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September 26, 2012

The Honorable Charles E. Schumer
United States Senate
Washington, D.C. 20510

Re: Proposals to Reduce Economic Hardships of Early Withdrawals from Individual Taxpayer Retirement Plans

Dear Senator Schumer:

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 28,000 CPAs, is concerned about the potential for additional economic hardship being imposed on many taxpayers during the current economic crisis by Internal Revenue Code (IRC) Section 72(t), which imposes a 10% additional tax on early distributions from qualified retirement plans.

The ongoing economic downturn, now in its fifth year, has resulted in extraordinarily high levels of unemployment and has inflicted substantial negative impacts upon many individuals' financial well being. Faced with this situation, more and more taxpayers are finding it necessary to withdraw assets from their Individual Retirement Accounts (IRAs) and other retirement accounts early and suffer the 10% "penalty" in order to meet obligations, even basic living expenses. Regardless of the future economic soundness (or lack thereof) of such an action, it has become the last resort for many taxpayers looking to avoid foreclosure, tax liens and bankruptcy.

We believe that in the interest of fairness and equity that Congress should consider enacting a number of targeted, short-term exceptions to the 10% additional tax that would address some of the more serious scenarios faced by taxpayers as a result of the economic crisis.

The following list of exceptions is intended to be a starting point for discussion. It is not intended to be all-inclusive, nor are we advocating that they should necessarily all be included in any legislation. Further, we are not calling for elimination of the distribution as taxable income, only that the 10% additional tax not be imposed.

1. Payments to prevent foreclosure on a principal residence.
2. Payments for a student loan of the taxpayer, their spouse or their child.
3. Long-term unemployment (individuals who have exhausted their 26 week basic unemployment benefit on or before the due date, including extensions, of their tax return).
4. To pay a Federal, state or local tax lien.
5. Extent to which a taxpayer is insolvent at the time of distribution (ignoring the amount of distribution).

6. As part of a court-ordered bankruptcy payment plan.
7. Deemed distribution of a loan under IRC Section 72(p), if caused by involuntary loss of employment (by layoff or termination).

At the time IRC Section 72(t) was passed, Congress recognized the existence of certain circumstances under which imposition of the additional 10% tax on an early distribution would be inappropriate or unreasonable and codified several of them. Among those exceptions are death or disability of the taxpayer, medical expenses otherwise deductible under IRC Section 213, higher education expenses, first time purchase of a home, health insurance premiums for unemployed individuals and a tax levy under IRC Section 6331. Further, Congress has in the past created short-term targeted exceptions to address specific causes of economic distress to taxpayers. We refer to the HEART Act of 2008, which created an exception for qualified reservists called to active duty and the Katrina Emergency Tax Relief Act of 2005, which created an exception for victims of Hurricane Katrina (later expanded to include Hurricanes Rita and Wilma).

In considering the merits of enacting other short-term exceptions such as those we have listed, the mere fact that an exception currently exists for one to purchase a home suggests it would be reasonable to provide an exception for one to save their home in a distressed economic climate, at the very least.

Regarding the time period during which these targeted exceptions should apply, we believe that for the starting date, any enacted legislation should allow for a retroactive application to distributions made on or after January 1, 2010, allowing taxpayers who would have qualified for the newly enacted exceptions at the time to file amended returns and receive refunds. While we believe this would be reasonable and fair, we understand that in the current fiscal environment, where concerns about the deficit are significant, a starting date of January 1, 2012 or even the actual date of enactment might be more realistic.

For the ending date for any enacted legislation, exceptions should be for distributions received on or before December 31, 2014. We base this recommendation on the Federal Reserve's recent statements indicating their belief that the economy will remain in a weakened state until at least 2015.

We appreciate your consideration of this proposal and would be glad to discuss any aspect of it in more detail with you or your staff at any time.

Sincerely,

A handwritten signature in black ink that reads "Gail M. Kinsella". The signature is written in a cursive style and is positioned above the typed name and title.

Gail M. Kinsella
President