TTAA Legislative Update

July 18, 2022

Small Business Surtax a Direct Attack on Main Street

Many small business organizations are urging small business owners to keep the pressure on President Joe Biden and Congress.

Last year, the Biden Administration and Congress Proposed a series of new tax increases and mandates. Small business owners say the increases and mandates are "dishonestly masked" as being needed to "close a loophole" and "fund Medicare." Neither of the above is true. Small businesses are already being impacted by things such as inflation, the tight labor market and supply chain issues. Small businesses don't need another tax.

A version of the 3.8% small business surtax has been around since 2013, when it was included as part of the Affordable Care Act. However, it has not been imposed on business income. It was imposed on interest, dividends, annuities, royalties, rents and passive income.

Congress is poised to expand the small business surtax to included business income earned by pass through small businesses. Pass through small businesses would include S corps, LLCs, sole proprietorships and partnerships.

The surtax is included as part of the Build Back Better Act, and Congress has not yet voted on it.

There are business income guidelines. The 3.8% surtax would be levied on business income of more than $400,000 ($500,000 for joint returns). The 3.8% surtax would also be levied on business held in trusts which earned more than $13,000.

In 2021 the Biden Administration and Congress proposed a series of new tax increases and mandates, including the following.

- Limiting the Small Business Deduction (IRS Section 199A)
- Increasing the corporate tax rate to 28% without lower rates for small businesses
- Raising the top income tax rate on individually- and family-owned businesses from 37% to 39.6%
- Eliminating stepped-up basis

- Increasing the top capital gains tax rates
- Taxing unrealized gains above $100 million with concern the threshold would quickly be lowered over time
- Enacting elements of the Protecting the Right to Organize (PRO) Act
- Mandating that employers provide paid sick leave and retirement accounts
- Establishing a complicated and inflexible new federal-government-run family and medical paid leave program

Several harmful proposals were eliminated from the House-passed version of the Build Back Better Act. However, these policies can still come back in the future legislation, and as the U.S. Senate considers the Build Back Better Act.

You can contact your elected representatives and urge them not to pass legislation that further impacts and challenges small business owners.

TTAA Signs onto Main Street Employer NIIT Opposition Letter

Dear Speaker Pelosi, Leader McCarthy, Leader Schumer, and Leader McConnell:

We, the undersigned organizations representing millions of Main Street businesses and employing tens of millions of American workers, urge you not to raise taxes on small, individually, and family-owned businesses as part of any effort to enact a reconciliation bill this year. In the face of a possible recession, 40-year high inflation, unprecedented supply-chain challenges, and chronic labor shortages, raising taxes on small, individually, and family-owned businesses is the wrong approach and should be rejected.

According to recent media reports, two tax increases under consideration would fall entirely on small, individually, and family-owned, closely-held businesses: 1) expanding the 3.8 percent Net Investment Income Tax (NIIT) to individuals and families who actively participate in their business, and 2) limiting the ability of small, individually, and family-owned businesses to fully deduct their losses during an economic downturn by expanding and extending the so-called "excess business loss limitation" for "noncorporate taxpayers." Combined, these would increase revenues by more than $400 billion over ten years, shouldered entirely on the backs of small, individually, and family-owned businesses.

While expanding the NIIT is sometimes characterized as closing a tax loophole and that it would increase Medicare funding, neither of these claims are true. When the NIIT was created as part of the Affordable Care Act, it was meant to apply to investment income only. The business income of small, individually, and family-owned firms where the owners ran the business was specifically exempted. This exemption was intentional and in no way constitutes a loophole.

Moreover, the revenue raised by the NIIT does not fund Medicare. As the NIIT initially was adopted as part of a reconciliation bill, attributing the funds of this new tax to the Hospital Insurance trust fund would have violated the Byrd Rule. That is why the NIIT did not fund Medicare when it was adopted in 2010, and that is why attributing the revenues raised by its expansion to Medicare would violate the Byrd Rule today.

As it does not close a loophole and does not fund Medicare, expanding the 3.8 percent NIIT represents nothing more than an eleven percent increase in the rates imposed on family-owned businesses. Based on Treasury data, we estimate up to 1 million small and family-owned businesses, representing over half of all pass-through business activity, would be at risk of having their rates increased under this policy. This small business tax hike would hurt the ability of businesses that survived the worst global pandemic in a century to survive in the coming months.

While expanding the NIIT would raise taxes on small and family-owned businesses when they are profitable, extending and expanding the "excess loss limitation" rules would hurt them in the next economic downturn. During the Great Recession, many businesses were able to survive, in part, by policies that allowed them to offset the losses they were incurring against taxes they had previously paid. This assistance was particularly important for cyclical industries such as construction, manufacturing, and travel and tourism. Extending and expanding the "excess loss limitation" rules into the future would prevent pass-through businesses from having this relief in the next recession, increasing the odds that they don't survive.

This is ill-advised tax policy, and it is being considered at a moment when the economy is no longer growing. First quarter gross domestic product (GDP) fell by 1.6 percent and many economists and forecasters predict that the second quarter GDP will also be negative. Meanwhile, the small business sector may already be in recession, as those businesses have lost employment in three out of the last four months, even as large companies have increased their employment.

Raising taxes on small and family-owned businesses with the economy on the brink of a recession, a situation which is compounded by the other post-pandemic challenges they are face, harms not only these businesses but the families and communities who rely on them. We ask you to reject any tax hikes on America's small and family-owned businesses in any legislation considered this year.

Sincerely,

TTAA and other trade associations

Self Insured Plans Must Pay PCORI Fee by August 1

Self-insured health plans are required by the Patient Protection and Affordable Care Act (ACA) to pay a fee to help fund the Patient-Centered Outcomes Research Institute (PCORI).

The fee for the 2021 plan year is due by August 1, 2022. The amount of the fee is based on the average number of lives covered under the plan.

This August 1, self-insured plan sponsors will be responsible for paying the fee for plan years ending in 2021. If the plan ended on or after October 1, 2021, through October 1, 2022 (including calendar year plans), the fee per covered life is $2.79.

Plan sponsors should use IRS Form 720 to pay the PCORI fee.

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