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AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.



February 3, 2010

The Honorable John Lewis
343 Cannon House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Boustany, Jr.
1117 Longworth House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Representatives Lewis and Boustany:

On behalf of the Associated General Contractors of America (AGC), I am writing to express our support for H.R. 4068, the Small Business Penalty Relief Act of 2009. Enactment of H.R. 4068 would protect small business contractors from draconian penalties under section 6707A of the Internal Revenue Code (IRC).

As you know, under section 6707A the Internal Revenue Service (IRS) can impose significant penalties on small businesses who unwittingly fail to timely and properly disclose a "listed transaction" to the IRS. Consequently, section 6707A can ensnare small businesses into costly penalties without benefit of due process or judicial review, or any opportunity to reduce penalties for good faith or innocence. Even the IRS' National Taxpayer Advocate has criticized section 6707A and raised serious Constitutional concerns with the law.

Listed transactions include certain retirement or employee welfare benefit plans implemented by small business seeking to provide retirement income or health benefits to their employees. Most taxpayers who have received section 6707A fines were not aware that they had done anything wrong. For example, in 2004 a small business contractor in Pennsylvania entered into a welfare benefit plan under IRC section 419 through the recommendation of its advisors and backed up with an opinion letter from a law firm. The contractor deducted contributions to the plan over the tax years 2004 through 2006 totaling about \$750,000, with a tax reduction of \$262,500. For this tax reduction of \$262,500, the IRS is assessing the contractor individually and as an entity approximately \$3.7 million. In another example, a 419 plan sponsor received a \$279,186 tax reduction over a five-year period, filed the appropriate disclosure (i.e., Form 8886) when it discovered it needed to do so, but is being assessed \$200,000 for each year that Form 8886 was not filed by the corporation and \$100,000 per year for each shareholder of the company (including for six minority shareholder children and grandchildren of the primary shareholders) for a total penalty of more than \$3 million.

The taxpayers described above had no intention of participating in tax shelters, acted in the best business interests of their companies, and relied on attorneys' and accountants' legal opinions. They were further jeopardized by failure of the IRS to respond timely to requests for a ruling on the issues. As a result, the IRS is assessing or proposing to assess penalties that well exceed the tax deductions taken and the alleged tax deficiencies. In addition, the IRS can assess an additional 30 percent penalty on the income tax assessment on top of the section 6707A penalty.

There are numerous family-owned businesses facing similar draconian penalties under section 6707A. For some, these penalties threaten to put them out of business entirely, especially during these tough economic times. That is why AGC supports H.R. 4068, which would treat small business fairly by bringing the assessed tax penalties in line with the received tax benefits.

AGC appreciates your leadership on this issue and looks forward to working with you to ensure timely enactment of this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. Shoaf".

Jeffrey D. Shoaf
Senior Executive Director
Government and Public Affairs