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Executive Director

W. PATRICK EVANS
Chief Tax Counsel

December 8, 2017

The Honorable Kevin P. Brady
Chairman
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Richard E. Neal
Ranking Member
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Orrin G. Hatch
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Ronald L. Wyden
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Retention of the Corporate Alternative Minimum Tax Under H.R. 1, the Tax Cuts and Jobs Act

Dear Chairmen Brady and Hatch, and Ranking Members Neal and Wyden:

On behalf of Tax Executives Institute Inc. (“TEI” or the “Institute”), I am writing to add the Institute’s voice to the growing chorus of taxpayers concerned about the Senate tax reform bill’s retention of the corporate alternative minimum tax. TEI is the preeminent association of in-house tax professionals worldwide, with more than 7,000 members representing a cross-section of the business community, and is dedicated to the development of sound tax policy, uniform and equitable enforcement of tax laws, and minimization of administrative and compliance costs to the benefit of both government and taxpayers.

Under current law, an alternative minimum tax (“AMT”) is imposed on a corporation to the extent the corporation’s tentative minimum tax exceeds its regular tax. This tentative minimum tax is computed at the rate of 20% on the corporation’s alternative minimum taxable income (“AMTI”) in excess of an exemption amount. AMTI is the taxpayer’s regular taxable income increased by certain preference items and adjusted by determining the tax treatment of certain items in a manner that negates the deferral of income resulting from the regular tax treatment of those items. Thus, the corporate AMT places a significant administrative burden on corporations by requiring them to maintain at least three sets of books—to calculate income for financial accounting, regular corporate income tax, and corporate AMT purposes.

Recognizing the requirement that taxpayers compute their income for purposes of both the regular income tax and the AMT as “one of the most far-reaching complexities of the Code,”¹ the Committee on Ways and Means included a provision in the House tax reform bill that would repeal the individual and corporate AMT.² The Committee on Finance included a similar provision in the tax reform bill it reported on November 16, but the version passed by the Senate on December 2 did not. The Senate bill would retain the corporate AMT without making any change to current law.

Retaining the corporate AMT under the *Tax Cuts and Jobs Act* would only add to the administrative burden, complexity, and cost that corporate taxpayers endure under current law. Under the Senate bill, beginning in 2019, the regular corporate income tax rate and the corporate AMT rate each would be 20%. As a result, the number of corporations that would be subject to the corporate AMT would be vastly increased from the number of corporations currently subject thereto.

More importantly, however, retaining the corporate AMT under the *Tax Cuts and Jobs Act* would significantly undermine some of its signature pro-growth policies, including the retention of the research tax credit and the establishment of a participation exemption system for the taxation of foreign income. For instance, the various nonrefundable business credits allowed under the regular corporate income tax, such as the research tax credit, generally may not be claimed against the corporate AMT. Furthermore, retention of the corporate AMT would materially limit the intended benefit of the Senate bill’s deduction for the foreign-source portion of dividends received by U.S. corporations from specified 10-percent owned foreign corporations.³ This would severely undercut the legislative aim of modernizing the U.S. international tax system to unleash the global competitiveness of America and American businesses by shifting to a territorial system of taxing corporate income—a central tenet of both House and Senate bills.

These and other likely unintended consequences of retaining the corporate AMT await corporate taxpayers should the Senate bill be enacted in its current form. TEI questions the overall policy rationale for a tax reform plan where one set of rules grants certain benefits to taxpayers but another one eliminates or significantly limits them. Accordingly, TEI respectfully urges members of the House-Senate conference committee for H.R. 1, the *Tax Cuts and Jobs Act*, to repeal the corporate AMT.

¹ H.R. Rep. No. 115-409, at 224 (2017).

² Tax Cuts and Jobs Act, H.R. 1, 115th Cong. § 2001 (as engrossed by House, Nov. 16, 2017).

³ See, e.g., Neil Barr et al., *Last Minute Retention of Corporate AMT in Senate Tax Bill has Unintended Consequences*, Davis Polk Tax Reform and Transition (Dec. 3, 2017), <https://www.taxreformandtransition.com/2017/12/last-minute-retention-of-corporate-amt-in-senate-tax-bill-has-unintended-consequences> (illustrating that the deduction would be added back to AMTI for purposes of determining the corporation’s “adjusted current earnings” under section 56(g) and therefore, all other things being equal, would increase AMTI by an amount equal to 75% of the amount of the deduction, effectively undoing 75% of the intended tax benefit thereof).

TEI's comments were prepared under the aegis of the Institute's Tax Reform Task Force. Watson M. McLeish, Tax Counsel for the Institute, coordinated their preparation. Should you have questions about TEI's comments, please contact Mr. McLeish at (202) 470-3600 or wmcleish@tei.org.

Respectfully submitted,



Robert L. Howren
International President