June 17, 2010

Dear Senator:

The National Association of Manufacturers (NAM)—the nation's largest industrial trade association—appreciates efforts to advance temporary extensions of important tax provisions and other pro-growth tax law changes. Unfortunately, the onerous tax increases also included in substitute amendment no. 4369 to H.R. 4213, could outweigh the benefits of the pro-growth changes by imposing significant new costs on American businesses and threatening job creation, U.S. competitiveness and overall economic growth.

Recent economic reports confirm that our economy still is in recovery mode. Pro-growth tax changes, particularly those discussed below, will go a long way to help the manufacturing sector and ensure a strong and durable recovery. Conversely, the tax increases could have the entirely opposite effect, putting American manufacturing employees out of work and stifling our fragile economy.

As H.R. 4213 moves through the legislative process, the NAM strongly urges policymakers to advance legislation that includes much-needed tax relief without anti-growth, anti-competitiveness revenue raisers.

Anti-Growth Tax Increases

NAM members believe strongly that the tax increases in the bill, which would impact manufacturers of all sizes and in all industry sectors, will do significant harm to our economy. Moreover, the NAM opposes the use of permanent changes to the tax code to "pay for" temporary tax incentives.

In particular, the NAM opposes the $14 billion in international tax increases. American global companies already struggle under a worldwide tax system and one of the highest corporate tax rates in the world. The proposed changes in the international tax rules will make it even more difficult for U.S. manufacturers to compete.

Many of the tax increase proposals, which are mischaracterized as tax loopholes, actually represent significant changes to pro-growth tax policy that has been supported by Congress and the Administration. For example, the proposed anti-competitive limitation on the use of Sec. 956 loans to bring cash to the United States removes a greatly needed source of U.S. cash for worldwide American companies—a source that Treasury and the Internal Revenue Service (IRS) sought to facilitate in guidance issued as recently as last December. As we continue to work through one of the greatest credit crunches in U.S. history, taking away a source of cash for U.S. companies to grow, build and create jobs puts our recovery in great peril.

In addition, some tax increases in the bill would apply retroactively. Similarly, Congressional tax writers have not held fair and adequate hearings on many of the proposed changes. In many cases, taxpayers have relied on these long-standing tax provisions in structuring their businesses. Changing the rules midstream without fair and adequate hearings will cost jobs, investment and manufacturers' ability to compete overseas.

The NAM also is opposed to a number of other business tax increases in the bill. In particular, we oppose the increase in the tax used to fund the oil spill liability trust fund, which would quadruple from 8 cents to 49 cents per barrel. This increase will dramatically intensify the cost of operating energy facilities—especially refineries where the operating cost margins are very thin—and will create a ripple effect throughout the economy resulting in job loss and higher operating costs for manufacturers.

NAM members also oppose the proposal to tax punitive damages in the bill. Under current law, a taxpayer can deduct damages that are a result of carrying on a trade or business, regardless of whether the damages are compensatory or punitive. The new provision 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.

Pro-Growth Tax Relief

In contrast, NAM members believe that pro-growth tax law changes included in H.R. 4213 will go a long way to shore up business confidence and promote economic growth and job creation.

In particular, a seamless extension of the R&D credit is a priority for the NAM. Manufacturers claim nearly 70 percent of the R&D credit, and R&D fuels innovation that translates into new products, increased productivity and jobs. A seamless extension of the credit through 2010 will help ensure that innovation and quality R&D jobs will stay—and grow—in the United States. In the long term, strengthening and making permanent the R&D tax credit would boost GDP by $206 billion and create 510,000 jobs within a decade according to the Milken Institute report "Jobs for America" released in January 2010.

Another NAM priority is an extension of the provision that allows "look-through" treatment for payments of dividends, interest, rents and royalties between related controlled foreign corporations. Without this provision, which expired at the end of 2009, American companies would be subject to immediate U.S. taxation when they redeploy foreign earnings from active business operations in foreign markets.

Similarly, the NAM supports an extension of the provision that taxes active financial services income earned abroad by foreign subsidiaries of U.S. companies when the financing income is brought back to the United States. This provision is important to U.S. manufacturers with finance and credit affiliates that provide financing for overseas buyers. The ability to provide competitive financing for customers has a direct and positive impact on U.S. exports and manufacturing jobs.

Other tax relief provisions supported by the NAM include extensions of the energy efficiency and renewable energy tax credits and incentives in the bill, as well as a provision that will allow struggling companies to use their AMT credits to offset the cost of needed investments in machinery and equipment and the extension through 2012 of the Build American Bonds program. The NAM also supports the expansion of Sec. 25C, the credit for energy efficient windows to include new Energy Star standards, and a technical correction to the HIRE Act clarifying the application of the statute of limitations.

On the pension front, manufacturers still rely heavily on defined benefit plans as valuable employee retention tools, and NAM members appreciate efforts to provide funding relief for single and multi-employer pension plans. However, we have significant concerns about language in the bill that would require increased information reporting requirements for plans with unfunded value in excess of $75 million. We strongly recommend using a percentage rather than a dollar figure to avoid penalizing the largest plans that could be required to file even if their plans were well over 90 percent funded.

Thank you in advance for considering our request. NAM members feel strongly that pro-growth tax law changes will go a long way to shore up business confidence and promote much-needed economic growth and job creation. At the same time, coupling this relief with more than $50 billion in business tax increases will jeopardize the positive impact of the relief provisions. We look forward to working with you to advance an extenders bill that helps our economy without penalizing American manufacturers.

Sincerely,

Dorothy Coleman