Congress of the United States
Washington, DC 20515

May 4, 2000

The Honorable Lawrence H. Summers
Secretary
U.S. Department of the Treasury
Washington, D.C. 20005

Re: Revenue Procedure 2000-22

Dear Secretary Summers:

As the Chairmen of the House and Senate Committees on Small Business, we are greatly concerned to learn that the Treasury Department (Treasury) plans to issue Revenue Procedure 2000-22 regarding inventory accounting methods for small business taxpayers, which is scheduled to appear in *Internal Revenue Bulletin* 2000-20 on May 15, 2000. Our concerns center on the content of this Revenue Procedure and the Treasury's failure to comply with applicable rulemaking procedures in issuing this guidance.

While we are encouraged by your desire to provide guidance needed to simplify record-keeping and compliance burdens on small business taxpayers, we find no statutory basis for the new $1 million threshold to except only certain small business taxpayers from accrual and inventory accounting with respect to purchases and sales of merchandise. Nowhere in the Internal Revenue Code (Code) do we find authorization for the Treasury to adopt a $1 million threshold. In contrast, Code section 448(c) sets forth a $5 million gross receipts test, which we believe Congress intended to provide a safe harbor for small businesses seeking to use the cash method of accounting. Consequently, the only statutory basis for the small-business tax-accounting safe harbor in Revenue Procedure 2000-22 requires that the threshold be set at $5 million.

In effect, Revenue Procedure 2000-22 will add complexity, unfairness, and recordkeeping burdens on small enterprises. At the $1 million level, the Revenue Procedure creates a disincentive for small businesses to succeed by increasing their gross receipts. For businesses with gross receipts between $1 and $5 million, the Revenue Procedure perpetuates the environment of complete uncertainty. A single $5 million threshold would provide clarity, certainty, and much needed simplicity for the vast majority of small business taxpayers in this country.

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Additionally, the Revenue Procedure appears to be intended to address complications that have resulted from the repeal of the installment-sales method of accounting for accrual-basis taxpayers under Public Law 106-170. Again, we find no statutory authority for the Treasury to limit urgently needed relief from the new restriction on installment-sales reporting only to small businesses that have average annual gross receipts of less than $1 million. We urge Treasury to support Congress' efforts to reinstate prior law and fully restore the installment method of accounting.

The most troubling aspect of this Revenue Procedure, however, is that the Treasury has blatantly disregarded the requirements of the Administrative Procedure Act (APA), the Regulatory Flexibility Act (RFA), and the 1996 amendments to the RFA, contained in Subtitle D of the Small Business Regulatory Enforcement Fairness Act (SBREFA). With the exception of section 6, Revenue Procedure 2000-22 contains all the hallmarks of a regulatory, if not a legislative, rule. Arguably, it creates new law. Alternatively, it sets forth the Treasury's interpretation of the Code, establishes a safe harbor threshold, and provides definitions and rules for determining taxpayer qualification. As a result, this guidance should be promulgated as a proposed Treasury regulation.

By choosing to issue a revenue procedure for the small-business tax-accounting exception, the Treasury once again has ignored the requirements of the RFA and SBREFA to conduct an initial regulatory-flexibility analysis before promulgating rules that will impact a substantial number of small businesses. Congress made clear through the SBREFA amendments to the RFA that agencies, including the Treasury and the Internal Revenue Service, are to analyze the impact of their regulations on small businesses and reduce the burdens whenever possible. Revenue Procedure 2000-22 fails to comply with the law in either of these respects.

In addition, a revenue procedure circumvents the requirement for notice and an opportunity for public comment, which are central to the regulatory rule-making process as specified in the APA. Both the original RFA and the RFA as amended by SBREFA also require agencies to solicit the input of small businesses about the effects of a rule. As a result, the Treasury has denied interested taxpayers the chance to comment on the strengths and weaknesses of this guidance, in essence turning a deaf ear to the needs and concerns of the small business taxpayers that the guidance is supposed to serve.

Given the Treasury's failure to comply with these laws, we urgently request that you reissue Revenue Procedure 2000-22 as a proposed regulation accompanied by an initial regulatory-flexibility analysis and an opportunity for public comment. In addition, we request

that you observe the $5 million threshold that Congress enacted in 1986 under Code section 448(c) and raise the small-business exception to the accrual accounting rules to that $5 million level as Congress intended.

Sincerely,

Christopher S. Bond
Chairman
Committee on Small Business
United States Senate

James M. Talent
Chairman
Committee on Small Business
United States House of Representatives

cc: The Honorable Charles O. Rossotti
Commissioner, Internal Revenue Service
The Honorable William V. Roth, Jr.
Chairman, Senate Committee on Finance
The Honorable Daniel Patrick Moynihan
Ranking Member, Senate Committee on Finance
The Honorable Bill Archer
Chairman, House Committee on Ways and Means
The Honorable Charles B. Rangel
Ranking Member, House Committee on Ways and Means