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Rep. Noel Frame, Chair
House Finance Committee
PO Box 40600
Olympia, WA 98504
via email

Rep. Ed Orcutt, Ranking Member
House Finance Committee
PO Box 40600
Olympia, WA 98504
via email

RE: **NFIB requests amendments to SB 5096**, enacting an excise tax on capital gains

Reps. Frame and Orcutt:

NFIB signed-in "other" for today's hearing on SB 5096, enacting an excise tax on capital gains. Please accept this correspondence as an explanation of that position.

NFIB has long argued that the full value of the sale of a small business to fund its owner's retirement should be protected from a capital gains tax to the same extent as any other retirement investment. As you may recall from our prior testimony, **nearly 80 percent of small-business owners rely on the sale of their company to fund retirement**, according to a [survey](#) by the Financial Planning Association and CNBC.

We are pleased that SB 5096 does much to achieve that goal. However, we believe a few changes could greatly improve a small business' chance of survival after such a sale.

As we understand the bill, Sec. 107 allows a deduction of the full value of a "qualified family-owned small business" (QFOSB) if the owner sells at least a 90% ownership stake in the firm. This appears to apply to small businesses organized as pass-through or disregarded entities with worldwide gross receipts of \$10 million or less during the 12 months preceding the sale. Sec. 104 also protects the sale of certain business assets, which may prove quite helpful, provided Sec. 107 is additive and not in lieu of the Sec. 104 deductions.

However, **we remain unclear why this new QFOSB designation is necessary**, unless it is to limit the fiscal impact of the deduction by restricting the number of bona fide small businesses to which it would apply. We hope this is not the case.

It would be helpful to know why a small business owner, intending to sell the firm to retire, must have held an ownership stake for eight years prior to sale. This seems rather arbitrary. While business survival rates do decline over time, from 1994-2015 the difference in firm survivability from five to eight years was only about 10% – roughly 50 % of firms surviving after five years versus about 40% surviving after eight – according to US Bureau of Labor Statists [data](#). We suggest the committee consider an ownership window shorter than eight years. We would not object to the continued inclusion of a "material participation" requirement adjusted to the shorter ownership term.

Perhaps more importantly, **the bill fails to take into account reasonable succession planning** whereby an owner preparing for future retirement would sell less than a 90% stake in the firm to a family member, employee, partner, or other successors.

Such an approach allows the future owner(s) to learn the business during the transition period, as well as build assets and equity that could be used to help finance the final sale or transfer from owner to successor. It is not difficult to imagine that many would-be buyers may lack the assets or access to sufficient financing to purchase 90% or more of a business outright, particularly those with worldwide sales approaching the \$10 million maximum.

The bill should be amended to also allow the sale of less than a 90% ownership stake to one or more buyers over a period of time as part of a succession plan. Reasonable sideboards could be included, such as limiting the sale of ownership stakes to one or more family members, business partners, employees, or (an)other identified individual or individuals as part of a written succession plan, purchase agreement, or other contract.

Finally, **NFIB urges the committee not to reinstate an emergency clause** in the bill. The people of Washington state deserve the opportunity to place the issue on the ballot at the earliest opportunity, if they so choose, so that voters can ratify or reject this new state tax.

Thank you for your consideration of NFIB's position and suggestions for improving SB 5096.

I look forward to discussing how best to protect the retirement investments of our state's small-business owners, and assist those firms survive an ownership transition.

Respectfully submitted,

A handwritten signature in black ink that reads "Patrick L. Connor" with a stylized flourish at the end.

Patrick Connor
NFIB Washington State Director