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REDUCING THE FEDERAL TAX BURDEN FOR AMERICA'S SMALL BUSINESSES

FIELD HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

MAY 4, 2015

Printed for the Committee on Small Business and Entrepreneurship



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REDUCING THE FEDERAL TAX BURDEN FOR AMERICA'S SMALL BUSINESSES

MONDAY, MAY 4, 2015

LIVINGSTON PARISH
COUNCIL CHAMBER,
LIVINGSTON, LA

The Committee met, pursuant to notice, at 8:30 a.m., at the Livingston Parish Council Chamber, 20356 Government Blvd., Livingston, LA, Hon. David Vitter, Chairman of the Committee, presiding.

Present: Senator Vitter.

OPENING STATEMENT OF HON. DAVID VITTER, CHAIRMAN, AND A U.S. SENATOR FROM LOUISIANA

Chairman VITTER. Good morning, everybody. If I can ask everyone to take a seat, we are going to go ahead and get started.

Well, good morning welcome to our Town Hall Meeting and Field Hearing of the U.S. Senate's Committee on Small Business and Entrepreneurship. The topic of our Field Hearing today is "Reducing the Federal Tax Burden for America's Small Businesses."

An organization, a leading small business organization, NFIB, surveyed small business and they asked a very direct question, "What's the greatest burden on your small business when it comes to taxes, the check you actually write out for taxes or all of the work you need to do to comply with the very complicated Federal law, the administrative burden?"

A majority, actually 53 percent, said the bigger burden was the administrative burden. I mean, don't get me wrong, I'm sure none of them liked the check they have to write out, but a majority said the even bigger burden was figuring out a very complicated tax code and complying with that and all of the costs that go along with that.

And that tax compliance burden had grown enormously over time. This is a simple chart of the number of pages of the Federal Tax Code. And you can reasonably say the bigger the code, the more complicated it is, the bigger the Federal burden. And so look what that has done over time since it was first instituted around 1912 and it's just gone through the roof. Right now that Federal Tax Code is over 70,000 pages.

Another way to look at the tax compliance burden, 40 percent of small businesses spend over 80 man-hours a year on compliance, just figuring out, making sure they follow the rules. Then 25 percent actually spend more than 120 man- or woman-hours every year.

One in three small businesses spend more than $10,000 on, again, figuring out the rules. We are not talking about the bill they write to the IRS, we are just talking about figuring things out and over half spend over $5,000. For very small businesses, that's a big burden.

Now, what solutions do we bring to bear? I have been reaching out, talking to a lot of Louisiana small businesses and other small businesses asking besides fundamental simplicity, what are some of the specific provisions you want to see? Don't want to get into the weeds, but these are what we have been hearing about: Permanently extending expensing, Section 179. This is an example of a perennial problem. We have some good provisions of the code, but they are very short-term. They are temporary. Now they are almost always extended, but that creates great uncertainty for small business.

Increasing the limit for cash-basis accounting; eliminating burdensome record-keeping requirements, particularly for business computer equipment; simplifying complex rules regarding retirement accounts; and requiring the IRS to consult with small business representatives before passing new rules on small business.

So we are taking these specific ideas and we are putting them in a small business tax reform bill. Now this isn't going to be every good idea out there for fundamentally simplifying the tax code. It's not going to be, you know, all of the tax reform that we need. It's going to be focused on small business relief and I'm drafting that bill now with the help of other members.

We are going to be introducing that small business tax reform bill in the next few weeks and then hearing it and marking it up in the Small Business Committee and going from there.

We are going to move on to our panel because I want to give them plenty of time for their testimony and to discuss things with them. We have a great small business panel today to talk about our topic. Let me introduce all four of them and then we will hear from each in turn in the order that I have introduced them.

First is Margot May. Margot is the owner of Inspired Media, which specializes in print publications for selected niche markets. It publishes the Livingston Business Journal, a monthly news magazine. Margot has served as a graphic designer and head of marketing for the Journal since 2006. And May and her colleague, Helen Turner, formed Inspired Media and acquired and became publishers of the Journal in May 2014. Margot is a member of several organizations, including LEDC, and the local BNI chapter of the Livingston Leaders.

Jim Urdiales has been the owner of Mestizo Louisiana Mexican Restaurant in Baton Rouge for the past 16 years. He's a third-generation restaurateur and has been involved with the Louisiana Restaurant Association since 1999, serving as Baton Rouge chapter president in 2006, and on executive board until 2013.

Candy Forbes is the president of Denham Springs Housing in Denham Springs. She is also the owner of Superior Communities, LLC. Candy has over 22 years experience in sales and finance and she is a Licensed Property and Casualty Insurance Agent. She's been a board member of the Louisiana Manufactured Housing Association since 2006.

And Ron Gitz serves as the Executive Director of the Society of Louisiana CPAs, which represents more than 6300 Certified Public Accountants across Louisiana. Mr. Gitz is a CPA as well as a charter global management accountant. And he also manages a state government relations program of the Louisiana CPA organization.

Welcome to all of you and I know you all have five-minute presentations and then we will have some discussion. We will get started with Margot.

MARGOT MAY, OWNER, INSPIRED MEDIA, DENHAM SPRINGS, LA

Ms. MAY. Thank you very much. As he said, my name is Margot May. I'm also very active in the Livingston Parish Chamber of Commerce and have been a board member for years.

I'm a part owner of Inspired Media, which publishes the Livingston Business Journal. As a publishing company, we are in a position different than most other small businesses because publications are not subject to sales tax laws and we do not have inventory to which we pay taxes.

So our primary tax affects us in the income tax. We have found it necessary to retain a CPA to help us with tax planning, and keep abreast of the ever-changing income tax laws, particularly the complicated laws and regulations pertaining to business expense deductions.

Tax planning for a small business is complicated by the fact that not only do the laws change almost every year, but new laws and extensions of expiring tax laws often not written until late in the year, sometimes in December, and are then published with a retroactive effective date of January 1st.

This sometimes greatly affects the planning and budgeting of our business, which is done in good faith and paid our CPA for, but is no longer applicable under these new laws. Tax incentives which were previously in effect were allowed to expire in 2014 and may not be reinstated by the end of 2015.

But because it's unknown, businesses have to have a Plan A and a Plan B to try to anticipate if they should or should not buy equipment or otherwise invest in the business and wonder if they will have enough funds to pay their tax bills if the laws turn out to be something completely different.

Our CPA has related to us that it's further complicating the situation that the IRS agents don't even know their own laws sometimes. You can speak to one agent one time and get an answer, and speak to another agent another time and get a completely different answer on the same issue. And if you can even reach an agent because of the long phone hold times. Many times you're required to search their website and try to interpret the regulations on your own or e-mail or write your IRS and wait and wait for a reply.

As a publisher, we are also in a position where we talk to our clients each month and we work with them on advertising budgets. We see from them the difficulty that many of them have being able to budget their money because they are paying so much in taxes and it limits their available funds. They are spending so many hours of their available time filling out paperwork to comply with Federal taxes and other workplace regulations which take precious

time that could be spent on their business and often cost them extra money to consult an advisor. If they can even afford one.

If a business makes a mistake, or interprets their regulations differently from the IRS, penalties can be very severe. Instead of making complicated laws and then slapping hard-working businesses with penalties, they should put more time and effort into simplifying these laws and providing assistance to businesses up front so they can comply, as most business owners want to do up front.

The tax burden is stressful for small business owners because it's difficult to understand the tax laws and expensive to hire an accountant to help you. But the biggest burden is not knowing what the tax law is going to be the next year. Furthermore, most business laws aren't even written in the benefit for that small business.

We would like to see a tax code for small businesses simplified, laws written well in advance to the applicable tax year to make it permanent so possibly business owners and accountants and their own IRS agents can help to understand and plan properly for the following and upcoming years. We would also like to see penalty reform to give businesses a break when they have tried in good faith to comply with these complicated laws.

Thank you for this opportunity, Senator, to share my thoughts on the tax burden of small businesses today.

[The prepared statement of Ms. May follows:]

Margot T. May
Publisher /Creative Director
Inspired Media

My name is Margot May and I am part owner of Inspired Media, which publishes the Livingston Business Journal. As a publishing company, we are in a position different from most other small businesses because publications are not subject to sales tax laws and we do not have inventory on which to pay taxes, so the primary tax that affects us is the income tax. We have found it necessary to retain a CPA to help us with tax planning and keep us abreast of the ever-changing income tax law, particularly the complicated laws and regulations pertaining to business expense deductions.

Tax planning for a small business is complicated by the fact that not only do the laws change almost every year, but new tax laws and extensions of expiring tax laws are often not written until late in the year – sometimes in December - and are then published with a retroactive effective date of Jan. 1. This sometimes greatly affects the planning and budgeting our business has done in good faith (and paid our CPA for) but which no longer are applicable under new laws. Tax incentives which were previously in effect were allowed to expire in 2014 and may be reinstituted by the end of 2015, but because it is unknown, businesses have to have Plan A and Plan B and try to anticipate if they should or should not buy equipment or otherwise invest in their business and wonder if they will have enough funds to pay their tax bill if the laws turn out to be something completely different.

Our CPA has related to us that further complicating the situation is that the IRS agents don't know their own laws. You can speak to an agent one time and get one answer and speak to another agent another time and get a completely different answer on the same issue. And that's if you can even reach an agent because of their long phone hold times. Many times you are required to search their website and try to interpret the regulations on your own, or to email or write the IRS and wait and wait for a reply.

As publishers, we are also in a position where we talk to our clients each month and work with them on their advertising budgets. We see from them the difficulty that many have in being able to budget their money because they are paying so much in taxes it limits their available funds. They are spending so many hours of their time filling out paperwork to comply with federal taxes and other workplace regulations which take their precious time that should be spent on business and often costs them extra money to consult an advisor – if they can even afford one.

If a business makes a mistake or interprets a regulation differently from the IRS, penalties can be severe. Instead of making complicated laws and then slapping hardworking businesses with penalties, they should put more time and effort into simplifying laws and providing assistance to businesses upfront so they can comply , as most of business owners want to do.

The tax burden is stressful for small business owners because it's difficult to understand the tax laws and expensive to hire an accountant to help you, but the biggest burden is not knowing what the tax law is going to be each year. Further, most business laws are written to benefit big businesses that have paid lobbyists to promote their interests, while small businesses' needs are overlooked.

We would like to see the tax code for small business simplified and laws written well in advance of the applicable tax year and made as permanent as possible so business owners, accountants and their own IRS agents can understand what the regulations are and plan for them.

We would also like to see penalty reform to give businesses a break when they have tried in good faith to comply with the complicated laws.

Furthermore, we would like to see the IRS overhauled and held accountable in the same way small business owners continue to be.

Thank you for this opportunity, Senator Vitter, to share my thoughts on the tax burden on small businesses today.

Chairman VITTER. Thank you very much, Margot. And now, Margot, you will be followed by Jim.

Jim, welcome.

JIM URDIALES, OWNER, MESTIZO RESTAURANT, BATON ROUGE, LA

Mr. URDIALES. Thank you. Actually I have to concur with Margot with everything you said because that was part of my journey in the first few years, too. Probably had the same burdens as well.

Thank you, Senator Vitter, for taking the time to understand some of the issues of small businesses today. I've owned and operated my own restaurant for over 16 years and there's many issues that we faced throughout this tenure.

The first one that's been interesting that a lot of people don't understand is the effect that the Farm bill had for corn growers for ethanol. Now although there's a drought in California that has dramatically affected beef prices, that bill in particular has probably risen beef prices fourfold in just the last five years. And even your average family has seen the prices at the grocery stores increase. But in case you're wondering why you've seen beef prices rise in restaurants, that's the one main thing.

As a restaurant owner, when I started, you know, you were lucky if you were operating with a 10 percent margin on a plate of food and right now most restaurants, even fast food, are operating with probably less than 2 percent margin of profit on food because of the increase. And you have got to realize everything that comes from the cow, whether it's the beef, cheese, or sour cream has all risen because of this subsidy.

The second topic is the Earned Tax Tip Credit, which is something I have been to your office in DC and we have lobbied quite a bit before. It was a compromise, I think Senator Breaux initiated before he left, but basically, what we do is the restaurants, the tip reporting is put on the restaurant owners now and no longer on the servers. And so what happens is we actually pay a payroll tax on their tips. So there's a discussion, you know, even when people talk about minimum wage increases, you know, there's always the discussion of servers only making 2.13 an hour, but in essence when they calculate their tips in a restaurant like mine, they probably average between 25 and $30 an hour.

But what happens is like for a weekly payroll of about 4,000, which is what my small restaurant runs, my weekly payroll tax 940 runs about 2,000 close to 2,000. So basically we overpay and then we get back a credit at the end of the year.

In some ways it's really great, but there's a margin between that 2.13 and 7.25, which is minimum wage, that that money is not given back. So basically you're basically overpaying for the tax period and that's something that a lot of full service restaurants have to deal with.

And you know, even this year, there was the beginning of some changes with automatic gratuities which most restaurants have moved away from now because it's a whole other level of taxation that the burden is put on restaurant owners.

The third topic is, again, the Affordable Care Act and I always bring this up that I have 19 employees, but the 25 suppliers that

I buy from have over 50 employees and they have seen their prices increase.

So another thing that's just important for people to know, because that is part of what all restaurants have been going through, is that everything that comes through our doors has risen in the last two years because basically the Affordable Care Act is a tax that affected all small businesses and they have to push it down.

Something as simple as Coca Cola, I mean, every year it does probably about a dollar or two increase on their boxes of soda. This year, it was five like 5.20, which is probably the biggest increase I have seen them push on a business in one year.

And then, of course, just the plan that I have for my business is three employees with, you know, some dependents. And I remember when I went back and looked at the fact that in 2010, it was $1,100 for three people and right now I'm currently at 2,500.

So it's one of those things that is a burden every year that I have to sit there and analyze. It's just a lot of these things are bigger regulations on the Federal level that affect the small guys. I think it's also always important to remember that restaurants are part of the hospitality industry. One in ten jobs in our country is affected by this. So through the restaurant association, NFIB, we have always been trying to champion for the smaller guys, as well as the multi-level units.

So again, thank you for listening and taking time.

[The prepared statement of Mr. Urdiales follows:]

Written Statement

Of

Jim Urdiales

For the Record of the

May 4, 2015

Field Hearing of

The United States Senate Committee on Small Business and Entrepreneurship

"Reducing the Federal Tax Burden for America's Small Businesses"

SMALL BUSINESS ISSUES

Thank you Senator Vitter for taking time to understand the issues of Small Businesses today. I have owned and operated my own restaurant for over sixteen years. There are many issues or hurdles that all small businesses face every day but here are a few that warrant discussion.

First there is the effect that the Farm Bill Subsidy on Corn for ethanol has had on food prices. The subsidies have taken a major food item that all cows need for feed and helped to drive up prices fourfold in the past five years. Every item from the cow such as steak, cheese, and sour cream have reached record levels and driven up food cost considerably. When I began in business, it was normal to have ten percent profit margins on all food items. Most are lucky to operate with two percent profit margin today. Although gas prices have dropped recently, most businesses that deliver to us are still charging delivery fees to recoup expenses.

The second topic for discussion is the Earned Tax Tip credit that all restaurants comply with. The burden of tip reporting was removed from servers and moved to the restaurant owners. Not a problem but all tips for servers are put on their weekly checks. I pay payroll taxes on these wages. In return, the IRS gives us a credit on all excess wages over 40 hours calculated at minimum wage of $7.25. Although most servers make $2.15 an hour, I am paying extra payroll taxes on the remaining $5.10 with no return. For instance, I average a weekly payroll of $4200 and my weekly 941 is close to $2000. The earned tip credit covers my federal bill completely but there is an excess paid into the system with no recoup.

The third issue is the Affordable Care Act effect on business. Although I am under the fifty employee limit, my twenty plus vendors are not. Their cost of doing business has risen and literally every item that comes through my doors has seen an increase in the past year. My own Blue Cross plan of me and two other full time employees with dependents is $2500 per month. This same plan was $1100 in 2010,

Thank you again for taking time to listen to the issues facing all small businesses today

Chairman VITTER. Thank you, Jim, for being here, very much and what you do in our economy. Next we will hear from Candy Forbes.

Candy, welcome.

CANDY FORBES, VICE PRESIDENT/SALES MANAGER, DENHAM SPRINGS HOUSING, DENHAM SPRINGS, LA

Ms. FORBES. Today I'm here to represent the Livingston Parish Chamber of Commerce. In the audience with me today is the CEO of the Chamber, April Wehrs, and the co-chair of the Legislative Committee for the Chamber, Mr. John Blount, President of Blount General Contractors, a commercial and residential contracting firm.

The Chamber represents over 500 local businesses within the parish and the majority of those businesses would be characterized as small business owners like myself. I'm the president of Denham Springs Housing. It's a small family-owned and operated manufactured housing dealership in Denham Springs and we have been in business for over 30 years. We employ eight full-time employees and over 12 separate subcontractors at our business.

Mr. Blount, who is in the audience, he employs about 25 full-time employees and numerous subcontractors and been in business 28 years.

Regardless of the scope or size of our operations, both of us pretty much face a common issue and that's the complexity and cost of dealing with the Internal Revenue Service. There are three thing I'd like to touch on today.

The first one is Section 179 changes that will affect the bottom line of most businesses. Very simply put, depreciation of equipment, automobiles, and other tangible business property helps to offset a company's scheduled tax burden. Big ticket purchases that business owners make help drive the economy.

For example, if I decide not to purchase a large piece of equipment in 2015 due to unfavorable depreciation rules, no profit is made at the heavy equipment sales center, no taxes are paid to help support the local and State economy. If a business can't depreciate big ticket items, they will simply wait it out until the IRS rules are adjusted and they can do so unless they absolutely need it. This slows growth and it injures multiple parties.

I feel like Congress is doing a disservice to American businesses whenever depreciation rules and tax code in general are used as leverage in year-end negotiations. We need a long-term solution to the problem, not a 2015 year-end retrospective fix. It's vital that Congress act to raise the depreciation limits and give businesses stability they need to make informed decisions about purchases without gambling with their taxes. That's the first thing I wanted to cover.

The next thing I wanted to talk about was some of the burdensome IRS regulations, coupled with a lack of accountability on the IRS's part, lead to a lot of problems for small business owners.

One local CPA that we do business with has been battling with the IRS for over six months for a client. Mr. Johnson makes online payments of roughly $2,000 a week for payroll taxes for his company. He's done so consistently for several years. Mr. Johnson

accidentally entered $2 million instead of $2,000 into the IRS's online payment system.

Mr. Johnson has Parkinson's disease and it makes his hands unsteady. It was the shaking hands that caused him to enter the extra zeroes on the online tax payment. He recognized the mistake as soon as he did it, he called the bank and stopped payment. He contacted his accountant and he made the $2,000 payment that he was supposed to make. The IRS then levied a $45,000 fine against Mr. Johnson's company for what was determined as dishonest form of payment. The fine was based on a percentage of the $2 million mistake rather than the $2,000 payment that he did owe.

Mr. Johnson has now given his CPA a power of attorney in order to deal with the IRS by U.S. Mail because she said that's the way that it has to be done. That's how you have to deal with them. After all these months, no one has been able to fix the problem. No one at the IRS has been able to correct the problem. The CPA is so frustrated that she said that she considered contacting the Parkinson's Disease Foundation to see if she could tell his story to the public.

There's a total lack of accountability on the part of the IRS in these types of situations. Fines are levied, accounts are frozen, liens are placed on assets, and all of these costs that are associated don't do anything to the IRS itself, it only hurts the small business.

I would like to see Congress increase oversight through legislation and bring about consequences for IRS abuse like this. There will never be any kind of change or relief for small business owners if we are the only ones that are penalized whenever there is an issue.

And in the interest of time, and because I believe Mr. Urdiales covered a couple things I wanted to talk about, I would like to thank you for allowing us to come out and speak today and I hope that the information that we provided is helpful in helping you understand the problems that we have as small business owners.

Chairman VITTER. Very helpful. Thank you, Candy. Regarding that specific case you outlined, which is outrageous, please——

Ms. FORBES. That's a business owner right here.

Chairman VITTER [continuing]. Please have them get us, my office, the details of that and we will get actively involved and we will blast through this mind-set of the IRS on this particular case. Shouldn't take that, but it often does. We work on individual cases like that all the time. So please have them—you will get our contact information before you leave.

Ms. FORBES. I will.

Chairman VITTER. Please have them get us the details. They will have to sign a privacy release form so we can work on it and we'll get right to work on that.

Ms. FORBES. They'd probably like to sign any forms with you that would help.

[The prepared statement of Ms. Forbes follows:]

My name is Candy Forbes. Today, I am here to represent the Livingston Parish Chamber of Commerce. Joining me today is the CEO of the Livingston Parish Chamber of Commerce, April Wehrs, and Mr. John Blount, President of Blount General Contractors, a commercial and residential contracting firm. The Livingston Parish Chamber of Commerce represents over 500 local business owners within the parish, and the majority of those businesses would be characterized as small business owners like me and Mr. Blount. I am the President of Denham Springs Housing- a family owned and operated manufactured housing dealership which has been in business for over 30 years. Denham Springs Housing employs 8 full time employees and 12 separate subcontractors involved in the sale, delivery and installation of new and used manufactured homes across Southern Louisiana and Mississippi. Blount General Contractors employs about 25 full time employees and numerous subcontractors and has been in operation for 28 years. Regardless of the size or scope of operations, many small businesses owners face once common issue: the complexity and cost of dealing with the internal revenue service.

The Chamber recently had the opportunity to talk with several small business owners and accountants in our Parish to discuss federal taxation issues. I would like to touch on a few of these issues today:

1. Sec 179 changes that will affect the bottom line of most small businesses
2. Burdensome IRS regulations coupled with a lack of accountability on the part of the IRS coupled with a general fear of consequences of misreporting, penalties, and audits.
3. Lack of knowledge regarding federal taxes with very small businesses (1-2 employees)

One of the topics I would like to talk about is the ongoing issues with Section 179/ depreciation. Very simply put, depreciation of equipment, automobiles and other tangible business property helps to offset a company's federal tax burden. Big ticket purchases that business owners make help to drive the economy. For example, if Blount General Contractors decides not to purchase a new $100,000 bulldozer in 2015 due to unfavorable depreciation rules, no profit is made at the heavy equipment sales center and no sales taxes are paid to help support the state and local economy. If a business cannot depreciate big ticket items in 2015, they will simply wait to make that purchase unless it is absolutely necessary. If a business can wait it out until the IRS rules are adjusted, they will do so. This slows growth and it injures multiple parties. Congress is doing a disservice to American businesses when depreciation rules and tax code in general are used as leverage in year-end negotiations. Businesses want a level of predictability and stability in the rules under which they are asked to play. We need a long-term solution, not a 2015 year-end retroactive fix. It is vital that Congress act raise the depreciation limits and give businesses the stability needed to make informed purchase decisions without gambling with their taxes.

Another ancillary issue that is related to depreciation involves how personal income is calculated by lending institutions and bankers when they are looking at the net income of self-employed individuals. If a business owner has his individual company set up as an LLC or a "flow through" type entity, depreciation can be added back to the business owner's bottom line net income in order to obtain

loans, such as a home mortgage. If there are very low limits set by the IRS for the amount that can depreciated, then the business owner's personal net income is also reduced. This reduction in net income can prevent small business owners, especially newer business owners or start up business owners from being able to purchase homes and obtain credit in general. Changes in the mortgage lending rules that banks have been forced to adhere to under the Dodd-Frank and The Financial Reform Act coupled with limits on depreciation have been double sucker-punch for many small business owners who need to obtain homes loans and personal credit lines.

With respect to IRS accountability and penalties, one CPA told me about one local business client who has been battling the IRS for over 6 months. Mr. Johnson makes an online payment of roughly $2000 per week to the IRS for payroll taxes and has consistently for several years. Mr. Johnson accidentally entered $2,000,000.00 instead of $2000.00 into the IRS's online payment system. Mr. Johnson has Parkinson's Disease, which causes his hands to be unsteady. It was his shaky hands that caused him to add the extra zeros to his online tax payment. He immediately recognized his mistake of adding the additional zeros, contacted his bank to stop the payment, paid the original $2000 payroll tax payment, and contacted his accountant. The IRS then levied a $45,000.00 fine against Mr. Johnson's company for what was termed a "dishonest form of payment." The fine was based on a percentage of the uncollectable auto draft of two million dollars that he did not owe, not the $2000.00 payment that he did owe. Mr. Johnson now has now given a power of attorney to his CPA to communicate back and forth with the IRS via the US mail. All of this is at considerable and unnecessary financial cost and nothing has been resolved. No one from the IRS has been able to remove the fine after months of communications. The CPA is so frustrated that she has considered contacting the Parkinson's Disease Foundation so his horror story could be told to the public. There is a total lack of accountability on the part of the IRS in situations like these. Fines are levied, accounts are frozen, liens are placed on assets and business owners are held hostage with no consideration of the costs associated with IRS errors. A federal tax lien of this size can prevent business owners from obtaining credit lines and renewing licenses. I would like to see Congress increase oversight through legislation and bring about consequences for the IRS for abuse of this nature. There will never be a change or relief for small business owners if the businesses are the only parties that are ever penalized for wrongdoing.

Lastly, I would like to talk about the knowledge gap between small and large businesses with regard to tax law. A large corporation can employ an army of tax attorneys and CPA's to maneuver through the myriad of IRS rules and regulations. Most small business owners lack the tax knowledge or the funds to employ these same tactics. While the cost of using a qualified CPA is obviously more than going it alone, I consider a necessary expense. My dealerships pay several thousand dollars a year in accounting costs for the best advice we can afford. Unfortunately, many small business owners attempt to go it alone or lack the funds for top notch accounting services. Small business owners need to have better access to information from the IRS in simple terms about what activities can trigger audits, how to avoid penalties, and what type of tax forms should be filed for their particular business. I spent over two hours looking for an answer to one simple question on the IRS website. Then, I gave up looking. The

system seems to be designed to produce penalties and audits, rather than help small businesses do the right thing. The largely unwelcome addition of the affordable care act provisions is an additional source of confusion to most business owners and will cause more penalties and tax issues for small business owners. We need a more streamlined, simplified tax code that does not cause ignorance of a rule to be grounds for a business to be financially penalized or ruined.

On behalf of the Livingston Parish Chamber of Commerce, I want to thank Senator Vitter and Senator Cassidy for the invitation to speak on these issues today. We hope that the information provided is helpful in understanding the issues for the average small business owner.

Chairman VITTER. Right. Let me make that offer to everybody here. We work on those sorts of individual cases all the time, whether it involves the IRS or other Federal agencies like the VA. If you or a family member, a neighbor, a business associate has anything like that that you need help with, call me and my office, and we will get to work on it. I think we have a handout and on that blue column on the left-hand side of the handout is all of my contact information. We have easy e-mail access on the website, and those are all of our offices, including Baton Rouge and Metairie. So please call us.

Now we will hear from Ron Gitz.

Ron, welcome.

RON GITZ, EXECUTIVE DIRECTOR, SOCIETY OF LOUISIANA CPAS, KENNER, LA

Mr. GITZ. Thank you. Thank you for being here. I know some have thanked you but I really appreciate the fact that you take time out of your very busy travel schedule to hear from the taxpayer——

Chairman VITTER. Absolutely.

Mr. GITZ [continuing]. And the businesses that help this country tick.

In the introduction, we represent 6,300 or so CPAs and firms in Louisiana. They represent the majority of business here. Prior to my stint as Executive Director, I come from an entrepreneurial small business background and I have been a partner in small CPA firms that represent business. And so now, we represent the firms that represent business. So I heard a lot of mention of CPAs throughout the panel here. Like Senator Vitter's offer, we also would help the CPA with this client. We do have contacts inside the IRS.

I have written testimony that I'm not reading from because it's quite lengthy. It was actually testimony provided by the AICPA, which is the national organization that represents CPAs, actually, internationally. They have 400,000 members and so they are out there doing this in each and every state. The testimony that they helped me provide was actually written testimony that they gave to the Committee on Small Business, which is a U.S. House of Representatives' Committee. Ironically, that testimony was provided on April 15th and I don't know if that's just an anomaly or if it was intended.

Chairman VITTER. I'm guessing the House planned it that way to make a point.

Mr. GITZ. To make a point, absolutely. Pleased to hear that some of the items contained therein are part of your tax reform package that you're going to present. The document that I have is 16 pages long. It falls a little lengthy if I were to read it, outside the five minutes I'm allotted, but I did select a couple of important items from it to share with you.

The goal of the CPA profession is to work with Congress to help ensure that the tax reform package follows principally good tax policy. There are ten of those principles. They are listed in that document. I will speak about one of those today, which is uncertainty, which we heard a lot about already. There are nine issues that we

have identified that, you know, when you're talking about 70,000 pages of tax code, where do you start?

So we have nine that we think can provide some instant relief. You referred to those in some of your opening remarks. We have heard Section 179 referred to a lot. That is one of the sunset tax provisions that dates back to President Bush's tenure as president that had a ten-year life. That ten years expired and so they have been getting annual renewals since then. As it stands now, here we are in May of 2015, and will they be renewed or not? Nobody knows. That's the uncertainty part. This is bad tax policy. That's why we are recommending that we make some of these things permanent.

It's not just Section 179. There are 50-plus other provisions as well that affect various businesses in different ways. So we would like to see some permanence in those tax provisions to make them more certain.

What happens is, and beyond just hearing from the panel from the business side, from the tax preparer side where CPAs are caught in the middle. What advice do you give? And so with the last couple of years, you get into the spring of the year following the tax year, and then the tax provision get renewed, for instance, 179, financial statements had to be prepared by year end, there had to have been a tax provision put into those financial statements because you can't do anything that's not enacted yet. So there's confusion in the marketplace. There's confusion with compliance, et cetera.

The other problem that I heard, you know, you may argue it's a big business, but it's a small business that did it. There's an estimated payment that a CPA had to recommend to their client to make of $250,000 because Section 179 has not been renewed at that time. So you're tying up very important cash flow and business capital. Ultimately, it's great, there's a lower tax burden on the taxpayer, but to make these things permanent and allow for tax planning would certainly be awesome.

The IRS services have been cut. We just heard big mention of that. There used to be the ability, there was thing called E-Services that is now gone. It happened two years ago. When I was practicing back in 2011, it worked pretty well. You signed up for E-Services and you had the ability to interact with the IRS and do some of the things described electronically.

Well, funding it's been cut to the IRS. Nobody loves the IRS, right? It's the dreaded tax man. We, at the beginning of every tax season, we have a liaison meeting with the local IRS group. One of the most dramatic and, quite honestly, sad meetings that I participated in was that meeting two years ago where, you know, it's the experts in the room. It's not just CPAs, it's open to tax practitioners and the IRS representatives there.

These folk, good, good American citizens that have dedicated their career to government service on the IRS side and are experts that have their hands tied, literally. The frustration in the room, mutual respect, because these are the experts on both sides of the tax equation. Their services have been just cut to the point where they can't function.

So to wrap up, to make the point a little clearer, I was at the AICPA Board meeting two weeks ago, there's this new thing that the IRS has come out with a new term called "the courtesy disconnect." So after you have been on the phone for two hours, there's a courtesy disconnect.

Chairman VITTER. How courteous is that?

Mr. GITZ. It's like the mercy rule, the home run mercy rule in baseball. What happens is, to make it even more dramatic, the IRS can now claim that at their call center, there are no calls longer than two hours.

Chairman VITTER. What a great way to meet that goal. Disconnect.

Mr. GITZ. I will leave you with that. Thank you for letting me be here.

[The prepared statement of Mr. Gitz follows:]

Written Statement

Of

Ronald A. Gitz II, CPA, CGMA

For the Record of the

May 4, 2015

Field Hearing of

The United States Senate Committee on Small Business and Entrepreneurship

Entitled

"Reducing the Federal Tax Burden for America's Small Businesses"



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

WRITTEN STATEMENT

OF

THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

FOR THE RECORD OF THE

APRIL 15, 2015

HEARING OF

THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

ON

TAX REFORM: ENSURING THAT MAIN STREET ISN'T LEFT BEHIND

INTRODUCTION

The American Institute of Certified Public Accountants (AICPA) commends Chairman Chabot, Ranking Member Velazquez, and Members of the House Committee on Small Business for examining the need for and potential economic benefits of comprehensive tax reform. We applaud the leadership taken by the Committee to spur tax reform discussions and recognize the tremendous effort required to analyze the current complexities in the tax law, examine policy trade-offs, and consider the various reform options.

The AICPA is the world's largest member association representing the accounting profession, with more than 400,000 members in 128 countries and a history of serving the public interest since 1877. Our members advise clients on federal, state and international tax matters, and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized business, as well as America's largest businesses.

We are a long-time advocate for an efficient and effective tax system based on principles of good tax policy.[1] Our tax system must be administrable, stimulate economic growth, have minimal compliance costs, and allow taxpayers to understand their tax obligations. We believe these features of a tax system are achievable if the ten principles of good tax policy are considered in the design of the system:

- Equity and Fairness
- Convenience of Payment
- Simplicity
- Economic Growth and Efficiency
- Minimum Tax Gap
- Certainty
- Economy in Collection
- Neutrality
- Transparency and Visibility
- Appropriate Government Revenues

We, therefore, appreciate the opportunity to provide input as you begin shaping tax reform policy in the small business income tax area.

In the interest of good tax policy and effective tax administration, specifically focusing on the simplification of small business income tax, we respectfully submit comments on the following key issues:

1. Cash Method of Accounting
2. Tangible Property Regulations – De Minimis Safe Harbor Threshold
3. Civil Tax Penalties
4. Permanence of Tax Legislation
5. Retirement Plans
6. Alternative Minimum Tax Repeal

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[1] AICPA, Guiding Principles for Good Tax Policy: Framework for Evaluating Tax Proposals, 2001.

7. Listed Property
8. Tax Return Due Date Simplification
9. IRS Taxpayer Assistance

AICPA PROPOSALS

1. Cash Method of Accounting

The AICPA wholly supports the expansion of the number of taxpayers who may use the cash method of accounting. The cash method of accounting is simpler in application than the accrual method, has fewer compliance costs, and does not require taxpayers to pay tax before receiving the income. For these same reasons, we are concerned with, and oppose, any new limitations on the use of the cash method for service businesses, including those businesses whose income is taxed directly on their owners' individual returns, such as S corporations and partnerships. Requiring these businesses to switch to the accrual method upon reaching a gross receipts threshold would unnecessarily discourage growth. A required switch to the accrual method would affect many small businesses in certain industries including accounting firms, law firms, medical and dental offices, engineering firms, and farming and ranching businesses.

The AICPA believes that limiting the use of the cash method of accounting for service businesses would:

1) Discourage their natural business growth;
2) Impose an undue financial burden on their individual owners;
3) Impose complexities and increase their compliance burden; and
4) Treat similarly situated taxpayers differently (because income is taxed directly on their owners' individual returns).

As the AICPA has previously stated,[2] we believe that Congress should not further restrict the use of the long-standing cash method of accounting for the thousands of U.S. businesses (e.g., sole proprietors, personal service corporations, and pass-through entities) that

[2] AICPA comment letter on the "Continued Availability of Cash Method of Accounting," August 15, 2013, http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2013.08.15_Comments_on_Continued_Availability_of_Cash_Method_of_Accounting.pdf, AICPA written statement before the House Committee on Ways And Means, dated May 15, 2013, Small Business and Pass-through Entity Tax Reform Discussion Draft; http://www.aicpa.org/Advocacy/Tax/Partnerships/DownloadableDocuments/AICPA-WRITTEN-STATEMENT-May-15-2013-hwmc-srsubcomte-camp-small-bus-submit.pdf, and AICPA written statement before the House Committee on Small Business, Subcommittee on Economic Growth, Tax and Capital Access, dated July 10, 2014, Hearing on "Cash Accounting: A Simpler Method for Small Firms?"; http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/AICPA%20WRITTEN%20STATEMENT%20July%2010%202014%20to%20House%20Subcte%20on%20Economic%20Growth%20Tax%20and%20Capital%20Access.pdf.

currently utilize it. We believe that forcing more businesses to use the accrual method of accounting for tax purposes would increase their administrative burden, discourage business growth in the U.S. economy, and unnecessarily impose financial hardship on cash-strapped businesses.

2. Tangible Property Regulations – De Minimis Safe Harbor Threshold

The AICPA urges the IRS and Treasury to increase the de *minimis* safe harbor threshold in order to offer meaningful tax compliance relief to small businesses. Final tangible property regulations (T.D. 9636) provide guidance for taxpayers to elect a minimum capitalization threshold, otherwise known as the de *minimis* safe harbor. The safe harbor allows taxpayers to set a minimum capitalization amount under which amounts are not capitalized. To reduce the unnecessary compliance burdens placed on small businesses, the AICPA recommends increasing the de *minimis* safe harbor threshold amount for taxpayers without an applicable financial statement (AFS) from $500 to $2,500.

Additionally, we recommend adjusting the de *minimis* safe harbor threshold amount on an annual basis for inflation.[3]

We understand that the intent of the $500 de *minimis* safe harbor election is to reduce the administrative burden of applying the complex set of capitalization rules for business taxpayers without an AFS (e.g., small business taxpayers). However, we have concerns about the current low amount ($500) of the de *minimis* safe harbor threshold for taxpayers without an AFS:[4]

a. **Reduction of Administrative Burden**
   Many small business owners have stated that repairs are consistently over $500 (parts are at least $250 and labor is at least $250). A cell phone or printer easily cost over $500 and are replaced quickly making it administratively impractical and costly to track. The $500 threshold is too low to effectively achieve any reduction in administrative burden.

[3] The AICPA previously commented on increasing the safe harbor de *minimis*. A copy of the letter can be found at the AICPA comment letter on $500 de *minimis* Safe Harbor Threshold and Retrospective Application of Final Tangible Property Regulations (T.D. 9636) for Small Businesses, dated October 8, 2014.

[4] An applicable financial statement (AFS) is a financial statement that is (i) a financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10-K or the Annual Statement to Shareholders); (ii) a certified audited financial statement that is accompanied by the report of an independent certified public accountant (or in the case of a foreign entity, by the report of a similarly qualified independent professional) that is used for credit purposes, reporting to shareholders, partners, or similar persons, or any other substantial non-tax purpose; or (iii) a financial statement (other than a tax return) required to be provided to the federal or a state government or any federal or state agency (other than the SEC or the IRS).

b. Relation with Section 179

The Internal Revenue Service (IRS or "Service") states that the safe harbor de *minimis* threshold, in conjunction with section 179[5] election to expense certain depreciable business assets, provide significant tax simplification to small businesses. Unfortunately, section 179 requires costly and time-consuming tracking of the item on a fixed asset depreciation schedule. Furthermore, not all property qualifies for the section 179 deduction (e.g., air conditioning and heating equipment, and real property such as land, buildings, and permanent structures).

Enhanced section 179 relief was also temporary and is, therefore, arguably unreliable. Currently, the section 179 deduction limit is only $25,000 for tax year 2015, despite having a limit of $500,000 for last year.

c. Clear Reflection of Income Test

To deduct amounts in excess of the $500 threshold, small businesses must prove that expensing such amounts "clearly reflects income." The clear reflection of income test is based on the taxpayer's facts, circumstances, and interpretations of those facts and circumstances by the taxpayer and IRS. Large businesses (e.g., taxpayers with an AFS), however, are allowed the higher ($5,000) threshold without the negative added compliance burdens.

d. Current Capitalization Policies

We also believe the $500 threshold does not accurately reflect the current capitalization policy threshold for many small businesses. An informal survey amongst our members, shows that many of our members and/or their small business clients have a minimum capitalization threshold in excess of $500 since few items costing $500 or less have a useful life of greater than one year. Therefore, we think that the $500 threshold does not provide any impactful relief for many small businesses.

e. Expansion of the AFS Definition for $5,000 Safe Harbor De Minimis Threshold

The AICPA believes the requirement that a taxpayer have an AFS to use the $5,000 de *minimis* threshold unfairly discriminates against smaller taxpayers, and recommends an alternative test to allow such taxpayers to use the de *minimis* rule. The AICPA recommends an expansion of the definition of AFS to include a financial statement that has been reviewed by a certified public accountant.

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[5] All section references in this letter are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated there under, unless otherwise specified.

3. Civil Tax Penalties

Congress should carefully draft penalty provisions and the Executive Branch should sensibly administer the penalties to ensure they deter bad conduct without deterring good conduct or punishing the innocent (i.e., unintentional errors, such as those who committed the inappropriate act without intent to commit such act). Targeted, proportionate penalties that clearly articulate standards of behavior and that are administered in an even-handed and reasonable manner encourage voluntary compliance with the tax laws. On the other hand, overbroad, vaguely-defined, and disproportionate penalties, particularly those administered as part of a system that automatically imposes penalties or that otherwise fails to provide basic due process safeguards, create an atmosphere of arbitrariness and unfairness that is likely to discourage voluntary compliance.

We have concerns[6] about the current state of civil tax penalties and would like to offer the following suggestions for improvement:

a. **Trend Toward Strict Liability**
The IRS discretion to waive and abate penalties where the taxpayer demonstrates reasonable cause and good faith is needed most when the tax laws are complex and the potential sanction is harsh. This reason is especially true where the taxpayer's state of mind is central to the conduct that is subject to penalty. Because it is not feasible to anticipate every possible situation to which a penalty might apply, permitting a reasonable cause defense and avoiding fixed-dollar amount penalties helps to ensure that a disproportionately large penalty is not applied to an unforeseen and/or unintended set of facts.

Over the past several decades, there has been an exponential increase in the complexity of the tax laws and a proliferation of increasingly severe civil tax penalties, with the Internal Revenue Code (IRC or "Code") currently containing eight strict liability penalty provisions.

b. **An Erosion of Basic Procedural Due Process**
Penalties should apply prospectively to future conduct and not retroactively to conduct that was appropriate at the time the conduct occurred. Judicial review of an IRS decision to impose a penalty or to deny waiver is an important constitutional check on Executive authority. Statutes that prohibit judicial review of agency penalty determinations undermine voluntary compliance by undercutting

[6] See the "AICPA Tax Penalties Legislative Proposals," submitted to Congress in April 2013: http://www.aicpa.org/Advocacy/Tax/TaxLegislationPolicy/DownloadableDocuments/AICPA-legislative-proposals-penalties-2013.pdf; and the "AICPA Report on Civil Tax Penalties," submitted April 2013: http://www.aicpa.org/Advocacy/Tax/TaxLegislationPolicy/DownloadableDocuments/AICPA-report-civil-tax-penalty-reform-2013.pdf.

taxpayers' faith in the system and eliminating an essential and expected avenue of potential redress.

Taxpayers should know their rights to contest penalties and have a timely and meaningful opportunity to voice their feedback before assessment of the penalty. In general, this process would include the right to an independent review by the IRS Appeals office or the IRS's FastTrack appeals process, as well as access to the courts. Pre-assessment rights are particularly important where the underlying tax provision or penalty standards are complex, the amount of the penalty is high, or fact-specific defenses such as reasonable cause are available.

c. Repeal Technical Termination Rule

We recommend[7] the repeal of section 708(b)(1)(B) regarding the technical termination of a partnership.[8] Under current law, when a partnership is technically terminated, the legal entity continues, but for tax purposes, the partnership is treated as a newly formed entity. The current law requires the partnership to select new accounting methods and periods, restart depreciation lives, and make other adjustments. Furthermore, under the current law, the final tax return of the "old" partnership is due the 15th day of the fourth month after the month-end in which the partnership underwent a technical termination.[9]

A technical termination most often occurs when, during a 12-month period there is a sale or exchange of 50% or more of the total interest in partnership capital and profits. Because this 12-month time frame can span a year-end, the partnership may not realize that a 30% change (a minority interest) in one year followed by a 25% change in another year, but within 12 months of the first, has caused the partnership to terminate.

In practice, this earlier required filing of the old partnership's tax return often goes unnoticed because the company is unaware of the accelerated deadline due to of the equity transfer. Penalties are often assessed upon the business as a result of the

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[7] AICPA submitted comments to the House Committee on Ways and Means on the Tax Reform Act of 2014, dated January 12, 2015; http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/AICPA-Comments-on-2014-Camp-Draft-General-Comments-Final.pdf.

[8] AICPA submitted letters and written statements on Option 1 and Option 2 of Chairman Camp's Small Business Tax Reform Draft: See Option 1 comments at "AICPA testimony on Small Business and Pass-through Entity Tax Reform," dated May 17, 2013; http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2013.05.13_Testimony_on_Small_Business_and_Pass-Through_Entity_Tax_Reform_Discussion_Draft.pdf, and Option 2 comments, dated July 30, 2013; http://www.aicpa.org/Advocacy/Tax/Partnerships/DownloadableDocuments/AICPA-Option-2%20-comments-7-30-13.pdf.

[9] For example, a partnership that technically terminated on April 30 of the current year due to a transfer of 80% of the capital and profits interests in the partnership to be timely filed must file its tax return for that final tax year on or before August 15 of the current year.

missed deadline. Although ignorance is not an acceptable excuse, this technical termination area is often misunderstood and misapplied. The acceleration of the filing of the tax return, to reset depreciation lives and to select new accounting methods, serves little purpose in terms of abuse prevention and serves more as a trap for the unwary.

d. Late Filing Penalties of Sections 6698 and 6699

Sections 6698 and 6699 impose a penalty of $195 per partner related to late filed partnership or S corporation return. The penalty is imposed monthly not to exceed 12 months, unless it is shown that the late filing is due to reasonable cause. 2014 amendments to sections 6698 and 6699 adjust the penalty for inflation beginning after 2014.

The AICPA proposes that a partnership, comprised of 50 or fewer partners, each of whom are natural persons (who are not nonresident aliens), an estate of a deceased partner, a trust established under a will or a trust that becomes irrevocable when the grantor dies, and domestic C corporations, will be considered to have met the reasonable cause test and will not be subject to the penalty imposed by section 6698 or 6699 if:

- The delinquency is not considered willful under section 7423;
- All partnership income, deductions and credits are allocated to each partner in accordance with such partner's capital and profits interest in the partnership, on a pro-rata basis; and
- Each partner fully reported its share of income, deductions and credits of the partnership on its timely filed federal income tax return.

e. Failure to Disclose Reportable Transactions

Taxpayers who fail to disclose a reportable transaction are subject to a penalty under section 6707A of the Code. For penalties assessed after 2006, the amount of the penalty is 75% of the decrease in tax shown on the return as a result of the transaction (or the decrease that would have been the result if the transaction had been respected for federal tax purposes). If the transaction is a listed transaction (or substantially similar to a listed transaction), the maximum penalty is $100,000 for individuals and $200,000 for all other taxpayers. In the case of reportable transactions other than listed transactions, the maximum penalty is $10,000 for individuals and $50,000 for all other taxpayers. The minimum penalty is $5,000 for individuals and $10,000 for all other taxpayers. The section 6707A penalty applies even if there is no tax due with respect to the reportable transaction that has not been disclosed. There is no reasonable cause exception to the penalty. The Commissioner may, however, rescind all or a portion of a penalty, but only in the case of transactions other than listed transactions, where rescinding the penalty would promote efficient tax administration and only after the taxpayer submits a

lengthy and burdensome application. In the case of listed transactions, the IRS has no discretion to rescind the penalty. The statute precludes judicial review where the Commission decides not to rescind the penalty.

Under section 6662A, taxpayers who have understatements attributable to certain reportable transactions are subject to a penalty of 20% (if the transaction was disclosed) and 30% (if the transaction was not disclosed). A more stringent reasonable cause exception for a penalty under section 6662A is provided in section 6664, but only where the transaction is adequately disclosed, there is substantial authority for the treatment, and the taxpayer had a reasonable belief that the treatment was more likely than not proper. In the case of a listed transaction, reasonable cause is not available, similar to the penalty under section 6707A.

The AICPA proposes for an amendment of section 6707A to allow an exception to the penalty if there was reasonable cause for the failure and the taxpayer acted in good faith for all types of reportable transactions, and to allow for judicial review in cases where reasonable cause was denied. Moreover, we propose an amendment of section 6664 to provide a general reasonable cause exception for all types of reportable transactions, irrespective of whether the transaction was adequately disclosed or the level of assurance.

f. 9100 Relief

Section 9100 relief, which is currently available with regard to some elections, is extremely valuable for taxpayers who miss the opportunity to make certain tax elections. Congress should make section 9100 relief available for all tax elections, whether prescribed by regulation or statute. The AICPA has compiled a list[10] of elections (not all-inclusive) for which section 9100 relief currently is not granted by the IRS as the deadline for claiming such elections is set by statute. Examples of these provisions include section 174(b)(2), the election to amortize certain research and experimental expenditures, and section 280C(c), the election to claim a reduced credit for research activities. We do not believe taxpayers are likely to abuse or exploit hindsight, as the IRS would continue to have discretion as to whether to grant relief for each specific request.

g. Form 5471 Penalty Relief

On January 1, 2009, the IRS began imposing an automatic penalty of $10,000 for each Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*, filed with a delinquent Form 1120 series return. When imposing the penalty on corporations in particular, the IRS does not distinguish between: a) large public multinational companies, b) small companies, and c)

[10] AICPA letter on "Tax Reform Administrative Relief for Various Statutory Elections," submitted January 23, 2015: http://www.aicpa.org/advocacy/tax/downloadabledocuments/aicpa-letter-to-congress-on-9100-relief-1-23-15submitted.pdf.

companies that may only have insignificant overseas operations, or loss companies. This one-size-fits-all approach inadvertently places undue hardship on smaller corporations that do not have the same financial resources as larger corporations. The AICPA has submitted recommendations[11] regarding the IRS administration of the penalty provision applicable to Form 5471. Our recommendations focus on the need for relief from automatic penalties assessed upon the late filing of Form 5471 in order to promote the fair and efficient administration of the international penalty provisions of the Code.

4. Permanence of Tax Legislation

Taxpayers and tax practitioners need certainty to perform any long-term tax, cash-flow or financial planning and reporting.[12] The permanence of tax provisions, such as the enhanced section 179 deduction, can have impacts on the growth of small businesses. The section 179 provision allows small and mid-size business owners to immediately take a tax deduction on qualifying equipment, rather than delaying the deduction and taking it in smaller portions over an extended period of years. With the increased section 179 expense provision, business owners could deduct up to $500,000 of qualifying assets. In 2015, the section 179 expense has reverted back to $25,000. However, over the past several years, Congress has retroactively passed an increased section 179 limit during or even after the applicable tax year. The possibility for such a retroactive action in 2015 still exists; however, the uncertainty creates unnecessary confusion, anxiety and administrative and financial burdens.

Without permanency in the Code, we are concerned about the following consequences:

a. **Impact on a Company's Financial Accounting and Reporting**
The retroactive extension of tax deductions and credits has implications for a company's financial accounting and reporting. For financial accounting purposes, "the effect of a change in tax laws or rates shall be recognized at the date of enactment."[13] Accordingly, even if Congress signals that it plans to extend various

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[11] AICPA submitted comments to the IRS, dated March 26, 2013; http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/AICPA-Comments-on-Form-5471-Penalties-3.26.13.pdf.

[12] For example, see the AICPA testimony before the U.S. House of Representatives Committee on Small Business Subcommittee on Economic Growth, Tax, and Capital Access on the September 13, 2012, hearing on Adding To Uncertainty: Small Businesses' Perspectives on the Tax Cliff, and AICPA written statement for the hearing before the U.S. House of Representatives Committee on Ways and Means Subcommittee on Select Revenue on May 15, 2013, on the Small Business and Pass-Through Entity Tax Reform Discussion Draft.

[13] See Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 740, Income Taxes (https://asc.fasb.org/ and http://www.uic.edu/classes/actg/actg593/Cases/ASC/Standards/ASC-740-10- Income-Taxes.pdf), 740-10-25-47, September 29, 2011, page 15.

tax credits and other tax incentives, because these tax credits and other tax incentives were not signed into law by the end of 2014, companies must calculate their 2015 tax provisions without regard to the extended tax credits and other tax incentives. Where the relevant credits and incentives are material, the failure to extend the expired provisions in a timely manner creates unnecessary and undesirable ambiguity for financial markets.

b. **Complexity and Administrative Burden for Taxpayers and the IRS**
When Congress enacts extensions of these provisions late in the year or in the beginning of the following year, after IRS has already finalized the income tax returns for the tax year, it causes confusion, complexity, and compliance burdens for taxpayers and practitioners, and the IRS. If the tax forms have already been released, the IRS may need to provide additional instructions or revised forms to clarify the new law and reporting. This instructions and forms delay causes the filing season to be even more compressed and taxpayers are not able to file and receive their tax refunds until later in the year.

If taxpayers have already filed their tax returns prior to the change in the law, they may need to file amended tax returns, reflecting the newly enacted tax rules for the prior tax year. Those taxpayers may have to pay additional costs for an amended tax return, and the IRS will have additional costs and burdens to process the amended tax returns. For example, a March 31, 2015 fiscal year corporate filer will likely have to (1) report 9/12ths of the research credit on the originally filed return and (2) amend the return when the credit is reinstated to claim the credit for the additional three months (assuming the credit is reinstated after the tax return is filed, which was the case for the provisions that expired in 2010).

c. **Adverse Impact on Small Businesses and Ultimately Jobs and Growth**
These ever-changing, often expiring, short-term changes to the tax laws make it increasingly difficult for small businesses and their owners to perform any long-term tax, cash-flow or financial planning. If businesses are not able to rely on these tax benefits for the long term, they are limited in their ability to plan, invest, grow and expand, and hire additional workers. Therefore, we urge Congress to extend these provisions sooner rather than later.

While taxpayers have come to anticipate the retroactive reinstatement of expiring provisions (e.g., the research and development credit and the enhanced section 179 expense deduction) and may act under the assumption that Congress again may extend the provisions, an incorrect assumption may prove costly. While a prudent small business owner may wait until Congress provides certainty, the delay may result in the small business owner postponing equipment acquisitions and research expenditures from 2015 to 2016. The intended impact and reason for these provisions as an incentive for small businesses to replace aged equipment and

pursue research and development are not achieved when the tax incentives are not available all or much of the year.

d. **Effect on Economic Decisions and Tax Payments**
Uncertainty concerning whether Congress will extend certain tax provisions also adversely impacts tax planning and economic decisions made by individuals. These planning challenges are further compounded when tax laws are changed after the year has already begun but are slated to take effect that same year. When tax laws are issued late in the year or at the last minute, individuals try their best to comply, with no ability to plan for such provisions, no matter how well-intentioned. Incorrect assumptions may result in underpayments of estimated taxes and potential penalties or overpayment of taxes.

e. **Lack of Transparency and Certainty with Short-Term, Retroactive Extensions**
The AICPA continues to support long-term tax reform simplification efforts as we strongly believe the short-term, retroactive extension of tax provisions on an annual basis is counter to the AICPA's Guiding Principles of Good Tax Policy, which promote certainty, as well as transparency and visibility. We also generally urge Congress to enact future tax changes with a presumption of permanency, except in rare situations in which there is an overriding and explicit policy reason for making provisions temporary, such as short-term stimulus provisions or when a new provision requires evaluation after a trial period. Providing long-term certainty will provide simplification. Eliminating the need to constantly extend expiring provisions, such as the research and experimentation credit, will decrease the current state of confusion and, in many cases, reaffirm (rather than undermine) the policy reasons behind these incentives. Eliminating the on-again-off-again nature of these provisions, coupled with the often retroactive tax law changes, will better support long-term planning, reduce the number of amended returns, and significantly decrease the overall complexity of the tax rules.

5. Retirement Plans

Small businesses are especially burdened by the overwhelming number of rules inherent in adopting and operating a qualified retirement plan. Therefore, we encourage Congress to consider the following measures for simplifying the operation of retirement plans:

a. **Create a Uniform Employee Contributory Deferral Plan**
The AICPA suggests that Congress create a uniform contributory deferral plan. Currently, there are four employee contributory deferral plans: 401(k), 403(b), 457(b), and SIMPLE plans. Having four variations of the same plan type causes confusion for many plan participants and employers. Congress could eliminate the unnecessary complexity by reducing the number of choices of the same type of plan

while keeping the desired goal intact; affording employers the opportunity to offer a contributory deferral plan to their employees and allowing employees to use this type of retirement plan to save for their retirement.

b. Eliminate Certain Nondiscrimination Tests on Employee Pre-tax and Roth Deferrals for 401(k) Plans, Matching Contributions

We propose eliminating the following nondiscrimination tests since they artificially restrict the amount higher-paid employees are entitled to save for retirement on a tax preferred basis by creating limits based on the amount deferred by lower-paid employees in the same plan. The tests result in placing greater restrictions on the ability of higher-paid employees to save for retirement than those placed on lower-paid employees. Although the 403(b) plan is of a similar design, there is no comparable test on deferrals for this type of plan.

Specifically, we recommend elimination of the following nondiscrimination tests:

- The actual deferral percentage (ADP) test – The ADP test limits the amount highly compensated employees can defer pre-tax or through Roth after-tax contributions by reference to the amount deferred by non-highly compensated employees. This test applies only to a 401(k) plan.
- The actual contribution percentage (ACP) test – The ACP test similarly limits, for highly compensated employees, the amount of employer matching contributions and the amount of other employee after-tax contributions (which are based on employee contributions). This test is applicable for both 401(k) and 403(b) plans.

c. Eliminate the Top Heavy Rules

We propose eliminating the top heavy rules because they constrain the adoption of 401(k) and other qualified retirement plans by small employers. Since the top heavy rules were enacted in 1982, there have been a number of statutory changes which have significantly decreased their effectiveness. The sole remaining top heavy rule is a required minimum contribution or benefit. The determination of top heavy status is difficult and the required 3% minimum contribution is often made for safe harbor 401(k) plans. The effect of the top heavy rules is to deter a small business from adopting a qualified retirement plan, including a non-safe harbor 401(k) plan. Without the top heavy rules, more small businesses would adopt plans to benefit their employees.

6. Alternative Minimum Tax Repeal

The AICPA supports repeal of the alternative minimum tax (AMT).[14] We believe that the current system's requirement for taxpayers to compute their income for purposes of both the regular income tax and the AMT is a far-reaching complexity of the Code. Small businesses, including those businesses operating through pass-through entities, are increasingly at risk of being subject to AMT.

This tax was created to ensure that all taxpayers pay a minimum amount of tax on their economic income. However, small businesses suffer a heavy burden because they often do not know whether they are affected until they file their taxes. They must constantly maintain a reserve for possible AMT, which takes away from resources that could be allocated to business needs such as hiring, expanding, and giving raises to workers.

The AMT is a separate and distinct tax regime from the "regular" income tax. Code sections 56 and 57 create AMT adjustments and preferences that require taxpayers to make a second, separate computation of their income, expenses, allowable deductions, and credits under the AMT system. This separate calculation must be done on all components of income including business income for sole proprietors, partners in partnerships and shareholders in S corporations. Small businesses must maintain annual supplementary schedules used to compute these necessary adjustments and preferences for many years to calculate the treatment of future AMT items and, occasionally, receive a credit for them in future years. Calculations governing AMT credit carryovers are complex and contain traps for unwary taxpayers.

Sole proprietors who are also owners in pass-through entities must combine the AMT information from all their activities in order to calculate AMT. Including adjustments and preferences from pass-through entities contributes to AMT complexity. The computations are extremely difficult for business taxpayers preparing their own returns and the complexity affects the IRS's ability to meaningfully track compliance.

AICPA supports repealing the AMT for corporations and individuals altogether. As AMT complexities increase, so do the tax regime's impact on unintended taxpayers[15] and related compliance problems.

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[14] AICPA written testimony before the House Committee on Ways And Means, Subcommittee on Select Revenue Measures, dated March 03, 2011, "Hearing on Small Businesses and Tax Reform," http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/FINALTESTIMONYFORTHOMPSONMarch32011.pdf; and AICPA submitted comments to the House Committee on Ways and Means on the Tax Reform Act of 2014, dated January 12, 2015; http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/AICPA-Comments-on-2014-Camp-Draft-General-Comments-Final.pdf.

[15] Although most sophisticated taxpayers are aware of the AMT and that they may be subject to its provisions, the majority of middle-class taxpayers has never heard of the AMT and is unaware that the tax may apply to them. Unfortunately, the number of taxpayers facing potential AMT liability is expanding exponentially due

7. Listed Property

We recommend the removal of "computer or peripheral equipment" from the definition of "listed property" in order to simplify and modernize the traditional tax treatment of computers and laptops. Classifying computers and similar property as "listed property" under section 280F is clearly outdated in a business environment where employees are increasingly becoming expected to work outside of traditional business hours. Various forms of technology, including laptops, tablets and cell phones, are all converging to serve similar purposes and cost roughly the same prices to purchase. The costs for the internet and service plans are now frequently sold in "bundles" and shared between multiple devices so it has become arguably impossible to segregate the cost of service between a cell phone, tablet, and laptop. The AICPA believes legislative change to update the treatment of mobile devices is the best simplification, similar to section 2043 of the Small Business Jobs Act of 2010, where cell phones were removed from the definition of listed property for taxable years beginning after December 31, 2009.

Additionally, guidance is needed to simplify the determination of when an employer-provided cell phone or similar device is considered a working condition or de *minimis* fringe benefit under section 132. A safe harbor approach is recommended for simplification purposes and in light of the fact that cell phones often allow for unlimited phone calls making any personal use de *minimis*. When taxpayers do not meet the safe harbor for treating a device as a non-taxable fringe benefit, additional guidance is needed to help determine the taxable amount of the benefit in a simple manner.

8. Tax Return Due Date Simplification

Taxpayers and preparers have long struggled with problems created by the inefficient timeline and flow of information. Federal Schedules K-1s are often delivered late, sometimes within days of the due date of taxpayers' personal returns and up to a month after the due date of their business returns. Late schedules make it difficult, if not impossible, to file a timely, accurate return. The current inefficient timeline of tax return due dates is a problem for taxpayers as well as their tax practitioners.

The AICPA recommendation would alleviate the problems mentioned above by establishing a logical set of due dates, focused on promoting a chronologically-correct flow of information between pass-through entities and their owners. Our proposal includes the changes as follows:

Current Tax Due Dates:

- March 15: S corporation and C corporation Forms 1120S and 1120; and

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to: (1) "bracket creep;" (2) classifying as "tax preferences" the commonly used personal and dependency exemptions, standard deductions, and itemized deductions for taxes paid, some medical costs, and miscellaneous expenses; and (3) the inability to use many tax credits to offset AMT.

- April 15: Individual, Trust and Estate, and Partnership Forms 1040, 1041, and 1065

Proposed Tax Due Dates:

- March 15: Partnership Form 1065;
- March 31: S corporation Form 1120S; and
- April 15: Individual, Trust and Estate, and C Corporation Forms 1040, 1041, and 1120

We recommend the extended due dates to be six months after the original filing due dates for all these forms, except the trust and estate Form 1041, which we recommend be extended five and half months.

The AICPA supports[16] the proposal to change due dates for tax returns of partnerships, S corporations and C corporations because it would:

- Improve the accuracy of tax and information returns by allowing corporations and individuals to file using current data from flow-through returns that have already been filed rather than relying on estimates;
- Better facilitate the flow of information between taxpayers (i.e., corporations, partnerships, and individuals);
- Reduce the need for extended and amended tax returns; and
- Simplify tax administration for the government, taxpayers, and practitioners.

9. IRS Taxpayer Assistance

To further reduce the burdens of income tax compliance, the AICPA urges Congress to address the "taxpayer service" issues at the IRS. Specifically, Congress should consider dedicating supplemental funds to ensure IRS is responsive to the needs of all taxpayers, including small businesses.

In order for small businesses (and their tax practitioners) to receive the assistance they need on tax issues, it is essential for the IRS to respond to them in a timely manner. At a minimum, for example, the IRS should improve (1) wait times for incoming telephone calls and (2) the time required for them to respond (in a substantive manner) to taxpayers'

[16] We are pleased that this due dates proposal has wide bipartisan support and has been included in proposed legislation introduced by Sen. Enzi and Rep. Jenkins, including in 2013 (S. 420 and H.R. 901) and in 2011 (S.845 and H.R. 2382). It was also included in the Senate Finance Committee Tax Reform options paper on Simplifying the Tax System for Families and Businesses dated March 21, 2013; the Senate Finance Committee staff discussion draft on tax reform of tax administration provisions dated November 20, 2013; and the House Ways and Means Committee Chairman comprehensive tax reform discussion draft "Tax Reform Act of 2014" dated February 26, 2014. See AICPA webpage for recommendations on Change to Return Due Dates:
http://www.aicpa.org/interestareas/tax/resources/taxlegislationpolicy/pages/duedatesproposal2010.aspx.

written correspondence on tax notices. The current levels of service for these two areas are simply unacceptable.

The AICPA also recommends that Congress provide the IRS with dedicated, traceable and supplemental funds for specified "taxpayer service" purposes only. We recognize that the IRS budget is oftentimes the subject of debate, and may be even more now given the various events that have occurred over the last few years. However, the need to provide assistance to taxpayers and tax practitioners remain important responsibilities.

We are concerned that the IRS is spending a significantly lower percentage of its limited budget on taxpayer services (e.g., Individual Income Tax Line, Refund Hotline, Practitioner Priority Hotline, etc.) than in prior years. We understand that the IRS has new initiatives and vital responsibilities (such as addressing identity theft), but taxpayer service must remain a priority in a voluntary compliance system, such as the U.S. income tax system, which relies on individuals and businesses to properly report their income.

CONCLUDING REMARKS

The AICPA understands the challenges that Congress faces as it tackles the complex issues inherent in drafting tax legislation, and note that both taxpayers and tax practitioners are interested in, and need, tax simplification. Compliance burdens for small business taxpayers are too heavy, both in terms of time required and out-of-pocket cost. Likewise, complexity increases the "Tax Gap" and may impair the efficiency of tax administration.[17] While there are costs associated with simplification reforms, it is also important to recognize the elimination of significant compliance burdens by such reforms.

The proliferation of new income tax provisions since the 1986 tax reform effort has led to compliance hurdles for taxpayers, administrative complexity, and enforcement challenges for the IRS. We encourage you to examine all aspects of the tax code to improve the current rules. The AICPA has consistently supported tax reform simplification efforts because we are convinced such actions will significantly reduce taxpayers' compliance costs and encourage voluntary compliance through an understanding of the rules. We look forward to working with the 114th Congress and the tax-writing committees as you address tax reform.

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[17] AICPA testimony on the House Committee on Ways And Means hearing on "How the Tax Code's Burdens on Individuals and Families demonstrate the need for Comprehensive Tax Reform," dated April 13, 2011; http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/FINAL_TESTIMONY_FOR_NELLEN_April_13,_2011.pdf.

Chairman VITTER. Thanks, Ron. Very compelling. Thanks to all of you for your very direct, real world testimony.

Candy, we heard from you about this outrageous example of IRS abuse not correcting a clear, simple mistake that was immediately identified by the taxpayer. To me, that's part of a broader "gotcha mentality," the way the IRS deal with a lot of individuals and small business.

Do any of you all have personal experience that would sort of be examples of that sort of gotcha mentality?

Ms. FORBES. I'm going to find some wood up here to knock on. Personally, I personally, I do not have any experience with any of those types of issues. Now I hear a lot of stories from our CPAs, but we have been fortunate enough to have a good solid relationship with our current CPA firm for a long time and we have been able to—find some more wood—avoid those types of problems.

Chairman VITTER. Anybody else?

Mr. URDIALES. I will say that same thing. I've been very lucky to have a good CPA to assist on some of the issues we have to deal with.

Chairman VITTER. We have also been talking a lot about compliance costs, not just the cost of the tax bill, but the cost of compliance. Jim, let's take your restaurant business as an example. How would you describe and estimate the compliance costs, not the check you write for the tax liability, but dealing with figuring out what that check has to be.

Mr. URDIALES. That, again, goes back to, you know, with the Earned Tax Tip Credit that we use, we are basically paying double each week. And so, you know, it covers my tax bill for the restaurant, but again you're tying up extra cash flow each week just to do that. But it's because of the extra tip reporting that we have to do for tips on servers. So there's a lot of issues, whether it's minimum wage, you know, that affect us, and it's—we are all operating on a smaller margin than we used to.

And so it's one of those things where at the end of the year—not even at the end of the year, this is monthly. I'm sitting there looking at the margins of what we have, what we need to adjust, you know, just to keep on going. You know, it's definitely—and all my costs have risen, but again like I said, the—it used to go from a quarterly to now it's weekly, just to stay abreast of it.

Chairman VITTER. And related to something you mentioned, because I don't understand the details of this, so let me ask you to explain. I think you suggested that restaurants that have any sort of automatic tip put on the bill face a higher burden or tax liability. Why don't you explain that?

Mr. URDIALES. There was a new rule that went into effect January of this year that basically said that any automatic gratuities added, for instance, if you go in the service industry, like if you have a party of eight or more, they used to sometimes put an automatic tip. Well it's no longer a tip, it's now considered wages so what happens, it goes on to the revenue side of the business, and so we pay taxes and then you disburse. So basically it's a double taxation. It's moving that automatic tip to two different zones to get your tip twice.

Chairman VITTER. So it's clearly increasing your tax burden?

Mr. URDIALES. Correct.

Chairman VITTER. But even if under that practice, which at least used to be very common for large parties, even if that were done, that would represent tip that would go directly to the employee, correct?

Mr. URDIALES. Right. Yes. Yeah.

Chairman VITTER. Margot, you wanted to add anything to that?

Ms. MAY. Again, like Candy said, I'll knock on wood being that we have only owned it and then operated it for a year, but continuously we hear stories not just from our CPA of their struggles of trying to be in compliance, but the fact that a small business owner is putting their life savings, their work and their day-to-day operations in making a business run and giving more employment to locals and being a good person of the community, and then a letter shows up. And it's like, wait a second, I wasn't supposed to have that, or did that box get checked wrong? That's not correct. It's a simple, simple mistake that can take something like six months to a year and then the letters are coming. And it just overwhelms a small business owner.

I believe very strongly that small businesses can do a lot with very little, but when you pull those funds, that burden of finances to taxes that you're not sure if you have or don't have, it stunts the growth of what can happen in a community or in a city or even in a larger state.

Chairman VITTER. Right. A related issue to all of this, and certainly an issue that impacts small business, both over 50 employees and under is ObamaCare. Do you all have any direct testimony about your businesses or your members, in Ron's case, in terms of dealing with that in the small business arena?

Mr. GITZ. The irony there, again, one of the things we do, CPAs are required to have an average of 40 hours a year in continuing education. So the Louisiana Society of CPAs provides that education. ObamaCare was looming. It was kind of a four-year implementation process and by the time it got to the fourth, it's here, right? It's upon us. The education that we had to provide the CPAs and the complexity therein, I don't know how many pages, 70,000 pages, but it was substantial, beyond the actual check that you write, and it is the burden of being able to navigate and figure it out. And so I know we provided, and continue to provide, continuing education to help our CPAs and there are still many questions that are unanswered. Nobody is even sure that they are completely complying with the law.

Chairman VITTER. Right. Anybody else?

Ms. FORBES. I'd like to add something. There's a lot out there about how ObamaCare is going to affect taxes and it most certainly will. But there are other issues that are related to this depreciation rule that you may not be aware of. Basically I'm in the lending business, you know. I'm a contractor and we have to arrange mortgage loans for people. A lot of those people are self-employed. One of the things that happened after Dodd-Frank and the financial reform act, which has been a huge hit to small business owners, is that it limited their abilities to be able to meet bank requirements because the banks had to adhere to certain lending guidelines.

How that relates to the depreciation is that when the depreciation is limited, that's one of the things that mortgage lenders will add back to the bottom line income of the self-employed person. There's an add-back depreciation to their net income and then use that to calculate how much their yearly income is by which they can get a mortgage loan or apply for a business line of credit or personal loan. And if those depreciation limits are lowered, then it actually makes the net income of that business owner less, which affects his ability to go and borrow money or to own a home.

And in this instance, I'm talking about your really small business owner who has got one employee, two employees an LLC, some type of flow-through entity and that right there prevents homeownership and it prevents them from being able to borrow and get personal credit lines and that's a huge hit not only for that business owner, but for people like me who sell homes for a living and for people like John Blount who need those people to be able to purchase the homes that he builds. So they are all interconnected. There have been some things that have happened that have really been a sucker punch for small business owners.

Chairman VITTER. Anybody else on ObamaCare?

Mr. URDIALES. I would add one of the issues I could go into of other restaurateurs who have over 50 employees where they have to—you have to offer the full plan to hourly employees if they are over 30 hours. And one of the things that they are finding out is they can't afford that plan. So then they have to sign a release saying that it was offered and then they have to go to an outside market and a lot of these plans aren't really great insurance. And they are not really there for—they are really only there for something catastrophic.

I had the situation where I did have two bartenders that kind of teetered on that 33-, 34-hour week and under the plan, I had to at least offer it to them. You know, I wanted to offer it to them as an option. But it was—it literally was one whole week's pay for them. Their mentality is they can't justify that because they can't live like that.

So you know, in the restaurant industry where you do have a lot of back-of-the-house people who may start at $10, $11, $12 an hour, for them, you know the fact at $250, $300 a month, they can't fathom that.

Chairman VITTER. Jim, I assume you have also seen in restaurant, and other businesses, certain employees being pushed below 30 hours——

Mr. URDIALES. Right.

Chairman VITTER [continuing]. For that reason because it changes the calculation.

Mr. URDIALES. Very much so.

Chairman VITTER. Any other?

Margot.

Ms. MAY. That's what I was going to bring up is personally it hasn't affected us, but I have seen, unfortunately, businesses that don't want to have to go under working more and not have others working, but their employees can't afford the ObamaCare and they can't afford to not have the workers. So they have to supplement

it in some way. It just messes up the whole entire purpose of what you're trying to do, run your business.

Chairman VITTER. As I mentioned a while ago, we are putting together a small business tax reform bill. I will get each of you an outline of that bill in its present draft form, and any specific provisions that really have a big impact on small business that aren't there, that we should consider and include, please let us know. We want your input on that.

We are going to introduce it soon. I think we are covering the big items, certainly Section 179 expensing, making that permanent is one of the obvious ones, but certainly want your input on that.

We are going to start to wrap up. Thanks to everybody for being here and special thanks to our four great panelists. Let's give them a round of applause.

Thank you all very much. As I told you beforehand, you're the meat of this program and you gave the real world perspective that we were absolutely after. And I know it's a sacrifice to come here, take time out of work, so thank you for that. And thanks to everybody for coming out today as well.

Before you leave, let me highlight two things. As I suggested a minute ago, I want this to be an ongoing conversation and if you have any specific problems with the IRS, or some other agency, please let us know the details. We work on those specific cases all the time. All of my contact information is right here on the handout and so please let us know those details so we can follow up.

In addition, our Small Business Committee has a little brochure that's available called "The Small Business Road Map" that gives you a lot of good small business contact information in Louisiana, specifically. So please look for this and pick this up and use it on a regular basis.

With that, thank you very much, very much, and have a great rest of the day.

[Whereupon, at 10:36 a.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

Chairman David Vitter Hearing Summary Statement

U.S. Senate Committee on Small Business and Entrepreneurship

"Reducing the Federal Tax Burden for America's Small Businesses"

May 4, 2015

Good morning, and thank you for joining me for today's Senate Small Business Committee field hearing to examine ways to reduce the federal tax burden for Louisiana small businesses.

Small businesses provide the majority of job opportunities across the United States; but when you consider the burden of tax compliance that's placed on their shoulders, you may wonder how small businesses stay open at all.

Small businesses now rank the administrative portion of taxes as a greater burden than the financial cost. I don't need to tell you about that because you feel it every day and so does every other small business in America. I want today's conversation to discuss your experiences and your recommendations so that others – including my colleagues in Washington – can better understand the consequences of the current regulatory environment.

The federal tax code is approximately 74,000 pages long and is continuing to grow. Under the current Administration, it's already grown approximately 7,000 pages with no end in sight. And just for some perspective, the code was only 400 pages when it was first created.

Small businesses in the U.S. spend approximately 6 billion hours fulfilling their income tax obligations. That doesn't even take into account state income taxes or sales tax that small business may have to handle. Over forty percent of small businesses spend 80 hours, and over a quarter of all small businesses now spend more than 120 hours a year on tax compliance. Imagine if those billions of hours spent complying with IRS could be spent focusing on growing your company, and what that would mean for our national economy and our Louisiana economy.

The cost of compliance to small businesses is 70% higher than bigger firms. In fact, 1 in 3 small businesses spend more than $10,000 just on federal tax administration, and half spend more than $5000. No offense to our accountant who is with us today, but a small business shouldn't have to hire an accountant in the first place to start and maintain a business. It should be simple enough that you can take that money you would otherwise pay an accountant and invest that into your company.

For some perspective on all these facts I've just mentioned: that's equivalent to over 50 King James Bibles, three 40 hour work weeks, and the cost of taking your family to Disneyworld, all for a small business owner like you to comply with federal tax law each year. And I haven't even mentioned the actual taxes themselves and how much those cost you.

You don't have the army of accountants and tax attorneys that "too big to fail" banks have at their disposal that take advantage of every loophole of the overly complicated tax code. No, you may only have you and a few others concentrating on the business side, and if you are really fortunate, a CPA on payroll to worry about the taxes.

It's an unfortunate truth, but Congress and the IRS simply do not lean towards the opinions of small businesses when crafting laws and regulations. But as Chairman of the Senate Small Business Committee, I'm working to change that. That is what this hearing is all about today.

I've been listening to the concerns and issues of small businesses across this state and am here to listen to your experiences and feedback. When I get back to Washington, I am preparing to introduce legislation that can reduce some of that burden and address many of the issues that you have discussed with me.

Just a few of the provisions include permanently extending Section 179 expensing, increasing the limit for cash basis accounting, eliminate burdensome record keeping requirements for business computer equipment, reducing the complex rules associated with small business retirement accounts, and requiring the IRS to consult small business representatives before passing new rules and regulations that may affect them, among many others.

These are real solutions to real problems and I am confident they will be a first step to removing that burden altogether.

Again, thank you for being here this morning, and I look forward to hearing from our witnesses.

