DEFENDING AMERICA'S SMALL AND FAMILY-OWNED BUSINESSES

January 11, 2018

Dear S-CORP Member:

Well that was a roller coaster ride. In just ten weeks, Congress went from being nowhere on tax reform to seeing a massive rewrite of the Tax Code enacted into law. It was a remarkable accomplishment whose benefits are already being felt in the job and equity markets. The stock markets like the new tax bill.

But does the new tax bill like Main Street? That's a little more complicated.

Thanks to the efforts of your S-Corp team and allies, the final version of the bill is a dramatic improvement over earlier drafts – the new pass-through deduction is larger, a broader swath of businesses will benefit, and exporters will not be penalized. Those improvements spell the difference between a tax hike and a tax cut for many Main Street employers.

To win these changes, S-Corp worked with trade associations and key allies in Congress – particularly Senators Ron Johnson (R-WI), Steve Daines (R-MT), and Jim Inhofe (R-OK). Theses Senators were champions for Main Street business, and S-Corp worked with them right up to the eleventh hour to improve the bill. Our membership stepped up as well. They hit the Hill enmasse, they got their stories into the press, and they picked up the phone and spoke directly to key policymakers.

As a result, the final bill is something that benefits many members of the S corporation community, but that outcome is not universal, it is not permanent, and it is not stable.

The simple reality is that many S corporations and other pass-through businesses will miss out – they are in the wrong industry or don't have sufficient employees to make full use of the deduction. For those that do get the deduction, the help is temporary. It's set to expire in a few years, so we have another fiscal cliff on our hands.

Finally, the deduction itself is unstable, both politically and from a policy perspective. As the Tax Policy Center noted the other day:

> *Almost all tax experts agree that many businesses will need to consult tax lawyers and accountants for years to come to minimize taxes and insure compliance with the new law. Perhaps millions will change their form of ownership.*

S-Corp has been arguing for years that real tax reform would establish a single top rate applying to all forms of income, and the complexity and polical complications surrounding the deduction just reinforce that point.

So the S corporation community, having just won some hard-fought fights, starts 2018 with a big target slapped squarely on its back. What are our priorities for the coming year?

1. Stablize the Deduction: Gaurdrails are important. There is a certain justice to the deduction's W-2 limitation applied to larger pass-through businesses. At the least, it requires a business to create jobs before it gets the deduction. Guardrails for smaller pass-through businesses, on the other hand, are virtually non-existent. It appears that anybody under the income threshold can create an LLC and claim the deduction. So we expect this issue to be revisited in 2018, and our goal will be as before – work with Treasury and Congress to successfully distinguish between wages and real profits for businesses of all sizes.

2. Restore Full SALT Deductions: The tax bill eliminates the deduction for most state and local income taxes levied on pass-through business income. C corporations continue to deduct these taxes. This result is not well understood in the S corporation community and we expect the issue to gain steam as we approach the first quarter tax filing deadline.

3. Fix the International Rules: S corporations were shut out of the international reforms -- the pass-through deduction does not apply to foreign-source income, the territorial provisions exclude flow-through entities, and the new "GILTI" tax imposes a 38.5 percent worldwide minimum tax on CFCs owned by S corporations.

4. Repeal the Net Investment Income Tax: Republican leadership promised to repeal the Net Investment Income Tax (NIIT) following the election of President Trump. The failure of health care reform, however, coupled with the decision to not repeal the NIIT in tax reform, means marginal rates on certain S corporations will 3.8 percentage points higher in 2018. S-Corp will continue to press Congress to repeal this destructive tax.

Tax reform should be a positive for Americans and the economy, but those benefits should not come at the expense of Main Street businesses. The improvements S-Corp secured during the tax reform debate significantly improved the bill. Making progress on the four priorities listed above would turn it into a home run.

Our S Corporation Modernization Act scored a couple victories in tax reform. Two of its provisions were included in the final bill, including our long-term effort to allow for foreign ownership of S corporations through electing small business trusts. This is a big deal to S corporations needing to raise capital, or those with large families where some of the family shareholders live or marry overseas. For 2018, we will continue to press for new rules that improve the rules governing how S corporations operate.

Finally, if 2017 demonstrated one thing, it reinforced the importance of having really good reseach to back up your advocacy efforts. In past years, S-Corp sponsored research has defined the pass-through tax discussion in Congress and in elections. Our most recent paper – highlighting the importance of family businesses to the American economy – helped better articulate the pass-through position as Congress debated tax reform. We need fresh research to be at the forefront of future tax discussions in 2018, so expect lots of good reseach coming your way.

So 2017 was a busy year, and 2018 promises to be just as busy. What can you do to help?

- ✓ **Renew your membership for 2018. S-CORP is not flashy, and we don't have lots of bells and whistles. What do we have is great advocacy, and advocacy starts with our members. Renew today!**
- ✓ **Spread the word. Our best ambassadors and recruiters are our members. Let other private businesses in your community know about S-CORP and the important work that we do.**

The debate over tax reform demonstrated once again that if S corporations and their advisors are not willing to defend our businesses and the people we employ, who will?

Again, I am deeply appreciative of your support and look forward to working with you in 2018 to defend the greatest vehicle for private enterprise ever invented – the S corporation.

Sincerely,

Tony Simmons
Chairman, S Corporation Association
President & CEO, The McIlhenny Company