CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organization of every size, sector, and region, supports extending expired tax provisions, however, because of the inclusion of permanent tax increases to pay for short term measures, opposes H.R. 4213, the "American Jobs and Closing Tax Loopholes Act of 2010."

The Chamber has long supported provisions which encourage job growth and economic recovery, such as the extension of expired business provisions, the pension funding relief, and the Build America Bonds provisions of this legislation. However, Congress' decision with this legislation, to saddle small business, American worldwide companies, and investment partnerships with draconian tax increases that will hinder job creation, decrease the competitiveness of American businesses, and deter economic growth, leaves the Chamber no choice but to oppose this legislation as currently drafted.

Many of these provisions would make significant changes to long-standing aspects of U.S. tax law and policy and have never been considered in hearings or other bills. Even worse, many of these provisions are retroactive, imposing serious costs and complications on companies seeking to comply with these changes. As such, the Chamber opposes:

- **Changes to the tax treatment of real estate, energy, and investment partnerships.**
  - **Changes to the tax treatment of carried interest**. Any change to the fundamental tax treatment of partnership profits interests or carried interests would reverse their longstanding tax treatment, which could lead to unintended negative consequences for capital formation and innovation in real estate, energy, investment, and other sectors of the economy. If Congress is seeking to enact policies which spur sustainable job creation and foster market stability, implementing changes to longstanding law that discourage investment and deter economic growth simply is not the answer.
  - **Changes to the tax treatment of the sale of investment services management partnerships (ISMPs).** The Chamber strongly opposes the targeted and punitive changes to the treatment of the sale of ISMPs in this legislation. Inconsistent with long-standing law, ISMPs would become the only businesses in the United States where the value inherent in the enterprise would be ineligible for long-term capital gains rates if the overall enterprise or part of it were sold. Real estate, private equity, and ISMPs have multiple sources of income, such as income from

fees, from carried interest, as well as from traditional capital assets, all of which add to enterprise value. Under this legislation, the mere presence of any carried interest as a source of revenue would cause all revenue associated with the investment partnership to be treated as ordinary income if and when these partnerships are sold. The Chamber strongly opposes Congress' decision to arbitrarily and unfairly single out ISMPs for this punitive tax treatment.

- **Changes to the tax treatment of small businesses by increasing payroll taxes on S corporation shareholders**. The Chamber is concerned that this provision would apply to capital investments made by businesses engaged in the service sector, hurting their ability to invest and create jobs. Further, by targeting service sector S corporations, this proposal would increase taxes on small business owners who are fully complying with the law. Finally, the Chamber is concerned that this provision would add to the Code's complexity by creating new categories of business activity that will have to be defined and litigated.

- **Changes to provisions which affect the competitiveness of American worldwide companies**. This legislation contains numerous changes to longstanding U.S. international tax law which are severely detrimental to the ability of American worldwide companies to compete globally, create jobs, and stimulate economic growth. For example:
    - **Denial of foreign tax credit with respect to foreign income not subject to U.S. taxation by reason of covered asset acquisitions** – This provision relates primarily to §338, which allows taxpayers the ability to characterize stock acquisitions as asset acquisitions for U.S. tax purposes. An acquisition can be concluded as either a share acquisition or an asset acquisition. Acquisitions by American worldwide companies are good for the U.S. economy – they provide additional jobs and broaden the U.S. tax base. Section 338 recognizes the inherent challenges and obstacles to asset acquisitions and, in effect, levels the playing field, allowing taxpayers the ability to choose the tax implications of an acquisition, regardless of the willingness of a seller to agree to one form or the other of a particular deal. Moreover, §338 unquestionably serves to encourage acquisitions by American worldwide companies by minimizing the competitive advantage that certain foreign competitors enjoy due to the participation exemption systems in which most are headquartered. This legislation would significantly strip away the benefits of §338 and would likely serve to further impede any competitive advantages of American worldwide companies in their bids for foreign targets.

    - **Limitation on the use of §956 for foreign tax credit planning (i.e., the "hopscotch" rule)** – Section 956, a longstanding provision of the Code, allows companies to repatriate cash to the United States in a tax efficient manner. Foreign business acquisitions generally result in a series of intermediate foreign holding companies which block the repatriation of earnings for a variety of reasons such as local statutory earnings deficits or other local restrictions on actual dividends. American worldwide companies have had the ability to

overcome such obstacles through the use of §956. This provision was particularly beneficial during the recent economic downturn and ensuing credit crunch when it was necessary for American worldwide companies to repatriate significant funds in order to meet the financial needs of their U.S. businesses. The revenue raising estimate for this provision seems to assume that taxpayers would simply bear the additional cost of the provision. However, the Chamber believes that most taxpayers, given the choice, would choose simply to not repatriate the earnings. Therefore, the legislation's proposed change to §956 would significantly reduce the repatriation of foreign earnings that otherwise might have been repatriated to the United States. That is a poor option if Congress seeks to enact provisions which stimulate economic growth and drive job creation.

While the economy needs an extension of expiring provisions, the Chamber cannot support legislation which imposes onerous, permanent tax increases to pay for the temporary extension of these provisions. These tax increases will stifle job creation and stunt economic growth. **The Chamber may consider votes on, or in relation to, this issue in our annual *How They Voted* scorecard**.

Sincerely,

R. Bruce Josten