

June 11, 2010

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Baucus and Senator Grassley:

As the Senate debates the American Jobs and Closing Loopholes Act of 2010, the organizations listed below ask you to support the Snowe-Enzi amendment to strike Section 413 and eliminate this harmful and poorly conceived tax increase from the bill.

Section 413 would raise taxes by \$11.2 billion on privately-held businesses located in every state of this country. While it has been described as a “loophole closer” and a “payroll tax” it is neither. It is a new tax on small employers that will overturn more than fifty years of established tax policy. We share the concerns of Congress that certain taxpayers are underpaying their payroll taxes, but we believe Section 413 is overly broad and will result in more increased tax collections than increased tax compliance.

This new tax would hurt job creation. It would be imposed regardless of whether the affected firms make distributions to the targeted shareholders and partners, or retain that income to reinvest in jobs and capital equipment. Shareholders and partners of “flow-through” businesses are taxed on their firm’s income even when that income is not actually distributed. As a result, this provision will reduce the capital these employers have to create jobs and invest in their businesses.

Just as importantly, the new tax appears to be unenforceable. Section 413 would require firms – regardless of how many employees they have - to test each year to determine whether the “skill and reputation” of one, two, or three key employees is the firm’s “principal asset.” The enforcement challenges accompanying this new test and the valuation of intangible assets are too numerous to list. The IRS currently uses a “reasonable compensation” test to ensure S corporation shareholders pay the correct amount of tax. Replacing this established test with a “principal asset” test is a step backward for tax enforcement and should be rejected by the Senate.

Finally, this new tax is an excellent example of what happens when the legislative process is short circuited. It was never the subject of hearings or public review, it was made public just a few short weeks ago, and it has been attached to legislation that already passed both the House and the Senate. It is an accident of the legislative calendar that we are in a position to offer our views at all.

For these reasons, we respectfully request that you support Senators Snowe and Enzi and remove Section 413 from the bill.

Thank you for your consideration.

Sincerely,

**AMT -- The Association For Manufacturing Technology**  
**Air Conditioning Contractors of America**  
**American Council of Engineering Companies**  
**American Institute of Architects**  
**American Subcontractors Association**  
**Associated Builders and Contractors**  
**Associated General Contractors of America**  
**Financial Executives International's Committee on Private Company Policy**  
**Food Marketing Institute**  
**Heating, Airconditioning & Refrigeration Distributors International (HARDI)**  
**International Foodservice Distributors Association**  
**National Association for the Self-Employed**  
**National Association of Convenience Stores**  
**National Association of Insurance and Financial Advisors**  
**National Federation of Independent Business**  
**National Lumber and Building Material Dealers Association (NLBMDA)**  
**National Marine Manufacturers Association**  
**National Multi Housing Council**  
**National Restaurant Association**  
**National Roofing Contractors Association**  
**National Small Business Association (NSBA)**  
**Radiant Panel Association**  
**S Corporation Association**  
**Small Business Legislative Council**  
**Society of American Florists**  
**U.S. Chamber of Commerce**  
**Wine & Spirits Wholesalers of America**