



Jay Timmons

Senior Vice President of Policy

January 25, 2007

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The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The National Association of Manufacturers (NAM)—the nation's largest industrial trade association—is extremely concerned about several tax increases included in the Small Business and Work Opportunity Act of 2007 (S. 349). We strongly urge you to reject these revenue raisers when they come to the Senate floor.

NAM members believe strongly that tax relief is critical to durable economic growth and job creation. In contrast, revenue raisers—like those included in the pending legislation—will impose new taxes on many businesses, making them less competitive in the global marketplace. As this bill moves through the legislative process, we urge you to drop provisions that:

- **Limit Deferrals Under Nonqualified Deferred Compensation Plans;**
- **Deny Deductions for Punitive Damage Payments; and**
- **Deny Deductions for Settlement Payments.**

Nonqualified Deferred Compensation

In 2004, Congress adopted significant changes to nonqualified deferred compensation that were designed to address perceived abuses. Regulations to implement those changes, which have not yet been finalized, will run to hundreds of pages. The 2004 changes should be allowed to take effect without adding new restrictions.

The provision in S. 349, which is not targeted at any abuse of deferred compensation rules, is a solution in search of a problem. By imposing significant limitations on nonqualified deferred compensation plans, this anti-savings proposal would effectively eliminate the ability of employers to use deferred compensation as a retention tool for valued employees.

Limiting the annual amount of deferred compensation, will directly and adversely affect middle management employees. Moreover, any violation of the new rule, even an unintentional violation, will trigger immediate taxation of all prior deferrals, as well as a 20-percent additional tax and retroactive interest. According to the Committee Report that accompanies S. 349, earnings on past deferrals would be treated as additional deferrals for purposes of the annual limitation. As a

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result, violations of the new rule could occur merely as the result of the passage of time and not as a result of any action by the employee or the company.

Finally, if enacted, the proposed rules would be extremely difficult to administer. For example, participants, who must make deferral elections before the beginning of the year, will not know how much they can defer until after the end of the year in which they must make their deferral election. At a time when Treasury has not yet finalized guidance on the 2004 rules, enacting new legislation on deferred compensation will make a bad situation worse.

Punitive Damages

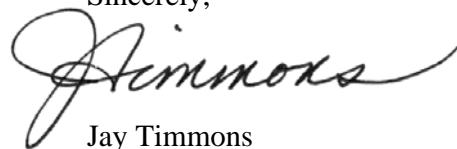
The proposal to make punitive damage payments in civil suits non-deductible, whether made in satisfaction of a judgment or in settlement of a claim, runs counter to fundamental and well-established tax principles, and represents unsound public policy. By providing different tax treatment for compensatory and punitive damages, the proposal would depart from a central objective of federal tax policy – to provide similar tax treatment for similar behavior. Similarly, eliminating the deduction would impose a “double tax” on the same income since both the payor *and* the recipient would be subject to tax on the punitive damages.

Settlement Payments

Under current law, a business cannot deduct from income “any fine or similar penalty paid to a government for the violation of any law.” By significantly extending this provision to the non-penalty portion of settlement payments, the proposal would deny deductions for most, if not all, settlement agreements with the government on a wide range of issues, regardless of whether there was any wrongdoing. The proposal represents a dramatic change in long-standing tax law that would act as a disincentive for companies to enter into settlement agreements with the government. The net effect of the proposal would be to eliminate a deduction for an ordinary and necessary business expense based on the willingness of the taxpayer to settle a legal dispute.

NAM members believe strongly that tax relief will go a long way to ensuring that our economy keeps growing. Conversely, tax increases on businesses, like those outlined above, will negate much of the positive impact of tax relief and, in some cases, threaten continued economic growth. Thank you in advance for working to defeat these business tax increases.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Timmons", written in a cursive style.

Jay Timmons
Senior Vice President
for Policy and Government Relations
National Association of Manufacturers