NAHB
National Association of Home Builders

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The Honorable Steven T. Mnuchin
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In the decades following the *Tax Reform Act of 1986* (TRA86), complying with the U.S. tax code became more costly as it became more complex. The *Tax Cuts and Jobs Act* (TCJA) resulted in simplifications to tax law to ensure that business owners use more of their time and money creating jobs and growing their enterprises, and less effort filling out tax forms. However, the lack of transition rules for some of the changes in TCJA, combined with many new provisions, means that the federal government is now tasked with writing a significant amount of new regulations.

NAHB understands the scale of the effort with which the Treasury and Internal Revenue Service (IRS) are tasked and recognize that the process must be conducted at a deliberate pace. However, the lack of some regulatory guidance has brought uncertainty to business owners and investors. This is especially challenging for taxpayers who must file estimated taxes each quarter.

Thus, NAHB requests that the IRS publish taxpayer guidance that provides safe harbors for possible underpayments in cases in which:

1. Underpayment is a result—direct or indirect—of changes made to the law by TCJA,
2. The taxpayer has made a good-faith effort to calculate and pay their estimated tax, and
3. Insufficient IRS guidance was available that would have otherwise made it possible to calculate tax liability.

Such regulatory relief should waive underpayment penalties and interest in cases where an amended return is required. This relief from the IRS would especially benefit small businesses. It would also be in line with regulatory relief associated with other significant tax legislation.

For example, enacted in late 1986, TRA86 specifically addressed underpayments of estimated taxes. In line with the first criterion above, section 1543 declared that “No addition to tax shall be made…with respect to any underpayment [of estimated taxes], to the extent such underpayment was created or increased by any provision of this Act.” The ensuing technical corrections bill provided similar relief in 1988, by which time the IRS had been publishing guidance for nearly two years.

Taxpayer relief measures related to TCJA have already been released. For instance, the IRS recently announced penalty and deadline relief involving so-called “deemed repatriation” owed by certain businesses. On June 4, 2018, IRS announcement IR-2018-131 stated that the IRS will “waive certain late-payment penalties relating to [deemed repatriation]” and extend deadlines by which certain amended returns must be filed. In short, if the amended forms are filed by the new deadline and tax liability is paid in full, taxpayers will not owe late-payment penalties.

For small business, tax compliance can be a source of stress and worry, particularly when faced with the potential for interest and penalty payments stemming from quarterly tax payments made before the regulations are finalized. Issuing guidance now for a safe harbor on underpayment for the millions of taxpayers who are required to submit estimated quarterly tax payments, particularly in light of the complexities of the Section 199A pass-thru deduction, would be a welcome relief to small businesses.

So long as the current regulatory uncertainty persists, compliance will remain costly, investment and hiring decisions will be delayed, and the full economic growth potential of the *Tax Cuts and Jobs Act* will not be realized.

Thank you for your consideration and willingness to work with businesses to ensure a smooth implementation of the new tax law.

Regards,

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National Association of Home Builders