

Dear Laura,

I apologize for this email's length. You can get an idea of how fundamentally important the LLC tax is to me when you realize I composed it on a PDA.

As I see it, there are 5 fundamental problems with the LLC tax.

1. This tax is a poorly disguised INCOME TAX. Most LLC owners derive their primary income from their LLC. Worse yet, it is based on a "divide and conquer" strategy. By targeting a minority population and then likening their salary to unearned income, LLC (read small business) owners are both isolated and villified.

2. This tax is regressive (as are all flat rate taxes.) It starts with the first dollar earned. The day I found out about the LLC tax (my family's primary income), I had just told my daughter that we couldn't afford to buy her her school's team sweater. Yet now NH wants to reach in my pocket for hundreds of team sweatshirts. If I couldn't afford a \$25 sweater, you can imagine the impact of coming up with thousands of dollars. Let me see. I could cancel my health insurance. Oops! Can't do that--lost that back in 2000. How about heat? It's extravagantly set to 65 daytime and 60 at night. And there's our entertainment budget. Maybe I can retroactively not pay my restaurant bill from June 30th when I last took the entire family out for dinner. . .

3. This tax bill was passed without proper review. If the state legislature thought it was "fair" why was it kept so hush-hush while it was under review. No one in my very active circle knew about it until more or less the DAY of the tax's passing!

Major uninvestigated impacts of keeping the new LLC tax are huge:

A. I expect a significant loss of jobs (that \$30,000,000/yr has to come from somewhere and it isn't the pot of gold that LLC proponents would have the general public believe we small business owners are sitting on).

B Some small number of businesses that would have survived the recession will fold instead (loss of yet more jobs and the revenue those LLCs returned in the myriad of fees and taxes that all NH businesses pay.)

C. Some number of new businesses will either not get started or will open in a neighboring states as NH's business climate loses its competitive advantage. Two parts of the LLC tax will contribute. One is the straight forward economic cost. The other is the perceived unpredictability of the NH business climate caused by the willy-nilly passage of high impact legislation without proper research (public, private and governmental).

D. Finally, there is the mental suffering and agonizing that weighs on those who have to bear the unfair burden of this new tax. My children know more about business and government than the 6-13 year-old set should have to. The LLC tax is just another log on the blazing fire of the recession.

4. LLC tax is fundamentally unfair to small businesses in at least three ways:

A. It was passed retroactively so small business owners had no way to advance plan for its impact. It figures. This is the first year we took a substantial amount of money out of our business (downpayment on a house--before that 6 of us lived in a 700 square foot apartment above our business for 9 years);

B. It lowers the resale value of every LLC in NH. Value is based on return on investment. Functional ROI is dropped by 5%. You do the math.

C. It amounts to a double tax on small business income that other types of legal organization don't have and which we had reason to anticipate. We already pay all the taxes and fees required which were deemed "fair" until some clueless nitwit decided small business owners were "getting over."

5. It is based on major flawed assumptions:

A. Proponents liken llc income to unearned interest and dividends tax. All LLC owners I know work 60+ hrs/wk. LLC income is definitely earned income.

B Proponents act as though they believe LLCs (small business owners) are rich. Most of us take out just enough to live on. (Most years my family qualifies for NH Healthy Kids at the no co-pay level). Note that a tremendous percentage of small businesses fail within a few years of start up. I'm sure an additional tax

will go nowhere towards lowering that percentage.

C. It sets an extremely dangerous precedent for ALL businesses in NH. Businesses need a predictable climate in which to thrive. Passing major new taxes without public review and then daring to pass this new tax.

You are more than welcome to contact me at work or my cell at 603-616-9510. Unfortunately I will not be able to tune in tomorrow as I am volunteering with our elementary school's ski program.

Sincerely,

Lon Henderson

Dear Senator Gallus,

You've been into my business for the some the fundraisers we host on behalf of our neighbors, thank you! This is an extremely important issue for Nancy and me and I'd be happy to talk with you or your staff about it if that will help our case. Probably by the time the state gets done with defending it, it will have cost more in litigation than it will generate in income, much less the intangible cost of lost good will among small business owners towards our state government.

Thank you for your time,

Lon Henderson 616-9510 (cell) or 823-5522 (work)

**This was dated 13 Jan and was sent to every state Senator and Representative as well as Ray Burton. The few replies I received are below this.**

I am strongly opposed to the LLC Tax for the following 5 reasons:

1. *This tax is a poorly disguised **INCOME TAX**.* Most LLC owners derive their primary income from their LLC. Worse yet, it is based on a "divide and conquer" strategy. By targeting a minority population and then likening their salary to unearned income, LLC (read small business) owners are both isolated and villified.

2. *This tax is **regressive*** (as are all flat rate taxes.) It starts with the first dollar earned. The day I found out about the LLC tax (my family's primary income), I had just told my daughter that we couldn't afford to buy her her school's team sweater. Yet now NH wants to reach in my pocket for hundreds of team sweatshirts. If I couldn't afford a \$25 sweater, you can imagine the impact of coming up with thousands of dollars Let me see. I could cancel my health insurance. Oops! Can't do that--lost that back in 2000. How about heat? It's extravagantly set to 65 daytime and 60 at night. And there's our entertainment budget. Maybe I can retroactively not pay my restaurant bill from June 30th when I last took the entire family out for dinner. . .

3. *This tax bill was passed **without proper review**.* If the state legislature thought it was "fair" why was it kept so hush-hush while it was under review. No one in my very active circle knew about it until more or less the DAY of the tax's passing!

Major uninvestigated impacts of keeping the new LLC tax are huge:

A. I expect a significant loss of jobs (that \$20,000,000/yr has to come from somewhere and it isn't the pot of gold that LLC proponents would have the general public believe we small business owners are sitting on) (My own small business has cut full-time employees from 11 to 2 and part-time staff from about 30 to just 10!! Based on what we would have to pay, we will (and have) forfeited several part-time positions).

B Some small number of businesses that would have survived the recession will fold instead (loss of yet more jobs and the revenue those LLCs returned in the myriad of fees and taxes that all NH businesses pay.)

C. Some number of new businesses will either not get started or will open in a neighboring states as NH's business climate loses its competitive advantage. Two parts of the LLC tax will contribute. One is the

straight forward economic cost. The other is the perceived unpredictability of the NH business climate caused by the willy-nilly passage of high impact legislation without proper research (public, private and governmental). The so-called "loophole" was put there intentionally when LLCs were legally established because a) LLC owners would be paying their taxes by other means and b) to encourage small business in NH.

D. Finally, there is the mental suffering and agonizing that weighs on those who have to bear the unfair burden of this new tax. My children know more about business and government than the 6-13 year-old set should have to. The LLC tax, for my family, is just another log on the blazing fire of the recession. We're already having economic difficulties despite working 150+ hours week between the two of us (and being on call the remaining hours).

4. *LLC tax is **fundamentally unfair*** to small businesses in at least three ways:

A. It was **passed retroactively** so small business owners had no way to advance plan for its impact. It figures. This is the first year we took a substantial amount of money out of our business (downpayment on a house--before that 6 of us lived in a 700 square foot apartment above our business for 9 years);

B. It lowers the market value of every LLC in NH. Value is based on return on investment. Functional ROI is dropped by 5%. This amounts to huge double tax especially when the hugely complicated tax laws governing sale of a small business are accounted for (it is already common for small business owners to end up OWING money to the state and federal governments even if they sell a business for multiples of what they "paid" for it. Lowering the value of a business will only exacerbate this unfair tax policy. (Feel free to contact me for the very complex reasons why this is so).

C. LLC tax amounts to a double tax on small business income that other types of legal organization don't have and which we had reason to anticipate. We already pay all the taxes and fees required which were deemed "fair" until someone decided that NH's hardest working people were "getting over." LLC tax isn't closing a loophole—it's opening a pipeline to disaster.

5. *It is based on major **flawed assumptions**:*

A. Proponents liken llc income to *unearned* interest and dividends tax. All LLC owners I know work 60+ hrs/wk. *LLC income is definitely earned income.*

B Proponents act as though they believe LLCs (small business owners) are rich (Proponents often use the phrases like "protects personal *fortune*" etc when talking about LLCs. The vast majority of LLC owners take out just enough to live on—because that's all there is. (Most years my family qualifies for NH Healthy Kids at the no co-pay level). (Note that a tremendous percentage of small businesses fail within a few years of start up. I'm sure an additional tax will go nowhere towards lowering that percentage. Again, when LLCs were created, they were designed to give a small business owner a slightly better chance at succeeding as well as in protecting him or her from some of the risk involved in being self-employed. Even the smallest LLCs do more to more to help NH's bottom line than all but the wealthiest NH residents who work in other states.

C. It sets an extremely dangerous precedent for ALL businesses in NH. Businesses need a predictable climate in which to thrive. What other small groups and organizations will see themselves culled from the herd and targeted for new taxes or other discriminatory measures. Even those not immediately affected have to be concerned about this aspect of LLC tax law.

In summary, LLC law is a discriminatory income tax passed without proper review that amounts to using the bully arm of the state to steal money from its citizens.

You are more than welcome to contact me at work or my cell.

Sincerely,

Lon Henderson

Replies:

[Lou D'Allesandro](#)

Thank you for your email. Due to the increased volume of emails I am now receiving, it is no longer possible to respond to each one. If you are writing about a particular piece of legislation, please know that I review all of my emails and I appreciate your taking the time to contact me. The thoughts and opinions of my constituents are important to me and I will consider your input.

If you are writing to schedule a meeting, invite me to an event, or if you are in need of immediate assistance, please call my office at 271-2117.

Thank you again for your email.

Senator Lou D'Allesandro

District 20

[Maggie Hassan](#)

Thank you and I will consider your points carefully. However I will also tell you that the assumptions behind many of your points appear to me to be unfounded.

Thank you for writing.

Maggie

[John Gallus](#)

Lon, Appreciate your input as you can guess as a small business person I voted against the budget because of this and other taxes and fee increases. Also I am a co sponsor of 2 bills to repeal or reverse the damage including getting rid of the LLC tax.....Continue to contact your local reps who did vote for the budget. Best wishes...John Gallus

I also wrote Governor Lynch and received a form letter reply (I can't find my copy and his reply was hard-copied so not in my system. You'll see reference to it in my notes. Basically it said it closed a loophole, leveled the playing the field and it was easy to understand the rules. Ha! In other words, "get stuffed."

**Letter addressed to the Governor who on The Exchange which was partially broadcast yesterday (28 Jan 10) and my follow-on letter to the Governor written to him after his comments (certified mail this time).**

January 28, 2010

Dear Governor Lynch,

I listened with great interest and disappointment to your comments reference LLC Tax on *The Exchange* today. I have attached my emailed comments to Laura Knoy to edify my very direct comments below.

LLC tax is not "closing a loophole." It's adding a huge economic burden on LLC in direct cost and record keeping.

LLC is not "leveling the playing field." It's changing the rules after the fact—to the detriment of LLC owners and competitive benefit of non-LLC businesses.

LLC tax will hurt the business climate in NH. Businesses need a predictable political and economic climate to thrive. This is the opposite.

LLC tax will cost NH jobs. If for no other reason than I've got to increase my owner draw just to keep my salary constant, and that money has to come from "somewhere" and not the "loophole" gold mine you imply we're all sitting on.

Yep, interest and dividends tax has been here since 1923. But its application to LLCs is new – and 18 years after the fact – and retroactive. Saying it's old is like President Clinton saying he didn't inhale. Call it what it is--a new tax. Or bullying.

Sincerely,

Lon Henderson

PS: My wife and I already return \$2 in taxes and fees to NH and its subdivisions for every \$1 we pay ourselves—not including the Federal government and non-funded mandates.

My email to Laura Know at The Exchange:

Dear Governor Lynch,

I have read the new LLC tax law and it has more potential for legal challenge than any tax law I've ever seen.

LLC tax now includes "non-taxable income," income received even if an LLC had to increase debt to support its members, tax on profits received on sale of a business even if they had already been paid as LLC income and, of course, it's still a retroactive tax.

Other problems are that LLC members can earn less than poverty line income and still have to pay tax (once an LLC has more than one member, the exemption cap of \$50k/LLC brings LLC income per member below poverty line guidance), and the notion of fair compensation tied to the market value of a similar employee does not take into account that the LLC owner has invested capital and assumes the risk for failure.

Bottom line, the tax is wrong and almost everyone knows it's wrong. It's going to cost the state a fortune to defend the tax. It's going to undermine support for the Democratic party in the state. And it's going to cost the state lost jobs and revenue as small businesses form in neighboring states and those in-state cut staffing proportionately.

Do you have any intent of asking the House and Senate to revert back to the old, fairer, LLC tax law?

Thank you,

Lon Henderson

Dear Laura,

I have written every member of the House and Senate and the Governor's office on this issue. I only received 4 responses--my local Senator (John Gallus), Senator Bob Odell responded (we disagree, but I appreciate that he's kept me informed), Executive Council member Ray Burton and the Governor's office.

The Governor's response was a form letter stating "The intent of this change (LLC Tax Law) was to ensure all businesses entities (misspelling is his office's) were treated equitably and fairly under our tax laws regardless of whether the business was structured as a corporation or as an LLC."

It ignores the fact that the reason businesses chose their specific type of legal organization was not "to get over" as the letter and rhetoric implies, but because that particular structure gave them the best chance at success. It also ignores that many LLC owners derive their primary income from their LLCs and that, in effect, the tax is an income tax, just on a minority population.

There is so much that is wrong with this legislation that is beyond even the wonderful extended sound-byte world of public radio and although I write well, I get too wrapped up to speak clearly.

Hopefully when I tune in later for the re-broadcast I'll find some small part of my comments made your show.

Sincerely,

Lon Henderson

**My follow-on response to Laura was:**

Dear Laura,

Thanks for reading my comments. I tried to PDA a response, but the technology burped. Who knows when it'll leave the ether and visit your inbox.

What I wrote (summarized and fixed a little) was:

. . . I regret the Governor is trying to soft soap.

The loss of jobs has little to do with reinvestment. It has to do with keeping owner income constant or at as minimal a decline as possible. I expect to be liable for 3-5k in llc income (we are a family of 6, two with special needs (adoptees from China)). That money has to come from somewhere. I can't cut from my personal budget—we've already cut to the bone. So I have to take it from the business—which means cutting something. Because of the recession, all of the easy "somethings" have been done (and a lot of really hard ones too). Therefore, goodbye one part-timer—in addition to the positions we've cut due to the recession. (Here in the North Country, a lot of people including our staff cobble together a full-time living with part-time jobs, so this isn't a high schooler without pocket money, but a person with a family).

The Governor says the law is old. True but completely irrelevant, unless he's thinks we're all a lot more ignorant than we are. Because the application of the law is new, it is to those of affected, it's a new law.

Finally, he says it just "levels the playing field." Utter nonsense. When we organized, we chose our organization type because it made the most sense at the time, not because we "could get over." Others organized their businesses differently because that different organization best suited their needs. "Leveling the playing field is really just changing the rule—to the significant detriment of those affected and the advantage of those who chose non-LLC formats.

Businesses need a predictable legal and political climate to thrive. Changing the rule 18 years after the fact is not "closing a loophole." It's simply a money grab by a bully that should have every business and person in NH running scared.

It's really too bad. I think until LLC Tax came up, Governor Lynch has done an excellent job for the state, but I believe his remarks are duplicitous and disingenuous and greatly undermine his credibility.

I will be forwarding this to his office.

Sincerely,

Lon Henderson

PS: Irrelevant to the program, but I forgot to mention my gender unspecific name is, in my case, male.

BTW: Does LLC tax apply to PLLCs? (ie, his business?)

Thanks again,

Lon