

April 30 - May 1, 2014



Day In Washington

Tax Policy

Introduction

The wholesale and retail food industry is an incredibly diverse one, comprised of everything from single store “Mom and Pop” operators to Fortune 500 companies. The industry is comprised of publicly traded companies, family-owned businesses that have passed through generations of ownership and six of the ten largest ESOPs in the United States. The tax structures of these businesses are equally diverse and include “traditional” C corporations; pass-through entities such as S corporations, partnerships, and LLCs; and even a number of Subchapter T co-operatives.

Unfortunately, the wholesale and retail food industry is also a highly taxed one, with average applied rates for companies often exceeding 31 percent. With these high rates and the narrow profit margins under which the industry operates – about one percent in an average year – even small changes in tax policy can have a significant impact on final operating results.

Tax Reform

The high federal tax rates paid by both C corporations and pass-through entities in the food wholesale and retail sector means that the industry has much to gain from broad-based, balanced and comprehensive tax reform that lowers applied rates and simplifies the tax code. Such an effort would not only spur growth and expansion, it could help create tens of thousands of well-paying new jobs. Comprehensive tax reform can also ensure that growth is long-term, by increasing certainty in the tax code and facilitating the long-term planning that has been difficult to undertake given the uncertain state of tax law over the past several years. The industry hopes that Congress recognizes the potential benefits of reform and encourages both the House and Senate to push forward supportive action on this issue soon.

Any effort at reform, however, must recognize the diversity of the industry and create a level playing field for all its members, not just certain groups. “Corporate only” reform, which has been suggested by some as the quickest route to passing a bill, would disadvantage the significant portion of businesses in the food wholesale and retail industry that operate as pass-throughs. Similarly, changes to tax law that continue and/or exacerbate the significant disparity between the top corporate and individual rates would also create a competitive imbalance that is unfair not only to businesses but also to consumers. C corporations and all pass-throughs both deserve a lower applied federal tax rate. The tax reform process should reflect this by being comprehensive and respecting the decisions made by business owners about the tax structure that will make them as competitive as possible in the markets where they operate.

LIFO

The use of the last-in, first-out (LIFO) method of inventory accounting has been allowed since 1939 and is broadly employed in the food wholesale and retail industry. LIFO helps protect against inventory price shocks that can result from inflation and is an important tool that creates consistency and aids in long-term planning. Over the past several years, there have been calls to repeal LIFO as a means of creating new revenue, many of which start with the incorrect assumption that it is either a tax “loophole” or that it is used by only a small number of industries. Neither of these is correct. As noted, the use of LIFO is an accounting method recognized by the IRS that dates back over 75 years, and it is used by industries as diverse as heavy manufacturing, oil and petroleum, wine and spirits distillers and, of course, the wholesale and retail food industry. Further, repealing LIFO and attempting to “recapture” companies’ reserve funds (LIFO reserves represent the difference in inventory value using LIFO versus using the first-in, first-out method (FIFO)) as a way of raising revenue effectively applies a retroactive tax onto LIFO users that would be considered wholly unacceptable in any other context.

LIFO is an integral part of the industry's accounting processes and helps to prevent the drain of capital necessary for growth and job creation, while also accurately reflecting the impact of inflation on the inventories we maintain. We urge members of Congress to retain LIFO and resist any attempt at repeal.

Tax Extenders

The group of tax laws frequently referred to as “tax extenders” contains a number of provisions employed by and important to the food wholesale and retail industry. In addition to several significant energy credits, the extenders package includes the work opportunity tax credit (WOTC), which helps encourage the hiring of certain “at risk” groups; the new markets tax credit (NMTC), which helps incentivize private investment in low-income areas; the research and development (R&D) tax credit; so-called “bonus” depreciation; Sec. 179 small business depreciation and the enhanced charitable deduction for donation of food inventories, among many other provisions.

The annual effort to renew the “tax extenders” package has gone a long way toward creating a “temporary tax code” that makes long-term planning extremely difficult. Congress frequently allows these provisions to expire and then reinstates them retroactively, but only for a limited period of time, creating uncertainty for businesses. We believe it is important for Congress to provide this certainty to businesses. Ideally, we would like to see an end to the temporary tax code by making tax extenders permanent. This would have a positive effect on business planning and could set the stage for improved economic growth. However, we also recognize that in the current budget environment, permanent enactment may be perceived as too expensive. Under these circumstances, the industry urges lawmakers to pass a two-year, retroactive renewal of the tax extender package this year.

Marketplace Fairness

Under current law, internet purchases from a retailer without a physical presence (“nexus”) in the state to which the order is shipped are not charged a state sales tax. In many cases, this provides an online-only retailer with a significant competitive advantage over brick-and mortar stores – resulting in as high as a 10 percent price differential. Our industry, in cooperation with a coalition of other industries, has been working to level the playing field for its members by changing current law to treat all retailers equally.

Last May, the Senate passed the *Marketplace Fairness Act* (S. 743) on a strong bipartisan vote of 69-27. This legislation would allow – but not force – states to begin requiring online retailers to collect and forward sales tax on purchases, providing that the state complies with a series of simplification measures designed to ease the burden on small and mid-sized companies. Members of the House Judiciary Committee are currently drafting their own legislation, but it has yet to be introduced. Creating a level playing field that applies tax regimes equally to retailers, regardless of whether they are brick-and-mortar, e-commerce or a mix of the two, is of vital importance to our industry. We urge the House to push forward as quickly as possible and for Congress to complete work on this long-delayed issue in 2014.

Estate Tax

Although the creation of a permanent 40 percent estate tax rate in the *American Taxpayer Relief Act* moved the issue of the estate to the back burner in the eyes of many lawmakers, it remains a vitally important issue to our industry. Much like farmers and ranchers, many grocery store owners find that their estates are valued in the millions (and sometimes tens of millions) due to the property held, even though the business itself may not generate a cash flow that reflects this valuation. Family-owned businesses in our industry often have to undertake expensive estate planning to help ensure that they are able to pass their companies on to the next generation; resources that could be better dedicated to growing the business and creating new jobs. The estate tax hits family businesses during a vulnerable time and places a burden on these closely held companies that other businesses do not face. We have a long history of calling for repeal, and we continue today to urge Congress to eliminate this unfair tax.