ENERGY MARKETERS OF AMERICA **ISSUE BRIEF**

Small Business Tax Issues for Tax Cuts 2.0

Background

The 2017 *Tax Cuts and Jobs Act* (TCJA) cut tax rates for small and family-owned businesses and unleashed economic, job, and wage growth nationwide. It is imperative that Congress enact a reconciliation package that preserves tax parity for pass-through businesses and C-corps. Small and family-owned business owners are affected by a variety of other tax issues including, but not limited to, payroll taxes, the estate tax, and industry-specific tax credits and deductions.

"The Ask"

- **Make permanent the Section 199A deduction for pass-through businesses.** The TCJA included a new 20 percent deduction to ensure pass-through business owners pay tax rates more comparable to the corporate income tax rate, reduced to 21% by the TCJA. If allowed to expire, the Section 199A pass-through deduction will severely disadvantage these small and family-owned businesses compared to other businesses. Section 199A allows owners of certain pass-through businesses (like S corps, partnerships, and sole proprietorships) to deduct up to 20% of their qualified business income. It's a major benefit for small and mid-sized businesses, who are taxed at individual income tax rates, that effectively lowers the top tax rate on qualifying income and allows pass-throughs to keep pace with C corps. According to the U.S. Small Business Administration's Office of Advocacy, 77% of small employers and more than 90% of small businesses are organized as pass-throughs. IRS data shows that 25.9 million small businesses utilized this deduction in 2021.

    - According to a recently published EY Study on the importance of the deduction, permanently extending Section 199A would increase jobs in the small business sector by 1.2 million jobs each year and by 2.4 million annually every year thereafter. The report also found that extending the deduction would result in a $750 billion GDP increase in the small business sector over the first ten years, and a $150 billion increase annually after that. This deduction will expire at the end of 2025 if Congress fails to act.

- **Restore 100% bonus depreciation**. Next to their commitment to their employees, family-owned businesses rely on capital investments to compete, grow, and thrive. 100% bonus depreciation allows businesses to immediately write off the full cost of qualifying assets (like equipment, furniture, and improvements) in the year placed in service, rather than depreciating over time. 100% bonus depreciation enables small and family-owned businesses to invest in their businesses, boosting growth and productivity, and creating more jobs.

- **Extend the 'Section 40A' Biodiesel Blenders' Tax Credit**. The expiration of the Biodiesel Tax Credit at the end of 2024 has decimated biofuels supply chains. Many biofuel production facilities, particularly biodiesel plants, have scaled back or are shutting down entirely. A blenders tax credit remains the most effective mechanism to increase biofuel consumption—an energy priority of the administration, compared to the current 45Z production tax credit which contains structural deficiencies that will likely hinder increased consumption.

- **Preserve the capital gains tax rate**. Like the estate tax, capital gains taxes present an obstacle for capital formation and investments necessary for family businesses to expand, modernize, and succeed in an increasingly competitive market.

- **Reinstate the Business Interest Deduction Limitation (EBITDA Standard).** From 2018–2021, the limit was calculated using EBITDA (earnings before interest, taxes, depreciation, and amortization), which allowed for a higher deduction for businesses. In 2022, the limitation transitioned to EBIT (excluding depreciation and amortization), effectively tightening the cap. This change has made financing more expensive for capital-intensive businesses, particularly those relying on debt for expansion. Reinstating the EBITDA standard would ease this burden and promote investment.

- **Preserve the current tax rates and brackets enacted under the TCJA**. The 2017 tax law reduced five out of seven individual income tax rates. This adjustment directly impacts nine out of 10 small businesses organized as pass-through entities, as their income is taxed according to individual income tax brackets. With these adjustments set to expire at the end of 2025, 90 percent of small businesses will see their effective tax rates increase significantly.

- **Reduce and/or repeal the estate tax rate**. The estate tax – commonly known as the Death Tax -- severely hampers the ability for family business owners to pass the business and related assets (which are typically illiquid) to the next generation, making it more difficult for the business to continue growing, providing important jobs, and contributing to local communities. The TCJA doubled the estate tax exemption from $5.5 million for individuals and $11.1 million for those filing jointly in 2017 to $11.4 million for individuals and $22.8 million for joint filers through 2025 (adjusted annually for inflation). The increase had the effect of exempting more small family businesses from the reach of the estate tax. For tax year 2025, the exclusion was increased to $13.99 million for individuals and $27.98 million for those filing jointly. TCJA's increase to the exemption level expires at the end of 2025, cutting the exemption in half, subjecting more family-owned businesses to the estate tax and hindering business growth and expansion.

(*Committees: House Ways and Means, Senate Finance Committee, All Lawmakers)*

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