BIOCOM

November 14, 2017

The Honorable Orrin Hatch
Chairman, Committee on Finance
United States Senate
104 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Ron Wyden
Ranking Member, Committee on Finance
United States Senate
107 Russell Senate Office Building
Washington, D.C. 20510

Re: Statement for the Record, Tax Cuts and Jobs Act Markup

Dear Chairman Hatch and Ranking Member Wyden:

Biocom represents the California life science ecosystem, which includes biopharmaceutical, medical device, genomics and diagnostics companies of all sizes, as well as research universities and institutes, clinical research organizations, investors and service providers. With almost 1,000 members dedicated to developing life-enhancing and life-saving treatments and cures for patients in need, Biocom leads advocacy efforts to positively influence the state's life science community in the development and delivery of innovative products.

In our mission of providing feedback and communication between legislators and industry, we write in response to the Tax Cuts and Jobs Act, legislation being marked up by the Committee this week. Biocom commends the Committee on drafting legislation that aims at reforming the tax code to make businesses more competitive at home and abroad, and create and support jobs throughout the country. Specifically, Biocom applauds the Committee for permanently reducing the corporate tax rate to 20 percent and moving the U.S. to a territorial tax system, which will help make companies more successful and attractive and level the playing field for both businesses and employees. We also applaud the Committee for retaining both the research and development (R&D) tax credit and the orphan drug tax credit (ODTC), which are essential to the sustainability and growth of California's innovation ecosystem by incentivizing investment in R&D and allowing companies to better plan for their development.

Biocom is very encouraged that the Committee acknowledged the value of the ODTC, contrary to its House counterpart, but we are concerned that the proposed limitations to the definition of qualified clinical testing expenses (expenses that exceed 50 percent of the average of such expenses for the three preceding taxable years) and eligible drugs (drugs previously used to treat other diseases if all diseases combined affect more than 200,000 people) would result in lower tax credits and affect our companies' ability to recoup their investments and undertake new R&D projects. Biocom suggests that the Committee revises the ODTC provision to eliminate the excess over the three year average and the 200,000 cap. We are amenable to reducing the rate to 40 percent and other changes to ensure that the ODTC remains as effective as in current law. With more than 7,000 rare diseases affecting more than 30 million Americans (one in 10) and only 305 with an approved treatment, a well-functioning ODTC remains a necessity to help companies develop rare disease products that would not otherwise be commercially feasible.

In addition, we are very concerned about a provision that would change how stock options offered to employees as part of a deferred compensation benefit are taxed. Taxing stock options when they are vested, rather than when they are exercised, would force employees to be taxed based upon a hypothetical compensation that's not yet accessible and could take years to become liquid (or never materialize into cash). As a result, it would bar businesses from offering this incentive program, turning an existing benefit into a liability. In the life science industry, small- and mid-size companies rely heavily on stock-based compensation to attract talent and compete with larger businesses which can usually provide better cash compensation. This provision would have devastating consequences for early-stage and startup companies, making it dramatically more difficult overnight to attract and retain talent. Biocom urges the Committee to eliminate this provision.

Lastly, we have concerns about the interest deductibility limitations proposed in the legislation, which would affect competitiveness, stifle innovation, and hamper future mergers and acquisitions which are critical to economic growth. To maintain global competitiveness and avoid significant harm to U.S. firms, a "thin cap" structure must allow unused interest expense to be carried forward indefinitely, be phased in over time, and have a high percentage of EBITDA limitation similar to existing U.S. 163(j) tax policy. In addition, the proposed worldwide interest limitation is an additional layer of complexity that further disadvantages U.S. headquartered businesses.

Again, Biocom applauds the Committee for drafting the Tax Cuts and Jobs Act and continues to support the Committee's efforts to enact tax reform legislation. We appreciate the opportunity to provide feedback on behalf of our members and thank you for your time and diligence in examining our comments.

Sincerely,

Joe Panetta
President and CEO
Biocom