

May 7, 2020

The Honorable Richard Neal
Chairman, Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Grassley
Chairman, Committee on Finance
U.S. Senate
Washington, DC 20510

Re: IRS Notice 2020-32 regarding deductible expenses related to Paycheck Protection Program loans

Dear Chairmen Neal and Grassley,

Thank you for your continued support for Congressional action to aid the economy as the country grapples with the novel coronavirus (COVID-19). As Congress has aggressively responded to provide relief for both employers and employees, the Paycheck Protection Program (PPP), administered by the Small Business Administration and the Department of the Treasury has emerged as an essential lifeline for struggling small business owners as they deal with federally, state, and/or locally mandated shutdowns as well as slowdowns of economic activity due to COVID-19.

As you are aware, on Thursday, April 30th, the Internal Revenue Service (IRS) issued Notice 2020-32 which “clarifie[d] that no deduction is allowed under the Internal Revenue Code (Code) for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).” This is at odds with the legislative text of the CARES Act, specifically Section 1106(i), which says that, with regard to the “taxability” of the loan forgiveness available to PPP recipients, any amounts forgiven by a PPP loan “*shall be excluded from gross income*” (emphasis added).

The impact of this IRS ruling is significant. The effect will be to substantially increase the tax liability of PPP loan recipients at the worst possible time. For C-Corporations, it means an increase in the net after tax liability of PPP loan forgiveness by as much as 21%. For pass-through businesses, such as S Corporations, the marginal increase could be as high as 37%. Once state income taxes are included, the impact will be even greater.

As both of you have publicly stated, the IRS’s interpretation of the CARES Act is contrary to the intent of Congress. It makes little sense to exclude an employer’s PPP loan forgiveness income from tax liability with the one hand, only to lose the same amount in deductions with the other hand. With many businesses struggling to stay afloat, it is imperative that the rescue measures enacted by Congress, including PPP loans, provide the maximum amount of flexibility to employers that they can. We are very appreciative of your recent letter to the IRS noting that Notice 2020-32 is contrary to Congressional intent, but absent subsequent guidance from the IRS, we encourage you to amend the CARES Act in future legislation that would explicitly waive Code Section 265 from applying to PPP loan forgiveness. Thank you again for your continued support.

Sincerely,

[List of signatories on following pages]

Cc: The Honorable Kevin Brady
The Honorable Ron Wyden

Associated General Contractors of America
ABC Contractors of DE
ABC of Delaware
ABC of Oklahoma
Academy of General Dentistry
Accessories Council
AdvaMed
Aeronautical Repair Station Association
Air Conditioning Contractors of America
American Academy of Pediatric Dentistry
American Apparel & Footwear Association (AAFA)
American Bakers Association
American Council for Capital Formation (ACCF)
American Council of Engineering Companies
American Dental Association
American Farm Bureau Federation
American Foundry Society
American Frozen Food Institute
American Hotel & Lodging Association (AHLA)
American Mold Builders Association
American Rental Association
American Road & Transportation Builders Association
American Society for Radiation Oncology
American Subcontractors Association
American Supply Association
American Veterinary Medical Association
AMT - The Association For Manufacturing Technology
Asian American Hotel Owners Association
Associated Builders & Contractors - South Texas Chapter
Associated Builders & Contractors, Inc. North Alabama Chapter
Associated Builders and Contractors
Associated Builders and Contractors of Western PA,
Associated Builders and Contractors, Central Pennsylvania Chapter
Associated Equipment Distributors
Association of the Wall and Ceiling Industry
Auto Care Association
CCIM Institute
Connecticut Marine Trades Association
Construction Industry Round Table
Convenience Distribution Association
Council of Fashion Designers of America
CT Marine Trades Association, Inc.
DHI - Door Security + Safety Professionals
Eastern States Hospitality Coalition
Energy Equipment & Infrastructure Alliance
Equipment Marketing & Distribution Association (EMDA)
Family Enterprise USA
Financial Executives International
Foodservice Equipment Distributors Association (FEDA)
Forest Resources Association
GAWDA
Global Market Development Center

Heating, Air-conditioning, & Refrigeration Distributors International
Independent Bakers Association
Independent Community Bankers of America
Independent Electrical Contractors
Independent Insurance Agents & Brokers of America
Independent Lubricant Manufacturers Association
Independent Office Products & Furniture Dealers Alliance
Industrial Fasteners Institute
Institute of Real Estate Management
International Association of Plastics Distribution
International Association of Plastics Distribution (IAPD)
International Council of Shopping Centers (ICSC)
International Foodservice Distributors Association
International Franchise Association
International Warehouse Logistics Association
International Wood Products Association
Irrigation Association
Job Creators Network
Manufactured Housing Institute
Manufacturer & Business Association
Marine Retailers Association of the Americas
Material Handling Equipment Distributors Association
Motorcycle Industry Council
Motorcycle Safety Foundation (MSF)
NACS
National Apartment Association
National Association of Chain Drug Stores
National Association of Chemical Distributors
National Association of Electrical Distributors
National Association of Manufacturers
National Association of Professional Insurance Agents
National Association of REALTORS®
National Association of Wholesaler-Distributors
National Automobile Dealers Association
National Beer Wholesalers Association
National Cattlemen's Beef Association
National Community Pharmacists Association
National Confectioners Association
National Cotton Council
National Electrical Contractors Association
National Electrical Manufacturers Representatives Association (NEMRA)
National Fastener Distributors Association
National Lumber and Building Material Dealers Association
National Marine Distributors Association
National Marine Manufacturers Association
National Mining Association
National Multifamily Housing Council
National Propane Gas Association
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National RV Dealers Association

National Small Business Association
National Tooling and Machining Association
National Waste & Recycling Association
NATSO, Representing America's Travel Centers and Truckstops
NFIB
North American Association of Food Equipment Manufacturers (NAFEM)
North American Die Casting Association
North American Meat Institute
National Office Products Alliance
Office Furniture Dealers Alliance
Out of Home Advertising Association of America
Outdoor Power Equipment and Engine Service Association
Pet Industry Distributors Association
Petroleum Equipment Institute (PEI)
Petroleum Marketers Association of America
Plumbing-Heating-Cooling Contractors—National Association
Policy and Taxation Group
Portland Cement Association
Precision Machined Products Association
Precision Metalforming Association
PRINTING United Alliance
Professional Beauty Association
REALTORS® Land Institute
Recreational Off-Highway Vehicle Association (ROHVA)
Retail Bakers of America
S Corporation Association
Secondary Materials and Recycled Textiles Assoc.
Service Station Dealers of America and Allied Trades
SHDA - Security Hardware Distributors Association
Sheet Metal and Air Conditioning Contractors National Association (SMACNA)
Small Business & Entrepreneurship Council
Society of Independent Gasoline Marketers of America (SIGMA)
Society of Industrial and Office REALTORS®
Southeastern Lumber Manufacturers Association
Specialty Equipment Market Association (SEMA)
Specialty Vehicle Institute of America (SVIA)
The Association for Hose and Accessories Distribution
The Design-Build Institute of America
The Fertilizer Institute
The Hardwood Federation
The Transportation Alliance
Tire Industry Association
Travel Goods Association (TGA)
Truck Renting and Leasing Association
United Veterinary Services Association
Western Equipment Dealers Association
Wholesale Florist & Florist Supplier Association
Wine & Spirits Wholesalers of America
Wisconsin Grocers Association