March 7, 2018

The Honorable David Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Acting Commissioner Kautter:

We are writing to request a six month extension of the time by which a corporation must make an election to be treated as a S corporation for the current calendar year.

As you know, The Tax Cuts and Jobs Act enacted in December of 2017 made substantial changes to the tax law as it relates to passthrough entities, including S corporations, with the introduction of a new Section 199A of the Internal Revenue Code. This Section provides that S corporations will generally be entitled to a deduction for each taxable year equal to the sum of:

1. The lesser of (A) the taxpayer's "combined qualified business income amount" or (B) 20 percent of the excess of the taxpayer's taxable income for the taxable year over any net capital gain plus the aggregate amount of qualified cooperative dividends, plus

2. The lesser of (A) 20 percent of the aggregate amount of the qualified cooperative dividends of the taxpayer for the taxable year or (B) the taxpayer's taxable income (reduced by the net capital gain).

Clearly, Section 199A is not only complex and confusing, but the effective tax rate can vary substantially depending on the definition of various terms using therein including "qualified business income" (QBI), "qualified property," and "W-2 wages" properly applicable to QBI. Section 199A further limits the deduction depending on whether the business is deemed to be a "specified service trade or business."

None of the terms used in Section 199A have been defined in any guidance issued by the IRS since the enactment of the provision. Nevertheless, NSA members as well as tax professionals across the country are being asked by clients to make our own interpretations of Section 199A, even as IRS and Treasury Department personnel have made numerous speeches acknowledging that the scope of this Section could change markedly depending on how official pronouncements choose to define some of the terms mentioned above.

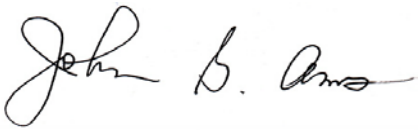
The updated Priority Guidance Plan, issued on February 7, 2018, lists guidance under Section 199A as a priority and the hope that all priority guidance will be issued by June 30.

However, any entity that wishes to be treated as a S corporation for tax purposes for this calendar year must do so by March 15, even in the absence of such guidance. It strikes us that making an election in March when the guidance on which such election may be based will be issued in June is unfair to taxpayers, tax professionals, and the tax system itself.

Section 1362(b)(5) of the Internal Revenue Code provides that a late election to be a S corporation can be deemed to be timely made if there is reasonable cause for the failure to timely make the election. We believe that the absence of any guidance under Section199A is reasonable cause to not make the election by March 15. We further believe that, assuming the regulations under Section 199A are in fact issued by June 30, any entity considering making a S election should be given a six-month extension, until September 15, 2018, to do so. This extension would afford time for all affected parties, as well as their tax adviser, to read and understand any such regulations and how they may impact their tax liabilities.

Thank you for your consideration of this request.

Sincerely,



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cc: Hon. Orrin G. Hatch, Chairman, Senate Finance Committee
Hon. Ron Wyden, Ranking Member, Senate Finance Committee
Hon. Kevin Brady, Chairman, House Ways and Means Committee
Hon. Richard Neal, Ranking Member, House Ways and Means Committee
Hon. Steven Mnuchin, Secretary, Department of the Treasury

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