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AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

May 24, 2010

The Honorable Nancy Pelosi
U.S. House of Representatives
235 Cannon House Office Building
Washington, D.C. 20515

Re: AGC's Concerns on H.R. 4213, the American Jobs and Closing Tax Loopholes Act

Dear Representative Pelosi:

On behalf of the Associated General Contractors of America (AGC), I am writing to express concerns with H.R. 4213, the American Jobs and Closing Tax Loopholes Act of 2010. AGC supports many of the provisions of the bill that would incentivize construction activity such as those regarding private activity bonds, Build America Bonds, multi-employer pension relief, and leasehold, restaurant, and retail depreciation. Unfortunately, the bill reduces the effectiveness of these provisions by reducing capital available for private construction and limiting private job creation by increasing taxes on many small businesses in the construction industry.

The construction industry is in a critical, vulnerable stage in economic recovery. More than any other sector of the economy, construction workers have borne the brunt of job losses. With construction unemployment higher than any other industry at 21.8 percent, more than one in five construction workers are out of work. Moreover, despite modest gains in public-sector construction spending in early 2010 that are attributable to investments made by the Recovery Act, private-sector construction spending continues to decline, and public-sector growth in construction spending is unlikely to last once the Recovery Act has run its course. High office and retail vacancy rates, and underutilized capacity indicate that private-sector construction will continue to decline through at least the end of the year. Further, cash-strapped state and local governments are not expected to increase their capital programs until at least 2012.

AGC strongly believes that the economy cannot be fixed until the construction industry is fixed. During the economic downturn, AGC has urged Congress repeatedly to enact legislation that would have an immediate positive impact on economic activity. AGC's recommendations have included both infrastructure investment and targeted tax provisions to stimulate public and private investment in infrastructure and nonresidential construction, and to incentivize capital investment. That is why AGC has advocated for several of the provisions included in H.R. 4213, such as the annual tax extenders package, multi-employer pension plan relief, extensions of the highly successful Build America Bonds program, and exemption of water infrastructure bonds from state private activity bond volume caps.

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Unfortunately, H.R. 4213 also includes provisions that would be damaging to the construction industry by taxing carried interest at higher rates and increasing payroll taxes paid by professional service businesses. At a time when private-sector construction spending is weak and nearly 2 million construction workers are looking for work, the carried interest proposal in H.R. 4213 would have a devastating and punitive impact on commercial real estate developers who use carried interest as the investment model for creating successful real estate projects. Moreover, the provision is retroactive so real estate partnerships and limited liability companies (LLC) that existed before enactment would lose the capital gains treatment on the carried interest, effectively devaluing existing and already depressed properties.

In addition, the bill contains a complicated and arbitrary provision that would increase payroll taxes paid by S corporations and partnerships engaged in professional service businesses, specifically architect and engineering firms. Not only does the provision set forth a vague test for a small business to determine whether its principal asset is the “skill and reputation” of fewer than three key employees, it also arbitrarily discriminates against small businesses by taxing businesses with three or fewer key employees at higher tax rates than businesses that are identical in every respect, except that it has four key employees. If the provision is an attempt to get at a few bad apples then the Internal Revenue Service already has provisions at its disposal to combat such problems.

Thank you for your consideration of our concerns. AGC looks forward to working with you to improve H.R. 4213 to maximize the benefits to create jobs in the construction industry.

Sincerely,

Jeffrey D. Shoaf
Senior Executive Director