



# **Tax Code and Small Business: Even More Bizarre and More Unfair Than Before**

Report of the Senate Finance Committee Democratic Staff

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## Introduction

Most Main Street businesses are “pass-throughs” for tax purposes. Pass-throughs are generally not taxed at the business level. Instead items of income and loss are passed through to owners and taxed directly on the owner’s individual income tax return.

In enacting the original provisions that govern the taxation of pass-throughs, Congress’ overarching priority was to provide business owners with simple, flexible rules that allow businesses to be formed and operations conducted in a tax-efficient manner. The new tax law does nothing like that. The new 20-percent pass-through deduction has left small business owners with an even more complex, more confusing tax code than before. What good is a deduction if money spent in annual fees to your accountant far exceed the tax break? **Main Street job creators will be lucky if they [figure out how to calculate their deduction any time soon](#). Hopefully at least by 2025, just in time for the provision to expire.**

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*"This \$1.5 trillion hole in the deficit will provide minimal benefit to Main Street small businesses, as the vast majority of the tax law's rewards will go to large corporations and the shareholders of a handful of wealthy pass-through entities. Republican lawmakers blew a once-in-a-generation chance to craft reforms that could have made life easier for America's small businesses. Instead, they passed convoluted tax cuts that will primarily reward their wealthiest donors. The new tax law is terrible policy, and we're already seeing that small businesses will pay the price."*

- Small Business Majority Founder & CEO John Arensmeyer

## **Small Business Owners Left with Uncertainty under Trump's Tax Law**

Republicans falsely boasted that small businesses would be among the biggest winners in tax reform, sold as “tax relief for Main Street.” But the pass-through deduction, for many small businesses, has created a lot of headaches. It has left small business owners across the country, no matter the industry, scratching their heads with no idea how the new law impacts them, their employees, or their bottom line.

*“After doing quite a bit of research regarding the tax law, I’m still confused as to what [the] new changes mean for me and my employees. I have yet to be able to find a single source with straightforward information.”*

- *Annie, second-generation owner of a bagel shop in upstate New York*

The text of the pass-through deduction spans 9 pages, cross references over 20 other sections of the tax code, and directs Treasury to issue volumes of new regulations. And if there is any question whether the new law and regulations will add additional burden to small business owners, just look to the [19-page letter](#) sent by the American Institute of Certified Public Accountants highlighting issues that require “immediate guidance” for taxpayers to be able to simply “comply with their 2018 tax obligations.”

*“I do not know how the new tax law will impact me or my employees.”*

- *Walt, third-generation owner of a local glass design business serving its central Pennsylvania community since the early 1900s.*

Republicans claim to want less government intervention, but with their new tax law they [picked winners and losers](#)—architects are in, accountants are out; engineers made the cut, doctors did not—leaving business owners wondering whether or not they were blacklisted. Even if a business is fortunate enough to be left off the explicit list of excluded businesses, they still must determine if they [fall into the catch-all](#) of a “trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees or owners.”

Dan, founder of a local IT consulting business in Washington D.C., has been telling his colleagues and friends in the small business community to “[speak to their accountants](#) because there is no way to make any sense of how the law will impact folks.”

One thing, however, is clear in Trump's tax law—if you're an average American worker, there's no special tax cut for you. Individuals “performing services as an employee” are definitively left out of this benefit. You can be doing the same job and be taxed differently. Consistent with the theme throughout the new tax law, the wealthy and well-connected reap the greatest reward, leaving American workers holding the bag.

The pass-through deduction was specifically designed to [most advantage those at the top](#)—giving the wealthiest investors the biggest tax cut. The complexity of the deduction will only further skew that benefit. While Main Street is begging for help and clarity, the wealthiest Americans are furiously consulting with high-priced lawyers and accountants to determine how to score the biggest tax break from the new tax law—corporation or pass-through, regarded or disregarded, aggregated or segregated, diversified or consolidated—eager to capitalize on a 7.4% rate slash available to only those with taxable income in excess of \$500,000 a year.

This begs the question, who was the pass-through deduction actually intended to benefit?

Mike, owner of a hobby-based retail store in Maryland, says friends in the small business space are all anxious for advice and clarification about how the new tax law will impact their businesses. Mike and his fellow small business owners have “been told so many competing narratives.” Multi-national corporations are confidently celebrating their immediate, permanent rate slash by [buying back stock](#) at record speed—but as for Mike, he says he’ll just “wait and see.”

Desperate to make good on campaign promises to slash taxes for the donor class, Republicans muscled sweeping tax legislation through Congress. They denied Democrats' requests for bipartisanship, for fiscal responsibility, and for an open and transparent process. President Trump signed his tax bill into law on December 22<sup>nd</sup> and it was fully effective 10 short days later.

*“I’m confused and fed up with how the current tax bill came to be. There isn’t information from a direct source to address any [of my] confusion. The rollout has not been informative in the slightest. “*

- Mike, owner of a local clothing store in Portland, OR

This isn’t a law for working Americans and Mom-and-Pop shops. It’s a giveaway to multinational corporations and the politically powerful.