

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

MEMORANDUM

TO: Members of the Committee on Small Business

FROM: Committee Majority Staff

DATE: April 12, 2023

RE: Full Committee Hearing Titled “Paying Their Fair Share: How Tax Hikes Crush the Competitiveness of Small Businesses.”

On **April 18, 2023, at 2:00 P.M. (EST)**, the Committee on Small Business will hold a hearing titled, **“Paying Their Fair Share: How Tax Hikes Crush the Competitiveness of Small Businesses.”** The meeting will convene in room 2360 of the Rayburn House Office Building. The purpose of this hearing is to explore the upcoming tax changes that will adversely impact small businesses and how increasing their tax burden will stifle economic growth.

I. Witnesses

- Ms. Lynn Mucenski Keck, Principal & National Lead, Federal Tax Policy, Withum
- Mr. Russell Boeing, President, Texas Farm Bureau
- Mr. Warren Hudak, President, Hudak & Company
- Ms. Anne Zimmerman, Founder & Owner, Zimmerman & Co CPAs Inc. & Co-Chair of Small Business for America’s Future

II. Background

Between inflation, a skilled worker shortage, and supply chain disruptions, small businesses are dealing with many unique challenges the past few years. During this period of economic uncertainty, small businesses are ill equipped to deal with potential tax increases. This hearing will examine the tax code and what provisions would be beneficial or detrimental to small businesses should changes be made.

Tax Cuts and Jobs Act

The Tax Cuts and Jobs Act¹ (TCJA) in 2017 led by President Trump and a Republican Congress delivered real incentives to entrepreneurs to start a small business.

The TCJA lowered individual rates, which helped pass-through businesses such as LLC's, sole-proprietorships, partnerships, and S-Corps.² A pass-through business is a business where net revenues pass through to an owner's individual income taxes. The individual tax rate has a substantial impact on small businesses as 77.5 percent of all small employers and 98.5 percent of small businesses without employees are organized as pass-through businesses.³ In addition to lowering these individual rates, the TCJA, for the first time, allowed for a 20 percent deduction for qualified business income for pass-through businesses.⁴ By lowering individual rates and creating this 20 percent small business deduction for pass-throughs, Congress brought substantial tax relief to every variety of small business. Additionally, the TCJA lowered and made permanent the C-Corp tax rate, taking it from 35 to 21 percent.⁵ This provision helped the 22.5 percent of all small businesses in the U.S. which are incorporated as C-Corps keep more of their hard-earned money.⁶

In the coming years, there are various provisions set to expire from the TCJA. The lowered individual rates, the 20 percent Pass-Through Deduction (Section 199(a)), and the Estate Tax Exemption (discussed below) are all set to expire on December 31, 2025. The unlimited expensing provision expired on December 31, 2022. This provision temporarily allowed 100 percent expensing for business property acquired and placed in service after Sept. 27, 2017 and before Jan. 1, 2023.⁷ The 100 percent allowance generally decreases by 20 percent each year in taxable years beginning after 2022 and it fully expires Jan. 1, 2027.⁸

The President's 2024 Budget Proposal

The Biden Administration's 2024 Budget Request proposes \$1.8 Trillion in new taxes.⁹ This includes an expansion of essentially the Net Investment Income Tax to include the active income of pass-through business owners earning over \$400,000.¹⁰ By including active income this tax acts as a surtax on passthrough business income. "When combined with surtaxes, the President's

¹ Tax Cuts & Jobs Act, Pub. L. No. 115-97, §199(a) (2017).

² Tax Cuts & Jobs Act, *supra note 1*.

³ U.S. SMALL BUS. ADMIN., OFFICE OF ADVOCACY, FREQUENTLY ASKED QUESTIONS (Dec. 2021), <https://advocacy.sba.gov/wp-content/uploads/2021/12/Small-Business-FAQ-Revised-December-2021.pdf>.

⁴ Tax Cuts & Jobs Act, Pub. L. No. 115-97, §199(a) (2017).

⁵ *Id.*

⁶ U.S. SMALL BUS. ADMIN., OFFICE OF ADVOCACY, FREQUENTLY ASKED QUESTIONS (Dec. 2021), <https://advocacy.sba.gov/wp-content/uploads/2021/12/Small-Business-FAQ-Revised-December-2021.pdf>.

⁷ *Tax Cuts & Jobs Act: a comparison for small businesses*, INTERNAL REVENUE SERV. (Jul. 11, 2022), <https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses>.

⁸ *Id.*

⁹ BUDGET OF THE U.S. GOVT., FISCAL YEAR 2024 (Mar. 2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/budget_fy2024.pdf.

¹⁰ *Id.*

budget calls for hiking the individual federal income tax rate up to its highest level since 1986—nearly 45 percent.”¹¹

The proposal also demands an additional \$235 billion in taxes for non-corporate businesses through an increase in the top individual tax rate.¹² Nearly one million small businesses organized as “C” corporations will also face a tax rate that is 33 percent higher.¹³ The proposal also calls for a \$77 billion increase in the death tax that could force family farms, ranches, and other generational businesses to go out of business in order to pay an enormous tax bill.¹⁴ This is in direct contrast to the Republicans TCJA, which doubled the Estate tax exemption.¹⁵ This is critical for family farms and small businesses that want to pass down their business to the next generation.

Furthermore, the proposal contains an increased corporate tax rate from 21 to 28 percent. When you compare that to China’s (25 percent) and Europe’s average (21.5 percent), this will have a significant negative affect on United States companies’ competitive advantage over foreign companies.

According to the Tax Foundation, Bidens tax hikes would destroy 335,000 jobs, cut workers’ wages by 1 percent, and reduce growth in America’s economy by 1.3 percent.¹⁶

III. Conclusion

In less than three years taxes will increase on millions of small business owners unless Congress acts. These tax hikes will put small business owners at a competitive disadvantage with larger businesses who benefit from a permanent C-corp rate. When you couple these potential tax increases with tax increases proposed by the President, small businesses are at risk of incurring a significantly new tax burden.

¹¹ News Release, U.S. Senate Comm. on Finance, President Biden’s \$4.7 Trillion Tax Hike (Mar. 14, 2023), <https://www.finance.senate.gov/ranking-members-news/president-bidens-47-trillion-tax-hike#:~:text=Congress's>.

¹² BUDGET OF THE U.S. GOVT., FISCAL YEAR 2024, *supra* note 9.

¹³ *Id.*

¹⁴ News Release, U.S. Senate Comm. on Finance, President Biden’s \$4.7 Trillion Tax Hike (Mar. 14, 2023) <https://www.finance.senate.gov/ranking-members-news/president-bidens-47-trillion-tax-hike#:~:text=Congress's>.

¹⁵ Tax Cuts & Jobs Act, *supra* note 1.

¹⁶ *Details and Analysis of President Biden’s Fiscal Year 2024 Budget Proposal*, THE TAX FOUND. (Mar. 23, 2023), <https://taxfoundation.org/biden-budget-tax-proposals-analysis/>