ONI
O'NEAL INDUSTRIES

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Via Electronic Mail (Business@finance.senate.gov)

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The Honorable John Thune
Co-Chairman
Business Tax Reform Working Group
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510-6200

The Honorable Ben Cardin
Co-Chairman
Business Tax Reform Working Group
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510-6200

Dear Chairmen Thune and Cardin:

We greatly appreciate the opportunity to comment to the Senate Committee on Finance Tax Reform Working Group. Our comments focus on 3 areas: Pass-Through Entity Taxation in Business Tax Reform; the LIFO Accounting Method; and the IC-DISC Export Incentive.

Who we are – O'Neal Industries is a 90+ year old, family owned, metals distribution and processing business with 3,200 employees in 85 locations in 33 US states. We were founded in Birmingham, Alabama in 1921 and continue to be managed here by the 3rd and 4th generations of the O'Neal family. We are an S Corporation that pays tax at the individual rates.

Business Tax Reform That Protects Pass-Through Businesses -- As a pass-through business, we strongly support the efforts by the Chairmen of the House Ways & Means and Senate Finance Committees to pass Business Tax Reform and restore a level tax rate playing field between pass-through entities and our corporate competitors. Since the current focus appears to have shifted from Comprehensive Tax Reform (including both the corporate and the individual tax rates) to Business Tax Reform, we ask that you protect the jobs of employees at privately held businesses by placing a cap on the top marginal tax rate an individual pays on business profits from pass-through entities. Such a "Pass-Through Rate Cap" (or as the Grant Thornton accounting firm calls it a "Business Equivalency Rate") could be linked to the top Corporate tax rate - effectively paving the way for a Business Tax Reform process that lowers the corporate (business) tax rate while broadening the tax base - and not disadvantaging one form of business over another.

- **Rate Cap to Protect Pass-Through Business Jobs --** Capping the rate at the corporate tax rate would return the tax rate parity between public and private businesses that allowed us to thrive and effectively compete against our corporate competitors through 2012. It would be extremely easy to implement through a tax worksheet like the one applicable to Capital Gains tax rates. Such a cap could also involve exempting active trade or business profits from the extremely inefficient 3.8% Medicare Tax on passive shareholders. It would also allow the tax writing committees to deal with the top marginal tax rates for the wealthiest Americans separately from the top rates applicable to business profits. Thus, effectively returning a level tax playing field for all businesses while protecting the cash flow of our country's family owned businesses.

- **Massive Tax Increase beginning in 2013** -- The top federal tax rate on our business income increased from 35 percent to 44.6 percent starting 1/1/2013 due to the Fiscal Cliff deal and the Healthcare Reform Medicare tax. If you add in state and local taxes, the government now takes close to half of every dollar our business earns. Worse yet, the new 3.8% HC Reform Medicare tax is a very inefficient tax that reduces our cash-flow by the added 3.8% tax, but the government only gets part of the money - from our Passive Shareholders!

- **Impact of the Tax Hike** -- Like many private companies, we rely on our earnings for our working capital and investment capital. We had a level playing field with our Public Company competitors prior to 2013. Now we are at a 15% cash flow disadvantage. Unlike a public company, however, we can't go to Wall Street to raise cash. Any tax reform that does not consider the tax rates applicable to pass-through business profits will only make our competitive situation worse.

Repeal of the LIFO Accounting Method to pay for a Rate Reduction – Chairman Camp included the repeal of the Last-In First-Out (LIFO) accounting method for inventory as a revenue raiser in his Tax Reform draft and the prospect of LIFO repeal has been raised in the current tax reform discussions. LIFO is not a "tax expenditure" or "tax preference". It is one of the 2 main generally accepted inventory accounting methods and has been in the tax code for 70+ years. Both of the 2 primary methods are appropriate. The choice of method just depends on the inflationary environment for the applicable industry. O'Neal has used the LIFO method since 1947 to calculate our income. It should not even be in the tax reform discussion.

- **Devastating Retroactive Tax Increase** – Repeal of LIFO would be an unprecedented retroactive tax assessment that would require our company to recalculate our income for the 67 years we have used the method and pay tax to the government on the cumulative difference -- tens of millions of dollars in tax at today's higher individual tax rates. Because of the retroactive nature of LIFO repeal, there would not be any additional revenue generated in order to pay the tax. This would put a severe strain on our cash flow at a time when we are trying to recover from the worst recession in decades. We were forced to cut inventory levels in half and cut our employee base by 25% in order to survive the recession. We have made significant progress in the years since the recession and have to-date restored half of those jobs. Repealing LIFO would force us back into the position of looking at the drastic measures needed to come up with the money to pay the retroactive assessment instead of focusing on growing our business and employment.

- **We Support Comprehensive or Business Tax Reform** -- As mentioned above, we strongly support a Tax Reform process that restores a level tax rate playing field between pass-through entities and our corporate competitors. However, we do not believe a retroactive tax assessment that puts our business at risk is the way to fund a prospective tax rate reduction.

IC-DISC Export Incentive – One additional area we would like to comment in support of is the IC-DISC export incentive. Congress has long supported providing export incentives to US business -- starting with the Domestic International Sales Corporation (DISC) in the early 1980s, followed by the IC-DISC, FSC and ETI. As each one was overturned by the GAAT or the WTO under our international trading agreements, Congress attempted to come up with a qualifying replacement. The IC-DISC remains the last true export incentive on the books. The IC-DISC provides a 10 point reduction in the US federal tax rate we pay on export profits. This provides an economic incentive for us to focus on exporting product from the US vs. sourcing locally for our foreign sales. While the nature of our business and the weight of our products makes exporting more difficult, we are nearing 6% export sales from our US business – due in part to the IC-DISC export incentive.

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Thank you for allowing us the opportunity to comment to your working group and thank you in advance for your support of the pass-through community and for your efforts to return a level tax rate playing field for all businesses. If you have any questions regarding our specific tax situation or if you need any additional information, please do not hesitate to call me.

Sincerely,

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