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September 3, 2021

Chairman Bobby Scott
Senate Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Ranking Member Virginia Foxx
House Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Chairman Richard Neal
House Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Ranking Member Kevin Brady
House Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Neal, Chairman Scott, Ranking Member Brady and Ranking Member Foxx:

On behalf of the Associated General Contractors of America (AGC), the largest national commercial construction trade association, representing more than 27,000 firms including America's leading general contractors, specialty contractors, service providers, and suppliers, I urge you to consider the following issues as the House of Representatives works toward developing policy proposals that will be included in the American Jobs and American Families Plan.

Many of the proposed policies would have vast and detrimental impacts on construction contractors through unprecedented tax increases and onerous workforce mandates through the creation of new entitlement programs. AGC outlines its concerns below and provides more detail in pages that follow.

I. AGC Opposes Detrimental Tax Increases on Construction Firms that will Undermine their Ability to Improve the Nation's Infrastructure, Hire New Workers, and Increase Wages and Benefits for Existing Workers

A. <u>AGC Supports Policies that Empower Construction Firms to Start, Develop and Grow for Generations to Come and Therefore Opposes Establishment of a "Double Death Tax": A New and Outrageous Tax on Assets Transferred within Families upon Death</u>

B. <u>AGC Supports Policies to Address the Fact that the Construction Industry Already Faces among the Highest Effective Tax Rate and, in turn, Opposes Increases to the Corporate and Individual Rates</u>

C. <u>AGC Supports Maintaining Tax Parity Between Corporate and Pass-Through Entities and Consequently Opposes Elimination of the Section 199A Qualified Business Income Deduction</u>

D. <u>AGC Supports Policies that Reward Business Owners Who Actively Participate in their Businesses and as a result Opposes Expansion of Obamacare Net Investment Income Tax to Pass-Through Businesses</u>

II. AGC Opposes the Creation of New Labor Mandates that Fail to Preserve the Delicate Balance of Federal Labor Rights for Employees and Employers and to Consider the Unique Nature of the Construction Industry and its Workforce Design

A. <u>AGC Supports the Preservation of the Delicate Balance in Federal Labor Policy that Permits Employees to Freely Choose to Engage in Collective Bargaining and that Allows Employers to Maintain Operations Free of Unwarranted Disruptions and Consequently Opposes any Effort to Pass the PRO Act, in Whole or in Part</u>

B. <u>AGC Advocates for Flexibility in Paid Leave Mandates that Recognize the Unique Nature of the Construction Industry and its Workforce Design Which the Reconciliation Process will Not Allow</u>

I. AGC Opposes Detrimental Tax Increases on Construction Firms that will Undermine their Ability to Improve the Nation's Infrastructure, Hire New Workers, and Increase Wages and Benefits for Existing Workers

Although specific tax proposals to fund the enormous budget reconciliation package have yet to be made public, the details contained in President Biden's budget proposal, or in recently released draft legislation from congressional tax writers could severely impact construction companies and their employees.

AGC has long supported significant federal investment in infrastructure and has proposed numerous, fiscally responsible methods to fund or finance this investment. However, current revenue proposals under consideration would cause significant economic harm to the very companies expected to turn this federal investment into tangible benefits for the American public, reduce capital needed for construction companies to grow and hire new workers, and complicate efforts to retain workers by increasing wages and benefits.

A. AGC Supports Policies that Empower Construction Firms to Start, Develop and Grow for Generations to Come and Therefore Opposes Establishment of a "Double Death Tax": A New and Outrageous Tax on Assets Transferred within Families upon Death

The most concerning proposal in the Biden budget would radically change how long-term capital gains income is taxed. Currently, capital gains are taxed at 15 percent or 20 percent depending on an individual's income. President Biden's proposal would drastically increase the top rate, up to 43.4 percent, and would treat the death of a business owner as a "realization event." This would create a new "double death tax" for business owners, where they would have to pay both their accumulated capital gains taxes *and* estate taxes at the time of death.

A recent study by EY estimates that this proposal would lead to the loss of at least 800,000 jobs and $100 billion in economic activity over the next 10 years. In the construction industry, an increase in the capital gains rate could lead to reduced private investment in infrastructure. Additionally, as construction has many family-owned businesses, this would also lead to increased industry consolidation, and place small and mid-sized firms at a competitive disadvantage to their larger peers as they set aside financial resources to prepare for and pay a potentially enormous tax bill.

B. AGC Supports Policies to Address the Fact that the Construction Industry Already Faces among the Highest Effective Tax Rate and, in turn, Opposes Increases to the Corporate and Individual Rates

In addition to the proposed changes to capital gains taxes, President Biden and congressional tax writers have proposed significant new and higher taxes on construction businesses, whether they are organized as C-corporations, or pass-thorough entities. The construction industry continues to face one of the highest effective tax rates of any industry in America. Thus, any proposed increase in tax rates will disproportionately impact construction more than other industries. Additionally, while the majority of construction firms are organized as pass-through entities—meaning the companies' owners are taxed at the individual, rather than corporate, tax rate—some construction firms are organized as C-corporations.

As such, AGC strongly opposes the proposed increase in the corporate rate to 28 percent, as well as the proposed increase to the top individual tax rate to 39.6 percent. These higher taxes will result in construction firms reducing their investment in new equipment, employee training, wages, and benefits.

C. AGC Supports Maintaining Tax Parity Between Corporate and Pass-Through Entities and Consequently Opposes Elimination of the Section 199A Qualified Business Income Deduction

AGC is also very concerned about the proposal by Senate Finance Committee Chairman Wyden to phase-out the Section 199A qualified business income deduction for pass-through businesses. While the deduction is not perfect, AGC was very supportive of the creation of Section 199A in the *Tax Cuts and Jobs Act* to ensure that pass-through businesses received some tax relief in exchange for the elimination of other tax benefits in that legislation.

Because most construction firms are pass-through entities, they largely did not benefit from the reduction in the corporate tax rate. With the Section 199A deduction, businesses organized as pass-throughs are not currently at a huge competitive disadvantage to other firms organized as C-corporations, but would become so absent this important deduction. Additionally, the current "guardrails" for this deduction, especially the requirement that the deduction be limited by the amount a company pays in wages to its employees, have ensured that it goes to companies that employ much of the overall workforce in the U.S. economy.

D. AGC Supports Policies that Encourage Business Owners To Actively Participate in their Businesses and as a result Opposes Expansion of Obamacare Net Investment Income Tax to all Pass-Through Business Income

Finally, President Biden has proposed greatly expanding the net investment income tax (NIIT) on pass-through businesses. This tax, originally passed as part of the *Affordable Care Act*, applies a 3.8 percent tax on certain investment income, but specifically exempted income earned from business owners who actively participate in their business. The proposal would apply the NIIT to all forms of income earned by pass-through businesses, raising their effective tax rates even higher.

II. AGC Opposes the Creation of New Labor Mandates that Fail to Preserve the Delicate Balance of Federal Labor Rights for Employees and Employers and to Consider the Unique Nature of the Construction Industry and its Workforce Design

In addition to the detrimental impact of new and expansive tax policies under consideration, construction firms could also face a myriad of new labor and employment policies that will jeopardize an economic recovery from the pandemic while burying construction firms under a mountain of compliance and regulatory challenges.

The industry continues to struggle to find enough qualified workers to hire even as they continue to be impacted by pandemic-induced project delays and supply chain disruptions. Congress should instead focus on creating an environment that encourages job creation and promotes and invests in skill training to ensure in-demand jobs have access to a skilled and trained workforce. Furthermore, policies that disincentive employment, like unemployment benefits that exceed potential compensation from job opportunities, should be rejected.

A. AGC Supports the Preservation of the Delicate Balance in Federal Labor Policy that Permits Employees to Freely Choose to Engage in Collective Bargaining and that Allows Employers to Maintain Operations Free of Unwarranted Disruptions and Consequently Opposes any Effort to Pass the PRO Act, in Whole or in Part

For reasons articulated above and below, AGC opposes any attempt to include the Protecting the Right to Organize (PRO) Act in whole or in part in any future legislation. The PRO Act makes an unprecedented attempt to fundamentally change dozens of well-established labor laws to assist organized labor without regard to their detrimental impact on workers, employers—union and open shop—and the economy. If enacted, the PRO Act would completely upend decades of work to balance employee and employer rights and restrictions settled in courts, the National Labor Relations Board (NLRB), and Congress.

If, as predicted, many of the provisions of the PRO Act fail to pass the Byrd Rule test, then attempts to include only civil monetary penalties from the PRO Act must be rejected. Labor policy is a complicated issue that impacts workers and employers equally. As such, that policy should balance the rights of both parties and be subjected to an inclusive, open and bipartisan legislative process.

To that point, the level and manner of the financial penalties being considered, uncapped in some instance, far exceed comparable employment-related laws. The change could also impact otherwise well-intentioned employers that have to navigate ever-changing NLRB decisions that fluctuate as different political parties take control. The extending personal liability to the officers of such an employer is a gross expansion of penalties to be leveled on them.

B. AGC Advocates for Flexibility in Paid Leave Mandates that Recognize the Unique Nature of the Construction Industry and its Workforce Design Which the Reconciliation Process will Not Allow

The consideration a new federal paid leave entitlement program through the budget reconciliation process will fail to create an equitable or efficient system for employees and employers alike. AGC has long advocated for flexibility in paid leave mandates that recognize the unique nature of the construction industry and its workforce design. However, the constraints and ambiguity under which a program must be created through reconciliation would fail to provide this necessary clarity and flexibility.

AGC has concerns about how such a program built under the reconciliation parameters would work with existing voluntary and mandatory employer provided benefits especially in states or localities with their own requirements. Employers will also likely be burdened by making eligibility determinations and enforcement actions because those policies will not be allowed under reconciliation resulting in outcomes that could be divergent from other federal leave laws.

Beyond the compliance and regulatory tripwires that ahead, the biggest impacts depend upon how such a new entitlement program would be funded and how much of a burden that funding mechanism would ultimately be placed on employers to contribute to it, both initially and in the future.

Combined, this package of tax increases and labor mandates would push effective tax rates for construction firms much higher than they have seen in decades while discouraging Americans to work. This would significantly harm a construction industry that is already struggling with labor shortages, higher costs for building materials, and new workplace restrictions from COVID-19. AGC will strongly oppose budget reconciliation legislation that contains these tax increases and labor mandates.

Thank you for your consideration.

Sincerely,

/S/

Jimmy Christianson
Vice President, Government Relations