AMERICANS FOR
TaxFairness

April 9, 2020

Dear Member of Congress:

Americans for Tax Fairness strongly objects to two overly broad and costly tax hand-outs to wealthy businesses gratuitously included in the recent Coronavirus Aid, Relief and Economic Security (CARES) act, and to urge Congress to curtail these provisions in the next COVID-19 rescue package. Coming as it does during an unprecedented national emergency of widespread suffering, this unwarranted assistance to wealthy business owners is particularly outrageous.

The provisions in question temporarily repeal reforms put in place just two years ago by the Tax Cuts and Jobs Act (TCJA) for the treatment of net operating losses (NOL) by businesses. These reforms allowed businesses to carry forward NOLs, but not back. But the CARES Act allows companies, temporarily, to carry back NOLs for 5 years, beyond even the 2-year period permitted by the pre-TCJA rules. While letting companies use losses stemming from economic crises to generate needed liquidity in the form of tax refunds may be good countercyclical economic policy, the nearly $200 billion in tax breaks, according to Joint Committee on Taxation (JCT) estimates, offered in the CARES Act is excessive and poorly targeted.

Sec. 2303 applies to both corporations and non-corporate businesses—so-called pass-throughs—and allows them to carry back losses not only from this pandemic-ravaged year, but for the previous two years as well when the economy was healthy. Thus, losses incurred in 2018, 2019, and 2020 can generally be carried back to the five previous years. Moreover, when losses are carried back to years before 2018, corporations get to deduct them at a 35% tax rate—the rate in effect prior to the TCJA—rather than the current 21% tax rate. Similarly, non-corporate businesses can pass through losses that can be carried back, and deducted, at higher rates for years before 2018. Once carried back, those losses can turn old tax payments into new tax refunds and cost $26 billion over 10 years per the JCT (although some tax experts believe this figure will prove to be much too low given the scale of losses from the pandemic). Both the corporate and pass-through relief is wildly excessive and unjustified given all the other aid being provided to companies under the CARES Act.

Much more costly at nearly $170 billion, according to the JCT, is Sec. 2304, which gives the wealthiest pass-through business owners the right to apply an unlimited amount of business losses from 2018, 2019 and 2020 against their *non-business income*. The only pass-through business owners who benefit from this provision are those with over $500,000 in *non-business* income ($250,000 for individuals) in at least one of the past three years. Such non-business income might be derived from passive investments in stocks, bonds and other valuable financial assets; the sale of valuable artwork or even a yacht; renting out a beach house at the Hampton's or a ski chalet in Vail.

Whatever the source, that level of income is enough to place those taxpayers in the top 1% of highest-earning American households, the group with the greatest capacity to weather the current economic disaster. These include owners of real estate firms (possibly including The Trump Organization), hedge funds, private equity firms, law firms and others that are financially well off. Aid for this privileged group would be better spent on those suffering most from the pandemic.

The money wasted on this tax break for wealthy business owners is more than the CARES Act spends on safety-net supports ($42 billion) or direct aid to state and local governments ($150 billion) and nearly matches the aid to hospitals and other healthcare spending ($180 billion).

More details on these complex, inefficient and unfair provisions can be found at this analysis by the Institute on Taxation and Economy Policy. These provisions appeared in the original Senate Republican CARES Act proposal (as Secs. 2203 and 2204).

Businesses should only be allowed to carry back losses from this pandemic year—not from previous healthy years—and should not be able to exploit the higher tax rates of previous years to wring out extra-big refunds. Aid for pass-throughs should focus on the corner cafes and small conference planners who face extinction, not on tax breaks like the NOL expansion exclusively valuable to couples with at least $500,000 half-million-dollar incomes.

Thank you for your attention to our concerns.

Sincerely,

Frank Clemente
Executive Director