



# Small Business Legislative Update

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Jeff Brabant





# Build Back Better Act (November House bill)

- Limits Maximum Small Business Deduction (Section 199A) – \$500,000\*
- Increases top individual rate – 37% → 39.6%
- Lowers top rate threshold – \$628,301 → 450,001
- Imposes 3.8% surtax on active business income >\$400,000\*
  - Lower threshold for businesses held in trusts >\$13,000\*
- Imposes 3% surtax on income >\$5 m\*
- Increases corporate tax rate and restores graduated corporate tax rate\*
- Increases the top capital gains tax rate from 20% to 25%\*
  - +3.8% surtax >\$500,000 (28.8%)\*
  - +3% surtax >\$10 m (31.8%)\*
- Accelerates sunset of estate tax thresholds
  - Exemption would be reduced from \$11.7 m to ~\$6 m



*\* not indexed for inflation*

# Build Back Better Act (July Senate bill)

- ~~Limits Maximum Small Business Deduction (Section 199A) – \$500,000\*~~
- ~~Increases top individual rate – 37% → 39.6%~~
- ~~Lowers top rate threshold – \$628,301 → 450,001~~
- **Imposes 3.8% surtax on active business income >\$400,000\***
  - **Lower threshold for businesses held in trusts >\$13,000\***
- ~~Imposes 3% surtax on income >\$5 m\*~~
- ~~Increases corporate tax rate and restores graduated corporate tax rate\*~~
- ~~Increases the top capital gains tax rate from 20% to 25%\*~~
  - ~~Plus 3.8% surtax >\$500,000 (28.8%)\*~~
  - ~~Plus 3% surtax >\$5 m (31.8%)\*~~
- ~~Accelerates sunset of estate tax thresholds~~
  - ~~Exemption would be reduced from \$11.7 m to ~\$6 m~~



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# Small Business Surtax

- **Imposes 3.8% surtax on active business income >\$400,000\***
  - **Lower threshold for businesses held in trusts >\$13,000\***
- Expansion of 3.8% surtax on passive income >\$200,000\*
  - Net Investment Income Tax (NIIT)
  - Created by ACA in 2010, effective 2013
- Alternative: Increase self-employment payroll taxes (SECA) by 3.8%
- Argument: "Close loophole to fund Medicare"

*\* not indexed for inflation*





NFIB

Congress is wrongly calling small business a tax loophole and plans to add a new tax on Main Street.

**MY SMALL BUSINESS IS NOT A TAX LOOPHOLE!**  
 Sweetsir Automotive  
 Plaistow, NH

**FRED SWEETSIR**  
 SMALL BUSINESS OWNER  
 PLAISTOW | NEW HAMPSHIRE

#smallbiznotaloophole

NFIB.com/NoNewTax



NFIB

Congress is wrongly calling small business a tax loophole and plans to add a new tax on Main Street.

**MY SMALL BUSINESS IS NOT A TAX LOOPHOLE!**  
 Direction Furniture  
 Newton, N.C.

**LISA BRITTAIN**  
 SMALL BUSINESS OWNER  
 NEWTON | NORTH CAROLINA

#smallbiznotaloophole

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NFIB

Congress is wrongly calling small business a tax loophole and plans to add a new tax on Main Street.

Senator Manchin,  
**I'm not a Tax Loophole!**  
 SKS Corp

**KEITH MORTON**  
 SMALL BUSINESS OWNER  
 OAK HILL | WEST VIRGINIA

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NFIB

Congress is wrongly calling small business a tax loophole and plans to add a new tax on Main Street.

Senator Manchin,  
**I'm not a Tax Loophole!**  
 Fonda Eastham

**FONDA EASTHAM**  
 SMALL BUSINESS OWNER  
 TEAYS VALLEY | WEST VIRGINIA

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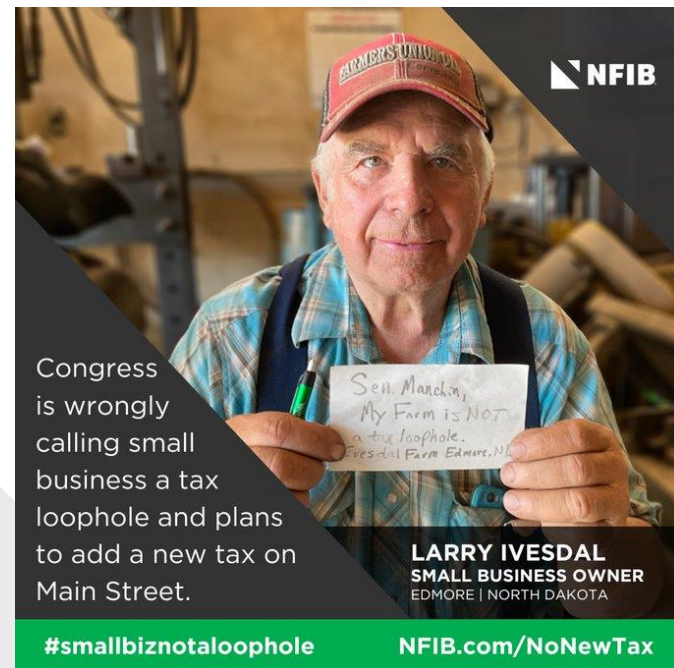
Congress is wrongly calling small business a tax loophole and plans to add a new tax on Main Street.

Senator Manchin,  
**I'm not a Tax Loophole!**  
 Candice Watts

**CANDICE WATTS**  
 SMALL BUSINESS OWNER  
 HUNTINGTON | WEST VIRGINIA

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NFIB

Congress is wrongly calling small business a tax loophole and plans to add a new tax on Main Street.

Sen. Manchin,  
 My Farm is NOT  
 a tax loophole.  
 Ivesdal Farm Edmore, ND

**LARRY IVESDAL**  
 SMALL BUSINESS OWNER  
 EDMORE | NORTH DAKOTA

#smallbiznotaloophole

NFIB.com/NoNewTax

# Build Back Better Act (August Senate bill)

- ~~Limits Maximum Small Business Deduction (Section 199A) – \$500,000\*~~
- ~~Increases top individual rate – 37% → 39.6%~~
- ~~Lowers top rate threshold – \$628,301 → 450,001~~
- ~~Imposes 3.8% surtax on active business income >\$400,000\*~~
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# Inflation Reduction Act of 2022

- Creates corporate Alternative Minimum Tax (AMT) on businesses with more than \$1 b in book income (+\$222 b)
- Doubles IRS funding; focus on enforcement (+124 b)
- Creates 1% stock buy back tax (+\$74 b)
- Limits ability of businesses to carryback excess business losses (+\$52 b)
- Allows Medicare to set prices for prescription drugs (+\$265 b)
- Extends enhanced Affordable Care Act advanced premium tax credits (APTCs) by 3 years through 2025 (-\$64 b)
- Creates climate and energy tax credits, preferences, programs (-\$373 b)





# Senate Key Votes

- Small Business Tax Increase Prohibition to S.Con.Res.5 (Amdt to FY2021 Budget Resolution)
- Raise the Wage Act (\$15/hour federal minimum wage) (Amdt to American Rescue Plan Act of 2021)
- Unemployment Insurance Decrease (Amdt to American Rescue Plan Act of 2021)
- PPP Extension Act of 2021 (H.R. 1799)
- Protecting stepped-up basis (Amdt to FY2022 Budget Resolution)
- Congressional Disapproval of the Vaccine and Testing Mandate (S.J.Res. 29)
- Small Business Audit Protection (Amdt to Inflation Reduction Act)



# House Key Votes

- American Rescue Plan Act of 2021 (H.R. 1319)
- Protecting the Right to Organize (PRO) Act of 2021 (H.R. 842)
- PPP Extension Act of 2021 (H.R. 1799)
- Paycheck Fairness Act (H.R. 7)
- Fiscal Year 2022 Budget Resolution (S.Con.Res. 14)
- Build Back Better Act (H.R. 5376)
- National Defense Authorization Act Labor Union Project Preference (H.R. 7900)



# The Fall Agenda

- September 30 – Government Funding Expires
- Defense Authorization Act
- Regs, Regs, Regs...
  - Overtime Exemption Threshold
  - Independent Contractor
  - WOTUS at SCOTUS
  - Joint Employer – Franchises
  - SEC Climate Disclosures
- Lame Duck Compromises
  - Anti-trust legislation?
  - Data Privacy legislation?
  - Tax Extenders?



# QUESTIONS

