have represented clients in tax matters that could potentially be brought to the Tax Court. If this were to occur, I would take whatever steps were necessary or appropriate under the rules of the U.S. Tax Court, the Code of Conduct for United States Judges, or 28 U.S.C. sec. 455, to resolve the conflict, including recusal.

2. **Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.**

See response to question 1, above.

3. **Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.**

   None

4. **Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)**

   I will take whatever steps are necessary or appropriate under the rules of the U.S. Tax Court, the Code of Conduct for United States Judges, or 28 U.S.C. sec. 455, to resolve any potential conflicts of interest, including recusal.

5. **Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.**

   Not applicable.

6. **The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:**

   Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

   Not applicable.

D. LEGAL AND OTHER MATTERS

1. **Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional**

conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. **Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.**

In the mid 1990s, I received a ticket for driving 77 miles per hour in the southbound HOV lanes of I-395, which constituted per se reckless driving. The ticket required a court appearance at which I pled guilty. A fine of less than $300 was imposed. I have received other traffic citations, none of which required a court appearance or involved a fine in excess of $300.

3. **Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.**

None

4. **Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.**

See number 2, above.

5. **Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.**

None.

E. TESTIFYING BEFORE CONGRESS

1. **If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?**

Yes.

2. **If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?**

Yes.

Ron Buch
Nominee to serve as Judge, U.S. Tax Court
Received December 13, 2012
Submitted December 13, 2012

Question 1:

In ruling as to a statute, how will you determine Congressional intent? Will you look to legislative history? If so, would you find one type of legislative history more authoritative than another type, or do you think that perhaps Justice Scalia is right, that only statutes become actual law, and that it would be inappropriate for a court's decision to turn on what a mere committee report states, given that a Committee report has not been passed by majorities of both houses and signed by the President into law? More fundamentally, do you think it even makes sense to talk about Congressional intent? Do statutes passed by Congress necessarily have an intention? I can tell you that Chairman Baucus and I might both vote for the same bill, but he and I might have very different reasons for doing so, he and I might have different hopes as to how the legislation works out, he and I might have very different understandings of some of the legislation's key provisions.

Congressional intent is best gleaned from the words of a duly enacted statute, and where a statute is clear on its face, I would not look to legislative history to deviate from the statute as written by Congress. Where a statute is ambiguous, however, courts look to legislative history in an effort to resolve that ambiguity. Although it is not a tax case, Justice Scalia, writing for the majority, articulated this view in *Bruesewitz v. Wyeth LLC*, 131 S. Ct. 1068, 1081 (2011), wherein he wrote:

> Since our interpretation of [the statute] is the only interpretation supported by the text and structure of the [Act], even those of us who believe legislative history is a legitimate tool of statutory interpretation have no need to resort to it.

As the question notes, legislative history has not been voted on by Congress, which is why, in my view and as implied by the quote above, it should not be used to contradict an otherwise unambiguous statute.

This same view was also articulated in Justice Scalia's recent book *Reading Law*. Although the authors wrote that "the purpose must be derived from the text, not from extrinsic sources such as legislative history," they also went on to state that one looks to the purpose underlying the text, stating that "[p]urpose sheds light only on deciding which of various *textually permissible meanings* should be adopted." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 and 57, respectively (2012) (*emphasis in original*). *See also id.* at 388 (describing uses for legislative history).

Regarding the weight afforded different types of legislative history, I believe different types of legislative history should be afforded different weights. For example, a Conference Report regarding the final bill as it was enacted would likely be afforded greater weight than a predecessor report regarding an earlier version of the bill prior to being resolved in conference. Likewise, a Conference Report would likely be afforded greater weight than a floor statement of a single senator.

STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER U.S. SENATE COMMITTEE ON FINANCE HEARING OF DECEMBER 11, 2012 NOMINATIONS OF ALBERT F. LAUBER AND RONALD LEE BUCH

WASHINGTON – U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, today delivered the following remarks during a Senate Finance Committee hearing considering the nominations of Albert F. Lauber and Ronald Lee Buch to serve as Judges of the U.S. Tax Court:

As we all know, the tax court is a very important institution, and it is important that this Committee keep its healthy functioning in mind. If both of you are confirmed, 17 out of the 19 Tax Court Judge positions will be filled.

The tax court is important because it is a venue where taxpayers can litigate issues without paying a disputed tax liability in advance. The tax code does not need to be a harness where the individual is yoked to the state, and as an institution the Tax Court helps to ensure that that remains the case.

The two nominees before us seem very qualified to serve.

Ronald Buch is a partner at Bingham McCutchen where he has represented clients before the IRS, the Department of Justice, and the federal courts. He is also an adjunct professor at the Georgetown University Law Center.

Albert Lauber also spent a significant part of his career in private practice at the firm of Caplin and Drysdale. Currently, he works as a visiting professor, also at the Georgetown University Law Center, and he has served as tax assistant to the Solicitor General.

Both of your backgrounds seem to suggest that you have the necessary skills and experience to serve on the tax court. I hope that, if confirmed, you will be able to use the practical knowledge you have gained from your law practice, to apply faithfully the tax laws authored by Congress, and to ensure that taxpayers are treated fairly by our system of tax administration, rather than being simply subject to it.

I also want to briefly discuss a matter that is not directly related to our nominees today, but is a matter of longstanding concern.

During a hearing last May, I remarked that there appeared to be a pattern at the Treasury Department of either refusing to respond to Senators' questions or only strategically responding the night before the Department wanted something from this Committee. At the time, I was referring to delayed responses to written questions submitted after Secretary Geithner testified before the Committee about the President's budget.

It appears that this trend continues.

As this hearing was coming together, my staff asked the Treasury Department about two information requests, one made on September 15 and the other on October 15. After weeks of receiving no response, and then mentioning these requests in the context of a nomination hearing, lo and behold, I received responses about two days later.

I and other Members of this Committee have other outstanding requests for information to Treasury and other cabinet agencies. I, along with most of my colleagues, am determined to fulfill my constitutional obligation to conduct oversight of the Executive Branch. Yet at every turn, it appears that the Administration is only willing to cooperate when there's something in it for them.

When we're talking about confirming nominees for administrative positions, there seems to be a willingness to do, or promise to do, just enough to get a nominee confirmed. Likewise, officials virtually always promise to be responsive to requests. But far too often those promises fall by the wayside.

If the President, cabinet secretaries, and other officers confirmed by the Senate are unable to wade through their own bureaucracy in order to provide timely responses to requests from Congress, then they ought to change their methods for processing such requests. On the other hand, if they are simply averse to providing answers to questions from Congress, that is much bigger problem.

Whether there is a process problem, or whether there is an unwillingness on the part of administration officials to respond to requests, the current mechanisms for facilitating oversight are clearly not adequate.

And I look forward to continuing to work with the Chairman to address this problem. As I noted, this is not directly related to the nominees before the Committee today, so I won't take up any more of the Committee's time discussing this matter today. Once again, I want to thank the nominees for appearing here today and I look forward to their testimony.

###

Opening Statement of Albert G. Lauber
Nominee for Judge, U.S. Tax Court
Senate Committee on Finance
December 11, 2012

Thank you, Chairman Baucus, Ranking Member Hatch, and distinguished members of the Committee on Finance, for the privilege of being here today. I am grateful to President Obama for nominating me to the United States Tax Court. And I am grateful to you, and to the Committee staff on both sides of the aisle, for your diligent efforts to complete the processing of my nomination when matters as pressing as the fiscal cliff demand your immediate attention.

I would like to introduce members of my family who are here today. First, my partner for 23 years, Craig Hoffman, who is also a professor at Georgetown Law School, is here. My brother and his wife were unable to get down from Boston, but I would like to introduce my niece, Hannah Lauber, who recently graduated from college and now works for the DC Department of Education.

I have looked at tax from many vantage points during my career. As a student at Yale, I studied tax under Boris Bittker and Marvin Chirelstein, legendary figures in this field. As a law clerk, I worked on tax opinions for Justice Harry Blackmun, one of the few Justices who actually liked tax. As a lawyer in the Justice Department, working under Rex Lee and Charles Fried, I handled tax appeals and tax cases in the Supreme Court. In private practice, I spent 20 years at Caplin & Drysdale, chiefly in the area of tax controversies and litigation. And for the past six years, as a professor and program director at Georgetown, I have taught and counseled about a thousand tax students, 30 of whom have gone on to become Tax Court law clerks.

Through my experience, I think I have come to understand what makes a good judge. If confirmed, I will endeavor to resolve disputes between taxpayers and the Internal Revenue Service by applying the tax laws in accordance with Congressional intent. I am happy to answer any questions the Committee may have.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

   Albert G. Lauber (prior to 1988, I used "Jr." at the end of my name)

2. Position to which nominated:

   Judge, United States Tax Court

3. Date of nomination:

   May 26, 2011

4. Address: (List current residence, office, and mailing addresses.)

   Home:

   Office:

   Mailing address: Either of above.

5. Date and place of birth:

   January 1, 1950
   Bronxville, N.Y.

6. Marital status: (Include maiden name of wife or husband's name.)

7. Names and ages of children:

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

Xavier High School, New York, NY (1963-1967). Diploma 1967
Yale College (1967-1971). B.A. 1971
Clare College, Cambridge University, England (1971-1974). M.A. (Classics) 1974
Yale Law School (1974-1977). J.D. 1977

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Summer Associate, Pitney, Hardin & Kipp, Newark, N.J. (Summer 1975)
Summer Associate, Cravath, Swaine & Moore, New York, N.Y. (Summer 1976)
Law Clerk, Judge Malcolm R. Wilkey, United States Court of Appeals for the District of Columbia Circuit (1977-1978)
Law Clerk, Justice Harry A. Blackmun, United States Supreme Court (1978-1979)
Associate Attorney, Caplin & Drysdale, Washington, D.C. (1979-1983)
Tax Assistant to the Solicitor General, U.S. Department of Justice, Washington, D.C. (1983-1986)
Deputy Solicitor General, U.S. Department of Justice, Washington, D.C. (1986-1987)
Partner, Caplin & Drysdale, Chtd., Washington, D.C. (1987-2006)
Visiting Professor and Director, Graduate Tax & Securities Programs, Georgetown University Law Center (2006-Present)

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

Member, District of Columbia Alcoholic Beverage Control Board (2004-2008)

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

Part-time Consultant, General Electric Canada Company (2008-2010)

Part-time Consultant, General Electric Company (2011)
Part-time Consultant, Zuckerman Spaeder LLP, Washington, D.C. (2007-2010)
Part-time Consultant, Burt Staples & Maner LLP, Washington, D.C. (2008)
Part-time Consultant, PricewaterhouseCoopers LLC, Washington, D.C. (2007-2008)
Part-time Consultant, Caplin & Drysdale, Chtd., Washington, D.C. (2007-2008)

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

Member, Board of Trustees, The Studio Theatre, Washington, D.C. (1993-Present)

13. Political affiliations and activities:

a. List all public offices for which you have been a candidate.

None.

b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

9/23/2002	Stephanie Herseth Sandlin for South Dakota	$500
9/4/2003	Dean for America	$1,000
11/11/2003	Dean for America	$1,000
6/21/2004	Kolbe for Congress	$250
6/23/2006	Bob Casey for Pennsylvania Committee	$250
6/26/2008	Obama for America	$300
7/18/2008	Obama for America	$250
7/30/2008	Obama for America	$250
8/24/2008	Obama for America	$250
9/15/2008	Obama for America	$250
10/16/2008	Obama for America via Obama Victory Fund	$500
4/16/2010	DNC Services Corporation/Democratic National Committee	$250
5/28/2010	DNC Services Corporation/Democratic National Committee	$250
5/28/2010	DNC Services Corporation/Democratic National Committee	$250
10/01/2010	DNC Services Corporation/Democratic National Committee	$500
10/18/2010	DNC Services Corporation/Democratic National Committee	$375
12/18/2010	DNC Services Corporation/Democratic National Committee	$1,000

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

IRS Chief Counsel's Award (for service to the Internal Revenue Service while in the Solicitor General's office) (October 1987)
Woodrow Wilson Fellowship (1971)
Mellon Fellowship to Clare College, Cambridge (1971)

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

Loan Guarantees and Transfer Pricing, Corporate Taxation 24 (May/June 2010) (with Prof. Stafford Smiley)
Tax Court Rules (Again) on Sierra Club Affinity Card Income, 24 Tax Exempt Organization Tax Review 311 (May 1999) (with Lloyd Mayer)
Voter Guides Must Meet IRS Guides as Permissible Voter Education, 8 Journal of Exempt Organizations 147 (1997) (with Milton Cerny)
Ninth Circuit Rules on Sierra Club Mailing List and Affinity Card Income, Tax Notes (July 15, 1996) (with Milton Cerny)
Barclays Bank: The Mystery of the Sinking Foreign Commerce Clause, Public Interest Law Review 51 (1995)
Logos, UBIT, and a Strict IRS Approach to Affinity Card Programs, 2 Journal of Tax-Exempt Organizations 9 (Winter 1991)
Choosing the Forum for a Corporate Tax Dispute, 2 Corporate Taxation 5 (Jan/Feb 1990)
Tax Controversies in the United States: Audit, Settlement, and Litigation, 12 International Tax Review 508 (December 1989) (with H. David Rosenbloom)
An Exchange of Views: Has the Solicitor General's Office Become Politicized? The Legal Times of Washington, Nov. 2, 1987
Supreme Court's TWR Decision Provides Guidance in 501(c)(3) Lobbying, 59 Journal of Taxation 66 (1983) (with Thomas A. Troyer)
Proposed Regulations on "Substantial.Understatements" Clarify and Define Important New Reporting Standards, The Legal Times of Washington, Apr. 11, 1983 (with Ronald B. Lewis)
TEFRA Compliance Provisions Give IRS New Powers, The Legal Times of Washington, Sept. 20, 1982 (with Ronald B. Lewis)
CA9's EMI Decision May Have Wide Impact on Corporations' State Taxes, 57 Journal of Taxation 94 (August 1982) (with Robert H. Elliott)
Court Sets Review of Ways States Tax Multinationals, The Legal Times of Washington, April 12, 1982 (with Robert H. Elliott)
Tax Regs Fit Poorly into Regulatory Reform Mold, The Legal Times of Washington, April 12, 1980 (with Mortimer M. Caplin)

Executory Labor Contracts and Municipal Bankruptcy, 85 Yale Law Journal 957 (1976)

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with **two** copies of each formal speech.)

    None.

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

    I have 35 years of experience as a tax lawyer, specializing in tax controversies. In private practice, I handled numerous cases in the U.S. Tax Court, several of which generated published opinions. As a lawyer in the Solicitor General's Office, I handled numerous appeals from Tax Court decisions. As a professor at Georgetown University Law Center, I teach Tax Court opinions to students. I have always been regarded as a superb writer. I believe I have the perspective, experience, skill set, and temperament to be a Tax Court Judge.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

   I would continue serving as a trustee of The Studio Theatre and teaching at Georgetown University Law Center as an adjunct professor. I will work to ensure these relationships are permissible under the rules of the U.S. Tax Court, the Code of Conduct for United States Judges, or 28 U.S.C. sec. 455.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

   See response to question 1, above.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

   No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

Yes, I would expect to serve out my full term as an active or as a senior Judge. (Tax Court judges serve 15 year terms; I would reach senior status before the expiration of this term).

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Since I directly own common stock of certain U.S. corporations, it is possible that a potential conflict of interest could arise if one of these corporations were a party in a case before me or in which I was otherwise called upon to exercise judicial authority. If this were to occur, I would take whatever steps were necessary or appropriate under the rules of the U.S. Tax Court, the Code of Conduct for United States Judges, or 28 U.S.C. sec. 455, to resolve the conflict, including recusal.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

See response to question 1, above.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

None.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with **two** copies of any trust or other agreements.)

I will take whatever steps are necessary or appropriate under the rules of the

U.S. Tax Court, the Code of Conduct for United States Judges, or 28 U.S.C. sec. 455, to resolve any potential conflicts of interest, including recusal.

5. **Two** copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

   N.A.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

   Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

   N.A.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

   No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   I have never been involved as a party in any administrative agency proceeding (other than the examinations of my tax returns described in response to Question

F.12 below). The only civil litigation in which I have ever been involved as a party was my divorce proceeding in 1985. That was a consensual divorce and I was the nominal defendant.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

   No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   None.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

   Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

   Yes.

Albert Lauber
Nominee to serve as Judge, U.S. Tax Court
Received December 13, 2012
Submitted December 13, 2012

Question 1:

In ruling as to a statute, how will you determine Congressional intent? Will you look to legislative history? If so, would you find one type of legislative history more authoritative than another type, or do you think that perhaps Justice Scalia is right, that only statutes become actual law, and that it would be inappropriate for a court's decision to turn on what a mere committee report states, given that a Committee report has not been passed by majorities of both houses and signed by the President into law? More fundamentally, do you think it even makes sense to talk about Congressional intent? Do statutes passed by Congress necessarily have an intention? I can tell you that Chairman Baucus and I might both vote for the same bill, but he and I might have very different reasons for doing so, he and I might have different hopes as to how the legislation works out, he and I might have very different understandings of some of the legislation's key provisions.

I am in substantial agreement with Justice Scalia's approach to statutory interpretation. I believe that the soundest guide to the meaning of a statute is its text. By "text," I mean the words that Congress employed; the architecture and structure of the statute as a whole; inferences that can be drawn from Congress's use of analogous words and phrases elsewhere in the statute; and negative implications that arise from what Congress could have included, but did not include, in the statute. In conducting this exercise, a judge must retain a firm grasp on the principles of English grammar, syntax, and punctuation.

In tax litigation, it is fairly unusual for a judge to be confronted by the bare text of the Internal Revenue Code, unaided by interpretative assistance. In most cases, the Treasury Department will have issued Regulations that provide guidance as to the meaning of the statutory text. Treasury Regulations have the force of law, and the Supreme Court has now made clear that *Chevron* deference applies with its full force to them. In drafting these Regulations, the Treasury Department will generally attempt to fill any statutory gaps or uncertainties by drawing, as appropriate, on the statute's legislative history and its own expertise. This will often make it unnecessary for the judge to consult the legislative history directly.

If a case arose that presented a genuine statutory ambiguity with no guidance from Treasury Regulations, I would not categorically exclude reliance on legislative history. However, the only types of legislative history that generally merit consideration in my view are Conference Reports and Committee Reports on the bill that Congress enacted. I would generally accord little if any weight to floor statements and to statements made during committee hearings.

The structure of the Tax Court provides another form of assistance to Judges confronted with difficult statutory construction problems. Judges do not sit individually, but as "divisions" of the full Tax Court. All draft opinions are reviewed by the Chief Judge to ensure consistency with Tax Court and appellate precedent. If a novel question of statutory construction is presented, the Chief Judge can require, and any Judge can request, that the case be reviewed by the full Court. This will bring to bear on the statutory construction question the collective knowledge and experience of 19 Judges.

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