TXCPA
Texas Society of Certified Public Accountants

April 29, 2020

The Honorable Chuck Grassley
Chairman
United States Senate
Committee on Finance
Washington, D.C. 20510

The Honorable Ron Wyden
Ranking Member
United States Senate
Committee on Finance
Washington, D.C. 20510

The Honorable Richard Neal
Chairman
United States House of Representatives
Ways and Means Committee
Washington, D.C. 20515

The Honorable Kevin Brady
Ranking Member
United States House of Representatives
Ways and Means Committee
Washington, D.C. 20515

RE: Tax Changes Necessary Due to the Coronavirus

Dear Chairmen and Ranking Minority Members:

We are grateful for your leadership and federal response in the midst of this unprecedented health crisis and appreciate your work to address the needs of those impacted by this historic event. On behalf of the 28,000 members of the Texas Society of Certified Public Accountants (TXCPA), we respectfully suggest that Congress enact legislation that would minimize or defer both individual and business taxpayers' tax liabilities during this period.

We write regarding certain tax provisions, changes to which will help taxpayers in the economic climate resulting from the pandemic.

**Temporarily Increase the Capital Loss Limitation**

We recommend temporarily increasing the amount of realized capital losses which may be deducted from ordinary income from the current limit of $3,000 annually to $250,000 annually. We recommend that this loss be available for a carryback to the previous three years. The primary reasons for this change are:

- The current Internal Revenue Code (IRC) Section 1211(b) limits the losses from the sales or exchanges of capital assets to $3,000 or $1,500 for married individuals filing separately.
- Increasing the limit on deduction of these realized losses to a larger amount will help lessen the economic effect on the affected taxpayers. This limit was set in 1978 and is out of date and out of touch with the real losses that are being suffered as a result of the current economic crisis.
- We propose a limit of $250,000 as we feel that this limit will result in tax relief for most middle-income taxpayers without being unduly beneficial for high-income taxpayers.
- The ability to carry back current losses against prior years' taxes will provide an immediate infusion of cash to investors and help stabilize capital markets.
- Without increasing the availability of capital loss deductions, some may never be utilized. They can be used to offset capital gains: if there is a substantial capital loss, it may be many years before it can be fully used to offset ordinary income in $3,000-per-year increments, with inflation diminishing the tax benefit.

972-687-8500 | 800-428-0272 972-687-8646 www.TSCPA.org 14651 Dallas Pkwy, Suite 700 | Dallas, TX 75254-7408

**Include IRC Section 501(c)(6) Associations in the Next Phase of Paycheck Protection Program**

We appreciate your leadership in providing unprecedented resources for American small businesses through the *Coronavirus Aid, Relief and Economic Security (CARES) Act*. Unfortunately, local trade and professional associations organized under IRC Section 501(c)(6) are ineligible for assistance through the lending programs included in the previous legislation.

We endorse expanding access to the Paycheck Protection Program (PPP) in forthcoming legislation. These organizations, such as the Texas Society of CPAs, require revenue beyond annual member dues to make ends meet. As conference and educational events are postponed or cancelled, and contributions become uncertain, finding funds to continue operations and maintain payroll is an increasingly dire issue. Because TXCPA is an IRC Section 501(c)(6) organization, there is no access to the PPP to cover employees' salaries and other costs during the pandemic, notwithstanding the TXCPA and like organizations have the same stresses on revenues and ability to pay staff as any other business.

**Provide a Refundable Tax Credit for Maintaining Payroll Through Year-End**

The PPP allows businesses to pay their employees for the eight weeks after loan funding. It seems likely that the economy may be weak for some time after that and employers should have an incentive to continue paying employees. The 20% of wages cost to government is largely offset by decreased unemployment claims and increased tax revenue from a stronger economy. A tax credit is much more efficient than a tax deduction in that it provides cash to the employer regardless of taxable income.

We propose a 20% refundable tax credit for wages, up to an annualized $100,000 per employee, for wages paid from July 1 to Dec. 31, 2020, for taxpayers who have not received a PPP loan, or for the period beginning eight weeks after funding of a PPP loan to Dec. 31, 2020. A refundable credit either reduces a taxpayer's current tax liability or, if there is not tax liability, produces a cash refund. These outcomes will be extremely beneficial for employers seeking to retain their employees.

**Temporarily Increase the Percentage Depletion Allowance to 25% of Gross Income**

Currently, small oil and gas producers are allowed a depletion deduction equal to 15% of the gross income from the producing property, with certain limitations. We recommend an increase in this deduction to 25% of gross income from the property and retaining the existing limitations for the following reasons:

- The price of oil has decreased to levels not seen in decades while demand for petroleum products is forecasted to decrease as much as 30% due the effects of the COVID-19 crisis. Small oil and gas producers will be extremely hard hit by this price decrease.
- Domestic oil and gas producers may be able to benefit from a reduced tax cost, which will help enable them to survive these two industry-threatening trends.

**Relax Form 8829 Requirements for Temporary Business Use of Home**

Enhanced deductions for temporary business use of home should be allowed for tax year 2020. For employees or self-employed taxpayers, we propose allowing an above-the-line deduction for use of a home office, temporary removal of the current requirement that the home office be the principal place of business, and a provision that the home office not be used solely for business. Reasons for making this recommendation include:

- Many employees are required to work at home under the various state and local shelter-in-place orders, stay-at-home orders or work safe rules and cannot work at their former principal place of business. Even when the coronavirus crisis subsides, some employers may not be able to provide sufficient separation for employees who will have to continue working from home.
- Employees who are forced to work from home may not have the space for a separate office in the home that satisfies the "regular and exclusive use" requirement for a deductible home office. Nevertheless, they are working from home and should be entitled to the deduction.
- Employees have additional direct and indirect costs of maintaining an office in home that should fairly be deductible.
- If the requirements were relaxed, taxpayers could use the simplified method provided by the IRS to allow up to $1,500 of deductible expenses without many of the complexities of the deduction and without home depreciation recapture.

The allowance of this deduction will provide tax relief for taxpayers working from home to accommodate restrictions related to the virus.

**Reinstate the Investment Tax Credit**

The investment tax credit (ITC), a refundable credit of 10% of the purchase price of new equipment, was removed from the IRC in the *Tax Reform Act of 1986*. We propose reinstating the ITC for equipment manufactured in the U.S. from parts sourced primarily in the U.S.

This will provide a tax benefit to the purchasers, regardless of their taxable income, as well as a benefit to the manufacturers, wholesalers and retailer who will see an increased demand for the manufactured goods. It will decrease our reliance on foreign countries for supplies that are essential to our domestic economy by providing incentives to make the necessary capital investments.

**Suspend the Passive Loss Rules for 2020 and 2021**

The passive loss rules in IRC Section 469 only allow passive losses under certain circumstances, even though there is a current economic cost to the taxpayer. We propose suspending the passive loss rules for taxpayers with adjusted gross incomes under $1 million.

For example, real estate rental properties in shopping malls and resorts are unused, and the lack of rent results in real economic losses that cannot be recovered because offsetting passive income is highly unlikely in the present economy. These are real economic losses and without fair tax relief, various segments of our markets and economy could be adversely affected.

**Many College Students and Dependent Adults Did Not Qualify for Stimulus Payouts**

In addition to these recommended tax provisions, we applaud Congress for providing emergency relief to millions of Americans in the form of stimulus payments. We also realize the intent of the law was to quickly distribute the rebates to taxpayers needing them to pay for necessities. However, a large gap of dependents did not meet the requirements for a $500 stimulus payment. Congress should expand the eligibility:

- Most college students and many recent college graduates who are now living and working on their own but were dependents on the 2019 tax return did not receive rebates. This includes students who lost their work study jobs when schools shut down. Many of these young Americans work in the retail and food service industries, which have been disproportionally affected by coronavirus layoffs.
- Senior citizens who are claimed as dependents on another taxpayer's return did not receive the economic stimulus payments, even though those funds may be essential for their livelihood, as they are unlikely to be generating any income and the value of their savings has likely been depleted.
- Disabled adults who are claimed as dependents on someone else's tax return did not receive the economic stimulus payments, even though those funds may also be essential for their livelihood.
- Dependents who have individual taxpayer identification numbers (ITINs) instead of Social Security numbers also did not receive economic stimulus payments, even though they are traditionally contributors to the economy.

**Conclusion**

We very much appreciate your attention to our recommendations. This is a critical time for the health and economy of our country. If you have any questions, or if we can assist further, please feel free to contact me at 832-333-7431 or ddonnelly@cricpa.com; or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pwyatt@tscpa.net.

Sincerely,

Lei D. Testa, CPA, CGMA
Chairman

David P. Donnelly, CPA
Chair, Federal Tax Policy Committee

cc: Members, Senate Committee on Finance
Members, House Ways and Means Committee
Texas Members of Congress
The Honorable Steven T. Mnuchin, Secretary of the Treasury
The Honorable David J. Kautter, Assistant Secretary (Tax Policy)
The Honorable Charles Rettig, Commissioner, Internal Revenue Service
Mr. Eric Hylton, Commissioner, IRS Small Business/Self-Employed
Ms. Erin M. Collins, National Taxpayer Advocate