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September 10, 2021

The Honorable Richard Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Neal and Ranking Member Brady:

On behalf of the Independent Community Bankers of America, representing community banks across the nation with nearly 50,000 locations, I write to express our opposition to certain tax provisions being considered by your committee as part of the Build Back Better reconciliation bill. This is not the time to hike taxes on community banks, small businesses, family farms, and individuals. These ill-advised tax increases come at the expense of community bank capital needed for local lending, business investment and expansion, and most importantly, hiring. As a package, the impact of these deeply troubling tax changes will be devastating to the continued independence of American small businesses.

As you know, the economy has not fully emerged from the pandemic. Economic gains made in the spring and early summer could evaporate in the coming fall and winter with the very real possibility of another spike in COVID caseloads. Unemployment has remained stubbornly high. This is clearly the wrong time for tax increases on small businesses that have not regained their footing. I ask you to keep your focus on the economic recovery.

Changes to the taxation of estates would make it harder to keep family-owned small businesses, including some community banks, in the family. This would exacerbate consolidation, which is already endangering independent Main Street businesses, reduce consumer choice, increase consumer prices, and change the character of American commerce.

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ICBA strongly opposes:

- Any increase in the corporate tax rate. Corporate income is already double taxed at the corporate and shareholder levels in the form of dividends and capital gains taxes.
- Any increase in the taxation of capital gains. Raising capital gains tax rates will discourage badly needed new investment to promote business expansion and hiring.
- Any increase in individual tax rates. In particular, income earned by America's Subchapter S corporations and other passthrough businesses, which employ most American private sector workers, is taxed at the individual rate, even when that income is kept in the business to fund investment. Any increase in the individual rate would have a direct, negative impact on these businesses.
- Any cap on the deduction under Tax Code Section 199A for shareholders in Subchapter S community banks and other pass-through small businesses. Section 199A helps maintain relative parity in the taxation of Subchapter S corporations and C corporations.
- The imposition of a 3.8 percent net investment income tax (NIIT) on the income of Subchapter S shareholders. This tax, on top of a proposed higher individual rate of 39.6 percent, would increase the top rate to 43.4 percent before the imposition of state taxes. Again, the tax would apply not only to distributed funds but to funds held within the bank to meet capital requirement and fund vital lending.
- Taxation at death, or removal of "stepped-up basis." Gains on assets held in an estate – such as a family business or farm – would be taxed at death at the new capital gains rate plus NIIT, 43.4 percent. This is a sharp departure from current law which rightly shields these gains from taxation. An estate tax of 40 percent would apply to remaining assets. Together, these provisions would create a punitive effective tax rate that could exceed 60 percent. It would result in the forced sale of small businesses and farms to pay the tax. Proposals for "carry-over basis" would only delay the impact of taxing gains, effectively placing a tax lien on the business.
- Limitations on Section 1031 exchanges. Current law allows a farmer or other business to swap land tax-free if the proceeds are invested in new land. This provision is widely used not only in rural areas but in all parts of the country. Proposals to limit this benefit to $500,000 and impose capital gains tax on amounts above that threshold would have a large, negative impact on the market for farmland and other commercial land.
- New requirements that banks and other financial institutions transfer customer financial data to the IRS. This broad, invasive, and indiscriminate proposal would sweep up the personal data of millions of compliant taxpayers and foster distrust in the IRS and government in general. The proposal would undermine critical efforts to bring more of the unbanked population into the banking system.

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To conclude, America's community banks and small businesses cannot absorb the tax increases currently before your committee without devastating effect on investment, employment, and ongoing independence. I urge you to oppose these punitive tax increases.

Thank you for your consideration.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

CC: Members of the House Committee on Ways and Means

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