



STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

CHRISTOPHER T. SUNUNU
Governor

May 14, 2019

The Honorable Mitch McConnell
Senate Majority Leader
S-230, The Capitol
Washington, D.C. 20510

The Honorable Chuck Grassley
Chairman, Senate Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Majority Leader McConnell and Chairman Grassley,

I am writing to you in regard to what I believe to be an unintended consequence the Tax Cuts and Jobs Act (TCJA) has had on the Internal Revenue Code (IRC) *contributions to the capital of a corporation*, 26 CFR § 1.118-1, and its application to regulated public water and wastewater utilities.

The federal Tax Reform Act of 1986 (TRA86) required all utilities to treat receipt of *contributions to the capital of a corporation* as taxable income. In 1996, Congress passed the Small Business Job Protection Act (SBJPA), whereupon under section 1613 water and wastewater utilities were granted an explicit exemption from the *contributions to the capital of a corporation* provision. Unfortunately, the TCJA removed this exemption and the IRC now treats any such contribution to a regulated public utility as taxable income.

In New Hampshire, this change has negatively affected our ability to provide safe drinking water for our citizens. The loss of the exemption creates a federal tax liability for New Hampshire's water utilities in two distinct ways:

- I. When parties responsible for contamination have, through a settlement or administrative order, needed to pay for water utilities to connect properties with affected wells to the public water systems; and
- II. When grants from the New Hampshire Drinking Water Groundwater Trust Fund and the New Hampshire MtBE Remediation Settlement Fund have been used as part of a large-scale regional drinking water project.

One water utility involved in a regional project expects to incur over \$1 million in federal tax liability for increasing its water tank size, piping, and pumps for the sole purpose of connecting needy towns far down the line.

I truly believe it was not the intent of Congress when the TCJA was enacted to disincentivize water utilities from expanding and improving in order to address drinking water contamination issues.

We put no greater trust in our government than when we turn on our faucet expecting clean water, and it's our duty, as elected officials, to ensure we do everything we can to meet that expectation.

I respectfully ask that Congress restore the exemption to the *contributions to the capital of a corporation* provision of the IRC for water and wastewater utilities.

As you know, there is a large infrastructure bill being considered and it may make sense to use it as a vehicle for restoring the exemption.

Thank you for your urgent attention and cooperation toward making this right.

Sincerely,



Christopher T. Sununu
Governor

Cc: Senator Jeanne Shaheen
Senator Maggie Hassan
Congressman Chris Pappas
Congresswoman Anne Kuster
Secretary Elaine Chao