National Small Business Association®

Nov. 12, 2014

The Honorable Harry Reid
Majority Leader
U.S. Senate
S-221 Capitol Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
S-230 Capitol Building
Washington, D.C. 20510

The Honorable John Boehner
Speaker
House of Representatives
H-232 Capitol Building
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
House of Representatives
H-204 Capitol Building
Washington, D.C. 20515

Dear Leader Reid, Leader McConnell, Speaker Boehner and Leader Pelosi:

The post-election session of Congress has the potential to make significant steps toward an improved legislative atmosphere and productive bipartisan work. Celebrating more than 75 years, the National Small Business Association (NSBA) has been the nation's leading small-business advocate, and tax reform has consistently remained one of NSBA's member-voted top ten priorities.

According to a recent NSBA survey, more than 76 percent of our members ranked enactment of the tax extenders as an important issue for Congress to deal with during the Lame Duck session. Of the most significance to small businesses are the business tax provisions which expired at the end of 2013, including the research and experimentation (also commonly referred to as the R&D) tax credit, bonus depreciation and the threshold for section 179 expensing, all of which are intended to help small-business owners invest in their businesses.

The current tax code is comprised of more than 10,000 pages of laws and regulations that serve as a disadvantage to small businesses, and are egregiously complex and constantly in flux. While 73 percent of NSBA members support broad tax reform, we recognize that is unlikely to happen in the immediate future, and instead are calling on Congress to act now and renew the dozens of tax incentives for small businesses that encourage job creation, investment, research and international competitiveness.

Due to budgetary and political restraints, too many of these provisions are enacted on a temporary basis, requiring repeated extensions. The uncertainty resulting from such temporary tax policy makes it difficult for small businesses to plan effectively for the future, creating significant uncertainty and making it increasingly difficult to remain competitive in an increasingly global marketplace. Underscoring the need to plan, 74 percent of small firms surveyed by NSBA say they support the House's approach to permanently extend only some of the tax extenders which would provide some level of permanency and stability to a tax code riddled with various sunsets.

Some of the most important, expired small-business provisions that Congress should address now, are:

Research and Experimentation Credit—The 20 percent credit for excess qualified research expenses expired at the end of 2013. The failure to at least maintain the 20 percent credit increases the risk that the jobs, capital investment, and intangible property developed in the R&E process will move overseas.

Bonus Depreciation—Businesses should continue to be able to claim an additional first-year depreciation tax deduction equal to 50 percent of the value of qualified property investments, such as machinery and equipment. Extending the tax break will help companies better access capital, invest in new facilities and create jobs.

Write-off for Certain Qualified Leasehold Property—The 15-year straight-line depreciation deduction for qualified leasehold improvements, qualified restaurant property, and qualified retail space improvements was retroactively restored for property placed-in-service in 2012 and extended to include property placed-in-service in 2013. However, for property placed-in-service after 2013, a 39-year write-off generally applies. This represents a substantial deceleration of the tax depreciation benefit and this break is needed because the 39-year depreciation schedule for buildings does not reflect actual business reality and having to wait to write-off improvements raises the cost of these investments.

Section 179 Expensing—Under Section 179 of the tax code, a business taxpayer can currently deduct qualified assets placed in service during the year, up to a specified amount. For 2013, the maximum deduction of $500,000 was allowed, subject to a phaseout for assets costing more than $2 million. However, when this provision expired after 2013, the limit for 2014 reverted to a paltry $25,000 with just a $200,000 phaseout threshold. More than one in three NSBA members take advantage of this break as it encourages small businesses to invest in new equipment by letting them expense much of the cost up front, instead of depreciating it over time.

Exclusion on Capital Gains of Small C-Corp Stock Acquired in 2011—If one acquired stock in a small C-Corp in 2013 and holds those shares of stock for a minimum of five years, the capital gains on those shares can be excluded 100 percent from taxes. That exclusion decreased to 50 percent in 2014.

Reduction in Recognition Period for S-Corp Built-in Gains Tax—Under current law, a corporation that meets certain requirements may elect to be taxed as an S-Corp, which generally pays no corporate-level tax, unlike a C-Corp. For corporations that convert from C-Corps to S-Corps, or S-Corps that receive assets under certain conditions from C-Corp, there is a corporate-level tax on certain built-in gains of certain assets, with a 10-year recognition period for 2014. NSBA supports the five-year recognition period for S-Corp built-in gains that was in effect for taxable years from 2011 through 2013.

Tax-Free IRA/Charitable Distributions—For 2013, an individual age 70½ or older could make direct charitable gifts from an individual retirement account (IRA), including required minimum distributions, of up to $100,000 to public charities and not have to report the IRA distributions as taxable income on their federal income tax return. The uncertainty caused by the need for an annual extension, as well as the fact that the provision has been allowed to lapse—it expired on Jan. 1, 2014—makes it difficult for people to effectively manage their finances and plan their estates.

Complexity and inconsistency within the tax code pose a significant and increasing problem for small businesses. The ever-growing patchwork of credits, deductions, tax hikes and sunset dates is a roller coaster ride without the slightest indication of what's around the next corner. Without either renewal of these tax extenders or comprehensive tax reform, the investment and hiring decisions of businesses must be made in an uncertain and confusing business environment. This is unsustainable and unacceptable.

NSBA urges Congress to quickly enact legislation to extend the temporary business tax provisions that expired at the end of 2013 so that individuals and business can better plan for the future. By Congress renewing these tax extenders businesses will be encouraged to invest in new equipment, hire more workers and spend more money on research and development, which in turn will help strengthen our economy.

We look forward to a productive post-election session of Congress, one where real and urgent needs can be addressed and political posturing can be kept to a minimum.

Sincerely,

Todd McCracken
President and CEO