

May 16, 2018

The Honorable Steven T. Mnuchin
Secretary of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
1500 Pennsylvania Ave., NW
Washington, DC 20220

On behalf of the 140,000 members of the National Association of Home Builders, thank you for your efforts in shepherding once-in-a-generation tax reform from outline to enacted law. It promises increased economic growth, capital investment, and more disposable income for the typical taxpayer. The law also gives small businesses, which constitute the majority of enterprises in the residential construction sector, significant tax policy improvements.

Newly enacted Section 199A of the Internal Revenue Code is an important provision of the new tax law, putting small business owners on the same playing field as their larger competitors. The new 20 percent deduction incentivizes both labor as well as investment for businesses—many of them family businesses—that may otherwise lack the resources to compete on a larger scale. The Congress also placed anti-abuse restrictions on the deduction, the largest of which is a provision disallowing the deduction for professional services including those in the fields of health, law, accounting, and consulting.

However, limitations on other businesses are uncertain. Section 199A disallows any deduction for a “specified service trade or business” defined by reference to IRC sec. 1202(e)(3)(A)). By reference to this section, the law disqualifies income eligible for 199A if it is derived from “...any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees.”

NAHB is concerned that, as it writes regulatory guidance for the implementation of the new tax law, Treasury and the Internal Revenue Service will unintentionally label some home builders, remodelers and independent contractors in the residential construction as a “specified service trade or business.”

Unlike service professionals described above, builders and independent contractors use inputs to create a tangible good—activity more akin to manufacturing than any professional service. That is why the economic activity attributable to these businesses is labeled as construction rather than a professional service by the Bureau of Economic Analysis in its use of the North American Industry Classification System. Building and remodeling firms also use capital equipment and contracted labor as part of their business operations.

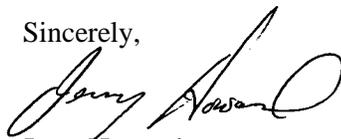
By enacting the *Tax Cuts and Jobs Act*, the Administration made clear that it understands the value of small, capital intensive businesses that create tangible goods. Section 179 was expanded and made permanent, while small businesses were exempt from limitations placed on the business interest deduction. Even the professional services exempt from the restrictions— architecture and engineering—are integral to and related to construction and manufacturing.

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To remain consistent with other provisions of the new law, NAHB requests that the Treasury and the Internal Revenue Service make it clear that home builders (including custom home builders, or builders whose activity is classified as owner-built and contractor-built housing [not-for-sale] under the Census Bureau Building Permit Survey, which provides statistics on new privately-owned residential construction), remodelers and independent contractors involved in the business of residential construction and land development are not a specified service trade or business for purposes of 199A. Failing to do so would penalize the very businesses that the new tax law was intended to help.

Thank you for your consideration. We will continue to engage with the Administration and the Congress to provide whatever resources we can to facilitate the development of efficient technical fixes and regulations in the coming months.

Sincerely,



Jerry Howard