FULL COMMITTEE HEARING ON EXPIRING TAX INCENTIVES: EXAMINING THEIR IMPORTANCE FOR SMALL BUSINESSES ON THE ROAD TO AN ECONOMIC RECOVERY

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

HEARING HELD
SEPTEMBER 30, 2009

Small Business Committee Document Number 111-048
Available via the GPO Website: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

52–888 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

HOUSE COMMITTEE ON SMALL BUSINESS

NYDIA M. VELÁZQUEZ, New York, *Chairwoman*
DENNIS MOORE, Kansas
HEATH SHULER, North Carolina
KATHY DAHLKEMPER, Pennsylvania
KURT SCHRADER, Oregon
ANN KIRKPATRICK, Arizona
GLENN NYE, Virginia
MICHAEL MICHAUD, Maine
MELISSA BEAN, Illinois
DAN LIPINSKI, Illinois
JASON ALTMIRE, Pennsylvania
YVETTE CLARKE, New York
BRAD ELLSWORTH, Indiana
JOE SESTAK, Pennsylvania
BOBBY BRIGHT, Alabama
PARKER GRIFFITH, Alabama
DEBORAH HALVORSON, Illinois
SAM GRAVES, Missouri, *Ranking Member*
ROSCOE G. BARTLETT, Maryland
W. TODD AKIN, Missouri
STEVE KING, Iowa
LYNN A. WESTMORELAND, Georgia
LOUIE GOHMERT, Texas
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
BLAINE LUETKEMEYER, Missouri
AARON SCHOCK, Illinois
GLENN THOMPSON, Pennsylvania
MIKE COFFMAN, Colorado

MICHAEL DAY, *Majority Staff Director*
ADAM MINEHARDT, *Deputy Staff Director*
TIM SLATTERY, *Chief Counsel*
KAREN HAAS, *Minority Staff Director*

STANDING SUBCOMMITTEES

Subcommittee on Contracting and Technology

GLENN NYE, Virginia, *Chairman*

YVETTE CLARKE, New York
BRAD ELLSWORTH, Indiana
KURT SCHRADER, Oregon
DEBORAH HALVORSON, Illinois
MELISSA BEAN, Illinois
JOE SESTAK, Pennsylvania
PARKER GRIFFITH, Alabama

AARON SCHOCK, Illinois, *Ranking*
ROSCOE BARTLETT, Maryland
W. TODD AKIN, Missouri
MARY FALLIN, Oklahoma
GLENN THOMPSON, Pennsylvania

Subcommittee on Finance and Tax

KURT SCHRADER, Oregon, *Chairman*

DENNIS MOORE, Kansas
ANN KIRKPATRICK, Arizona
MELISSA BEAN, Illinois
JOE SESTAK, Pennsylvania
DEBORAH HALVORSON, Illinois
GLENN NYE, Virginia
MICHAEL MICHAUD, Maine

VERN BUCHANAN, Florida, *Ranking*
STEVE KING, Iowa
W. TODD AKIN, Missouri
BLAINE LUETKEMEYER, Missouri
MIKE COFFMAN, Colorado

Subcommittee on Investigations and Oversight

JASON ALTMIRE, Pennsylvania, *Chairman*

HEATH SHULER, North Carolina
BRAD ELLSWORTH, Indiana
PARKER GRIFFITH, Alabama

MARY FALLIN, Oklahoma, *Ranking*
LOUIE GOHMERT, Texas

Subcommittee on Regulations and Healthcare

KATHY DAHLKEMPER, Pennsylvania, *Chairwoman*

DAN LIPINSKI, Illinois
PARKER GRIFFITH, Alabama
MELISSA BEAN, Illinois
JASON ALTMIRE, Pennsylvania
JOE SESTAK, Pennsylvania
BOBBY BRIGHT, Alabama

LYNN WESTMORELAND, Georgia, *Ranking*
STEVE KING, Iowa
VERN BUCHANAN, Florida
GLENN THOMPSON, Pennsylvania
MIKE COFFMAN, Colorado

Subcommittee on Rural Development, Entrepreneurship and Trade

HEATH SHULER, North Carolina, *Chairman*

MICHAEL MICHAUD, Maine
BOBBY BRIGHT, Alabama
KATHY DAHLKEMPER, Pennsylvania
ANN KIRKPATRICK, Arizona
YVETTE CLARKE, New York

BLAINE LUETKEMEYER, Missouri, *Ranking*
STEVE KING, Iowa
AARON SCHOCK, Illinois
GLENN THOMPSON, Pennsylvania

CONTENTS

OPENING STATEMENTS

	Page
Velázquez, Hon. Nydia M.	1
Graves, Hon. Sam	2

WITNESSES

Bernstein, Ms. Rachel, Vice President and Tax Counsel, National Retail Federation	3
Dwyer-Owens, Ms. Dina, Chairwoman and CEO, The Dwyer Group, Chairwoman of the Board, International Franchise Association, Waco, Texas	5
Feraci, Mr. Manning, Vice President, Federal Affairs, National Biodiesel Board	8
Frenz, Mr. John, Owner, Frenz & Schmidtknect, Incorporated, On behalf of The National Restaurant Association	10
Hall, Mr. Keith, National Tax Advisor, National Association for the Self-Employed	12

APPENDIX

Prepared Statements:	
Velázquez, Hon. Nydia M.	24
Graves, Hon. Sam	26
Bernstein, Ms. Rachel, Vice President and Tax Counsel, National Retail Federation	28
Dwyer-Owens, Ms. Dina, Chairwoman and CEO, The Dwyer Group, Chairwoman of the Board, International Franchise Association, Waco, Texas	34
Feraci, Mr. Manning, Vice President, Federal Affairs, National Biodiesel Board	41
Frenz, Mr. John, Owner, Frenz & Schmidtknect, Incorporated, On behalf of The National Restaurant Association	47
Hall, Mr. Keith, National Tax Advisor, National Association for the Self-Employed	55
Statements for the Record:	
Clarke, Hon. Yvette D.	60
Associated Builders and Contractors, Inc.	62
International Franchise Association	63

FULL COMMITTEE HEARING ON EXPIRING TAX INCENTIVES: EXAMINING THEIR IMPORTANCE FOR SMALL BUSINESSES ON THE ROAD TO AN ECONOMIC RECOVERY

Wednesday, September 30, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:07 a.m., in Room 2360, Rayburn House Office Building, Hon. Nydia M. Velázquez [Chairwoman of the Committee] presiding.

Present: Representatives Velázquez, Dahlkemper, Schrader, Ellsworth, Graves, and Fallin.

Chairwoman VELÁZQUEZ good morning, everyone. This hearing is now called to order.

Part of the tax relief has played a key role in our Nation's recovery efforts. Since February, we have worked to deliver $15 billion in credits and deductions to entrepreneurs. These measures are ensuring every small firm has the tools it needs to grow from within. When coupled with existing incentives like tax extenders, Recovery Act tax relief has created real momentum. But with expiration dates looming, many of these provisions will soon run out, putting the brakes on much of our progress thus far.

In roughly 2 months' time, a wide range of tax provisions, from R&D credits to clean energy incentives, will sunset for small firms. In today's hearing we will examine those measures. In doing so, we will look for ways to ensure effective efforts are continued and ineffective ones are either allowed to sunset or enhanced to spark growth.

Whether we are talking about home office deductions or bonus depreciation for equipment purchases, entrepreneurs rely on tax measures to expand their ventures. This is the case in both bad times and good times, but rings particularly true in today's economy.

For small firms facing tightening credit and shrinking capital, incentives can make all the difference. In some instances, they are a deciding factor for things like hiring workers and making investments. That is why targeted relief is so important, and that is why we need to be reauthorizing measures that work for small firms.

There are a number of valuable, soon-to-expire tax extenders. Perhaps the best example is the R&D credit, an incentive that has been reauthorized 13 times since 1981. This provision yields $2 in research for every $1 in investment, and helps create high-wage jobs for workers like engineers and scientists. Yet, despite its obvious economic benefits, the R&D credit is slated to expire in December, leaving countless small firms in the lurch.

The R&D credit is just one example of an expected but endangered tax provision. Reauthorizing this credit could ease the anxiety associated with last-minute extensions. It could also provide small firms with the stability they need to plan budgets and attract investments. In that same vein, extending certain recurring incentives could also go a long way in stimulating small businesses.

While not considered extenders in the traditional sense, Recovery Act tax breaks are also set to expire. These incentives were designed to boost consumer spending and spur investment. Credits for first-time home buyers, for example, are sparking growth in the real estate and construction industries. The $8,000 incentive has already contributed to a rebound in the housing market, one that some experts say could drive an additional 400,000 home sales this year. Reauthorizing this particular provision will undoubtedly stimulate future growth. Failure to do so, however, could create greater uncertainty in the marketplace and dampen recovery for small businesses.

Entrepreneurship is an inherently high-risk, high-reward endeavor, one that is often characterized by uncertainty. Since the beginning of the downturn, that uncertainty has been compounded. Now, more than ever, small firms need stability and incentives to grow. But, unfortunately, the lack of finality in our tax policy may be undermining these very goals.

As we look for ways to strengthen small businesses, we need to be focused on the tools that are already sparking progress. By extended and expanding these measures, we can give small firms the certainty they need to make new investments and the encouragement they need to help grow our economy.

I would like to take this opportunity to thank all the witnesses for coming here today to shed some light on how these tax credits have helped businesses and especially the small businesses that you represent. I would like to thank the witnesses in advance for their testimony, and I will now yield to Ranking Member Graves for his opening statement.

[The statement of Chairwoman Velázquez is included in the appendix.]

Mr. GRAVES. Thank you, Madam Chair. And I too would like to thank the witnesses for coming in today for this very important hearing.

Year after year, taxes rank as a top concern for small businesses. According to the IRS National Taxpayer Advocate, small firms must deal with a particularly complex array of laws, such as depreciation, employment taxes, and independent contractor rules. It is even more difficult for companies to operate when tax provisions are temporary, because they cannot effectively budget or plan for the long term. Small businesses pay more per employee to comply with the Internal Revenue Code and often can't afford to hire tax experts to help them.

For small businesses, these are difficult times. Unemployment is rising, credit is tight and energy prices remain steep. Every expense is an added burden and can make the difference between whether a firm stays open or is forced to close.

The tax provisions we are considering today are critically important to entrepreneurs. Because small businesses are constantly squeezed by ever-growing costs, tax relief is essential. I would prefer that Congress pass permanent tax rate reductions rather than narrower, temporary provisions that must be renewed by Congress year after year.

I am particularly concerned that we extend the 2001 and 2003 tax cuts. Although not the topic of this hearing, these provisions are scheduled to expire in 2010; if they do expire, working families will see their taxes increase and their prospects for employment decline. For entrepreneurs, these provisions are a necessary incentive to keep our economy moving.

I support temporary tax relief, but we need to go further. Making the 2001-2003 tax benefits permanent would give small firms the confidence to purchase new equipment and hire more workers. That is why I introduced legislation to permanently extend the 2001-2003 provisions. I hope Congress will act to provide this predictability for our Nation's small businesses.

Finally, a word about the alternative minimum tax, which has been called the most serious problem faced by taxpayers. The AMT hits many small business owners very hard. It reduces business deductions, is needlessly complex, and increases tax uncertainty. I would prefer that we repeal it, but failing that, we should at least extend AMT relief.

So again, thank you, Madam Chairwoman, for holding this hearing. I look forward to the testimony.

[The statement of Mr. Graves is included in the appendix.]

Chairwoman VELÁZQUEZ. Thank you.

Chairwoman VELÁZQUEZ. And I welcome Ms. Rachel Bernstein. She is the Vice President and Tax Counsel for the National Retail Federation. Ms. Bernstein joined the organization 13 years ago and specializes in tax matters facing the retail industry.

NRF represents an industry with more than 1.6 million U.S. retail establishments and more than 24 million employees.

Welcome. You have 5 minutes to make your statement.

STATEMENT OF RACHEL BERNSTEIN

Ms. BERNSTEIN. Thank you, Chairwoman Velázquez, for the opportunity to provide testimony to evaluate the impact tax provisions scheduled to expire at the end of 2009 and other stimulus measures.

I am Rachelle Bernstein, Vice President and Tax Counsel for the National Retail Federation which represents 1.6 million U.S. retail establishments, about one in the five American workers, and had 2008 sales of $4.6 trillion. Most retailers, as you know, are small businesses.

In 2008, retailers' holiday sales, which typically represent 25 to 50 percent of their annual sales, declined by 2.8 percent. During the past year, consumer confidence hit its lowest level since records have been kept. For the first time in its long history, NRF is forecasting a decline in annual retail sales for 2009. Retailers lost

835,000 jobs since the beginning of 2008. Retail sales for the past 3 months continue to show sharp year-over-year declines.

The tax proposal that would provide the most immediate and beneficial help to retailers that are struggling to survive is the 5-year net operating loss carry-back. In our current recession where access to credit is so severely limited, the NOL carry-back will provide an important source of capital to finance ongoing operations and retain employees.

An NOL can be used to obtain a refund for taxes paid in the past and/or carried forward to offset tax obligations that arise in the future. Under current law, taxpayers may carry losses back 2 years and forward 20 years.

Although both the House and Senate versions of the 2009 economic stimulus legislation would have permitted all businesses except those that have received TARP funds to carry their losses back for 5 years, the final version of that legislation permitted only businesses with less than $15 million in gross receipts to carry back their 2008 losses for 5 years. This provision needs to be expanded so that the size of business is not a factor in limiting the benefit of the carry-back. It also should be extended to cover losses incurred in 2009, because it appears that the sales decline for 2009 will be worse than it was in 2008.

NRF strongly supports H.R. 2452, bipartisan legislation introduced by Representatives Richard Neal and Pat Tiberi, the chairman and ranking member of the Select Revenue Measures Subcommittee of the House Ways and Means Committee, which would permit businesses to carry back losses from 2008 and 2009 for 5 years. President Obama included a similar proposal in his fiscal year 2010 budget.

Because current law allows taxpayers to carry losses forward for as many as 20 years to reduce future tax liability, allowing for this longer carry-back period is merely an advance on a tax refund that would be due to them in the future. This advance of a future tax refund provides a much-needed source of cash for operations, as businesses are struggling through this recession.

This problem can be illustrated with the stories of two of our smaller chain retail members. These retailers are too large to be able to qualify for loans from the Small Business Administration, too small to have been able to negotiate large enough lines of credit to carry them through this recession, not creditworthy enough to qualify for TALF, and too large to be eligible for the NOL carry-back permitted to only small businesses earlier this year. In both of these situations, the retailers are struggling to find ways to finance their inventory for the holiday season, which is their greatest opportunity for revenue this year.

In the first case, a retailer in business for 45 years suffered its first-ever loss in 2008. For them, the ability to use a modest 2008 NOL carry-back to finance inventory worth five times that carry-back could mean the difference in staying in business for its 2,000 permanent employees and 6,000 additional seasonal employees.

In a second situation, a regional specialty chain operating in four Western states predicts that it will close one-third of its remaining stores if it does not get a cash influx from its 2008 NOL carry-back. That will result in a loss of 800 jobs.

For businesses that are not on the brink of survival, the NOL carry-back will allow them to make some new investments, like improvements to their stores, for which there is no capital to finance in this current environment.

Another provision that will help create jobs is the extension of the 15-year depreciable life for improvements made to retail stores, restaurants, and leaseholds. If this provision is not extended, the depreciable life of these improvements will revert to 39 years, which will drive up costs and hurt investments and jobs.

Both the NOL carry-back and the extension of the 15-year life for improvements to retail, restaurant, and leasehold property will have a direct and positive impact on employment in the current economy. It is not only important for Congress to extend these provisions, but also it is important that these extensions be enacted soon. Delaying action will impact thousands of jobs. We urge the Small Business committee to lend its support to extension of these important tax provisions.

Thank you for the opportunity to participate in this important hearing.

Chairwoman VELÁZQUEZ. Thank you, Ms. Bernstein.

[The statement of Ms. Bernstein is included in the appendix.]

Chairwoman VELÁZQUEZ. Our next witness is Ms. Dina Dwyer-Owens. She is the chairwoman and CEO of the Dwyer Group. The Dwyer Group is a family-owned business that has grown into a holding company of service-based franchise companies.

Ms. Dwyer-Owens is also chairwoman of the board for the International Franchise Association. With more than 10,000 members, IFA represents all aspects of the franchise community.

Welcome.

STATEMENT OF DINA DWYER-OWENS

Ms. DWYER-OWENS. Good morning, Chairwoman Velázquez, Ranking Member Graves, and all the committee members. My name is Dina Dwyer-Owens, and I am grateful to have the opportunity to speak before you today. And during my statement, I have three key points that I would like to make.

Number one, extending certain elements of the American Recovery and Reinvestment Act of 2009 and the Emergency Economic Stabilization Act of 2008, which are helping to strengthen the foundation of our economic recovery;

Number two, enacting legislation to put veterans returning from service overseas into business for themselves; and

Three, bolstering the ability of franchisees to obtain the capital necessary to expand their operations thereby creating more sustainable jobs for the economy.

I am the chairwoman and CEO of the Dwyer Group, franchisor of six service industry concepts, including Rainbow International, Mr. Rooter, Air Service, Mr. Electric, Mr. Appliance, and Glass Doctor.

Across these brands, the Dwyer Group provides support and opportunity to 1,200 franchisees in the United States and Canada and additional franchisees in seven other countries. My father founded the Dwyer Group in 1981 with the intent to build a system of related businesses that would provide high-quality residential and light commercial services; and through the systems, we have enabled thousands of entrepreneurs to own their own small businesses.

I also have the privilege of serving as the chairwoman of the International Franchise Association. The IFA represents more than 85 industries, including more than 11,000 franchisees, 1,200 franchisors, and 600 supplier members. This is nationwide.

According to the 2008 study conducted by the IFA Educational Foundation, there are more than 900,000 franchise establishments in the U.S., creating 21 million American jobs and generating $2.3 trillion in economic output.

Since the economy went into recession, Congress has enacted numerous provisions designed to help small business. The Nation is only now starting to see signs of recovery, and those fragile businesses that operate in your communities need these programs to continue. Bonus depreciation and a shortened, straight-line cost recovery for qualified leasehold improvements, qualified restaurants, buildings and improvements, and qualified retail improvements provide valuable benefits to franchise businesses.

In addition, the Recovery Act added a 15-year schedule for new construction and improvements placed in service in 2009. It is clear that our recovery will not be fully under way in this tax year, and these provisions must be extended beyond 2009. Extending these provisions will entice franchise business owners to reinvest and expand their businesses. This will create a tremendous spillover effect on other industries.

Madam Chair and members of the committee, I sincerely hope that Congress can also address the upcoming expiration of the important estate, or death, tax that is set to expire in 2010. The estate tax has long cost our economy more than the revenue it generates for the Federal Government. The IFA has advocated for a permanent solution to the estate tax, and I urge Congress to address the situation now before the tax returns to its pre-2001 level.

There is another policy objective that I would like to discuss, and that idea was inspired by a provision in the Recovery and Reinvestment Act, but not included in the bill.

The Recovery Act included a provision providing a tax credit to employers to hire qualified military veterans. Taking this concept and expanding it to the entrepreneurial level, Congressmen Leonard Boswell and Aaron Schock proposed a bill that creates an incentive to not only give our veterans jobs, but to give them the keys to the front door.

H.R. 2672, the Help Veterans Own Franchises Act, establishes a tax credit for franchise businesses that choose to offer qualified veterans a discounted initial franchise fee. The tax credit would amount to 50 percent of the total franchise fee discount offered by the franchisor to the franchisee and would be capped at $25,000 per unit. More importantly, the bill would also provide a tax credit to the veteran who chooses to purchase a franchise and open a business in their local community equal to 25 percent of the remaining fee.

So just to kind of net it out for you, in our business, for example, we give approximately a $6,000 discount on the initial franchise fee to the veteran. So we are asking for a 50 percent credit back to one of our brands for giving that discount to the veteran, and then the veteran would pick up another $4,500 tax credit. So, basically, he is buying the franchise for about $14,000.

Given the current economic climate, many franchise businesses are finding it harder to access the capital they need to open new stores and recruit investors. In order to encourage economic growth and to make it easier for veterans to own their own businesses, the IFA supports enactment of this tax credit for the franchise systems that choose to offer qualified veterans a discounted franchise fee.

Assisting the transition of military veterans from active service to civilian life holds a special place for me, since it was my father, Don Dwyer, Sr., who helped launch a program with the IFA nearly 2 decades ago as the United States was in the midst of the first Gulf War. At that time, nearly 100 members of the IFA stepped up to show their gratitude to our men and women in the military, to provide financial incentives and aid them in acquiring their own franchises.

We relaunched that program in 2002, and to date, there have been 1,500 veterans who have become franchisees through these generous franchisors that have given discounts. The Dwyer Group of companies alone are responsible for 170 of those veterans becoming franchisees.

The same leadership qualities and adherence to established structures of operation that make our military the finest in the world translate perfectly into the successful operation of franchise businesses. I thank Representative Schock for his leadership in introducing this bill together with Representative Boswell, and I ask you to help support the Help Veterans Own Franchises Act.

Before I close, I cannot pass the opportunity to impress upon you ongoing concerns of the franchise community that we have with access to capital. Credit is the lifeblood of small business, as you know. Beyond the daily credit needed to keep a small business afloat, franchise investors need access to capital to expand their brands and create jobs.

Unlike many jobs created by the Federal infrastructure spending, we firmly believe that franchise jobs are sustainable. They will be here when the asphalt dries. As tourism recovers, franchise jobs will provide services at hotels and restaurants, at rental car counters and travel agencies. When Americans resume buying and fixing up their homes, franchise jobs will be there to broker the sale, remodel the kitchen; they will also be there to paint the house and beautify the yard.

A recent study of the IFA Foundation revealed that for every $1 billion in lending to franchise businesses, 34,100 jobs—sustainable jobs—are created, which will help our economy recover faster.

And I am just about out of time here. But while Congress and the administration have taken important steps to address the challenges of small businesses in assessing credit, franchise businesses and prospective franchise investors with strong credit histories continue to have loan applications denied or delayed. In fact, according to the 2009 Senior Loan Officer Survey conducted by the Federal Reserve, more than one-third of these bankers reported tightening terms for small business loans, while one reported easing terms.

These tight standards continue to keep capable and willing franchise business owners on the sidelines.

Chairwoman VELÁZQUEZ. Time has expired, so you will have an opportunity during the question-and-answer period to expand on any idea that you feel hasn't been covered. Thank you.

[The statement of Ms. Dwyer-Owens is included in the appendix.]

Chairwoman VELÁZQUEZ. Our next witness is Mr. Manning Feraci. He is the Vice President of Federal Affairs for the National Biodiesel Board. Before joining NBB, Mr. Feraci had more than 14 years of experience working for Members of the U.S. House of Representatives.

The NBB is the national trade association representing the biodiesel industry.

Welcome.

STATEMENT OF MANNING FERACI

Mr. FERACI. Chairwoman Velázquez, Ranking Member Graves, members of the committee, I appreciate having the opportunity to testify this morning. I am here today on behalf of the National Biodiesel Board, the national trade association for the U.S. Biodiesel industry. Our membership produces a renewable, high-quality diesel replacement fuel that is readily accepted in the marketplace. The U.S. biodiesel industry is the only game in town when it comes to the commercial-scale production of biomass-based diesel as defined in the renewable fuel standard.

The production and use of biodiesel is consistent with an energy policy that values the displacement of petroleum diesel fuel; and there are significant energy, security, environmental, and economic public policy benefits associated with biodiesel use. In this regard, the biodiesel tax incentive has achieved its desired goal of promoting the domestic production and use of biodiesel. In 2004, the U.S. produced 25 million gallons of fuel; last year, that number rose to 690 million gallons.

The biodiesel tax incentive is primarily structured as a $1 per gallon blenders' credit that is triggered when biodiesel is blended with petroleum diesel fuel. The incentive can be used to offset excise tax liability and is refundable to the degree that the credit exceeds an excise tax owed by a taxpayer. The liquidity of this structure is designed to make biodiesel price competitive in the marketplace with diesel fuel.

Biodiesel must meet both the ASTM B6751 fuel specification and the EPA's Clean Air Act registration requirements to qualify for the incentive. Last year's tax extender package provided a 1-year extension of the credit, and thus the incentive is currently set to expire at the end of this year.

Due to volatile commodity prices, unfavorable market conditions, difficulty accessing operating capital, and uncertainty regarding Federal policy, the U.S. biodiesel industry is facing severe economic challenges. The industry's viability and the Nation's ability to reap the policy benefits associated with domestic biodiesel production will be seriously compromised if the biodiesel tax incentive is allowed to lapse at the end of the year.

It is difficult for small businesses and investors to make long-term business decisions based on year-to-year extensions of the biodiesel tax incentive. A multiple-year extension of the incentive is absolutely necessary to provide the certainty and stability that is needed in the marketplace.

NBB also supports a structural reform of the tax incentive. Restructuring the current blenders' credit with a production excise tax credit of equal value will streamline administration of the credit and promote tax compliance while preserving the liquidity of the existing incentive. This reform proposal is encompassed in S. 1589, the Biodiesel Tax Incentive Reform and Extension Act of 2009, which has been introduced in the Senate by Senators Cantwell and Grassley. Representative Pomeroy will be introducing the House version as legislation in the near future.

There are several shortcomings associated with the current blenders' credit that will be remedied by restructuring the incentives of production credit. Since biodiesel blending can occur at multiple stages in the distribution chain, it can be difficult to ensure that only qualifying fuel receives a credit.

This also makes it difficult for both taxpayers and the IRS to determine when a fuel becomes subject to the Federal 24.3-cent-per-gallon diesel fuel excise tax. The IRS is currently pursuing several courses of action designed to collect this excise tax liability, and what they are pondering would be particularly burdensome and onerous on small business. A change to a production credit in tandem with treating biodiesel as regular diesel fuel for tax purposes would remove the need for these regulatory burdens while improving tax compliance. A change to a production credit would also stop abusive transshipment schemes.

With NBB's full support, Congress last year closed the so-called ″splash and dash″ loophole that had previously allowed foreign-produced fuel to enter the United States, claim the biodiesel tax incentive, and then be sent to a third country for end use. Now, if you think about that, there is clearly no energy or tax policy justification for these sorts of transactions.

With that said, the current blenders' credit could still inadvertently allow for other potential abuses associated with the transshipment of foreign fuel through the U.S., and a change to a production excise tax credit would remedy this problem in a WTO-consistent manner.

In conclusion, the biodiesel tax incentive has helped achieve the desired goal of increasing domestic production and use of biodiesel. These benefits, however, will be lost if the biodiesel tax incentive is allowed to lapse at the end of the year. The NBB, on behalf of the U.S. Biodiesel industry, urges Congress to provide a multiyear extension of the reformed incentive.

Again, Chairwoman Velázquez, Ranking Member Graves, members of the committee, I really appreciate having the opportunity to testify this morning.

Chairwoman VELÁZQUEZ. Thank you, Mr. Feraci.

[The statement of Mr. Feraci is included in the appendix.]

Chairwoman VELÁZQUEZ. And the Chair recognizes Mr. Ellsworth for the purpose of introducing our next witness.

Mr. ELLSWORTH. Thank you, Madam Chair. It is a pleasant surprise for me this morning to welcome Mr. John Frenz. He is not only a constituent, but he is a very good friend of mine from Indiana.

Mr. Frenz is owner of Frenz & Schmidtknect, Incorporated, which includes two Montana Mike's family restaurants. The restaurants are located both in Illinois and Indiana. Mr. Frenz today, though, is testifying on behalf of the National Restaurant Association, which represents more than 380,000 member-restaurant establishments.

John also sits on my small business advisory committee, so we are in close contact all the time. And if you are ever in Indiana, I can recommend Montana Mike's with the highest—it is a four-star in my book.

And, John, when you go home, tell them I was at work today, if you don't mind telling the folks in Knox County.

But I would offer Mr. John Frenz.

STATEMENT OF JOHN FRENZ

Mr. FRENZ. Thank you.

Chairwoman Velázquez, Ranking Member Graves, Congressman Ellsworth, and other members of the Small Business Committee, thank you very much for this opportunity to testify before you today for the National Restaurant Association. As Brad has said, my name is John Frenz and am part owner of Frenz & Schmidtknect, Incorporated.

My business partner of 28 years now, Greg, and I, we operate two Montana Mike's Steakhouses in Vincennes, Indiana, and Danville, Illinois. I am here today to strongly urge this committee and Congress to extend certain expiring tax provisions before the end of this year.

The 15-year depreciation schedule for leasehold improvements, restaurant improvements, and new construction is stimulative and creates jobs. It should be extended and is the tax revision on which I will focus my comments today. However, I just want to touch on a couple other areas that are also very important. One is about the deduction for charitable donations of food.

At the end of the night, you have got food left over. We have got to throw it away. If we go and extend this on, it goes and allows the small business the same deduction that the C Corp already gets. It is extended already for them, but for the small business it is the same whether we throw it in the trash or whether we give it to charity. It is the same unless we extend this, and that helps out.

Second of all is about, as she had touched on, about the net operating loss carry-back 5 years and two. When we get in trouble in economic times, you get those years. Business is down, dollars didn't come in like you expected. If you can carry that back, you can still make the payroll, you can still make the withholding deposits on time, and you can make it through. That cash flow matters, and especially in these times.

And then—I have been in the restaurant business many years, but 28 in business myself. I still remember back when businessmen visited, we got—they could take a 100 percent deduction of that business expense. I remember when it went to 80 and then it went to 50, and you saw it drop off more. That three-martini lunch doesn't exist anymore. Maybe it did exist 30 years ago.

That doesn't exist anymore. If a businessman can bring another businessman to close a sale, to potentially find new customers, if they can go and deduct that meal as a business expense, it brings in business to the restaurant industry, generates dollars, generates jobs, generates income tax.

And the main thing that hits me is the extension of the 15-year rather than the 39-year depreciation schedule, and there are further details on that stuff on my written form that I had turned in. But for restaurateurs, this provision has made significant capital available for expenditures with the tax savings that result. Those capital expenditures for expansion and remodeling translate into jobs in the rest of the economy, as well as increased sales and employment at the restaurant, all of which are really needed right now.

When restaurants invest in construction and renovations, the impact spreads throughout the economy. Before the economic downturn, the restaurant industry spent more than $10 billion in 2007 on construction of restaurant buildings. According to the Bureau of Economic Analysis, every dollar spent in the construction industry generates an additional $2.39 in spending in the rest of the economy, and every $1 million spent in the construction industry generates another 28 more jobs in this economy. That means the restaurant industry construction spending created 280,000 jobs in 2007.

In fact, Congress has frequently enacted shorter depreciation schedules to stimulate the economy and create jobs. As far back as the 107th Congress, shorter depreciation schedules for different pieces of this entire provision for leasehold improvements, restaurant and construction have been included in various economic stimulus bills.

Even during those difficult economic times, some business owners are in the position to expand. In fact, 42 percent of restaurateurs like me and my business partner are planning to make a capital expenditure for equipment over the next 6 months. In our business, Montana Mike's in Vincennes, right now we are planning to put on an addition. We have those times—on Friday nights, Saturday nights, and Sunday at lunchtime, we have people waiting for 20 minutes to 30 minutes. Well, when we have got those customers, we have got to expand and take care of those customers.

This 15-year depreciation expires at the end of this year, so we have a short period of time to get the financing arranged, get the building built and put into use. Depreciation doesn't start until the project is actually put into use. So if it doesn't get done until January 1, first time used, then we will be on the 39-year depreciation schedule.

What does that mean? Over that 15 years on, say, it was—I will just take a figure of $150,000 to add that addition on—that will allow us to have an additional $6,154 in depreciation a year now for those first 15 years.

It all equals out. You pay less taxes now, but you pay more taxes later. The same amount of taxes will be paid over that period of time. It is just so when you start out, that is when the cash flow is needed.

And, once again, I want to thank you for the opportunity to testify before you today regarding these important tax provisions in the restaurant industry. I strongly urge Congress to extend and, in some cases, expand these benefits before the end of this year. Doing so will give small business owners like me—certainly when it comes to those tax provisions, that will not only help my business's employees, but will also help create jobs in construction and stimulate the overall economy. Thank you very much.

And, when it is appropriate, I will be open for questions. Thank you very much.

Chairwoman VELÁZQUEZ. Thank you, Mr. Frenz.

[The statement of Mr. Frenz is included in the appendix.]

Chairwoman VELÁZQUEZ. Our next witness is Mr. Keith Hall. He is the National Tax Advisor for the National Association for the Self-Employed. Mr. Hall is the primary consultant available to the self-employed of microbusiness owners.

NASE was founded in 1991, and represents hundreds of thousands of entrepreneurs in microbusinesses.

Welcome.

STATEMENT OF KEITH HALL

Mr. HALL. Thank you. Madam Chair, Ranking Member Graves, members of the committee, thank you for the opportunity to be here. My name is Keith Hall, and I am a small business owner. That is what I do, and I am very proud of that.

On behalf of the National Association for the Self-Employed and the 250,000 microbusiness owners it represents, I would like to say thank you, guys, for your commitment to small business owners everywhere. You guys really do make a difference.

I don't want to be overly dramatic today, but I want to talk about commitment. I have been fortunate enough through my association with the NASE to see the commitment of thousands of small and microbusiness owners—both to their families and to their businesses.

I have also been extremely lucky to be able to see the commitment to those same families and those same small businesses from this committee, from you guys. Today, I am here to ask you to continue that commitment. I know you guys have a tough job with lots of challenges trying to help people, trying to help the economy, trying to find new ways to meet the needs of so many people, and then trying to figure out some way to pay for it all. I know that is not easy.

The Tax Code has always been an effective tool in helping you guys to meet those goals, not just funding the government, but encouraging or discouraging activities and actions; and I believe Congress has used that tool well. But a number of those tools are scheduled to expire, as we talked about. Bonus depreciation options, increased expensing under Section 179, accelerated recovery periods, as Mr. Franz has talked about; all of those things have been extremely effective at creating jobs for small business and have contributed greatly to the economic recovery that I believe is under way. These tax incentives show a commitment to small business that shouldn't come to an end.

So the real question today that we need to evaluate is whether or not we want to continue that commitment to small business. The country finally seems to be seeing a light at the end of the tunnel. Taking away these incentives that clearly are making a difference seems to be the wrong signal at the wrong time.

Now, I could spend my whole 5 minutes talking about any one of those areas, but I would like to concentrate on just one, and that is the Alternative Minimum Tax exemption amount. I want to talk about this one in particular, because I think at the end of the day this cost really is levied almost exclusively on the small business guy.

The original idea behind the AMT was to prohibit the taxpayers with the most resources at their disposal, the wealthiest of Americans, from taking advantage of loopholes in order to avoid paying any tax at all. However, the effects of inflation, the growth of earnings and expenses weren't taken into account.

Now, Congress has recognized this over time and adjusted the exemption amount to keep track with inflation, but now that adjustment is scheduled to end. If we allow that adjustment to end, then the tax burden for many Americans who had no increase in earnings year over year will be paying more tax immediately—the same level of earnings, but more tax. A penalty.

And why? Many would pay the extra tax simply because they live in a State with a higher-than-average State income tax. Others would pay more simply because they have a larger-than-average family. Clearly, that was not the intent of the AMT when it began so many years ago; and ending that provision now would punish the people that the original AMT provision set out to protect.

Here is the real kicker: Even if the AMT system does not result in any additional tax, it still has to be calculated. Allowing this provision to end would force many Americans to do the math even if they don't meet the test and end up paying any tax. So the AMT requires a completely different set of rules.

Now, this committee, particularly, has continually promoted the need for simplification in the Tax Code; yet, here is the single topic that results in a completely new tax return, a second tax return, a second set of records, a second tax liability, and a second set of headaches. The instructions for the AMT form actually say, and I quote: "Therefore, you need to refigure items for the AMT that you have already figured for the regular tax. In some cases, you may wish to do this by completing the applicable tax form a second time." Really, two times?

Now, the very concept of having a second set of records, a second set of tax forms, a second set of calculations goes to the very heart of the need for simplification. Again, even if no tax results from the AMT, a system that requires two calculations is a tax in itself. And, worse, it is a tax that doesn't even generate any money for the Treasury. And without this increased exemption, many more small businesses will be stuck in this trap.

So getting rid of the AMT altogether would be my first choice, but that may not be an option. At a very minimum, the exemption amount that is included should be indexed to inflation, and this fallback should not be allowed.

Now, my most concerted point here is that the wealthiest of taxpayers will still be affected by the AMT, regardless of this exemption amount. But those taxpayers who have had no real increase in earnings, no other resources to call upon, those are the small businesses and the individuals who will pay this price. And I know that wasn't the intent of the AMT, and certainly not the intent as we consider these expiring tax incentives.

The bottom line: Keep these incentives, keep the commitment.

Thanks again for the chance to be here. And, more importantly, thank you guys for your commitment to small business.

Chairwoman VELÁZQUEZ. Thank you, Mr. Hall.

[The statement of Mr. Hall is included in the appendix.]

Chairwoman VELÁZQUEZ. And if I may, I would like to address my first question to Ms. Bernstein.

For the first time, the 15-year depreciation schedule also applies to qualified retail improvements. What impact has this change had on your industry? And even in the current economic climate, are more retailers undertaking construction projects?

Ms. BERNSTEIN. That is a good question.

It has had a positive impact. I actually was recently talking with a small business member in Montana who is putting in a $1.5 million dollar improvement to the retail store that they own as a result of this provision, and actually looking to maybe improve—they have got a total of three stores—their other two stores down the line.

Unfortunately—that would probably be something they would have to do in 2010—and cost is going to be a factor; and if the cost goes back up to 39 years, that is going to be very difficult to do in these times.

I will tell you, though, that when I talk to the vast majority of our retail members, they have cancelled whatever plans they could cancel for projects in 2009 because of their very slim earnings or loss situations.

As you know, with all businesses, but especially retail, sales have been down so much that the businesses really are cutting back everything that is not essential. Now, that builds up more pent-up demand for improvements that must be made and that they are trying very hard to be able to make in 2010, at least to put some more of those projects on the line; cost is going to be critical. And if the cost is—if they can only depreciate 1/39th of the cost per year, which is virtually nothing, then it is going to make a big difference.

Chairwoman VELÁZQUEZ. Let me ask you, has this provision been used in concert with bonus depreciation and 179 expensing?

Ms. BERNSTEIN. I don't think that—you can't use the 179 expensing, I don't think, for the same, exact property. I don't think you can double—that would be a double benefit.

So I do believe that the leasehold improvement did qualify for bonus depreciation, though.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Frenz, IRS Commissioner Shulman recently said that he expects to see a record number of tax refund requests, and this jump can be attributed to the Recovery Act provisions that allow small firms to carry back losses.

Have restaurants been taking advantage of that provision, and has it helped them survive for the last 12 months?

Mr. FRENZ. Yes, especially in these economic times.

You can be operating for many years—the restaurant industry, you have heard before, our median bottom line or median percentage is 3 to 5 percent. It is very low compared to other industries because there is so much competition.

You can be doing fine for years. You get in tough economic times, the manufacturing facility in your area gets shut down or laid off, and all of a sudden your business drops down. And you are on such a thin margin, all of a sudden, boom. You are in that provision—or in that situation where you have got to decide whether to talk to the employees.

Either you need to reduce hours so you have to—everyone, do you want to just take a little reduction in hours or are we going to have to lay some people off? What do you want to do? You work with them on that.

But then the bottom line comes negative. And if you have got that, where you can carry back—this is what they are talking about the carry-back, that is, taxes you paid on income; you can't get any more than that, than what you have already paid. It is just allowing that credit or that deficit to be carried back.

And, yes, it is very important, especially in these economic times. You can't operate in the red all the time or you are out of business. In these situations when business gets tough, if you have that possibility, it really helps them. And it is used.

Chairwoman VELÁZQUEZ. Ms. Dwyer-Owens, this committee has always been very concerned about helping those returning veterans from the Iraq and Afghanistan wars, including provisions on the small business lending programs under SBA that we specifically instructed to be in place for returning veterans.

Can you talk to us about what is so unique about returning veterans, that helps them succeed in becoming small business owners?

Ms. DWYER-OWENS. Especially as it relates to franchising.

Franchising is a set of systems, so—in the military they are trained to follow systems, so it is a perfect fit. And they are also disciplined. So we find that franchisees who come into our businesses, that have that strong discipline to follow systems, do very well in business.

So they have got strong ethics. They have been trained to have strong ethics in business, so it is a perfect fit for franchising.

And I have not heard of many of them getting benefits from the SBA.

Chairwoman VELÁZQUEZ. Well—

Ms. DWYER-OWENS. I should only speak for my franchisees; I shouldn't speak for others. My own franchisees are having a terrible time, even those that are veterans, getting help.

Chairwoman VELÁZQUEZ. I don't know if any person here is from SBA, but that is the story that we hear not only for veterans but other small businesses. And we are working very hard to make sure that the sensitivity is there. So this is the time to make sure that the system is provided.

As we look at moving a tax bill, one revenue offset that some have talked about is changing the taxation rules for carried interest. How would changing the tax rate for such interest impact private equity investment in your industry; and how would this impact private equity investment?

Ms. DWYER-OWENS. I think it would be a big challenge.

Entrepreneurs are the ones really driving the economy, from my perspective. And in my own personal situation—I am a private equity owner, and I will tell you with certainty that today we would not be where we are as an organization without the help of the private equity owner because we finance our franchisees. So we will have a record year in new unit sales for our franchise companies because we finance in house, and we would not be doing that without the support of our private equity partner.

So this is not the time, from my perspective, to make that kind of a change.

Chairwoman VELÁZQUEZ. Mr. Feraci, in your statement you stated that if the biodiesel tax incentive is not extended, production in the U.S. will stop completely.

Have you made any analysis as to how many jobs we stand to lose if we don't extend the tax credit?

Mr. FERACI. Thanks for the question, because that really does kind of highlight the importance of extending the tax incentive and not having there—letting there be a lapse.

Right now, the U.S. biodiesel industry supports, directly and indirectly, approximately 52,000 jobs in the United States. And if you look and think about how the tax incentive is structured, what it does is, it makes the fuel price competitive with diesel fuel. So absent that incentive, the fuel is selling at a premium to diesel fuel.

And the fuels business, in general, is a very high-volume, low-margin business. So if you have that much of a disparity in the price, it is going to be hard to move any product in the marketplace and get contracts. You know, you put that in tandem with the fact that there is not—the renewable fuel standards not yet in place, I don't think it is being alarmist to say that you would see production in the United States come to a screeching halt.

Chairwoman VELÁZQUEZ. In order to give your industry certainty, the extension should be how for how long? Two years? Five years?

Mr. FERACI. What you see in the legislation that I mentioned in my testimony is calling for a 5-year extension. And if you look back to the Recovery Act, you had similar-length-duration extensions for wind and other section 45 tax incentives. And the idea is the same; you want to provide that certainty and reliability to businesses so they can make planning decisions; to the investment community so you can have capital come in to continue to grow the business.

Chairwoman VELÁZQUEZ. Mr. Hall, I heard you make your case on AMT, but I would like to ask you what other tax policy should we be looking at to encourage entrepreneurship among the self-employed?

Mr. HALL. I think, consistent with some of the other panelists, small business continues to have issues with access to credit. So whether they are financing restaurant equipment or they are financing a franchise fee, whatever they are challenged with, whether they are a veteran or just like me, still finding access to invest in their new idea, their new effort, their contribution to the economy is still difficult.

And when I look at the bonus depreciation items, section 179 limits, the recovery periods that Mr. Frenz talked about, all those things seem to be tax comments or tax issues, but I view those as credit issues as well. Because, as Mr. Frenz said also, that I agree with, those issues really are just timing issues. They don't increase the deduction or the expense of an item over time; it just puts the small business in the position of more readily financing their new idea.

And, again, it is my belief that is where the economic recovery comes from. That is where the jobs come from. And so having access to those tax incentives helps with the credit issue as much as having better rates at the bank even.

Chairwoman VELÁZQUEZ. Thank you.

Now I recognize Mr. Graves.

Mr. GRAVES. Thank you, Madam Chair.

The estate tax expires next year, goes back to the way it used to be, with much higher rates and lower exemptions.

I don't know if you, Mr. Feraci, want to comment.

But I would ask each of you—and I would start Ms. Bernstein—how you feel about that and the state of the estate tax. Obviously, it doesn't have that much effect on running your business. But it does if something happens to you and you pass it on; it has a huge effect. But I would be very curious about that and including it in the extenders.

Ms. BERNSTEIN. It is very important that something be done about the estate tax—obviously, you know, for small businesses. Everybody here represents small businesses; the businesses are very often family businesses that are passed on to children, and it is important to be able to pass that on without having to pay so much in tax that you don't even have the ability to pass on that business because it all has to go to the Federal Government.

There also is some certainty that is needed here. The situation that we are in right now is one where the tax would be repealed completely for next year and then go back up to pre-2001 levels, which is obviously an absurd thing and something needs to be done before that happens.

We are very hopeful that this is something that Congress will put on the fast track and deal with the permanent solution, so that people can plan on something that clearly is not as onerous as the levels that we remember, pre-2001, which were really confiscatory.

Ms. DWYER-OWENS. I had a personal experience.

My father died of a sudden heart attack at the age of 60 in 1994. And thank goodness my mother survived, because our family would have lost probably almost everything that he worked so hard to build in our organization. So we would have lost employees; our family members wouldn't have had anything to go forward with. And our franchisees would have been very upset in that whole process as well.

So I agree. I think we just have to find a permanent solution to this. And going back to this is not the solution.

Mr. FERACI. Your average biodiesel plant has an average of about 15 million gallons of production and less than 20 employees, which is a way of saying they are small businesses. So to the degree that you could have an impact on estate planning and the costs associated with that, and then not being ready for that if you do get hit with the estate tax, it would have an impact on some of these businesses in our industry.

Mr. FRENZ. Very good question.

In the restaurant industry, seven out of ten restaurants are single-unit, family-owned/operated restaurants, and that has a huge effect on the estate tax in its current form.

And I fully agree with you, something needs to be done.

Mr. HALL. And it is complicated, because it is a revenue issue. It certainly speaks straight to budget issues, and it is very complicated for most small businesses, I think—the uncertainty—and that may be the same thing with so many tax issues, not being able to plan, not knowing exactly what is going to happen.

Finding some permanent exemption amount, whether that is $5 million—our microbusiness base, that seems to be the right amount that I think the NASE would support.

But the key point there is finding some remedy that is permanent so that people could then actually plan and then know what they are facing so that they can make the appropriate decisions.

Mr. GRAVES. Thank you.

Chairwoman VELÁZQUEZ. Mr. Schrader.

Mr. SCHRADER. Thank you, Madam Chair.

I guess I would like to open with a general question here. I mean, one of the things that has concerned me—I like a lot of what I have heard, and I appreciate the succinctness of the testimony from all the witnesses; it has been very, very good and on point, and hopefully our committee will have an opportunity to deal with some of these.

But all of these cost money. And when I go back to the district, I keep getting hit up on, How much money are you all spending? And then I also get hit up on, How come you are not doing anything for small business? And I would suggest that, in the Recovery Act, we did a lot of the things, at least during this past year, that are good for small business.

And how do we—and I guess I would ask, how do you get the message out to your Members that this Congress has stepped up, at least in the very near term of the Recover Act, and done a lot of these things already, to make sure they didn't expire this year so they can continue on and, hopefully, during this year at least, be all right?

And I guess my question: If we extend some of these things, like we already talked about doing the estate tax, we are already talking about doing the AMT, we are talking—I think there is some discussion about the net operating loss issue, particularly for smaller businesses. If we do go down that road, how do you and we communicate that successfully to small business so that they realize this Congress has helped them?

Because we have not done that so far. I need your help, and I would ask each of the members of the panel here, maybe starting with Mr. Hall, and go the other way.

Mr. HALL. Well, I still would use—I am not a PR person, so I apologize for that.

Mr. SCHRADER. But you are still a businessman.

Mr. HALL. I would still use the word "commitment." That is one of the things I talked about in my oral comments, and I think that is the word small business wants to hear.

And I think it is easy to say that word, but when you pass things extending these types of things for investment in property, for useful lives of equipment, for the AMT exemption—and, again, that represents a situation that only the people caught in that middle bracket are going to be affected by if it is not extended.

Passing those type of things, I think, says commitment to small business. And I think that is the way to communicate it to small business. I think—I am sitting here in this chair and that is what I hear; I hear a commitment to that.

Mr. SCHRADER. But do you communicate back to your membership that Congress has done X, and this should help you; please take advantage of it?

Mr. HALL. Absolutely. In fact, I would love to selfishly say, because of our testimony, some things happened to promote small business. But absolutely we communicate procedures like that, and we communicate again back. We communicate that the commitment to this committee, to small business, is very important.

Mr. SCHRADER. Thank you.

Mr. FRENZ. It is real easy with the restaurant industry, because for every dollar spent in the restaurant industry it is another $2.34 that expands out. And the issue with accelerated depreciation, the same amount of taxes does need to be paid, it is just paid later. More cash flow early on when you need it, and then you pay it later. So there is no loss of tax dollars, it is just when it is paid on that speed-up of depreciation.

On the other issues, when you save a business on the block, especially the family-operated restaurant, you are saving a lot in that neighborhood, a lot of that in the economy. And those are jobs that are saved.

Mr. SCHRADER. Well, I agree with all that. But my problem is, I don't think we have communicated that successfully to our restaurants on the street. They don't realize we have already done some stuff. And if we do more stuff, if we have already failed in communicating the first part, what is the--

Mr. FRENZ. I am a restaurant operator and I am—I have a very big smile when my restaurant is full and the dollars are being spent and the employment is up and dollars going out. As far as the actual taxation dollars, I don't know.

Mr. SCHRADER. Talk to some of your buddies, if you wouldn't mind. Thank you, though.

Mr. FERACI. The biodiesel tax incentive plays such a critical role for the industry. Our membership is keenly aware in terms of what is going on with the incentive, when it is going to expire. You just have to check my voice mail to see that they are very aware of what is going on with that.

They have been very appreciative of what this committee has done in providing a forum to discuss renewables and talk about the benefits that come from displacing petroleum with renewable fuels, and in terms of communicating to—you know, good policy will trickle down and our membership will understand and benefit and country at large will benefit if you have a longer-term extension and continue to get the benefits of displacing petroleum with renewables.

Ms. DWYER-OWENS. I was here just 2 weeks ago with about 450 other franchisors and franchisees on the Hill, and one of the big messages we pushed at is, we need to thank our representatives, especially the Small Business Committee, for all the good work they are doing for us. So we recognize.

And it is constantly pushed. We have a government relations side, of course, on our franchise association Web site, and we are pushing the positives as well as where we need help. But I would say that we try to keep a lot of balance there; and on the Hill, we have probably said as many thank-yous as we have said, "We need more."

Ms. BERNSTEIN. I can tell you that when Congress enacted the NOL carry-back, 5-year, for the businesses with less than $15 million in gross receipts, the IRS put out some very quick advice on how to go for a quick refund on that. We put that material into our newsletter on our Web site, so that our small retailers could figure out how to take advantage. Because, as was pointed out, they don't have the advisers who are right there to say, Let's go right away and apply.

And I did get phone calls with people asking how to use it, and we tried to help them through it. So we certainly do that.

But I do want to stress that in this economy, from the retail side, obviously what all of our small business and large business members need is more consumer spending. It is 70 percent of GDP. Until the consumer comes back, the economy can't come back. And what probably is going to help the most with that, we all know the answer: It is more employment. The employment numbers are making people who have good jobs afraid to go out and spend in the retail stores, in the restaurants that are represented at this table and with your members. So we need to give them the confidence. We need to do that through employment. So, with that, I urge you also to support expanding that NOL carry-back for larger than $15 million in gross receipts.

I have talked about some not very big businesses today because of the slim margins in the retail industry. You would be surprised how little money it is that some of these companies need for their NOL carry-back. But they have got a lot of employees, and I think that we wouldn't want to see more of those jobs cut.

And I think it is an important issue across the board, and I urge your support.

Mr. SCHRADER. Thank you.

I yield back.

Chairwoman VELÁZQUEZ. Ms. Dahlkemper.

Ms. DAHLKEMPER. Thank you, Madam Chair. And thank you. I apologize for coming in late. I had a hearing in another committee to go to first. So I hope I am not actually repeating questions that were already asked.

But, Mr. Hall, as part of the Recovery Act, Congress increased the AMT exemption to spare nearly 20 million taxpayers from the

AMT liability. And if we are unable to reach a deal on AMT, how would it slow the recovery process?

Mr. HALL. Well, again, I think the key issue there is, depending on estimates, the original AMT impacted about 1 percent of taxpayers. And that was 1 percent by definition of the more wealthy taxpayers, and I think that was its intent.

Recent estimates, particularly in States like New York, New Jersey, California, who have a higher State income tax, as many as 8 to 10 percent of taxpayers are affected by AMT.

Ms. DAHLKEMPER. And how many of those are small business owners?

Mr. HALL. Again, back to one of my original comments, the thing that scares me most about the impact of this exemption on small business is, all of them have to do the calculation anyway. Even if it doesn't have a revenue impact to the Treasury, it still causes a drain on the small business because they are having to go through the process.

But estimates have been as many as 10 percent of small businesses will be affected by AMT, and overall, one out of five, 20 percent, would be affected by AMT.

And, again, the biggest concern there for me, back to your original question: Is that is going to be tax out of their pocket? That is money that they would be using to finance business investment. And whether that is dollar for dollar, or that kind of changes that their perception or their optimism on their future, the uncertainty involved, all those things put an optimism strain on small business, which then translates back into lower investment.

So that is my real concern, uncertainty.

But then also having just the exemption amount being the only thing that is changed, it is only going to capture people in the lower-income levels, anyway, which again wasn't the original intent of AMT to begin with.

Ms. DAHLKEMPER. Thank you.

Mr. Feraci, the biodiesel industry is clearly facing challenges in the current economy. But despite these obstacles, I know you are very aware of the producer in my district, Lake Erie Biofuels, who has actually now changed their name. But they are finding a way to thrive in these really tough business conditions.

Can you maybe elaborate on the role of tax incentives in the successes of firms such as Lake Erie Biodiesel?

Mr. FERACI. Sure.

They have done a fantastic job. And when you talk to them, they have a business model that is utilizing some feedstock that other providers own, and that is a huge component of the input cost. And they make a quality fuel.

The State of Pennsylvania, as well, has done some good things at the State level to promote biodiesel use, which is building a market there. And we have several other biodiesel producers in the State who are weathering what is a pretty difficult storm for the industry right now.

All that said, the tax incentive still plays a key role because it is performing that role in the marketplace of making biodiesel price competitive with conventional diesel fuel. And you have to have that, especially in the absence of the RFS being in place right now, to have consumers purchase the fuel and actually use it in the marketplace.

So absent that tax incentive, I think that any biodiesel producer in the country is going to have—would have a difficult time making ends meet.

Ms. DAHLKEMPER. Do you think any of them would be able to survive in the long term if there was not the short-term tax credit?

Mr. FERACI. I think you would see people—to the degree that you couldn't claim the incentive, I think you would see people start to mothball their production facilities, waiting to see if the incentive were to come back.

But if it were to disappear for a long period of time, that—you would see the production cease, and then you would start to lose the production capacity in the country that we have built up since 2004 when we put the incentive in place. And that would be a real shame, because we do have the capacity now.

We have commercial-scale production of low-carbon, clean-burning diesel replacement fuel. We are going to be able to meet the RFS standards in terms of making volume and displacing petroleum. And if that tax incentive goes away, you are just not going to be able to do it.

Ms. DAHLKEMPER. Thank you.

I yield back.

Chairwoman VELÁZQUEZ. Ms. Dwyer-Owens, the committee has conducted so many hearings regarding access to capital and the condition, the climate, the downturn in our economy. And the biggest issue that small businesses are facing right now is access to credit, tightening standards by lenders, and so on.

So I am interested to hear, what are the advantages of the franchise business model in a bad economy? And how can franchisors help franchisees weather the storm?

Ms. DWYER-OWENS. There are numerous benefits, but just to hit on a few of them: In franchising, you are in business for yourself but not by yourself. So if you think about somebody starting a business from scratch and trying to figure it out along the way, there are going to be a lot of costly mistakes. And if somebody becomes part of a franchise organization, a lot of those mistakes have already been made. So, again, if you follow the system, you should find success in a franchise organization.

There are other things, too, like buying power. So when you become part of a franchise organization, there are pooled buying dollars. You know, whether you are buying vehicles—in our business, we have a lot of vehicles out on the road, and we get much better prices for our franchisees because we are buying those vehicles together versus independently.

So those are two of the top things that I would focus on.

Chairwoman VELÁZQUEZ. Mr. Frenz, we know how important consumer spending and consumer confidence is to getting this economy turned around, and we hear reports that the retail spending has increased.

My question to you is, can you say the same with the restaurant industry, food traffic has increased?

Mr. FRENZ. I wish I could. We are currently on the—at the location in Indiana, it is riding about—I am trying to remember, because I ran those figures for last month last week. And it is right around 12 percent, down, sales from last year, the same period of time.

And in the store in Illinois, it is down 5 percent.

The price of fuel is much lower this year than last year, so that has helped on some of the expenses. And the price of the beef is much lower this year, and part of that is the fuel cost.

So the bottom line is approximately the same as last year, but the sales are currently down.

Last weekend—this last weekend, we were packed. And whether it was the cooling-off or whatever that the people, less people went out to the park to eat and came in and ate at the restaurant, or less people ate on the patio at home, I don't know.

But last weekend sales were up, and I hope with—the government reports that the recession is over. I hope that word gets out to the people and they back them up on it.

Thank you very much for that question.

Chairwoman VELÁZQUEZ. Thank you.

Well, let me take this opportunity to thank all of you for being here today. And when it comes to tax policies, especially in Ways and Means, small businesses are an afterthought. So we will be there to remind them as to the importance of this provision when it comes to small businesses.

I intend to send a letter to Ways and Means, and especially to the chairman, about keeping and extending and expanding some of these provisions.

So, with that, I ask unanimous consent that members will have 5 days to submit a statement and supporting materials for the record. Without objection, so ordered.

Chairwoman VELÁZQUEZ. This hearing is now adjourned. Thank you.

[Whereupon, at 11:15 a.m., the committee was adjourned.]

NYDIA M. VELAZQUEZ, NEW YORK
CHAIRWOMAN

SAM GRAVES, MISSOURI
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

STATEMENT
of the
Honorable Nydia M. Velazquez, Chairwoman
United States House of Representatives, Committee on Small Business
Full Committee Hearing: ""Tax Extenders: How to Ensure Small Business Growth and Continue Economic Recovery"
September 30, 2009

Targeted tax relief has played a key role in our nation's recovery efforts. Since February, we've worked to deliver $15 billion in credits and deductions to entrepreneurs. These measures are ensuring every small firm has the tools it needs to grow from within. When coupled with existing incentives, like tax extenders, Recovery Act tax relief has created real momentum. But with expiration dates looming, many of these provisions will soon run out, putting the breaks on much of our progress thus far.

In roughly two months time, a wide range of tax provisions--from R&D credits to clean energy incentives-- will sunset for small firms. In today's hearing, we will examine those measures. In doing so, we will look for ways to ensure effective efforts are continued, and ineffective ones are either allowed to sunset, or enhanced to spark growth.

Whether we're talking about home office deductions or bonus depreciation for equipment purchases, entrepreneurs rely on tax measures to expand their ventures. This is the case in both bad times and good times, but rings particularly true in today's economy. For small firms facing tightening credit and shrinking capital, incentives can make all the difference. In some instances, they are a deciding factor for things like hiring workers and making investments. That's why targeted relief is so important, and that's why we need to be reauthorizing measures that work for small firms.

There are a number of valuable, soon-to-expire tax extenders. Perhaps the best example is the R&D credit, an incentive that has been reauthorized 13 times since 1981. This provision yields $2 in research for every $1 in investment, and helps create high-wage jobs for workers like engineers and scientists. Yet despite its obvious economic benefits, the R&D credit is slated to expire in December, leaving countless small firms in the lurch.

///more///

The R&D credit is just one example of an effective--but endangered-- tax provision. Reauthorizing these credits could ease the anxiety associated with last minute extensions. It could also provide small firms with the stability they need to plan budgets and attract investment. In that same vein, extending certain Recovery incentives could also go a long way in stimulating small businesses.

While not considered "extenders" in the traditional sense, Recóvery Act tax breaks are also set to expire. These incentives were designed to boost consumer spending and spur investment. Credits for first time home buyers, for example, are sparking growth in the real estate and construction industries. The $8,000 incentive has already contributed to a rebound in the housing market--one that some experts say could drive an additional 400,000 home sales this year. Reauthorizing this particular provision would undoubtedly stimulate future growth. Failure to do so, however, could create greater uncertainty in the marketplace, and dampen recovery for small businesses.

Entrepreneurship is an inherently high-risk, high-reward endeavor-- one that is often characterized by uncertainty. Since the beginning of the downturn, that uncertainty has been compounded. Now, more than ever, small firms need stability and incentives to grow. But unfortunately, the lack of finality in our tax policy may be undermining these very goals. As we look for ways to strengthen small businesses, we need to be focused on the tools that are already sparking progress. By extending and expanding these measures, we can give small firms the certainty they need to make new investments, and the encouragement they need to help grow our economy.

2

U.S. HOUSE OF REPRESENTATIVES

SMALL BUSINESS COMMITTEE REPUBLICANS

REPRESENTATIVE SAM GRAVES, RANKING MEMBER

Opening Statement of
Ranking Member Sam Graves
House Committee on Small Business
Hearing: "Expiring Tax Incentives: Examining their Importance for Small Businesses on the Road to Economic Recovery"
September 30, 2009

Madam Chairwoman, thank you for holding this hearing on the temporary tax provisions known as "extenders." A special thanks to our panel of witnesses. Year after year, taxes rank as a top concern for small businesses. According to the IRS' National Taxpayer Advocate, small firms must deal with a particularly complex array of laws, such as depreciation, employment taxes, and independent contractor rules. It is even more difficult for companies to operate when tax provisions are temporary, because they cannot effectively budget or plan for the long term. Small businesses pay more per employee to comply with the Internal Revenue Code, and often can't afford to hire tax experts to help them.

For small businesses, these are difficult times. Unemployment is rising, credit is tight, and energy prices remain steep. Every expense is an added burden, and can make the difference between whether a firm stays open or is forced to close. The tax provisions we are considering today are critically important to entrepreneurs. Because small companies are constantly squeezed by ever growing costs, tax relief is essential. I would prefer that Congress pass permanent tax rate reductions, rather than narrower, temporary provisions that must be renewed by Congress year after year. I am particularly concerned that we extend the 2001 and 2003 tax cuts. Although not the topic of this hearing, these provisions are scheduled to expire in 2010. If they do expire, working families will see their taxes increase, and their prospects for employment decline. For entrepreneurs, these provisions are a necessary incentive to keep our economy moving.

I support temporary tax relief. But we need to go further. Making the 2001 and 2003 tax benefits permanent would give small firms the confidence to purchase new equipment and hire more workers. That's why I introduced legislation to permanently extend the 2001 and 2003 provisions. I hope Congress will act to provide this predictability for our nation's businesses.

Finally, a word about the Alternative Minimum Tax, which has been called the most serious problem faced by taxpayers. The AMT hits many small business owners hard. It reduces business deductions, is needlessly complex and increases tax uncertainty. I would prefer that we repeal it, but failing that, we should extend AMT relief.

Madam Chairwoman, thank you for holding this hearing. I look forward to hearing the testimony of our experts.

National Retail Federation®
The Voice of Retail Worldwide

Statement

Of

Rachelle Bernstein

Vice President, Tax Counsel

National Retail Federation

Expiring Tax Incentives: Examining their Importance for Small Business on the Road to an Economic Recovery

Before the

House Small Business Committee

Wednesday, September 30, 2009

Liberty Place
325 7th Street NW, Suite 1100
Washington, DC 20004
800.NRF.HOW2 (800.673.4692)
202.783.7971 fax 202.737.2849
www.nrf.com

Chairwoman Velazquez, Ranking Member Graves, members of the Committee, NRF commends you for holding this important hearing to evaluate the impact on small business of the tax provisions scheduled to expire at the end of 2009 and other stimulus measures.

I am Rachelle Bernstein, Vice President and Tax Counsel for the National Retail Federation (NRF), which is the world's largest retail trade association. NRF represents an industry with more than 1.6 million U.S. retail establishments, more that 24 million employees, about one in five American workers, and 2008 sales of $4.6 trillion. Many NRF members and most retailers are small businesses. Ninety-six percent of retail businesses have only one location.

Retail Industry in Recession

In 2008, retailers' holiday sales, which typically represent 25-50% of their annual sales, declined by 2.8%. During the past year, consumer confidence hit its lowest level since records have been kept. For the first time in its long history, NRF is forecasting a decline in annual retail sales for 2009.

Retailers lost 535,000 jobs in 2008 and another 299,200 jobs through August of 2009. A consumer confidence survey conducted the first week of September showed consumers less confident that they were in August, with 70.2% of consumers having no confidence that there will be a strong economic recovery. Retail sales for the past three months continue to show sharp year-over-year declines, with declines of 4.3% in August, 5% in July and 3.8% in June.

Net Operating Loss Carryback

The tax proposal that would provide the most immediate and beneficial help to retailers that are struggling to survive is the 5 year net operating loss (NOL) carryback. In our current recession, where access to credit is so severely limited, the NOL carryback will provide an important source of capital to finance ongoing operations and retain employees.

An NOL is incurred when a business has negative taxable income. An NOL can be used to obtain a refund for taxes paid in the past and/or carried forward to offset tax obligations that arise in the future. The purpose of the NOL carryover is to smooth out changes in business income, and taxes on that income, throughout the business cycle, which will encourage investment and increase economic efficiency.

Under current law, taxpayers may carry losses back 2 years and forward 20 years. Although both the House and Senate versions of the 2009 economic stimulus legislation would have permitted all businesses except those that have received TARP funds to carry their losses back for 5 years, the final version of the American Recovery and Reinvestment Act (ARRA) included a 5 year NOL carryback for losses incurred in 2008 only for businesses with less than $15 million in gross receipts. This provision needs to be expanded so that size of business is not a factor in limiting the benefit of the carryback. It also should be extended to cover losses incurred in 2009 because, as I stated earlier, it appears that the sales decline for 2009 will be worse than 2008.

There is precedent for extending the carryback period for the NOL in times of recession. After 9/11, the Job Creation and Worker Assistance Act of 2002 extended the NOL carryback period from two to five years for losses incurred in 2001 and 2002. NRF strongly supports H.R. 2452, bipartisan legislation introduced by Representatives Richard Neal and Pat Tiberi, the Chairman and Ranking Member of the Select Revenue Measures Subcommittee of the House Ways and Means Committee. H.R. 2452 would permit businesses to carryback losses from 2008 and 2009 for 5 years. President Obama included a similar proposal in his Fiscal Year 2010 Budget.

Because current law allows taxpayers to carry losses forward for as many as 20 years to reduce future tax liability, allowing for this longer carryback period is merely an advance on a tax refund that would be due to them in the future. This advance on a future tax refund provides a much needed source of cash for operations as businesses are struggling through this recession.

Because retail sales have fallen so dramatically over the past year and access to capital has been so limited, retailers are struggling to find the cash they need to operate their businesses as the economy moves toward recovery. For most retailers, 25-50% of their annual sales occur during the last quarter of the year – during the holiday season. In fact "Black Friday," the day after Thanksgiving, marks the beginning of the period when retailers go from being "in the red" (i.e. losing money) to being "in the black" (i.e. turning a profit). If struggling retailers cannot finance inventories for the 2009 holiday season, which is their greatest opportunity for revenue for the year, they could go out of business.

The problem can be illustrated with the stories of two of our smaller chain retail members. These retailers are too large to be able to qualify for loans from the Small Business Administration, too small to have been able to negotiate large enough lines of credit to carry them through this recession, not credit worthy enough to qualify for TALF (businesses must be AAA rated to benefit), and too large to be eligible for the NOL carryback permitted to small businesses in ARRA. In both of these situations, the retailers are struggling to find ways to finance their inventory for this holiday season. In the first case, a small specialty chain, the ability to use a modest (less than $10 million) 2008 NOL carryback to finance inventory worth 5 times as much could mean the difference in staying in business for its 2000 permanent employees, and additional 6000 seasonal employees. In the second situation, a regional specialty chain operating in 4 western states predicts that it will close one-third of its remaining stores if it does not get the cash influx from its 2008 NOL carryback. That will result in a loss of 800 jobs. For businesses that are not on the brink of survival, the NOL carryback will allow them to make some new investments, like improvements to their stores, which there is also no capital to finance in this current environment. These investments would create new jobs that are so desperately needed in this economy. Members of the Committee, if the NOL carryback is not enacted soon, tens of thousands of additional retail jobs will be lost.

<u>Depreciation of Improvements to Retail Stores, Restaurants and Leased Property</u>

The existing 39-year recovery period for real estate improvements grossly overstates the actual economic life of structures and improvements, increasing the cost of capital and distorting business decisions. In 2004, Congress recognized this problem and enacted a temporary provision to shorten the depreciable life of leasehold and restaurant improvements from 39 to 15 years. Recognizing that this provision put retailers who owned their property, many of which were small businesses, at a competitive disadvantage compared to those who leased their stores, in 2008 Congress extended the 15-year depreciable life to improvements made to stores that are owned by retailers, as well. The 15-year depreciable life for improvements made to leasehold, retail and restaurant space is scheduled to expire at the end of 2009. The President's Fiscal Year 2010 Budget proposes to extend this provision through the end of 2010.

The recovery period for real estate is not based upon the actual life of the property, but rather is the result of several incremental increases in the depreciation period that Congress enacted in order to raise revenue. Studies conducted by the Treasury Department, Congressional Research Service and private economists all have found that the depreciable life for buildings is too long and that the depreciation rules for investments in nonresidential structures may be the only type of investment where tax rules provide for decelerated cost recovery. As a result, current depreciation allowances generate high tax costs for these investments and cause investors to under invest in these projects.

Retailers generally remodel their stores every 5 to 7 years to reflect changes in customer taste and needs. Retailers must update their stores in order to compete in the marketplace. Because of the sharp decline in 2009 retail sales, retailers were forced to cut all but the most essential operating expenses during this past year. As a result, many retailers canceled planned improvements to their stores. The cancellation of these improvements resulted in severe job losses in the construction industry. Many retailers have even more urgent needs for improvements in 2010, which they are currently trying to plan for. However, because retail sales have not yet turned around, cost will be a major factor in going forward with these improvements. If the 15 year depreciable life for improvements is not extended, the after-tax cost of these improvements will increase dramatically and will result in fewer projects in 2010. This will severely affect the ability of the construction industry to re-hire workers.

Conclusion

Both the NOL carryback and the extension of the 15 year life for improvements to retail, restaurant and leasehold property will have a direct and positive impact on employment in the current economy. It is not only important for Congress to extend these provisions, but also it is important that these extensions be enacted soon. Delaying action will impact thousands of jobs. We urge the Small Business Committee to lend its support to extension of these important tax provisions.

Thank you for the opportunity to participate in this important hearing.

IFA INTERNATIONAL FRANCHISE ASSOCIATION | Franchising Building local businesses, one opportunity at a time. 50 YEARS 1960-2010

Statement of Dina Dwyer-Owens
Chairwoman & CEO, The Dwyer Group
Chairwoman, International Franchise Association

Before the House Committee on Small Business

Hearing on *Expiring Tax Incentives: Examining their Importance for Small Businesses on the Road to an Economic Recovery*

September 30, 2009

1501 K Street, N.W. Suite 350 Washington, DC 20005
Telephone: 202/628-8000 Fax: 202/628-0812 E-Mail: ifa@franchise.org Internet: www.franchise.org

Statement of Dina Dwyer-Owens
Chairwoman and CEO, The Dwyer Group
Chairwoman, International Franchise Association

United States House of Representatives
Committee on Small Business

September 30, 2009

Good afternoon Chairwoman Velázquez, Ranking Member Graves and members of the committee. My name is Dina Dwyer-Owens, and I am grateful to have the opportunity to speak to you today about what Congress can do to help franchised small businesses lead the way to economic recovery for our nation. During my statement, I will discuss three key points that can help achieve this goal:

1. Extending certain elements of the American Recovery and Reinvestment Act of 2009 and the Emergency Economic Stabilization Act of 2008, which are helping to strengthen the foundation of our economic recovery;
2. Enacting legislation to put veterans returning from service overseas into business for themselves; and
3. Bolstering the ability of franchisees to obtain the capital necessary to expand their operations, thereby creating more sustainable jobs for the economy.

I am the Chairwoman and CEO of The Dwyer Group, franchisor of six service industry concepts, including Rainbow International, Mr. Rooter, Aire Serv, Mr. Electric, Mr. Appliance, and Glass Doctor. Across these brands, The Dwyer Group provides support and opportunity to over 1200 franchisees in the United States and Canada, and an additional 300 units in seven other countries. My father founded The Dwyer Group in 1981 with the intent to build a system of related businesses that would provide high-quality residential and light commercial services, and through this system we have enabled thousands of entrepreneurs to own their own small business.

I also have the privilege to serve as the Chairwoman of the International Franchise Association, the largest and oldest franchising trade group in the world. The IFA represents more than 85 industries, including more than 11,000 franchisee, 1,200 franchisor and 600 supplier members nationwide. According to a 2008 study conducted for the IFA Educational Foundation, there are more than 900,000 franchised establishments in the U.S., creating 21 million American jobs and generating $2.3 trillion in economic output.

Since the economy went into recession, Congress has enacted numerous provisions that have helped small businesses avoid some of the worst effects of the downturn. The nation is only now starting to see signs of recovery and those fragile businesses that operate in your communities need these programs to continue. A key provision that is providing a valuable benefit to small franchised businesses is bonus depreciation. The Emergency Economic Stabilization Act of 2008 extended the provision of 15 year straight-line recovery for qualified leasehold and restaurant improvements for 2008 and 2009. In addition, the Act added a 15 year schedule for new construction and improvements placed in service in 2009. It is clear that our recovery will not be fully underway in this tax year and the provision must be extended beyond 2009. It lowers real estate costs and related construction spending in the franchise industry. Extending this provision will entice franchise business owners to reinvest in their brick-and-mortar facilities. This will create a tremendous spill-over effect on other industries. The Bureau of Labor and Statistics estimates that every $1 spent on construction generates another $2.39 in economic activity; and every $1 million spent in the construction industry creates more than 28 jobs in the overall economy.

The American Reinvestment and Recovery Act also provided important tax relief to small businesses through the Work Opportunity Tax Credit and capital gains tax relief for businesses organized as S Corporations. The Work Opportunity Tax Credit has assisted many franchise businesses in hiring unemployed veterans or youth who are not in school or already employed. This tax credit should be extended until our national unemployment rate returns to pre-recession levels. Additionally, I believe Congress can do more to assist our returning military veterans with the transition to civilian life, which I will mention in a moment.

Madame Chair and members of the Committee, I sincerely hope that Congress can also address the upcoming expiration of the important estate—or death—tax relief set to expire after 2010. The estate tax has long cost our economy more than the revenue it generates for the federal government. According to the Joint Economic Committee (JEC), the estate tax has brought in only $761 billion in revenue since 1942, while reducing the stock of capital in the economy by $847 billion. The JEC study finds no compelling reason to keep the tax and a number of compelling reasons to reduce or abolish it. The IFA has advocated for a permanent solution to the estate tax and I urge Congress to address this situation now before the tax returns to its pre-2001 level.

There is another policy objective that I would like to discuss, an idea that was inspired by a provision in the Recovery and Reinvestment Act, but not included in the bill. As I mentioned, the recovery act included a provision providing a tax credit to employers who hire qualified veterans. Taking this concept and expanding it to the entrepreneurial level, Congressmen

Leonard Boswell and Aaron Schock proposed a bill in June that creates an incentive to not only give our veterans jobs, but give them the keys to the building.

H.R. 2672, the "Help Veterans Own Franchises Act" establishes a tax credit for franchise businesses that choose to offer qualified veterans a discounted initial franchise fee. The tax credit would amount to 50% of the total franchise fee discount offered by the franchisor to the franchisee and would be capped at $25,000 per unit. More importantly, the bill also provides a tax credit to the veteran who chooses to purchase a franchise and open a business in their local community, equal to 25% of the remaining franchise fee. Eligibility for both the franchisor and franchisee is capped at franchise fees of $100,000.

Given the current economic climate, many franchised businesses are finding it harder to access the capital they need to open new stores and recruit new investors. In order to encourage economic growth and to make it easier for veterans to own their business, the IFA supports enactment of this tax credit for those franchise systems that choose to offer qualified veterans a discounted franchise fee.

The Help Veterans Own Franchises Act is a natural compliment to IFA's popular Veterans Transition Franchise Initiative (VetFran), a program established to help those who have so honorably served their country to seek the dream of business ownership.

The VetFran Program holds a special place for me, since it was my father, Don Dwyer, Sr., who launched the program nearly two decades ago as the United States was in the midst of the First Gulf War. At that time, nearly a hundred members of the International Franchise Association stepped up to show their patriotic gratitude by providing financial incentives that aided veterans in acquiring franchises. The program was re-launched in 2002 as a permanent initiative of the IFA. Since 2002, purchases of franchised businesses by former military personnel have reached

1,500 and I'm proud to say that my companies are responsible for helping 170 of those veterans become franchisees. There are 228 others currently in negotiation. There are 395 franchised business concepts from which to choose and most offer significant reductions of the initial franchise fee required at purchase. The same leadership qualities and adherence to an established structure of operation that make our military the finest in the world translate perfectly into the successful operation of a franchised small business. Indeed, our military veterans are a sought after commodity for franchise investors.

Before I close I cannot pass up this opportunity to impress upon you the continued concerns the franchise community has with access to capital. Credit is the lifeblood of small businesses, as you know. Beyond the daily credit needed to keep a small business afloat, franchise investors need access to capital to expand their brand and create jobs. In an economic recovery, these jobs are critical. Unlike many jobs created by federal infrastructure spending, we firmly believe that franchise jobs are sustainable. They will be here when the asphalt dries. As tourism recovers, franchise jobs will provide services in hotels and restaurants, at rental car counters and travel agencies. When Americans resume buying and fixing up their homes, franchise jobs will be there to broker the sales and remodel the kitchens; franchise jobs will be there to paint the house and beautify the yard.

A recent study by the IFA Educational Foundation revealed that for every $1 billion of lending obtained by franchised businesses, 34,100 jobs, sustainable jobs, are created and $3.6 billion in annual total economic output is realized. Unfortunately, less than one tenth of one percent of the money allocated in the Recovery and Reinvestment Act was dedicated toward helping support small business lending.

While Congress and the Administration have taken important steps to address the challenges small businesses are facing in accessing credit, franchised businesses and prospective franchise investors with strong credit histories continue to have loan applications denied or delayed. In fact, according to the July 2009 senior loan officer survey conducted by the Federal Reserve, more than one-third of these bankers reported tightening terms for small-business loans, while only one reported easing terms. These tight standards continue to keep capable and willing franchise business owners on the sidelines. Congress can create jobs faster and support small businesses by: 1) extending the 90% SBA 7(a) loan program guarantee rate through 2010; 2) increasing the maximum 7(a) loan size to $5 million; and 3) improving access to SBA loan programs specifically for small business start-up and expansion.

Madam Chairwoman, again I wish to thank you and the committee members for allowing me to come here today to discuss the ways in which Congress can continue to help small businesses lead the nation to economic recovery. I look forward to answering your questions.

National Biodiesel Board
1331 Pennsylvania Ave., NW, Suite 512
Washington, DC 20004
(202) 737-8801
www.biodiesel.org

Testimony of Manning Feraci
National Biodiesel Board Vice President of Federal Affairs
Before the U.S. House Committee on Small Business
September 30, 2009

Summary of Testimony: Biodiesel is a commercially viable, renewable, low carbon diesel replacement fuel that is widely accepted in the marketplace. The biodiesel tax incentive has allowed the U.S. to reach commercial scale production of biodiesel and achieve the significant economic, environmental and energy security benefits associated with the domestic production and use of biodiesel. Due to volatile commodity prices; unfavorable market conditions; difficulty accessing operating capital; and uncertainty regarding federal policy; the U.S. biodiesel industry is facing severe economic challenges. The industry's viability will be compromised if the biodiesel tax incentive is allowed to lapse on December 31, 2009.

It is difficult for entrepreneurs and investors to make long-term business decisions based on year to year extensions of the biodiesel tax incentive. Thus, a multiple year extension of the incentive is needed to provide certainty and stability in the marketplace. In addition, the U.S. biodiesel industry supports reforming the biodiesel tax incentive by changing the current blenders excise tax credit to a production excise tax credit. This will improve administration of the incentive, eliminate potential abuses and improve tax compliance.

****

Chairwoman Velazquez, Ranking Member Graves and Members of the Committee, I thank you for the opportunity to testify today on behalf of the National Biodiesel Board (NBB) regarding the need to extend and reform the biodiesel tax incentive.

About NBB: NBB is the national trade association representing the biodiesel industry as the coordinating body for research and development in the United States. It was founded in 1992 by state soybean commodity groups who were funding biodiesel research and development programs. Since that time, the NBB has developed into a comprehensive industry association which coordinates and interacts with a broad range of cooperators including industry, government and academia. NBB's membership is comprised of biodiesel producers; state, national and international feedstock and feedstock processor organizations; fuel marketers and distributors; and technology providers.

Background and Industry Overview: Biodiesel is a diesel replacement fuel made from agricultural oils, fats and waste greases that meets a specific commercial fuel definition and specification. The fuel is produced by reacting feedstock with an alcohol to remove the glycerin and meet the D6751 fuel specifications set forth by the American Society for Testing and Materials (ASTM International). Biodiesel is one of the best-tested alternative fuels in the country and the only alternative fuel to meet all of the testing requirements of the 1990 amendments to the Clean Air Act. There are currently 173 biodiesel plants in the U.S. with a combined production capacity of 2.69 billion gallons. The average biodiesel plant employs less than 20 employees and has an annual production capacity of 15.5 million gallons.

Biodiesel is primarily marketed as a 5 percent (B5) blending component with conventional diesel fuel, but can be used in concentrations up to 20 percent (B20). It is distributed utilizing the existing fuel distribution infrastructure with blending occurring both at fuel terminals and "below the rack" by fuel jobbers. Biodiesel is beginning to be distributed through the petroleum terminal system. To date, biodiesel is available in over 40 fuel distribution terminals. In the past year, two major pipeline companies have successfully tested B5 blends in pipelines, and the biodiesel industry has committed funds to continue to study the technical needs required for moving biodiesel through U.S. pipelines. Already, biodiesel is moved through pipelines in Europe and expanding that capability in the U.S. would significantly increase biodiesel penetration in the U.S. diesel fuel market.

Background on the Biodiesel Tax Incentive: The biodiesel tax incentive was enacted in 2004 as part of the American Jobs Creation Act (P.L. 108-357). The incentive was subsequently extended through December 31, 2008 as part of the Energy Policy Act of 2005 (P.L. 109-190). H.R. 1424, the Emergency Economic Stabilization Act of 2008 (P.L. 110-343), again extended the incentive for one year through December 31, 2009.

The biodiesel tax incentive is designed to encourage the production and use of biodiesel by making the fuel price competitive with conventional diesel fuel. In general, current law allows taxpayers to claim the biodiesel tax incentive as either a $1.00 per gallon general business income tax credit or as a $1.00 per gallon blenders excise tax credit. To qualify for the biodiesel tax incentive, the fuel must by statute meet both the ASTM D6751 fuel specification and the Environmental Protection Agency's (EPA) registration requirements under Section 211 of the Clean Air Act. The income tax credit can be claimed either as a biodiesel mixture credit, which provides the incentive for each gallon of biodiesel that is blended with conventional diesel fuel, or as a B100 biodiesel credit for each gallon of pure biodiesel that is used as a fuel.

The current law biodiesel tax incentive also provides a biodiesel blenders excise tax credit. The credit is $1.00 for each gallon of biodiesel that is blended with conventional diesel fuel. The blenders excise tax credit differs from the biodiesel mixture income tax credit and the B100 biodiesel income tax credit in that the blenders credit can be used to offset excise tax liability, and is refundable to the degree that the credit exceeds excise tax owed by a taxpayer. The B100 biodiesel credit and biodiesel mixture income tax credit are coordinated to take into account amounts claimed via the blenders credit. The vast majority of biodiesel tax incentives are claimed as a blenders excise tax credit.

Lastly, current law provides for a small agri-biodiesel producer income tax credit. The credit is 10 cents per gallon and can be claimed by taxpayers with less than 60 million gallons of cumulative annual production capacity. The credit is limited to the first 15 million gallons of annual production. To qualify for the small producer credit, fuel must be produced from either virgin vegetable oils or animal fats.

Biodiesel Public Policy Benefits: The biodiesel tax incentive has helped achieve the worthwhile policy goal of increasing the production and use of biodiesel in the U.S. In 2004, when the incentive was initially enacted, the U.S. produced 25 million gallons. In 2008, that number rose to 690 million gallons. There are compelling public policy benefits associated with the enhanced production and use of biodiesel in the U.S.

Biodiesel Reduces our Dependence on Foreign Oil: Biodiesel can play a major role in expanding domestic refining capacity and reducing our reliance on foreign oil. The 690 million gallons of biodiesel produced in the U.S. in 2008 displaced 38.1 million barrels of petroleum, and increased production and use of biodiesel will further displace foreign oil. In addition, biodiesel is an extremely efficient fuel that creates 5.2 units of energy for every unit of energy that is required to produce the fuel.

Biodiesel is Good for the Environment: Biodiesel is an environmentally safe fuel, and is the most viable transportation fuel when measuring its carbon footprint, life cycle and energy balance. The U.S. Department of Agriculture (USDA)/Department of Energy (DoE) lifecycle study shows that biodiesel yields a 78 percent reduction in direct lifecycle CO2 emissions compared to petroleum diesel fuel. 1 billion gallons of biodiesel will reduce current life cycle greenhouse gas emissions by 16.12 billion pounds, the equivalent of removing 1.4 million passenger vehicles from U.S. roads. In 2008 alone, biodiesel's contribution to reducing greenhouse gas emissions was equal to removing 980,000 passenger vehicles from America's roadways.

Biodiesel's emissions significantly outperform petroleum diesel. Biodiesel emissions have decreased levels of all target polycyclic aromatic hydrocarbons (PAH) and nitrited PAH compounds, as compared to petroleum diesel exhaust. These compounds have been identified as potential cancer causing agents.

Biodiesel is the only alternative fuel to voluntarily perform Environmental Protection Agency (EPA) Tier I and Tier II testing to quantify emission characteristics and health effects. That study found that B20 (20 percent biodiesel blended with 80 percent conventional diesel fuel) provided significant reductions in total hydrocarbons; carbon monoxide; and total particulate matter. Research also documents the fact that the ozone forming potential of the hydrocarbon emissions of pure biodiesel is nearly 50 percent less than that of petroleum fuel. Pure biodiesel typically does not contain sulfur and therefore reduces sulfur dioxide exhaust from diesel engines to virtually zero.

The Biodiesel Industry is Creating Green Jobs and Making a Positive Contribution to the Economy: In 2008 alone, the U.S. biodiesel industry supported 51,893 jobs in all sectors of the economy. This added $4.287 billion to the nation's Gross Domestic Product (GDP) and generated $866.2 million in tax revenue for federal, state and local governments.

By conservative estimates, there is domestic feedstock available to support 1.77 billion gallons of annual biodiesel production in the U.S. The domestic industry has the capacity to support this level of production. The production of 1.77 billion gallons of fuel would support 78,619 jobs; add $6.660 billion to the GDP; displace 97.8 million barrels of petroleum; generate $1.345 billion in revenue for federal, state and local governments; and reduce greenhouse gas emissions by 27.4 billion pounds - the equivalent of removing 2.38 million passenger vehicles from U.S. roads.

The Biodiesel Industry Stimulates Development of New Low-Carbon Feedstocks: The feedstock used to produce U.S. biodiesel has increasingly diversified, with waste products such as animal fat and used restaurant grease (yellow grease) making up a larger portion of the feedstock used to produce fuel. Biodiesel production is currently the most efficient way to convert lipids into low-carbon diesel replacement fuel, and as a result, industry demand for less expensive, reliable sources of fats and oils is stimulating promising public, private and non-profit sector research on second generation feedstocks such as algae.

Algae's potential as a source of low carbon fuel has been well documented, and a stable, growing biodiesel industry is necessary if the U.S. is to eventually benefit from the commercial scale production of algal-based biofuels. The NBB estimates that for every 100 million gallons of biodiesel that is produced from algae, 16,455 jobs will be created and $1.461 billion will be added to the GDP.

U.S. Biodiesel Industry is Facing Severe Economic Hardship: Despite recent growth, the industry is in the midst of an economic crisis. Plants are having difficulty accessing operating capital. Volatility in commodity markets and reduced demand for biodiesel in both domestic and global markets are making it difficult for producers to sell fuel. Lastly, uncertainty relating to federal policy that is vital to the industry's survival is sending inconsistent signals to the marketplace and undermining investor confidence in the industry.

If prolonged, this downturn will lead to a severe retraction in U.S. biodiesel production capacity. Due to current market conditions, less than one-third of the industry's facilities are currently producing fuel. If the biodiesel tax incentive is allowed to lapse on December 31, 2009, the price of biodiesel will be significantly higher than petroleum diesel, further reducing demand and making it nearly impossible for biodiesel plants to produce fuel at a profit. It is safe to assume that if the biodiesel tax incentive lapses, biodiesel production in the U.S. will halt or at a minimum be severely curtailed, and the energy security, environmental, and job creation benefits that the nation realizes from biodiesel production will be lost.

Multiple Year Extension of a Reformed Biodiesel Tax Incentive is Consistent with Sound Tax and Energy Policy: The biodiesel tax incentive has helped the nascent U.S. biodiesel industry reach commercial scale production of renewable, low carbon diesel replacement fuel. This in turn has allowed the nation to realize the energy security, economic and environmental benefits associated with the domestic production and use of biodiesel. It is, however, difficult for entrepreneurs and investors to make long-term business decisions based on year to year extensions of the biodiesel incentive. Thus, a multiple year extension of the biodiesel tax incentive is needed to provide certainty and stability in the marketplace.

NBB also supports a structural reform of the tax incentive. Specifically, the U.S. biodiesel industry supports changing the current blenders excise tax credit to a production excise tax credit of equal value. This change will streamline administration of the credit and promote tax compliance while preserving the elements of the existing incentive that have effectively incentivized the production and use of biodiesel. This reform proposal is encompassed in S. 1589, *the Biodiesel Reform and Extension Act of 2009*, introduced in the U.S. Senate by Senator Maria Cantwell (D-WA) and Senator Charles Grassley (R-IA).

There are several shortcomings associated with the current structure of the biodiesel blenders excise tax credit that would be remedied by restructuring the incentive as a production excise tax credit. Specifically:

Current Blenders Excise Tax Credit Structure Presents Administrative Difficulties: Blending biodiesel with diesel fuel, the event that triggers the blenders credit, can occur at multiple stages in the fuel distribution chain. This significantly increases the number of registrants eligible to claim the credit and makes it difficult to ensure that only fuel that qualifies for the benefit claims the incentive. Changing the blenders excise tax credit to a production excise tax credit would allow the incentive to be claimed at either a biodiesel plant or at an Internal Revenue Service (IRS) registered terminal, making it easier to ensure that only fuel meeting the ASTM D6751 fuel specification receives the tax incentive while preserving the incentive's underlying economic benefits.

Existing Blenders Excise Tax Credit Does Not Work Well with the U.S. Department of Treasury's Excluded Liquids Rule: Under existing regulations, for purposes of the 24.3 cents per gallon diesel fuel excise tax, diesel fuel does not include "excluded liquids." Among other things, liquids with less than 4 percent paraffin content are considered an excluded liquid. Existing IRS regulations allow B99.9 biodiesel blends and other blends to qualify for the biodiesel blenders excise tax credit, even if the blend is an excluded liquid not subject to the federal diesel fuel excise tax. B99.9 blends do not have 4 percent paraffin content, and thus, are not currently subject to the diesel fuel excise tax. Because biodiesel is typically used as a lower level blend component in the marketplace that is eventually subject to the federal diesel fuel excise tax, this leads to a situation where excise tax liability is triggered at varying points "below the rack." This makes collection of the 24.3 cents per gallon diesel fuel excise tax burdensome for both taxpayers and IRS.

In an attempt to address this issue, the IRS issued a proposed rule on July 29, 2008 that would modify the Excluded Liquids rule in a manner that would subject B99.9 biodiesel blends to the federal diesel fuel excise tax. This change, however, would further complicate the taxation and distribution of biodiesel in fuel terminals. For example, under the proposed rule, a B99.9 blend sold by a biodiesel producer to a position holder in an IRS registered terminal would be subject to the 24.3 cents per gallon diesel fuel excise tax. When the B99.9 fuel is further blended to a B5 through B20 level and is sold at the terminal in a taxable sale, the biodiesel component of the blend would again be subject to the diesel fuel excise tax. Though there is an existing regime that would allow for the refunds, this system is not timely and is difficult for taxpayers to navigate. As a result, this change would again have the unintended consequence of artificially inflating the price of biodiesel in the marketplace on account of the fuel being subject to double taxation and could cause cash flow issues for fuel marketers and terminal operators who sell and promote biodiesel in the marketplace. Further, terminal operators who handle both B100 and B99.9 biodiesel blends would be forced to expend capital to purchase additional storage tanks and other infrastructure to handle biodiesel, again serving as a deterrent to the expanded use and sale of biodiesel through the nation's fuels terminals.

The IRS is also in the midst of a process that would incorporate biofuels, including biodiesel, in the existing ExStars fuel reporting system. ExStars is a fuel excise tax compliance reporting system that tracks the flow of fuel through IRS registered terminals. In an effort to collect the 24.3 cents per gallon diesel fuel excise tax owed on biodiesel blends "below the rack", IRS envisions significantly expanding the number of taxpayers that must file reports under the ExStars system to include small "below the rack" fuel marketers. This would impose an onerous regulatory burden on small businesses.

To remedy this issue, S. 1589 would treat pure biodiesel as diesel fuel for tax purposes. In general, the reform proposal would provide that the biodiesel tax incentive would be claimed and the diesel fuel excise tax would be paid when biodiesel was sold by the plant. The proposal would also allow for the sale on tax-exempt, non-credit claimed fuel to an IRS registered terminal, and the credit would be claimed and excise tax paid at the terminal. This structure would avoid the complexities associated with subjecting B99.9 blends to the diesel fuel excise tax under the current structure of the biodiesel tax incentive. In addition, this would significantly improve tax compliance and remove the need for the IRS to impose onerous below the rack ExStars reporting requirements on fuel distributors and marketers.

Change to Production Excise Tax Credit Would Stop Potential Transshipment Schemes: P.L. 110-343 contained a provision designed to give IRS the statutory authority to stop so-called "splash and dash" transactions. A "splash and dash" transaction occurs when biodiesel produced in a foreign country is sent to the U.S.; splash blended with diesel fuel to claim the U.S. biodiesel blenders excise tax credit; and then sent to a third country for final use as biodiesel or diesel fuel at any blend level. P.L. 110-343 clarified that effective May 15, 2008, fuel produced outside the U.S. for use outside the U.S. does not qualify for the biodiesel tax incentive. There is clearly no energy or tax policy justification for this sort of transaction, and the NBB was fully supportive of efforts to close this unjustified and unforeseen tax loophole.

Though Congress closed the "splash and dash" loophole, the current law blenders credit could inadvertently allow for other potential abuses associated with the transshipment of foreign fuel through the U.S. to claim the blenders credit. In addition, further refinements to the blenders excise credit to address these issues are likely to run contrary to U.S. WTO commitments. A change to a production excise tax credit would thwart any potential transshipment abuses in a WTO-consistent manner.

Transition to Production Excise Tax Credit Could be Accomplished with Minimal Marketplace Disruption: Under current law, a blend of 99.9 percent biodiesel and .1 percent diesel qualifies for the biodiesel blenders excise tax credit. Biodiesel plants are currently permitted to claim the incentive. Thus, for practical purposes, the current incentive in these instances functions as a production credit. A change to a production excise tax credit would preserve the incentive's liquidity and could be easily administered by both taxpayers and the IRS.

In conclusion, the biodiesel tax incentive has helped achieve the desired goal of increasing the domestic production and use of biodiesel, and in turn has helped the U.S. realize the energy security, economic and environmental benefits associated with displacing petroleum with domestically produced renewable fuels. These benefits, however, will be lost if the biodiesel tax incentive is allowed to lapse at the end of the year. The NBB, on behalf of the U.S. biodiesel industry, urges Congress to reform the biodiesel tax incentive as a production excise tax incentive and provide a multiple year extension of the reformed incentive.

Chairwoman Velazquez, Ranking Member Graves and Members of the Committee, I again thank you for the opportunity to testify today, and would be pleased to answer any questions you may have.

NATIONAL
RESTAURANT
ASSOCIATION®

REPRESENTING THE RESTAURANT INDUSTRY
The Cornerstone of the Economy, Career Opportunities and Community Involvement

Written Testimony

of

John Frenz, CEO,
Frenz & Schmidtknecht, Inc.,
operating Montana Mike's Steakhouse

for the hearing

"Expiring Tax Incentives: Examining Their Importance for Small Businesses on the Road to an Economic Recovery"

before the

U.S. House of Representatives
Committee on Small Business

on behalf of the

National Restaurant Association

Wednesday, September 30, 2009

1200 SEVENTEENTH STREET, NW • WASHINGTON, DC 20036-3097
TEL: 202.331.5900 • FAX: 202.331.2429 • WWW.RESTAURANT.ORG

Chairwoman Velazquez, Ranking Member Graves, members of the House Committee on Small Business; thank you for the opportunity to testify before you today on behalf of the National Restaurant Association. My name is John Frenz, Chief Executive Officer of Frenz & Schmidtknecht, Inc., of Vincennes, Indiana. My business partner of more than 28 years, Greg Schmidtknecht, and I operate two Montana Mike's Steakhouse restaurants – casual steakhouse themed concepts located in Vincennes, IN and Danville, IL. I'm here today to ask Congress and this Committee to extend certain expiring tax provisions before the end of the year, such as the 15-year depreciation schedules for leasehold improvements, restaurant improvements and new construction and retail improvements, as well as the charitable deduction for the donation of food inventory. I also ask Congress to expand and extend beyond 2009 the 5 year net operating loss carryback provision that was included in the American Recovery and Reinvestment Act. Finally, I ask that Congress increase the business meal deduction from its current level of 50 percent to 80 percent to provide additional stimulus to the economy.

I began my restaurant career as a busboy at the Courtyard Cafeteria in downtown Minneapolis, Minnesota back in 1972. After graduating from the University of St. Thomas in Saint Paul, MN in 1977, I started as a management trainee in Marshfield, WI for Sirloin Stockade, a family steakhouse chain. In 1980, Sirloin Stockade was pulling back on rapid expansion and was selling some of their company owned restaurants. My business partner and I took advantage of this opportunity and bought our first Sirloin Stockade in January 1981. We further expanded and in 1984, joined five other franchisee groups to purchase the whole Sirloin Stockade franchise group. We helped reorganize the company and two concepts were added, one being the Montana Mike's concept. We converted our Sirloin Stockades into Montana Mike's concepts in 2000 and the franchisee group was subsequently bought out in 2004. Both our locations continue to be extremely successful operations.

I have been active in the Indiana Restaurant Association since 1982, serving as President and Chairman from 1997 until 1999. Outside the restaurant industry, I served eight years as State Representative from District 64, from 1996 through 2004, working for the citizens and small businesses of Vincennes, Princeton and Petersburg areas of Indiana. There I worked through a law change and a constitutional amendment to end the inventory tax in Indiana, among other issues that adversely impacted the restaurant and hospitality industry. Besides operating our restaurants, I currently serve as President of the Vincennes/Knox County Convention and Visitors Bureau. Tourism is a prime asset of our counties and we are constantly working to improve the awareness of the numerous tourist sites in our area.

I am proud to be a part of the restaurant industry – an industry that plays such a significant role in this nation's economy. There are 945,000 restaurant and foodservice outlets in this country. Seven out of ten restaurants are single-unit operators which means the restaurant industry is an industry of small businesses. Most eating and drinking places – three-quarters of the industry – employ 50 or fewer employees. Restaurants also serve as the conference rooms for many of the self-employed and other small businesses.

This year the restaurant industry is estimated to generate $558 billion in sales, with an overall economic impact of $1.3 trillion. Every dollar spent dining out generates $2.34 in business for other industries. The restaurant industry is one of the nation's largest private employers, employing more than 13 million people, representing more than 9 percent of the job-base. We are truly the cornerstone of this nation's economy.

Extend Leasehold Improvements, Restaurant Improvements and New Construction, Retail Improvements 15-year Depreciation Schedule

The fifteen-year depreciation schedule for leasehold improvements, restaurant improvements and new construction, and retail improvements must be extended before the end of 2009. The fifteen-year depreciation schedule has made significant capital available for restaurant owners to make capital expenditures with the tax savings. Those capital expenditures translate into jobs in the rest of the economy. In addition, a faster, more accurate depreciation schedule has a direct impact on a restaurant's bottom line. By shortening the depreciation schedule, Congress gives operators cash flow to reinvest in their businesses, allowing them to grow restaurant jobs and contribute to the community. In an industry with median profit margins of 3 to 5 percent, every penny counts.

Even during difficult economic times, restaurateurs are planning capital expenditures to improve or expand their businesses. According to the National Restaurant Association July 2009 Tracking Survey, 42 percent of restaurant operators plan to make a capital expenditure for equipment, expansion or remodeling in the next six months. The ability to plan for these expenditures and know what the tax treatment will be in subsequent years, particularly during these difficult times, is important to those who are making those decisions right now.

Moreover, this provision is an important driver of economic stimulus. Extending the 15 year depreciation schedule for leasehold improvements, restaurant improvements and new construction and retail improvements beyond 2009 will fuel economic activity and create jobs. When restaurants invest in construction and renovations, the impact spreads through the economy. Before the economic downturn, the restaurant industry spent more than $10 billion in 2007 on construction of restaurant buildings. According to the Bureau of Economic Analysis, every dollar spent in the construction industry generates an additional $2.39 in spending in the rest of the economy and every $1 million spent in the construction industry creates more than 28 jobs in the overall economy. That means that restaurant industry construction spending created 280,000 jobs in the overall economy in 2007.

Restaurant Spending on Construction

Year	Billions ($)	Jobs Created In Overall Economy
2004	5.2	145,600
2005	7.4	207,200
2006	6.6	184,800
2007	10.4	280,000

Source: U.S. Census Bureau and National Restaurant Association

In fact, Congress has frequently enacted shorter depreciation schedules to stimulate the economy and create jobs. As far back as the 107th Congress, shorter depreciation schedules for different pieces of the 15 year leasehold improvements, restaurant improvements and new construction, and retail improvement depreciation provision have been included in various economic stimulus bills.

It is also important to note that fifteen years, rather than 39 years, is a much more accurate timeframe for depreciation for restaurant buildings. With 133 million Americans patronizing restaurants each day, restaurant building structures experience a daily human assault unlike that borne by any other type of retail building. Restaurateurs must constantly make changes to keep up with the structural and cosmetic wear and tear caused by customers and employees. The heavy use accelerates deterioration of a restaurant building's entrance, lobbies, flooring, restrooms and interior walls. National Restaurant Association research shows that most restaurants remodel and update their building structures every six to eight years.

Extend the Deduction for Charitable Donation of Food Inventory for Small Businesses

The statistics are astounding. Each day, 35 million Americans are at risk of hunger. At the same time, billions of pounds of food are wasted each year. America's restaurants give back to their communities in major ways – the most significant of which is through food donation. According to National Restaurant Association research, 73 percent of restaurants donate food to individuals or charities.

The deduction for charitable donation of food inventory is a critical tool in alleviating hunger and Congress cannot delay its extension any longer. Without the provision, taxpayers get the same tax treatment for throwing out surplus food as they do for giving it to charity. The enhanced deduction encourages donating the food to charity instead, by helping to offset the costs associated with storing and transporting the extra food.

For this tax extender to be effective in encouraging more small businesses, including restaurants, to donate food that would otherwise go to waste, it must be extended before the end of 2009. If Congress were to wait to extend this provision until 2010, it would be ineffective for the period that it was not in place. The perishable nature of the donated product requires this provision to be in place before such food is produced and goes bad.

Moreover, Congress should make this tax extender permanent for all small businesses as the tax code currently does for C corporations – and has for decades. The Good Samaritan Hunger Relief Tax Incentive Extension Act (H.R. 3227) is sponsored by Congressmen Levin (D-MI) and Davis (R-KY) in the House and would expand and make permanent this tax extender provision for small businesses, farmers and ranchers to donate food inventory to charity. The Senate companion bill (S. 1212) is sponsored by Senators Lugar (R-IN), Lincoln (D-AR), and Leahy (D-VT).

H.R. 3227 and S. 1212 would permanently allow all qualified business taxpayers (not just C corporations) to take a special deduction for contributions of food inventory. In addition, because the need is so great in the current economic environment, the legislation would temporarily allow taxpayers to deduct the full fair market value of food inventory donations.

The National Restaurant Association strongly encourages its members to donate more food, and we recently partnered with Food Donation Connection (FDC) to do just that. Founded by a former restaurant executive, FDC serves as the liaison between the restaurants interested in donating food and the social service agencies adept at getting that food to people in need. FDC helps restaurants develop and implement programs designed to provide an alternative to discarding surplus food, while capitalizing on the economic benefits of those donations through the tax savings. Since 1992, FDC has helped facilitate the donation of over 140 million pounds of food to non-profit, hunger-relief agencies.

I ask members of this Committee and all members of Congress to extend the deduction for charitable donation of food inventory before the end of 2009 and to cosponsor H.R. 3227 and S. 1212, the Good Samaritan Hunger Relief Tax Incentive Extension Act.

Extend the expansion of Net Operating Loss Carryback

Many in the restaurant industry continue to struggle in these difficult economic times. While the country may officially be coming out of a recession, consumer spending remains low and, as a result, customer traffic in restaurants is significantly decreased. More restaurants are likely to be facing losses than ever before; moreover, the magnitude of the operating losses is likely to be larger. At this time, America's restaurants need the benefit of an extension of the American Recovery and Reinvestment Act's expanded net operating loss (NOL) provision from 2 years to 5 years. An expansion of the provision to include all businesses should also be considered, as is addressed in H.R. 2452 introduced by Congressmen Richard Neal (D-MA) and Patrick Tiberi (R-OH) and S. 823 introduced by Senator Olympia Snowe (R-ME) and Senate Finance Committee Chairman Max Baucus (D-MT).

NOL carrybacks allow small businesses, like restaurants, to smooth out changes in income over the business cycle by allowing losses to be offset against past profits. This provides a critical and immediate cash infusion to businesses when they incur losses – the time when businesses need additional funds the most.

Because the NOL carryback measure is one of the few effective tax policies available to businesses in a loss position, it is highly stimulative. The cash infusion provided by an NOL carryback gives small businesses the resources necessary to make investments, hire and retain workers, and, in certain cases, keep their doors open.

When Congress has enacted NOL carryback relief in the past, it has proven to be an effective economic stimulus measure. In the Jobs Creation and Worker Assistance Act of 2002, Congress provided a five-year NOL carryback for 2001 and 2002. In support of the legislation, Congress explained, "The current uncertain economic conditions have resulted in many taxpayers incurring unexpected financial losses…The provision will free up funds that can be used for capital investment or other expenses that will provide stimulus to the economy." And, in fact, the measure proved successful in providing necessary relief to businesses across all industries.

America is coming out of an economic recession that may be the worst since the Great Depression. Given the unique ability of NOL relief to provide assistance where it is needed most, the extension and expansion of the NOL carryback period from two to five years should be extended beyond 2009.

<u>Increase the Business Meal Deduction to Stimulate the Economy</u>
The National Restaurant Association strongly urges Congress to provide additional economic relief for this nation's economy and to implement policies that will boost consumer spending. Increasing the business meal and entertainment deduction from 50 percent to 80 percent is a key provision for small businesses. For many small companies the ability to conduct business over a meal is their only means of advertising and marketing their business.

While officially the recession may be ending, the restaurant industry is still reeling from the effects of decreased consumer spending and increased unemployment. Increasing the business meal deduction would encourage consumers to eat out and also benefit small businesses. America's restaurants are small business' conference rooms and the restaurant table is where much business is conducted. Increasing the deduction is a benefit not only to restaurateurs and their employees, but their guests – the small business owner or the self-employed.

The Small Business Committee has been a long time supporter of increasing the business meal and entertainment deduction as a means of providing tax relief for the nation's small businesses. Last Congress, this Committee included a provision to increase the deduction from 50 percent to 80 percent in the *Small Business Tax Modernization and Stimulus Act of 2008.* While this legislation was not enacted into law, the National Restaurant Association applauds the Committee's continued leadership to restore this valuable deduction.

Representative Neil Abercrombie (Hawaii – 1st) has re-introduced H.R. 3333, a bill that would increase the business meal and entertainment deduction to 80 percent for all business meal users. An increase in the business meal deduction to 80 percent would increase business meal sales by $6 billion and create an $18 billion increase in the overall economy, according to National Restaurant Association research. The impact of the restaurant industry on the nation's economy is considerable and felt in every state (See Figure 1). We service 133 million guests every day. Every dollar spent dining out generates $2.34 in business to other industries, totaling $1.3 trillion in overall economic impact.

We appreciate the Committee's continued support for the business meal and entertainment deduction and look forward to our continued work together to enact this legislation.

Conclusion
I greatly appreciate this opportunity to testify on behalf of the restaurant industry before you today. I strongly urge Congress to extend these important tax provisions before the end of the year.

The restaurant industry needs certainty when it comes to the 15 year depreciation schedule for leasehold improvements, restaurant improvements and new construction and retail improvements as capital expenditures are being considered and planned.

Small businesses, including restaurants, need at minimum the extension of the deduction for charitable donation of food inventory before the end of the year.

Congress must extend some provisions of the America Recovery and Reinvestment Act such as the expanded net operating loss carryback provision as restaurants and other businesses continue to have a difficult time in this economy.

Additionally, Congress should consider additional items that will help boost the economy and create jobs like an increase in the business meal deduction to 80 percent.

Thank you for considering the restaurant industry's perspective and ideas regarding expiring tax provisions and stimulus items.

Figure 1.

Estimated Impact of Increasing Business Meal Deductibility from 50% to 80%

State	Increase in Business Meal Spending 50% to 80% Deductibility (in millions)	Total Economic Impact In the State (in millions)	Total Employment Impact In the State (number of jobs created)
Alabama	$77	$155	2,464
Alaska	$17	$29	401
Arizona	$118	$235	3,125
Arkansas	$43	$87	1,451
California	$767	$1,797	20,868
Colorado	$114	$264	3,328
Connecticut	$71	$133	1,624
Delaware	$19	$35	402
District of Columbia	$31	$43	254
Florida	$368	$745	9,746
Georgia	$193	$446	5,642
Hawaii	$44	$86	1,154
Idaho	$24	$47	799
Illinois	$256	$610	7,207
Indiana	$117	$241	3,712
Iowa	$47	$95	1,544
Kansas	$46	$92	1,314
Kentucky	$78	$158	2,266
Louisiana	$81	$158	2,374
Maine	$24	$46	709
Maryland	$113	$235	2,750
Massachusetts	$161	$324	3,884
Michigan	$171	$341	5,272
Minnesota	$105	$240	3,270
Mississippi	$41	$78	1,340
Missouri	$115	$256	3,512
Montana	$20	$39	682
Nebraska	$31	$64	1,048
Nevada	$71	$127	1,703
New Hampshire	$29	$53	653
New Jersey	$170	$367	4,139
New Mexico	$37	$66	1,079
New York	$379	$751	8,855
North Carolina	$176	$371	5,435
North Dakota	$11	$20	333
Ohio	$217	$466	6,978
Oklahoma	$60	$127	2,016
Oregon	$82	$169	2,274
Pennsylvania	$212	$478	6,311
Rhode Island	$24	$45	598
South Carolina	$87	$179	2,689
South Dakota	$14	$27	458
Tennessee	$121	$272	3,531
Texas	$477	$1,164	14,109
Utah	$41	$92	1,375
Vermont	$11	$19	288
Virginia	$157	$331	4,155
Washington	$129	$279	3,419
West Virginia	$28	$47	830
Wisconsin	$100	$210	3,399
Wyoming	$10	$16	293

Source: National Restaurant Association estimates, 2009

National Association for the Self-Employed

Legislative Office
325 7th Street, NW, Suite 250
Washington, DC 20004
P: 202-466-2100
F: 202-466-2123
www.NASE.org

Testimony of

Keith Hall, National Tax Advisor
The National Association for the Self-Employed

"Expiring Tax Incentives: Examining their Importance for Small Businesses on the Road to an Economic Recovery"

House Committee on Small Business

September 30, 2009

Introduction

The economic recovery continues. Today, as always, small business leads the charge in creating new jobs that stimulate the economy, claiming as much as 80% of all net new jobs in this country. The Administration, legislators on both sides of the aisle, short and long term economists, and virtually every other source point to small business as *the* sector of our economy that leads all others in job creation and therefore, the key stimulus factor in continuing the economic recovery vital to all sectors of our country.

The Joint Committee on Taxation has provided a list of over 25 major tax incentives that are scheduled to expire in 2009, and further, there are over 85 temporary tax incentives that have been extended from year to year that are scheduled to expire or "sunset" by the end of 2010. Many of those provisions were enacted over time by Congress to stimulate business and job growth and have been successful particularly for small businesses across the country. Congress certainly could not have anticipated the economic crisis that we all are currently facing, however, now is not the time to end key tax incentives that have contributed to the creation of new jobs. The National Association for the Self-Employed (NASE) is strongly in support of extending tax incentives that are currently scheduled to expire. In particular, the NASE supports extending the provisions for Alternative Minimum Tax increased exemption amounts, bonus depreciation options, section 179 limits, the sales tax deduction option, the first time home buyer's credit, and 15 year cost recovery for certain qualified leasehold improvements and five year recovery for farming business machinery and equipment.

There are certainly many other provisions that have made a significant difference in helping American citizens through troubled times that deserve to be extended as well. Education incentives, charitable contribution incentives, educator incentives, required IRS distribution options for certain retirement plans, among others have all made a difference and provided relief for taxpayers. The country finally seems to be able to see a light at the end of the tunnel, and taking away tax incentives that clearly have made a difference for many Americans seems to be the wrong signal at the wrong time.

Although each of these provisions deserves its own discussion, the National Association for the Self-Employed would like to highlight some of the key provisions scheduled to expire that will have a significant impact on small businesses, particularly the smallest of those businesses, micro-businesses.

Alternative Minimum Tax exemption amount:

The Alternative Minimum Tax (AMT) was enacted over four decades ago to remedy a unique situation in the tax code, namely that a few of the wealthiest taxpayers paid no tax at all. In times of tough choices and budget constraints at all levels, the idea of the wealthiest Americans and those with the highest earnings paying no taxes certainly seems like a loophole that should be closed. However, in 2009 the AMT affects more Americans than was ever intended and affects almost all small business owners even if no tax results from the additional calculation. The basic premise of the AMT system is that all people should pay their fair share, so the AMT provides for an alternate tax calculation that eliminates many deductions, exemptions and credits so that all taxpayers pay some tax. Again, the original idea was to prohibit those taxpayers with the most resources at their disposal from taking advantage of "loopholes" in order to avoid tax altogether. However, the effects of inflation, the time value of money, the growth of earnings and expenses was not taken into account. Therefore, today small business owners and families who never had the resources to seek out loopholes or to avoid tax liability find themselves subject to AMT due to the fact that the exemption amount embedded in the AMT calculation was never adjusted for inflation. Congress has recognized that inequity and has adjusted the exemption amount over time to keep up with inflation. That increase in the exemption amount is now scheduled to end. Allowing that inequity to resurface would cause an unfair increase in taxes under the AMT system for millions of Americans, many of whom can ill afford the increase and all of whom were never part of the AMT concept of paying your fair share that gave rise to the tax in the first place.

Allowing the increase in the exemption amount to "sunset" would directly increase the tax burden for many Americans past their "fair share" simply because they may live in a state with a higher than average state income tax. Others would pay more than their fair share simply because they have a larger than average family. Others would pay more than their fair share simply because they have higher mortgage interest due to a second lien necessary to fund their business or a child's education. Clearly, none of these scenarios was the intent of the AMT from so many years ago.

The Alternative Minimum Tax exemption amount under Internal Revenue Code Section 55 was increased to $70,950 for married taxpayers filing a joint return in 2009. For single taxpayers in 2009, the exemption amount is $46,700. After 2009, those exemption amounts are scheduled to drop to $45,000 and $33,750, respectively. That represents more than a 37% decrease in the exemption amount for joint filers and a 27% decrease in the exemption for single taxpayers. As a direct result, potentially millions of Americans will be subject to Alternative Minimum Tax in 2010 that were not in 2009, without any change in their underlying earnings, deductions, exemptions or any other material economic factor. The bottom line is that these Americans, many of whom are small businesses, will pay more in tax without any corresponding increase in earnings. In other words, this would cause a direct and unintended tax increase on the very sector that we are all relying on to continue the economic recovery. At a very minimum, the exemption amounts should not be allowed to decrease, but should be increased annually based on an inflation index in order to continue the recovery.

Regardless of the net tax impact, the Alternative Minimum Tax System is still expensive to small business. Even if the AMT system does not result in any additional tax, it still must be calculated. The most common mistake related to AMT is simply not knowing that it needed to be calculated. The AMT requires a completely different set of rules and requirements for the tax calculation. The Committee has continually promoted the need for simplification in the Tax Code, yet here is a single topic that results in a whole new set of rules and regulations. In fact, a single topic that results in virtually a second tax return, a second set of records, a second tax liability and a second set of headaches. The following is an excerpt from the Instructions for Form 6251, Alternative Minimum Tax – Individuals.

> "Recordkeeping: For the AMT, certain items of income, deductions, etc., receive different tax treatment than for the regular tax. Therefore, you need to refigure items for the AMT that you figured for the regular tax. In some cases, you may wish to do this by completing the applicable tax form a second time. If you do complete another form, do not attach it to your tax return, but keep if for your records. However, you may have to attach an AMT Form 1116, Foreign Tax Credit, to your return; see the instructions for line 33 that begin on page 9.
>
> For the regular tax, some deductions and credits may result in carrybacks or carryforwards to other tax years. Examples are investment interest expense, a net operating loss, a capital loss, a passive activity loss, and the foreign tax credit. Because you may have to refigure these items for the AMT, the carryback or carryforward amount may be different for the AMT than for the regular tax. Your at-risk limits and basis amounts also may differ for the AMT. Therefore, you must keep records of these different amounts."

The very concept of having a second set of records, a second set of tax forms, a second set of calculations, goes to the very heart of the need for simplification. The original goal of the AMT system of targeting those higher income taxpayers who have the tax professionals on call to manage the paperwork and the multiple forms has some merit. Yet requiring small businesses, and more importantly average Americans, to keep up with two sets of tax issues borders on unconscionable.

Perhaps the best solution of all would be a total repeal of the Alternative Minimum Tax system. The NASE would support the repeal of the AMT system completely, based in part on the fact that it does not meet the original goals for which it was enacted, but more importantly because it results in a higher tax on small business both in money and in time. Even if no tax results from the AMT system, a system of requiring two sets of calculations is a tax itself. At a very minimum, the exemption amount that is included as part of the AMT should be indexed to inflation and maintained at a level consistent with the growth in earnings and expenses, and the adjusted amounts should not be allowed to revert to prior levels but should be extended.

Bonus depreciation options and Section 179 limits:

Investment in new business ventures as well as existing business ventures remains a critical factor in continuing the economic recovery. Providing incentives for such investment is also critical and should continue to be a focus of tax policy. Currently small businesses, as well as all businesses, can take advantage of additional first year depreciation for qualified property placed in service in the current year. A 50 percent bonus depreciation in the first year is available, which directly affects the taxpayers' cash flow during that critical first year analysis of whether or not to invest in that new equipment. Unless extended, that option is scheduled to expire at the end of 2009 for most types of business property.

Likewise, the option to fully expense new investment in qualified property via Internal Revenue Code Section 179 is scheduled to be significantly reduced after 2009. Congress has recognized, and rightfully so, that the investment in business assets is critical to business growth, and corresponding tax policy to promote that investment must also be considered critical. Reducing the Section 179 limits would have the unintended consequence of reducing such investment and therefore, a corresponding reduction in the positive economic impact of such investment.

One key point to both items is that the impact from an overall tax standpoint is only one of timing. Neither the bonus depreciation nor the accelerated expensing option under Section 179 increase the deduction for the investment in total. Both simply accelerate the deduction to the year of acquisition, which more closely matches the cash flow commitment of the small business. Accelerating the depreciation directly helps in both the analysis for the small business in evaluating their ability to make the investment, and in the ability to fund the investment.

The tax code has always promoted investment, as has Congress and particularly this Committee. At a time when the economy needs investment to continue the recovery, extension of these provisions past the current year seems not only prudent, but necessary.

Conclusion:

The NASE supports the extension of expiring tax incentives including the AMT exemption, accelerated depreciation, sales tax deductions, first time home owner buyer credit and others. The key point for supporting the extension of tax incentives is to support extending the economic recovery. As always, small business is leading the way, supported by key proponents such as the House Committee on Small Business and the NASE. The recovery is underway and building steam. This is not the time to reduce the commitment to small business by reducing tax incentives.

The NASE believes in the long term impact small business will have on the overall economy, and supporting tax policy that promotes that impact is only natural. Promoting investment, encouraging new job development and keeping the playing field level for all taxpayers is essential to long term recovery. We are on the right path. This Committee, along with its stakeholders, is making a difference. The NASE strongly supports the continued investment in small business through tax incentives that have already proven effective and efficient. Extending the existing tax incentives makes sense in helping small businesses create jobs. Helping small businesses create jobs makes sense for helping the overall economic recovery. And helping the overall economic recovery makes sense for all Americans.

YVETTE D. CLARKE
11TH DISTRICT, NEW YORK

1029 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-6231

EDUCATION AND LABOR COMMITTEE

HOMELAND SECURITY COMMITTEE

SMALL BUSINESS COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-3211

HEALTH, EMPLOYMENT, LABOR, AND PENSIONS SUBCOMMITTEE

HEALTHY FAMILIES AND COMMUNITIES SUBCOMMITTEE

CHAIRWOMAN: EMERGING THREATS, CYBERSECURITY, AND SCIENCE AND TECHNOLOGY SUBCOMMITTEE

INTELLIGENCE, INFORMATION SHARING AND TERRORISM RISK ASSESSMENT SUBCOMMITTEE

CONTRACTING AND TECHNOLOGY SUBCOMMITTEE

RURAL DEVELOPMENT ENTREPRENEURSHIP AND TRADE SUBCOMMITTEE

Rep. Yvette Clarke
House Committee on Small Business
Statement for the Record
Wednesday September 30, 2009

COMMENTS

- Thank you Madame Chair. And thank you to the distinguished panel for being here to share their views on tax incentives that are beneficial to small business.

- This is a timely discussion to have as we seek to use our tax code to address the worst economic downturn in decades.

- These panelists are also giving us first hand confirmation some of the provisions in the stimulus bill are working and should be extended.
  - For example, the *bonus depreciation allowance,* which would allow taxpayers to recover the cost of qualified new property such as buildings, vehicles, furniture, and equipment - should be extended beyond 2009.

- There are other tax incentives that we should study for a possible extension because they provide great benefits to Americans and to our economy.

YVETTE D. CLARKE
11TH DISTRICT, NEW YORK

1029 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-6231

EDUCATION AND LABOR COMMITTEE

HOMELAND SECURITY COMMITTEE

SMALL BUSINESS COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-3211

HEALTH, EMPLOYMENT, LABOR, AND PENSIONS SUBCOMMITTEE

HEALTHY FAMILIES AND COMMUNITIES SUBCOMMITTEE

CHAIRWOMAN: EMERGING THREATS, CYBERSECURITY, AND SCIENCE AND TECHNOLOGY SUBCOMMITTEE

INTELLIGENCE, INFORMATION SHARING AND TERRORISM RISK ASSESSMENT SUBCOMMITTEE

CONTRACTING AND TECHNOLOGY SUBCOMMITTEE

RURAL DEVELOPMENT ENTREPRENEURSHIP AND TRADE SUBCOMMITTEE

- For example, the First Time Homebuyer's tax credit should be extended.
    - In addition to the impact this will have on small businesses working directly in the housing sector, there will also be an impact on entrepreneurs that often use the equity in their homes as collateral for loans to finance new businesses or to expand an existing one.

- Tax credits for research and experimentation expenses, (also known as R&D Tax Credits) should be extended so that our innovative small business sector can develop products and processes that will propel us into future economic expansion.

- I would also like to go on record as supporting the tax incentives for the uses of bio fuels for its environmental, economic, and national security benefits.

- I look forward to working with my colleagues on the Committee on these important issues.

- The economy is showing signs of recovery and extending tax incentives that work for small businesses will help return our economy to a status of recovery and prosperity.

- Thank you Madame Chair

Associated Builders and Contractors, Inc.

September 29, 2009

The Honorable Nydia Velázquez
Chair
House Small Business Committee
2361 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Sam Graves
Ranking Member
House Small Business Committee
B-363 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Velázquez and Ranking Member Graves:

On behalf of Associated Builders and Contractors (ABC) representing more than 25,000 open shop contractors, subcontractors, material suppliers and related firms, we appreciate the opportunity to provide our positions regarding tax relief in response to the House Small Business Committee's hearing entitled, "Expiring Tax Incentives: Examining their Importance for Small Business on the Road to an Economic Recovery." Tax relief is extremely important to the open shop construction industry and small businesses.

One of the greatest obstacles to increased economic growth and higher standards of living is our nation's complex and ever changing tax code. The current tax code disproportionately affects small businesses, which are forced to expend significant time and resources in order to comply with the extensive, complicated and burdensome tax code. Moreover, the tax code impedes small businesses growth by discouraging long term investment due to high capital gains taxes and hinders further job creation with an over reliance on payroll taxes.

ABC supports minimizing the tax burden on American citizens – the construction industry in particular – to help increase the rate of capital formation, economic growth and job creation. ABC specifically advocates capital gains tax cuts, repeal of the estate tax, Alternative Minimum Tax (AMT) relief, independent contractor clarification, cash accounting clarification, increase the threshold for the completed contract method (CCM), and repeal of look-back accounting requirements for construction firms.

Specifically, the estate tax is set to expire in Fiscal Year (FY) 2010 for one year and return to its highest taxable rate of 55 percent in FY 2011. Almost one-third of all small business owners today will be forced to sell outright, or liquidate a significant portion of their company to pay for this unfair tax. Construction companies are frequently small, family-owned businesses and are particularly hit hard by the estate tax burden, since the value of these businesses is not in liquid assets. The estate tax not only jeopardizes the survival of family-owned construction companies, but it also siphons off critical funds used for estate planning costs that could be invested back into the business.

Family-owned businesses are the backbone of our economy and give Americans a sense of pride and accomplishment in our country. In the construction industry, they provide valuable jobs and play an integral role in building communities. ABC believes that these businesses are worth preserving for the next generation. Lessening the tax burden on individuals will encourage small business owners and construction companies to reinvest in their businesses, thus expanding the economy. We look forward to working with you to provide tax relief to small businesses.

Sincerely,

Brewster B. Bevis

Brewster B. Bevis
Senior Director, Legislative Affairs

4250 North Fairfax Drive, 9th Floor • Arlington, VA 22203 • 703.812.2000 • www.abc.org

IFA
INTERNATIONAL FRANCHISE ASSOCIATION
Franchising
Building local businesses one opportunity at a time
50 YEARS 1960-2010

For immediate release
Contact: Alisa Harrison
202-628-8000
aharrison@franchsie.org
www.twitter.com/IFADC

CONGRESS SHOULD EXTEND CERTAIN TAX CREDITS TO HELP SMALL BUSINESSES LEAD THE ECONOMIC RECOVERY

New Bill to Help Veterans Get into Business is Critical, IFA Chairwoman Says

WASHINGTON, Sept. 30, 2009—Congress should enact tax policies that help small businesses create jobs and new entrepreneurs, including veterans, get into business for themselves, International Franchise Association Chairwoman Dina Dwyer-Owens testified today at a House Small Business Committee hearing on expiring tax incentives and their importance for small businesses on the road to economic recovery.

Dwyer-Owens, chairwoman and CEO of The Dwyer Group in Waco, Texas, told committee members that there are more than 900,000 franchised establishments in the U.S., creating 21 million American jobs and generating $2.3 trillion in economic output. The more incentives and tax credits available, the more jobs created, leading to a faster economic recovery.

"Since the economy went into recession, Congress has enacted numerous provisions that have helped small businesses avoid some of the worst effects of the downturn," Dwyer-Owens said. "The nation is only now starting to see signs of recovery and fragile businesses need these programs to continue."

Dwyer-Owens urged Congress to consider the following measures to help small businesses:

Extend Bonus Depreciation. The Emergency Economic Stabilization Act of 2008 extended the provision of 15-year straight-line recovery for qualified leasehold and restaurant improvements for 2008 and 2009. In addition, the Act added a 15-year schedule for new construction and improvements placed in service in 2009.

"These provisions must be extended beyond 2009 for the benefits of lower real estate costs to coincide with construction spending in the franchise industry," Dwyer-Owens said. "Extending these provisions will entice franchise business owners to reinvest in their facilities, which creates a tremendous spill-over effect on other industries. The Bureau of Labor and Statistics estimates that every $1 spent on construction generates another $2.39 in economic activity; and every $1 million spent in the construction industry creates more than 28 jobs in the overall economy."

Extend the Work Opportunity Tax Credit & Capital Gains Tax Relief. The American Reinvestment and Recovery Act of 2009 includes the Work Opportunity Tax Credit and relief for businesses organized as S Corporations from capital gains taxes. The Work Opportunity Tax Credit, has helped many franchise businesses to hire unemployed veterans or youth who are not in school or already employed. "This tax credit should be extended until our national unemployment rate returns to pre-recession levels," Dwyer-Owens said.

Extend Death Tax Relief: The death tax has long cost our economy more than the revenue it generates for the federal government. According to the Joint Economic Committee (JEC), the death tax has brought in only $761 billion in revenue since 1942, while reducing the stock of capital in the economy by $847 billion. The JEC study finds no compelling reason to keep the tax and a number of compelling reasons to reduce or abolish it. "The IFA has advocated for a permanent solution to the estate tax and I urge Congress to address this situation now before the tax returns to its pre-2001 level," Dwyer-Owens said.

-more-

Pass the Help Veterans Own Franchises Act. The American Recovery and Reinvestment Act of 2009 provides a tax credit to employers who hire qualified veterans. To extend this effort, Congressmen Leonard Boswell (D-IA) and Aaron Schock (R-IL) proposed a bill in June that establishes a tax credit for franchise businesses that choose to offer qualified veterans a discounted initial franchise fee. The tax credit would amount to 50 percent of the total franchise fee discount offered by the franchisor to the franchisee and would be capped at $25,000 per unit. The bill also provides a tax credit to veterans who purchase a franchise and open a business in their local community, equal to 25 percent of the remaining franchise fee. Eligibility for both the franchisor and franchisee is capped at franchise fees of $100,000.

"Given the current economic climate, many franchised businesses are finding it harder to access the capital they need to open new stores and recruit new investors," Dwyer-Owens said. "The Help Veterans Own Franchises Act is a natural compliment to IFA's Veterans Transition Franchise Initiative (VetFran), a program established to help those who have so honorably served their country to seek the dream of business ownership. To date, purchases of franchised businesses by former military personnel have reached 1,500 and 228 others are in negotiation. There are 395 franchise businesses from which to choose and most offer significant reductions of the initial franchise fee required at purchase."

Increase Access to Credit. Dwyer-Owens said that unlike many jobs created by federal infrastructure spending, franchise jobs are more sustainable. "Congress can create jobs faster and support small businesses by extending the 90% SBA 7(a) loan program guarantee rate through 2010, increasing the maximum 7(a) loan size to $5 million and improving access to SBA loan programs specifically for small business start-up and expansion.

She added that a recent study by the IFA Educational Foundation revealed that for every $1 billion of lending obtained by franchised businesses, 34,100 jobs, sustainable jobs, are created and $3.6 billion in annual total economic output is realized. Only 1/800th percent of the money allocated in The American Recovery and Reinvestment Act of 2009 was dedicated toward helping small businesses.

"While Congress and the Administration have taken important steps to address the challenges small businesses are facing in accessing credit, franchised businesses and prospective franchise investors with strong credit histories continue to have loan applications denied," Dwyer-Owen said. "Under normal circumstances, the Small Business Administration typically guarantees approximately $20 billion in loans annually; however, new lending in 2009 is predicted to be less than half of that."

For Dwyer-Owens' full testimony, visit www.franchise.org.

###

About the International Franchise Association
The International Franchise Association, the world's oldest and largest organization representing franchising, is the preeminent voice and acknowledged leader for the industry worldwide. Approaching a half-century of service with a growing membership of nearly 1,300 franchise systems, 10,000-plus franchisees and more than 500 firms that supply goods and services to the industry, IFA protects, enhances and promotes franchising by advancing the values of integrity, respect, trust, commitment to excellence, honesty and diversity. For more information, visit the IFA Web site at www.franchise.org.