TESTIMONY OF

RAYMOND HUFF

PRESIDENT

HJB CONVENIENCE CORPORATION

AND

BOARD MEMBER

NATIONAL ASSOCIATION OF CONVENIENCE STORES

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS

HEARING ON

“TAX DAY: EXPLORING THE ADVERSE EFFECTS OF HIGH TAXES AND A COMPLEX TAX CODE”

APRIL 10, 2024

Thank you for providing me with the opportunity to testify on tax issues. My name is Raymond Huff and I am President of HJB Convenience. I own and operate seven convenience stores and have sixteen employees. My model is different than the typical convenience store as I have located my stores in high rise office buildings and some of the stores use self check-out technology so that no employees need to be inside the store to conduct business.

I am testifying today on behalf of my association, the National Association of Convenience Stores (NACS). NACS is an international trade association representing the interests of the convenience industry. In the United States, the industry includes more than 150,000 stores employing 2.44 million people. It is truly an industry of small business with a full 60 percent of the industry comprised of single-store operators. The industry handles about 165 million transactions each day – a number equivalent to about half of the U.S. population.

Today I will focus on section 199A of the tax code which provides small pass-through businesses like mine a deduction of our taxable income to help bring pass-through businesses into rough parity with C corporations from a tax perspective. I will cover the importance of section 199A to my business and others like mine, the need for tax fairness for businesses like mine compared to our larger competitors, the other benefits of the section 199A provision, and the importance of extending and making permanent the 199A deduction.

I. Executive Summary

Most small businesses, including mine, operate as pass-throughs and the section 199A deduction is essential to the competitiveness of those small businesses. The deduction has principally been used by small businesses though many have not been able to take advantage of the deduction for some of the years it has been in place due to the economic dislocations caused by the COVID pandemic. Small businesses need section 199A and other tax provisions from the Tax Cuts and Jobs Act, such as bonus depreciation, to remain in effect so that we can make full use of those tax policies as our businesses rebound from tough times.

Tax fairness between small and large businesses is essential. Small businesses like mine must be in a position to compete on a level playing field with larger businesses. Without section 199A, however, the playing field will simply be unfair to small pass-throughs.

Section 199A has delivered broad benefits to the economy through incentivizing investments, particularly in equipment, and providing a key lifeline to allow businesses to increase compensation to employees and create new jobs (or, in some cases, protect jobs that could otherwise be lost).

Each of those points is covered in more detail in this testimony. The bottom line is that small businesses are a central part of the U.S. economy and the section 199A deduction is essential for those businesses. Small businesses need those benefits into the future and would benefit tremendously from certainty regarding their future tax treatment. For those reasons, the section 199A deduction, bonus depreciation, and other beneficial provisions of the Tax Cuts and

Jobs Act should be extended and made permanent to provide small businesses with the foundation and certainty they need to invest and thrive.

II. Importance of Section 199A to Small Businesses

For the first two years that the section 199A deduction was in effect, I was able to benefit from it. When the pandemic hit, however, everything changed. People stopped going to work in the buildings where my stores are located. In many locations, I had no customers at all. Two-thirds of my stores closed. I have seven operating now and some days I wonder how we have kept them afloat.

My business has operated at a loss every year since 2020. With no profits, I have not been able to make use of the 199A deduction during that time. My message to you is simple: please do not take away the 199A deduction before I have a real chance to benefit from it. I need those benefits to compete and get back to real profitability. The deduction ought to be extended and made permanent so that I can plan for the future knowing what I will face.

But, this obviously isn't just about my business. Many, many small businesses have similar stories. I have seen most of the other businesses that were doing well right next to mine in office buildings and downtown locations reduce hours, lay off employees, and close. Even now, office building occupancy rates are currently at around 50%. That is not enough to sustain many of the businesses that have traditionally operated in central business districts. Restaurants, for example, were hit very hard by the pandemic. Some were able to survive selling take-out and delivery food while some were not able to make that pivot. Even most of those who did will tell you that take-out sales didn't work as well for them as in-person dining. And, movie theaters and other venues that depended on people being there in person were devastated by the pandemic.

All of these small businesses have had similar experiences. Like mine, many still are waiting to see profits and get the benefits of the tax break for pass-throughs that has been in place during this time. And, none of these small businesses want the rug pulled out from under them just when they have a shot at getting some benefit from the deduction. This is no time to pull back on the ability of small pass-through businesses to profit and grow.

The evidence shows that section 199A has primarily benefitted small businesses. The Congressional Research Service, reporting on Internal Revenue Service data, has found that 80% of claims for the 199A deduction have come on adjusted gross incomes of $200,000 or less and full 98% of claims have come on adjusted gross incomes below $1 million.[1] That is a strong indication that the deduction has worked to target small businesses with better tax treatment.

III. The Need for Tax Fairness

One of the major reasons for the 199A deduction is simple fairness. With the reduction in corporate tax rates in the Tax Cuts and Jobs Act, it was clear that small businesses could have

---

[1] Gary Guenther "The Debate Over Extending the Section 199A Deduction for Qualified Business Income," Congressional Research Service (Aug. 18, 2023) (available at 2023-08-18_IN12226_cce8a1bda0a3c63f891d879b8fab45b3e591084d.pdf (everycrsreport.com)) at 2.

faced a major competitive disadvantage. There are big chains that that are C corporations and pay lower rates than the small pass-throughs that they compete with every day. The tax code should not favor their growth and profitability over ours.

Section 199A brought rough parity to small and large businesses so that businesses like mine had a shot. If larger businesses had a tax advantage, that would allow them to use those dollars to out-compete me on price, service, technology or other investments. Given a fair shot, I know that small businesses can more than hold our own. 199A gives us that fair shot.

The data shows that the provision has been successful in achieving rough parity in tax rates between C corporations and pass-throughs. C corporations pay effective tax rates between 25 and 31 percent while, due to section 199A, pass-throughs pay an effective tax rate of 27 percent.[2] And, it's worth noting that large pass-throughs pay an effective tax rate of 34 percent which is one piece of evidence that the intended effect of helping small businesses achieve tax parity is being achieved without creating a windfall for large businesses.[3] As Ken Kies has concluded based on his own analysis of tax fairness (including that even with section 199A, pass-throughs are taxed at a higher effective rate than C corporations), "Current law section 199A should be retained in its entirety. Doing so will still leave passthroughs more heavily taxed than C corporations, but removing any of the benefits of section 199A will only make the disparity worse."[4]

I would also note that small businesses like mine can't just convert themselves into C corporations to get tax fairness if section 199A goes away. That is because small businesses like mine would face the full burden of double taxation of earnings when we take profits out of our small businesses. Large C corporations for the most part can avoid the double taxation problem. Small businesses can't. That's a big reason why we only get fairness with section 199A in place.

IV. Broad Benefits of Section 199A

When I was able to take advantage of it, the pass-through deduction helped me invest more in technology and equipment for my stores. The new technology allowed me to do some of the things that only some of the biggest businesses – like Amazon – could do in the past. While I will never have their resources, I was able to move quickly on a smaller scale and retrofit some of my stores to allow for a similar automatic check-out experience. I'm glad that I did. Those upgrades were essential for keeping some of my locations in business when our customer count dramatically fell. Without the 199A tax provision, I don't know if I could have made those investments or, later, kept those stores. Losing 199A may mean more losses of small businesses in the future than we know.

Making those types of business investments more affordable is exactly what the 199A provision is designed to do. The Congressional Research Service has described it well in noting,

---

[2] "The Importance of 199A" S-Corporation Association of America (June 22, 2023) (available at The Importance of 199A - The S Corporation Association (s-corp.org)).

[3] *Id*.

[4] Kenneth J. Kies "The Ryder Cup and Section 199A – Really!" tax notes federal (Oct. 5, 2021) (available at TNF 10-11-2021.book (s-corp.org)).

"The deduction, combined with the reduced individual income tax rates under the 2017 tax law, reduces the user cost of capital for eligible pass-through businesses, expanding the portfolio of investments a firm could profitably undertake. As such, the law improves investment incentives for these firms. The boost, however, may be limited by the temporary nature of the reduction in effective tax rates for pass-through business income."[5]

That is particularly true when you look at the 2017 Tax Cuts and Jobs Act more broadly. The combination of the 199A deduction, corporate tax relief, and the 100% expensing provisions of the 2017 law reduced the effective tax rate of investments in tangible assets making it easier and more affordable for businesses to invest.[6] That is just the type of behavior we ought to be encouraging. Investment is a path to small businesses growing and thriving as well as a good way to spur economic activity overall.

While there are not good studies on the actual investment effects of section 199A, multiple studies show that the deduction creates stronger incentives for pass-through businesses to invest – particularly with investments in equipment.[7] According to research conducted by the National Federation of Independent Business in 2022, "56% of small business owners reported capital outlays in the last six months, 45% reported raising compensation, and 23% plan to create new jobs in the next three months."[8]

NFIB has noted that section 199A was an important part of giving small businesses the ability to make those investments in wages, new employees, and capital.[9] Over the last few years, for example, we have seen tight labor markets lead businesses to pay more to attract and retain workers. Rising minimum wages in a number of states have added to this trend. Without 199A, it would have been much more challenging for small businesses to keep pace with these trends.

These provisions of the tax code form a virtuous cycle that benefits all of us – particularly when you take into account the central role that small businesses play in the U.S. economy. That importance has been noted by many, but the U.S. Small Business Administration Office of Advocacy is one key source. In the past, they have found that small businesses account for two-thirds of net new jobs and drive 44 percent of U.S. economic activity.[10] SBA also concluded that small businesses "drive U.S. innovation and competitiveness."[11]

---

[5] Gary Guenther "Section 199A Deduction: Economic Effects and Policy Options" Congressional Research Service (Jan. 6, 2021) at 3 (available at Section 199A Deduction: Economic Effects and Policy Options (congress.gov)).
[6] *Id*. at 3.
[7] Gary Guenther "Section 199A Deduction: Economic Effects and Policy Options" Congressional Research Service (updated Feb. 8, 2024) at 4-5 (available at Section 199A Deduction: Economic Effects and Policy Issues (fas.org)).
[8] "Inflation Remains Top Business Problem for Small Business Owners" National Federation of Independent Business (Oct. 11, 2022) (available at Inflation Remains Top Business Problem for Small Business Owners - NFIB).
[9] "NFIB Members Discuss the Small Business Deduction" National Federation of Independent Business (Nov. 3, 2022) (available at NFIB Members Discuss the Small Business Deduction).
[10] U.S. Small Business Administration Office of Advocacy "Small Businesses Generate 44 Percent of U.S. Economic Activity" (Jan. 30, 2019) (available at Small Businesses Generate 44 Percent of U.S. Economic Activity – SBA's Office of Advocacy).
[11] *Id*.

V. The Need to Make Section 199A Permanent

If we want a healthy small business sector and want to continue to encourage those businesses to make investments and grow, we need to extend section 199A as well as bonus depreciation. That is a sure path to continuing the benefits we have seen from the provision. But, part of business investment involves projecting the future. The more confidence that businesses have in that future, the more likely they are to invest. Many investments – particularly in new innovations and technology – can take many years to pay off. That is a major reason why Congress should not just extend section 199A but should make it permanent. Right now, we don't know if we will lose that deduction in the near future. That uncertainty will keep popping up as long as this tax provision has a near-term expiration date. Making the deduction permanent would provide the certainty that businesses need to plan long-term.

As noted earlier, this is also a basic matter of fairness. Without section 199A, businesses like mine will be taxed at significantly higher effective rates than C corporations. We have to compete with those big companies every day. I think small businesses are remarkably successful in doing that. We don't have the same capital as the big players, but we are close to our customers and can be nimble. We don't need the tax code putting a thumb on the scale in favor of our larger competitors. Let's keep it fair. If we do, I'm confident that U.S. small businesses can more than hold their own.

* * *

Thank you for providing me the opportunity to give the Committee my views on this important tax provision. It looms large for my business and for many others in my industry and across U.S. industries. I welcome the opportunity to work with the Committee as it considers tax priorities in the next year.