

Chris Jahn
President & CEO



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The Honorable Richard Neal
Chairman
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Dear Chairman Neal and Ranking Member Brady:

On behalf of the American Chemistry Council (ACC) and our members, thank you for the decisive actions you have taken to address the public health crisis and the economic effects of the COVID-19 pandemic. This is a time when bipartisanship is more important than ever, and the speed at which the Administration and Congress is delivering relief is signaling the much-needed confidence that we will emerge from this pandemic stronger and more united than ever.

ACC member companies apply the science of chemistry to create and manufacture innovative products that make people's lives better, healthier, and safer. The business of chemistry is a \$526 billion enterprise and a key element of the nation's economy. Over 25% of U.S. GDP is generated from industries that rely on chemistry, ranging from agriculture to oil and gas production, from semiconductors and electronics to textiles and vehicles, and from pharmaceuticals to residential and commercial energy efficiency products.

The U.S. economy has slowed considerably due to nationwide social distancing and shelter-in-place orders. These unusual conditions have led to significant new challenges for manufacturers, such as staff quarantines, interruptions to business and the supply chain, and sharp drop-offs in demand for products. Businesses will need to carefully manage cash flow and find ways to access capital in the face of these difficult economic conditions.

As the ACC member companies continue to deal with the economic effects of the COVID-19 pandemic, it asks Congress to consider the following proposals – all designed to enhance the CARES Act:

- **Overall Domestic Loss (ODL)** - Modify Section 904(g)(5) to allow taxpayers to elect ODL recapture of up to 100% of current year U.S. source taxable income for ODLs generated in tax years 2018, 2019, and 2020. Eliminate the allocation of ODL to global intangible low-taxed income (GILTI) to eliminate the permanent impact that results from the loss of foreign tax credits.



- **General Business Credits (GBC)** - Make Section 38 GCBs carried forward to 2020 and generated in 2020 refundable. To create liquidity, amend the Internal Revenue Code to permit taxpayers to claim the refundable credits as they are generated.
- **Net Operating Losses (NOLs)** -The CARES Act permits NOLs from the 2018, 2019, and 2020 tax years to be carried back to the previous five tax years and suspends the 80% of taxable income limitation through the 2020 tax year. The carry back should be extended to 10 years or further. In addition, to provide immediate taxpayer access to liquidity created through these provisions, we recommend allowing for the filing of provisional 2020 corporate income tax returns coupled with tentative claims for refunds for taxpayers expecting a 2020 NOL.
- **BEAT and GILTI** - Changes to the NOL rules made by the CARES Act have resulted in an unanticipated increase of some taxpayers' base erosion and anti-abuse tax (BEAT) liability without any actual increase in outbound payments. In addition, taxpayers with GILTI basket foreign tax credits may not benefit from the liberalization of the NOL rules, even though they continue to pay taxes in foreign countries above the target rate. Congress should amend the BEAT for tax years 2018, 2019, and 2020 to avoid penalizing taxpayers with an increased BEAT liability for electing to carryback NOLs as a result of the changes made by the CARES Act. Furthermore, the NOLs rules should be amended to allow NOLs to be carried to other years without regard to a taxpayer's current- or prior-year GILTI.
- **Delay of Employer Taxes** - Extend the deadlines further to pay over to the United States the 6.2% employer portion of payroll taxes and ensure taxpayer optionality to include the current year employer OASDI deduction in the current year while deferring payment to 2022 and 2023 (via deemed loan construct, deemed payment, recurring item exception, etc.).

In addition, the ACC has identified several proposals that, while not addressed in the CARES Act, would be very beneficial:

- **Research and Development (R&D) Credit** - Liberalize the current rules on R&D credits. This could include for example, by lowering the current base amount over which a credit can be claimed or increasing the percentage of qualified research expenses that qualify in calculation of the credit. To create liquidity, amend the Internal Revenue Code to permit taxpayers to claim the refundable credits as they are generated.
- **Interest Rate Stabilization** - Extend pension smoothing provisions that under current law are scheduled to phase down after 2020 and narrow the corridor for the 2020-2025 period to 5% around 25-year interest rate averages. Reduce shortfall amortization bases for all plan years beginning before January 1, 2020 to zero and amortize all shortfalls over 15 years for plans effective after January 1, 2020.



Finally, there are several things that the Treasury Department/IRS can do under their existing authority to assist businesses:

- **Excise Tax Penalty Relief** - Provide penalty relief for the quarterly Federal Excise Tax liability by eliminating the penalty with respect to the requirement to pay 95% of the liability in bi-weekly payment prior to the due date of the return. In other words, Treasury could waive the penalties and interest as long as the liability was fully paid with the quarterly return.
- **Employee Retention Credit** - Clarify that an eligible employer includes employers whose detrimental supply and demand effects are proximately linked to COVID-19 governmentally mandated shutdowns applicable to affected customer and suppliers (e.g. secondarily, tertiary, etc.).
- **Quarterly Estimated Income Tax Payments** - Further extend the deadlines for payment of quarterly estimated income tax payments for 2020. Penalty and interest should be waived on all 2020 estimated income tax payments. Make conforming amendments to 26 U.S.C. § 461.

I hope you find this list from ACC helpful. I recognize it's a lot. My staff will be reaching out to schedule a follow up meeting at your convenience and would be happy to provide you with further information on any of these topics as needed.

Best,



Chris Jahn
President and Chief Executive Officer
American Chemistry Council

cc: House and Senate Leadership, and Members of Senate Committee on Finance and of House Committee on Ways and Means.

