

**STATEMENT BY DAVID D. GUSTAFSON, NOMINEE FOR JUDGE OF UNITED STATES  
TAX COURT, BEFORE THE SENATE COMMITTEE ON FINANCE  
APRIL 17, 2008**

It is an honor to appear before this Committee of the United States Senate, having been nominated by the President to be a Judge on the United States Tax Court. I have always appreciated that the Framers of our Constitution imposed a separation of powers upon the federal government, but this nomination experience has made that doctrine more real and mundane for me than it ever was before. Not even the President of the United States can simply make someone a judge; it requires a political consensus that includes even the President's opponents. I thank this Committee for its consideration of my nomination.

I am also grateful to the Tax Division of the Department of Justice, for allowing me over the past 24 years to learn, practice, and supervise tax litigation. In 1989 I became an Assistant Chief and, in 2005, the Chief of a litigating section, in which I supervise a staff of 20 tax litigators who handle a docket of some 500 cases, representing about \$3 Billion in tax claims against the United States. Our cases run the gamut from the small and simple to the complex and enormous: My section defends small-dollar refund suits brought by indigent taxpayers, and multi-million-dollar claims by Fortune 500 and multinational corporations; we answer "tax protestor" arguments on the one hand, and on the other we address sophisticated issues involving complicated provisions of the Internal Revenue Code, Treasury Regulations, and tax treaties; the broad range of our subject matter includes tax-exemption, life insurance taxation, excise taxes, partnerships, interest computation, and myriad other issues. In addition, for four years I had the privilege of serving as the Coordinator of Tax Shelter Litigation for the entire Tax Division, and in that post I had a wide exposure to some of the Government's most important tax controversies. I could not ask for any better preparation for adjudicating cases in the Tax Court. Over the years my mentors and superiors in the Tax Division--including Eileen J. O'Connor, Claire Fallon, Mildred Seidman, Theodore Peyser, Robert S. Watkins, Gerald Leedom, and William C. Rapp--have been generous with their support; and I hope that, if I am confirmed, my work as a Tax Court judge will reflect well on them.

An attorney who has been especially encouraging and inspiring to me, both professionally and personally, is Sharon Fast Gustafson, my wife of 27 years and the mother of my nine children. Her combination of zeal, diligence, competence, reasonableness, and civility in a challenging and stressful law practice is the example I hold before myself as I try to be a good attorney, and I will continue to hold her example before me if I become a judge. I am grateful that she could be here today with seven of our children.

In the United States, the tax law is the creature of Congress, a fact of which I am keenly aware, as I appear before this congressional Committee that plays a key role in the legislative process. The tax collector does not make the tax law, but administers it; and judges in tax cases do not make the tax law, but apply it in deciding the cases before them. I am committed to that distinction; and if I am confirmed as a judge, I will do my best to faithfully and honestly interpret and apply the law.