TTAA Legislative Update

September 27, 2021

TTAA Signs onto Joint Trades Letter

Dear Chairman Neal:

The undersigned organizations representing millions of individually- and family-owned businesses strongly urge you to reject any measures that would raise taxes on Main Street employers as part of the upcoming reconciliation bill.

Individually- and family-owned businesses are the cornerstone of the American economy. They represent nearly all businesses, they employ the vast majority of private sector workers, and they are the building block upon which innumerable communities across this country are built.

The package of tax hikes being considered by the Biden administration and Congress represents a direct assault on these employers. Proposals to raise rates on pass-throughs and C corporations, cap the Section 199A deduction, increase the capital gains tax, and impose capital gains at death would raise taxes on Main Street businesses when they operate, when they are sold, and when they are passed on to the next generation.

This triple threat would lock in unprecedented levels of government spending and taxes that would handicap these businesses, and the communities that rely upon them, for decades to come. They would also violate the President's pledge not to raise taxes on individuals making less than $400,000 a year. Many individual and family business owners that make less than $400,000, including the 1.4 million private C corporation owners, family businesses with ownership shares held in trust, and entrepreneurs selling their business after a lifetime of work, will be directly harmed by these tax increases.

As inflation and unemployment remain stubbornly high, Main Streets across the country remain boarded up, their businesses closed and their workers idle. Estimates suggest up to one-third of all private businesses have closed their doors during the COVID-19 lockdowns, with more joining them every day.

Congress should avoid tax policies that harm Main Street employers at any time, much less at this difficult moment in our nation's history. The Biden tax hikes pose a triple threat to the ability of these individually- and family-owned businesses to survive an uncertain future, and we urge Congress to reject them.

Sincerely,

TTAA and other professional associations

Wyden Floats Taxing Unrealized Gains at Death

Congress is on a fast-track timeline to construct the next social spending reconciliation bill which will be partly financed by tax increases. Senate Finance Committee Chairman Wyden circulated a list of potential payfors which included the following:

1) **Realization at death** – Require realization at death for transfers of property in excess of $5 million ($10 million per couple). An additional $500,000 per couple exemption would apply for principal residences. Conversations continue with various offices about the design of a family farm exemption, which would provide an exemption for the first $25 million in family farm property per couple (in addition to the $10 million per couple generally exemption).

2) **Estate tax reforms** – Eliminate the ability to avoid estate tax by disallowing the use of certain trust planning techniques, including Grantor Retained Annuity Trusts (GRATs) and Intentionally Defective Grantor Trusts (IDGTs). Would also include language compelling Treasury to update regulations to prevent the abuse of non-economic valuation discounts.

TTAA Sends Letter of Concern to Wyden and Neal

Dear Chairmen Wyden and Neal,

As the House Ways and Means and Senate Finance Committees consider options to finance the coming reconciliation bill, we respectfully urge the committees to steer clear from tax increases that will make it harder for family businesses to pass to the next generation of ownership.

A list of potential pay-fors circulated which included a number of revenue raisers small business has consistently opposed, including making death a realization event for capital gains, imposing technical changes relating to the estate tax, and reopening the fight over valuation rules for family businesses.

Forcing capital gains realization at death as if a profitable sale has occurred when in fact no sale has occurred creates the same problem the estate tax does for family businesses. Family-owned businesses across a number of industries tend to operate on small margins and with not much cash on hand. For many of our members, the value of their businesses is tied up in equipment, machinery, land, buildings, and other illiquid assets. When faced with a new capital gains tax at death on top of the existing estate tax and state level transfer taxes, businesses without sufficient liquid reserves will be forced to fire workers, close branches, or shut down the businesses altogether.

TTAA opposes the concept of carve outs or exemptions; these exemptions create the perception of protecting family businesses while history has shown that carve outs are complicated to qualify for and as House Agriculture Chairman David Scott (D-GA) recently wrote “could still result in significant tax burdens on many family farming operations…” Technical changes related to the estate tax like eliminating the use of Grantor Retained Annuity Trusts (GRATS) would hurt family businesses that currently use these legitimate planning tools to help their families plan for succession.

Pulling the rug out from under family business owners’ succession plans will force many back into the costly and time consuming process of estate planning. As it stands now, 70% of family businesses do not make it to the second generation and 90% do not make it to the third. Congress should be focused on improving the prospects for family business succession, especially considering the current delicate state of the economy, not considering new tax increases and regulations that are likely to further complicate the process.

Specific to taxing unrealized gains at death, we urge you to also consider the following:
-House Agriculture Committee Chairman David Scott (D-GA) sent a June 2 letter to the administration expressing concerns with the idea of a new capital gains tax at death. The letter stated in part: "While I appreciate the proposal provides for some exemptions, the provisions could still result in significant tax burdens on many family farming operations." Available here: https://agriculture.house.gov/uploadedfiles/06022021letter.pdf
-13 House Democrats sent a May 6th letter led by Reps. Axne (D-IA) and Costa (D-CA) to House leadership voicing concerns about family businesses and capital gains due at death. The letter stated in part: "The requirement to recognize capital gains at death runs the risk of forcing farms and ranches to sell part, or all, of a farm that may have been passed down for several generations in order to pay the tax burden." Available here: https://axne.house.gov/sites/axne.house.gov/files/5.6.21%20Stepped%20Up%20Basis%20Final.pdf
-The entire Senate Republican conference led by Sen. Thune (R-SD) sent a letter opposing a new capital gains tax due at death. The letter stated in part: "As you will recall, a proposal to reach a similar outcome by requiring an heir to "carry-over" the decedent's tax basis was tried before in 1976 – and failed so spectacularly it never came into effect." Available here: https://www.thune.senate.gov/public/_cache/files/8951d087-ef78-4623-a38d-3ccbc359fb35/340FB04101F4D5172E58194B2DB886BB.letter-to-potus.pdf
-130 House Republicans sent a May 5th letter to House leadership opposing taxing unrealized gains at death. The letter stated in part: "Because assets such as manufacturing equipment and farmland are not liquid and can be difficult to unwind, we are concerned a likely outcome of this new tax would be the sale… of businesses in order to pay it at a time when small business jobs are most needed." Available here:https://adriansmith.house.gov/sites/adriansmith.house.gov/files/FINAL%20-%20Stepped-Up%20Basis%20Member%20Letter%202021-05-05.pdf
-Former Finance Committee Chairman Max Baucus penned a September 1st Wall Street Journal op-ed entitled: "A Tax Plan to Destroy Farms and Ranches". Available here:https://www.wsj.com/articles/tax-destroy-family-farms-ranches-small-business-step-up-in-basis-11630524254
-A budget amendment offered by Senator Thune (R-SD) on August 10th to protect step up in basis passed unanimously 99-0 (S.Amdt. 3106 to S.Con.Res. 14).
Family businesses are the lifeblood of their communities, it would be counterproductive to impose new taxes on these job creators as they work to help the economy get back on solid footing.

Regards,

Texas Tire & Automotive Association

Chuck Space - TTAA Executive Director
4600 Spicewood Springs Road
Suite 103
Austin, TX 78759
(512) 343-9023