Enterprise Holdings, Inc.
Tax Reform Working Group Submission 2013

There are three primary federal income tax topics that materially impact EHI as follows:

- Like-kind exchange
- Depreciation
- Corporate Tax Rate/Internationally competitive tax regime

<u>Like-kind Exchange</u>

The like-kind exchange provisions have been a part of the tax law since the 1920s. The concept of like-kind exchange makes perfect sense; a business that is replacing or modernizing its plant and equipment or other business assets, that is reinvesting the proceeds from the sale of the property being replaced, has not actually received the benefit of any economic gain on the disposed property. Rather such gain has been reinvested in replacement property. Because the business has not received the benefit of any gain on the disposition of the property but has instead reinvested the entire proceeds into replacement property, the business should not owe any income tax on the rolled over gain.

The like-kind exchange provisions also serve as a tremendous incentive for continued capital investment by businesses. If a business that wants to update its equipment is required to pay tax on any gain realized from the disposition of the property being replaced, then the business has less capital available to purchase replacement equipment. It is obviously easier from a financial perspective for a business to replace business assets if there is no tax to pay on the disposition of the property that is being replaced.

We feel that there are multiple opportunities for simplification with respect to the like-kind exchange area. Under the Regulations that address deferred exchanges there are many rules that must be followed that add no value and have no impact on the ultimate result. Examples are the requirement to restrict the proceeds from the sale of relinquished property until such proceeds are used to purchase replacement property and the need to notify all parties to the transaction that the transaction rights have been assigned to an intermediary.

For these reasons, we believe that like-kind exchange should be preserved, but simplified.

<u>Depreciation</u>

The tax depreciation methodologies have changed very little in the past 30 years. The Accelerated Cost Recovery System (ACRS) was adopted in the early 1980s in an effort to simplify and standardize tax depreciation. As part of the 1986 Tax Reform Act the broad principles of ACRS were carried over into the next evolution of tax depreciation which was appropriately named the Modified Accelerated Cost Recovery System (MACRS). MACRS essentially added a couple of asset classes and slightly lengthened some of the recovery lives. What has been a common theme of modern tax depreciation systems is the need to provide an accelerated write off of the cost of such property in order to incentivize capital investment and by lowering the cost of investment, make the U.S. more competitive in the world market. The concept of accelerated write-offs has been taken to new levels since 2001 with the advent of 30%, then 50% and finally 100% bonus depreciation.

It is our belief that a consistently applied accelerated depreciation system should be retained to preserve the capital investment incentive and international competitiveness. Many other countries maintain accelerated tax depreciation for those very reasons and we need to follow suit if we want to compete for the mobile capital investment.

We are in favor of simplification where it makes sense. The bonus depreciation was certainly favorable and served to pull forward capital investment, but it is burdensome to apply and many states did not follow the federal law and in varying manners, which presented the challenge of multiple calculations. Another area for potential simplification is with respect to preference treatment for AMT purposes and the resulting need to compute multiple methods of depreciation. Additionally, the listed property provisions are complex and add additional multiple variations to the depreciation calculations. Finally, one potential avenue for simplification would be to adopt straight-line depreciation as the single method and to then adjust the depreciable lives to achieve the goal of accelerated write-offs. We believe that 3-year straight line would be appropriate for vehicles as it provides for accelerated write-offs for some taxpayers and 3 years likely reflects the true economic life for businesses that generally put significantly more miles on vehicles and hold them for shorter periods that individuals do for personal use.

Reduction of the Corporate Tax Rate

The U.S. combined federal and state income tax rate is now the highest rate among any of the member countries of the Organization for Economic Cooperation and Development (OECD) of which the U.S. and most other economically developed nations are members. Many of these countries have had lower corporate tax rates for some time and there has been a recent trend for many other countries to lower their rates. As it stands today, the U.S. combined rate is in excess of 39% while the rates of other countries are much lower (U.K. 28%, Canada 28%, France 34.43%, Spain 30%, Australia 30%, Germany 30.18%, and the list goes on).

There are multiple impacts of a high versus low corporate tax rate. One such impact is that companies with related operations in multiple countries use transfer pricing to decrease the profits in the high tax rate jurisdictions. And since the U.S. has the highest rate in the world, the trend is to minimize U.S. taxable income. Another impact is with respect to mobile investment. When investment is mobile, a low tax rate country obviously is more attractive than a high tax rate country. Some studies have shown that every 1% reduction in the corporate tax rate increases foreign direct investment by 3.7% (Ruud de Mooij and Sjef Ederveen, "Taxation and Foreign Direct Investment: A Synthesis of Empirical Research," *International Tax and Public Finance* 10(6)(2003): 673-93. Likewise, Hufbauer and Grieco estimate that a 5 percentage point increase in corporate taxation depresses inward FDI by about 15 percent.)

Additionally, the U.S. is one of only a few countries that generally impose their corporate tax on world-wide income. Many other countries have adopted the territorial approach whereby profits are subjected to income tax in the country in which such profits are earned and such funds can be repatriated to the companies' home countries without additional corporate taxation. This would obviously allow U.S. based companies to be on equal ground with their foreign competitors, but would also dramatically simplify the U.S. tax law. One example is that there would no longer be a need for the extremely complex foreign tax credit regime to avoid double taxation.

From our perspective what is good for business in the U.S. in general is good for the Company. Additionally we believe that simplification of the tax law and broadening of the tax base will lead to additional positive outcomes for the U.S. with respect to competing for foreign direct investment, which will indirectly benefit all U.S. based businesses. In following that belief we suggest two strategies:

- A lower statutory corporate tax rate that is more competitive with the rates of other countries.
- Adoption of the territorial approach with respect to companies' international activities.