

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 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  
Eastern States Hospitality Coalition  
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 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 Cotton Council  
National Council of Farmer Cooperatives  
National Electrical Contractors Association  
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 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 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  
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  
Roof Coatings Manufacturers Association  
S Corporation 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  
SPRI, Inc.  
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