

February 5, 2021

The Honorable Ron Wyden
Chairman
Senate Finance Committee
219 Dirksen Building
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
Senate Finance Committee
219 Dirksen Building
Washington, DC 20510

Dear Chairman Wyden and Ranking Member Crapo:

A recent letter signed by dozens of U.S. Senators and Representatives called on Congress to retroactively repeal last year's Net Operating Loss (NOL) relief enacted in the CARES Act. This ill-advised effort would result in a massive, retroactive tax hike on thousands of businesses who, by definition, have suffered losses in recent years and need help during the pandemic. It should be rejected by both the House and the Senate.

The CARES Act included a 5-year carryback for losses incurred in 2018, 2019, and 2020. It also suspended the loss limitation rules for those years. Absent the loss limitation relief, pass-through businesses with large losses would have been unable to access the NOL relief. With small business revenue declining by 30 percent in the past year, this provision was necessary to ensure businesses of all sizes benefitted from the policy.

Providing temporary NOL relief has broad support in the business community. One hundred and twenty national business trade groups called on Congress to include it in the response to the COVID-19 pandemic. It was part of the CARES Act negotiations from the beginning and it was included in every CARES Act draft leading up to its adoption. There is simply no truth to the notion that this provision was "snuck" into the legislation.

Nor is it true that this policy is something new. NOL relief enjoys a longstanding history of bipartisan support during economic crises. The "alternative" bill authored by Speaker Nancy Pelosi last spring included five-year carrybacks of net operating losses, as did the Worker, Homeownership, and Business Assistance Act of 2009, the Gulf Opportunity Zone Act of 2005, and the Job Creation and Worker Assistance Act of 2002. All of those bills were supported by bipartisan coalitions and were adopted by the House and Senate with overwhelming majorities. As President Obama's press office summarized the 2009 provision:

"The bill provides an expanded tax cut to tens of thousands of struggling businesses, providing them with the immediate cash they need to pursue an expansion or avoid contracting or furloughing their workers...Business losses incurred in 2008 or 2009 can now be used to recoup taxes paid in the prior five years. This provision is a fiscally responsible economic kick-start, putting \$33 billion of tax cuts in the hands of businesses this year when they need it most, while enabling Treasury to recoup the majority of that funding in the coming years as these businesses regain their strength and resume paying taxes."

A key reason NOL carrybacks have long enjoyed bipartisan support is highlighted in the Obama Administration's statement – any tax benefit realized by businesses suffering losses will result in higher

tax payments for those businesses in the coming years. The goal of the policy is to level out tax burdens to reflect the long-term income of the businesses.

Finally, repeal of the temporary NOL and Loss-Limitation relief will not “save \$250 billion” as the letter asserts. The Joint Committee on Taxation estimated NOL relief would reduce revenues by \$161 billion over ten years, and even that estimate is likely overstated. NOL carrybacks provide a timing benefit only, as deductions taken this year are no longer available next year. Reversing this policy will not generate nearly \$100 billion in additional savings. Instead, the policy being advocated in the letter would not just impose a retroactive tax hike on businesses suffering losses, but also extend that tax hike beyond the current sunset of the loss limitation rules beginning after 2025.

The undersigned organizations ask that you stand by the business community during this difficult time and reject imposing a massive, retroactive tax hike on businesses that have lost money in recent years. Providing businesses with temporary NOL relief has a long history of bipartisan support, has been enacted during every economic downturn in recent memory, and the provision in question only applied to tax year 2020. The policy has already sunset.

Thank you for your consideration of our views and for defending businesses during the pandemic.

Sincerely,

American Bakers Association
American Council of Engineering Companies
American Forest and Paper Association
American Hotel & Lodging Association (AHLA)
American Institute of Architects
American Iron and Steel Institute
American Lighting Association
American Mold Builders Association
American Supply Association
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors of America
Auto Care Association
CCIM Institute
Equipment Leasing and Finance Association
Financial Executives International
GAWDA
Glass Packaging Institute (GPI)
Global Cold Chain Alliance
Heating, Air-conditioning & Refrigeration Distributors International
Independent Community Bankers of America
Independent Electrical Contractors
Independent Lubricant Manufacturers Association
Industrial Fasteners Institute
Institute of Real Estate Management
Institute of Scrap Recycling Industries
International Council of Shopping Centers
International Foodservice Distributors Association

International Franchise Association
International Warehouse Logistics Association
Manufactured Housing Institute
Manufacturer & Business Association
Material Handling Equipment Distributors Association
Metals Service Center Institute
NACS
National Apartment Association
National Association of Home Builders
National Association of REALTORS®
National Association of Wholesaler-Distributors
National Automatic Merchandising Association (NAMA)
National Cattlemen's Beef Association
National Community Pharmacists Association
National Cotton Council
National Electrical Contractors Association
National Funeral Directors Association
National Grocers Association
National Insulation Association
National Marine Distributors Association
National Marine Manufacturers Association
National Mining Association
National Multifamily Housing Council
National Onion Association
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Small Business Association
National Stone, Sand and Gravel Association
National Tooling and Machining Association
NFIB
North American Association of Food Equipment Manufacturers (NAFEM)
North American Die Casting Association
Outdoor Power Equipment and Engine Service Association
Parity for Main Street Employers coalition
Policy and Taxation Group
Precision Machined Products Association
Precision Metalforming Association
Professional Beauty Association
Retail Industry Leaders Association
S Corporation Association
Service Station Dealers of America and Allied Trades (SSDA-AT)
SHDA - Security Hardware Distributions Association
Small Business & Entrepreneurship Council
Southeastern Lumber Manufacturers Association
Specialty Equipment Market Association
The Association of Hose and Accessories Distribution

The Hardwood Federation

Tire Industry Association

Tire Industry Association (TIA)

Truck Renting and Leasing Association

USA Rice

Vinyl Institute

Wholesale Florist & Florist Supplier Association (WF&FSA)