

BILLION DOLLAR



How the U.S. Tax Code's Small
Business Expenditures Impact
Women Business Owners

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KOGOD SCHOOL OF BUSINESS
TAX POLICY CENTER

TIMELINE OF MAJOR MOMENTS IN U.S. TAX AND WOMEN-OWNED BUSINESS HISTORY



1913

16th Amendment ratified & President Woodrow Wilson signs legislation establishing the individual income tax that subjects women to federal taxes



1963

Equal Pay Act outlaws pay discrimination based on sex



1977

Carter Administration establishes Interagency Tax Force on Women Business Owners



1978

Pregnancy Discrimination Act updates Title VII of Civil Rights Act to prohibit sex discrimination on the basis of pregnancy

1980

Miscellaneous Revenue Act creates IRC Sec. 195, allowing small business to amortize startup costs

1919

Sarah Breedlove, the first U.S. self-made woman millionaire and the first African-American woman self-made millionaire, dies having been subject to U.S. income tax but never eligible to vote



1958

Small Business Tax Revision Act creates small business expensing allowance on new and used business equipment and machinery (precursor to IRC Sec. 179)



1986

Tax Reform Act overhauls the U.S. tax code for the first time since 1954 and retains many small business tax incentives

1964

Civil Rights Act outlaws major forms of discrimination against women



1991

Women's Business Development Act supports women's contracting and Women's Business Centers

1973

Joint Economic Committee holds hearing titled "Features of Federal Income, Estate and Gift Tax Law Which Have a Disparate Impact on Women"; business taxes are not discussed



1993

Omnibus Budget Reconciliation Act creates IRC Sec. 1202, a tax incentive for individuals to invest in small business manufacturing corporations (service firms don't qualify)

1976

Census releases data on women-owned firms operating in the U.S.: 402,025



1999

Women's Business Centers Sustainability Act supports women's contracting and reauthorized Women's Business Program P.L. 106-165

1977

Congressional Caucus on Women's Issues formed to advocate for bipartisan legislation impacting women and families



2002

Census counts 6.5 million women-owned businesses

JUNE 1978

Interagency Tax Force releases its report on women business owners finding women are concentrated in service industries



2010

Small Business Jobs Act provides more than \$12 billion in tax incentives for small business including enhancements to IRC Sections 179, 195, and 1202

1979

President Carter issues Exec. Order No. 12138 creating a National Women's Enterprise Policy



2014

Oprah Winfrey becomes first African-American woman billionaire according to Forbes

1981

Economic Recovery Tax Act eliminates "widow's tax" for women business owners who jointly owned businesses with their husbands and were predeceased



1982

Failure to Ratify Equal Rights Amendment to the Constitution

1985

SBA estimates there are 3 million women-owned businesses, including partnerships and corporations as well as sole proprietorships

1988

Women's Business Ownership Act supports women's small business ownership & established National Women's Business Council does not include tax title

1992

Census counts 6.4 million women-owned businesses

1997

Census SBO counts 5.4 million women-owned businesses

2000

Martha Stewart becomes first U.S. self-made woman billionaire according to Forbes



2007

Census counts 7.8 million women-owned businesses

2012

Census counts 9.9 million women-owned businesses (an increase of 26.8% from 2007)

2016

2016 State of Women-Owned Business Report released estimating more than 11.3 million women-owned businesses (an increase of 45% from 2007)

EXECUTIVE SUMMARY

In 1976, the U.S. Census Bureau (Census) released its first ever report on the state of women's business ownership in the United States that counted 402,025 women-owned U.S. firms representing only 4.6% of all firms and 0.3% of all U.S. business receipts, as of 1972. Today, women-owned firms have increased to 11.3 million businesses representing 38% of all U.S. firms.

During this period of extraordinary growth, Congress has acted to promote women's business ownership by passing legislation designed to eliminate discriminatory lending practices and promote federal contracting and counseling opportunities for women business owners. At the same time, Congress has also worked to enhance the U.S. tax code (the "Code") to aid small businesses with tax expenditures that will cost U.S. taxpayers more than \$255 billion in the next five years under current law. However, at no point have policymakers looked at whether this will be money well spent when it comes to women business owners and the challenges they have growing their receipts and accessing capital.

This report, in keeping with the mission of the Kogod Tax Policy Center (KTPC) to conduct non-partisan policy research on tax and compliance issues specific to small businesses and entrepreneurs, provides an initial assessment of how the Code's tax expenditures targeted to help small businesses grow and access capital impact women-owned firms. The results are eye-opening.

- We report that while women-owned firms have increased to total more than one-third of all U.S. firms, the majority of women business owners are small businesses operating in service industries and they continue to have challenges growing their receipts and accessing capital.
- At the same time, three of the four tax expenditures we assessed that Congress targeted to help small businesses grow and access capital are so limited in design that they either (i) explicitly exclude service firms, and by extension, the majority of women-owned firms; or (ii) could effectively bypass women-owned firms who are not incorporated or who are service firms with few capital-intensive equipment investments altogether.
- Our survey data corroborates these findings, and nevertheless suggests that when women-owned firms can take advantage of tax expenditures, they do. However, there is an absence of government data and research on these issues that demonstrates an acute need to develop research to measure the effectiveness of tax expenditures with respect to women-owned firms.
- Our findings raise questions as to (i) whether the Code's small business tax expenditures are operating as Congress intended; and (ii) whether the cost of these expenditures has been accounted for in terms of women-owned firms.

In the context of answering these questions impacting millions of women business owners, we report that policymakers and stakeholders have a billion dollar blind spot when it comes to understanding how effective small business tax expenditures are with respect to women-owned firms. This blind spot indicates Congress does not have the information necessary to make evidence-based tax policy decisions with respect to women business owners. Ultimately, this report identifies a critical need to develop tax research specific to women-owned firms and recommends strategies for doing so.

INTRODUCTION

In 1976, the U.S. Census Bureau (Census) released its first ever report on the state of women's business ownership in the United States that counted 402,025 women-owned U.S. firms representing only 4.6% of all firms and 0.3% of all U.S. business receipts, as of 1972.¹ Concerned by these low figures, U.S. Commerce Secretary, Dr. Juanita Kreps, a labor economist, advised President Carter to investigate the circumstances behind the numbers.² On Aug. 4, 1977, Carter issued a memorandum creating an Interagency Task Force on Women Business Owners (the "Task Force") to (i) identify and assess the adequacy of existing data on women entrepreneurs; and (ii) assess current federal programs and practices that have the effect of discriminating against women entrepreneurs or placing them at a competitive disadvantage.³

"Taxation plays a key role in the survival and growth of small businesses, primarily through its effect on equity infusion. The major source of equity capital for expansion of a business is reinvested profits. The amount of tax the business must pay determines the amount of money available for growth and expansion."

U.S. Dep't of Commerce, Interagency Task Force on Women Bus. Owners, The Bottom Line: Unequal Enterprise in America (1978)

In November 1977, the Task Force established its membership and got to work.⁴ High-level representatives from eight federal agencies served on the Task Force and contributed to its findings.⁵ In conducting its review, the Task Force not only identified the many challenges women entrepreneurs face, but also focused on small businesses, "since this is the business sector in which most women-owned businesses are concentrated."⁶ While recognizing that minority women business owners were subject to "double barriers of racism and sexism," the Task Force primarily attacked sexism rationalizing that "alleviating this significant problem would aid in the discrimination faced by minority women."⁷ As part of this exercise, the U.S. Department of Treasury ("Treasury") prepared a report for the Task Force (the "1978 Treasury Study") that "concentrated on small business because the majority of women-owned businesses are small businesses" and focused its work on "credit and capital formation as well as other financially-related issues such as insurance, bonding and taxation."⁸

With respect to its assessment of the impact of tax on women-owned firms, the 1978 Treasury Study noted at the outset that tax laws were "sex neutral" and focused its work on describing tax provisions impacting small business.⁹ Fundamentally, the 1978 Treasury Study concluded, "[o]f course, taxation is not sex-specific. A small business is taxed as a business, not as female versus male-owned. As a consequence, any changes in tax laws to benefit small businesses would benefit men more than women, since so few businesses are owned by women."¹⁰ And that was that.

Since 1972, women-owned firms, which Census defines as businesses in which women own 51% or more of the equity or stock,¹¹ have increased to 11.3 million businesses representing 38% of all U.S. firms as of 2016.¹² During this 44-year period of extraordinary growth, Congress has acted to promote women's business ownership by passing legislation designed to eliminate discriminatory lending practices and promote federal contracting and counseling opportunities for women business owners.¹³

At the same time, Congress has worked to enhance the U.S. tax code (the "Code") to aid small businesses.¹⁴ So much so that, in January 2017, the nonpartisan Congressional Joint Committee on Taxation (JCT), the official Congressional budget estimator for tax expenditures, estimated that small business tax expenditures alone will cost U.S. taxpayers more than \$270 billion in revenue losses from 2016 through 2020.¹⁵ While the budget estimates for these tax expenditures have risen along with the overall number of women-owned firms, at no point has Congress meaningfully and specifically looked at whether this will be money well spent when it comes to women business owners.¹⁶

This report, in keeping with the mission of the Kogod Tax Policy Center (KTPC) to conduct non-partisan policy research on tax and compliance issues specific to small businesses and entrepreneurs, serves as a long overdue follow-up to the 1978 Treasury Study and provides an initial assessment of how the Code's tax expenditures targeted to help small businesses grow and access capital impact women-owned firms. The results are eye-opening.

We report that while women-owned firms have grown to number more than one-third of all U.S. firms, the majority are small businesses operating in service industries and continue to have challenges growing their receipts and accessing capital. At the same time, three of the four small business tax expenditures we assessed are so limited in design that they either

- (i) explicitly exclude service firms, and by extension, the majority of women-owned firms; or
- (ii) could effectively bypass women-owned firms who are not incorporated or who are service firms with few capital-intensive equipment investments altogether.

Our survey data corroborates these findings, and nevertheless suggests that when women-owned firms can take advantage of tax expenditures, they do. These findings also raise questions as to

- (i) whether these small business tax expenditures are operating as Congress intended; and
- (ii) whether the cost of these expenditures is money well spent with respect to women-owned firms.

In the context of answering these questions impacting millions of women business owners, we report that Congress and stakeholders have a billion dollar blind spot when it comes to understanding how effective small business tax expenditures are with respect to women-owned firms. This blind spot is primarily attributable to an absence of existing tax research on women-owned firms and indicates Congress doesn't have the information necessary to make evidence-based tax policy decisions with respect to women-owned firms. Ultimately, this report identifies an immediate need for additional research on how small business tax expenditures impact women-owned firms to evaluate their effectiveness and recommends strategies for doing so.

We start by highlighting just how much women's business ownership has increased to enter every sector of the U.S. economy. We then summarize the research on the ongoing challenges women-owned firms encounter growing their businesses and accessing capital. Next, we assess four tax expenditures Congress designed to stimulate small business access to capital or investment, and review the existing research as to their impact on small firms generally, and women-owned firms specifically. As part of this analysis, we include data we collected from our 2017 survey of women-owned firms. Finally, this report reviews the need to develop the research and testimony to provide Congress with the data it needs to engage in evidenced-based policy making moving forward with tax reform.

OUR APPROACH, DATA AND METHODOLOGY

In August 2016, we began reviewing existing Congressional research on small business tax provisions to identify expenditures designed to support smaller firms and to “boost their rates of formation and growth.”¹⁷ We focused on tax expenditures rather than other Code provisions impacting small business as tax expenditures are “similar to direct spending programs that function as entitlements to those who meet the established criteria.”¹⁸ Given the challenges women-owned firms have, we developed the following criteria for the small business tax expenditures included in our analysis and survey:

1. provisions intended to stimulate growth or access to capital or investment for smaller firms; and
2. small business tax expenditures with a cost of at least \$100 million.¹⁹

Using these criteria, we selected the following small business tax expenditures to review:

1. *IRC Section 1202 – 100% Exclusion from Capital Gains Tax for Investments in Qualified Small Business Stock*: allows qualified investors who invest in certain small business corporations and hold the stock for at least five years to exclude from capital gains tax any gains made on a subsequent sale. JCT estimates that this provision will cost taxpayers \$6.2 billion over the next five years.²⁰
2. *IRC Section 1244 – Ordinary Loss Treatment for Investments in Small Business Stock*: allows individuals or partnerships to treat losses from the sale or exchange of qualified small business stock as ordinary (rather than capital) losses on investments (up to \$100,000 for joint filers) in certain small business corporations. Treasury estimates this provision will cost taxpayers \$500 million over the next ten years.²¹
3. *IRC Section 179 – Accelerated Depreciation for Small Businesses*: allows businesses to deduct a limited amount (up to \$510,000 in 2017) of the cost of new or used business property in the year in which the property is placed in service (as opposed to recovering the cost over a longer period of years under current depreciation rules) so long as the total doesn't exceed a certain dollar threshold (\$2,030,000 in 2017). JCT estimates that this provision will cost taxpayers \$248.2 billion over the next five years.²²
4. *IRC Section 195 – Deduction for Qualified Start-Up Costs*: allows businesses to deduct up to \$5,000 of qualified start-up costs in the year in which a business begins to operate. JCT estimates that this provision will cost taxpayers \$400 million over the next five years.²³

We then reviewed the most recent research on women-owned firms to identify their total number, average size and receipts; as well as representation across industries. We also reviewed academic research describing the challenges women business owners encounter. We investigated existing government research and publicly-available data on women-owned firms (e.g., publicly available taxpayer filing and Census data; U.S. Small Business Administration's (SBA) data and reports; Government Accountability Office (GAO) reports; Treasury reports and technical papers; and U.S. Commerce Department and National Women's Business Council (NWBC), reports), as well as Congressional tax-writing and small business hearing testimony and reports, to identify the relevant existing government research on small business tax issues as they relate

to women-owned firms and the industries in which they operate. We also requested from IRS, through Congressional staff, data on the number of women-owned businesses that have claimed: (1) Section 179; or (2) Section 195; as well as how many women-owned businesses have: (1) qualified as C-corporations that can issue qualified small business stock under Section 1202; or (2) have qualified as a “small business corporation” under Section 1244. In response, we were informed by IRS that neither its small business nor Statistics of Income (SOI) divisions collect data responsive to these inquiries.

We interviewed more than three dozen current and former government economists, lawyers and experts at Treasury’s Office of Tax Analysis (OTA); the Internal Revenue Service (IRS); SBA’s Office of Women’s Business Ownership; SBA’s Office of Advocacy; GAO; NWBC; Congressional Research Service; and JCT as well as other Congressional staff responsible for studying and writing government research on small businesses tax issues and women-owned firms. We also spoke with current and former senior policy advisors from both political parties on each of the Congressional tax-writing and small business committees about this research. Our questions and conversations focused on the extent to which Congressional action or consideration of tax issues specific to women-owned firms had occurred.

We also reviewed the Congressional tax-writing committees’ legislative calendars and reports summarizing their activities and hearings from 1986, the last time Congress passed comprehensive tax reform, through 2016. Specifically, we reviewed the records of more than 1,270 full tax-writing committee hearings held during this period, which translates to more than 1,500 hearing days, and were unable to find a single full committee hearing dedicated to investigating the effectiveness of small business tax expenditures with respect to women-owned firms.²⁴ We did, however, identify multiple instances of women-business owners testifying before these committees on other tax issues, including small business tax issues like the home office deduction and the impact of the estate tax on small businesses.²⁵

In addition, we interviewed multiple academic and tax practitioner experts, including the National Taxpayer Advocate and nonpartisan trade associations representing women business owners to understand whether and how women-owned firms are impacted by the U.S. tax code’s small business incentives and the extent stakeholders have considered these issues.

Finally, we talked to a number of women-owned firms and developed our own survey for the members of Women Impacting Public Policy (WIPP) and its coalition partners (the “2017 WIPP/Kogod Survey”).²⁶ WIPP, together with its partners, is the largest nonpartisan coalition advocating on federal public policy issues on behalf of women entrepreneurs. WIPP coalition partners that participated in the survey include: Adelante Movement; California Association for Micro Enterprise Opportunity; National Association for Female Executives; Women’s Business Development Center – Chicago; National Association of Women in Real Estate Businesses; Women’s Business Development Council; Women’s Business Enterprise National Council; Women Presidents’ Organization; Association for Enterprise Opportunity; ATHENA International Inc.; Colorado Women’s

Chamber of Commerce; GovConnects; Michigan Association for Female Entrepreneurs; National Association of Women Business Owners (NAWBO) California; NAWBO Greater Raleigh, N.C.; NAWBO San Francisco Bay Area; NAWBO Silicon Valley; Filipina Women's Network; National Association of Certified Government Business Enterprise; Women in Trucking; Executive Women In Government; and Hispanics Impacting Public Policy.

Our survey was designed to gauge how familiar self-identified women business owners are with the Code sections we assessed and whether those women-owned firms benefitted from them. In conducting our survey, our intention was not to prepare a statistically reliable estimate of the entire American population of women-owned firms, or even of the 550,000 members of WIPP and their coalition partners. Rather, our focus was to measure whether engaged, experienced women business owners, defined by their own self-selection as members of WIPP or one of its coalition partners, are familiar with and take advantage of tax expenditures targeted to small businesses. WIPP and its coalition partners invited their memberships to participate in the online Survey Monkey survey, which was conducted from February 24, 2017, through April 11, 2017. We received 515 completed responses from women who, on their own, or with other women, owned at least 51% of a business, from the more than 550,000 WIPP or coalition partner members invited to participate in the survey.

Ultimately, we concluded that:

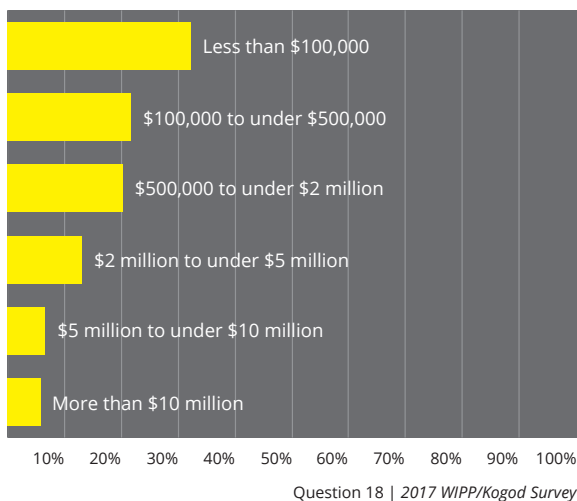
1. While the number of women-owned firms has increased at extraordinary rates, the majority of firms remain predominately small businesses operating in service industries and still encounter substantial challenges with growing their receipts and accessing capital.
2. Our survey results suggest that when women-owned firms can take advantage of tax expenditures, they do so. However, we also found at least some of the Code's small business tax expenditures targeted to stimulating small firm investment either explicitly exclude service firms by design, and by extension, the majority of women-owned firms, or operatively bypass them in favor of firms that are incorporated or operating in industries that tend to make more regular capital-intensive investments.
3. There is a critical need to develop tax research to measure the effectiveness of small business expenditures with respect to women-owned firms in view of ongoing challenges they face growing their businesses and accessing capital to determine whether these expenditures are operating as Congress intended.
4. The current lack of research on the impact of the Code's small business tax expenditures on women business owners constitutes a billion dollar blind spot that constrains policymakers from developing evidence-based tax policy moving forward.

PART I

SEEING WOMEN-OWNED FIRMS AS SMALL BUSINESSES WITH CHALLENGES GROWING RECEIPTS AND ACCESSING CAPITAL

A RECOGNIZING MOST WOMEN-OWNED FIRMS ARE SMALL BUSINESS SERVICE FIRMS

Which of these categories best describes the gross REVENUE of your business for 2016?



Since their 1972 Census debut, the number of women-owned firms has increased exponentially and women business owners are now represented in every major industry sector.²⁷ The most consistent measure of this increase is the Census Survey of Business Owners, which Census conducts every 5 years, in years ending in 2 or 7, with the most recent being done in 2012. That year, Census counted more than 9.9 million women-owned firms—an increase of 26.8% from 2007.²⁸ In contrast, male-owned firms increased only 6.8% to 14.8 million during the same period.²⁹

More impressive is the fact that from 2007-2016, the total number of women-owned firms increased by 45%—a rate 5 times *faster* than the national average during a period that included a severe recession.³⁰ Women of color are leading the charge. In fact, the number of women-owned firms owned by women of color has more than doubled since 2007, from 2.2 million to nearly 5 million in 2016, totaling 44% of all women-owned firms.³¹ This increase has important implications for employment activity, too. As of 2016, women-owned firms employed 8% of the private sector workforce, which translates to approximately 9 million people.³²

While the number of women-owned firms has increased 27 times since 1972, these firms remain firmly entrenched in the small business ranks. Most federal government agencies that measure small businesses concede just how challenging it is to define “small business” as a distinguishable category of taxpayers and readily acknowledge “a consensus does not exist on a definition of small businesses, including which specific attributes or thresholds distinguish small businesses from other firms.”³³ Complicating matters is the fact that how the term “small business” is defined can dictate results in terms of the data captured by a given government metric. For example, using taxpayer data, Treasury has developed a methodology to identify more than 23 million small businesses; however, SBA’s Office of Advocacy, relying on Census data, has identified more than 28.2 million small businesses.³⁴

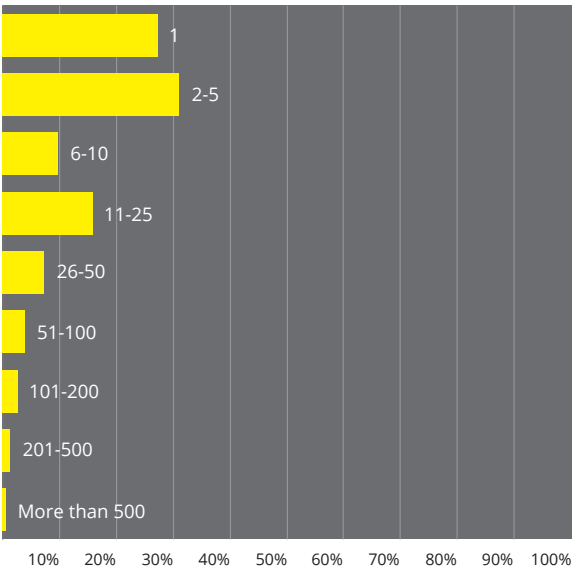
As part of a small business tax compliance assessment done in 2015, GAO, using Treasury’s methodology, found that most small businesses are individuals who report some business income as a sole proprietor on a Schedule C or as a landlord on a Schedule E-Part 1 or farmer on a Schedule F.³⁵ This group of 16 million individual taxpayers (69% of all small businesses), on average, earns \$100,000 (or less) per year and generates \$1.4 trillion of the total small business income reported to the IRS.³⁶ Under these metrics GAO relied on for tax research purposes, we find that the majority of today’s women-owned firms appear to fit well-within GAO’s definition of “small business.”³⁷ For example, the 2012 Census data found that 89.5% of women-owned firms were nonemployer firms (i.e., businesses with no employees), and that 88.5% of women-owned firms had annual receipts of below \$100,000³⁸ (Table 1).

TABLE 1: 2012 CENSUS DATA ON WOMEN-OWNED FIRMS³⁹

Receipt/Revenue Size	Number of Women-Owned Firms	Percent of Women-Owned Firms
Total/2012 SBO Data	9,878,397	100%
less than \$5,000	2,497,048	25.3%
\$5,000 to \$9,999	1,776,343	18.0%
\$10,000 to \$24,999	2,722,295	27.6%
\$25,000 to \$49,999	1,052,900	10.7%
\$50,000 to \$99,999	681,243	6.9%
\$100,000 to \$249,999	553,503	5.6%
\$250,000 to \$499,999	258,398	2.6%
\$500,000 to \$999,999	164,824	1.7%
\$1,000,000 or more	171,842	1.7%

88.5%

How many employees did your business have at the END of 2016, including yourself?



Question 12 | 2017 WIPP/Kogod Survey

Notably, these are two key points where the 2017 WIPP/Kogod Survey results differ sharply and reflects its bias: 73% of our survey respondents were employers, and 68% indicated they had gross revenue of \$100,000 or more for 2016.⁴⁰ In fact, 26% of our survey respondents had gross revenues in excess of \$2 million.⁴¹

In terms of industry representation, although women-owned firms have permeated every industry sector to some degree, they remain predominately active in service industries and are underrepresented in other industries. For example, according to SBA's Office of Advocacy's analysis of Census' 2012 data, while women owned 36% of all U.S. firms and 20% of all employer businesses, "women-owned businesses were only 9% of the construction industry and 24% of the manufacturing industry."⁴²

In contrast, another recent study found that as of 2016, 61% (or 6.9 million) of women-owned firms are found in the following four service sectors: 22% in other services (e.g., home to hair and nail salons and pet care); 15% in health care or social assistance; 13% in professional/scientific/technical services (e.g., accountants, lawyers, architects, PR and management consultants); and 11% in administrative, support and waste management services.⁴³ The 2017 WIPP/Kogod Survey, not surprisingly, also found an overwhelming majority of respondents (84%) operating in services.⁴⁴

Although federal government data on the number of women-owned firms, their receipts and presence among industries is readily available, we were unable to identify similar government research on the current number of women-owned firms operating as C-corporations or S-corporations from existing SBA or IRS data, which would be particularly useful for tax research purposes.⁴⁵ We asked both the IRS and SBA's Office of Advocacy whether this data exists and were told that it is not generally collected and is not currently publicly available.⁴⁶ We did confirm that IRS has data for women-owned firms operating as sole proprietors and that SBA's Office of Advocacy does track data on the legal organization for small firms generally⁴⁷ (Table 1.1).

TABLE 1.1: LEGAL FORM OF FIRMS⁴⁸

Comparison of Existing Data on Legal Form of Organization	SBA Advocacy Nonemployer Firms (All small firms)	SBA Advocacy Small Employer Data (All small firms)	2017 WIPP/KOGOD SURVEY (Only women-owned firms) Question 4
Sole Proprietor	86.4%	14.8%	32.04%
Partnership	9.13%	11.3%	9.13%
C-Corporation	--	19.7%	12.43%
S-Corporation	4.7%	46.9%	44.66%
Other/Don't Know	1.6%	7.5%	1.75%

B WOMEN-OWNED FIRMS STILL ENCOUNTER GROWTH AND ACCESS TO CAPITAL CHALLENGES

Notwithstanding gaps in government research on how women-owned firms are legally organized, extensive work has been done by academics on gender and entrepreneurship issues.⁴⁹ In addition, government and academic research has focused on the challenges women business owners have growing their businesses and accessing capital.

For example, while the number of women-owned firms increased exponentially from 2007 to 2012, by the end of that period, less than 2% of (or just 171,842) women-owned firms had annual receipts in excess of \$1 million⁵⁰ (*Table 1*). This is a sharp contrast to the 6.2% or 923,173 male-owned firms with receipts of \$1 million or more.⁵¹ Also troubling is an estimate that found that while overall women-owned firms averaged \$143,431 in annual revenues as of 2016, firms owned by minority women averaged only \$68,982 in annual revenues while non-minority women-owned firms averaged \$201,948.⁵² Moreover, while overall receipts for women-owned firms increased by 18.7%, up from \$1.2 trillion in 2007 to \$1.4 trillion in 2012, and to \$1.6 trillion in 2016, women-owned firms still only contribute 4% to overall business revenues, “a share that has not changed over the past 20 years.”⁵³

“Any additional barrier to women’s access to capital is one that needs to be pulled down.”

Interview with Nancy Cremins, General Counsel, Globalization Partners, expert on startups and VC funding

More recently, in 2017, SBA’s Office of Advocacy issued a report on women-owned firms finding that they continue to “lag behind in revenue and employment. For every dollar of revenue an average women-owned employer business earns, a male-owned business earns \$2.30. For every 10 employees at a women-owned business, a male-owned business employs 15.”⁵⁴ Consequently, although Census research has tracked a dramatic spike in the number of women-owned firms, average receipts and firm size have not grown to the same degree, indicating, among other things, that challenges remain for these small business owners.⁵⁵

Related to the growth challenges women-owned firms encounter is the documented challenge women-owned firms have accessing capital.⁵⁶ In fact, some older research suggests that “lack of access to capital (including personal resources) is seen as a major reason for the concentration of women-owned businesses in service and retail.”⁵⁷ More recent research has reiterated that lack of access to capital “continues to be a barrier for women-owned businesses” and that a gender gap persists in financing needed for startups and growth.⁵⁸

A 2014 report prepared for the nonpartisan National Women's Business Council on access to capital issues summarized the research on women's access to capital issues and noted:

1. "Women start their businesses with smaller amounts of capital and are less likely to raise capital from external sources;"
2. "Women employ a much lower percentage of external equity capital to finance their firms;"
3. "Results from prior research indicate gender differences in financial strategies and structures persist, but that there is a lower predilection for growth among women entrepreneurs."⁵⁹

That same year, the majority staff for the U.S. Senate Committee for Small Business and Entrepreneurship, under the leadership of Sen. Maria Cantwell, published its own report (the "Small Business Committee Report") on existing barriers to women's entrepreneurship and concluded: "in the area of capital, studies find that women do not get sufficient access to loans and venture investment."⁶⁰ Specifically, the Small Business Committee Report found that access to capital is a more severe challenge for women-owned firms when it noted:

1. "Women account for only 16 percent of conventional small business loans, and 17 percent of SBA loans even though they represent 30 percent of all small companies.
2. Of conventional small business loans, women only account for 4.4 percent of total dollar value of loans from all sources. In other words, just \$1 of every \$23 in conventional small business loans goes to a woman-owned business."⁶¹

As alarming as these figures are, notable gaps remain in government research on women-owned firms and access to capital issues. In fact, the Small Business Committee Report ultimately found that "when it comes to assessing the capital needs of women-owned businesses, limited government data on small business credit and virtually none that is gender-based has hindered the development of effective public policy to support and provide adequate access to capital. The lack of data is as astounding as it is concerning."⁶²

OUR VIEW: SMALL BUSINESS TAX EXPENDITURES & THEIR IMPACT ON WOMEN-OWNED FIRMS

While research on the challenges women-owned firms have is well-developed among academics, the research on how tax expenditures impact women-owned firms and whether they work to address those challenges is conspicuously less so.⁶³ In contrast, academics and tax experts have not only considered the effectiveness of small business tax incentives generally but also the political influence of small business stakeholders.⁶⁴ Make no mistake, Congress is willing to listen when small businesses speak and to work to address the concerns they raise. For example, a common complaint from small business to Congress is accessing capital. It's not unique to women-owned firms, it's just more acute. Small businesses have regularly testified and requested Congressional intervention to facilitate growth and access to capital, and one of the more evident examples of Congress' willingness to intervene to aid small businesses in accessing capital is Section 1202.

SECTION 1202: EXCLUSION FROM CAPITAL GAINS TAX FOR INVESTMENTS IN QUALIFIED SMALL BUSINESS STOCK

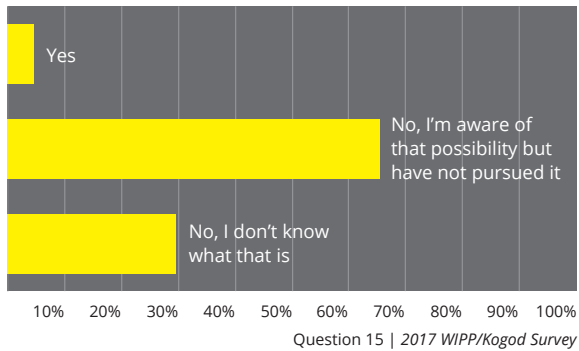
Under current law, Section 1202 allows non-corporate investors (e.g., angel investors and some venture capital funds) to exclude from gross income 100% of any gain from the sale or exchange of qualified small business stock (QSBS) that (1) was acquired at original issue in exchange for money or property or compensation for services, and (2) is held for a minimum of five years.⁶⁵

To qualify as QSBS, the stock must be issued by a C-corporation with no more than \$50 million in gross assets before and when the stock is issued, and 80% (by value) of the corporation's assets must be used in the active conduct of "one or more qualified trades or businesses."⁶⁶ In order for a corporation's stock to qualify as QSBS, the corporation can be in any business, *other than*:

- A. any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees,
- B. any banking, insurance, financing, leasing, investing, or similar business,⁶⁷
- C. any farming business (including the business of raising or harvesting trees),
- D. any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A, and
- E. any business of operating a hotel, motel, restaurant, or similar business.⁶⁸

In addition, Section 1202 provides that any specialized small business investment company (SSBIC) licensed to operate under the Small Business Investment Act of 1958 as in effect on May 13, 1993, will meet the requirements of the 1202 active business test.⁶⁹ The SSBIC program was "an SBA program that was authorized between 1969 and October 1996 to target 'disadvantaged' businesses, meaning those that were at least 50 percent owned, controlled and managed on a day-to-day basis

At any point, have you been able to attract capital for your corporation from non-corporate investors by issuing qualified small business stock in exchange for money, services or other property?



by a person or persons whose participation in the free enterprise system was hampered because of social or economic disadvantages.⁷⁰ As of September 2015, there were a total of nine SSIBICs registered with SBA.⁷¹

Congress' intent in developing Section 1202 is generally understood to be "to encourage the flow of capital to small businesses, many of which have difficulty attracting equity financing"⁷² and to "promote long-term investments in small businesses and venture capital startups by providing a partial exclusion of gain on the sale qualified small business stock."⁷³ However, Congress specifically limited the benefits of Section 1202 to "facilitate the formation and growth of small C corporations involved in commercial development of new technologies by increasing their access to relatively patient capital...by giving investors (individuals such as angel investors as well as venture capital funds organized as partnerships) an incentive to acquire significant equity stakes in such firms."⁷⁴

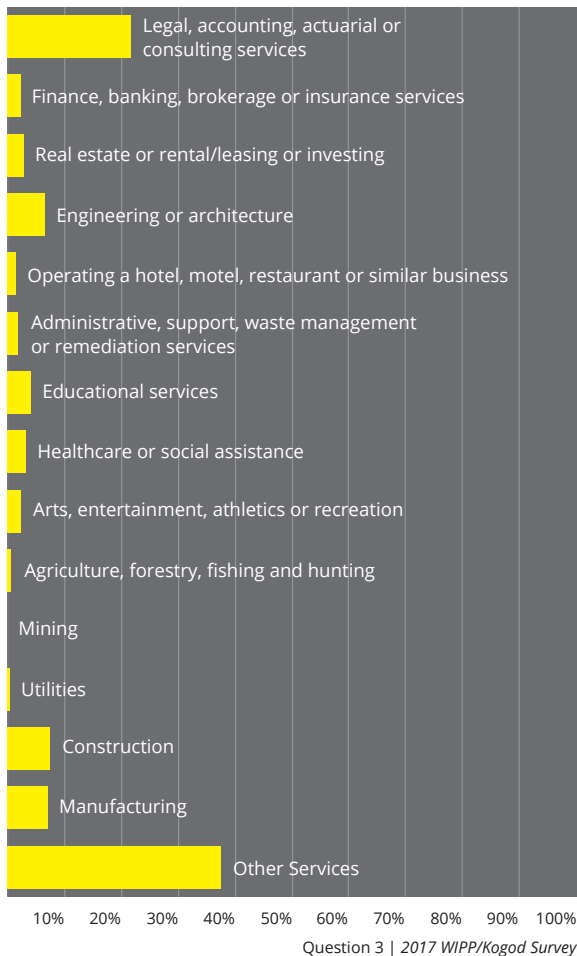
More specifically, Congressional experts confirm that "while the legislative history of the [expenditure] did not specify this, the design of the exclusion suggested that it was targeted at new small research-intensive manufacturing firms."⁷⁵ Ultimately, Congress intended "to encourage entrepreneurs and investors to start and operate businesses that would generate economic activity and employment."⁷⁶

While Congress had originally intended for Section 1202 to provide only a partial (50%) exclusion from tax of gains from the sale or exchange of QSBS, during and after the 2007-2009 recession, Congress repeatedly acted to enhance Section 1202's benefits "in a bid to expand access to capital for new ventures."⁷⁷ In 2010, Congress moved to eliminate the tax on gains from these investments altogether, as they believed that "increasing the exclusion of gain for small business stock will encourage new and additional investment in small businesses [and that] access to additional capital will help these small businesses expand and create jobs."⁷⁸ Congress made this 100% exclusion permanent in 2015.⁷⁹

In the 18 years since Section 1202 was first enacted, Congressional research has found that "there is no conclusive evidence that the provision has had the intended effect of increasing the flow of equity capital to eligible firms...[and] there has been a lack of research on the provision's impact on the cash flow, capital structure, or investment behavior of companies issuing the stock."⁸⁰ Indeed, commentators have routinely criticized Section 1202 as ineffective due to its many limitations, including its application to selected industries.⁸¹

The 2017 WIPP/Kogod Survey provides insight into some of these issues. We asked participants whether at any point, they had been able to attract capital for their corporation from non-corporate investors by issuing qualified small business stock in exchange for money, services or property. Only 3 respondents (or less than 0.6% of survey participants) responded affirmatively.⁸² Interestingly, of those respondents who were incorporated and indicated that they were aware of Section 1202 as a strategy for accessing capital, 65% indicated that they had yet to pursue it. This may be explained by the fact that approximately 84% of our women-owned firms had previously indicated that they were in service industries excluded from Section 1202, and only 14.75% of respondents indicated they were in construction or manufacturing.⁸³

How would you categorize your business?



Taken together, these survey responses suggest that our respondents are, like most women-owned firms, predominately in service industries and, as a result, excluded from using Section 1202 as a strategy to access capital—even when they are aware of it. To analyze our survey results in view of IRS data on the total number of women-owned corporations that have issued Section 1202 stock since 1993, we researched existing publicly-available data and requested, through Congressional staff, the total number of women-owned corporations that had issued Section 1202 stock.⁸⁴

In response to this request, IRS indicated that it does not provide research with respect to women-owned firms and Section 1202.⁸⁵ This may be attributable to existing confidentiality rules designed to protect taxpayer privacy or to limitations of information provided on relevant taxpayer filings or to the fact that Treasury has yet to issue regulations for the reporting requirements for corporations issuing Section 1202 stock. Regardless of the reason, the lack of government data means we were unable to comprehensively assess the impact of Section 1202 beyond reporting that we identified only three women-owned corporations that have used Section 1202 to access capital.⁸⁶ This is a particularly concerning finding in view of the fact that JCT projects Section 1202 will cost taxpayers \$6 billion from 2016 to 2020.

The absence of government research means that we have yet to measure whether this \$6 billion small business tax expenditure is operating as Congress intended in encouraging the flow of capital to small businesses, millions of whom are women-owned service firms with access to capital challenges. This billion dollar blind spot illustrates the critical need for additional research on the overall effectiveness of Section 1202 with respect to women-owned firms.⁸⁷

SECTION 1244: LOSSES ON QUALIFIED SMALL BUSINESS STOCK TREATED AS ORDINARY

Like Section 1202, Section 1244 is another small business tax expenditure designed to “encourage financing of small business.”⁸⁸ Congress added Section 1244 to the Code in 1958 as part of a broader package of tax incentives targeted to small businesses.⁸⁹ Under the provision, individuals or partnerships that realize losses on the sale or exchange of qualified “small business stock” may treat up to a specified amount (\$50,000 for individuals and \$100,000 for joint filers) of the losses as ordinary losses rather than capital losses. There is no limit on the ordinary losses that can be deducted in a tax year, but capital losses are generally limited to \$3,000.⁹⁰

To qualify for this treatment, the “small business stock” must be:

1. Either preferred or common;
2. Acquired by an individual or a partnership in exchange for money and not securities; and
3. Issued by a small business corporation, which is defined as a corporation whose aggregate amount of money and other property received as a contribution to capital and as paid in surplus, does not exceed \$1,000,000.⁹¹

Also, the issuing corporation can't have derived more than 50% of gross receipts from passive investments (e.g., from sources other than royalties, rents, dividends, interests, annuities, and sales or exchanges of stocks or securities) in the 5 years before the loss is claimed.⁹²

In 1958, Congress developed Section 1244 to “increase both the external and internal volume of funds available for the financing of small business corporations.”⁹³ Congress intended for the provision to “accelerate the tax use of the stock investment losses in order to promote a partial recovery of those losses through the tax savings that would be realized when the losses were used to offset other taxable forms of income.”⁹⁴ Congress expected that the provision would “encourage the flow of new funds into small businesses...[in] the form of reducing the risk of loss for these new funds.”⁹⁵

Have you ever claimed an ordinary loss (as opposed to a capital loss) on your individual tax return from the sale or exchange of stock you purchased from a domestic corporation or S-Corp that had less than \$1 million in aggregate capital when you bought the stock and didn't earn more than 50% of its income from passive investments?



The available research on the overall effectiveness of Section 1244 is surprisingly sparse, given that it has been in the Code for almost 60 years, generating billions of dollars of revenue losses during that time. However, in recent months, tax practitioners have begun to consider whether Section 1244 could be used to attract crowdfunding.⁹⁶ For example, one recent study reviewed SEC filings for entities relying on crowdfunding from May 16, 2016, to December 21, 2016, to determine whether investors could potentially claim Section 1244 losses for investments in new firms.⁹⁷ The authors concluded that “investors purchasing stock should carefully investigate the amount of a company's equity if they plan to take advantage of Section 1244 ordinary loss deduction in the event the company does not succeed.”⁹⁸

As part of our survey, we wanted to test both the familiarity women business owners had with Section 1244 as an access to capital strategy for their own firms and whether they claimed it as investors. Only 6% of respondents indicated they had ever claimed Section 1244 losses on their returns, while a full 86% of respondents indicated that they hadn't. These results could be indicative of an overall lack of awareness among women-owned firms of Section 1244 and its benefits. However, to measure our results against publicly-available data, we were told that neither IRS nor its research arm have research available on those issues.⁹⁹ Compounding this problem is the overall absence of government data on the legal organization of women-owned firms, which could be useful in estimating Section 1244's effectiveness. As a result, we are unable to measure the effectiveness of Section 1244 to determine whether it is operating as Congress intended to increase the volume of funds available for small firms generally and specifically for women-owned firms, the majority of whom are not incorporated.

SECTION 179: ACCELERATED DEPRECIATION FOR INVESTMENTS IN TANGIBLE PROPERTY FOR SMALL BUSINESSES

Another older, albeit more popular, provision of the Code is Section 179. In general, it allows businesses to deduct up to a specified amount (\$510,000 in 2017) of the cost of qualified assets (mostly machinery and equipment) in the year they are placed in service. The Section 179 deduction includes two limitations: 1) the deduction cannot exceed a taxpayer's income from their trade or business; and 2) the deduction is phased out dollar for dollar when a taxpayer's total spending on qualified assets exceeds a specific threshold amount (\$2,030,000 in 2017).¹⁰⁰ Both the deduction and its limits are indexed to inflation for years beginning after 2015.

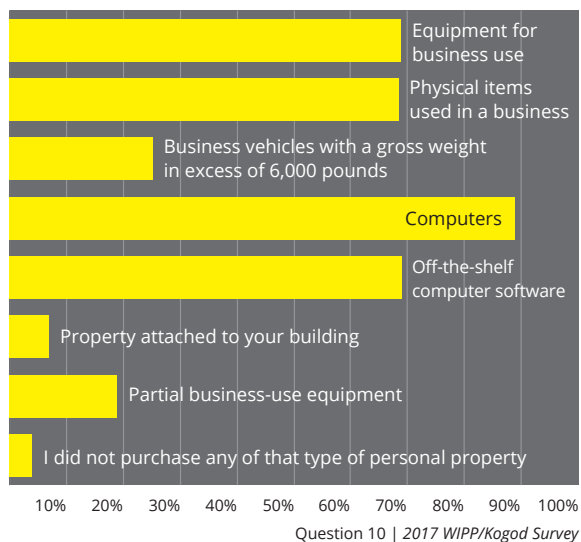
Section 179 is another long-time resident of the Code that Congress originally enacted in 1958.¹⁰¹ At the time, Congress intended to “reduce the tax burden on small firms, give them an incentive to invest more, and simplify their accounting.”¹⁰² Since then, policymakers have enhanced Section 179 from time to time by raising the expensing allowance and increasing the phase-out threshold to “boost the economy and lower the tax burden on small business owners at the same time.”¹⁰³

According to a 2011 JCT report, Congress “believes that section 179 expensing provides two important benefits:

1. it lowers the cost of capital for property used in a trade or business. With a lower cost of capital, Congress believes businesses will invest in more equipment and employ more workers;
2. expensing eliminates depreciation recordkeeping requirements with respect to expensed property.”¹⁰⁴

There has been important work done on analyzing the effectiveness of Section 179. For example, in 2016, Treasury’s Office of Tax Analysis prepared a comprehensive analysis on taxpayer use of Section 179 using IRS data from 2002-2014.¹⁰⁵ That report found that the “take-up rates were relatively high for Section 179 expensing....generally in the 70% or 80% range for C-corporations and S-Corporations, and somewhat lower at around 60% to 70% for partnerships and individuals.”¹⁰⁶

Since you’ve been running your business, have you purchased any of the following types of property that you have been able to deduct on your tax return in full in the year you placed that property in service?

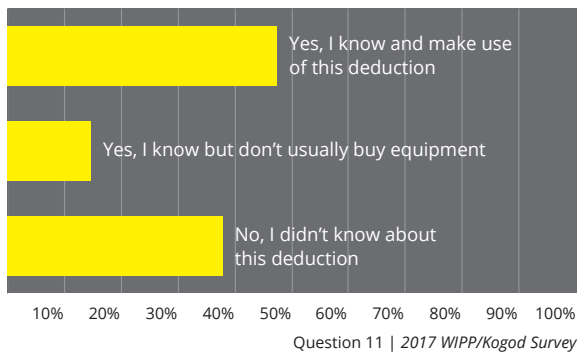


Although these rates suggest Section 179 is popular, the Treasury report doesn’t offer any insight whatsoever as to the uptake by women-owned firms (although it does review industry-specific data), and IRS has no available data on how many women-owned firms have claimed Section 179.¹⁰⁷ This matters because some research suggests that accelerated depreciation allowances are not necessarily universally good for small businesses.¹⁰⁸ Moreover, previous tax reform efforts have readily acknowledged that the existing system of cost recovery “rewards specific industries to the detriment of others, creates uncertainty with provisions that are temporary, and adds unnecessary complexity to business tax compliance.”¹⁰⁹

Our research seems to corroborate these conclusions. We asked participants what types of property they have been able to deduct—in full—in the year the property was placed in service. Computers were the most popular expense, with 89% of respondents indicating that they had expensed those costs. Coming in second were computer software and other equipment purchases for business use, tied with physical items such as desks, shelves, etc. that can be expensed under Section 179 at approximately 69% of respondents. Business vehicles with a gross weight of 6,000 pounds were cited by 25%, while 19% of respondents purchased and deducted equipment for business and personal use. We did have 4% of respondents indicate that they did not purchase any equipment.

In addition, we wanted to probe the familiarity women business owners had with Section 179 as well as the frequency with which they elected to claim it. We specifically asked survey participants whether they knew that they could deduct the full amount of business equipment purchased and placed in service (in recent years, up to \$500,000) as long as the full amount does not exceed \$2 million. Every survey respondent answered this question (except one), and 47% of respondents indicated

Do you know you can deduct the full amount of business equipment purchased and placed in service (in recent years, up to \$500,000) as long as the total purchase does not exceed \$2 million?



they were aware of it and used it. However, 38% didn't know about it, and approximately 15% did, but indicated that they don't usually buy equipment, so they didn't make use of the deduction.

Our survey results suggest that 53% of our respondents don't fully benefit from Section 179 either because they don't know about it or don't regularly make use of it. Keep in mind, our survey results are not representative of the general population of women business owners. Instead, we surveyed engaged, experienced business owners as represented by their membership in WIPP or one of its coalition members. And even this more sophisticated population indicated a significantly lower uptake rate (47%) for Section 179 than the uptake rates Treasury identified in its own analysis (60 to 80%). The discrepancy in the uptake rates is a prime example of why tax research on women-owned firms is critical.

Section 179 is one of the most expensive tax expenditures targeted to help small businesses. JCT estimates it will cost taxpayers \$248.2 billion from 2016 through 2020. At the same time, there is no official government data on how Section 179 impacts millions of women-owned firms and whether it is operating as Congress intended for these small businesses. In fact, our data suggests women business owners benefit less from Section 179 than Treasury's research finds for businesses generally. This discrepancy reflects the billion dollar blind spot policymakers have with respect to how the Code's small business tax expenditures impact women-owned firms.

SECTION 195: DEDUCTION FOR START-UP COSTS

Unlike the complicated rules involving the foregoing provisions, Section 195 is a fairly straightforward tax expenditure. It allows businesses to deduct up to \$5,000 of their start-up costs in the year they begin operations.¹¹⁰ The deduction is reduced, dollar for dollar, once startup expenses exceed \$50,000, and taxpayers then have the option to amortize those costs over a longer period of not less than 180 months.¹¹¹ In order to meet the requirements for Section 195, start-up costs must:

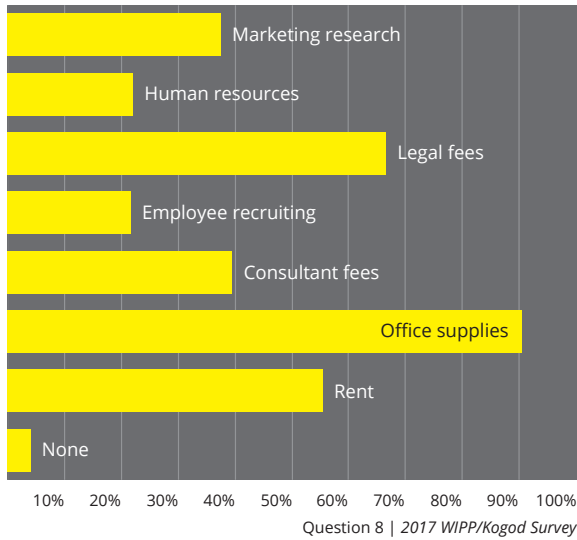
1. Be incurred in connection with an investigation into starting or acquiring a new business, actually starting a new business, or engaging in what the IRS considers as a "profit seeking or income-producing activity before a trade or business starts; and
2. Resemble costs that would be deductible if they were paid or incurred in connection with an existing trade or business."¹¹²

Commonly incurred startup costs include marketing research, human resources, legal fees, employee recruiting, consulting fees, office supplies, and rent.

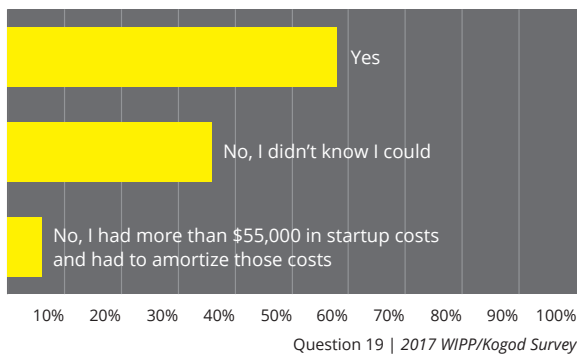
Prior to the enactment of Section 195, the IRS and small businesses routinely litigated the question of whether start-up costs could be deducted "as a current expense" or had to be capitalized.¹¹³ As a result, Congress added the predecessor to the current version of Section 195, which allowed taxpayers to amortize startup costs over a period of not less than 60 months, "to facilitate the creation of new businesses and reduce the frequency of protracted legal disputes over the tax treatment of startup expenditures."¹¹⁴

In 2004, Congress again tinkered with Section 195 to aid small businesses

Thinking back to when you first launched your business, did you incur any of the following start-up expenses in that year?



Did you deduct up to \$5,000 of those start-up expenses on your tax return in the year you started your business?



by allowing taxpayers to immediately deduct \$5,000 of qualified start-up expenses in the year the business began, in part “to encourage the formation of new firms that do not require substantial start-up costs by allowing a large share of those costs to be deducted in the tax year when they begin to operate.”¹¹⁵ In 2010, as part of the Small Business Jobs Act and in order to promote entrepreneurship, Congress enhanced Section 195 by temporarily increasing the deduction limit to \$10,000, in an effort to “help encourage the formation of new businesses.”¹¹⁶

Although Congressional research maintains that it is “unclear from the existing literature the extent to which Section 195 deduction has affected the rate of new business formation,”¹¹⁷ our survey results suggest that many women-owned firms have benefitted from it. We asked our respondents what start-up expenses they incurred in the year that their business launched and we offered a range of options with instructions to check all that apply. The respondents reported incurring the following expenses: office supplies (91%), legal fees (67%), rent (56%), consultant fees (39.4%), marketing research (37.5%), and human resources (22%). Only 4% of respondents incurred no start-up costs. Concerning the tax treatment of those expenses, 58% of respondents indicated that they deducted their startup costs and another 6% indicated that they had startup costs in excess of \$55,000 and so they were unable to deduct any of them. These responses are very telling in that they indicate that the women-owned firms who participated in our survey would have or did take advantage of Section 195 to deduct costs and to start their businesses. The majority of our respondents incurred start-up costs and took the deduction as intended by Congress to enable business formation.

Our overall assessment of the small business tax expenditures designed to provide investment and access to capital for small businesses is one that raises more questions than it answers. While Section 195 appears to be operating as Congress intended, at least among the women business owners that participated in our survey, the results are less encouraging for Sections 1202, 1244 and Section 179. A key obstacle to assessing these tax expenditures’ impact on women-owned firms is that we do not have existing publicly-available data or tax research with which to compare our survey results. For example, our survey identified only three women-owned firms as accessing Section 1202. In addition, our survey indicates women-owned firms are less likely to claim Section 179 than official Treasury data uptake rates suggest. In our view, lack of government data on these issues precludes measuring the effectiveness of these small business tax expenditures with respect to women-owned firms and results in a glaring billion dollar blind spot.

EVIDENCED-BASED POLICYMAKING REQUIRES A CLEAR- EYED ACCOUNTING OF THE IMPACT OF SMALL BUSINESS TAX EXPENDITURES ON WOMEN-OWNED FIRMS

Whereas this report finds that the absence of data and research on how the Code's small business tax expenditures impact women-owned firms constitutes a billion dollar blind spot, other experts disagree. In fact, of the more than 45 experts we talked to, at least three government economists expressed skepticism on the need for this kind of research and at least one former senior Congressional tax staffer repeatedly asked why this research mattered at all because the Code doesn't expressly discriminate against women or women business owners.

We agree that the Code does not expressly discriminate against women business owners. This is the same conclusion that Treasury promulgated in the 1978 Treasury Study.¹¹⁸ Indeed, some experts we consulted suggested that it could be that because the Code does not expressly discriminate against women-owned firms that the Congressional tax-writing committees haven't focused on assessing the effectiveness of small business tax expenditures for women-owned firms specifically.¹¹⁹ Similarly, those experts suggested the absence of discrimination as one reason the IRS and SBA do not collect tax data on women-owned firms, separate and apart from the data collected on small business generally.

In other words, because the Code is facially neutral, neither Congress nor Treasury or IRS have considered or developed data on how the Code's small business tax expenditures impact women-owned firms independent from data or research collected and reviewed on small businesses generally. This blind spot constrains policymakers from developing effective tax policy with respect to women-owned firms to address the persistent challenges these small businesses encounter growing their receipts and accessing capital.

At the same time, Congress has demonstrated time and again its commitment to aiding small businesses. So much so, that under current law, taxpayers will forego more than \$255 billion from 2016 to 2020 just on the four small business tax expenditures assessed in this report. And yet there has been no formal accounting as to whether and how these expenditures impact or are distributed to or among women-owned firms. As a result, Congress doesn't know whether the money it has spent trying to help smaller firms access capital and grow has been well spent with respect to women-owned firms.

"Although business statistics abound, what we know about women business owners is woefully inadequate."

*Dr. Juanita Kreps,
U.S. Sec. of Commerce, Preparing Women to
Be Entrepreneurs, N.Y. Times, Sept. 17, 1977*

The absence of tax research on these small businesses is contrary to recent Congressional efforts to engage in evidenced-based policy making going forward. For example, in 2016, Congress passed bipartisan legislation to establish a federal Commission on Evidence-Based Policymaking (the "Commission") to, among other things, "determine the optimal arrangement for which administrative data on Federal programs and tax expenditures, survey data and related statistical data may be integrated and may be available to facilitate program evaluation, continuous improvement, policy-relevant research, and cost-benefit analysis by qualified researchers and institutions."¹²⁰

Based on the results of our research and discussions with current Congressional staff, we think developing research on the effectiveness of tax expenditures targeted to small business in terms of how they impact women-owned firms is exactly the kind of research that Congress

"Even today, more than fifteen years later, there has not been any work done on these issues. I now have children and grandchildren, women business owners who struggle with gaining access to capital. A daughter, an interior designer, a granddaughter, who is a web designer and developer, could not find access to capital when they tried to go out on their own. Instead, they had to become contractors for other business owners."

2017 Interview with Joy Turner, small business tax preparer and owner, and witness to 2001 Senate Finance Committee hearing (S. Hrg. 107-48)

intended the Commission to develop. And we are not alone in this kind of thinking. In fact, other countries including the U.K., India, South Korea and international institutions such as the World Bank and IMF have been engaging in developing this kind of research for budget analysis purposes and as a driver of economic growth.¹²¹

While this report readily acknowledges the challenges of developing new data on these issues, we are not without precedent or tools to immediately begin to develop the research and policy prescriptions necessary to provide Congress with the information it needs to make informed decisions. In our view, Congress and the 11 million women-owned firms operating today are entitled to know what industries and which small businesses are benefitting from the Code's provisions to improve small business growth and access to capital. To that end, we recommend that Congress and the President take the following actions to gain a better understanding of how small business tax expenditures impact women-owned businesses.

1. The Congressional tax-writing committees should hold hearings to consider the impact of Code's small business tax expenditures on women-owned small businesses.
2. The Congressional tax-writing committees should charge the JCT with preparing a formal estimate of the taxpayer cost and distribution by industry of the Code's small business tax expenditures claimed by women business owners.
3. The federal Commission on Evidenced-Based Policy Making should develop assessments and strategies to inform Congress with evidence-based analysis on tax expenditures' impact on women business owners and other groups.
4. The Administration should move quickly to nominate a nonpartisan Director of the Census Bureau, and Congress should prioritize considering this nomination in order to move forward with executing the 2017 Census survey of business ownership as well as the annual survey of entrepreneurs.

CONCLUSION

Our report finds that the Code itself does not overtly discriminate against women-owned firms, which is reflective of an institutional understanding articulated in the 1978 Treasury Study that small business tax expenditures are “sex neutral” with respect to their impact on women-owned firms. However, this has an unintended consequence of contributing to a notable absence of research and Congressional oversight resulting in a billion dollar blind spot as to how the Code’s small business tax expenditures impact women business owners altogether.

The starkest example of this is the lack of government data on effectiveness of Section 1202, a key small business tax expenditure designed to help small firms access capital that excludes service firms, and by extension the majority of women-owned firms. Although JCT estimates that the provision will cost taxpayers \$6 billion from 2016-2020, we identified only three women-owned firms that had used it to access capital. While we expect that more than three women-owned firms have used Section 1202 since 1993, we don’t currently have the publicly-available taxpayer data to prove it.

“As a manufacturer I recognize there are opportunities on local, regional, and federal levels to receive tax reductions that enable a company to invest funds back into equipment, capability, and job creation. There are not as many opportunities for service industry companies, and those that are available appear to target the larger corporations as opposed to small businesses. Service industries face different challenges in trying to grow their business, but are also critical to our economic ecosystem.”

*Anne Shybunko-Moore,
Member of NWBC and President of GSE
Dynamics Inc., a U.S. defense manufacturer*

Similarly, our survey of women business owners indicated that women-owned firms claim Section 179 at significantly lower rates than existing government research finds for businesses generally. Section 179 is one of the most expensive tax expenditures in the Code and is estimated to cost \$248.2 billion in the coming years, and yet we don’t have research on whether or how it benefits women business owners. At the same time, what government research we do have reiterates the ongoing challenges women business owners face growing their businesses and accessing capital. Ultimately, we have yet to consider what small business tax expenditures are working with respect to women-owned firms, and we don’t have the research to make changes as needed.

Tax reform is the opportunity to develop the research necessary to give Congress information it needs to make evidence-based policy decisions. For all intents and purposes, tax reform is the process by which policymakers will formally determine who wins and who loses under a revised Code. Given that current JCT estimates suggest that the small business tax expenditures overall will cost U.S. taxpayers in excess of \$270 billion under current law, policymakers and their voters are entitled to an accounting of which industries and which small businesses benefit most from those expenditures and why. They are, in fact, entitled to an accounting, rather than continuing to move forward destitute of vision.

FOOTNOTES

¹ However, soon after the release of the data, the Carter Administration acknowledged there were problems with both the age and methodology of the Census data, but nevertheless found the 1972 Census data a “valuable benchmark.” U.S. Dep’t of Commerce, Interagency Task Force on Women Bus. Owners, *The Bottom Line: Unequal Enterprise in America* (1978). A decade later, a U.S. Commerce Department report readily conceded that while the initial Census count likely underestimated the total number of women businesses owners, “all the data suggest that the typical woman-owned firm is a very small service or retail concern with low receipts and few employees.” U.S. Dep’t of Commerce, Office of the Sec’y, *Women and Business Ownership: An Annotated Bibliography* (1986), available at <https://babel.hathitrust.org/cgi/pt?id=umn.31951003078016s;view=1up;seq=3>.

² Burton I. Kaufman, *The Carter years* 273 (2006).

³ *The Bottom Line*, *supra* at n. 1. In addition, the Task Force would propose changes in the federal law and “advise as to impact, if any, of such changes on the federal budget.” *Id.* at 3.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* The 1978 Interagency Task Force Report concluded that women-owned firms were “much like most small businesses in being service-oriented and closely held, except they represent so small a portion of all business.” *Id.* at 32. Also, the Task Force found women-owned businesses were “clustered in industries that required low capitalization and were labor intensive, such as services and retail trade.” *Id.* at 30.

⁷ *Id.* at 3.

⁸ U.S. Dep’t of Treasury, *Credit and Capital Formation: A Report to the President’s Interagency Task Force on Women Business Owners* (1978) at v.

⁹ *Id.* at vi. In preparing this report, we interviewed the primary author of the 1978 Treasury Study, Teddy Watts, who after 40 years of government service, retired to start her own small business. During our interview, she told us that the 1978 Treasury Study drafting team had been assured by Treasury representatives that the tax code was gender neutral. Telephone Interview with Theodora K. Watts, author of the 1978 Treasury Report (May 15, 2017). When we informed Ms. Watts of the intent of this report to show the immediate need for additional research as women-owned firms remained predominately small businesses in services industries, she told our team, “you’ve convinced me.” *Id.*

¹⁰ *Credit and Capital Formation*, *supra* at n. 8 at 86. This 1978 Treasury Study also noted that when tax policies “related to increasing the amount of venture capital are addressed [in this report], we will see that men would, again, be the major beneficiaries because so few women have sufficient capital to make such investments.” *Id.*

¹¹ U.S. Census Bureau, 2012 Survey of Business Owners and Self-Employed Persons (SBO) Methodology, available at <https://www.census.gov/programs-surveys/sbo/technical-documentation/methodology.html>.

¹² *2016 State of Women-Owned Business Report 2016: A Summary of Important Trends, 2007-2016*, American Express OPEN, Womenable (2016), <http://www.womenable.com/70/the-state-of-women-owned-businesses-in-the-u.s>. The 2016 State of WOB Report is the sixth annual report on the state of women’s business ownership. The report was commissioned by American Express Open and prepared by Womenable and its recently-deceased President and CEO, Julie Weeks, who served as the U.S. Small Business Administration’s Deputy Chief Counsel for Statistics and Research (1990 to 1993), and Executive Director of the National Women’s Business Council (2002-2005). The 2016 State of WOB Report developed its 2016 estimates using data from the Census quinquennial 2012 SBO, and factoring in Gross Domestic Product (GDP) data from the Census Bureau of Economic Analysis. Census released the most recent data from the 2012 SBO on women business ownership in December 2015. U.S. Census Bureau, *Number of Minority – and Women-Owned Firms on the Rise*, <https://www.census.gov/newsroom/press-releases/2015/cb15-209.html>. Throughout this report, we sometimes rely on the 2016 State of WOB Report data as indicative of the most current, existing data available and reflective of the overall extraordinary growth of women-owned firms since they were first counted in the 1970s.

¹³ See, e.g., Equal Credit Opportunity Act of 1974, Pub. L. No. 93-495 (outlawed discrimination in granting credit based on sex or marital status); Women’s Business Ownership Act of 1988, Pub. L. No. 100-533 (supported women small business ownership and established the National Women’s Business Council); Women’s Business Development Act of 1991, Pub. L. No. 102-191 (supported women-owned business with federal contracting and women’s business centers); Women’s Business Centers Sustainability Act of 1999, Pub. L. No. 106-165 (supported women-owned businesses federal contracting and reauthorized Women’s Business Program); SBA Reauthorization Act of 2000, Pub. L. No. 106-544 (authorized the Women-Owned Small Business Federal Contract Assistance Program, which is a set-aside program for women-owned businesses for federal contracts); and Small Business Jobs Act of 2010, Pub. L. No. 111-240 (supported women’s business centers).

¹⁴ See, e.g., Miscellaneous Revenue Act of 1980, Pub. L. No. 96-605 (allowed taxpayers to amortize startup costs over a period of 5 years); Economic Recovery Tax Act of 1981, Pub. L. No. 85-866 (replaced the 1958 small business expensing provision with a \$5,000 maximum spending allowance); Tax Reform Act of 1986, Pub. L. No. 99-514 (comprehensively overhauling the U.S. tax code for the first time since 1954); Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66 (raised small business expensing allowance to \$17,500 and established capital gains exclusion for investments into qualified small business manufacturing corporations); American Jobs Creation Act of 2004, Pub. L. No. 108-357 (allowed taxpayers to deduct up to \$5,000 in startup costs in the year the business begins); 2010 Small Business Jobs Act, Pub. L. No. 111-240 (increased the expensing limits for Sec. 179; temporarily increased the amount of startup costs a taxpayer could deduct from \$5,000 to \$10,000; temporarily increased to 100% the exclusion from tax the capital gains from investments into qualified small business stock under Sec. 1202); and Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113 (made permanent 100% exclusion from tax the capital gains from investments into qualified small business stock under Sec. 1202). For summary descriptions, impact and legislative history on small business tax and other tax expenditures, see Congressional Research Service, *Tax Expenditures: Compendium of Background Material on Individual Provisions* (Dec. 2016), available at <https://www.gpo.gov/fdsys/pkg/CPRT-114SPRT24030/pdf/CPRT-114SPRT24030.pdf>.

¹⁵ JCT regularly prepares estimates of tax expenditures that have a greater than *de minimis* (i.e., more than \$50 million of revenue loss) impact on the federal budget for use by the Congressional tax-writing and budget committees. Joint Committee on Taxation, *Estimates of Federal Tax Expenditures For Fiscal Years 2016-2020*, JCX 18-10 (Jan. 30, 2017), available at <https://www.jct.gov/publications.html?func=startdown&id=4971> (setting forth estimates for 2016-2020 for the following small business tax expenditures: 1) small firm expensing (IRC § 179); 2) amortization of startup costs (IRC § 195); 3) graduated corporate income tax rates; 4) exclusions from gains of certain qualified small business stock (IRC § 1202). The foregoing total approximately \$271 billion. *Id.* Our report does not assess the impact of graduated corporate income tax rates on women-owned firms as that provision does not meet the criteria we developed and describe in the methodology section *infra*. However, in conducting research on the effectiveness of small business tax incentives generally, we identified research that reviews the history of graduated corporate tax rates and cites work critical of maintaining them as a small business incentive. See Steven A. Bank, *Taxing Bigness*, 66 *Tax. L. Rev.* 379 (2013). (citing Marty Sullivan's view that graduated corporate tax rates have no economic justification except as a poorly targeted benefit for small businesses).

¹⁶ Congress has acted to address some tax issues affecting women business owners, including the elimination of the "widow's tax," in 1981, which was deemed to disproportionately impact women who jointly owned their businesses with their spouses. See *Women and Business Ownership: An Annotated Bibliography*, *supra* note 1 at p. 46-47.

¹⁷ See Gary Guenther, Cong. Research Service, *Small Business Tax Benefits: Current Law and Main Arguments For and Against Them*, RL 32254 (2013) (listing the federal tax benefits for small businesses "with the broadest reach outside of agriculture"). In addition, we relied on the institutional knowledge derived from the author's prior experience developing small business tax legislation while serving on the staff of the U.S. Senate Committee for Small Business and Entrepreneurship from 2009-2014.

¹⁸ JCX 18-10, *supra* n. 15 at 2. For more on the history of tax expenditure analysis, see Anthony C. Infanti, *A Tax Crit Identity Crisis? Or Tax Expenditure Analysis, Deconstruction, and the Rethinking of a Collective Identity*, 26 *Whittier L. Rev.* 707 (2005).

¹⁹ The Code includes a number of small business tax expenditures for which official cost estimates were either not available (e.g., rollover of certain gains into specialized small business investment companies, simplified dollar-value LIFO accounting, tax credit for pension plan startup expenses, exemption of small C corporations from the alternative minimum tax), or which have been recent additions for which no publicly available tax data is available (i.e., the expansion of the R&D tax credit to small firms by allowing them to claim the credit against payroll taxes). Guenther, Cong. Research Serv., *supra* n. 17. Revenue losses are a key factor Congress relies on in determining the effectiveness of a tax expenditure and "also may be useful in determining the relative merits of achieving specific public goals through tax benefits or direct outlays...[i]t is appropriate to evaluate tax expenditures with respect to cost, distributional consequences, alternative means of provision, and economic effects and to allow policymakers to evaluate the tradeoffs among these and other potentially competing policy goals." JCX 18-10, *supra* n. 15 at 2.

²⁰ JCX 18-10, *supra* n. 15 at 33.

²¹ While acknowledging Section 1244 is a tax expenditure, JCT estimates its revenue loss will be less than \$50 million over the next 5 years and doesn't include a specific estimate in its most recent publication on tax expenditures. JCX 18-10, *supra* n. 15. Treasury's revenue loss estimate cited in this report is included in the President's annual budget request in a table showing the revenue effects of certain tax expenditures generated by Treasury's Office of Tax Analysis. According to table 14-1 in the Analytical Perspectives volume from the FY-2017 budget request. See <https://www.treasury.gov/resource-center/tax-policy/Documents/Tax-Expenditures-FY2018.pdf>. For information on how Treasury estimates differ from JCT estimates, see JCX 18-10 *supra* n. 15.

²² JCX 18-10, *supra* n. 15 at 32.

²³ *Id.*

²⁴ In conducting this research, we reviewed legislative calendars prepared by the tax-writing committees to identify full-committee hearings from the 99th Congress through the 114th Congress. Where it was not possible to access a legislative calendar, we reviewed the tax-writing committees' reports summarizing their legislative activities. Under this methodology, we identified 1,274 full-committee hearings over 1,521 days, none of which were held specifically for assessing the impact of small business tax expenditures on women-owned firms. With respect to the U.S. House of Representatives Ways & Means (W&M) Committee activities, we independently confirmed our findings during an in person interview with Janice Mays, former Staff Director and Chief Counsel, who served on W&M from 1975 until 2015. In person interview with Janice Mays, Former Staff Director and Chief Counsel, House of Representatives Committee on Ways and Means (May 12, 2017).

²⁵ See, e.g., *Fundamental Tax Reform: Hearing Before the Committee on Ways and Means*, 106th Cong. (2000) (Testimony of Patricia M. Soldano). See also, *Small Business Taxation Proposals: Hearing Before the Subcommittee on Taxation and IRS Oversight of the Committee on Finance*, 105th Cong. (June 5, 1997) (Unofficial transcript, where found) Sen. Bond, Chair of the U.S. Senate Small Business Committee, testifying that "a majority of home-based businesses are owned by women and SBA estimates that women are starting over 300,000 new home-based businesses each year." Congress enacted the home office deduction in 1976. See Staff of S. Joint Comm on Taxation, 94th Cong., Joint Committee Blue Book Tax Legislation Enacted in the 94th Congress (1976), available at <http://www.jct.gov/s-31-76.pdf>.

²⁶ 2017 WIPP/Kogod Survey of Women-Owned Firms (April 2017) (unpublished raw survey data, WIPP and its coalition members). We conducted the survey March 9, 2017 through April 11, 2017, through email invitation sent to members by WIPP. We received 515 completed responses from the approximately 550,000 WIPP and coalition partner members who were invited to participate in the survey.

²⁷ Keep in mind, the 1977 Census reported that 75% of all women-owned firms were concentrated in the services and retail trade sectors. *Women and Business Ownership: An Annotated Bibliography*, *supra* n. 1 at 8.

²⁸ See Census, *Number of Minority - and Women-Owned Firms on the Rise*, *supra* n. 12.

²⁹ *Id.*

³⁰ 2016 *State of Women-Owned Business Report 2016*, *supra* n. 12 at 3.

³¹ *Id.* at 5.

³² *Id.* at 3.

³³ U.S. Gov't Accountability Office, *Small Businesses: IRS Considers Taxpayer Burden in Tax Administration, but Needs a Plan to Evaluate the Use of Payment Card Information for Compliance Efforts*, GAO-15-513 (June 30, 2015) <http://gao.gov/products/GAO-15-513>. See also, U.S. Gov't Accountability Office, *Tax Policy: Differences in Definitions and Rules in the Tax Code*, GAO-14-652R (July 8, 2014) <http://gao.gov/products/GAO-14-652R>. See also, Mirit Eyal-Cohen, *Downsizing the "Little Guy" Myth in Legal Definitions*, 98 Iowa L. Rev. 1041 (2013) (analyzing the varying definitions of "small business" for legal purposes and the policy considerations behind them).

³⁴ GAO-14-652R, *supra* n. 33. In May 2017, SBA's Office of Advocacy released a report finding that 99.9% of women owned firms are small businesses using the definition of "small business" as one that has 500 or fewer employees. Michael J. McManus, *Issue Brief Number 13: Women's Business Ownership: Data from the 2012 Survey of Business Owners*, Office of Advocacy, U.S. Small Business Administration (May 31, 2017), available at <https://www.sba.gov/sites/default/files/advocacy/Womens-Business-Ownership-in-the-US.pdf>.

³⁵ GAO-15-513, *supra* n. 33 at 6-7. GAO began its analysis with identifying what groups of taxpayers were small businesses, using two distinct litmus tests developed by Treasury's Office of Tax Analysis in 2011 as a more "nuanced approach to identifying small businesses." *Id.* Each of these tests had specific income thresholds that a business return would first have to meet. Under the *De Minimis Test*, total income or deductions would need to exceed \$10,000 or their sum exceed \$15,000, and under the *Business Activities Test*, total deductions should exceed \$5,000 in order for a return to be counted as a small business. In developing this approach, OTA focused on incorporating income thresholds to ensure that misclassified employees and non-business income, or hobby income, were excluded in the methodology. Office of Tax Analysis, *OTA Technical Paper No. 4, Methodology to Identify Small Businesses and Their Owners* (Aug. 8, 2011), available at <https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/OTA-TP-4.pdf>.

³⁶ GAO-15-513, *supra* n. 33 at 6 (noting that 31% of small businesses (or roughly 7.3 million) are partnerships, S corporations, or C corporations that earn \$4.5 trillion of total small business income).

³⁷ SBA's Office of Advocacy has published research on the growth of women as sole proprietors. In fact, a 2005 SBA study reviewed growth rate trends of sole proprietors in terms of gender 1985 to 2000, using datasets tabulated for SBA by IRS, and found women-owned sole proprietorships grew at a faster rate than their male peers, but that women comprised a significantly smaller percentage of total business ownership, receipts and net income for all sole proprietorships. Dr. Ying Lowrey, *U.S. Sole Proprietorships: A Gender Comparison from 1985-2000*, SBA Office of Advocacy (2005) <https://www.irs.gov/pub/irs-soi/00solprop.pdf>.

³⁸ See *Census Number of Minority - and Women-Owned Firms on the Rise*, *supra* n. 12. This data is in sharp contrast to the data we collected from the respondents to our 2017 WIPP/Kogod Survey. In fact, for 2016, 26% of our survey respondents had gross revenue in excess of \$2 million; 20% had gross revenue between \$500,000 to under \$2 million; 22% had gross revenue between \$100,000 to under \$500,000; and only 33% of our respondents had gross revenues under \$100,000. 2017 WIPP/Kogod Survey of Women-Owned Firms, *supra* n. 26 (Question 21).

³⁹ Data and Table-1, *infra*, courtesy of research division of National Women's Business Council derived from Census 2012 SBO data (the "NWBC Table"). On file with author.

⁴⁰ 2017 WIPP/Kogod Survey of Women-Owned Firms, *supra* n. 26 (Question 12 & Question 18). We also had three respondents who indicated that they had more than 500 employees at the end of 2016.

⁴¹ *Id.* (Question 18).

⁴² Email from SBA Office of Advocacy in response to official FOIA request. (On file with author). In addition, women own 9% of all employer construction businesses and 15% of employer manufacturing businesses. *Id.* See also, McManus, *Issue Brief Number 13: Women's Business Ownership*, *supra* n. 34.

⁴³ *2016 State of Women-Owned Business Report 2016*, *supra* n. 12 at 8.

⁴⁴ 2017 WIPP/Kogod Survey of Women-Owned Firms, *supra* n. 26 (Question 3).

⁴⁵ We did identify a report from 2001 that included data on the legal form of women-owned firms derived from Census data and authored by Center for Women's Business Research. *A Compendium of National Statistics on Women-owned Businesses in the U.S.: Executive Summary and Data Report*. Washington, DC: Center for Women's Business Research, (2001) <https://www.nwbc.gov/sites/default/files/compendi.pdf>. (finding 85% of majority-owned, privately-held women-owned firms to be sole proprietorships, while 6% of women-owned firms were c-corporations and 6% were subchapter S corporations). This kind of data could shed light on how many women-owned firms are potentially eligible for small business tax expenditures as described *infra* Part II.

⁴⁶ Request to SBA Office of Advocacy dated May 18, 2017; Request to IRS dated May 22, 2017. Email requests and responses on file with author.

⁴⁷ *Frequently Asked Questions about Small Business*, Small Business Association Office of Advocacy (June 2016), https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf. The IRS research division, the Statistics of Income (SOI), does provide research on women-owned sole proprietors and as of 2014, counted 11.7 million women-owned firms in 2014 using taxpayer data. However, "SOI does not have these data for the other forms of businesses. For sole proprietors, for Tax Year 2014...an estimated 42.6 percent of the total 27.6 million sole prop businesses were owned by women. That percentage amounts to about 11.7 million women-owned sole prop businesses." Email from IRS dated May 22, 2017, responding to inquiry from Congressional staff. Email request and response on file with author.

⁴⁸ *Frequently Asked Questions about Small Business*, *supra* n. 53. SBA has recognized the relevancy of this data and has funded tax research on the effective tax rates for small businesses derived from SOI Public Use files. See also Quantria Strategies, LLC, *Effective Federal Income Tax Rates Faced By Small Businesses in the United States*, U.S. Small Business Office of Advocacy (2009), <https://www.sba.gov/sites/default/files/advocacy/rs343tot.pdf>. This small business tax research does not consider effective tax rates for women-owned firms, although it does look at the effective tax rates of service industries generally. When we contacted the authors of this research, they indicated they could develop alternative research specific to women-owned firms.

⁴⁹ Albert N. Link & Derek R. Strong, *Gender and Entrepreneurship: An Annotated Bibliography*, 12 *Foundations and Trends in Entrepreneurship* 287-441, 287-441 (2016). (covering the literature from 1979 through 2016); Patricia G. Green et al., *Women Entrepreneurs: Moving Front and Center: An Overview of Research and Theory*, Patricia G. Greene, University of Missouri - Kansas City Myra M. Hart, Harvard Business School Elizabeth J. Gatewood, Indiana University, Candida G. Brush, Boston University, Nancy C. Carpenter, University of St. Thomas (2003). Jennings, Jennifer, and Candida Brush. *Research on Women Entrepreneurs: Challenges To (and From) the Broader Entrepreneurship Literature? Academy of Management Annals* (2013).

⁵⁰ NWBC Data, *supra* n. 39.

⁵¹ *Id.* NWBC provided a separate table on receipts of men-owned firms derived from 2012 Census data. On file with author.

⁵² 2016 State of Women-Owned Business Report 2016, *supra* n. 12 at 6.

⁵³ Census, *Number of Minority – and Women-Owned Firms on the Rise*, *supra* n. 12; 2016 State of Women-Owned Business Report, *supra* n. 12 at 3.

⁵⁴ McManus, *Issue Brief Number 13: Women's Business Ownership: Data from the 2012 Survey of Business Owners*, *supra* n. 34 at 13.

⁵⁵ See e.g., Susan Coleman & Alicia, *Access to Capital by High-Growth Women-Owned Businesses*, National Women's Business Council, (2014), available at [https://www.nwbc.gov/sites/default/files/Access%20to%20Capital%20by%20High%20Growth%20Women-Owned%20Businesses%20\(Robb\)%20-%20Final%20Draft.pdf](https://www.nwbc.gov/sites/default/files/Access%20to%20Capital%20by%20High%20Growth%20Women-Owned%20Businesses%20(Robb)%20-%20Final%20Draft.pdf).

⁵⁶ See e.g., National Women's Business Council, *A compendium of National Statistics on Women-Owned Businesses in the U.S.: Executive Summary and Data* (1994), <https://permanent.access.gpo.gov/lps77240/StatisticsCompendium.1994.pdf>. Center for Women's Business Research, *A Compendium of National Statistics on Women-Owned Business in the U.S.* (2001), <https://www.nwbc.gov/sites/default/files/compendi.pdf>. For the leading comprehensive analysis of venture capital investments in women entrepreneurs since 1999, see Candida G Brush et al., *Diana Report: Women Entrepreneurs 2014: Bridging the Gender Gap in Venture Capital* (2014), <http://www.babson.edu/Academics/centers/blank-center/global-research/diana/Documents/diana-project-executive-summary-2014.pdf>.

⁵⁷ *Women and Business Ownership: An Annotated Bibliography*, *supra* n. 1 at 19 (citing, Patricia McNamara, *Business Ownership: A New Career Option for Women*, *New Directions for Education, Work and Careers* 71-82 (1979)).

⁵⁸ National Women's Business Council, *Problem: Women Entrepreneurs Need Greater Access to Capital* (2015), <https://www.nwbc.gov/sites/default/files/gettingtosuccess.pdf>. Some research has explored why women are less likely to apply for business loans and concluded that women business owners, "seem to follow a 'vicious cycle' of circular reasoning: they tend to start a smaller firm in one of the less profitable and less growth-oriented industries, both of which are reasons for loan denial. Once their application for a loan has been rejected, they remain discouraged from applying for a future loan; their firms stay smaller, have less cash flow, and thus have fewer growth opportunities." Naranchimeg Mijid, *Why are Female Small Business Owners in the United States Less Likely to Apply for Bank Loans than their Male Counterparts* (2014), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2381302. See also, Naranchimeg Mijid, *Dynamics of Female-Owned Smallest Businesses in the U.S.*, *Int'l Journal of Gend. & Entrepreneurship*, 9(2) (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2933258 (finding that women-owned firms have a demonstrably lower rate of loan approval and that "minority women owners face a double burden.").

⁵⁹ Susan Coleman & Alicia Robb, *Access to Capital by High-Growth Women-Owned Businesses*, *supra* n. 55 at 7.

⁶⁰ Staff of S. Comm. on Small Bus. and Entrepreneurship, Majority Rep. of the U.S. Sen. Comm. on Small Bus. and Entrepreneurship, *21st Century Barriers to Women's Entrepreneurship* (2014), available at https://www.sbc.senate.gov/public/?a=Files.Serve&File_id=3f954386-f16b-48d2-86ad-698a75e33cc4.

⁶¹ *Id.* at 2.

⁶² *Id.* at 16.

⁶³ However, legal scholars beginning with Grace Blumberg and including: Anne Alstott, Dorothy Brown, Bridget Crawford, Anthony Infanti, Carolyn C. Jones, Marjorie Kornhauser, and Nancy Staudt to name only some, have developed research analyzing "what impact the tax laws have on historically disempowered groups." Anthony C. Infanti & Bridget J. Crawford, *Critical Tax Theory: An Introduction* (2009), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1333799#. Other work has been done to review the gender implications of specific federal tax code provisions regarding social security taxes, estate and gift taxes, the earned income tax credit, the dependent care tax credit, the evolution of joint returns and women as secondary wage-income earners. See e.g., Edward J. McCaffery, *Taxing Women*, University of Chicago Press (2000); *Women and Business Ownership: An Annotated Bibliography*, *supra* n. 1 at 48. Other legal scholars have focused on Congress' ability to legislate gender equality in the wake of the failure to ratify the Equal Rights Amendment. Patricia A. Seith, *Congressional Power to Effect Sex Equality*, 36 *Hav. J.L. & Gender* 1 (2013). Still other work has looked at gender implications of U.S. Supreme Court decisions as well as overall implications of gender and public policy. See e.g., Michele Gilman, *En-gendering Economic Inequality*, 32 *Colum. J. of Gender & L.* (2016); Mary Lou Kendrigan, *Gender Differences: Their Impact on Public Policy*, Greenwood Press (1991). More recently, in May 2017, JCT noted in a report to the House Ways & Means Committee that the economic literature on tax rates on wages of married women can influence the hours they work. Joint Committee on Taxation, *Economic Growth and Tax Policy*, JCX-19-17, (2017), available at <https://www.jct.gov/publications.html?func=startdown&id=4992>.

⁶⁴ See e.g., Guenther, Cong. Research Serv., *supra* n. 17. Ronald F. Wilson, *Federal Tax Policy: The Political Influence of American Small Business*, 37 *S. Tex. L. Rev.* 15 (1996) (reviewing problems of using tax policy to favor small businesses); Victor Fleischer, *The Rational Exuberance of Structuring Venture Capital Start-Ups*, 57 *Tax. L. Rev.* 137 (2003); Mirit Eyal-Cohen, *When American Small Business Hit the Jackpot*, 6 *Pitt. Tax Rev.* 1 (2008) (analyzing the history behind Congress' addition of Subchapter S to the Internal Revenue Code of 1954); Rafael Efrat, *The Tax Burden and the Propensity of Small-Business Entrepreneurs to File for Bankruptcy*, 4 *Hastings Bus. L. J.* 175 (2008) (confirming the prevalence of tax problems as a cause of bankruptcies of entrepreneurs and noting future research might consider the extent and type of tax debts of bankruptcy filers). Mirit Eyal-Cohen, *Why is Small Business the Chief Business of Congress?*, 43 *Rutgers L. J.* 1 (2012) (reviewing the legislative history and effectiveness of the Small Business Investment Company Program); Martin A. Sullivan, *When Should Small Businesses Get a Tax Break?*, *Tax Analysts* (Jan. 16, 2012) <http://www.taxhistory.org/www/features.nsf/Articles/204464B18298173C85257988005BFB99?OpenDocument> (debunking myths about small business' contributions to the economy and identifying reasons to provide small business tax incentives); William G. Gale & Samuel Brown, *Small Business, Innovation and Tax Policy: A Review*, Brookings Institution (2013), available at <https://www.brookings.edu/research/small-business-innovation-and-tax-policy-a-review> (describing some small business tax incentives and ultimately concluding that more research is needed to understand "the distinctions of small business v. entrepreneurial business and to understand the impact of taxes and other policies, on start-up, financing, investment, and organizational form of entrepreneurial enterprises); Joseph Rosenberg & Donald Marron, *Tax Policy and Investment by Startups and Innovative Firms*, Tax Policy Center (2015), available at <http://www.taxpolicycenter.org/publications/tax-policy-and-investment-startups-and-innovative-firms/full>; Len Burman & John Iselin, *Tax Compliance Costs and Business Formation*, *New Entrepreneurial Growth Agenda*, Kauffman Foundation (2016), available at <http://www.kauffman.org/neg/section-7#taxcompliancecostsandbusinessformation>.

⁶⁵ Cong. Research Serv., *Tax Expenditures Compendium* *supra* n. 14 at 526. "For QSBS acquired between Aug. 11, 1993 and Feb. 17, 2009, 50% of any gain on its sale could be excluded. The exclusion percentage rose to 75% for QSBS acquired from February 18, 2009 to Sept. 27, 2010." *Id.* A specialized small business investment company (SSIBC) licensed by the SBA may also qualify to issue QSBS. *Id.*

⁶⁶ David B. Strong, *Section 1202 Qualified Small Business Stock*, Morrison Foerster (2011), available at <https://media2.mfo.com/documents/110811-section-1202-qualified-small-business-stock.pdf>.

⁶⁷ §1202(e)(7) provides that "the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business."

⁶⁸ IRC §1202(e)(3). See also, Internal Revenue Service, *Investment Income and Expenses*, Publication 550 (2016), available at https://www.irs.gov/publications/p550/ch04.html#en_US_2016_publink100010688.

⁶⁹ IRC §1202(e)(3).

⁷⁰ John Pagila & David Robinson, *Measuring the Representation of Women and Minorities in the SBIC Program*, Small Business Administration (2016), available at <https://www.sba.gov/sites/default/files/SBIC-Diversity-Report.pdf>.

⁷¹ *Id.*

⁷² H.Rep. 103-111, at 600 (1993), available at <https://www.gpo.gov/dfs/pkg/BILLS-103hr2264rh/pdf/BILLS-103hr2264rh.pdf>.

⁷³ Beckett G. Cantley, *The New Section 1202 Tax-Free Business Sale: Congress Rewards Small Businesses that Survived the Great Recession*, 17 Fordham J. of Corp. & Financial Law 1127 (2012) (citing Vic Fleisher's work finding that subsequent enhancements to § 1202 were intended to encourage investment in certain new C corporation ventures and small businesses).

⁷⁴ Cong. Research Serv., *Tax Expenditures Compendium*, *supra* n. 14 at 529.

⁷⁵ *Id.* at 527. See also, Cantley, *supra* n. 73 (citing Vic Fleisher's work finding that subsequent enhancements to Sec. 1202 were intended to encourage investment in certain new C corporation ventures and small businesses).

⁷⁶ Cantley, *supra* n. 73. Although President Clinton signed Section 1202 into law in 1993, "the provision owes its existence to the efforts of another Arkansas Democrat, then-Senator Dale Bumpers, who chaired the Senate's Small Business Committee." Alan D. Viard, *The Misdirected Debate and the Small Business Stock Exclusion*, Tax Notes, Feb. 6. 2012.

⁷⁷ Cong. Research Serv., *Tax Expenditures Compendium*, *supra* n. 14 at 528.

⁷⁸ JCT, General Explanation of Tax Legislation Enacted in the 111th Congress, JCS-2-11 (2011) at 464, available at <https://www.jct.gov/publications.html?func=startdown&id=3775>.

⁷⁹ PATH Act, P.L. 114-113.

⁸⁰ Cong. Research Serv., *Tax Expenditures Compendium*, *supra* n. 14 at 530.

⁸¹ See, e.g., Viard, *supra* n. 76. In his article, Viard reiterates his view that, "targeting particular sectors for tax relief tilts the economic playing field and misallocates economic resources, unless the targeted sector is initially taxed more heavily than others, in which case the targeting actually helps level the playing field." *Id.*

⁸² 2017 WIPP/Kogod Survey of Women-Owned Firms, *supra* n. 26. We designed this survey question to specifically track the language of the industries excluded by §1202.

⁸³ *Id.* (Question 3).

⁸⁴ Email request made via Congressional staff; IRS response dated May 9, 2017. Request and response on file with author. Treasury has yet to issue guidance on regulations on the reporting requirements for Section 1202. See e.g., Strong, *Section 1202 Qualified Small Business Stock*, *supra* n. 66 at 13.

⁸⁵ *Id.*

⁸⁶ Despite our findings in this report, we expect that there have been multiple, if not thousands, of women-owned firms who have benefited from §1202. In addition, it could very well be that Congressional small business committee reports include testimony with anecdotal evidence of other women-owned corporations who have used §1202 to attract investment.

⁸⁷ Recent work has been dedicated to reviewing the ability to use §1202 and §1244 to solicit crowdfunding following the Jumpstart Our Business Startups (JOBS) Act of 2012 (P.L. 112-106). Nancy B. Nichols & Blaise M. Sonner, *Regulation Crowdfunding and Investor Taxation*, *Tax Analysts* (2017), available at <http://www.taxnotes.com/tax-notes/corporate-taxation/regulation-crowdfunding-and-investor-taxation/2017/03/06/r3xq?highlight=Section%2B1244#3> (last visited May 17, 2017). (Nichols & Sonner). This could have implications for increasing the overall cost of these expenditures to taxpayers and is yet another reason why immediate research on the effectiveness of the provision is warranted.

⁸⁸ See Joint Committee on Internal Revenue Taxation, Summary of Small Business Tax Revision Bill of 1958, JCT-1-58 (1958), available at <https://www.jct.gov/publications.html?func=startdown&id=4191> (noting the provision was not intended to result in any revenue loss).

⁸⁹ *Id.*

⁹⁰ IRC § 1211.

⁹¹ IRC § 1244. See also, Nichols & Sonner, *supra* n. 87 (reviewing the rules for Section 1244 with respect to crowdfunding and noting that a "domestic corporation includes an association taxable as a corporation" and that stock in both C and S corporations qualifies for Section 1244 purposes but "the benefit for S corporation shareholders is reduced because of the passthrough of losses.").

⁹² JCT, *Present Law and Background Information Related to the Taxation of Capital Gains*, JCX-72-12 (September 14, 2012), available at <https://www.jct.gov/publications.html?func=startdown&id=4485>.

⁹³ Gregory J. Naples, *Section 1244 - Small Business Stock Losses: A Reacquaintance that Will Survive Tax Reform and a Proposal for Change*, 71 Marq. L. Rev. 283 (1988) at 286.

⁹⁴ *Id.*

⁹⁵ *Id.* at footnote 3 (citing H.R. Rep. No. 2198, 85th Cong., 1st Sess. (1958) and quoting that report's commentary on the rationale for Section 1244).

⁹⁶ Nichols & Sonner, *supra* n. 87.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Email request made via Congressional staff to IRS Congressional liaison. IRS email response dated May 9, 2017. Request and response on file with author.

¹⁰⁰ § 179.

¹⁰¹ Small Business Tax Revision Act of 1958 (P.L. 85-866).

¹⁰² Cong. Research Serv., *Tax Expenditures Compendium*, *supra* n. 14 at 453.

¹⁰³ *Id.* at 454. For more information on the history of §179, see Mirit Eyal-Cohen, *Lessons in Cyclical Fiscal Activism*, 48 Conn. L Review 873 (2016).

¹⁰⁴ JCT, General Explanation of Tax Legislation Enacted in the 111th Congress, *supra* n. 78 at 41.

¹⁰⁵ John Kitchen Matthew Knittel, *Business Use of Section 179 Expensing and Bonus Depreciation, 2002-2014 Working Paper 110*, Office of Tax Analysis (2016), available at <https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/WP-110.pdf>.

¹⁰⁶ *Id.* at 1.

¹⁰⁷ Email request made via Congressional staff to IRS Congressional liaison. IRS email response dated May 9, 2017 on file with author. We separately confirmed this with conversations with Treasury's Office of Tax Analysis.

¹⁰⁸ Don Bruce, John Deskins & Tami Gurley-Calvez, *Depreciation Rules and Small Business Longevity*, 3 Journal of Entrepreneurship and Public Policy 10, at 26 (2014). *But see*, Kyle Pomerleau, *Full Expensing Spurs More Investment than a Corporate Rate Tax Foundation* (2017), <https://taxfoundation.org/full-expensing-corporate-rate-investment> (arguing that full expensing may be preferable to tax cuts for larger firms).

¹⁰⁹ U.S. Senate Committee on Finance, *Summary of Staff Discussion Draft: Cost Recovery and Accounting* (Nov. 11, 2013), available at <https://www.finance.senate.gov/imo/media/doc/Chairman's%20Staff%20Discussion%20Draft%20on%20Cost%20Recovery%20and%20Accounting%20Summary1.pdf>. For more specific commentary on the draft, see Clint Strech, *Tax Reform: New Drafts and Old Lessons*, Tax Analysts (2013), available at <http://www.taxnotes.com/tax-notes-today/corporate-taxation/tax-reform-new-drafts-and-old-lessons/2013/12/09/f98m?highlight=small%2Bbusiness%22%2Band%2B%22service%2Bfirms%22> (noting the draft "illuminates the tension between firms with high effective tax rates (such as service firms and retailers) and those with lower rates driven by some combination of generous treatment of capital investment, production activity deductions, and research and development.").

¹¹⁰ IRC § 195; Cong. Research Serv., *Tax Expenditures Compendium*, *supra* n. 14 at 459.

¹¹¹ *Id.*

¹¹² *Id.* at 460.

¹¹³ Cong. Research Serv., *Tax Expenditures Compendium*, *supra* n. 14 at 460.

¹¹⁴ *Id.* at 461.

¹¹⁵ *Id.* See also American Jobs Creation Act of 2004 (P.L. 108-357).

¹¹⁶ JCT, General Explanation of Tax Legislation Enacted in the 111th Congress, *supra* n. 78 at 475.

¹¹⁷ Cong. Research Serv., *Tax Expenditures Compendium*, *supra* n. 14 at 462.

¹¹⁸ U.S. Dep't of Treasury, *Credit and Capital Formation*, *supra* n. 8.

¹¹⁹ During our review of more than 1,200 Congressional tax-writing committee full-committee hearings held since 1986, we were unable to identify a single hearing dedicated to assessing the impact of the small business tax expenditures with respect to women-owned firms. We did, however, review testimony from one small business owner, Joy Turner, who testified before the U.S. Senate Committee on Finance in 2001 and stated her view as to the state of women's business ownership at that time, "Although there were remarkable increases in the number of women and minority-owned firms in the last decade, their ability to compete is significantly reduced without improvements in fair and equitable contracting practices. Credit card use is higher than normal in these groups due to difficulty in securing financing and accessing capital." Testimony of Joy Turner before the U.S. Senate Committee on Finance, Preserving and Protecting Main Street U.S.A. (Mar. 28, 2001). We also found a testimony from an April 2016 Finance Committee hearing witness, who runs a family farm with her brothers and uses the Section 179 deduction. However, it is unclear from the hearing testimony whether the fourth-generation family farm run by the witness and her two brothers qualifies as a women-owned business (i.e., the testimony doesn't confirm that the witness owns 51% or more of the company). *Navigating Business Tax Reform: Hearing Before the U.S. Sen. Comm. On Finance*, 114th Cong. (April 26, 2016) (Testimony of Gayle Goschie).

¹²⁰ P.L. 114-140. "The mission of the Commission is to develop a strategy for increasing the availability and use of data in order to build evidence about government programs, while protecting privacy and confidentiality. Through the course of the Commission's work, members will study how data, research, and evaluation are currently used to build evidence, and how to strengthen the government's evidence-building efforts." *About Commission on Evidence-Based Policy Making*, U.S. Commission on Evidence-Based Policy Making, available at <https://www.cep.gov/about.html>.

¹²¹ *Tax is a Feminist Issue: Why National Budgets Need to Take Gender into Account*, The Economist (Feb. 23, 2017), available at <http://www.economist.com/news/finance-and-economics/21717404-designing-fiscal-policies-support-gender-equality-good-growth-why>.

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Prof. Bruckner is on the faculty of American University's Kogod School of Business and is the managing director of the Kogod Tax Policy Center, which researches tax issues specific to small businesses and entrepreneurs. In this capacity, she has testified before both Congressional small business committees as well as the IRS, and in 2016 authored, *Shortchanged: The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy*.

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