

December 21, 2018

Internal Revenue Service
Attn: CC:PA:LPD:PR (REG-130244-17)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Attn: David J. Kautter
Assistant Secretary for Tax Policy
U.S. Department of the Treasury

Charles P. Rettig
Commissioner
Internal Revenue Service

William M. Paul
Acting Chief Counsel and Deputy Chief Counsel (Technical)
Internal Revenue Service

And submitted electronically with the Federal eRulemaking Portal at:
www.regulations.gov (REG-130244-17)

Re: Request for Comments on the Proposal to Withdraw the Section 385 Documentation Requirements (REG-130244-17)

Dear Sirs:

The Retail Industry Leaders Association ("RILA") is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

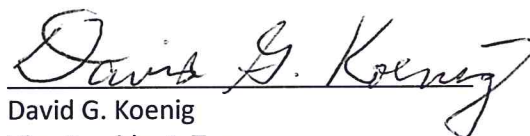
With nearly 18 million Americans employed in retail jobs, and more than 10 million additional jobs supported by retailers, the retail industry is America's second-largest private employer. Because of the retail industry's role as a significant employer, and the billions of dollars retailers pay in federal, state, and local taxes, few industries have a greater impact on the U.S. economy than retail. Prior to the enactment of the Tax Cuts and Jobs Act,¹ the retail industry paid an average effective tax rate of 36.4%, and many retailers faced rates significantly higher than that. In fact, prior to the enactment of the TCJA, the industry's effective tax rate was the fourth highest of all 18 major industrial sectors. Thus, taxes are a significant issue for RILA's members.

¹ The Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, P.L. 115-97.

On September 24, 2018, the United States Treasury ("Treasury") and the Internal Revenue Service ("IRS") published proposed regulations that would remove the documentation requirements currently described in Treas. Reg. sec. 1.385-2 (the "Proposed Regulations") and requested comments. RILA's members are significantly impacted by the guidance promulgated under Section 385,² and appreciate this opportunity to provide comments. Since regulations under Section 385 were first proposed on April 8, 2016, RILA has submitted a comment letter and testified at the public hearing held by Treasury and the IRS in July, 2016.³

RILA appreciates the opportunity to provide comments on the Proposed Regulations. We support Treasury's proposal in the Proposed Regulations to withdraw the documentation requirements described in Treas. Reg. sec. 1.385-2 and agree that these requirements should be withdrawn. RILA's members also appreciate that taxpayers may rely on the Proposed Regulations until final regulations withdrawing the documentation requirements are published in the Federal Register. If taxpayers were not able to rely on the Proposed Regulations, RILA's members would have incurred costs to begin complying with the overly burdensome documentation requirements. Allowing taxpayers to rely on the Proposed Regulations reduces the compliance burden on taxpayers, while providing Treasury and the IRS with an opportunity to draft simplified, streamlined documentation requirements that appropriately balance the compliance burdens imposed on taxpayers with the anticipated benefit to the government. RILA looks forward to working with Treasury and IRS to develop such documentation requirements.

RILA appreciates the opportunity to provide comments on the Proposed Regulations, and we hope that the above comment will be taken into account. If you would like to discuss this matter further or the impact of the Section 385 regulations on the retail industry, please contact David G. Koenig at (703) 600-2051 or david.koenig@rila.org.



David G. Koenig
Vice President, Tax
Retail Industry Leaders Association

Cc: Krishna Vallabhaneni, Acting Tax Legislative Counsel

Brett York, Associate Tax Legislative Counsel

² Unless otherwise noted, all references to Section numbers herein are to the Internal Revenue Code of 1986, as amended, or to the Treasury regulations promulgated thereunder.

³ For a copy of RILA's previous comment letter, please see

<https://www.rila.org/enterprise/RegulatoryCommentLetters/Documents/RILA%20Comments%20on%20Proposed%20Section%20385%20Regulations.pdf>. RILA's July 2016 comment letter contained recommendations relating to provisions in Treas. Reg. sec. 1.385-3 and Treas. Reg. sec. 1.385-4, which RILA believes continue to be relevant. However, those comments are beyond the scope of this comment letter.