

August 4, 2020

The Honorable Nancy Pelosi
Speaker of the House of Representatives
United States Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

Speaker Pelosi and Majority Leader McConnell:

As Congress negotiates another round of relief in response to the on-going COVID-19 pandemic, we strongly encourage you to include a technical correction addressing the tax treatment of loan forgiveness under the Paycheck Protection Program (PPP).

When the PPP was adopted as part of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Congress made clear that any loan forgiveness under the program would be excluded from the borrower’s taxable income. Specifically, a recipient of a PPP loan was eligible for forgiveness of indebtedness for amounts equal to certain payroll, mortgage interest, rent, and utility payments made during a prescribed period, **with any resulting cancelled indebtedness excluded from the borrower’s taxable income**. As Section 1106(i) makes clear:

(i) TAXABILITY.—For purposes of the Internal Revenue Code of 1986, any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income.

The publication of IRS Notice 2020-32 effectively overturned this policy by denying these borrowers the ability to deduct the same expenses that qualified them for the loan forgiveness. The Notice argues “...section 265(a)(1) of the Code disallows any otherwise allowable deduction... for the amount of any payment of an eligible section 1106 expense to the extent of the resulting covered loan forgiveness...”

Defenders of the IRS’ position argue that allowing businesses to deduct these expenses would result in business owners receiving a “double” benefit. This is simply untrue. Congress intended for the loan forgiveness under PPP to be tax-free. The IRS Notice reverses that position and eliminates *any* benefit, let alone a double benefit. If a business has \$100,000 of PPP loans forgiven and excluded from its income, but then is required to add back \$100,000 of denied business expenses, the result is the same as if the loan forgiveness was fully taxable. Section 1106(i) becomes moot if the IRS Notice is allowed to stand.

On the other hand, denying the correct tax treatment of these loans will result in hardship for many struggling businesses. More than five million businesses have participated in the PPP. More than \$520 billion has been lent. In nearly all cases, these businesses have already spent the loan proceeds keeping employees on payroll and meeting other necessary costs. In addition to the approximate \$100 billion tax hike the IRS position represents, denying businesses the ability to deduct these expenses could result in numerous other complications – how would the denial of deductible wages affect the 199A

deduction or the Work Opportunity Tax Credit? How do you offset expenses incurred in 2020 with loan forgiveness realized in 2021? Does disallowed interest expense avoid the excess business interest expense limitation under section 163(j)?

The correctness of the IRS's reasoning underpinning Notice 2020-32 is a debatable point and if left intact it will certainly result in extensive legal challenges. What is not debatable, however, is congressional intent regarding the tax treatment of these forgiven loan amounts. As part of the next round of COVID-19 relief, we request that Congress reaffirm its intent and restore the tax benefits it intended to give distressed Main Street businesses as part of the CARES Act.

We appreciate your consideration and thank you for your leadership during these very difficult times.

Sincerely,

ABC
ABC Central Ohio
ABC of Alaska
Academy of General Dentistry
Agricultural Retailers Association
AIM/R
Air Conditioning Contractors of America (ACCA)
American Association of Advertising Agencies
American Bakers Association
American Composites Manufacturers Association
American Council of Engineering Companies
American Dental Association
American Farm Bureau Federation
American Feed Industry Association
American Foundry Society
American Frozen Food Institute
American Horse Council
American Institute of Architects
American Institute of CPAs (AICPA)
American International Automobile Dealers Association
American Lighting Association
American Mold Builders Association
American Mushroom Institute
American Rental Association
American Road & Transportation Builders Association
American Supply Association
American Veterinary Medical Association
AmericanHort
AMT - The Association For Manufacturing Technology
Asian American Hotel Owners Association
Associated Builders & Contractors
Associated Builders & Contractors, Heart of America Chapter
Associated Builders and Contractors
Associated Builders and Contractors of Western PA

Associated Equipment Distributors
Associated General Contractors of America
Association of Fund-Raising Distributors and Suppliers
Association of the Wall and Ceiling Industry
Auto Care Association
Builders Hardware Manufacturers Association
CCIM Institute
Ceramic Tile Distributors Association
Chemical Fabrics & Film Association
Coalition of Franchisee Associations
Construction Industry Round Table
Customized Delivery and Logistics Association
DHI - Door Security and Safety Foundation
Distilled Spirits Council of the United States
Eastern States Hospitality Coalition
Equipment Leasing and Finance Association (ELFA)
Equipment Marketing & Distribution Association (EMDA)
Family Business Coalition
Farm Credit Council
FEUSA
Financial Executives International
Forest Resources Association
Franchise Business Services
Gases and Welding Distributors Association
Glass Packaging Institute
Global Cold Chain Alliance
Greeting Card Association
Heating, Air-conditioning, & Refrigeration Distributors International
Independent Bakers Association
Independent Community Bankers of America
Independent Electrical Contractors
Independent Insurance Agents & Brokers of America
Independent Office Products & Furniture Dealers Alliance
Industrial Fasteners Institute
Institute of Real Estate Management
Institute of Scrap Recycling Industries (ISRI)
International Association of Movers (IAM)
International Association of Plastics Distribution
International Council of Shopping Centers
International Door Association
International Flight Services Association
International Foodservice Distributors Association
International Franchise Association
International Housewares Association
International Sign Association
International Warehouse Logistics Association
Irrigation Association
Manufactured Housing Institute

Material Handling Equipment Distributors Association
Metal Service Center Institute
NACS
National Apartment Association
National Association of Broadcasters
National Association of Chain Drug Stores
National Association of Electrical Distributors (“NAED”)
National Association of Home Builders
National Association of Professional Insurance Agents
National Association of REALTORS®
National Association of Truckstop Operators
National Association of Wholesaler-Distributors
National Automatic Merchandising Association(NAMA)
National Automobile Dealers Association
National Beer Wholesalers Association
National Candle Association
National Cattlemen’s Beef Association
National Community Pharmacists Association
National Confectioners Association
National Cotton Council
National Council of Farmer Cooperatives
National Electrical Contractors Association
National Electrical Manufacturers Representatives Association (NEMRA)
National Fastener Distributors Association
National Franchisee Association
National Insulation Association
National Marine Distributors Association
National Marine Manufacturers Association
National Mining Association
National Multifamily Housing Council
National Newspaper Association
National Office Product Alliance
National Onion Association
National Pasta Association
National Pecan Shellers Association
National Potato Council
National Propane Gas Association
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National RV Dealers Assn (RVDA)
National Small Business Association
National Sorghum Producers
National Stone, Sand & Gravel Association
National Tooling and Machining Association
National Waste & Recycling Association
NATSO, Representing America's Travel Centers and Truckstops

NAW/Ceramic Tile Distributors Association
NFIB
North American Association of Food Equipment Manufacturers (NAFEM)
North American Die Casting Association
Office Furniture Dealers Alliance
Outdoor Power Equipment and Engine Service Association
Parity for Main Street Employers
Pet Industry Distributors Association
Petroleum Equipment Institute (PEI)
Petroleum Marketers Association of America
Plastics Industry Association
Plumbing-Heating-Cooling Contractors--National Association
Portland Cement Association
Precision Machined Products Association
Precision Metalforming Association
PRINTING United Alliance
Professional Beauty Association
Refrigerated Foods Association
Renewable Fuels Association
Roof Coatings Manufacturers Association
Secondary Materials and Recycled Textiles Assoc.
Security Hardware Distributors Association
SHOP!
Small Business & Entrepreneurship Council
Society of Industrial and Office REALTORS®
Society of Maintenance and Reliability Professionals
Southeastern Lumber Manufacturers Association
Specialty Equipment Market Association
Structural Insulated Panel Assn. (SIPA)
The Association for Hose and Accessories Distribution
The Hardwood Federation
The Transportation Alliance
Tile Roofing Industry Alliance
Truck Renting and Leasing Association
U.S. Apple Association
U.S. Sweet Potato Council
US Rice Producers Association
USA Rice
Vinyl Institute
Virginia Small Business Partnership
WASDA
Water and Sewer Distributors of America
Western Equipment Dealers Association
Western Growers
Wholesale Florist and Florist Supplier Association
Window Covering Manufacturers Association
Wine & Spirits Wholesalers of America
Wine Institute

Wireless Internet Service Providers Association
Wisconsin Grocers Association