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December 4, 2017

The Honorable Orrin Hatch
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hatch, Ranking Member Wyden, Chairman Brady and Ranking Member Neal:

The Associated General Contractors of America (AGC) appreciates your ongoing efforts towards comprehensive tax reform that lowers tax rates, simplifies the tax code, and spurs investment and growth in the broader economy.

AGC is the leading association in the construction industry, representing over 26,000 firms. AGC members are engaged in all forms of nonresidential construction and consist primarily of small businesses with the vast majority organized as pass-through entities.

At 30.3 percent, the construction industry currently faces the highest effective rate of any industry in America. Throughout the tax reform process, AGC has repeatedly noted that we support giving up tax incentives that currently reduce the effective tax rate of our member companies in exchange for lower tax rates.

Passing H.R. 1, the *Tax Cuts and Jobs Act of 2017*, was an important step forward for tax reform, culminating years of effort. As the process moves into its final stages in a joint House-Senate conference committee, AGC urges the conferees to adopt the following House or Senate positions, and to improve the legislation as outlined below.

- **Pass-Through Business Tax Relief:** AGC does not take a position on the approach to providing tax relief for pass-through businesses as proposed in either the House or Senate bills. Whether the conferees adopt a capped pass-through rate of 25 percent, with a default wage/business income ratio of 70:30, and a “prove-out” based on some alternative calculation – as passed by the House – or the 23 percent deduction limited to businesses with payroll above a certain threshold – as passed by the Senate – either approach would benefit certain construction companies and be limited to others. However, AGC does remain concerned about both the House and Senate bills’ treatment of pass-through businesses as compared to the permanent, low 20 percent rate proposed for C-Corporations. Depending on the approach adopted by the conferees, AGC proposes the following changes to improve the legislation as it relates to pass-throughs.

If the conferees adopt the approach as passed by the House of Representatives, AGC urges the conferees to expand the 30 percent “prove-out” to include leased equipment, or to allow for an alternative calculation based on wages paid to employees, or the equity in the business. If the conferees adopt the approach as passed by the Senate, AGC urges conferees to allow trust owners of pass-through businesses to accessing the 23 percent deduction.

In both the House and Senate bills, AGC is very concerned about the impact of the loss of the state and local tax deduction for pass-through businesses, and that this will put pass-throughs at a competitive disadvantage relative to C-Corporations, which retain the deduction.

- **The Individual and Corporate Alternative Minimum Tax (AMT)**: AGC urges the conferees to adopt the *House of Representatives position* that the Individual and Corporate AMT are fully and permanently repealed. Repeal of the AMT is a long-standing priority for AGC. Currently, the AMT forces companies to calculate their taxes twice, pushes them into using methods of accounting that hinder cash-flow, and negate many commonly used business deductions. Reinstating the AMT, as the Senate bill does, has the potential to claw back much of the tax relief in the underlying bill, and would needlessly complicate the tax code.
- **Permanency**: AGC urges the conferees to adopt the *House of Representatives position* that the business tax relief proposed in the underlying bill is made permanent. AGC notes that, in the Senate legislation, many provisions that broaden the tax base for all types of businesses, including both corporations and pass-through businesses, are made permanent, while the individual and pass-through business rate reduction expires after 2025. This will create significant uncertainty about the future and will result in a substantial tax increase for pass-through construction businesses *above current law* absent future congressional action.
- **Accounting Provisions**: AGC urges the conferees to adopt the *House of Representatives position* to increase to \$25 million the “small contractor exemption” from percentage of completion accounting, the use of cash accounting, and the exemption from the uniform capitalization rules (UNICAP). In particular, relief from having to file taxes using the onerous percentage-of-completion method of accounting and from having to file “look-back interest” tax returns is a long-standing AGC priority. While AGC supported raising the exemption to \$40 million and is concerned that the \$25 million exemption is not indexed to inflation in the House bill, this is an improvement over the \$15 million exemption in the Senate bill.
- **Private Activity Bonds (PABs)**: AGC urges the conferees to adopt the *Senate position* on PABs. H.R. 1, as passed by the House of Representatives, repeals the tax exemption for all PABs issued after 2017, while the Senate legislation contains no such provision. PABs are an important financing tool for surface transportation projects, airports, port facilities, water and wastewater facilities, multi-family housing projects and other exempt facility bond projects located in every state and congressional district. At a time when all levels of government are struggling to meet their infrastructure needs removing the tax exemption for PABs is shortsighted, will raise the cost of construction projects, and will lead to further underinvestment in our nation’s infrastructure.
- **Historic Tax Credit (HTC)**: *AGC’s preference is restoration of the full value of the HTC*. Absent that, AGC urges conferees to drop the repeal of the HTC, but—at the very least—adopt the *Senate position*. AGC strongly opposes full repeal of the HTC in the House bill. While the Senate position is more favorable than the House’s—as it would only repeal the 10 percent non-historic rehabilitation tax credit and reduce the percentage of qualified rehabilitation expenses eligible for the HTC from 20 percent to 10 percent—both the House and Senate bills would result in a

significant decline in private investment for the rehabilitation of historic buildings.

- **Estate Tax:** AGC urges the conferees to adopt the *House of Representatives position* on the estate tax. H.R. 1, as passed by the House immediately doubles the exemption level for the estate tax, and fully repeals it after six years while preserving “stepped-up basis.” Repeal of the estate tax would both reduce complexity and make it easier for multi-generational family-owned construction firms to continue to operate without fear of a sudden and substantial tax burden upon the death of an owner. While the Senate bill would also double the exemption level, the tax is preserved and the increase in the exemption level expires after 2025.
- **Expensing Used Equipment:** AGC urges the conferees to adopt the *House position* on expensing used equipment. While H.R. 1, as passed by both the House and Senate, temporarily allows for full expensing of equipment for the next five years, the House bill allows used equipment to be expensed, while the Senate bill only applies to new equipment. Much of the equipment that construction firms purchase is used, and this would substantially improve the positive benefits of expensing to the industry.
- **Work Opportunity Tax Credit (WOTC):** AGC urges the conferees to adopt the *Senate position* on WOTC. H.R. 1, as passed by the House of Representatives repealed WOTC, while the Senate bill contained no such provision. AGC supports extending the WOTC, which provides a benefit to employers for hiring groups facing high rates of unemployment. Utilizations of the WOTC has substantially increased in recent years as Congress has expanded the potential pool of recipients WOTC helps these targeted groups obtain employment so they are able to gain the skills and experience necessary to obtain better job opportunities.

Finally, H.R. 1 misses an opportunity to address two long-standing AGC priorities relevant to the tax code. First, H.R. 1, as passed by both the House and Senate, fails to address the long-term solvency of the Highway Trust Fund, and slashes incentives for public construction. While the bill maintains the tax-exempt status for municipal bonds used to fund many state and local infrastructure projects, it eliminates advanced refund municipal bonds, which is a common tool used by state and local governments to lower the cost of construction projects.

Another missed opportunity in H.R. 1 is the failure to modernize multiemployer pension plans for the future. For 70 years, these plans have offered secure retirements. However, outdated rules and regulations have kept the plans from modernizing to keep pace with the changing economy. Congress should authorize composite plans, which would offer greater stability to employers and certainty to working Americans for the future. While composite plans are a new type of retirement plan, they are similar to plans common in the Canadian multiemployer pension system. Those plans are stable and growing. The composite plan design enjoys widespread support of contributing employers and our construction labor union partners.

AGC remains committed to comprehensive tax reform. We look forward to working with the conferees to ensure a favorable outcome for the construction industry in tax reform.

Sincerely,



Jeffrey D. Shoaf
Senior Executive Director, Government Affairs

cc: House and Senate Conferees