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October 14, 2022

The Honorable Charles Schumer
Senate Majority Leader
United States Senate
S-221 U.S. Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232 U.S. Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Senate Minority Leader
United States Senate
S-230 U.S. Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
House Minority Leader
U.S. House of Representatives
H-204 U.S. Capitol
Washington, D.C. 20515

The Honorable Ron Wyden
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Mike Crapo
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Richard Neal
Chairman
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Kevin Brady
Ranking Member
House Committee on Ways and Means
1139 Longworth House Office Building
Washington, D.C. 20515

Re: Shift in determining interest deduction limitation under section 163(j) imposes additional burdens on middle market businesses

Dear Leader Schumer, Speaker Pelosi, Leader McConnell, Leader McCarthy, Chairman Wyden, Chairman Neal, Ranking Member Crapo, and Ranking Member Brady:

The 2017 Tax Cuts and Jobs Act (TCJA) significantly changed the rules governing the deductibility of interest expense for businesses by subjecting taxpayers to limitations on their interest expense deductions based on a percentage of adjusted taxable income, or ATI. The new law became effective in two parts: first in 2018, as part of the general enactment of the new rule, and subsequently in 2022, which further modified the manner in which the limitation is computed.

While the TCJA changes apply to all but the smallest businesses, we are particularly concerned about the impact of the change that came into effect this year on middle market businesses.

We write today to ask that the change that came into effect this year be retroactively repealed, and that the rule for determining ATI based on earnings before interest, taxes, depreciation, amortization, and depletion (EBITA) be restored for taxable years beginning on or after Jan. 1, 2022. Alternatively, we request that the implementation of the new law (as recently modified), which took effect for taxable years beginning on or after Jan. 1, 2022, be retroactively deferred for an additional three years.

As enacted, effective for taxable years beginning after 2017, a taxpayer's interest expense under section 163(j) is limited to the extent that it exceeds 30% of a taxpayer's ATI. For taxable years beginning before Jan. 1, 2022, ATI is based on EBITA. Beginning in 2022, depreciation, amortization, and depletion are no longer allowed to be added back to taxable income in computing ATI, thus requiring an EBIT rather than EBITDA calculation. This will result in a greater interest deduction disallowance for taxpayers with depreciation, amortization, and depletion, such as middle market manufacturers and many other middle market businesses.

Middle market businesses do not enjoy the same access to public markets that many of their larger competitors have and tend to rely heavily on debt rather than equity financing for their capital expenditures. Those capital expenditures are critical to increasing productivity, which reduces cost and overall inflation. We believe that adding an additional tax burden onto those firms at this time is unwise.

According to the June 2022 edition of the RSM US Middle Market Business Index, 42% of survey respondents increased their capital expenditures during the most recent quarter, and over 50% of respondents expect to increase capital expenditures during the next six months. In addition, 34% of respondents indicated that they plan to increase their borrowing over the next six months.

The data could not be clearer—**middle market businesses want to expand and produce domestically** by increasing their capital through additional borrowing, even as they face continued supply chain disruption, rising prices due to inflation, and wage pressures. Given the Federal Reserve's recent increase in interest rates and the potential for further increases this year, middle market businesses face serious challenges in their ability to expand their production and add to their payrolls. This is not the time to increase the tax burden on these businesses.

There have been legislative proposals introduced in both the House and Senate that would make EBITDA permanent for purposes of determining the income limitation on the tax deduction for business interest. We support the inclusion of these provisions in any upcoming legislation and, at a minimum, request a three-year delay in the change to EBIT.

Middle market businesses are the lifeblood of the U.S. economy, serving a vital role in driving innovation and cutting-edge technologies, while also playing a key role and operating as crucial links within the supply chains of larger businesses. Policies that help such businesses thrive and grow will undoubtedly have a broader impact on the business ecosystem through investments these businesses make in areas such as property, plant, and equipment.

The change in computation of ATI is effectively a tax increase for middle market businesses across the nation—and it could not come at a more challenging time for many.

We appreciate your consideration of our request and welcome any conversations you may wish to have.

Sincerely,

RSM US LLP

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Tony Urban, National Tax Leader-Elect, RSM US LLP

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