May 29, 2013

The Honorable Pat Tiberi
Chairman
Select Revenue Measures Subcommittee
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
Select Revenue Measures Subcommittee
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Re: Hearing on Small Business and Pass-Through Entity Tax Reform Discussion Draft

Dear Chairman Tiberi and Ranking Member Neal:

The National Retail Federation (NRF) submits the following comments for the record of the May 15 subcommittee hearing on the Ways and Means Small Business and Pass-Through Entity Tax Reform Discussion Draft.

NRF believe that the most important aspect of any tax reform measure is its impact on the economy, jobs, and the consumer. The U.S. economy is coming out of the worst recession since the Great Depression, but economists predict that economic growth may continue to be slow, which will also continue to depress consumer spending. Tax reform can provide much needed stimulus to the economy and should be enacted as expeditiously as possible.

We believe that a reform of the income tax, by providing a broad base and low rates, will bring the greatest economic efficiency to the federal tax system. These changes will lead to greater investment, more jobs and greater economic growth. In making these reforms, it is important that the tax code not place different tax burdens on taxpayers in similar economic circumstances. For this reason, tax reform must be applicable to all businesses, not just "C corporations." A reformed income tax code should not include tax preferences based on form of legal entity (e.g. C corporations vs. pass-through entities), how property is owned (e.g. leased stores vs. owned stores), and distribution channel (e.g. brick and mortar sales vs. remote sales).

Exchanging so-called "tax expenditures" for lower tax rates will not only result in greater economic efficiency, it will also eliminate some of the major complications in the current Internal Revenue Code. The vast majority of retailers are small businesses. In fact, 96% of all retailers have only one location. The policy of eliminating tax expenditures in exchange for lower tax rates is important for both large and small businesses because it will lead to a more productive employment of capital and more economic growth. Retailers, both small and large, are high effective taxpayers and prefer the simplicity of a tax system that exchanges complex tax expenditures for lower rates, allowing businesses to make economic decisions for their enterprises that are based on the best business result, rather than tax motivations. Because most small business owners report taxes as individuals, generally as S corporations or partnerships, there are some additional considerations to this reform that may not be present in the debate of corporate tax reform.

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The NRF commends Chairman Camp for issuing a discussion draft for reforming small business tax rules. The options included in the draft recognize that tax reform must be comprehensive with respect to all businesses, whether C corporations or "pass-throughs." The Chairman's proposed expansion of the cash method of accounting will be particularly helpful to small retailers. Section 179 expensing is also very helpful for small retailers, but the current definition of qualifying expenses puts retailers that own their buildings at a competitive disadvantage vis-à-vis retailers that lease their buildings.[1] Many small retailers own their buildings in order to achieve the best location for their store in the community, or because they want to invest in an asset that will maintain its value for retirement, or because they have inherited a family business that includes the real estate. The NRF believes that tax reform should eliminate provisions that discriminate between taxpayers in the same industry. To accomplish this, the current rules regarding leasehold improvements probably need to be expanded to include all commercial improvements, in order to eliminate the bias in favor of improvements to leased property over owned property in the same industry.

The NRF supports income tax reform that will lower tax rates and broaden the tax base. We believe this type of income tax reform will be good for the retail industry and good for the economy as a whole. The NRF urges Congress to pass tax reform legislation this year, and we offer whatever assistance we may provide in meeting this goal. Income tax reform will encourage investment, create jobs and simplify administration of the tax system.

Sincerely,

Rachelle Bernstein

Vice President, Tax Counsel
Government Relations

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[1] The definition of "qualified retail improvement" is narrower than the definition of "qualified leasehold improvement." For retailers that own their buildings, only improvements to space that is "open to the public" is eligible for Section 179. Retailers that lease their buildings can also get Section 179 benefits for improvements to backroom, warehousing, and other non-public space.