

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

May 1, 2018

The Honorable Steven Mnuchin
Secretary
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable David Kautter
Assistant Secretary of the Treasury for Tax Policy
and Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Secretary Mnuchin and Acting Commissioner Kautter,

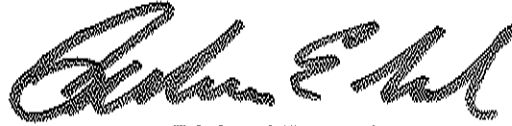
The Republican tax legislation enacted structural changes to the Internal Revenue Code (“IRC”) that will significantly affect how taxpayers carry out their business activities. While guidance on many aspects of the new tax law is necessary, I write today to urge the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) to issue clarifying guidance on the new IRC section 199A deduction for qualified business income, i.e., the “pass-through deduction.”

Section 199A generally permits owners of sole proprietorships, S corporations, or partnerships to deduct up to 20-percent of their share of income earned by the business. However, there are a number of limitations, exceptions, and poorly defined terms of art that have left taxpayers (and tax advisors) struggling to comply with their tax obligations. We’re already seeing this in the context of estimated tax payments. Without computational and definitional guidance to assist taxpayers in determining whether, and to what extent, they may qualify for the pass-through deduction, it is difficult for them to properly calculate their quarterly estimated tax payments. Given the possibility that individuals may have considerably different tax liabilities under the new law, the inability to determine the appropriate estimated tax payment could result in liability for additions to tax and underpayment penalties.

In addition to computational and definitional guidance, I also urge Treasury and IRS to consider a variety of anti-abuse measures. As taxpayers and practitioners navigate the outer limits of the pass-through deduction, we’re concerned by signs of aggressive tax-minimization strategies. A recent Wall Street Journal article discussed several of these approaches, including a method labeled the “crack and pack,” which advises taxpayers to maximize the pass-through deduction by splitting certain disqualifying activities such as legal and consulting services from activities that could otherwise be fully eligible for the deduction. This strategy, and others, will invariably lead to disputes between taxpayers and the IRS and possibly result in the legislation losing even more tax revenue than the Joint Committee on Taxation initially estimated.

Republicans rushed the tax bill through Congress with little opportunity for public comment or close scrutiny. As a result, taxpayers are left struggling to understand its implications, and opportunities to exploit its ambiguities abound. I urge Treasury and IRS to issue guidance as soon as possible to address these concerns. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Neal". The signature is fluid and cursive, with the first name being the most prominent.

Richard E. Neal
Ranking Member