

United States Senate

WASHINGTON, DC 20510

May 1st, 2012

Senator Max Baucus
Chairman
Senate Finance Committee
Washington, DC 20510

Senator Orrin Hatch
Ranking Member
Senate Finance Committee
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Hatch:

As the Committee reviews expired and expiring tax provisions in coming months, we respectfully request that you give particular consideration to extending the five-year holding period in connection with the built-in gains (“BIG”) of S corporations.

S corporations are the cornerstone of the business community. Such corporations are located in every state, participate in a broad range of industries, and employ one out of every four private-sector workers. For many of these Main Street businesses, access to capital is a primary challenge that inhibits their ability to invest, expand, and create jobs. Much like bonus depreciation, the shorter, five-year holding period serves as a powerful incentive for these closely-held businesses to increase their investment efforts.

Prior to recent congressional action, the built-in gains holding period was ten years. This meant that any business that converted to S status would need to retain appreciated property held at the time of the conversion for at least ten years or face a punitive level of tax equal to the highest corporate tax, on top of the applicable federal, state and local taxes. For companies unable to wait the ten years, this could mean a tax burden of nearly sixty percent on the sale of an asset. The BIG tax effectively “locks-up” capital, forcing companies to cut back on planned investments or seek credit in tight financial markets. This is a particular challenge for S corporations as closely-held businesses have limited access to the public markets.

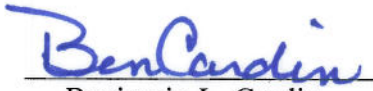
In 2009, Congress acted to reduce the BIG holding period to seven years, and again it acted in 2010 to extend and further reduce the holding period to five years. In doing so, Congress concluded, rightly in our view, that ten years is simply too long to reasonably ask a company to commit to retaining any particular asset. Rather, it determined that a five-year holding period better matches current business planning cycles. At the same time, it retains the original policy intent of the holding period, which was to avoid abusive conversions.

At the end of 2011, the five-year holding period for built-in gains expired. Now, companies must wait the longer, ten-year holding period before divesting themselves of any appreciated assets or face punitive taxes. According to the IRS, tens of thousands of corporations convert to S status each year, so this excessive holding period is likely inhibiting significant economic activity by preventing many of these businesses from accessing their own capital. At a time when the economy is suffering from a lack of capital, this outcome makes little sense.

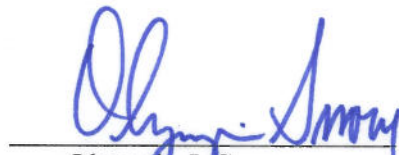
In an effort to assist an economy starved for capital and modernize outdated and punitive tax rules, we believe an extension of the five-year holding period for built-in gains should be a priority for this Committee and the U.S. Senate. BIG relief would improve the ability of S corporations to respond to the demands of an extremely competitive business environment and remove impediments that prevent them from operating on a level playing field with their counterparts here in the United States.

We appreciated working with you to enact the reductions in the holding period in the recent past. Based on our previous collaboration, we are hopeful that we again can work together to make this important provision law.

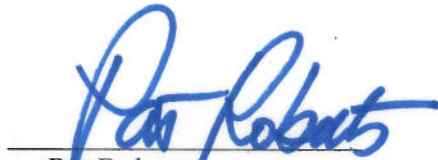
Sincerely,



Benjamin L. Cardin
U.S. Senator



Olympia J. Snowe
U.S. Senator



Pat Roberts
U.S. Senator



Mary Landrieu
U.S. Senator