



COMMITTEE ON PRIVATE COMPANIES

November 12, 2008

The Honorable Harry Reid
Senate Majority Leader
S-221 United States Capitol
Washington, D.C. 20510

The Honorable Mitch McConnell
Senate Minority Leader
S-230 United States Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker of the House
H-232 United States Capitol
Washington, D.C. 20515

The Honorable John Boehner
House Minority Leader
H-204 United States Capitol
Washington, D.C. 20515

Dear Congressional Leader:

We are writing on behalf of the Committee on Private Companies (“CPC”) of Financial Executives International (“FEI”) to ask that you consider critical relief for small and closely-held businesses in any new economic stimulus legislation package.

In particular, FEI asks that you consider providing relief from the section 1374 built-in gains tax (“BIG”) on Subchapter S corporations. Reducing the holding period from 10 to 7 years for BIG assets would provide access to additional capital for many small businesses which is significant considering the challenges that currently exist in U.S. lending markets.

S corporations generally are not subject to corporate-level taxation, barring several exceptions. The most significant exception is BIG which applies to any appreciated assets held on the day a C corporation converts to an S corporation.

Under BIG, companies are required to hold these assets for at least ten years (the holding period) or be subject to a *prohibitive* layer of tax. BIG is imposed at the highest corporate tax rate – 35 percent – on top of all other applicable federal, state and local taxes. Requiring companies to hold on to appreciated assets for a decade restricts the redeployment of valuable assets by closely-held businesses which have fewer options for raising capital than many of their competitors.

Bipartisan legislation to reduce the harmful impact of the BIG tax has been introduced in both the House (H.R. 3874; H.R. 4840) and Senate (S. 3063). Provisions in these bills would reduce the holding period from 10 to 7 years for built-in gains assets and enjoys the support of numerous Ways and Means and Finance Committee members.

FEI strongly agrees with the recent statement by U.S. Senators Lincoln (D-AR), Hatch (R-UT), Cardin (D-MD), and Snowe (R-ME) that “*This modest reduction preserves the original policy intent of the holding period, while allowing many*

businesses that have long been S corporations to immediately access their own capital without penalty.”

S corporations continue to be the most prevalent type of corporation in the U.S; in fact, these firms account for over 60 percent of all corporations. Accordingly, many companies are likely sitting on billions of dollars that could be used for capital investment, economic growth and stability, and job creation. BIG relief can help S corporations access and redeploy capital currently “locked-in” by *prohibitive* tax rates.

Thank you for your consideration of our comments. We would be pleased to discuss these matters in further detail with you. Feel free to contact Matt Miller, FEI’s Director of Tax and Economic Policy at 202-626-7804 or mmiller@financialexecutives.org.

Sincerely,



Mark Smetana
Chairman
FEI Committee on Private Companies
Subcommittee on Policy

FEI is a professional association representing the interests of more than 15,000 chief financial officers, treasurers, controllers, tax directors, and other senior financial executives from over 8,000 major companies throughout the United States and Canada. FEI represents both the providers and users of financial information. The CPC Subcommittee on Policy is a technical committee of FEI which formulates private company tax policy positions for FEI. This letter represents the views of the Subcommittee on Policy and not necessarily the views of FEI.

cc: The Honorable Charlie Rangel
The Honorable Jim McCrery
The Honorable Max Baucus
The Honorable Chuck Grassley