

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

TO: Members of the Subcommittee on Economic Growth, Tax, and Capital Access

FROM: Committee Majority Staff

DATE: September 7, 2023

RE: Subcommittee Hearing Titled: “Enabling Success: Examining the Competitive Landscape for Small Businesses”

On **September 13, 2023 at 10:00 A.M. ET**, the Subcommittee on Economic Growth, Tax, and Capital Access will hold a hearing titled “**Enabling Success: Examining the Competitive Landscape for Small Businesses.**” The meeting will convene in room 2360 of the Rayburn House Office Building. The purpose of this hearing is to review the impact of the upcoming tax and rule changes which could harm the competitive landscape for US small businesses worldwide.

I. Witnesses

- James Chung, CEO/Franchisee, Atlas
- Holly Wade, Executive Director of the NFIB Research Center, National Federation of Independent Businesses
- Kathryn Judge, Harvey J. Goldschmid Professor of Law, Columbia Law School

II. Background

Small businesses are the backbone of the U.S. economy and play a pivotal role in keeping the U.S. a competitive innovator on the world stage. Small businesses make up 99 percent of all businesses in the US and account for 44 percent of all domestic economic activity.¹ Access to capital has been a long concern for business owners, with 77 percent of small businesses citing access to capital as a concern.² It is vital that our nation’s legal and regulatory landscape support a strong, globally competitive small business economy.

¹ Press Release, Office of Advocacy, U.S. Small Bus. Admin., Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019).

² *More than 75% of surveyed small businesses are worried about access to credit*, GOLDMAN SACHS (May 16, 2023).

The Tax Cuts and Jobs Act (TCJA), signed into law in 2017, allowed businesses to calculate taxable income following Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA).³ However, since the Depreciation and Amortization provisions expired in January 2022, businesses have only been permitted to base their deductions on their Earnings Before Interest and Taxes (EBIT).⁴ For companies with a large amount of capital expenditures, the difference between EBIT and EBITDA can lead to a significant tax increase.⁵

Currently, the deduction for any tax year cannot exceed the sum of the taxpayer's interest income, 30 percent of the taxpayer's adjusted taxable income, and the taxpayer's floor plan financing interest.⁶ By allowing businesses to only deduct up to 30 percent of adjusted taxable income, substantial interest expenses may be prohibited from deduction.⁷ While this provision does not apply to businesses making less than \$27 million dollars in annual revenue, this still applies to small businesses in up to 685 industries.⁸

Additionally, earlier this year, federal banking agencies announced a new framework ruling for banking organizations with total assets of \$100 billion or more.⁹ This framework would implement the international standards issued by the Basel Committee on Banking Supervision and is commonly referred to as Basel III. Basel III would materially increase capital requirements, and align the regulatory capital calculation and the calculation of risk-weighted assets across large bank organizations.¹⁰ These increased costs will force banks to either provide financing to fewer customers or provide it at a higher cost.¹¹ Additionally, lenders typically view smaller entities as a riskier investment.¹² These changes could impact the access to capital that small business owners need to operate and expand their businesses.

III. Conclusion

Small businesses play an important role in the American economy. We must ensure they are given the resources needed to flourish and compete. This hearing will examine the changes to the

³ Garrett Watson, *Tighter Limits on U.S. Interest Deductibility Make U.S. an Outlier and Increase Pain of Rising Interest Rates*, THE TAX FOUND. (Dec. 5, 2022).

⁴ Garrett Watson, *Tighter Limits on U.S. Interest Deductibility Make U.S. an Outlier and Increase Pain of Rising Interest Rates*, THE TAX FOUND. (Dec. 5, 2022).

⁵ David McGuire, *Expired TCJA Provisions Hurt Businesses Come Tax Time*, FORBES (Feb 27, 2023).

⁶ Basic questions and answers about the limitation on the deduction for business interest expense, INTERNAL REVENUE SERV. (last visited Aug. 24, 2023), <https://www.irs.gov/newsroom/basic-questions-and-answers-about-the-limitation-on-the-deduction-for-business-interest-expense>.

⁷ Carolyn Quill, *Sec. 163(j) business interest limitation: New rules for 2022*, BENJAMIN BUCKNER, CPA, HUGHES PITTMAN & GUPTON LLP (Dec. 1, 2022).

⁸ Basic questions and answers about the limitation on the deduction for business interest expense, INTERNAL REVENUE SERV. (last visited Aug. 24, 2023), <https://www.irs.gov/newsroom/basic-questions-and-answers-about-the-limitation-on-the-deduction-for-business-interest-expense>; Small Business Size Regulations, 13 CFR § 121.201 (2023).

⁹ *Federal Banking Agencies Issue Basel III Endgame Package of Reforms*, GIBSON DUNN (Aug 3, 2023).

¹⁰ *Federal Banking Agencies Issue Basel III Endgame Package of Reforms*, GIBSON DUNN (Aug 3, 2023).

¹¹ *Federal Banking Agencies Issue Basel III Endgame Package of Reforms*, GIBSON DUNN (Aug 3, 2023).

¹² BOARD OF GOVERNORS OF THE FED. RESERVE SYSTEM, AVAILABILITY OF CREDIT TO SMALL BUSINESSES, 2 (Nov. 4, 2022).

TCJA and the proposed Basel III rule, and how they will affect the ability of small businesses to remain competitive against both larger companies and international competitors.