

June 14, 2016

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Orrin Hatch
Chairman
Committee on Finance
U.S. Senate
Washington, DC 20510

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Ron Wyden
Ranking Member
Committee on Finance
U.S. Senate
Washington, DC 20510

Dear Chairmen Brady and Hatch and Ranking Members Levin and Wyden:

The undersigned associations, representing thousands of global and domestic businesses in the United States across a wide range of industries, have serious concerns about the proposed Section 385 regulations released by the Treasury Department on April 4, 2016. This proposal, which overturns long-standing tax policy and well-established case law and is of questionable validity, will significantly increase the cost of doing business in the United States, creating further obstacles to much needed investment, job creation and economic growth.

Since the proposal will have a significant and disruptive impact on critical business operations of a wide swath of employers in the United States, it is critically important for policy makers to consider the overall effect of the proposal on the economy and for companies to have adequate time to assess the impact of these new rules on their business operations. Thus, we ask you to support our efforts to encourage Treasury, at a minimum, to: delay the effective date of the proposed debt-equity recharacterization rule until 90 days after the proposed regulations are finalized; extend the public comment period from July 7, 2016, to October 5, 2016, at the earliest; and dedicate adequate time and resources for a thorough review and analysis of the public comments rather than seeking to finalize the regulations on an arbitrarily rapid timeline.

Under the proposal, the Internal Revenue Service (IRS) will have wide latitude to recharacterize a company's related party debt as equity, increasing taxes on businesses and threatening legitimate and well-established business practices, from corporate reorganizations to day-to-day cash management. By creating uncertainty for intercompany financing, the proposed regulations push companies to use more expensive external debt and interfere with common lending arrangements such as cash pooling. In addition, the question of whether an instrument is debt or equity has significant consequences to business planning and operations, including the legal classification of a business, eligibility for withholding tax exemptions under tax treaties and the ability to file a consolidated tax return.

Moreover, the proposal, which includes a retroactive effective date and a three-year look-forward/look-back period, will create even more uncertainty for companies in the United States, making prudent business planning unduly difficult and complex. The regulations also will make it even harder for U.S. companies to compete in the global economy. In many cases, our trading partners may not recognize recharacterized debt as equity. This mismatch in treatment could lead to double taxation and create conflicts under tax treaties on the treatment of interest and dividends.

Thank you in advance for actively supporting our effort. We look forward to working with you to advance tax policy that promotes investment, job creation and economic growth in the United States.

Sincerely,

AdvaMed - Advanced Medical Technology Association
AICC, The Independent Packaging Association
American Chemistry Council
American Coatings Association
American Forest & Paper Association
American Iron and Steel Institute
American Petroleum Institute
American Sportfishing Association
Association for Financial Professionals
Association of Global Automakers
Biotechnology Innovation Organization
Business Roundtable
Colorado Retail Council
CompTIA
Confederation of British Industry
Council of Industry of Southeastern New York
CTIA
Financial Executives International
Global Cold Chain Alliance
Idaho Retailers Association
Indiana Manufacturers Association, Inc.
Indiana Retail Council
Information Technology Industry Council
Iowa Association of Business and Industry
Maryland Retailers Association
Minnesota Retailers Association
Missouri Retailers Association
Motion Picture Association of America
Motor & Equipment Manufacturers Association
NAHAD - The Association for Hose & Accessories Distribution
National Association of Manufacturers
National Association of Real Estate Investment Trusts®
National Cable & Telecommunications Association
National Council for Advanced Manufacturing
National Foreign Trade Council
National Lumber and Building Material Dealers Association
National Retail Federation
Nebraska Retail Federation
New Jersey Retail Merchants Association
New Mexico Business Coalition

New Mexico Retail Association
North American Association of Food Equipment Manufacturers (NAFEM)
Northeast PA Manufacturers & Employers Association
NPES The Association for Suppliers of Printing, Publishing and Converting Technologies
Oklahoma Retail Merchants Association
Orange County Technology Alliance
Organization for International Investment
Pennsylvania Retailers' Association
Precision Metalforming Association
Retail Association of Nevada
Retail Council of New York State
Retail Industry Leaders Association
The S Corporation Association
Securities Industry and Financial Markets Association
Semiconductor Industry Association
Silicon Valley Leadership Group
Software Finance and Tax Executives Council
South Dakota Retailers Association
State Chamber of Oklahoma
Technology Association of Georgia
Tennessee Chamber of Commerce and Industry / Tennessee Manufacturers Association
Texas Association of Manufacturers
Carpet and Rug Institute
Trans-Atlantic Business Council (TABC)
U.S. Chamber of Commerce
United States Council for International Business
United States Telecom Association
Virginia Retail Merchants Association
Washington Retail Association