

United States Senate

WASHINGTON, DC 20510

August 24, 2016

The Honorable Jacob Lew
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Lew:

We are writing to you as a follow up to our original letter sent on July 1, 2016, regarding the proposed regulations under Internal Revenue Code Section 385. To begin, we were extremely disappointed to not receive a timely response to our original letter prompting a follow up letter on July 18, 2016. Moreover, we did not receive a direct response from you but instead from a senior advisor to the Treasury. It was our understanding you were ultimately in charge of finalizing the Treasury rules under Section 385, given your briefing to Senate Finance Committee members on July 7, 2016. In order to avoid any discrepancy over your agency's role and your role in finalizing these rules under Section 385, can you please describe in detail your role in regards to Section 385? Are you in charge of finalizing these proposed rules?

Furthermore, we were extremely concerned with the substance of your agency's response or lack thereof to the concerns outlined in our original letter. Small businesses to multinational businesses, which provide jobs and economic growth to our home states, have expressed deep concerns over the proposed rules under Section 385 being finalized without substantial reforms. It is our understanding some business associations, which in some cases represent over three million businesses across the nation, have submitted formal comment letters to the Treasury in regards to Section 385. Though your agency believes per its response that it has "offered an appropriate period of time for the public to comment," we respectfully request you make a thorough review of any public comments, including those from congressional lawmakers, before finalizing any rules.

Per our letter, we have repeatedly raised concerns with you and your staff in regards to the range of negative, unintended consequences of these proposed rules, if finalized without substantial reforms. In Treasury's August 12, 2016, response, the letter stated the Treasury believes it "can respond to concerns about unintended consequences in the final regulations." Given the far-reaching implications of the proposed rules under Section 385 on American businesses, we are deeply concerned with your agency's response. Until Finance members have a full understanding of what reforms the Treasury is implementing to fix the proposed rules, there remains a great deal of doubt whether Treasury will take into account congressional lawmakers' concerns. That is why we respectfully **request you respond to the below questions in detail by August 31, 2016:**

1. Your agency's August 12th response stated that over 100 comment letters had been submitted to Treasury in regards to the proposed 385 rules, yet Treasury's website (<https://www.regulations.gov/document?D=IRS-2016-0014-0002>) lists almost 30,000 comments. Can you please explain this discrepancy?
2. What is the total number of businesses, including all those listed in each comment letter, which have submitted comments?

3. Should Treasury decide to finalize the proposed regulations “swiftly,” please describe, at a minimum, how the following reforms will be addressed, including any safe-harbors, before the rules are finalized:
- a. Ensure that S corporations, a critical component of America’s small business community, do not lose their S corporation tax status by virtue of having their debt re-characterized as equity and are not penalized for their domestic-to-domestic transactions;
 - b. Ensure that non-tax motivated cash management techniques, such as cash pooling or revolving credit arrangements, are exempted;
 - c. Exempt foreign-to-foreign transactions from the scope of the proposed regulations;
 - d. Address the “cascading effect” of the currently drafted regulations, in which a single tainted transaction funded with intercompany debt can create a multitude of additional tainted transactions;
 - e. Extend the 30-day deadline for meeting the documentation requirements;
 - f. Expand the \$50 million intercompany debt threshold so that more small businesses will be exempt from these rules;
 - g. Ensure the regulations take into account the global economic and regulatory environment in which regulated financial groups operate; and
 - h. Ensure that local interest deductions for U.S. multinational businesses are not eliminated under the OECD BEPS hybrid transaction concepts.

Thank you for your attention to this matter, and we look forward to your immediate response to our concerns.

Sincerely,



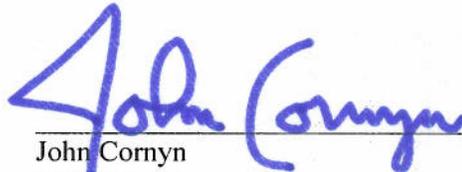
Dean Heller
U.S. Senator



Mike Crapo
U.S. Senator



Pat Roberts
U.S. Senator



John Cornyn
U.S. Senator



John Thune
U.S. Senator



Johnny Isakson
U.S. Senator



Tim Scott
U.S. Senator

CC: The Honorable Mark J. Mazur, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Mr. Robert B. Stack, Deputy Assistant Secretary (International Tax Affairs), U.S. Department
of the Treasury
Ms. Emily S. McMahon, Deputy Assistant Secretary (Tax Policy), U.S. Department of the Treasury