FRAMEWORK FOR EVALUATING CERTAIN EXPIRING TAX PROVISIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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Framework for Evaluating Certain Expiring Tax Provisions

FRIDAY, JUNE 8, 2012

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SELECT REVENUE MEASURES,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in Room 1100, Longworth House Office Building, Hon. Pat Tiberi [chairman of the subcommittee] presiding.

[The advisory of the hearing follows:]

Hearing Advisory

FROM THE COMMITTEE ON WAYS AND MEANS

Chairman Tiberi Announces Hearing on Framework for Evaluating Certain Expiring Tax Provisions

Friday, June 8, 2012

Congressman Pat Tiberi (R–OH), Chairman of the Subcommittee on Select Revenue Measures, today announced that the Subcommittee will hold a hearing on how Congress should evaluate certain tax provisions that either expired in 2011 or will expire in 2012 (also known as "tax extenders"). **The hearing will take place on Friday, June 8, 2012, in Room 1100 of the Longworth House Office Building at 9:30 A.M.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

BACKGROUND:

On September 22, 2011, the Subcommittee held a joint hearing with the Subcommittee on Oversight on the topic of the intersection of energy policy and tax policy. At that hearing, witnesses testified on the effectiveness of a number of energy-related tax extenders. On April 26, 2012, the Subcommittee held a hearing on Member proposals related to tax extenders, at which Members of Congress testified both in favor of and in opposition to numerous tax extenders.

As with the Subcommittee's April 26, 2012 hearing, for purposes of this hearing, a "tax extender" is any tax provision:

1. Extended in Title VII of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law No. 111–312; "TRUIRJCA"), or
2. Expiring between the end of calendar year 2011 and the end of calendar year 2012, **other than any provision**:
   - Addressed in Titles I through VI of TRUIRJCA, or
   - Related to a transportation trust fund.

In announcing the hearing, Chairman Tiberi said, **"As part of the Ways and Means Committee's ongoing effort to review dozens of tax provisions that either expired last year or expire this year, we need to consider carefully the principles that we should use to evaluate the merits of these policies. Having recently heard from our House colleagues about their views on many of these extenders, it is time for the Subcommittee Members to roll up their sleeves and see how the provisions stack up against what experts consider the principles of sound tax policy."**

FOCUS OF THE HEARING:

The hearing will explore ideas on the framework that Congress should use to evaluate tax extenders, the principles of good tax policy that Congress should apply during this evaluation, and the specific metrics against which Congress should test the merits of particular provisions. While the hearing is not intended to focus on specific tax extenders, individual provisions may be discussed for the purpose of illustrating how to use such principles and metrics.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "*Hearings*." Select the hearing for which you would like to submit, and click on the link entitled, "*Click here to provide a submission for the record.*" Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Friday, June 22, 2012**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–3625 or (202) 225–2610.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to people with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://www.waysandmeans.house.gov/*.

Chairman TIBERI. This hearing will come to order. Good morning. Thank you for joining us today for another in a series of hearings on what are commonly referred to as tax extenders.

As most of you know, during member day hearing in April, we had the opportunity to hear from a number of our colleagues about the merits of extending or in some cases not extending many of these tax policies. By all accounts, it was a productive exercise, and I commend our chairman of the full committee, Chairman Dave Camp, for his leadership in providing the opportunity then and now and in the future to examine these tax provisions.

His leadership in setting forth a transparent process for reviewing the tax extenders is what the American people expect from their congressional representatives. I think that it is likely accurate to say that the days of simply rubber stamping and extending an entire package of extenders is now behind us, and today we pivot to exploring what we hopefully will hear, and that is ideas to providing a framework that Congress should use in evaluating these tax extenders.

Our witnesses today will share their views on principles of good tax policy and the specific merits and metrics against which Congress should test the merits of particular provisions.

I look forward to their testimony and the ensuing conversation.

Before we begin, I would like to take a moment to thank Congressman Mike Thompson from California for serving as our ranking member today. Unfortunately, Congressman Richie Neal couldn't be with us today because he is attending a funeral in Springfield for a fallen police officer.

I now yield to Mr. Thompson for his opening statement.

Mr. THOMPSON. Thank you, Mr. Chairman. And I think I can speak for everyone when we say that our thoughts and prayers are with the family of those in Mr. Neal's district who lost a police officer today, and I know as a father of a detective, I know that is something that all of us care a great deal about, and we are mindful of just how dangerous those public servants' jobs are.

And I thank the chairman for convening this hearing today. We appreciate that the subcommittee has decided to begin consideration of certain expired and expiring tax provisions as this consideration is long overdue. Businesses have been desperate for certainty in the tax law when attempting to make decisions that can help to grow the economy.

However, many may view today's hearing as actually increasing uncertainty for businesses and for individuals that use these tax benefits.

As we learned in our last hearing, so many of these benefits enjoy broad, bipartisan support. Their extension should not be difficult. As we learned from the recent jobs report, our economy is struggling and job creation is still too slow in coming. Unfortunately, proven job creation programs have not received adequate consideration in this Congress.

Press reports indicate that the highway conference may be stalled and possibly gridlocked and provisions on the President's to-do list to create jobs have not made it to a vote. The public is losing faith in Congress' ability to act and act quickly to turn this economy around. Frankly, I don't blame them.

We have had a hard time finding an agreement on a lot of things, but it is important to remember that there are things we can do in this committee that can help alleviate some of the pressures people are feeling and the uncertainties facing businesses.

As we learned from the last subcommittee hearing, so many expired provisions that are under consideration today enjoy broad, bipartisan support. In fact, many of us are lead sponsors of important job-creation provisions, including the new markets tax credit, the R&D tax credit, the conservation easement credit, and the list goes on.

We have all worked well together on these provisions, and we should now work to get them across the finish line.

I appreciate the testimony from the witnesses today. Evaluation of temporary provisions is as important as evaluating all provisions in the Tax Code. There are a number of loopholes that can be closed or provisions that provide windfalls to certain industries that should be examined particularly close.

The temporary nature of provisions should not automatically make it more eligible for termination than some of the provisions in the Tax Code that are permanent. Many of these provisions were enacted on a temporary basis due to budgetary constraints. That does not automatically detract from the merit of the provisions themselves.

But today, we are talking about provisions that have already expired. Businesses, large and small, rely on these provisions when making investment decisions. We have allowed almost 18 months of the 112th Congress to pass without doing our job to move legislation providing extension of these provisions. I mentioned in detail at the last hearing—the last time we had a tax extender hearing a few weeks ago just how important some of these extenders are to my district and to my constituents. I won't go into detail again but will mention that Mr. Gerlach and I have a bill to make permanent the enhanced conservation easement incentive. It is one of the most successful tools we have to support preservation of open space and family farms, which protects our watershed and ensures food security. Today, it has 308 cosponsors, including the chairman, which I appreciate very much, and wish that we were marking that bill up today or, better yet, had it on the suspension calendar.

I couldn't agree more with our chairman that this committee has a duty to ensure that the Tax Code is working to create jobs and grow our economy. It is an exercise that is necessary and takes time. But so much of the rest of Congress is gridlocked. This committee can act quickly and do so in a bipartisan way to extend expired provisions that need to be extended and help kick start our job creation and get the economy going.

I believe that such legislation should include not only job creating provisions that expired in 2011, but also proven job creating provisions that were allowed to expire in 2010, such as the Build America bonds and the 48(c) Advanced Manufacturing Investment Tax Credit.

The committee should engage in proper oversight and review of all of the tax provisions to identify those that are meritorious based on their economic performance and find ways to strengthen them and make them permanent. But this oversight should not come at the cost of inaction on important job-creating provisions.

I hope that the subcommittee and the full committee can get to doing our work and get these in front of the full House for a vote and in front of the President for his signature so we can help to improve the economy.

I thank the chairman for allowing me to read this testimony.

Chairman TIBERI. Thank you, Mr. Thompson. All that and no mention of grapes or vineyards. Inside joke.

Mr. THOMPSON. Could I get unanimous consent?

Chairman TIBERI. Speaking of unanimous consent, can I have unanimous consent to allow for the reading or the submission of Mr. Neal's opening statement?

Without objection.

[The prepared statement of Mr. Neal follows:]

Opening Statement of Rep. Richard E. Neal
Ranking Member, SRM Subcommittee
Hearing on Extenders
June 8, 2012

Thank you, Mr. Chairman. I first want to commend you on the quality of the hearings you've held in our subcommittee this Congress. And today's hearing is no exception - I'm very pleased that we're focusing today on the tax extenders. That being said, I think the time has come with respect to the tax extenders to move beyond the hearings and analysis and start making some decisions. We need to extend these important provisions as soon as possible.

Last week's disappointing jobs numbers once again demonstrated the need for Congress to take action and promote economic growth and job creation. And the tax extenders is a jobs issue. The New Markets Tax Credit (NMTC) program has led to the creation or retention of about 300,000 jobs in some of our most financially-troubled communities. In Western Massachusetts, the Massachusetts Green High Performance Computing Center is being built thanks in large part to the NMTC - and this project is creating about 600 construction jobs.

Unfortunately though, our inaction is already having a negative economic impact. According the National Restaurant Association, because of the uncertainty around an extension of the 15-year restaurant depreciation provision, thirty percent of restaurant operators have put projects on hold. The additional construction activity of these projects alone would exceed $7 billion and the overall economic impact would exceed $23 billion, with a total employment impact of nearly 200,000 additional jobs.

Let's not wait until after the elections to extend these important provisions - let's act now! As our last hearing demonstrated, this is a bipartisan issue. And this is a jobs issue. So let's put politics aside and pass a tax extenders bill as soon as possible.

Thank you.

Chairman TIBERI. Well, next it is my pleasure to introduce the witnesses here today, and we have an excellent panel of witnesses seated before us.

Today's witnesses bring both tax policy and oversight experience to us. Today's witnesses begin with from my left to the right, we would like to welcome back Dr. Jim White from the General Accounting Office, where he is the Director for Tax Issues. Dr. White is responsible for GAO's work pertaining to the IRS tax administration and tax policy. Thank you for being here, sir.

Second, we welcome back Dr. Donald Marron, the Director of Tax Policy Center at the Urban Institute here in Washington, DC. Dr. Marron's research at the Tax Policy Center has focused on tax reform as he has previously served as the Acting Director of the Congressional Budget Office and as a member of the President's Council of Economic Advisers. Thank you for being here today, sir.

Third, we will hear from Mr. Alex Brill, a Research Fellow at the American Enterprise Institute here in Washington, DC. Mr. Brill is an alum of the Ways and Means Committee staff, and he has also served on the President's Council on Economic Advisers and has served as an adviser to the President's Fiscal Commission in 2010. Welcome back to the room, sir. Glad to have you here.

Finally, we will hear from Alex Gornstein, the Under Secretary for Housing and Community Development for the Commonwealth of Massachusetts. Go, Celtics. And being from Ohio, there is even an added little emphasis on that.

Thank you for being here today, folks. The subcommittee has received from each of you written statements, and they will be made part of the formal hearing record, as you know.

Each of you will be recognized for 5 minutes for oral testimony, and then we will have questions.

With that, Dr. White, the floor is yours.

STATEMENT OF DR. JAMES R. WHITE, DIRECTOR, TAX ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Dr. WHITE. Thank you. Mr. Chairman, acting ranking member, and members of the subcommittee, I am pleased to be here to discuss how to evaluate the expiring tax provisions, sometimes called tax extenders. Most are tax expenditures, so I will focus on those. However, the evaluation principles I discuss do apply more broadly.

Tax expenditures are special credits, deductions, deferrals, and so on, that reduce a taxpayer's tax liability from what it would have been under a normal tax—under a "normal tax."

Tax expenditures often have policy goals similar to those of spending programs. They may promote economic development, energy efficiency, or research and development. Because tax revenue is foregone, such provisions may, in effect, be viewed as spending channeled through the tax system. Like decisions about spending, decisions on whether and how to extend tax provisions involve tradeoffs between policy goals and costs. My written statement summarizes factors commonly used to evaluate government policy, including tax policies such as the expiring provisions.

First is the effect of extending the provisions on revenue. Tax expenditures shrink the tax base. They either reduce funding available for other Federal activities or require higher tax rates to raise the same amount of revenue from the smaller base. Put another way, revenue the government would have collected absent the tax expenditure could have been used to fund other programs, deficit reduction, or tax rate reductions.

Second is the effect on equity, the economy, and taxpayers' compliance burden. Equity or fairness is a subjective judgment, but asking questions about who benefits from a provision and how ability to pay tax is affected can help policymakers reach conclusions about it.

The effect on the economy is what my statement calls economic efficiency; lightly taxing one activity shifts resources to it and away from less tax favored activities. The overall effect depends on whether the favored activity provides greater benefits than the less favored activity.

The effect on taxpayers' cost to comply with the provision depends on its simplicity and transparency. Can taxpayers understand the provision? What kinds of records will they need to keep? And, of course, simplicity and transparency affect IRS's ability to administer and enforce a provision.

A third factor to consider when evaluating the expiring provisions is whether the tax system is the best way to deliver the benefit or whether some other tool of government, such as spending, a loan or a loan guarantee, could provide the same benefit at lower costs.

Tax expenditures may have a cost advantage when benefits are means tested.

One goal is to prevent fragmentation, overlap or duplication among programs, not just to save money, but also to avoid confusing the public. Also important is the choice of tax policy tool. The choice of a credit versus a deduction, for example, affects incentives and the distribution of the benefits.

A final factor is measurement. Too often programs are implemented with little attention to how we will measure the results. In the case of tax provisions measuring results is complicated because IRS administers the provisions, but it is not the agency with functional responsibility for energy efficiency or community development or any of the other goals of the expiring provisions. Thus, decisions are needed about what agency should evaluate tax provisions, who should collect necessary data, and so on.

Now, I want to briefly illustrate how GAO has applied these factors in our reports.

Regarding the credit for ethanol, we found that while the credit helped create the industry during its formative years, having both a tax credit and a renewable fuel standard now is duplicative. Thus, we suggested that Congress consider modifying or phasing out the credit. Our reports on higher education tax assistance raised transparency questions. There are multiple such complex provisions, and we found many eligible taxpayers either failed to claim anything or claimed one that did not maximize their financial benefit.

We looked at the efficiency of the research credit. While economists tend to support a subsidy for research because the social returns exceed the private returns to firms, we found the current design introduces inefficiency because incentives are distributed unevenly across firms and estimated that more than half of the regular credit is a windfall for research that would have been done anyway. We suggested changes to improve the bang per buck of the credit.

We also looked at whether the new markets tax credits succeeded in moving resources as intended. The credit did appear to increase investment in low income communities. However, we also reported that its complexity makes it difficult to complete smaller projects and results in less money flowing through to low-income community businesses than might be possible with alternative designs. We suggested that Congress consider offering grants instead of tax credits with one option being a side-by-side test of the two approaches.

Mr. Chairman, acting ranking member and other members, we have done a number of other such assessments all intended to provide Congress with factual information about the evaluation factors I outlined up front. How to use the information and make tradeoffs between the factors is up to policymakers.

I would be happy to answer questions.

[The prepared statement of Mr. White follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Select Revenue Measures, Committee on Ways and Means, House of Representatives

For Release on Delivery
Expected at 9:30 a.m. EDT
Friday, June 8, 2012

TAX POLICY

Factors for Evaluating Expiring Tax Provisions

Statement of James R. White, Director
Strategic Issues

GAO
Accountability * Integrity * Reliability

GAO-12-760T

GAO
Accountability • Integrity • Reliability

Highlights

Highlights of GAO-12-760T, a testimony before the Subcommittee on Select Revenue Measures, Committee on Ways and Means, House of Representatives

June 8, 2012

TAX POLICY

Factors for Evaluating Expiring Tax Provisions

Why GAO Did This Study

GAO was asked to discuss the extension of tax provisions, sometimes called tax extenders, that either expired in 2011 or are scheduled to expire at the end of 2012. For a prior hearing of this subcommittee, the Joint Committee on Taxation (JCT) prepared a document detailing 64 expiring tax provisions. Most of these provisions are tax expenditures—reductions in a federal taxpayer's tax liability that result from special credits, deductions, exemptions and exclusions from taxation, deferral of tax liability, and preferential tax rates. Tax expenditures are often aimed at policy goals similar to those of spending programs, such as encouraging economic development in disadvantaged areas and stimulating research and development. Because revenue is foregone, these provisions may, in effect, be viewed as spending programs channeled through the tax system. For those provisions the President proposed extending through 2013, JCT estimated the budgetary effect would be at least $40 billion in foregone revenue over its 10-year budget window.

This testimony outlines factors useful for considering trade-offs when deciding whether and how to extend provisions and illustrates their application to some of the expiring provisions. GAO's testimony is based on previous work on tax reform and tax expenditures.

What GAO Recommends

GAO has made many recommendations in its previous reports on tax expenditures that reflect the factors described in this testimony. Some have been acted on, while others have not.

View GAO-12-760T. For more information, contact James R. White at (202) 512-9110 or whitej@gao.gov.

What GAO Found

Factors commonly used to evaluate tax policy, as well as other policy tools such as spending programs or regulations, can be applied to decisions about whether and how to extend expiring tax expenditures, as discussed below.

Revenue Effects. Revenues foregone through tax expenditures either reduce resources available to fund other federal activities or require higher tax rates to raise a given amount of revenue. Like decisions about spending, deciding whether to extend an expiring tax expenditure involves considering whether the benefit of the intended outcome is worth the effect on other programs or tax rates. The nation's long-term fiscal challenge makes it all the more important to ensure tax expenditures are efficient and relevant.

Criteria for Good Tax Policy. Three long-standing criteria typically used to evaluate tax policy—equity; economic efficiency; and a combination of simplicity, transparency, and administrability—can be applied to the expiring tax expenditures. Because the criteria may sometimes conflict with one another, there are usually trade-offs to consider when evaluating particular tax expenditures.

Relationship to Other Policy Tools. Tax expenditures represent just one policy tool of several—including spending, grants, loans, and regulations—that policymakers can use to achieve policy goals. If not well designed, tax expenditures can create the potential for duplication with other policy tools.

Measurement Challenges. Unavailable or insufficient data can hinder policymakers' ability to consider how the factors described above relate to particular tax expenditures. A key challenge is that data necessary to assess how a tax expenditure is used and by whom generally are not collected on tax returns unless the Internal Revenue Service needs the information to ensure tax compliance or is legislatively mandated to collect or report the information.

GAO's prior reports on tax expenditures illustrate how these factors can be used to evaluate whether and how to extend expiring tax provisions. For example, GAO found that the research tax credit, as currently designed, provides many recipients with windfall benefits earned for spending they would have done anyway. A report on domestic ethanol production—in which GAO suggested modifying or phasing out a tax credit that was duplicative of the renewable-fuel standard—highlights the importance of considering how tax expenditures relate to other policy tools. GAO's work on higher-education tax expenditures illustrates how tax expenditures that are not transparent (i.e., cannot be easily understood by taxpayers) can result in taxpayers making decisions that do not maximize their tax benefits. This work also concluded that little is known about the effectiveness of education-related federal grants, loans, and tax expenditures in promoting certain student outcomes, such as college attendance. Research gaps may be due, in part, to data and methodological challenges—such as difficulty isolating the behavioral effects of the tax expenditure under study from other changes—that have proven difficult to overcome.

Chairman Tiberi, Ranking Member Neal, and Members of the Subcommittee:

I am pleased to be here to discuss the extension of tax provisions, sometimes called tax extenders, which either expired in 2011 or are scheduled to expire at the end of 2012. These provisions were the subject of an April hearing before this subcommittee, for which the Joint Committee on Taxation (JCT) prepared a document detailing 64 expiring provisions.[1] Most of the 64 expiring provisions are tax expenditures—reductions in a federal taxpayer's tax liability that result from special credits, deductions, exemptions and exclusions from taxation, deferral of tax liability, and preferential tax rates.[2] Tax expenditures are provisions that are exceptions to the "normal structure" of the individual and corporate income tax. Other provisions that reduce tax liability, such as many deductions for business expenses, are considered to be part of the normal tax structure and are not considered tax expenditures.[3]

Tax expenditures are often aimed at policy goals similar to those of spending programs, such as encouraging economic development in disadvantaged areas, promoting energy efficiency, or stimulating

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[1] For the purposes of that hearing, a tax extender was defined as any tax provision extended in title VII of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (Dec. 17, 2010), or expiring between the end of calendar year 2011 and the end of calendar year 2012, other than any provision addressed in titles I through VI of Pub. L. No. 111-312 or related to a transportation trust fund. For a list of the 64 expiring provisions, see Joint Committee on Taxation, *Legislative Background of Selected Federal Tax Provisions Scheduled to Expire in 2011 or 2012*, JCX-39-12 (Washington, D.C.: Apr. 25, 2012). Also, the list of 64 provisions does not include (1) individual income tax rate reductions, enacted into law primarily by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (June 7, 2001); (2) an increase in the exemption amount under the Alternative Minimum Tax enacted by the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, 117 Stat. 752 (May 28, 2003); (3) a reduction of Social Security tax rates for employees and self-employed individuals, initially enacted for 2011 by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (Dec. 17, 2010); or (4) provisions on temporary disaster relief.

[2] Examples of expiring provisions that are not tax expenditures are those covering the disclosure of prisoner tax return information to certain prison officials under 26 U.S.C. 6103(k)(10) and refunds disregarded in the administration of federal programs and federally assisted programs under 26 U.S.C. 6409.

[3] The concept of tax expenditures extends beyond the income tax. Tax expenditures also exist for other types of taxes, such as excise taxes.

research and development. Because revenue is foregone, these provisions may, in effect, be viewed as spending programs channeled through the tax system. JCT's publication providing revenue estimates for provisions contained in the President's fiscal year 2013 budget proposal does not include all of the 64 expiring provisions. However, for those provisions the President proposed extending through 2013, JCT estimated that the budgetary effect would be at least $40 billion in foregone revenue over its 10-year budget window.[4]

Like budget decisions for spending programs, decisions on whether and how to extend expiring tax provisions involve trade-offs between policy goals and revenue costs. My testimony today will outline a set of factors useful for understanding these trade-offs and illustrate their application to some of the expiring provisions. Although the main focus of my testimony is on how the factors apply to evaluating expiring tax expenditure provisions, the factors are also relevant to evaluating other expiring provisions, such as those related to tax administration. This testimony is based on previous GAO reports on tax reform and tax expenditures. Additional information on our scope and methodology is available in those published products, which are referenced throughout this statement.

The work for this testimony and the reports on tax expenditures upon which it is based were conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[4]Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal*, JCX-27-12 (Washington, D.C.: Mar. 14, 2012). JCT revenue estimates compare predicted federal revenues under a proposal with predicted revenues under present law. JCT provides a year-by-year comparison for a 10-year budget window, which we provide for this and each example listed below. Negative estimates reflect decreased revenue, and positive estimates reflect increased revenue. Revenue estimates take certain behavioral responses into account.

Factors to Consider When Evaluating Expiring Tax Provisions

Factors commonly used to evaluate tax policy in general can be applied to decisions of whether and how to extend expiring tax provisions, including tax expenditure provisions. The factors, listed in table 1 and discussed below, may also be relevant to evaluating other policy tools, such as spending programs or regulations.[5]

Table 1: Factors to Consider When Evaluating Expiring Tax Provisions

1. Revenue effects
2. Criteria for good tax policy
Equity
Economic efficiency
Simplicity, transparency, and administrability
3. Relationship to other policy tools
4. Measurement challenges

Source: GAO

1. Revenue Effects. Tax expenditures may, in effect, be viewed as spending programs channeled through the tax system. Tax expenditures can be viewed this way because they grant special tax relief for certain kinds of behavior by a taxpayer or for taxpayers in special circumstances. Revenues foregone through tax expenditures either reduce funding available for other federal activities or require higher tax rates to raise a given amount of revenue. Like decisions about spending, deciding whether to extend an expiring tax expenditure involves considering whether the benefit of the intended outcome is worth the effect on other programs or tax rates. Revenue the government would have collected absent a tax expenditure could have been used for other federal priorities, deficit reduction, or tax rate reductions.

The long-term fiscal challenge facing the United States makes it all the more important to ensure all major federal spending and tax programs and policies—including tax expenditures—are efficient and relevant. Although the expiring tax expenditures being discussed today represent only a portion of all tax expenditures, on the whole, tax expenditures represent a substantial federal commitment. Aggregate revenue losses

[5]These factors have been described in our previous reports. For example, we discuss criteria for good tax policy in GAO, *Understanding the Tax Reform Debate: Background, Criteria, & Questions*, GAO-05-1009SP (Washington, D.C.: September 2005).

were an estimated $1 trillion in fiscal year 2011.[6] For the past three decades, annual revenue losses from all tax expenditures have been similar to the amount of discretionary spending each year. As such, evaluating tax expenditures, including the expiring provisions being considered today, can help policymakers assess how to alleviate the rapidly building fiscal pressures facing our national government.

2. Criteria for Good Tax Policy. Three long-standing criteria typically used to evaluate tax policy—equity; economic efficiency; and a combination of simplicity, transparency, and administrability—can be applied to the expiring tax expenditures.[7] The criteria may sometimes conflict with one another and some are subjective. As a result, there are usually trade-offs to consider between the criteria when evaluating particular tax expenditures or other tax provisions.

- **Equity.** There is a wide range of opinions regarding the fairness or equity of tax provisions. Nevertheless, certain principles, such as a taxpayer's ability to pay taxes and the extent to which a taxpayer benefits from a provision, are useful for thinking about equity. Similarly, analytical tools, such as distributional analysis, can provide information about who pays or benefits that may inform value judgments about the equity effects of the expiring tax expenditures.
- **Economic efficiency**. The expiring tax provisions generally are efforts to redirect society's resources to achieve a variety of economic or social goals. Lightly taxing some activities targeted by the expiring provisions shifts resources to them and away from less-tax-favored activities. For example, the research tax credit is designed to increase the overall level of resources that the private sector invests in research, but this comes at the cost of fewer resources devoted to other activities. To the extent that a tax provision shifts resources to an activity that provides greater economic benefits to society as a whole than the private sector would provide on its own, there is a net

[6] Summing revenue loss estimates does not take into account possible interactions between individual provisions or potential behavioral responses to changes in these provisions on the part of taxpayers. Additionally, revenue loss estimates include the effect of certain tax credits on receipts only and not the effect of the credits on outlays. While revenue estimates do take certain behavioral responses into account, tax expenditure revenue loss estimates do not.

[7] GAO-05-1009SP.

gain that is said to improve economic efficiency. These gains improve peoples' well-being in a variety of ways, including increased income and consumption opportunities.

Estimating efficiency gains and losses can be challenging. Studies may be limited by what can be quantified; for example, studies may examine dollars spent on qualified research or the number of economic development projects built, rather than whether the use of funds for these activities constitute a better use of resources.

- **Simplicity, transparency, and administrability**. A tax expenditure's design can affect three related and desirable features of tax provisions: simplicity, transparency, and administrability. Simple tax expenditures impose less taxpayer compliance burden, such as keeping records, learning about tax rules, filing tax returns, and other compliance activities. Transparent tax provisions are easy to understand, that is, taxpayers can grasp the logic behind them. Administrable tax expenditures have lower administrative costs for both the Internal Revenue Service (IRS) and third parties, such as banks or employers required to submit information on taxpayers' income and transactions to IRS. Administration includes processing returns, programming information systems, answering taxpayer questions, and enforcement activities. Simplicity, transparency, and administrability are not the same but are interrelated. For example, extensions of expiring tax code provisions, sometimes retroactively, can add compliance burden, reduce taxpayers' understanding of the tax laws, and impose additional costs on IRS, such as more phone calls from taxpayers.[8]

3. Relationship to Other Policy Tools. Tax expenditures are one policy tool out of several—including spending, grants, loans and loan guarantees, and regulations—that policymakers can use to achieve public goals. The choice of whether to use tax expenditures, spending, or other tools depends on which approach better meets the goal at the lowest cost.

- Different policy tools may be more effective than others in achieving a particular policy outcome. With tax expenditures, certain activities may be cheaper and simpler to subsidize through the tax code because

[8]GAO, *2011 Tax Filing: Processing Gains, but Taxpayer Assistance Could Be Enhanced by More Self-Service Tools*, GAO-12-176 (Washington, D.C.: Dec. 15, 2011).

IRS has the administrative infrastructure to collect and remit money to millions of taxpayers. For example, the incremental administrative and compliance costs to deliver the tax credit for child and dependent care expenses may be relatively low compared to the costs of setting up a separate system for processing child care applications and sending vouchers to those eligible.[9]

- How a tax expenditure is designed can affect its revenue effects and how it relates to the criteria for a good tax system. For example, depending on their design, tax expenditures can result in taxpayers receiving benefits for actions they would have taken absent the tax expenditure. Also, each type of tax expenditure creates tax savings in different ways and, consequently, reduces federal revenues in different ways and may have different distributional effects. The amount of tax relief per dollar that a taxpayer receives using an exclusion, exemption, or deduction depends on the taxpayer's marginal tax rate. Generally, the higher a taxpayer's marginal tax rate, the greater the tax savings from these tax expenditure types. Tax credits reduce tax liability dollar-for-dollar, so the value of a credit is the same regardless of a taxpayer's marginal tax rate.

- The Government Performance and Results Act (GPRA) Modernization Act of 2010 (GPRAMA)[10] can help in evaluating tax expenditures in that it establishes a framework for providing a more crosscutting and integrated approach to focusing on results and improving government performance. GPRAMA makes clear that tax expenditures are to be included in identifying the range of federal agencies and activities that contribute to crosscutting goals. Moving forward, GPRAMA implementation can help inform tough choices in setting priorities as policymakers address the rapidly building fiscal pressures facing our national government.

- If not well designed or effectively implemented, tax expenditures can contribute to mission fragmentation and program overlap, thus creating the potential for duplication with other policy tools. All federal spending and tax policy tools, including tax expenditures, should be

[9]GAO, *Government Performance and Accountability: Tax Expenditures Represent a Substantial Federal Commitment and Need to Be Reexamined*, GAO-05-690 (Washington, D.C.: Sept. 23, 2005).

[10]Pub. L. No. 111-352, 124 Stat. 3866 (Jan. 4, 2011).

reexamined to ensure that they are achieving their intended purposes and are designed in the most efficient and equitable manner.

4. Measurement Challenges. Unavailable or insufficient data can hinder policymakers' ability to consider how the factors described above relate to particular tax expenditures. A key challenge is that data necessary to assess how and by whom a tax expenditure is used generally are not collected on tax returns unless IRS needs the information to ensure tax compliance or is legislatively mandated to collect or report the information. In some cases, IRS may combine reporting requirements to minimize its workload and taxpayer burden, and as a result, the information collected may not identify specific beneficiaries or activities targeted by a tax expenditure. Also, the influence of other economic and social factors can confound efforts to measure a tax expenditure's effects on efficiency and equity. We and the Office of Management and Budget (OMB) have noted that the desired outcomes of a tax expenditure or other policy tool are often the combination of effects of the program and external factors.[11]

If policymakers conclude that additional data would facilitate reexamining a particular tax expenditure, decisions would be required on what data are needed, who should provide the data, who should collect the data, how to collect the data, what it would cost to collect the data, and whether the benefits of collecting additional data warrant the cost of doing so. Another factor to consider is how to facilitate data sharing and collaborative evaluation efforts amongst federal agencies.

[11]GAO, *Designing Evaluations: 2012 Revision*, GAO-12-208G (Washington, D.C.: Jan. 31, 2012); and Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2013* (Washington, D.C.: 2012).

Illustrating These Factors Using Examples from GAO's Past Work

Our prior reports on tax expenditures illustrate how these factors can be used to help evaluate whether and how to extend expiring tax provisions.

Domestic Ethanol Production. Our past work related to domestic ethanol production highlights the importance of considering how tax expenditures relate to other policy tools.[12] Congress has supported domestic ethanol production through two policy tools: (1) a tax credit, the most recent version of which expired after December 31, 2011, and (2) a renewable-fuel standard that generally requires transportation fuels in the United States to contain certain volumes of biofuels, such as ethanol. In 2009, we reported that the tax credit was important in helping to create a profitable corn starch ethanol industry when the industry had to fund investment in new facilities, but is less important now for sustaining the industry because most of the capital investment has already been made. We found that Congress's efforts to support domestic ethanol production through a tax credit and renewable-fuel standard were duplicative. The fuel standard is now at a level high enough to ensure that a market for domestic ethanol production exists in the absence of the ethanol tax credit. As such, we suggested that Congress consider modifying the credit or phasing it out. Congress allowed the credit to expire at the end of 2011. JCT did not include an estimate of the budgetary effect of extending the credit through December 31, 2013, in its March 2012 estimates, as the President did not propose to extend the credit.[13]

Higher Education. Our past work on higher-education tax expenditures illustrates how tax expenditures that are not transparent (i.e., cannot be easily understood by taxpayers) can result in taxpayers making decisions

[12] GAO, *Follow-up on 2011 Report: Status of Actions Taken to Reduce Duplication, Overlap, and Fragmentation, Save Tax Dollars, and Enhance Revenue*, GAO-12-453SP (Washington, D.C.: Feb. 28, 2012); *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP (Washington, D.C.: Mar. 1, 2011); and *Biofuels: Potential Effects and Challenges of Required Increases in Production and Use*, GAO-09-446 (Washington, D.C.: Aug. 25, 2009).

[13] Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal*. JCT revenue estimates compare predicted federal revenues under a proposal with predicted revenues under present law. JCT provides a year-by-year comparison for a 10-year budget window, which we provide for the examples listed below. Revenue estimates incorporate certain behavioral responses.

that do not maximize their tax benefits.[14] The tuition and fees deduction, which expired after December 31, 2011, helped students and their families pay for higher education by allowing them to deduct qualified education expenses from income that would otherwise be taxable. In 2008, we found that tax filers did not always claim higher-education tax expenditures, such as the tuition and fees deduction, that maximize their potential tax benefits, potentially because of the complexity of higher-education tax provisions.[15] Further analysis and simplification of the tax provisions involved could potentially increase transparency in the system. JCT estimates the budgetary effect of extending this provision through December 31, 2013, would be about $1.5 billion in fiscal years 2012-2022.

Higher education tax expenditures also illustrate how measurement and methodological challenges can impede evaluating their effectiveness. In 2005, we reported that little is known about the effectiveness of education-related federal grants, loans, and tax expenditures in promoting student outcomes including college attendance, students' choice among colleges, and the likelihood that students will continue their education. We also found that research gaps may be due, in part, to data and methodological challenges—such as difficulty isolating the behavioral effects of the tax expenditure under study from other changes—that have proven difficult to overcome.

Research Tax Credit. Our past work on the research tax credit provides insights into how improving the design of a tax expenditure could improve its economic efficiency and reduce revenue costs.[16] Economists widely agree that some government subsidy for research is justified because the social returns from research exceed the private returns that investors

[14]GAO, *Higher Education: Multiple Higher Education Tax Incentives Create Opportunities for Taxpayers to Make Costly Mistakes*, GAO-08-717T (Washington, D.C.: May 1, 2008); *Student Aid and Postsecondary Tax Preferences: Limited Research Exists on Effectiveness of Tools to Assist Students and Families through Title IV Student Aid and Tax Preferences*, GAO-05-684 (Washington, D.C.: July 29, 2005).

[15]In a forthcoming report, we will update our analysis on the extent to which filers select higher education provisions that maximize their tax benefit.

[16]GAO-11-318SP; GAO, *Tax Policy: The Research Tax Credit's Design and Administration Can Be Improved*, GAO-10-136 (Washington, D.C.: Nov. 6, 2009); *Tax Policy: Additional Information on the Research Tax Credit*, GAO/T-GGD-95-161 (Washington, D.C.: May 10, 1995).

receive. Since 1981, the research tax credit has provided significant subsidies (an estimated $6 billion for fiscal year 2011) to encourage business to invest in research and development. The most recent version of the credit expired after December 31, 2011. Despite the widespread support for the concept of a credit for increasing research activities, concerns have been raised about the cost-effectiveness of the design of the current credit and its administrative and compliance costs. We found that the research tax credit, as currently designed, distributes incentives unevenly across taxpayers and provides many recipients with windfall benefits, earned for research that they would have done anyway. For example, we found that for those claiming the regular credit, more than half of the credit such claimants earned was a windfall. The disparities in incentives can lead to an inefficient allocation of investment resources across businesses, and the windfall benefits represent foregone tax revenue that does not contribute to the credit's objective. Accordingly, we suggested that Congress modify the research tax credit to reduce economic inefficiencies and excessive revenue costs. JCT estimates the budgetary effect of the President's proposal to enhance and make permanent this provision would be about $99 billion in fiscal years 2012-2022.

Our past work on the research tax credit also provides insight into how tax expenditure design can affect transparency and administrability. In 2009, we reported that there are numerous areas of disagreement between IRS and taxpayers concerning what types of spending qualify for the research credit because of issues such as the definitions used to determine eligibility and the documentation needed to support the claim. These disputes raise the cost of the credit to both taxpayers and IRS and diminish the credit's incentive effect by making the ultimate benefit to taxpayers less certain. We made several recommendations to the Department of the Treasury (Treasury) to reduce the uncertainty that some taxpayers have about their ability to earn credits for their research activities. To date, Treasury has not fully implemented these recommendations.

New Markets Tax Credit (NMTC). Our past work on the NMTC provides examples highlighting issues of simplicity and the need to consider tax expenditures in light of other policy tools.[17] Congress enacted the NMTC in 2000 as part of an ongoing effort to revitalize low-income communities. Treasury awards tax credits to Community Development Entities (CDE), which sell the credits to investors to raise funds. JCT estimates the budgetary effect of the President's proposal extending and modifying the NMTC would be about $3.5 billion in fiscal years 2012-2022.[18]

In 2007, we reported that the NMTC appeared to increase investment in low-income communities.[19] However, in 2010 we reported that the complexity of NMTC transaction structures appeared to make it difficult to complete smaller projects and often results in less of the money investors initially put into the project ending up in low-income community businesses—the beneficiaries of NMTC financing—than would be the case if the program were simplified. We suggested Congress consider offering grants to CDEs that would provide the funds to low-income community businesses and assess the extent to which the grant program would increase the amount of federal subsidy provided to low-income community businesses compared to the NMTC. One option would be for Congress to set aside a portion of funds to be used as grants and a portion to be used as tax credits under the current NMTC program to facilitate a comparison of the two programs.

Revitalization Programs. Our past work on revitalization programs, including the Empowerment Zone (EZ), Enterprise Community (EC), and Renewal Community (RC) programs, provides an example of

[17]GAO-11-318SP; GAO, *New Markets Tax Credit: The Credit Helps Fund a Variety of Projects in Low-Income Communities, but Could Be Simplified*, GAO-10-334 (Washington, D.C.: Jan. 29, 2010).

[18]The President's Fiscal Year 2013 Budget proposed extending the program through 2013 with $5 billion available for allocation in both 2012 and 2013. The proposal would also modify the NMTC to offset alternative minimum tax liability.

[19]GAO, *Tax Policy: New Markets Tax Credit Appears to Increase Investment by Investors in Low-Income Communities, but Opportunities Exist to Better Monitor Compliance*, GAO-07-296 (Washington, D.C.: Jan. 31, 2007).

measurement challenges when evaluating tax expenditures.[20] Congress established the EZ, EC, and RC programs to reduce unemployment and generate economic growth in selected Census tracts. Urban and rural communities designated as EZs, ECs, or RCs received grants, tax expenditures, or a combination of both to stimulate community development and business activity. Tax provisions for empowerment zones and the District of Columbia (DC) enterprise zone (including the first-time homebuyer credit for the District of Columbia) expired after December 31, 2011. JCT estimates that the budgetary effect of extending these provisions through December 31, 2013, would be $585 million from fiscal years 2012-2022.

Our prior work has found improvements in certain measures of community development in EZ communities, but data and methodological challenges make it difficult to establish causal links. In the case of the EZ, EC, and RC programs, the lack of tax benefit data limited the ability of the Department of Housing and Urban Development (HUD) and the Department of Agriculture to evaluate the overall mix of grant and tax programs to revitalize selected urban and rural communities. In response to our recommendations, HUD and the IRS collaborated to share data on some program tax credits. However, the IRS data did not tie the program tax incentives to specific designated communities, making it difficult to assess the effect of the tax benefits. We have previously reported that if Congress authorizes similar programs that rely heavily on tax expenditures in the future, it would be prudent for federal agencies responsible for administering the programs to collect information necessary for determining whether the tax benefits are effective in achieving program goals.[21]

Nonbusiness Energy Property Credit. Our work on the nonbusiness energy property credit highlights the importance of considering revenue

[20]GAO-11-318SP; GAO, *Revitalization Programs: Empowerment Zones, Enterprise Communities, and Renewal Communities*, GAO-10-464R (Washington, D.C.: Mar. 12, 2010); *Empowerment Zone and Enterprise Community Program: Improvements Occurred in Communities, but the Effect of the Program Is Unclear*, GAO-06-727 (Washington, D.C.: Sept. 22, 2006); *Community Development: Federal Revitalization Programs Are Being Implemented, but Data on the Use of Tax Benefits Are Limited*, GAO-04-306 (Washington, D.C.: Mar. 5, 2004).

[21]GAO, *Community Development: Limited Information on the Use and Effectiveness of Tax Expenditures Could Be Mitigated through Congressional Action*, GAO-12-262 (Washington, D.C.: Feb. 29, 2012).

foregone and the criteria for good tax policy when determining whether and how to extend specific tax provisions.[22] Enacted as part of the Energy Policy Act of 2005, the nonbusiness energy property credit was intended to increase homeowners' investment in energy-conserving improvements, such as insulation systems, exterior windows, and metal roofs, by reducing their after-tax costs. The credit expired on December 31, 2011. JCT estimates the budgetary effect of the President's proposal extending and modifying this provision through December 31, 2013, would be about $2.4 billion in fiscal years 2012-2022.

The design of the credit affects its economic efficiency and revenue costs. The credit combines features of both cost-based and performance-based credits. Cost-based credits provide incentives that are usually a fixed percentage of qualified spending, whereas performance-based credits provide incentives that are tied to specific measures of energy savings and therefore may require before and after energy audits. The nonbusiness energy property credit is cost-based in that the amount of credit claimed is directly proportional to a taxpayer's qualified spending. It is performance-based in that only certain qualifying purchases are eligible. In 2012, we reported that both the performance-based and cost-based credits have advantages and disadvantages with neither design being unambiguously the better option based on current information. For example, a performance-based credit is more likely to effectively reduce energy use and carbon dioxide emissions because it rewards energy savings from the investment rather than the cost-based credit's rewarding of spending regardless of whether this spending results in energy savings. However, the performance-based credit may have significant up-front costs for energy audits, not required by the cost-based credit, which could reduce its effectiveness by discouraging investment.

The credit's design also can affect its administrability and equity. For taxpayers who do invest, these up-front costs may mean that a performance-based credit may have significantly higher taxpayer compliance and IRS administrative costs than a cost-based credit. Views on what is a fair distribution of the credit's costs and benefits can differ dramatically across individuals. However, whatever one's views of

[22]GAO, *Energy Conservation and Climate Change: Factors to Consider in the Design of the Nonbusiness Energy Property Credit*, GAO-12-318 (Washington, D.C.: Apr. 2, 2012).

fairness, an analysis of the distribution of costs and benefits by such factors as income level can be useful.

Indian Reservation Depreciation. Our work on this provision is another example of how measurement challenges can hinder evaluation of tax expenditures.[23] The provision allows taxpayers to take larger deductions for depreciation from their business income earlier than they otherwise would be allowed for certain property on Indian reservations. For the deduction, taxpayers are not required to identify the reservation on which the depreciated property is located, preventing assessments linking investment to economic indicators on specific reservations. We suggested Congress consider requiring IRS to collect this information, but we noted that Congress would need to weigh the associated costs of collecting and analyzing the information as well as the effects on IRS's other priorities. The credit expired on December 31, 2011. JCT estimates the budgetary effect of extending this provision through December 31, 2013, would be $100 million in fiscal years 2012-2022.

In closing, considering the various factors I have laid out today can help when deciding whether and how to extend expiring tax provisions. Improving tax expenditure design may enable individual tax expenditures to achieve better results for the same revenue loss or the same results with less revenue loss. Also, reductions in revenue losses from eliminating ineffective or redundant tax expenditures could be substantial depending on the size of the eliminated provisions. As we have stated in prior reports,[24] we believe that tax expenditure performance is an area that would benefit from enhanced congressional scrutiny as Congress considers ways to address the nation's long-term fiscal imbalance.

Chairman Tiberi, Ranking Member Neal, and Members of the Subcommittee, this completes my prepared statement. I would be happy to respond to any questions you and Members of the Subcommittee may have at this time.

[23]GAO, *Tax Expenditures: Available Data Are Insufficient to Determine the Use and Impact of Indian Reservation Depreciation*, GAO-08-731(Washington, D.C.: June 26, 2008).

[24]GAO-05-690 and GAO, *Tax Policy: Tax Expenditures Deserve More Scrutiny*, GAO/GGD/AIMD-94-122 (Washington, D.C.: June 3, 1994).

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Chairman TIBERI. Thank you, Dr. White.

Dr. Marron, you have 5 minutes.

STATEMENT OF DR. DONALD B. MARRON, DIRECTOR, TAX POLICY CENTER, THE URBAN INSTITUTE

Mr. MARRON. Great. Thank you.

Chairman Tiberi, Ranking Member Thompson, and members of the subcommittee, thank you for inviting me to appear today to discuss the perennial challenge of the tax extenders which might be better called the tax expirers.

As you know, the United States faces a sharp fiscal cliff at year end when numerous policy changes occur. If all these changes happen, they will reduce the fiscal 2013 deficit by about $500 billion, according to the Congressional Budget Office, before taking into account any negative feedback from a weaker economy. About one-eighth of that cliff, $65 billion, comes from the expiring and expired tax cuts that are the focus of today's hearing.

In deciding their fate, you should consider the larger problems facing our tax system. That system is needlessly complex, economically harmful, and widely perceived as unfair. It is increasingly unpredictable, and it fails at its most basic task—raising enough money to pay our bills.

The expirers often worsen these problems. They create uncertainty, complicate compliance, and cost needed revenue. Some make the Tax Code less fair, some more fair. Some weaken our economy while others strengthen it. Fundamental tax reform would, of course, be the best way to address these concerns, but such reform isn't likely soon, so you must again grapple with the expirers.

As a starting point, let me note that they come in three flavors.

The first are tax cuts that were enacted to address a temporary challenge such as a recession, the housing meltdown, or regional disasters.

The second are tax cuts that have reached a sunset review. Prolonged economic weakness and recent omnibus extensions mean that there aren't that many of these at the moment, but they do exist.

And third, there are tax cuts that expire to game budget rules. These appear to be the most common. Supporters intend these provisions to be long-lived or permanent, but they haven't found the budget resources to do so.

To determine which of these policies should be extended and which not, you should consider several factors: Does the provision address a compelling need for government intervention? Does it accomplish its goal effectively and at reasonable cost? Does it make the Tax Code more or less fair? Do its potential benefits justify the revenue loss or the need for higher taxes elsewhere in the economy?

In short, you should subject these provisions to the same standards you apply to other policy choices, and in this case you should keep in mind, as Jim said, that most of the so-called tax extenders are effectively spending through the Tax Code. You should thus hold them to the same standards as equivalent spending programs.

You should also reform the way you review expiring tax provisions. First, I think you ought to flip the burden of proof. Today's standing presumption is that most of these provisions will ultimately be extended. That is why they are called the extenders even after they have expired. Ultimately, though, we should move to a system in which the presumption, rebuttable to be sure, is that expiring provisions will expire unless supporters can justify their continuation. In short, they should be the expirers.

Second, you should divide them up. Like musk oxen, the beneficiaries of these provisions have realized that there is safety in numbers. They must do their best to coalesce as a single herd, the extenders, and try to migrate across the annual legislative tundra with as little individual attention as possible. You should break up the herd. Reviewing each provision in detail may not be practical in a single year given how many there are, but you can identify specific groups for careful review.

For example, you can separate out the stimulus provisions, the charity provisions, the energy provisions, and so on. You should also try to spread scheduled expirations out over time. If few are expiring in any given year, you will be able to give each one more attention.

Third, I think you ought to change budget rules for temporary tax cuts. Pay-as-you-go budgeting creates crucial discipline but has an unfortunate side effect. Long-term tax policies often get chopped into 1-year segments. In addition, 10 years of offsets can be used to pay for a single year extension. To combat this, you could require that any temporary tax provision be assumed to last no less than 5 years in the official budget baseline. Proponents would then have to round up enough budget offsets to pay for those 5 years. In addition, you could require that offsets happen over the same span of years as an extension. That would eliminate situations in which 10 years of offsets pay for 1 year of extension.

Thank you for inviting for me to appear today. I look forward to your questions.

[The prepared statement of Mr. Marron follows:]

The "Tax Expirers"

Donald B. Marron[*]
Director,
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Testimony before the Subcommittee on Select Revenue Measures
of the Committee on Ways and Means,
United States House of Representatives
June 8, 2012

Chairman Tiberi, Ranking Member Neal, and Members of the Subcommittee, thank you for inviting me to appear today to discuss the perennial challenge of the "tax extenders," which could equally well be called the "tax expirers."

As you know, the United States faces a sharp "fiscal cliff" at year end when numerous tax cuts expire, automatic spending cuts take effect, temporary spending programs expire, and new taxes begin. If all these changes happen, they will reduce the fiscal 2013 deficit by about $450 billion (Congressional Budget Office 2012a). That figure includes $500 billion in direct deficit reduction from the policy changes, offset by $50 billion in deficit increases from the near-term shock to the economy.[1]

Expiring (and expired) tax provisions make up most of the direct deficit reduction:

- $221 billion for the income, estate, and gift tax cuts originally set in motion in 2001 and 2003, plus the expired "patch" to the Alternative Minimum Tax;

- $95 billion for the 2 percentage point cut in employee payroll taxes; and

- $65 billion for the dozens of other temporary provisions that are the focus of today's hearing. (For a list of these items, see CBO 2012b.)

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[*] The views expressed here are my own; they do not necessarily reflect the views of the Urban Institute, its trustees, or its funders. Howard Gleckman, Jim Nunns, Kim Rueben, Eric Toder, and Roberton Williams provided helpful comments, but all errors are my own.

[1] CBO (2012a) projects that these changes would push the economy into recession in the first half of calendar 2013 unless they are offset by other tax cuts or spending increases.

Like the AMT patch, most of these other temporary provisions expired at the end of 2011, but much of their revenue impact won't occur until fiscal 2013.

In deciding the fate of these "tax expirers," Congress should consider the larger problems facing our tax system. That system is needlessly complex, economically harmful, and widely perceived as unfair. Because of a plethora of temporary tax cuts, it's increasingly unpredictable. And it fails at its most basic task, raising enough money to pay our government's bills.

The "expirers" worsen at least three of those problems. Their temporary nature adds to policy uncertainty, making it harder for businesses and families to plan ahead. Innovative companies can't be sure whether future research expenses will qualify for the research and experimentation (R&E) credit, for example, and families considering adoption don't know whether a federal credit will offset some of their costs. That uncertainty undermines any incentives created by those credits. Temporary provisions also add complexity to compliance and administration, particularly when they are renewed retroactively, a particularly pernicious feature of recent tax policy. And they reduce federal revenues at a time of persistent, large deficits.

The expiring provisions have mixed effects on the fairness of the tax code. Some, such as the one for NASCAR venues, add to the perception that the tax code is riddled with special interest giveaways. Others arguably make the system fairer. The tax break for mass transit benefits, for example, reduces the federal tax disparity that would otherwise exist between people who use mass transit and those who drive.

These provisions similarly have mixed effects on the health of our economy. Several have attempted to provide near-term economic stimulus. Others attempt to encourage clean energy, but fall short of the economic ideal (Marron 2011a). And some worsen existing economic distortions. The deductibility of mortgage insurance premiums, for example, further amplifies the tax code's bias in favor of housing debt over other uses of capital.

Fundamental tax reform would be the best way to address all these concerns. Congress can and should create a tax code that is simpler, fairer, and more conducive to economic prosperity while raising adequate revenue and eliminating pointless expirations of tax provisions that deserve longer lives. Such reform could involve several components, such as greater reliance on consumption and pollution taxes. The most likely path, however, involves broadening the tax base by reducing tax preferences and using the resulting savings to reduce deficits, lower rates, or both. That approach has been endorsed by several reform efforts, including the Bowles-Simpson commission and the Domenici-Rivlin task force (National Commission on Fiscal Responsibility and Reform 2010; Bipartisan Policy Center Debt Reduction Task Force 2010; I was a member of the latter).

Such reform is not likely this year, however, so lawmakers must again grapple with the "expirers." As a first step, they should differentiate among three types of expiring provisions:

- *Tax cuts enacted to address a temporary challenge.* Some temporary tax provisions were enacted because of national or regional emergencies. Partial expensing, for example, was intended to encourage and accelerate investment in a weak economy. Excluding mortgage forgiveness from taxable income was intended to help homeowners and encourage principal reductions in the aftermath of the housing crash. Tax benefits for New York City following 9/11, the Gulf Coast following Hurricane Katrina, and areas damaged by Hurricane Ike and the 2008 Midwestern storms were intended to help those areas recover from disasters.

  Each of these provisions should expire unless the temporary need still exists and the provision's performance justifies extending it.

- *Tax cuts that have reached a sunset review.* Some temporary tax provisions address ongoing policy concerns but have finite lives in order to force periodic congressional review. When Congress first enacted the R&E credit in 1981, for example, it included a sunset to force a review at the end of 1985 (Joint Committee on Taxation 2012). Prolonged economic weakness and the growing tendency for Congress to enact omnibus short-term extensions make it difficult to identify provisions subject to sunset reviews today. However, JCT (2012) does identify a few expiring provisions that were last enacted before the economic downturn. These include the credit for production of Indian coal and the refundability of credits for prior year minimum tax liability.

  These provisions deserve special scrutiny because they have received no review since their original enactment or last sunset review.

- *Tax cuts that expire every year or two to game budget rules.* Many expiring provisions are in this category. Their supporters intend them to be permanent or long-lived, but they haven't been able to find the budgetary resources to extend them for a prolonged period. Examples include numerous energy incentives, the deduction for schoolteacher expenses, the R&E credit, and the subpart F treatment of active financing income.

Some of these provisions are good policy and ought to be renewed for a prolonged period or made permanent. Others should be allowed to expire once and for all.

To determine which policies are which, policymakers should consider several factors:

- *Rationale for government intervention.* Does the provision address a compelling need for government intervention? For example, does it address an important externality from private activity (e.g., by reducing negative spillovers or increasing positive spillovers)? Does it improve the income distribution or otherwise make society more equitable? Does it correct a flaw in the tax code?

- *Efficiency.* Does the provision accomplish its goal effectively and at reasonable cost? Could the government achieve the same result at lower cost through other means?

- *Fairness.* Does the provision make the tax code more or less fair? Does it level the playing field among different activities or tilt the playing field further (an issue of both fairness and efficiency)?

- *Revenue.* Do the potential benefits, if any, justify the loss of revenue at a time of large and persistent deficits? (Equivalently, for members who want to maintain current revenue levels, do the potential benefits of the provision justify levying higher taxes elsewhere in the economy?)

- *Duration.* Does it make sense for the provision to be enacted a year or two at a time? Or does that undermine its potential benefit? Should it be a permanent part of the tax code or, at least, extended for a prolonged period before its next sunset?

In making such evaluations, policymakers should keep in mind that most of the so-called "tax extenders" are effectively spending programs run through the tax code.

Rather than "letting people keep their own money," these provisions give money to people and businesses if they do things the government wants, whether it be investing in wind energy, adopting a child, giving supplies to school children, making certain types of charitable donations, or undertaking new research. Those incentives could, in principle, be structured as spending programs instead. The logistics and political optics would be different—the program would be recorded as spending and different committees would exercise congressional oversight—but the economic, social, and budget consequences would be the same. Lawmakers should thus hold these provisions to the same standards they apply to equivalent spending programs. They should also keep in mind that cutting back on these subsidies, when appropriate, would make the government smaller even though tax revenues, as conventionally measured, would increase.[2]

Lawmakers should also reform the way they review expiring tax provisions. I have three suggestions:

- *Flip the burden of proof.* Today's standing presumption is that most or all of these provisions will ultimately be extended. That's why they are called "the extenders," even after they have expired. That presumption places the burden of proof on those who believe a provision should expire (and stay expired), rather than on its supporters. Lawmakers could reverse that burden by expecting temporary provisions to expire unless supporters can demonstrate sufficient merit. Such provisions would rightly be known as "the expirers."[3]

- *Divide to conquer.* Musk oxen form into a tight circle when wolves appear on the arctic tundra. They know that the key to survival is to stick together. The wolves, meanwhile, try to separate a single one from the herd so they have a chance to feed their pups.

  The same is true with expiring tax provisions. The beneficiaries of each provision have no desire to stand out, lest that draw scrutiny. Their goal is to coalesce as a single herd—"the extenders"—and migrate across the annual legislative tundra with as little attention as possible.

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[2] For an extended discussion of these points, see Marron (2011b) and Marron and Toder (2012).

[3] This approach would make particular sense after Congress reviews all the expiring provisions and makes worthy ones permanent or long-lived; the remaining "expirers" would then be either sincerely temporary or subject to a periodic sunset.

For lawmakers to engage in serious oversight, they need to break up the herd. In principle, that would mean reviewing each provision on its merits every time it faces expiration. In practice, though, demanding annual review of dozens of provisions could well deliver careful review of none.

One way to address this challenge is for policymakers to distinguish and review groups of expiring provisions rather than approach them as an undifferentiated mass. Crandall-Hollick (2012) offers one possible taxonomy, categorizing provisions as individual, business, charity, energy, community, and disaster. The provisions could also be further distinguished as intentionally short-lived, subject to periodic sunset review, or pretending to be temporary for budget reasons. Lawmakers could then focus on each of these smaller groups rather than all the provisions together.[4]

Another strategy would be to spread scheduled expirations out over time. If fewer provisions expired each year, Congress would be able to give each one greater attention. To do so, however, would likely require new budget rules.

- *Change budget rules for temporary tax cuts.* Pay-as-you-go budgeting places crucial discipline on new legislation, but it has an unfortunate side effect: long-term tax policies often get chopped up into one-year segments. For example, lawmakers often find it easier to pay for a one-year extension of the R&E credit than a five- or seven-year extension. The short extension reduces the apparent price tag of the provision, even though everyone knows it will need to be extended again the next year. It also allows lawmakers to use 10 years of offsets to pay for a single-year extension, further lowering the apparent price tag. Such short-sighted budgeting is a key reason the number of expiring provisions has blossomed in recent years.

  One potential solution would be to change the budget rules that apply to temporary tax provisions. Congress could require that any temporary tax provision be assumed to last no less than, say, five years in the official budget baseline. Proponents would then have to round up enough budget offsets to pay for five years of the provision. In return, they wouldn't have to come back to legislators for another five years. Over time, this approach would spread

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[4] An example is the hearing this Subcommittee held last fall on taxes and energy policy (Marron 2011a).

tax provisions out in time and allow Congress to devote more attention to each when it periodically comes up for review.[5]

Another possibility would be to require that a one-year extension be paid for with offsets in the same year or, more generally, that offsets happen over the same years covered by the extension. That would eliminate situations in which 10 years of offsets pay for a single-year extension.

If Congress enacts such budget process reforms, it may want to allow a safety valve for special cases. One option would be to allow an emergency designation, similar to that for discretionary spending, for tax cuts that should truly last just a year or two or should not be immediately offset (e.g., stimulus). Such emergency measures could then be exempt from either or both of these requirements.

Thank you again for inviting me to appear today. I look forward to your questions.

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[5] Lawmakers could go even further, of course, and require that temporary tax cuts be assumed to persist for the entire ten-year budget window, as currently happens with mandatory spending programs.

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Chairman TIBERI. Thank you, Dr. Marron.
Mr. Brill, you are recognized.

STATEMENT OF ALEX BRILL, RESEARCH FELLOW, AMERICAN ENTERPRISE INSTITUTE

Mr. BRILL. Thank you very much, Chairman Tiberi, Congressman Thompson, and members of the subcommittee, for the opportunity to appear before you this morning to discuss the regularly expiring tax provisions commonly known as tax extenders.

I believe today's hearing is on an important topic as the number and budgetary magnitude of these regularly expiring tax provisions have ballooned in recent years. Some of these policies can serve an appropriate goal, but many have crept into the Tax Code over the years with little evaluation.

For example, in 2001, 13 tax provisions were set to expire that year or the next year. A decade later, 129 tax provisions were set to expire in 2011 or 2012.

The budgetary consequences of extenders have increased as well. For example, in September of 2004, Congress enacted a 1-year extension of 23 tax extenders for a cost of $13 billion. In 2010, a 2-year extension of these policies cost over $55 billion. And if Congress were to extend those policies again this year, the cost would be even higher.

Let me summarize three key conclusions from my written testimony.

First, no tax policy should be intentionally temporary. Any tax extenders deemed appropriate should be made permanent, and the rest should be allowed to expire.

Second, each of the tax extender provisions must be considered individually on its own merits and against a clearly defined policy objective. Each extender must be shown to meet an objective such as promoting economic efficiency or tax equity.

And third, a successful evaluation of the tax extenders—keeping the good and eliminating the bad or inefficient—may set a useful precedent for the bigger challenges of tackling tax expenditures broadly and ultimately tax reform.

To guide the evaluation of tax extenders, policymakers, I believe, need to answer simply two questions. First, intent. Does the intent of the provision improve economic efficiency, increase growth, promote fairness, or achieve some other desirable goal? For example, the R&D tax credit is intended to increase the aggregate level of research and development because R&D generates benefits to society beyond those realized by the firm.

But one key point I would like to stress is that with any tax extender that is intended to subsidize a given activity, special care must be taken to evaluate its net economic benefit. Most subsidies will increase the subsidized activity. But that does not mean that it will produce such a net benefit or improve overall economic efficiency.

In the absence of externalities, a credit for any given activity will lead to a misallocation of resources, more of the subsidized activity but less of everything else. And a provision that encourages more of a particular activity does not necessarily promote overall economic growth.

The second question, after determining the intent, that policymakers should ask is would the policy be effective if it were permanent and evaluate the effectiveness on a permanent basis, regardless of the fact that it has frequently in the past been a temporary provision.

Let me next quickly highlight four harmful consequences that I see from the constant expiration and reinstatement of tax extenders.

First, tax extenders distort the fiscal budget baseline and complicate revenue and deficit forecasts over the future period.

Second, tax extenders create financial reporting problems for publicly traded companies.

Third, and importantly, tax extenders exacerbate the uncertainty facing businesses as they don't know whether they can depend on these policies once they have expired.

And fourth, tax extenders may be designed to encourage oversight, but they are generally extended without much consideration.

Obviously, this subcommittee has held a number of hearings on this topic of oversight, but a review historically would indicate that, more often than not, these policies are extended without serious review.

And allow me to conclude by observing, as this committee knows well, that the tax base has eroded over the last 25 years. A proliferation of tax credits, deductions, and exclusions has left a system that misallocates resources, creates complexity and introduces compliance problems. Reducing the number of tax extenders offers an opportunity to reduce this complexity and uncertainty and to promote efficiency.

I hope that such an effort could set a positive precedent for the greater challenges that this committee will face as it embarks on broader tax reform.

Thank you.

[The prepared statement of Mr. Brill follows:]

American Enterprise Institute for Public Policy Research

Statement before the House Committee on Ways and Means
Subcommittee on Select Revenue Measures

Hearing on Framework for Evaluating Tax Extenders

Alex M. Brill

Research Fellow

American Enterprise Institute

June 8, 2012

The views expressed in this testimony are those of the author alone and do not necessarily represent those of the American Enterprise Institute.

Chairman Tiberi, Ranking Member Neal, and members of the subcommittee, my name is Alex Brill, and I am a research fellow at the American Enterprise Institute. Thank you for the opportunity to appear before you this morning to discuss the regularly expiring tax provisions commonly known as "tax extenders."

As you carefully define in the document setting forth this hearing, "tax extenders" are a subset of the tax provisions extended by Title VII of the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" (Public Law No. 111-312), as well as a number of other tax provisions that have expired or will expire this year. Before elaborating on my views, let me lead with my conclusion:

- Each tax extender provision must be considered individually, on its own merits, and against clearly defined objectives. Each and every tax extender must be shown to be appropriate against one or more of these objectives. Later in my testimony I suggest two criteria that could guide this decision-making process.

- No tax policy should be intentionally temporary. Any tax extenders deemed appropriate should be made permanent and the rest should be allowed to expire.

- A successful evaluation of tax extenders—keeping the good and eliminating the bad—may set a useful precedent for the bigger challenges of tackling other tax expenditures.

In this testimony, I first present a brief background on recent trends in tax extenders and then discuss how to evaluate which tax extenders should be made permanent and which should be allowed to expire. I then highlight four harmful effects of intentionally preserving a set of temporary tax provisions. I conclude with a comment regarding tax reform.

Background: Tax Extenders Are Growing, and Thus Are a Growing Concern

The number and budgetary magnitude of regularly expiring tax provisions have ballooned in recent years. The Joint Committee on Taxation (JCT) releases a report almost every year listing expiring provisions and the date on which they are scheduled to expire. Table 1 reports the number of expiring tax provisions by year for each of the JCT reports on expiring provisions since 1998. The table reveals a rapid increase in the number of expiring tax provisions, particularly provisions that are set to expire within the current year or the following year. In 2001, 13 tax provisions were set to expire that year or in 2002. A decade later, in 2011, 129 tax provisions were set to expire in 2011 or 2012.

Table 1. Number of Expiring Federal Tax Provisions and Year in Which They Expire

	JOINT COMMITTEE ON TAXATION LIST OF EXPIRING FEDERAL TAX PROVISIONS											
Report Issue:	1998	1999	2001	2003	2004	2005	2007	2008	2009	2010	2011	2012
Year of Expiration												
1998	9	4										
1999	4	8										
2000	6	5										
2001	5	3	**10**									
2002	5	5	**3**	**3**								
2003	4	6	12	**24**	**22**							
2004	1	3	5	7	**14**	**2**						
2005	7	8	11	11	13	**42**						
2006	0	0	1	9	9	16	**6**					
2007	9	7	7	7	7	9	**47**	**44**				
2008		1	0	1	3	6	22	**26**	**5**			
2009			8	8	8	14	20	21	**89**	**88**		
2010			1	1	1	3	10	12	42	73	**33**	
2011						0	7	8	11	12	**84**	**73**
2012						0	2	2	8	8	46	**56**
2013						1	1	1	7	7	7	8
2014						1	9	9	7	7	7	7
2015							1	1	0	0	0	0
2016 & beyond							1	1	8	9	8	8
Total expiring	**50**	**50**	**58**	**71**	**77**	**94**	**126**	**125**	**177**	**204**	**185**	**152**
1st & 2nd year expiring	**13**	**12**	**13**	**27**	**36**	**44**	**53**	**70**	**94**	**161**	**117**	**129**

Source: Joint Committee on Taxation, various reports.

The great majority of tax extenders are credits, deductions, and exclusions that can be viewed as tax expenditures. Therefore, the increase in the number of tax extenders contributes to the increase in tax expenditures. The JCT tracks the number of tax expenditures over time and recently noted the rise in the number of tax expenditures from 100 in 1981 to 150 in 2003, and then to 250 in 2009.[1]
The budgetary consequence of tax extenders has also increased significantly over time. For example, in September 2004, Congress enacted H.R. 1308, the "Working Families Tax Relief Act," which contained a one-year extension of 23 tax extenders, ranging from the research and experimentation (R&E) tax credit to the above-the-line deduction for teacher classroom expenses, with a net revenue loss of $13 billion

[1] Joint Committee on Taxation (JCT), "Testimony of the Staff of the Joint Committee on Taxation before the Joint Select Committee on Deficit Reduction" (JCX-49-11), September 22, 2011, available through www.jct.gov/publications.html?func=startdown&id=4363.

over the budget window.[2] In 2010, a two-year extension of tax extenders cost $55 billion.[3] If Congress were to extend the set of tax provisions for an additional year, the cost would be even higher.

How to Evaluate Tax Extenders

As I said at the outset, each tax extender should either be made permanent or allowed to expire. To guide this determination, I advocate assessing each tax extender's appropriateness and effectiveness. Policymakers should ask two questions about each tax extender.

1. Does the Intent of the Provision Reflect Sound Tax Policy?

First, policymakers should consider the intent of each provision individually and evaluate whether those intentions improve economic efficiency, increase growth, promote fairness, or achieve some other desirable policy goal.

For example, the R&E tax credit is intended to increase the aggregate level of R&D in the United States because of the "positive externality" R&D generates (i.e., benefits to society beyond those realized by the firm conducting the R&D). This tax credit is intended to promote innovation and foster productivity growth. In my view, these are sound policy objectives, and I support making the credit permanent, in the context of the current tax code.

The deduction for state and local general sales tax, another tax extender, does not seek to promote economic growth, but rather to provide parity between resident of states with state income taxes and residents of states with only sales taxes. In my view, a more appropriate means to achieve parity would be to repeal the deduction for state and local income taxes.[4]

With regard to a tax extender that is intended to subsidize a given activity, special care must be taken to properly evaluate its net economic benefit. Most tax subsidies will increase the subsidized activity or product, but that need not mean that it will produce a net positive economic benefit or improve economic efficiency. In the absence of externalities, a tax credit or other subsidy for a given activity will generally lead to a misallocation of resources in the economy—more of the subsidized activity, but less of everything else. A provision that simply leads to more of a particular activity does not necessarily promote overall economic growth.

This first question has examined each tax extenders' appropriateness based on its intent.

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[2] JCT, *Estimated Revenue Effects of the Conference Agreement for H.R. 1308, the "Working Families Tax Relief Act of 2004"* (JCX-60-04), September 23, 2004, available at www.jct.gov/x-60-04.pdf.
[3] JCT, *Estimated Budget Effects of the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010," Scheduled for Consideration by the United States Senate* (JCX-54-10), December 10, 2010, available through www.jct.gov/publications.html?func=showdown&id=3715.
[4] See Alex Brill, "A Pro-Growth, Progressive, and Practical Proposal to Cut Business Tax Rates," AEI *Tax Policy Outlook*, no. 1 (January 2012), available at www.aei.org/outlook/economics/fiscal-policy/taxes/a-pro-growth-progressive-and-practical-proposal-to-cut-business-tax-rates.

2. Would the Policy Be Effective If It Were Permanent?

Second, policymakers should evaluate the likely effectiveness of the policy if it were made permanent, a more complicated question than its effectiveness in its current temporary form. For example, numerous analysts have noted that the temporary structure of the R&E tax credit inhibits its effectiveness.[5] As the Technology Policy Institute's Scott Wallsten has testified:

> Because firms tend to smooth their R&D spending over time, their responses to temporary policies are likely to be muted. A temporary tax credit will, therefore, have limited effectiveness. That is, if firms do not have confidence that the credit will remain in effect, they will probably not increase their R&D spending by as much as they would if the credit were permanent. A permanent R&D tax credit would be more consistent with the way companies make decisions regard R&D spending and is more likely to have the intended positive effect on private spending.[6]

Some tax extenders may be ineffective due to their temporary nature, but would be effective if made permanent. Other extenders may be ineffective, distortionary, or undesirable regardless of whether they are temporary or permanent.

Additional Concerns Raised by Tax Extenders

To explain why I advocate either eliminating tax extenders or making them permanent, I now highlight four harmful consequences that the constant expiration and reinstatement of tax extenders have for businesses, the economy, and policymakers.

1. Tax extenders distort the fiscal budget baseline, thereby complicating revenue and deficit forecasts. The fiscal outlook for the U.S. economy is severely troubling, to say the least. Not only have annual deficits exceeded $1 trillion for a number of consecutive years, but spending on health care and Social Security is projected to increase by more than 5 percent of GDP in the next twenty-five years.[7] However, forecasting the budget outlook has become increasingly complicated as the number of tax extenders and the associated revenue loss have increased. While the majority of the revenue uncertainty is attributable to the expiration of tax policies originally enacted in 2001 and 2003, the portion attributable to tax extenders is significant. Making all of the extenders permanent would reduce revenue by approximately $400 billion

[5] For more on the importance to society of R&D, see Bronwyn H. Hall, Jacques Mairesse, and Pierre Mohnen, "Measuring the Returns to R&D," National Bureau of Economic Research, Working Paper 15622, December 2009
[6] Scott Wallsten, "The Role of Government in Promoting R&D," testimony before the Senate Finance Committee, September 20, 2011, available at www.techpolicyinstitute.org/files/wallsten_senate_finance_rd_testimony.pdf.
[7] Congressional Budget Office (CBO), *The 2012 Long-Term Budget Outlook*, June 2012, available at www.cbo.gov/sites/default/files/cbofiles/attachments/06-05-Long-Term_Budget_Outlook.pdf.

over the next ten years.[8] Budget forecasts made by the Congressional Budget Office therefore present both a "current law" and a "current policy" baseline, which illustrates the uncertainty of expected future tax receipts given the expiration of "tax extenders" and other temporary policies. The gap between these two scenarios is widening, making plausible budget forecasts more difficult.

Furthermore, new tax extenders are often created as a result of budget scoring maneuvers to mask the long-term budgetary consequences of a new provision. For example, the American Opportunity Tax Credit enacted in 2009 for calendar years 2009 and 2010 at an estimated cost of $10.2 billion[9] was extended in 2010 for two years at a cost of $17.6 billion.[10]

2. Tax extenders create financial reporting problems for publicly traded companies. When tax extenders expire and are retroactively reinstated, this introduces unavoidable discrepancies in public companies' quarterly reports, as they report information based on a policy's having expired, only to then have to account for the policy's subsequent reinstatement.[11]

3. Tax extenders exacerbate the uncertainty facing businesses. While all tax policy is temporary in some sense, because Congress has the authority to change any provision it chooses, the uncertainty of policies *scheduled* to expire but likely to be extended (or reinstated) is an unnecessary burden on an already burdened private sector. This burden worsens the economic environment for firms by increasing uncertainty. For a visual representation of how this uncertainty has increased over time, see Figure 1, drawn from a paper authored by Scott Baker and Nicholas Bloom, both of Stanford University, and Steven Davis of the University of Chicago. This index is, in effect, a discounted summation of the data that I presented in Table 1. Their research, which examines policy uncertainties beyond just tax policy uncertainty, concludes that an increase in fiscal policy uncertainty similar to what was experienced from 2006 to 2011 would have had a very significant impact on U.S. employment and economic production.

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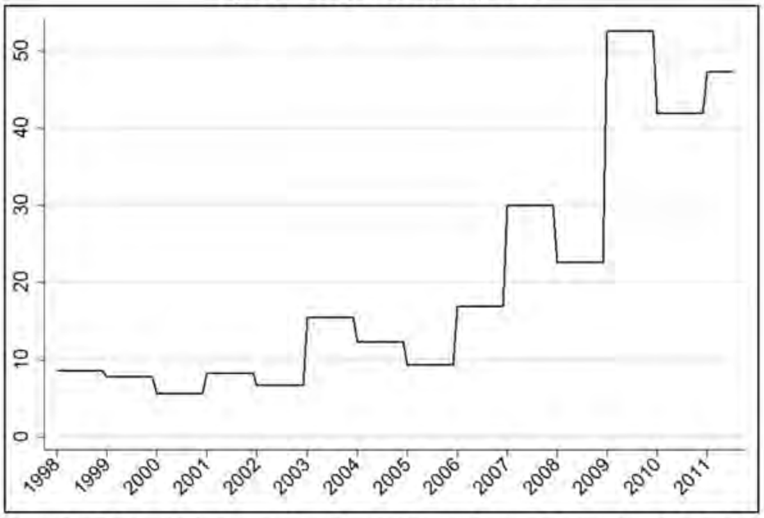
[8] CBO, "Expiring Tax Provisions—January 2012 Baseline," January 31, 2012, available through www.cbo.gov/publication/42910.
[9] JCT, *Estimated Budget Effects of the Revenue Provisions Contained in the Conference Agreement for H.R. 1, the "American Recovery and Reinvestment Tax Act of 2009"* (JCX-19-09), February 12, 2009, available through www.jct.gov/publications.html?func=startdown&id=1172.
[10] JCT, *Estimated Budget Effects of the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010," Scheduled for Consideration by the United States Senate.*
[11] According to the Chamber of Commerce, "[T]he uncertainty of expired deductions and credits can have a material impact on a business' bottom line in certain cases, requiring certain disclosures such as in financial statements filings, which can adversely affect the business more broadly." (Chamber of Commerce, testimony before the Senate Finance Committee, January 31, 2012, available at www.finance.senate.gov/imo/media/doc/Harris%20Testimony%20SFC%20Tax%20Extenders1.pdf.)

Figure 1. Tax Legislation Expiration Index



Source: Scott R. Baker, Nicholas Bloom, and Steven J. Davis, "Measuring Economic Policy Uncertainty," October 10, 2011, available at http://faculty.chicagobooth.edu/steven.davis/pdf/PolicyUncertainty.pdf.
Notes: Utilizes List of Tax Expirations from the Joint Committee on Taxation. Each year's forecast is a 10-year horizon of expiring tax laws. Future months expirations are weighted by 0.5^((T+1)/12) where T is the number of months in the future the tax is expiring.

4. Tax extenders are intended to ensure oversight, but they are generally extended without much consideration. In theory, forcing periodic reconsideration of tax policy may facilitate congressional oversight of various provisions. Numerous spending policies require periodic reauthorization, which permits reforms and policy adaptations. Obviously, today's hearing and this Committee's previous hearing on this issue could be considered elements of such an oversight effort. However, I would humbly suggest that given the budgetary magnitude of the extenders, such oversight has been woefully inadequate. My view is that much more oversight regarding the effectiveness of these policies (and other tax expenditures) should occur. However, that oversight should not be driven by scheduled tax policy expirations, but rather by the constant pursuit of tax reform. While various spending policies that are scheduled for periodic reauthorization have spurred ample research in these areas,[12] tax extenders have not

[12] See, for example, AEI's research on the Farm Bill reauthorization, available through www.aei.org/topic/farm-bill; and No Child Left Behind, available through www.aei.org/topic/no-child-left-behind.

served to create a framework for research around the provisions, with the exception of the R&E credit[13] and occasional reports on a few other provisions.

Conclusion: The Rise of Tax Extenders Is Evidence of the Need for Tax Reform

The expansion in the number and fiscal impact of tax extenders serves as strong evidence that the quality and efficiency of the tax system has further eroded. Given the budgetary outlook and need for a more rational, pro-growth tax system, lawmakers must seriously evaluate each and every tax extender provision. Even extenders with relatively small budgetary impact deserve scrutiny, as their economic burden or benefit could be much larger.

As I outlined above, the first question is whether the extender is intended to serve a valid policy goal, such as promoting economic growth or tax fairness. The second question is whether the extender would be effective at achieving its intended goal if it were permanent. Extenders that meet these criteria should be made permanent and the others should expire.

No revenue should be forgone for policies that do not serve an appropriate purpose or are limited in their effectiveness. The tax extender "momentum" that has existed over the last decade, whereby new tax extenders are added while few terminate, is not sustainable.

As this Committee knows well, the tax base has eroded significantly over the last twenty-five years. A proliferation of tax credits, deductions, and exclusions has left a tax system with a myriad of provisions that misallocate resources, create complexity, and introduce compliance problems. The discussion of tax extenders offers a modest opportunity to reduce complexity and uncertainty within the tax code. I hope that a successful effort to curtail ineffective or inappropriate tax extenders will set a positive precedent for the greater challenge this Committee will face if it embarks on broader tax reform.

[13] See, for example, Bronwyn H. Hall, "The Private and Social Returns to Research and Development," in *Technology, R&D, and the Economy*, ed. Bruce L. R. Smith and Claude E. Barfield (Washington, DC: The Brookings Institution and the American Enterprise Institute, 1996). For a discussion of possible reforms to the R&E credit, see Alan D. Viard, "Tax Policy and Growth," in *Rules for Growth: Promoting Innovation and Growth through Legal Reform* (Kansas City, MO: Ewing Marion Kauffman Foundation, 2011), available at www.aei.org/files/2011/02/08/Tax-Policy-and-Growth.pdf.

Chairman TIBERI. Thank you, Mr. Brill.

Mr. Gornstein, you are recognized for 5 minutes.

STATEMENT OF AARON GORNSTEIN, UNDER SECRETARY FOR HOUSING AND COMMUNITY DEVELOPMENT, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, COMMONWEALTH OF MASSACHUSETTS

Mr. GORNSTEIN. Thank you, Chairman Tiberi, Congressman Thompson, and members of the subcommittee. Thank you for the opportunity to testify today.

I am here to urge you to extend certain critical programs that support economic development, housing, and community development. Some of these successful job-creating programs expired in 2011, while others were deemed not traditional extenders in 2010 regardless of their proven effectiveness.

The new markets tax credit, Build America bonds, empowerment zones, and the low-income housing tax credit have created hundreds of thousands of jobs in housing units across the country. These programs play a vital role in encouraging investment in our communities.

As we continue our steady climb out of the great recession, now is the perfect time to extend these programs and the critical work that they support.

Let me briefly describe each program's impact.

The first new markets tax credit allocations were awarded only 9 years ago, yet this well-designed program has achieved excellent outcomes: $45 billion invested, 92 million square feet of retail, commercial, and office space developed, over 300,000 jobs created. These investments in each of your congressional districts are restoring abandoned buildings to the tax rolls, revitalizing small business districts, and creating momentum for further development.

I wanted to provide a few examples from Massachusetts.

Holyoke is a western Massachusetts city, once the world's largest paper manufacturer, but now one of the poorest communities in the State. New markets generated $9 million in debt financing for a full service health care center in the heart of downtown, a project that created 350 jobs. A few blocks away, a world-class computer technology center, a $168 million project, is under construction with 600 jobs already created. Universities, including Harvard and MIT, are actively supporting this initiative.

The new markets tax credit expired at the end of 2011, but it is not too late to extend it. Because of its importance, I ask the committee and Congress to take three actions: First, make the program permanent; second, extend the program for 5 more years at an annual allocation level of $5 billion, and we thank Congressman Neal and Congressman Gerlach for their sponsorship of H.R. 2655 in this regard, and three, allow new markets to be used to offset taxes paid under the alternative minimum tax.

In the short time Build America bonds were available, less than 3 years, Massachusetts issued close to $5 billion in bonds, with over $3 billion supporting our accelerated bridge program and creating 12,000 construction jobs for bridge repair.

Empowerment zone bonds have also been very important in many cities, including the City of Boston, which issued $130 million in tax-exempt bonds to help several blighted neighborhoods, creating 14,000 jobs and stimulating retail and commercial development where none had occurred in years.

Reinstating the Rebuilding Bonds program could put hundreds of thousands back to work nationwide, and I encourage you to include it in any extenders package that the committee considers.

Finally, the low-income housing tax credit program has created or preserved over 2.5 million units of rental housing. No other Federal housing program equals this record. But the credit is not just a housing program. It creates jobs, restores abandoned properties, and supports retail and commercial opportunities nearby. It is highly flexible, and it supports new construction, rehab, and renovation. It serves families, seniors, persons with disabilities, veterans, and former homeless families.

On a specific matter, we urge Congress to extend the so-called fixed 9 percent credit established in the Housing and Economic Recovery Act of 2008. When HERA replaced a floating tax credit rate with the fixed 9 percent rate, Congress brought consistency and clarity to the program.

Chairman Tiberi, we appreciate your leadership on this issue with your introduction, along with Ranking Member Neal, of H.R. 3661 to make the flat 9 percent credit permanent.

In conclusion, these community development tax credits provide many important benefits. They leverage private sector funds for economic development in housing. They create jobs, rebuild infrastructure, and transform distressed neighborhoods.

I urge you to extend these credits on a long-term basis so that we can use them to continue to build the road to economic recovery. And as you consider ways to streamline and reform the Tax Code, please take into consideration the important contributions that these programs have made, especially while undertaking efforts to lower the top corporate and individual rates.

Thank you very much.

[The prepared statement of Mr. Gornstein follows:]

Commonwealth of Massachusetts
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
Deval L. Patrick, Governor ◆ Timothy P. Murray, Lt. Governor ◆ Aaron Gornstein, Undersecretary

Testimony of Aaron Gornstein, Undersecretary for Housing and Community Development, Commonwealth of Massachusetts

U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Select Revenue Measures

June 8, 2012

Chairman Tiberi, Ranking Member Neal, and members of the Subcommittee, thank you for the opportunity to testify today. I want especially to acknowledge your leadership on a national level, Mr. Chairman and Mr. Neal, and to thank you for it.

My name is Aaron Gornstein and I am the Undersecretary for Housing and Community Development for Massachusetts Governor Deval Patrick. Our agency administers nearly $1 billion in state and federal resources for affordable housing and community development each year. Prior to joining state government four months ago, I worked for 22 years as Executive Director of Citizens' Housing and Planning Association, a non-profit organization in Massachusetts.

I am here to urge you to extend certain critical programs that support economic development, housing, and community development. Some of these successful job-creating programs expired in 2011, while others were deemed to not be "traditional extenders" in 2010, regardless of their proven effectiveness. The New Markets Tax Credit, Build America Bonds, Empowerment Zones and Empowerment Zone Bonds, and

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Low Income Housing Tax Credits have created hundreds of thousands of jobs and housing units throughout the nation. As we continue to climb out of the Great Recession, now is the time to extend these programs and the work they support. We cannot afford to lose these instruments of economic growth, and the Congress should take action to extend these programs as soon as possible. On the longer horizon, as this Committee undertakes the important task of reforming our tax code, it is important to understand the tradeoffs that are involved in eliminating these provisions, as there often does not exist a comparable way to enhance community development through other sectors of the government. In fact, while the Congress continues to cut spending programs in various programs under a number of departments, these projects can often only rely on supports in the tax code to continue. Elimination of these tax benefits could very well terminate a history of public-private partnership that has brought so much growth to our state and the country.

Let me briefly describe each and what they have meant to Massachusetts.

New Markets Tax Credit Program

The first New Markets Tax Credit (NMTC) allocations were awarded only nine years ago, yet already the NMTC has established a track record as a major source of community development financing in America. Congress authorized the NMTC in 2000 in an effort to stimulate private investment in low-income urban neighborhoods and rural communities that lacked access to the capital needed to support and grow businesses, create jobs, and sustain healthy local economies. Since the first NMTC allocations were awarded in 2001, this well-designed program has generated impressive community development results. Between 2003 and 2010, close to 300 community development entities (CDEs) have received NMTC allocations.

These CDEs, including community loan funds, Community Development Corporations and private financial institutions, have used the NMTC to finance thousands of retail, commercial, and cultural facilities, with over 92 million square feet of space.

Investments in NMTC financed-business totaled $45 billion during this period. Of this amount, an estimated $20.9 billion was direct NMTC investments, and the balance was leveraged from other sources –both public and private. These NMTC investments created or retained an estimated 300,000 jobs at a cost of $17,000 per job.

In 2010, investments in NMTC financed businesses totaled $9.5 billion. Of that amount, NMTC financing totaled $4.7 billion. This activity in 2010 created close to 70,000 jobs. All of this economic success is achieved for a relatively modest federal investment. A private investor in a New Markets Tax Credit project, investing in a financial intermediary or Community Development Entity, receives a 39% credit against its federal tax liability. In 2010, taking into consideration the funds leveraged at the project level, the NMTC program produced $8 of project-level investments for each $1 of foregone tax revenue.

Perhaps most important is the fact that every NMTC investment has been made in a business in a neighborhood or community historically underserved by private capital. Countless successful communities throughout the country are magnets for private investment – investment that does not need the encouragement of a federal or state government incentive. These are not the communities served by New Markets Tax Credit. The New Markets communities have significant poverty levels and relatively low median incomes. Over time, these communities have been written off by private capital. Yet these places are called home by millions of Americans who work hard, want to live in strong communities, and want to ensure that their children have every opportunity to achieve the American dream.

New Markets investments can only be made in communities with a poverty level of at least 20% or a median income at or below 80% of area median income. While these are the minimum thresholds, statistics show that New Markets investments frequently reach communities with deeper poverty levels and lower median incomes than required by statute. In fact, seventy-five percent of NMTC activity is in communities with higher distress – poverty rates of at least 30% or median incomes that do not exceed 60% of area median income. Approximately 60% of the activity is in communities with unemployment rates at least 1.5 times that national average. NMTC investments are creating jobs and supporting development in places where it is most needed. These investments are also halting blight, restoring abandoned buildings to tax rolls, revitalizing small downtown business districts, and creating momentum for further development in underserved neighborhoods, cities, and towns. And the cities and towns that are benefiting from this powerful program are located in each of your Congressional Districts.

I am sure that you are familiar with the New Markets investments in your districts, and understand the impact they have had on the communities you represent. But I want to highlight a couple of projects from our state. The first I'd like to highlight is the River Valley Market in Northampton, Massachusetts. The owners of this local food business and cooperative, in need of a home in the small city of Northampton, selected a former granite quarry on a major highway as their site. But they could not attract investors or secure financing for the work needed to house their business. With a New Markets award, the owners were able to support the construction of the quarry space and open a food cooperative that features produce and meat from dozens of local farmers, take-out food service, and a sit-down café. In addition to generating retail opportunities in the agricultural center of Massachusetts, the River Valley Market is a true community gathering place, with hundreds of area residents and tourists converging on its food stalls and take-out stands on every day of the week. Residents from towns and cities throughout the Connecticut River Valley are benefiting from this facility, which could not attract private investment on its own.

Another project with which I know Congressman Neal is familiar is the Holyoke Health Center Project in Holyoke. With a New Markets award from the Massachusetts Housing Investment Corporation (MHIC), a closed health center was replaced by a full service, one-stop medical complex, renovated into three commercial properties located in the heart of the central business district. Holyoke once was the world's largest paper manufacturer – a thriving 19th century community with 25 active paper manufacturing plants. In recent decades, Holyoke has become one of the lowest income communities in Massachusetts and has been designated a "medically underserved area". The new facility has helped fill a substantial need for primary care medical services and has reduced the extremely costly reliance on emergency room care. The new center also offers important new services, including a diabetes clinic and substance abuse programs. The MHIC New Markets award generated over $9 million in debt financing for this important projects. And the New Markets investment led to the creation of 350 jobs in this small Massachusetts city burdened for years by high unemployment rates.

Several blocks from the Holyoke Health Center, a new computer center is a beneficiary of New Markets investment. The High Performance Computing Center is a $168 million technology hub under construction at a former industrial site in the heart of downtown. When completed, the facility will be New England's first high performance computing center and will rank among the 500 most powerful computing centers world-wide. The center was developed through a private/public partnership including five Massachusetts universities – Harvard University, the Massachusetts Institute of Technology, Boston University, Northeastern University, and the University of Massachusetts – as well as Cisco Systems and

EMC Corporation. Over 600 construction workers have been employed on this critically important project, which has attracted attention throughout New England.

I would like to describe another New Markets investment in western Massachusetts. The city of Pittsfield is located in the heart of the Berkshires – an important tourist destination for our state. The city's economy declined sharply several decades ago when General Electric closed its facilities and moved its jobs out of state. Unemployment increased immediately, as did the poverty level. Since that time, city officials have worked hard to attract new business, create a stronger local economy, and participate in the tourism industry in this beautiful region of the state. With a New Markets award from MHIC in 2006, a historic theater in the center of the city – closed for 50 years -- was beautifully restored. The restored theater is a symbol of the re-emergence of Pittsfield, after many difficult decades, as the economic and cultural center of the Berkshires.

Shortly after the Colonial Theater restoration, the city benefited again from a New Markets award. With $17.2 million in financing from MHIC, the six-screen Beacon Cinema Complex was restored in a long-vacant historic property near the Colonial Theater. The new cinema opened for business in 2009. Together, the cinema and the theater have changed downtown Pittsfield, attracting as many as 400,000 new visitors a year to the area. The city estimates that 45 new businesses have opened since the restorations were completed. The well-known Barrington Stage Company relocated to downtown Pittsfield. Downtown foot traffic has increased, retail sales have improved, and vacant downtown storefronts are now few and far between. The New Markets Tax Credit program has been the catalyst for major improvement in this small western Massachusetts city.

I have given you Massachusetts examples because they are best known to us. But thousands of New Markets projects exist in communities throughout the country – and, in the short span of nine years, these projects have demonstrated their significance and their value.

The New Markets Tax Credit expired on December 31, 2011. But it is not too late to extend it. Because of its importance and success, I would ask the Committee and the Congress to take three actions: 1) Make the program permanent; 2) At a minimum, extend this program for five more years at an annual allocation level of $5 billion by passing H.R. 2655. We thank Congressman Neal and Congressman Gerlach for their sponsorship of this important legislation; and 3) Allow the NMTC to be used to offset taxes paid under the Alternative Minimum Tax (AMT) structure. In the long term, as this Committee considers ways to reform our code, I am glad that this program enjoys the strong support of many Committee members and I hope that support will provide for its proper consideration at the appropriate time.

Build America Bonds

Build America Bonds have been extremely important to Massachusetts and it is our hope that Congress will reinstate this program at least through 2013. As you know, the Build America Bonds were authorized under the American Recovery and Reinvestment Act of 2009—and thus they do not have the history of performance shared by the New Markets Tax Credit and the Low Income Housing Tax Credit. But in the short time they were available – less than three years -- they made a tremendous impact by enabling states and cities to access capital at significant cost savings.

Build America Bonds are taxable bonds. The U. S. Treasury pays a 35% direct subsidy to the issuer of the bonds, thus driving down significantly the cost of borrowing. Between April 2009 and December 2011, there were over 2,275 separate issuances of Build America Bonds, raising over $181 billion for capital projects such as bridges and schools. Massachusetts issued close to $5 billion in Build America Bonds, and the impact has been evident in every region of the state. The bonds attracted investors for projects such as our $3 billion Accelerated Bridge Program, which created 12,000 construction jobs while enabling the Commonwealth to repair hundreds of aging bridges, including the historic Longfellow Bridge over the Charles River. Our schools and universities – so important to our economy -- also benefited from these bonds. As one example, our largest school -- the University of Massachusetts Amherst -- renovated two laboratories and is building a new Commonwealth Honors Residence Complex that is scheduled to open next year. This extremely successful program was terminated in 2010, and I urge the Committee to work to reinstate it. State and local governments were quick to issue bonds, and the private sector was quick to purchase them. As we wait for the Congress to act on a long-term extension of the highway bill, reinstating the Build America Bonds program could help ensure that projects are not terminated or even aborted because of the uncertainty of project funding.

Within the Build America Bond program, Congress established the Recovery Zone Bond Program, with a combined national volume cap of $25 billion. The Commonwealth of Massachusetts was allotted $557 million. Governor Deval Patrick signed Executive Order 514 in October, 2009, officially opening the Recovery Zone Bond program in Massachusetts and identified the existing state Economic Target Areas as Recovery Zones. All the bond allocation controlled by the Patrick-Murray Administration was used, with the Recovery Zone Bond program being most attractive to companies that wanted to rehabilitate or expand their existing facilities.

In Lenox, the Allegrone Company, a family-owned real estate and construction firm that has served the Berkshires for four generations, used a $3 million Recovery Zone Bond issue to acquire, renovate and expand a foreclosed building. The Iredale Mineral Cosmetics company in Great Barrington benefited from a $4.6 million bond issue that enabled it to convert a former elementary school into its new headquarters, expand its staff, and prepare for growth. And Springfield will get a new 72,000 square-foot surgery center and medical office building constructed for Bay State Health Systems with the backing of a $17.8 million bond. Past Congresses considered legislation to enhance the Recovery Zone Bond program so that more jurisdictions would be able to take advantage of them. It makes sense to consider those improvements and extend the Recovery Zone Bond program.

Similar to the New Markets program, the Build America Bond program and Recovery Zone Bond program have had a significant economic impact and have provided the impetus for projects that otherwise might never have gone forward. And most importantly, the programs have proven to be a more efficient means of delivering the tax benefit on state and local borrowings. For these reasons, we strongly urge Congress to extend this important program through December 2013.

Empowerment Zone Bonds

Empowerment Zones were created by Congress in 1993, but it was 1999 before HUD designated an Empowerment Zone in the City of Boston. Along with the designation, Boston received tax-exempt bonding authority in the amount of $130 million. The Empowerment Zone program ended at the end of 2011, after a retroactive extension. As of January, 2012, over 14,000 jobs had been either created or retained in City's Empowerment Zone, a diverse area that includes five neighborhoods. The Newmarket Square district in the neighborhood of Roxbury is an example of how this program transformed a blighted area. Best Western Hotels redeveloped a 150-year old, industrial building into a 92-room hotel that serves the Boston Medical Center. With several other such projects, this area is no longer desolate, but is a thriving local center of commerce. According to a 2010 report on the Boston Empowerment Zone by researcher James Jennings: "A key accomplishment of the Empowerment Zone is the significant, positive change in perceptions about doing business in some areas in this part of the city."

The same report cites that between 2000 and 2009, the rate of growth in the Empowerment Zone increased by 12.2 percent, far exceeding the 1.5 percent job growth in the rest of the city, and growth rates of per capita income and median household income also outpaced the rest of the city. These are no small accomplishments, and speak to the importance of extending the Empowerment Zones and their bonding authority. Additionally, two other complimentary programs, the Enterprise Community and Renewal Community programs, were terminated at the end of 2010. Many of these areas of economic downturn were located in rural areas, and could benefit from a long-term extension that would ensure certainty to investors in those areas.

The Low Income Housing Tax Credit Program

The successes of the New Markets Tax Credit Program are particularly powerful. But the outcomes generated by the Low Income Housing Tax Credit program are equally powerful. Authorized by Congress in the Tax Reform Act of 1986, the Low Income Housing Tax Credit program was created to spur the development of badly needed affordable rental housing. It has undoubtedly achieved that goal. Since its authorization, the Low Income Housing Tax Credit has created or preserved over 2.5 million units of rental housing. No other federal housing program – and certainly no state-funded housing program – can equal that record. As the House considers tax reform measures in the coming year, we urge that it recognize the tremendous accomplishments of the Low Income Housing Tax Credit program and ensure its continued success.

The Low Income Housing Tax Credit is not just a housing program; it is a significant community development program. The credit creates jobs, restores abandoned or underutilized properties, reclaims urban in-fill sites, and supports retail and commercial opportunities near projects. In fact, the Low Income Housing Tax Credit program is one of the premier community development programs in the country.

Let me provide more detail on community development through the housing credit. As it produces or preserves units, the credit creates jobs – millions of jobs over the life of the program. In Massachusetts alone, credit awards have helped create over 40,000 jobs – and that is just during construction. Once a project has been built or rehabilitated, it creates permanent jobs on site – jobs for property managers, service coordinators, maintenance employees, and office staff.

Administered at the state level by housing credit agencies such as our Department, the program is highly flexible. The credit can be awarded to all kinds of projects: new construction, rehabilitation, and preservation; projects for families, for seniors, for veterans, for persons with disabilities, for individuals with certain needs, for the formerly homeless. The credit can support rental housing that is completely affordable, but it can also support mixed-income rental housing, with affordable units and market units side by side in the same building.

Countless housing credit projects have had major impacts on the neighborhoods in which they are located and have been the catalyst for private investment. It is easy to understand why. Many credit projects involve the rehabilitation of abandoned or underutilized properties that are an eyesore and a blight on the surrounding neighborhood. When abandoned or underused properties are rehabilitated and returned to the tax rolls, the neighborhood improves – and private investors, always alert for opportunities, begin to take notice. This is community development at its best.

In our largest cities, housing credit projects often are built on urban in-fill sites – sites that frequently have become environmental hazards through illegal dumping and other criminal activity. In thousands of American neighborhoods, the tax credit program has brought these sites to life and has helped spur additional investment – retail opportunities or market rate housing -- in the surrounding blocks. This is community development in the truest sense.

Tax credit projects throughout the country feature new office, retail, or commercial space serving residents of the property but also the broader community. In addition, the residents in housing credit projects constitute a ready-made market of new consumers, who often buy from local merchants and support local businesses – major community development goals. Research confirms that a housing project -- an affordable rental housing project – frequently leads to an increase in property values in the surrounding neighborhood. This also is community development.

In Massachusetts, the Department of Housing and Community Development has been the state allocating agency for the credit since the program began. To date, we have awarded tax credits to 574 projects comprising 39,016 units located in every region of the state. Approximately 85 percent of the units are affordable to individuals or households earning no more than 60% of area median income – the target group intended by Congress when the program was authorized 26 years ago. The program serves very needy individuals and families, but it also serves thousands upon thousands of working families. In the Boston metropolitan area, our family tax credit projects are filled with workers often employed in health care, food service, maintenance, small business enterprise, construction, education, transportation. These are not high-paying jobs – often below $50,000 -- but these jobs are in many ways central to the economy.

I also want to highlight another very important aspect of the program: tax credit support for vulnerable populations. The Commonwealth of Massachusetts is very interested in making tax credit awards to projects for homeless veterans. We have just completed a tax credit funding competition and were able to make credit awards to two new veterans' projects. Gordon H. Mansfield Village will be built in a vacant police training academy in Agawam, a small city in Western Massachusetts. The sponsorship entity includes Soldier On – a group that exclusively serves veterans and has extensive experience with homeless veterans. Soldier On operates homeless shelters, job training, financial management training, counseling, and other supportive services that veterans need. When the Agawam project is ready for occupancy, 56 currently homeless veterans will move into newly rehabilitated apartments and will receive support services.

The Agawam project will be Soldier On's second project featuring permanent housing and services for homeless veterans. The first project – also funded by DHCD and other public lenders – is located in Pittsfield, MA, and includes 40 units for homeless veterans. Also called Gordon H. Mansfield, the project has been occupied for almost two years, is highly successful, and has received national recognition.

Our Department also has just awarded tax credits to Pleasant Street, a historic rehabilitation project for homeless veterans located in the central business district in Beverly, one of our smaller cities. Peabody Properties – one of the Pleasant Street sponsors -- has solid experience in developing and managing properties for homeless families and individuals, including homeless veterans. Peabody's management company will work with a local veterans' group – whose offices are just a block away from the project – to ensure the availability of services to the 40 veterans who will move into Pleasant Street sometime next year.

At this time, DHCD is working with three additional veterans' projects whose sponsors intend to seek tax credits as the cornerstone of their financing. On behalf of the Department, I want to tell you that using tax credits to support veterans housing is one of our highest priorities. We are fully committed to serving this population, and the tax credit program allows us to do that.

Let me close with an example of the Low Income Housing Tax Credit supporting high impact community development. As recently as eight years ago, hundreds of deteriorated rental units were clustered in several neighborhoods near downtown Springfield, MA. Some of the projects had been purchased by out-of-state owners who provided minimal management and reacted slowly, if at all, to criminal activity within their properties. These properties were notorious within the larger Springfield community and constituted a drain on public safety resources. The Worthington neighborhood was particularly impacted by these deteriorated projects. Seven years ago, an experienced tax credit developer put together a strong partnership with the city of Springfield and our Department and began assembling resources to acquire, rehabilitate, and manage these properties. With tax credit awards from DHCD, the development entity, First Realty Resources, acquired the first properties and took over management in 2006. As rehabilitation got underway, First Realty's management company focused sharply on changing the behavior of the residents by enforcing rent collections and lease terms. City officials and the police department have been very happy with the results, including a substantial drop in criminal activity in the neighborhood.

With tax credit awards from our Department, First Realty now has finished rehabilitating over 340 units in the Worthington neighborhood. This is a true community development and community revitalization project. The appearance of the neighborhood has changed significantly, as has quality of life for its residents. No program other than the Low Income Housing Tax Credit is powerful enough to support rehabilitation and neighborhood improvement at this scale. This is one of many reasons we ask you to support this program in the years to come.

On a specific matter, we particularly urge Congress to extend the so-called fixed 9% credit, established in the Housing and Economic Recovery Act (HERA) of 2008. When the HERA legislation replaced a floating tax credit rate with the fixed 9% rate, Congress brought consistency and clarity to the program. Developers could predict with much greater accuracy the value of the 9% credit to private investors. Chairman Tiberi and Congressman Neal, we appreciate your leadership on this issue with your introduction of legislation to make the flat 9% credit permanent, H.R. 3661.

While current law expires for properties placed in service after 2013, it has effectively expired already since new allocations of Housing Credits cannot reasonably assume that the property will be built and occupied within the next year and a half. Property developers receiving allocations of credits in Massachusetts and other states must now assume a low credit amount. This has effectively reduced the amount of equity that can be raised for Housing Credit development by almost 20%, making it more difficult to develop this housing. We ask that the fixed 9% rate be extended.

Conclusion

In conclusion, these community development tax credits provide many important benefits. They leverage funds for economic development, community development, and housing. They create jobs, rebuild infrastructure, and they transform distressed neighborhoods. They represent the kind of innovative thinking that is the core of this country's greatness. Again, I urge you to extend these tax credit programs on a long-term basis so that we can use them to continue to build the road to economic recovery. And as you consider ways to streamline and reform the tax code please take into consideration the important contributions that these programs have made, especially while undertaking any base-broadening exercises to lower the top corporate and individual rates.

Chairman TIBERI. Thank you, sir. Thanks for the testimony. Thank you all.

Dr. Marron, Mr. Brill, in your written testimony and as well as your oral testimony today, you both talk about how we should change the automatic nature of extending the extenders, which is the goal of Chairman Camp.

How do you think—can you focus a little bit more operationally from your perspectives on how we should put the burden on having supporters of each extender provide us and how we should therefore proceed in separating the different types of extenders and their worthiness of staying in the law?

Dr. Marron.

Mr. MARRON. Certainly. So I think actually the last time I appeared before you I thought it was a good start, which was to take a category of tax preferences and focus on them directly. So in that case, it was energy provisions. You can imagine doing similar things, right? While the tax extenders or expirers list is very long, you can group it into categories of charity, community development, energy, stimulus, and try to sort of focus on those as a group, figure out which ones make sense, which ones don't.

Chairman TIBERI. Should supporters be providing certain data points, economic development, jobs numbers, any thoughts on that?

Mr. MARRON. Actually that would be great if they could. You know, our friends at GAO sometimes have data on this as well, or if not to add to Jim's workload, but it can be asked to provide such information as available.

I should note, by the way, on that particular issue, I don't want to over emphasize these particular provisions. There are a lot of provisions in government policy in general and the Tax Code in particular that don't get enough review. So, you know, certainly there are things that are in the permanent tax system that deserve more review than they currently get as well.

But some way of kind of separating them out, giving them attention requiring some data and justification for what they are doing.

And then also I think the other point is if you can spread them out in time, right? So if a typical tax extender lasts 5 years, then on average you are only going to have one-fifth as many to look at every year, and you are going to be able to give those closer attention.

Chairman TIBERI. Mr. Brill.

Mr. BRILL. Thank you. I think you are raising really a critical issue. One is the burden of proof question. Is it the responsibility of the constituent and the advocate to prove to Congress the worthiness of these policies, or does the burden rest with Congress itself or other Federal agencies to prove the policies are not working?

I think that we would be well-served by trying to pursue both of those agendas.

As Jim noted in his remarks, there is oftentimes not a lot of—there may be oversight but—on the administrative side but not a lot of evaluation by the government on the effectiveness of these programs.

These are really hard questions, however, because simply observing that a subsidized activity, that that activity is doing well doesn't prove the effectiveness of the policy itself. And so for any given credit, for example, there may be lots of energy production, but that doesn't mean that on the margin we are encouraging that investment or activity. Rather, we may just be providing a windfall.

And so the analysis necessarily requires that you develop a "but for" case in the absence of this policy, what would be the outcome. These are really hard economic problems to figure out because we don't have a control case. And I think that the conclusion there is that the bar needs to be very high. In order to have a policy that distorts from what would otherwise be happening, we need to set a very high expectation for the outcome.

Chairman TIBERI. Thank you.

Dr. White, some of the work that GAO has done on the new market tax credit suggests that we should consider converting the credit into a grant program. So I have two questions related to that.

First, since 2003, the program's cost to the treasury has been about $5¼ billion. In exchange, the treasury has allocated roughly $29 billion in tax credits that have resulted in what Mr. Gornstein has said is roughly $45 billion in new market investments. So that is a leverage of about 8 to 1.

In addition, some estimates are that 300,000 jobs are created or retained at a cost of about $17,000 per job.

So the question, first question is can you elaborate on how GAO's perspective on obtaining that same sort of leverage would work through, that ratio would work through a grant program in place of a tax credit program?

Mr. WHITE. Yes. The question we were looking at with the grant program was the amount of money that is flowing through from the treasury ultimately to the beneficiary businesses, the community-based businesses, and because of the way the tax credit is structured, credits are allocated and then they are sold to investors, and there is a fairly complex process for raising the funds from the private sector; in effect the tax credits are sold to them. And in that process, not all of the money is flowing through to the ultimate beneficiary businesses in the community.

And so the question we had was whether a grant would allow for the same cost to the treasury, more money to flow through to the beneficiary businesses. What we actually suggested was running an experiment—divide up the funding for this and have some of it run as a grant program, some run as the traditional tax credit program and test which one is more effective at getting money through to the community businesses.

Chairman TIBERI. Well, it seems to me that one of the driving factors in GAO's conclusion of the grant program operation is that the tax credits are running at a discount. But certainly, the economy and the recession have probably intensified that issue.

And so Mr. Gornstein suggested that maybe one way of improving that is to treat the new market tax credit program like the low-income housing tax credit program and the historic tax credit by entering into exempting from the alternative minimum tax as we do for low-income housing tax credit and historic tax credit. What are your thoughts on that?

Mr. WHITE. Well, I think you still have the basic question of whether there is some alternative design to a tax credit that would allow more money to flow through to the beneficiary businesses. And then a whole separate issue from what we are talking about here is how much of the assistance from the treasury actually flows through. And the separate issue is the effectiveness of these programs overall, and we have tried to look at that.

Our work on that suggested that there was some increase in the amount that investors were investing in this sort of program. And those are kind of two separate questions. One is the effectiveness of the money from the treasury flowing through, and the other one is the effectiveness of the program overall.

Chairman TIBERI. My time has expired, but Mr. Gornstein, since you brought it up and I asked the question, do you have any thoughts on that?

Mr. GORNSTEIN. Yes, I do. Let me get to the—answer the grant versus tax credit issue if I can, very briefly. As you point out, the tax credit attracts significant private investment which otherwise would not have been made in very targeted low-income communities within the new markets credit. And I think GAO's own study found a survey of the investors, 88 percent, would not have made the investment without the tax credit. So a grant program is not going to give you that private leverage that is so important to getting funding into these communities.

Second, it brings private sector participation in both the underwriting of the projects and the ongoing matter, which you would not have under a grant program.

And finally, I think converting to a grant program obviously brings the appropriation risk. And as there is so much pressure on the domestic programs, we are certainly going to run into that I think as you convert to a grant program.

So those are some of the concerns we would have with converting to a grant program.

The program is working well. It is becoming more efficient, as you point out, since the recession. After the 2-year extension that Congress provided to the new markets, we have seen the yields going up. We have seen the investments increasing, record levels in 2011. So I think we are on the right path and a permanent extension would even build on that momentum.

Chairman TIBERI. Mr. Neal would be proud of your testimony today.

Mr. GORNSTEIN. Thank you very much.

Chairman TIBERI. Mr. Thompson is recognized.

Mr. THOMPSON. Thank you, Mr. Chairman.

I want to follow up on the new market stuff on behalf of Mr. Neal. I have a couple of specific questions for him.

But I just want to note a couple of things.

One, all of the issues that have been explained, everything from uncertainty to the difficulty in the Code are clearly important. And the effect that the work that this committee does on both the Tax Code and on the economy I don't think can be overlooked. I think we are in a very unique position here. You know, a lot of this stuff is just a math problem, bottom line. It is the political side that gets in the way. And I think that is where this committee's responsibility really needs to be stepped up because we need to get beyond some of that, the political bickering, and focus on what tax policy is going to improve our economy and improve the lives of the American people.

We need to have honest debate.

I know that, Mr. Marron, you mentioned in your written statement, you didn't talk about it, the whole issue of the NASCAR provision. And you said that it adds to the perception that the Tax Code is riddled with special interest giveaways, when in fact that was merely done to correct an administrative action by IRS that would have treated one theme park different than another theme park, to put it basically.

We went through the same thing a couple of years ago where it was media fodder over the arrows. There was a company, I think it was in San Diego, that made aluminum arrows, and they were going to move offshore because the Tax Code made it more lucrative for them to make the arrows in Korea rather than in the United States of America because they assembled, they could make them one place and assemble them here and get a tax break.

When that was fixed, it kept a bunch of jobs in the United States. And we handled aluminum arrows the same way we handled aluminum baseball bats. But the press went wild with this stuff. They talked about it being a giveaway to the bow and arrow people, which was ridiculous.

So I think we all have a responsibility to make sure that the debate is honest. So I appreciate you bringing that up, and I hope that we can get to that honest debate to make sure that we have tax policy that is effective, that is efficient, that is fair, and that meets all of the criteria that a couple of you had mentioned.

On the new market tax credit, I think this deserves a lot more discussion. Not only has it worked in Massachusetts, where there has been historic building preservation and jobs associated with that, it is being used all over.

I have a clinic on the North Coast of California that is one of the main health care providers on the North Coast, and they are looking at it to do their expansion. And not only is this a growth in construction jobs, but it is a growth in medical jobs. You know this. Doctors, nurses, nurse practitioners, all of the folks who not only are good jobs, but when you are all done, you have got good infrastructure and you have got a healthier community, which saves us money in the future as well.

So on behalf of Mr. Neal, Mr. Gornstein, I would like to ask you his question. And you have talked about the new market tax credit quite a bit. But he would like you specifically to comment on the GAO's recommendation on this issue. Could you please do that.

Mr. GORNSTEIN. Yeah. As I had said before, we certainly have to look for every way to make the new markets tax credit more efficient and effective. And I think the community development field welcomes the scrutiny, the evaluation, and appreciates all that the GAO has done to point out areas where the program could be strengthened. But, we do have concerns about shifting to a grant program, as I mentioned, and that would really be around the issue of leveraging private sector investment and how critical that is to get the private sector involved in these distressed communities, in investing in low-income neighborhoods. This is a highly targeted tax credit that is benefiting thousands of low-income people in low-income neighborhoods around the country, as you had said in California as well.

And it is a program that also brings oversight from that private sector around underwriting. This is true in the low income housing credit.

So you are getting the market discipline imposed and having another set of eyes on these projects both in underwriting and then once they are built and occupied, ongoing monitoring to ensure that the benefits continue going forward.

Again, new markets and the housing credits score very high, I believe, in that regard, and the very nature of the tax credit is a big reason for that.

Mr. THOMPSON. Thank you. Thank you, Mr. Chairman.

Chairman TIBERI. Dr. Boustany is recognized for 5 minutes.

Mr. BOUSTANY. Chairman Tiberi, I want to thank you for the series of hearings we are having on these temporary tax provisions and the thoughtful approach you are taking to it, as well as thanking Chairman Camp for his leadership on these issues as well.

Gentlemen, I chair the Oversight Subcommittee for Ways and Means, and we have been looking very intensively at a number of tax credits and the administration problems, the propensity for fraud and abuse and those kinds of things.

And Dr. White, it is fairly easy to dissect down on that particular aspect. But you have mentioned a number of other areas, metrics that we ought to be looking at and some of the challenges. And I am kind of curious, help us figure out what we should be looking at when we try to make distinctions between a tax provision that is very well written but yet hard to measure versus one that may be flawed in the way it is written, and of course that creates measurement problems and distortions as well.

Could you give us a little more insight how we might approach that dilemma as policymakers?

Mr. WHITE. Yes. And a couple of things I would emphasize. First would be, as I think some of the panelists have discussed, first would be setting clear goals for the program, spelling out what the, what the effect is that you are looking for.

Mr. BOUSTANY. Would you do that in the statute?

Mr. WHITE. It could be done in the statute. And you know, is the community development program focused on construction or is it focused on jobs, and is it focused on jobs for existing residents or just new jobs in that community that might come in from the outside.

And then a second issue would be focusing on evaluation. And there, one issue, especially in the case of tax provisions, is what agency ought to be responsible for the evaluation. IRS administers these tax provisions, but IRS is not the Federal agency, the executive branch agency responsible for housing programs or energy programs or community development programs. And so what happens with tax provisions are they are administered by IRS, the agency with a functional responsibility in many cases doesn't pay much attention to the program. So assigning responsibility for actually doing some assessment of the programs I think would help.

Mr. BOUSTANY. Thank you. Any of you want to comment further on this? Mr. Brill.

Mr. BRILL. I would just add briefly to Jim's comment.

The evaluation of the effectiveness of any given tax policy extender needs to also occur while recognizing other programs on the other side of the ledger. And so we need to think about the net consequences not only of our tax policy geared, say, for example, towards housing but also due to our spending policies, bring those together in a single framework and then make a determination and evaluation.

Mr. BOUSTANY. Thank you.

If I could shift gears for a moment. Mr. Brill, you mentioned no tax policy should be intentionally temporary, and as we go through tax reform, clearly we want to simplify, streamline the Code, hopefully see more permanency so that you create an environment of certainty. And that sounds all great, but if we are going to have provisions that sunset gives me—I mean what is a reasonable timeframe? Clearly, 1 year makes it very difficult when you are doing things year after year. Several of you highlighted that. It also creates problems for oversight. What is a reasonable timeframe for a temporary provision?

Mr. BRILL. I think the answer probably depends on the policy itself. But I know that the committee has thought in the past about how to create a temporary policy that is convincing to the beneficiaries that it's permanent. That is, in essence, how do you work around the budget constraint systems in the Budget Act, yet still convince the users that this is something they can rely on?

Certainly only reinstating policies retroactively is to create windfall benefits. On the other hand, I would look back to 2003 when the dividend/capital gains rates were lowered on a temporary basis due to a budget process issue, not a cost issue, but budget process. At that point, it was viewed that 5 years would give that amount of certainty, some confidence to the market. And other policies were considered at that time that would have been much shorter and not pursued because of the importance of convincing beneficiaries or constituents, taxpayers, that the intent is to create policy that is permanent.

Mr. BOUSTANY. Thank you. My time has expired. Thank you, Mr. Chairman.

Chairman TIBERI. Thank you. Mr. Marchant is recognized for 5 minutes.

Mr. MARCHANT. Thank you, Mr. Chairman.

Mr. Brill, over the years various industries have urged the adoption of tax provisions with the stated purpose of incentivizing investment in certain types of energy.

In selling the merits of these incentives to Congress, it was indicated that these taxpayer supports would only be required for the amount of time necessary for these industries to mature. To date, very few, if any, of these industries have independently determined that these subsidies are no longer necessary.

Could you address the methods and criteria that Congress should use to make its own evaluation as to whether the originally stated objectives of these subsidies has been achieved and what the appropriate means of discontinuing this taxpayer benefit?

Mr. BRILL. Thank you. This goes to one of perhaps the hardest questions for Congress or the private sector to grapple with, which is the rate of technological progress. And so while many will be hopeful that their nascent technology will quickly mature and that cost of production will fall quickly in such a way that it will no longer need government support, these are really hard issues to ultimately predict ahead of time how well those markets will mature.

We have seen a lot of policies work their way into the Code on exactly that argument. "We only need this relief, this encouragement, for a limited period of time."

Ultimately, the industry can grow to become dependent on these policies. And the economics for any given activity will rely on the availability of a taxpayer subsidy. And the ability to wean an industry, particularly the energy industry, off of these credits is obviously proving very difficult.

I would suggest that to the extent the committee pursues a policy, an effort to reduce these credits, you need to think carefully perhaps about a transition, a phaseout of some of these policies that might allow the market to understand how things are going to, over time, step down and ultimately end.

Mr. MARCHANT. So a strategy for an energy source that is heavily relying on these subsidies, a strategy for this to come to this committee would be to demonstrate very clearly at what point they feel like they would not need the subsidy any more and then codify that and put that into law?

Mr. BRILL. That is exactly right. And if you codified the stepdown or the phaseout of that policy instead of having them hit a wall where a large benefit goes away overnight, both as a policy matter and I also would suggest politically, that might make it more likely that the policy will actually terminate.

Mr. MARCHANT. And then in the investor community, an investor would look at that and make a decision whether that investment was in fact, you could tie the risk of the investment to the stepdown of it and it might more realistically reflect—the investment level might more realistically reflect how actually feasible that industry was?

Mr. BRILL. That is exactly right.

Mr. MARCHANT. Mr. White, you mentioned in your written statements that with some tax expenditures, it is difficult or impossible to determine whether a provision is having its intended effect. Should Congress decide to extend a given tax expenditure, what steps should it take to facilitate measuring its impact?

Mr. WHITE. As I said earlier, I think setting goals, assigning responsibility to an executive branch agency for actually doing the evaluations, and I think that ought to be the agencies with functional responsibility, not IRS. IRS is a tax agency. I don't think they should be in the business of assessing a housing program or an energy program. And then that agency then would make some determinations about the type of data that would be needed to actually conduct the evaluations.

So, right now, the only data that is collected on many provisions is data that IRS needs for ensuring compliance with the law. IRS is not collecting information suitable for assessing the effectiveness of many provisions.

Mr. MARCHANT. Okay.

Thank you, Mr. Chairman.

Chairman TIBERI. Thank you, Mr. Marchant.

As a follow-up, Mr. Brill, to Mr. Marchant's question on energy, I am sure you were glued to your computer screen when we had the last hearing—it was a very highly rated session we had—with Members on both sides of the aisle, for example, talking about the production tax credit. And we had a lot of consensus from not just Members but supporters on this issue of phasing out the tax credit over the period of the next several years, which was kind of interesting.

And as just a side question to what Kenny talked about, I also heard that, since this has already expired, that it is having an impact on reinvestment. Because folks don't know whether or not we are going to re-extend it.

So, as we look at this, how does that impact the policy, the fact that it is already expired and the fact that you have advocates now saying we will phase it out?

Mr. BRILL. Yes, there is no question in my mind that many of these policies in the extenders package have real, measurable, observable consequences in the market. The taxpayers act or don't act depending on whether or not they are getting these policies.

And so if it is a determination that the subsidy is desirable, that we want more of that activity, there are many of them that work that way. And it is observable for sure in the energy sector, with a host of the credits, how the levels of investment have increased and decreased over time as the credits have changed or expired.

In particular with regard to letting them lapse and then going back or promising to go back or then arguing about whether or not you are going to go back and reinstate them, it is going to have a big consequence, too, and create an additional uncertainty for that community, for that industry.

And so, to the extent that we are trying to develop a set of policies where Washington is freeing the private sector to do as it wishes or to set a set of policies that encourages it without constantly interfering, we are failing that test when we let those policies expire and then go back and reinstate them.

Chairman TIBERI. Thank you.

Mr. THOMPSON. Mr. Chairman, would you yield?

Chairman TIBERI. I will yield for a minute.

Mr. THOMPSON. That is all I need. I just want to get some certainty. When we are talking about the energy tax provisions, we are talking about all of them, not just the renewables, correct? So the 199 deduction for gas and oil? We are talking about everything?

Mr. BRILL. Well, the 199 is not an expiring provision. I was speaking generally of tax credits to encourage activity in a given sector, including in the energy sector.

Mr. THOMPSON. So the 199 deduction for gas and oil would be one that you are talking about?

Mr. BRILL. Well, section 199 is not an expiring provision.

Mr. THOMPSON. I understand it is not expiring. But if you are going to talk about energy tax provisions, I don't know how you talk about one side without talking about the other side.

Mr. BRILL. So, section 199, which applies for manufacturing income, including income derived through energy production, may have an effect on the allocation of resources toward those activities and away from activities——

Mr. THOMPSON. Similar to tax expenditures' effect on the allocation of resources as it pertains to renewable energy.

Mr. BRILL. That is correct.

Mr. THOMPSON. Thank you.

Chairman TIBERI. I was actually trying to be helpful.

Mr. THOMPSON. Me, too.

Chairman TIBERI. Mr. Gerlach is recognized for 5 minutes.

Mr. GERLACH. Thank you, Mr. Chairman.

First of all, thank you both, Mr. White and Mr. Gornstein, on your thoughts, further thoughts, on this issue of the New Markets Tax Credit. And particularly, Mr. Gornstein, I share your view on keeping the program as is and growing it in terms of the amount of allocation that is available each year over a longer period of time. I think it does a pretty terrific thing in a lot of communities with these projects.

Mr. White, if I can, however, go back to your testimony or your GAO report that gets into, again, the criteria for good tax policy. And I am interested very much in the terminology you use, criteria including equity, economic efficiency, simplicity, transparency, and administrability, as well as relationship to other policy tools.

Interestingly, as we were talking about what should stay in or what should be taken out of the Tax Code as we go through this process of hopefully simplifying it, you would think and most of the conversations we have had center around job growth, making it more easy to grow capital that makes itself available then for investment in the economy. But you term it as economic efficiency.

And can you describe a little bit more fully that term relative to jobs, relative to capital formation, as a criteria for how we ought to look at a lot of these provisions down the road?

Mr. WHITE. Yes. Essentially what you are doing with these tax provisions—and this applies not just to tax provisions; this applies more broadly to spending programs or other types of programs—you are shifting resources, you are providing incentives to move resources from one area in your economy to other activities in your economy. And the question is whether there is a net gain or not from doing that. And, in some cases, there may be a net gain from that.

So with the research credit, for example, it is argued that private businesses will underinvest in basic research because they can't capture all of the benefits of that research. And so there is a justification there for some government subsidy to shift additional resources into basic research. Tax provisions are one way to do that but not the only way to do that.

Mr. GERLACH. Uh-huh. And does that roll into this issue of relationship to other policy tools? For example, let's take the New Markets Tax Credit that can be used in an older community in my district to undertake renovation of older housing stock and turn it around for affordable housing projects. And yet you could find umpteen other Federal programs that are grant programs that might do the same thing, say, HUD programs.

So is it better, from a policy standpoint, to allow a more private-sector, market-based approach, to use a credit but then allow also the formation of cap to do that project, or just have some entity go and file a grant application with HUD and get it done that way?

Or take a look at a situation where you might have an R&D tax credit or a section 179 business expensing. Or, rather than a Tax Code approach, just have them go get an SBA 7(A) loan to do something.

So shouldn't we be looking at these Tax Code extenders as well as reform issues not only from the context of what would happen reaction-wise in the private sector based on what the Code says, but also what is available out there on the programmatic side that is also available to people? And maybe even think about whether those programmatic approaches to doing what we want to see happen in the private sector—those ought to be maybe reduced and provide better opportunities in the Tax Code so individual companies can make decisions based on the Tax Code without having to go through the bureaucratic process of filing an application, go through a grant review, maybe get the grant, maybe not get the grant.

Mr. WHITE. Yes.

Mr. GERLACH. But rather then relying on government to give them some benefit through a bureaucracy, have a Tax Code that can be more responsive to what they can do in our communities to improve the quality of life in our communities.

Mr. WHITE. There are some different advantages and disadvantages to using these different, I call them tools of government—spending programs versus tax programs, for example. With the Low-Income Housing Tax Credit, for example, the way that is structured, the private sector does have some incentive over time to ensure that the projects that are built stay in compliance with the rules. So it was a way to bring in some private-sector management experience there.

Another example of what we are talking about here is the assistance provided to higher education, where you have Title IV spending programs and a number of tax programs at the same time, and what you would like to do is apply these evaluation criteria across the board to all of those programs.

One of the things we found in our work right now is that it appears that the mix of these programs is just not very transparent to many people. They are either not claiming anything at all even when they are eligible or they are using the wrong program. They seem to be overwhelmed by the choice here. And it has resulted in confusion and people making bad decisions from their own financial self-interest perspective.

Mr. GERLACH. Yeah.

Does anybody else on the panel have a thought on that, in terms of the relationship of current grant loan programs that are administered through a massive bureaucracy in Washington versus just allowing the Tax Code to be a better tool to stimulate private-sector investment in our economy and our communities?

Mr. GORNSTEIN. Yeah, just one more point about that.

The grant programs are extremely important, but it is the tax credits—Low-Income Housing Tax Credit, New Markets—that are the engine that drive these deals. So the grant programs alone are not enough to move forward on most development projects in most communities. You need a combination, typically.

But the biggest resource, the most powerful one, is the tax credit. So I think if we lose the tax credit or it is not extended or there is uncertainty and we are not getting the yields we need, it is going to have a detrimental effect on our ability to do more projects in very targeted communities.

Mr. GERLACH. Thank you.

Any others?

Okay. If not, thank you, Mr. Chairman.

Chairman TIBERI. Thank you, Mr. Gerlach. And thank you for your leadership on the New Markets Tax Credit.

And, Dr. White, just an aside to add to what Mr. Gerlach was talking about, I know in my district, which is urban/suburban in my current district, the fact is, if you and I drove through it and saw the differences of housing policy at the Federal level between a housing authority, a HUD property, versus Low-Income Housing Tax Credit policy or go to a New Markets Tax Credit policy that has private-sector involvement and oftentimes local support from cities and counties, the differences are unbelievable.

And I would love to see you all do a study on how those different policies at the Federal level impact, in the end, what the bricks and mortars are built on the ground and how it impacts communities. I don't know if you have ever done that before. Have you?

Mr. WHITE. I don't think we have done as comprehensive a look as you are asking about. I have been involved with our past reviews of Low-Income Housing Tax Credits and have visited projects myself. So I have seen that difference, as well.

And I think, you know, ultimately it boils down to questions of, if you are comparing programs, does one deliver more bang for the buck than another one; and then also the overall effect of the combination of programs——

Chairman TIBERI. Right.

Mr. WHITE [continuing]. For example, to what extent are the programs crowding out private-sector investment in an area. That would be part of the evaluation.

One of the things we found in our reviews of the New Markets Tax Credit was that it did appear to increase overall investment in the targeted communities.

Chairman TIBERI. So you probably wouldn't answer this question. You probably couldn't come out and support Mr. Gerlach's amendment to the appropriations bill to zero out HUD grants and transfer them to the tax credit—just kidding.

Mr. Berg is recognized for 5 minutes.

Mr. BERG. I had better cut in there. Thank you, Mr. Chairman.

And I thank the panel for being here. I mean, this is an important, great discussion that is really the next step.

You know, I mean, there is no question the problems we have with the Tax Code. The uncertainty, the unpredictability, I mean, it has just caused so much doubt throughout our economy. I mean, I think that is just one of the key things that we need to get fixed if we are going to get our economy turned around. There is absolutely no question about it.

You know, having said that, you know, there has been a lot of discussion about a comprehensive tax reform. And, you know, I think that is something that many of us in this committee would like to see happen.

And so I would like to kind of ask the panel just kind of briefly, you know, we have the extenders. If we do that outside of the box of a comprehensive tax reform, you know, really, what are we accomplishing? Or should they not be part of this comprehensive tax reform when we get that?

You know, I think everyone that is a beneficiary of these, you know, the discussion today is make them stand up, make them say, you know, "Here is why this is important," let them stand on their own merit, and I think that is important. I think the comment about, so many of these are short-term because of the budget problem—well, these are some long-term decisions that, quite frankly, need to be made, as well as long-term comprehensive tax reform.

So my question is, can we do this outside this, or should they all be part of this comprehensive tax reform?

Mr. White.

Mr. WHITE. I think you want to do both. You want to look at the merits of individual provisions or the package of programs targeting a specific area, such as assistance for higher education, but then you also, on tax reform, you have broader issues.

With tax expenditures as a whole, not just the expiring provisions, but tax expenditures as a whole are so large that that affects what tax rates have to be. There is so much revenue given up from shrinking the base that tax rates on the remaining base have to be higher. Well, there are economic consequences to those higher tax rates. And so there is a tradeoff there that needs to be taken into account at a more macro level.

Mr. BERG. Thank you.

Mr. MARRON. I would absolutely agree. The optimal would be to do fundamental tax reform and clean up everything. So there are a bunch of expiring provisions that really ought to be permanent features of law, either because they are good tax policy—Mr. Thompson gave an example where one might correct an error that is out there. You know, those kinds of things ought to just be addressed permanently as part of overall reform.

The challenge, as you know better than me, is that the clock of legislation doesn't suggest that we are going to have such tax reform before people deserve some resolution in the near term about what is going to happen to these provisions, particularly those that have already expired but are still under consideration. And you have sort of an opportunity to let some of them die permanently and maybe keep them out of the next discussion of tax reform. But, frankly, I think the legislative clock will require that you address a whole bunch of these for another year or 2 as sort of another bridge to the hoped-for tax reform of 2013 or 2014.

Mr. BRILL. I would just note that many of the policies in the tax extender package are tax expenditures. And there has been a dialogue over the last 2 years or so more focused on the notion of broadening the tax base, curtailing these tax expenditures, whether they are temporary or a permanent part of the Tax Code today.

And then with a broader tax base that is more efficient, less distortionary, there is an opportunity to reduce tax rates, which would be pro-growth, and/or potentially reduce the deficit in some combination that policymakers will need to wrestle with.

But I think that we should consider these tax extenders and the distortionary effects that many of them have, just as we have had a debate about tax expenditures generally in the Code.

Mr. GORNSTEIN. Well, given the urgency and the need to extend the expiring credits, I would hope Congress would move quickly on that, you know, as soon as possible and not wait for the broader reform package, which, as has been pointed out, may or may not happen by the end of the session.

So, New Markets in particular, the flat 9 percent fix terms of the Low-Income Housing Tax Credit—two very, very high priorities.

Mr. BERG. All right. Thank you.

Thank you, Mr. Chairman.

Mr. THOMPSON. Would the gentleman yield?

On the issue of the comprehensive tax reform and doing away with the tax expenditures to get the rate down, do you all agree that—I know we need to do it, and I think you all agree that we need to do it, but do you agree that it needs to be revenue-neutral?

You don't think we should grow the debt and the deficit in order to do this?

Mr. WHITE. Well, certainly, you know, the United States is on a long-term budgetary path that is not sustainable——

Mr. THOMPSON. I get all that. I am just wondering, should tax reform be revenue-neutral?

Mr. WHITE. I think that has to be answered in the context of how you are going to reduce the debt, bring down the deficit.

Chairman TIBERI. They all weren't prepared to testify on tax reform, so you got them, Mike.

So you may answer if you want. Go ahead, guys. Go ahead, if you want.

Mr. MARRON. Sir, again, as you experience as much as I do, unfortunately the phrase "revenue-neutral," now there is enormous debate about what on earth that means and does it include the extenders, whatever. So it is easy to say "yes" or "no" to that without.

I would say, the way I would summarize your point is that we need a tax revenue target for tax reform. And my reading of the tea leaves is, as you look into the future, the Federal Government is going to have to raise more revenue than it has historically in the past, given the spending pressures that are building and continue to build.

Chairman TIBERI. Anybody else want to answer? Mr. Gornstein. Mr. Brill.

Mr. BRILL. I agree with Donald's comments, that we need to think about what that revenue level needs to be, given all of the spending objectives that we have, and we need to find a balance. And so it is a question that needs to be answered both considering the outlay side and the spending side. And, obviously, there are significant spending pressures.

Chairman TIBERI. All right. The gentleman's time has expired. The gentleman from Texas?

Mr. MARCHANT. Thank you, Mr. Chairman. I will be very brief.

I would like for our committee to also interject another aspect of the extenders and the viability of them, and that is the probability of that program or extender having the same ability to attract investment and the proper amount of investment in a, in fact, reformed Tax Code; where if I am at 39 percent and I am an investor, I am looking at deals based on the tax effect on my personal tax return. I am looking at the income credits. And, at that point, the value of all those credits and the value of that investment is worth X.

If we follow through—and I believe we will—as a committee and lower the tax rate, simplify the Code, then in 1 year or 2 years many of the programs that we renew or put back on the books will not have the same level of viability in the investor community because they simply won't have the horsepower to attract the investment that they will at the higher rates.

So I would just like to interject that as another criteria when we look at these extenders——

Chairman TIBERI. Thank you. Thank you.

Mr. MARCHANT [continuing]. And see if there is some——

Chairman TIBERI. Excellent point.

Mr. MARCHANT. Thank you.

Chairman TIBERI. Excellent point.

Well, this concludes today's hearing, right on cue with the bell. I really appreciate the four of you today. You have really provided some excellent testimony. And I appreciate the dialogue and the give and take and even some of the questions outside the area to which we attracted you here to give your expert opinions.

And we are going to continue as a committee and as a subcommittee to go through this process and try to determine what extenders should be extended and what should not be extended and what, maybe, should be part of a permanent form of tax reform. So we appreciate your input.

Please be advised that Members may submit written questions to the witnesses. Those questions and the witnesses' answers will be made part of the official record.

Chairman TIBERI. Again, I would like to thank you all for taking time out of your busy schedule. Thank our Members for being here today for this great discussion.

This hearing is adjourned.

[Whereupon, at 10:51 a.m., the subcommittee was adjourned.]

[Submissions for the Record follow:]

Rep. Doc Hastings
1203 Longworth House Office Building
(202)-225-5816
Whitney.riggs@mail.house.gov
Evaluating Certain Expiring Tax Provisions

Chairman Tiberi, Ranking Member Neal and Members of the Select Revenue Measures Subcommittee:

As you continue consideration of the future of our country's tax policy, I appreciate the opportunity to submit testimony in favor of renewing the state sales tax deduction and respectfully ask that my testimony be submitted into the record.

American taxpayers deserve a tax code that is less complex and easier to understand. It is time to replace the current code with one that is simpler, fairer, and more consistent. A simplified tax code will not only assist taxpayers in complying with the law, it will reduce the cost of administering and collecting taxes, thereby saving taxpayers money.

As you consider ways to simplify and improve our tax code, ensuring fairness in the tax code should be a top priority. Restoring the state sales tax deduction would prevent millions of Americans from being punished for their state's tax structure.

My home State of Washington is one of nine states across the country that does not have a state income tax. Instead, Washington and non-income tax states have opted to charge residents a substantial sales tax in order to finance state services. The current tax code contains a federal tax deduction for state income taxes, but excludes a deduction for sales taxes – penalizing residents of states with no income tax. As you know, Congress recognized the inequity of this provision and restored the state sales tax deduction in 2004.

Unfortunately, in spite of efforts by myself and my colleagues from impacted states, this deduction was never made permanent. After several extensions, the state sales tax deduction expired at the end of 2011. Should this provision not be renewed retroactively, Washingtonians and millions of other Americans will be forced to once again pay a disproportionate amount in taxes on their tax returns.

Residents of states who opt to have a higher sales tax instead of state income taxes should not be punished by having to turn over more of their hard earned money to the federal government. In 2010, the most recent year of published IRS data, 951,803 Washingtonians took advantage of the state sales tax deduction. By renewing this important deduction, Washingtonians and those in other states with a sales tax instead of an income tax, will be able to spend and invest more of their money as they see fit. The state sales tax deduction is not a carveout- it does not pick winners and losers. It simply restores fairness to millions of hardworking taxpaying Americans.

Once again, I respectively ask you to consider tax fairness for residents of Washington and all non-income tax states and make the state sales tax deduction permanent. Thank you for your consideration.

ABM
Building Value

June 22, 2012

The Honorable Pat Tiberi, Chair
The Honorable Richard E. Neal Ranking Member
Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Tiberi and Ranking Member Neal:

On behalf of ABM Energy, a leading provider of integrated facility solutions that also provides energy efficiency home and commercial retrofits across the country, I thank you for the opportunity to express support for the restoration and extension of residential and commercial energy efficiency tax credits.

Please consider this letter a statement to the record for the House Committee on Ways and Means, Subcommittee on Select Revenue Measures, Hearing on a Framework for Evaluating Certain Expiring Tax Provisions on June 8, 2012.

We respectfully request that the Committee act quickly to renew and extend the Tax Code Section 25C that provides a 10% tax credit for the purchase of certain energy efficient materials up to $500. Since its passage in 2005, this tax credit has been a significant incentive for homeowners to choose energy efficient products over less-expensive and less-efficient alternatives. It has proven to be an important tool to promote energy efficiency by helping owners afford higher efficiency windows, doors, HVAC systems, hot water heaters, roofing and insulation. It has also served to create and preserve American jobs in the remodeling and retrofit industry.

The 25C tax credit could be improved. Between December 31, 2008 and January 1, 2011 the tax credit was expanded to 30% of the purchase of the energy efficiency products up to $1500. This supported a growth in demand for those products in a challenging economic environment for those in the building industry. A return to those levels would further support American jobs in the residential building sector.

ABM also asks the committee to extend and modify the "Energy Efficient Commercial Buildings Deduction" (Section 179D). In addition to extending this provision, we recommending making adjustments to the legislation to specifically encouraging existing commercial building retrofits. In particular, ABM urges the committee to consider the baseline of an existing building as the baseline for a performance calculation rather that the current code for new construction of that building. It is more appropriate and effective to calculate energy performance improvements of the actual buildings and reward those real energy savings. To advance the country's energy security, significant energy-efficiency improvements to older building is important.

In addition to restoring, extending, and expanding the 25C and 179D tax provisions, ABM Energy expresses support for a new tax credit proposal, recently introduced in the Senate. The bi-partisan "Cut Energy Bills at Home Act" (S.1914) was introduced in the Senate and would create the 25E tax credit -- the first residential performance-based tax credit given to homeowners who make energy efficiency improvements. As a performance-based incentive, this tax credit would address to the April GAO report's concerns and reward energy saving levels rather than specific products, thus aligning taxpayer dollars directly with public policy objectives, creating significant energy savings and job creation. A performance-based residential tax credit would lay the foundation help create a sustainable market for energy efficiency and an incentive for sound, efficient construction by trained contractors.

We appreciate the opportunity to express our support of these three important tax provisions. Should you have any questions about our position or company, please do not hesitate to contact me or our Washington Representative Kara Saul Rinaldi at kara@anndyl.com or 202.276.1773 directly.

Sincerely,

Michael Rogers
Vice President
ABM Energy

152 Technology Drive | **Irvine**, CA 92618
802-862-3250 (Office)
mike.rogers@abm.com

Title of Hearing : **Hearing on the Framework for Evaluating Certain Expiring Tax Provisions, June 8 2012**

May 30, 2012

The Honorable Dave Camp
Chair
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Pat Tiberi
Chair
Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Richard E. Neal
Ranking Member
Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Camp and Tiberi and Representatives Levin and Neal,

We, the undersigned companies and organizations, strongly urge you to renew the Non-Business Energy Property Credit (section 25C in the tax code) to help homeowners improve the energy efficiency of their homes. This credit helps consumers defray the upfront costs of residential efficiency retrofits, helping to create domestic jobs while saving homeowners money on their energy bills.

This tax credit was included in the Energy Policy Act of 2005 and enacted into law by President Bush. When it expired at the end of 2011, it was worth 10% of certain energy efficiency improvement costs (up to $200 for windows), and fixed amounts for specified heating and cooling equipment, up to a limit of $500. But it had a much larger impact for 2009 and 2010, when it was set at 30% of costs up to $1500. There are specified efficiency performance criteria to qualify for all products.

We urge you to extend this important credit. By tightening the efficiency criteria while increasing the amount of the credit, it would significantly increase the energy savings and market impact at the same time as limiting the cost to the Treasury. This credit is most effective when it facilitates initial deployment and market growth of cutting-edge technologies and practices for a limited time, but avoids paying for routine replacements. We would be available to discuss appropriate criteria and amounts with you.

The improvements eligible for this tax credit included upgrades to building components like insulation, windows, and roofs as well as equipment like air conditioners, furnaces and water heaters. While it was available, the 25C credit was an extremely popular tax incentive, driving demand for energy efficient products and building materials while supporting the employment of local contractors and builders during the economic downturn. It was the only tax credit related to building efficiency that went directly to consumers.

Energy efficiency is an issue with bipartisan support. It is about doing more with the energy we possess and making the most of our resources; it is also the cheapest way to address our energy needs. But while many efficiency improvements pay for themselves over their lifetimes, the advance costs of these projects remain a barrier. Tax incentives help defray these up-front costs.

The 25C credit in particular has been an integral component of the federal government's assistance to Americans to reduce energy consumption, cut costs, create jobs, and improve air quality. More importantly, the incentive is readily accessible to nearly any homeowner. Renewal of this important tax credit should be a central part of energy tax policy.

Sincerely,

Alliance to Save Energy
Council of North American Insulation Manufacturers Association
Ingersoll Rand
Johns Manville
Knauf Insulation
Lowe's Companies
Masco Corporation
National Lumber and Building Material Dealers Association
Owens Corning
Rinnai
The Dow Chemical Company
Vinyl Siding Institute, Inc.
Window and Door Manufacturers Association

american cleaning institute®
for better living

Comments Relating to
A Framework for Evaluating Certain Expiring Tax Provisions
House Committee on Ways and Means
Subcommittee on Select Revenue Measures
June 8, 2012 Hearing

Submitted for the Record
By
The American Cleaning Institute

The American Cleaning Institute (ACI) is a national trade association representing the interests of cleaning product formulators, the suppliers of ingredients and packaging to those formulators as well as the domestic oleochemical industry. ACI submits these comments on behalf of its oleochemical members. The goal of establishing criteria for the continuance of tax extenders is laudable as well as essential. The Subcommittee is to be congratulated for taking up this critical issue.

Equity, that is, the inherent fairness, of a tax extender is a critical criterion that must be incorporated in any evaluation process. In their broadest characterization, tax extenders are credits that are generally granted in order to support a technology or industry that is deemed worthy for a fiscal or public policy purpose. While in most instances the consequences of such credits may be wholly benevolent, this is not always the case. In these latter cases, the credits at issue should be considered ripe for elimination or amendment.

In the regulatory arena, agencies are required to assess designated factors, e.g., paperwork and the environment, when determining regulatory impacts. In the tax extenders' context, it seems reasonable that an analysis of potential competitive impacts on collateral or legacy industries sharing, for example, markets or raw material pools should be undertaken. In this manner, at minimum, the "equity" of a credit could be analyzed and made part of the policy debate.

Examples of competitive impacts for evaluation could include government funding of facilities/products in direct competition with existing private sector capabilities as well as market distortions such as raw material supplies and costs. Analyzing the competitive impacts of a tax extender would allow policy makers to better target tax credits for maximum benefit and minimal harm to existing industries.

The disadvantages created by tax credits can create extremely stressful conditions for an established industry with the potential to foster significant, though avoidable, dislocations. The domestic oleochemical industry's entanglement with federal biofuels subsidies is a case in point.

Oleochemicals are the original "green" chemistry. They may be produced from "animal fats" or seed oils. The domestic oleochemical industry has historically been based on "animal fats." Prior to passage of the American Jobs Creation Act of 2004" (AJCA) "animal fats" were purchased in an unsubsidized, free, competitive market. Implementation of the VEETC provisions of AJCA changed all that by creating a $1/gal tax credit for the production of biodiesel, including that produced from "animal fats." This was followed by similar subsidies created for other categories of biofuels also using "animal fats" as a raw material.

With their tax credit subsidy, enhanced by the volume mandates of the Revised Renewable Fuel Standard (RFS2), biofuel producers have been given extraordinary market leverage in the purchase of "animal fats." Oleochemical producers receive no subsidies or market guarantees yet compete for the same raw material.

Complicating the situation even more, the "animal fats" supply is inelastic. Cows are raised for meat, not their fats. Consequently, "animal fats" demand has increased while supply has remained relatively static. As a result, the economic outcome has been a sustained price increase over eight years. Currently tallow trades for about $0.45/lb. Prior to implementation of the AJCA, historical levels were approximately $0.13 – 0.16/lb. At these price levels, substitutes, principally foreign palm oil, are becoming increasingly competitive in the United States as oleochemical raw materials.

While there is no doubt that "animal fats" prices would have increased with the development of biofuels, the allocation of this raw material would have best been left to a free, competitive and equitable marketplace. Oleochemical producers are now effectively competing against their own government's policies.

It is essential that the equity of collateral impacts related to tax extenders become a bedrock criterion in assessing the future of not only tax extenders but of tax policy relating to credits generally.

Submitted on behalf of the American Cleaning Institute,

Dennis Griesing
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Comments for the Record
Hearing on
Framework for Evaluating Certain Expiring Tax Provisions

Steven Nadel
Executive Director
American Council for an Energy-Efficient Economy
529 14th Street NW, Suite 600
Washington, D.C. 20045

I am writing to provide the comments of the American Council for an Energy-Efficient Economy (ACEEE) for the record of the hearing on Framework for Evaluating Certain Expiring Tax Provisions. ACEEE is a nonprofit research organization formed in 1980 that acts as a catalyst to advance energy efficiency policies, programs, technologies, investments, and behaviors. We now employ more than 40 researchers and publish dozens of well-regarded studies each year. Additional information on our organization can be found at http://aceee.org. ACEEE has conducted substantial research on energy efficiency tax incentives and has also done research on how broader tax policy affects investment in energy efficiency.

Regarding tax extenders, many of the witnesses at the hearing discussed a variety of criteria including economic efficiency. We believe that Congress should go further and explicitly examine the benefits of the various expiring tax provisions relative to their costs. Given current budget deficits, we assume that funds for tax incentives will be very limited. In such an environment, only those incentives with benefits substantially greater than their cost should be considered. We also favor establishing an explicit budget for tax expenditures and allocating this budget to a limited number of specific incentives that maximize benefits per federal dollar. Evaluation of benefits should be relative to what would happen in the absence of a tax incentive. Thus, if $10 billion is invested by consumers under a tax credit for efficient windows but without the credit $8 billion would have been invested, the net benefit for the federal investment is only $2 billion.

Regarding energy tax incentives, we recommend that the limited available funds be targeted at instances where the technology or practice is not widespread, but with medium-term support (e.g., five years), markets can be transformed so that these technologies or practices become much more widely used even after tax incentives end. We can no longer afford long-term subsidies but instead should use limited dollars in ways that can use "jujitsu" to leverage lasting changes in markets.

Recent examples of such tax credits include the energy efficiency appliance tax credit (Section 45M) and the new homes tax credit (Section 45L). In the case of appliances, incentives have targeted very high efficiency appliances, substantially raising market share and energy savings. Many of the products incentivized under the original 2005 legislation now represent the majority of product sales. This progress has allowed eligibility levels to be tightened several times so that incentives are only available for the very most efficient products on the market, with incentives phased out for lower efficiency levels that no longer need support. This credit expired at the end of 2011, but given its success, we recommend that the credit be renewed for 2013, but with the least stringent clothes washer and dishwasher incentives deleted (ending these lower tiers is part of an agreement between appliance manufacturers and groups such as ACEEE).

Likewise, the new homes tax credit has targeted very high levels of performance, raising qualifying homes from less than 1% of new construction to more than 10%. We recommend extending this credit, which expired at the end of 2011, but also adding a new, higher efficiency tier. When the market share of the original tier grows some more, incentives can be phased out, leaving only incentives for the new, higher tier.

On the other hand, the residential weatherization credit (Section 25C) has had much higher costs to the Treasury. For example, GAO found that $5.3 billion was claimed by taxpayers in 2009.[1] The residential weatherization credit includes useful credits for high-efficiency heating and cooling systems and installation of insulation, but also a less useful credit for windows where much of the money appears to have gone to consumers who would have installed qualifying windows without the credit – our analysis indicates that nearly 90% of residential window sales qualified for the credit. Due to its high cost, Section 25C is a lower priority for extension. Furthermore, if 25C is considered for extension, the qualifying level for windows needs to be substantially increased.

Our analysis of the impact of these and other energy efficiency tax incentives can be found in an ACEEE white paper available at http://aceee.org/white-paper/energy-efficiency-tax-incentives.

Based on this analysis of experience, we recommend that future energy incentives:

- Target energy-saving equipment and practices with substantial energy savings and target energy sources that can produce a substantial amount of energy over the long term (we want "mountains" not "molehills");
- Target efficiency levels and new energy sources that currently have a very small market share to keep costs down and minimize the number of "free riders" (purchasers who would have bought equipment anyway, even without incentives);
- Pay substantial incentives to motivate significant sales;
- Continue to incentivize investment in research and development; and
- Leave incentives in place for a medium period of time (e.g., five years) so manufacturers and other market players know incentives will be available for long enough that it is worth making investments. Short-term incentives do not provide such assurance. After this medium period of time, incentives should either be phased out or eligibility levels increased, starting a new market transformation process.

In addition, for measures that are expensive and for which quick market transformation is not possible, such as comprehensive home and building energy efficiency retrofits, Congress

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[1] GAO. 2012. *Energy Conservation and Climate Change, Factors to Consider in the Design of the Nonbusiness Energy Property Credit.* GAO-12-318. Washington, DC: General Accounting Office.

should consider repayable incentives after the initial five-year incentive ends. Under such a system, a tax credit could be made when investments are made, but then the taxpayer would gradually repay the investment in subsequent-year taxes. For example, if a business receives an initial tax credit of $100,000 on a combined heat and power (CHP) system the year the system was placed into service, they might repay the federal credit at the rate of $20,000 per year over the next five years or some other reasonable rate. The initial credit encourages the original investment, and the subsequent repayments channel the value of some of the energy bill savings back to the federal government, so that the long-term cost to the federal government is very low – just defaults plus interest costs. Essentially this would be a zero-interest loan.

This idea has already begun to circulate in Congress. In 2011, Senator Shaheen from New Hampshire circulated a draft bill that would provide a repayable tax incentive for CHP systems. Under the proposal, an incentive would be given to electric utilities that finance CHP systems. The amount of the incentive would then be repaid to the Treasury through an annual installment payment paid by the customer who owns the CHP system equal to the amount of the subsidy divided by an installment period, specified in years. In this case, the installment period is 3 years (e.g., the customer repays the subsidy over 3 years) but payments don't begin until the third year after the subsidy is paid (i.e., the customer repays nothing for the first two years, then repays 1/3 of the subsidy each year for the next three years). However, this particular proposal is complicated by the fact that the electric utility receives the tax incentive, but a business that hosted the CHP system would make the repayment, resulting in some tricky legal issues. These issues would be much more limited if the same firm received the credit and then made the repayments.

Concluding Thoughts

Tax reform is a monumental challenge but one that we hope Congress takes up next year in a pragmatic and bipartisan fashion. In the meantime, we encourage Congress to extend the most important incentives for another year or two so that the momentum that has been built up is not lost.

In addition to our work evaluating current tax incentives, we have also prepared a series of working papers on tax reform issues. We would be happy to discuss these issues in a hearing, a briefing, or discussions with staff.

Statement of the American Farm Bureau Federation

TO THE HOUSE COMMITTEE ON WAYS AND MEANS

HEARING ON FRAMEWORK FOR EVALUATING CERTAIN EXPIRING TAX PROVISIONS

June 8, 2012

600 Maryland Ave. SW | Suite 1000W | Washington, DC 20024 | p. 202.406.3600 | f. 202.406.3606 | www.fb.org

The American Farm Bureau Federation welcomes this hearing providing an examination of the framework Congress should use to evaluate the extension of expired and expiring tax provisions. Farm Bureau believes the tax system plays an important role in determining the economic well-being of farms, ranches and other businesses involved in the production of food, fiber and energy. For this reason, Farm Bureau strongly supports a seamless extension of key expired and expiring tax provisions affecting the agriculture industry, but most importantly because Farm Bureau farm and ranch members need certainty in order to engage in sound business planning.

Before discussing specific provisions, Farm Bureau would like to emphasize the importance of extending the current estate tax exemption. This is and has been at or near the top of legislative priorities for over a decade. Establishing clear, reasonable rules for estate taxes would probably be the most effective action Congress could take to help in inter-generational transfer and establishment of young farmers. When estate taxes on an agricultural business exceed cash and other liquid assets, surviving family partners may be forced to sell land, buildings or equipment needed to keep their businesses operating. This not only can cripple a farm or ranch operation, but also hurts the rural communities and businesses that agriculture supports. Other important issues include maintaining capital gains tax rates, individual income tax rates and holding the Alternative Minimum Tax harmless.

Incentives for Renewable Energy

Clean, renewable, domestic energy will help America achieve long-term economic growth, create a cleaner environment and shield the economy from unreliable foreign energy sources. American farmers and ranchers are playing a bigger role in supplying the nation with the energy it needs through the production of agricultural-based, renewable energy resources. Long-term extensions of renewable energy tax incentives are needed to boost renewable technologies and support development of the market infrastructure necessary to make these technologies more competitive. In addition, the long-term extension of renewable energy incentives will ensure industry stability along with attracting the capital necessary to realize the benefits of long-term planning. Renewable energy tax incentives that should be extended include:

- Biodiesel and renewable biodiesel tax incentives;
- Small biodiesel producer tax credit;
- Tax incentives for diesel fuel created from biomass;
- Tax incentives for alternative energy refueling property;
- Cellulosic biofuels producer tax credit;
- Production tax credit for power from wind; and
- Production tax credit for power from biomass.

Deduction for Self-Employed Deduction against Self-Employment Taxes

With health insurance premiums on the rise and benefits on the decline, self-employed individuals, including most farmers and ranchers, continue to find it difficult to obtain and afford health insurance coverage. Congress recognized the need to make coverage more affordable by permanently allowing a deduction for health insurance premiums against income taxes. With many producers paying as much or more in self-employment taxes as income taxes, it is important to reinstate and extend the deduction for health insurance premiums against self-employment taxes.

Section 179 Small Business Expensing and Bonus Depreciation

The ability to deduct expenses immediately instead of having to depreciate them over time improves cash flow and allows farm and ranch businesses to better match income and expenses. Section 179 allows small businesses to expense the cost of qualified property in the year purchased in lieu of depreciation. Bonus depreciation gives businesses a way to write off additional expenses. Enhanced Section 179 small business expensing is especially important to farm and ranch businesses and should be extended. Bonus depreciation is also valuable in instances involving the purchase of new equipment.

Five Year Depreciation of Farm Equipment

Agriculture is an equipment-intensive industry with nearly $130 billion of stock in use during any given year. Ideally, the allowed number of years to depreciate a piece of business machinery or equipment should match the period of debt service so that the tax benefits can be used to finance payments. Surveys from the Department of Agriculture's Farm Service Agency show, on average, farmers and ranchers finance business equipment and machinery for five years. Five-year depreciation of farm equipment should be reinstated and extended.

Modification of the Tax Treatment of Certain Payments to Controlling Exempt Organizations

Interest, rents, royalties and annuities (*i.e.*, payments of passive income) are generally received free of tax by exempt organizations. Under Internal Revenue Code Section 512(b)(13), however, these payments are subject to tax if they are received from a "controlled" organization (*e.g.*, a subsidiary). Fair market provisions provide a reasonable and fair way to determine when Unrelated Business Income Tax (UBIT) is owed, and should be reinstated, extended and amended to cover new contracts between tax-exempt parent organizations and their controlled subsidiary organizations.

Elimination of Tax on Awards under the National Health Service Corps Scholarship Program

Individuals living in rural and isolated areas face special challenges in receiving timely, quality healthcare. These areas often suffer from shortages of physicians and other healthcare providers, and the costs of providing quality healthcare in a rural health infrastructure can extend beyond available resources. The tax-free treatment of scholarships awarded to healthcare providers who agree to practice in underserved areas should be extended.

Enhanced Charitable Deduction for Contributions of Food Inventory

Some farmers and ranchers already donate gleaned food to charitable organizations that feed the hungry. Many more would do so if they are able to take a tax deduction that would help them to cover the expense of harvesting, processing and transportation. The enhanced charitable deduction for donated food for non-C corporations should be reinstated, extended and expanded so that cash method farmers (who do not use accrual accounting) can take advantage of tax incentives for donating food.

Contributions of Capital Gains Real Property Made for Conservation Purposes

Easements are an important tool for conserving our nation's resources and safeguarding farmland. When farmers and ranchers voluntary donate conservation easements they preserve farmland for future generations by giving up development rights while retaining ownership and management of the land. The enhanced deduction for donated conservation easements should be reinstated and extended to give farmers and ranchers an incentive to preserve farmland and in recognition of the reduced value of protected farmland.

Railroad Track Maintenance Credit

Short line railroads are a feeder system for large Class I railroads, picking up or delivering one out of every four rail cars moving on the national rail network. They offer agricultural producers moving commodities to market an alternative to truck transport and allow producers to reach markets far beyond that in which trucks can reach in an economic manner. The tax credit for track maintenance should be reinstated and extended.

June 8, 2012

The Honorable Dave Camp
Chair
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Pat Tiberi
Chair
Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Richard E. Neal
Ranking Member
Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Camp and Tiberi and Representatives Levin and Neal,

As you continue your ongoing review of tax extenders, we urge you to permanently extend the mass transit commuter tax benefit (section 132(f) in the tax code) at the level equivalent to the monthly parking benefit. Originally enacted in 2009 as part of bipartisan legislation, this provision, which expired at the end of last year, helped cut commuting costs by establishing parity with the tax-free parking benefits available to commuters who drive.

Three years ago, Congress raised the tax-free benefit that workers could apply toward monthly commuting expenses, from $120 per month up to $230 per month, putting transit benefits on par with parking benefits. Since the end of last year, however, the tax savings for the transit benefit have been significantly reduced as commuters who use rail, subways, buses or vanpools are only eligible for up to $125 in monthly pre-tax transit benefits with the recent Internal Revenue Service cost of living adjustment.

In the past, this important provision has eased the burden of commuting costs on American families, reduced stress and congestion on our roads and highways, lowered harmful air pollutant emissions and decreased domestic reliance on foreign fuel sources. More than 2.7 million Americans nationwide utilize the transit benefit, with over one third of those users spending more than $125 per month. Additionally, commuter benefits are an attractive fringe incentive offered by employers.

As such, failure to extend the higher mass transit benefit would prolong the tax hike on middle-class transit riders and their employers during an economic recession and rising gasoline prices when such ridership should be encouraged. Unlike other tax cuts, this benefit impacts employers and employees immediately and reduces their tax liability, resulting in sound fiscal savings for both. Furthermore, federal tax law should refrain from favoring one means of commuting over another.

For these reasons, we ask that you permanently reestablish parity between parking and mass transit benefits. And we look forward to working with you in the coming weeks on this important matter.

Sincerely,

Alliance to Save Energy
American Public Transportation Association
Ceres
Coalition for Smarter Growth
Smart Growth America

The Business Council for Sustainable Energy
1992-2012

Statement of the Business Council for Sustainable Energy

House Committee on Ways and Means
Subcommittee on Select Revenue Measures

Hearing on a Framework for Evaluating Certain Expiring Tax Provisions

June 8, 2012

The Business Council for Sustainable Energy urges Congress to continue its long-standing support for a broad array of clean energy tax incentives to spur investment, create jobs and diversify our nation's energy portfolio to power the U.S. economy. While Members of Congress have expressed an interest in comprehensive tax reform, the Council believes that until tax reform is enacted that includes a place for clean energy provisions, Congress should continue the federal commitment to clean energy tax incentives by extending expiring, and expired measures.

The Business Council for Sustainable Energy (BCSE) is a coalition of companies and trade associations from the energy efficiency, natural gas and renewable energy sectors, and also includes independent electric power producers, investor-owned utilities, public power and commercial end-users. Founded in 1992, the Council advocates for policies that expand the use of commercially-available clean energy technologies, products and services. The coalition's diverse business membership is united around the revitalization of the economy and the creation of a secure and reliable energy future for America.

BCSE underscores the critical role that clean energy tax incentives play in helping the United States achieve vital economic and energy security objectives. Tax incentives are an important part of our energy policy and have been as effective as any state or federal energy policy mechanism in helping to ensure an adequate, reliable, safe, clean supply of energy resources. Tax incentives can be effective, efficient tools to encourage private sector investment, reduce costs for consumers and industry, spur technological innovation and enhance the viability and deployment of a variety of clean energy options.

Smart federal policy has assisted the natural gas, renewable energy and energy efficiency sectors in adding hundreds of thousands of jobs to the U.S. economy. By way of example, the shale gas revolution that is providing so many benefits across the United States was supported, in part, by federal tax incentives.

Continued support for clean energy incentives is in the best interest of American taxpayers and supports a well-reasoned national energy strategy that improves our economic conditions at home and strengthens America's competitiveness in the global marketplace.

The Council and its members have been gathering input from experts on how clean energy can fit into comprehensive tax reform and the Council is willing to engage in discussions about how to structure comprehensive tax reform, if and when Congress moves legislation in this or a future Congress.

However, until comprehensive tax reform is enacted, the Council strongly urges Congress to extend expiring and expired clean energy tax incentives.

We look forward to constructively working with you as you consider spending and tax policy proposals this fall.

Contact Information:

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Comments for the Record

House Committee on Ways and Means

Subcommittee on Select Revenue Measures

Hearing on Framework for Evaluating Certain Expiring Tax Provisions

Friday, June 8, 2012, 9:30 AM

By Michael G. Bindner

Center for Fiscal Equity

Chairman Tiberi and Ranking Member Neal, thank you for the opportunity to submit these comments for the record to the House Ways and Means Committee Subcommittee on Select Revenue Measures.

As always, our comments are in the context of our proposed comprehensive tax reform. As you know, the Center for Fiscal Equity proposal includes four major provisions:

- A Value Added Tax (VAT) to fund domestic military spending and domestic discretionary spending with a rate between 10% and 13%, which makes sure that every American family pays something.
- Personal income surtaxes on joint and widowed filers with net annual incomes of $100,000 and single filers earning $50,000 per year to fund net interest payments, debt retirement and overseas and strategic military spending and other international spending, with graduated rates between 5% and 25% in either 5% or 10% increments. Heirs would also pay taxes on distributions from estates, but not the assets themselves, with distributions from sales to a qualified ESOP continuing to be exempt.
- Employee contributions to Old Age and Survivors Insurance (OASI) with a lower income cap, which allows for lower payment levels to wealthier retirees without making bend points more progressive.
- A VAT-like Net Business Receipts Tax (NBRT), which is essentially a subtraction VAT with additional tax expenditures for family support, health care and the private delivery of governmental services, to fund entitlement spending and replace income tax filing for most people (including people who file without paying), the corporate income tax, business tax filing through individual income taxes and the employer contribution to OASI, all payroll taxes for hospital insurance, disability insurance, unemployment insurance and survivors under age 60.

While the call for comments excludes transportation trust fund taxes from the mix of taxes considered under these comments, we find that our analysis of such taxes provides a very useful criterion in judging the appropriateness of targeted taxes. In our testimony on the issue of energy (and by definition, transportation) tax issues, we laid out the principle that if the tax provision led to a general increase in a broad based tax paid by employers in other industries, then the tax break was inappropriate.

For example, if energy companies received a credit that was applicable to them, rather than to all businesses, then it would be wrong to maintain such a credit. If, on the other hand, all firms could utilize the same credit in principle, then it should be allowed. This is true in both a corporate income tax system and the more general VAT-like Net Business Receipts Tax we suggest as part of our comprehensive plan for tax reform.

To the extent to which tax reform eliminates a specific tax and the related subsidy and replaces it with reforms such as the Net Business Receipts Tax (which taxes both labor and profit), tax extenders are problematic, but not impossible to preserve.

This is one of the virtues of a separate Net Business Receipts Tax, rather than replacing the Corporate Income Tax with a VAT or a Fair Tax – which by their nature have no offsetting tax expenditures. The challenge arises, however, when the existence of tax subsidies carry with them the very justified impression that less well connected industries must pay higher taxes in order to preserve these tax subsidies. Worse is the perception, which would arise with their use in a business receipts tax, that such subsidies effectively result in lower wages across the economy. Such a perception, which has some basis in reality, would be certain death for any subsidy.

One must look deeper into the nature of these activities to determine whether a subsidy is justified, or even possible. If subsidized activities are purchased from another firm, the nature of both a VAT and an NBRT alleviate the need for any subsidy at all, because the VAT paid implicit in the fees for research and exploration would simply be passed through to the next level on the supply chain and would be considered outside expenditures for NBRT calculation and therefore not taxable. If research and exploration is conducted in house, then the labor component of these activities would be taxed under both the VAT and the NBRT, as they are currently taxed under personal income and payroll taxes now.

The only real issue is whether the profits or losses from these activities receive special tax treatment. Because profit and loss are not separately calculated under such taxes, which are essentially consumption taxes, the answer must be no. The ability to socialize losses and privatize profits through the NBRT would cease to exist with the tax it is replacing.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

Contact Sheet

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Committee on Ways and Means
Subcommittee on Select Revenue Measures

Hearing on Framework for Evaluating Certain Expiring Tax Provisions

Friday, June 8, 2012, 9:30 AM

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears:

This testimony is not submitted on behalf of any client, person or organization other than the Center itself, which is so far unfunded by any donations.

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U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SELECT REVENUE MEASURES

6/8/12 Hearing on Framework for Evaluating Tax Extenders

Post-Hearing Written Committee submission

"**Dramatic adverse paradigm shift**" for systemic economic recovery, investments, and jobs-creation—this is assuredly the certain unavoidable, undeniable, inescapable consequence which must follow the expiration of the tax-extenders or tax-expirers under consideration. This conclusion is drawn from 8 years' experience as Counsel to the Cleveland Empowerment Zone (a $200 million dollar program funded by HUD Section 108 loans, and EDI grants, and DOL workforce dollars and State of Ohio funds), and lead counsel for the City of Cleveland on 6-8 recent and pending New Markets Tax Credit (NMTC) transactions (total aggregate financing in excess of $100 million). My message, my bias, is simple and straight-forward. Tax-tools under programs like EZ and NMTC are admittedly not fully goal-effective or cost-efficient; yet, they are moderately productive and, importantly, the only tools currently available or in-play. It would be not only counter-productive; but conclusive evidence of a coalescence of cowardice and hubris for Congress not to extend the useful lives of these vital tools. **Have I gained your attention?**

We are called, by virtue of our respective positions, experience, and intellect to engage in informed public discourse seeking diligent discernment of solutions for ongoing economic crises which are beyond vital and urgent—they are endemic and "end-gamic." Are there any among us who would deny the portents of doom readily available from the most cursory consideration of the European Union, particularly Greece and Spain, or, domestically, a study of California and Michigan? Even the second-largest and only robust national economy, China, is now seeing a significant drop in growth. Leaders at all levels, national, state, and global lack the vision, the will and the courage to generate and implement effective recovery plans. Still, we must continue to do what little we can do and have been doing. Clearly we need an exhaustive and comprehensive re-working of the Internal Revenue Code and world trade and markets; but those tasks are beyond our current scope. Unless and until presented with some viable, effective alternative tools, **we must extend the proven tools of NMTC and EZ and others.**

It is imperative that we recognize, address, confront, challenge, and ultimately discount, dismiss and abandon various accepted or conventional premises, predicates, assumptions, terms, concepts or notions, if we are to engage fully and productively. Simply and summarily stated: our national GDP is deceptively defined and is not growing but is stagnant, at best; reports and claims that our national unemployment is at or near 8.2% are dangerously deceptive; the accepted notion of equivalency of impact or treatment between tax credits and tax expenditures is, likewise, deceptive. **We must clarify our thoughts and analysis.**

By this, the fourth paragraph, most readers will uncomfortably wonder whether there will be any facts or data or application of metrics in support of the verbiage, asking "Am I merely indulging the ramblings and rantings of some rhetorician?" What is there to distinguish this diatribe from the exhortations or scoldings of politicians or candidates staring at their tele-prompters and guided by poll results? What indeed? I urge the Committee and interested readers to suspend disbelief a while longer.

Congress may readily confirm through OIG, GAO, IRS, HUD, and its own experiences that the process and tools for measurement, reporting and monitoring effectiveness of such programs are, generally, obtuse and susceptible of manipulation and misinterpretation, either unwitting or contrived.

RE: EZ Program...The Office of Inspector General (OIG) conducts one or more audits of a sampling of such programs and finds successfully completed projects, with jobs-creation for permitted uses; yet, challenges documentation. The Government Accountability Office (GAO) conducts repeated program reviews and issues reports acknowledging jobs creation, economic development and the apparent leveraging of significant private capital; yet, challenges causality. The Internal Revenue Service (IRS) asserts an inability or unwillingness to quantify and document the extent of utilization of the EZ employee-wage and other tax benefits. The Department of Housing and Urban Development (HUD) is fully engaged with proscriptive implementation efforts and unable to devote adequate resources to measurement and monitoring despite an overly complex self-reporting Performance Measurement tool (PERMS). There are performance and process deficiencies in the EZ program. Still, in the Cleveland EZ, with a beneficial focus on the EZ communities and community based development organizations, over the past decade and a half, permitted-use projects generated almost 4,000 new jobs, plus an unreported number of construction jobs, provided employment training for over 5,000 low-income residents of EZ, and leveraged over $350 million of private capital—all at a cost of $87 million in EDI grants and loans of $87 million in HUD Section 108 funds and a DOL Grant of $20 million.

RE: NMTC Program...Banks, developers, qualified entities and communities have recognized so much value in this program that the available allocations ($3.5 billion for 2011) have been over-applied-for by a factor of 10X. A sound argument can be advanced that the Community

Development Financial Institutions (CDFI) Fund should be authorized to expand the program and award more allocations. The NMTC program generates investment, economic development, and jobs creation in targeted low-income communities (like the local EZ); yet, the financing structure is unduly complicated and the credits all flow primarily to banks with moderate "leakage" of fees and costs to CDE's, counsel and accountants. There are performance and process deficiencies in the NMTC program. Still, in Cleveland, in the past decade there have been eight or more projects, for an aggregate of over $100 million which would not have happened without the NMTC component.

Respectfully, any real or perceived deficiencies in performance or process or measurement should not be deemed adequate to impel the expiration of these unique and vital jobs-creation programs.

Current economic realities support my respectful request that the committee recommend not only extension of the current deadlines for these tax credits but, also, significant expanded funding and greatly expanding geographic application for both. Since 2007 it has become evident beyond argument that virtually all neighborhoods and communities of virtually every mid to large size urban area are in great survival-need of even marginally effective economic development and jobs-creation tools and programs. While there are undoubtedly some few enclaves of affluence in a few major metropolitan areas—the great majority of zip codes need help desperately. They need EZ grants and loans and bonds and credits and they need NMTC credits if they are to have any chance of generating development and construction in the current economic realities.

Repeated annual threats to change or eliminate the EZ program and those like it disrupt the economy and worse introduce UNCERTAINTY into economic planning and decision making. UNCERTAINTY is perhaps the most insidious enemy of economic growth because it paralyzes entrepreneurs and community leaders, freezing most new ideas and programs and initiatives. What we don't see, and we don't see the effects of UNCERTAINTY, we cannot measure and therefore it is like it does not exist. However, that great unheralded economist Anna Schwartz who passed away yesterday gave an interview when she was about 93 and testified that the Federal Reserve should not be worried about liquidity so much as about UNCERTAINTY for it is UNCERTAINTY which reduces economic activity and growth and is inimical to the American way.

Her qualifications? With another somewhat more heralded economist named Milton Friedman, she authored The Economic History of Money. She did, I believe, recognize the nudity of emperors like Greenspan and Bernanke.

ClearStack

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June 7, 2012

Congressman Patrick J. Tiberi
Chairman: Subcommittee on Select Revenue Measures
House Ways and Means
U.S. House of Representatives

Dear Congressman Tiberi:

We appreciate your re-visiting the U.S. energy tax credit provisions. We have developed a technology that more than complies with all of the pollutant reduction provisions for refined coal as delineated in the Tax Relief and Job Creation Act of 2010 (expired on January 1, 2012).

The technology is a low cost air-blown gasifier(s) that can be retrofitted to existing coal-fired boilers. It reduces sulfur dioxide emissions by over 70%, mercury emissions (and other air metal toxics) by up to 100% and reduces nitrogen oxide emissions to less than 0.10 lb/million Btu. The tax credit provision would be very helpful in allowing us to demonstrate the technology. It was proved in a demonstration on a small steam boiler at the Lincoln Developmental Center in Lincoln, IL and is ready to be demonstrated on a larger scale electric utility boiler for power generation. With such a successful commercial demonstration it should well become the Best Available Control Technology for coal-fired power plants.

We ask that you consider extending the refined coal tax credit provisions in the Tax Relief and Job Creation Act of 2010 for at least an additional three years. It would take around 18 months to design, construct, retrofit and start-up our gasifier technology, so one year extensions as have been done in the past are not very helpful to the commercialization of this Clean Coal Technology.

This is an easy retrofit technology that can diminish the number of existing coal fired power plants planned for shutdown because of the current easily recognized US EPA mission to destroy the coal industry; if these plants are shutdown it will result in the loss of many coal mining and power plant jobs. We are having discussions with American Electric Power concerning retrofitting their Big Sandy coal fired units that could put them into EPA compliance by 2015 and save many jobs.

Kindest Regards,

Robert A. Ashworth

Robert A. Ashworth
Sr. Vice President – Technology

cc: John Siegel
Jim Wolff
Steve Rickmeier
Steve McClure
Andy Hamilton

Mission: " To develop and implement technologies that provide for the continued use of fossil fuels, especially coal, in a manner that protects the environment "

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June 22, 2012

The Honorable Pat Tiberi, Chair
The Honorable Richard E. Neal Ranking Member
Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Tiberi and Ranking Member Neal:

On behalf of Efficiency First, a trade association representing America's Home Performance workforce, I thank you for the opportunity to express support for the restoration and extension of the residential energy efficiency (25C) tax credit. Please consider this letter a statement to the record for the House Committee on Ways and Means, Subcommittee on Select Revenue Measures, Hearing on a Framework for Evaluating Certain Expiring Tax Provisions on June 8, 2012. As large and small businesses that make up the home performance industry – including contractors, building product manufacturers and related organizations – we recognize that energy efficiency tax incentives are critical to increasing the efficiency of our nation's homes, reducing energy bills, and putting our contractors back to work.

We urge you to extend the Tax Code Section 25C that provides a 10% tax credit for the purchase of certain energy efficient materials up to $500. Since its passage in 2005, this tax credit has been a significant incentive for homeowners to choose energy efficient products over less-expensive and less-efficient alternatives. It has proven to be an important tool to promote energy efficiency by helping owners afford higher efficiency windows, doors, HVAC systems, hot water heaters, roofing and insulation. It has also served to create and preserve American jobs in the remodeling and retrofit industry.

The 25C tax credit could be improved. Between December 31, 2008 and January 1, 2011 the tax credit was expanded to 30% of the purchase of the energy efficiency products up to $1500. This supported a growth in demand for those product in a challenging economic environment for those in the building industry. A return to those levels would further support American jobs in the residential building sector.

In addition to restoring, extending, and expanding the 25C tax provision, Efficiency First expresses support for a new tax credit proposal, recently introduced in the Senate. The bi-partisan "Cut Energy Bills at Home Act" (S.1914) would create the 25E tax credit -- the first residential performance-based tax credit given to homeowners who make energy efficiency improvements. As a performance-based incentive, 25E would reward energy saving levels rather than specific products, thus aligning taxpayer dollars directly with public policy objectives, creating significant energy savings and job creation. The 25E tax credit would lay the foundation not only for short term gains, but will also help create a market for energy efficiency and an incentive for sound, efficient construction by trained contractors.

Few tax credits under consideration provide tax relief to the average American homeowner. Both 25C and 25E would reduce America's energy use, create jobs, protect our nation's security, and put money back into the pocket of the American taxpayer.

We appreciate the opportunity to express our support of these two important tax provisions. Should you have any questions about our position or organization, please do not hesitate to contact me or our Washington Representative Kara Saul Rinaldi at kara@anndyl.com or 202.276.1773 directly.

Sincerely,

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Title of Hearing: **Framework for Evaluating Certain Expiring Tax Provisions, June 8 2012**

Statement for the Record

Submitted by

Vicki Escarra, President and CEO,

Feeding America

For The Hearing on Framework for Evaluating

Certain Expiring Tax Provisions

Before The

U.S. House of Representatives

Committee on Ways and Means

Subcommittee on Select Revenue Measures

June 8, 2012

Chairman Tiberi, Ranking Member Neal, and members of the House Subcommittee on Select Revenue Measures, thank you for the opportunity to submit this statement for the record on behalf of Feeding America. We are grateful to the Subcommittee for recognizing the importance of examining the impact that numerous expired and expiring tax extenders have on the US economy and American taxpayers. In particular, Feeding America recognizes the vitally important contributions that the charitable giving tax extenders have on the nonprofit community and those we serve. We urge Congress to swiftly renew the food donation tax deduction extender while the process of examining extenders in the context of comprehensive tax reform continues.

Feeding America is the nation's leading domestic hunger-relief charity with a network of more than 200 food banks in every state serving over 60,000 local food assistance agencies. Feeding America food banks as well as food assistance agencies rely on a variety of public and private funding streams, government commodities, as well as food donated by retailers, food manufacturers, farmers, and restaurants. Last year, 37 million people, or one in eight Americans, received emergency food assistance through the Feeding America network of over 200 food banks. This represents an increase of 46% since 2006. As a result, approximately 5.7 million people per week are now receiving emergency food assistance through Feeding America food banks.

During the worst economic downturn since the Great Depression, the number of American families struggling to make ends meet has increased significantly. With unemployment still hovering near 8 percent and millions of Americans underemployed, the need for food assistance continues to grow and food banks continue to be pressed to meet the need in their communities.

The food distributed by Feeding America and the programs our food bank members run in local communities provides a solid return on taxpayer investments and helps reduce state government and private sector health costs as well as investing in a healthy future workforce. Feeding America network members utilize local and national public private partnerships to maximize the impact of government commodities and provide the most complete and nutritious food packages available. We also continue to do more with less, responding to an unprecedented increase in demand while combatting a 40% decline in surplus agriculture products from USDA, stagnation in manufactured food donations and a staggering 150% increase in the amount of food purchased by the network.

The food donation tax deduction (Internal Revenue Code Section 170 e3) is a critical food sourcing tool for Feeding America network members.. The deduction provides an incentive for businesses to donate fit and wholesome food inventory to a 501c3 organization serving the poor and needy. The deduction seeks to capture food that would otherwise be wasted by providing an incremental tax deduction over the cost of goods sold if the food is donated to a 501c3. Without Section 170e3, there is no incentive for a business to donate the food verses dumping the food inventory in question or selling the food to another retail outlet.

Since the inception of the food donation tax deduction in 1976, the provision was available to C corporation taxpayers only. However, as manufacturing efficiencies and improved sales forecasting by food manufacturers decrease the surplus goods donated to Feeding America members, it is vital to secure additional food product that is available across the food industry spectrum, including from small businesses like restaurants, farmers, and retailers. In 2006, Congress enacted as part of the Pension Protection Act a two year provision expanding the food donation tax deduction to include all business taxpayers as eligible donors, not just C corporations. This modification to the food donation tax deduction gave small businesses, including pass-through entities (Subchapter S corporations, limited liability companies), the ability to take the same enhanced deduction for the contribution of food inventory as C corporations.

The expansion of the food donation tax deduction in 2006 to include small business donors has worked to spur additional food donations. Food Donation Connection has seen a 137% increase in pounds of food donated by its restaurant clients to food pantries. This is food that would otherwise have been sent to a landfill. Feeding America and its food banks have benefited from increased donations from food manufacturers, retailers and growers that can now take the same enhanced deduction for donating food as larger food companies. Still, despite the success of the food donation extended in spurring additional food donations, we know that this is only part of the solution in capturing the 75 billion pounds of nutritious food landfilled every year.

Feeding America strongly believes enactment of the Good Samaritan Hunger Relief Tax Incentive Act would help maximize donations of excess food inventory across the food industry spectrum. The legislation would make permanent the temporary provision allowing all qualified business taxpayers (including farmers, retailers, restaurants and food manufacturers) to take a heightened charitable tax deduction for donations of fit and wholesome food to non-profit charitable organizations that serve the needy. Feeding America has seen a significant increase in the amount of food donations from small businesses such as restaurants, retailers, and farmers since the temporary provision was enacted in 2006. According to data collected by Food Donation Connection, in 2005 prior to the 2006 expansion donations of food from restaurants enrolled in FDC's Harvest Program were approximately 15 million pounds. By 2008, that amount had grown through the expansion of the provision to include 22 million pounds of food donated in 2008. However, the temporary nature of this provision makes it very difficult for small businesses to incorporate food donations into a long term business plan and reduces the amount of businesses willing to donate food.

The legislation would also allow farmers and other "cash method" accounting taxpayers to consider 25% of the fair market value of the donated food as the cost to produce the food. Current law does not accommodate the accounting choices that most farmers organized as sole proprietors use and prevents farmers that are sole proprietors from taking the tax deduction.

Lastly, the legislation would codify an important Tax Court ruling, *Lucky Stores, Inc. v. Commissioner of Internal Revenue*, in which the Court upheld the right of the taxpayer to determine a reasonable fair market value of donated food rather than the IRS.

We greatly appreciate the opportunity to submit testimony today on behalf of Feeding America, our over 200 member food banks, and the 37 million Americans fed last year. The food donation tax extender and the broader Good Samaritan Hunger Relief Tax Incentive Act would provide strong incentives to capture millions of pounds of nutritious food currently going to waste while giving small business owners fair and equitable access to the food donation giving incentives C corporations have had for decades. We urge the Subcommittee to swiftly pass an extension of expired provisions as a bridge to consider extenders thoroughly during tax reform, and to use tax reform as an opportunity to enact HR 3729 to expand and improve the food donation tax deduction.

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STATEMENT OF

COMMITTEE ON TAXATION

FINANCIAL EXECUTIVES INTERNATIONAL

BEFORE THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

HEARING ON

FRAMEWORK FOR EVALUATING CERTAIN EXPIRING TAX PROVISIONS

JUNE 8, 2012

The Committee on Taxation of Financial Executives International (FEI) thanks Chairman Tiberi and Ranking Member Neal for the opportunity to submit this statement on the annual tax extender provisions. The Committee on Taxation urges Congress to act as soon as possible to extend these expired tax provisions. Inaction on these tax provisions has brought instability and uncertainty into the U.S. economy and put American companies at a competitive disadvantage in the global marketplace.

FEI is the leading advocate for the views of corporate financial management. Its 15,000 members hold policymaking positions as chief financial officers, treasurers, and controllers at companies from every major industry. FEI enhances member professional development through peer networking, career management services, conferences, teleconferences, and publications. Members participate in the activities of 86 chapters, 74 in the U.S., 11 in Canada, and 1 in Japan. FEI is headquartered in Morristown, NJ, with additional offices in Washington, D.C. and Toronto. The Committee on Taxation formulates tax policy for FEI in line with the views of the membership.

The Committee on Taxation believes that tax policy that supports economic growth includes certainty and predictability in the Internal Revenue Code (the "Code"). Many of the tax extenders have long been part of the Code, and taxpayers have come to expect they will be extended annually. Failure to extend some or all of these provisions before they expired, or doing so later in the legislative session with retroactive application, creates uncertainty, as well as tax financial reporting and planning challenges. The failure to extend these tax provisions in a timely manner reduces their incentive effects and raises taxes on businesses, leaving less income for investment and job creation. In addition, expired tax provisions can have a material impact on a business' available capital and public perception when disclosures are required in financial statement filings.

The Committee on Taxation supports tax reform that simplifies, makes certain and predictable, and improves the Code, while increasing the global competitiveness of U.S. companies. The Committee on Taxation also believes that these tax provisions should be carefully examined, along with all tax policies, in the context of fundamental tax reform. However, the Committee on Taxation believes that these tax provisions should not be allowed to remain expired during the careful and deliberative legislative process on tax reform. Nonetheless, the Committee on Taxation believes that permanent tax increases should not be used to pay for the temporary extension of these provisions and that permanent tax changes should only be considered in the context of fundamental tax reform.

Many of the provisions in the annual tax extender package have become fixtures of the Code. Despite their recurring expiration dates and uncertain renewal, taxpayers have come to rely on these tax provisions when making business decisions. The research and development (R&D) tax credit is such an example. While the R&D credit has been a proven incentive for R&D investment and job creation in the U.S., companies must rely on annual Congressional action to make the investment. Global competition for R&D is fierce, and the U.S. R&D tax credit only ranks 17th overall among the 34 countries in the Organization for Economic Cooperation and Development (OECD). That is why the Committee on Taxation supports not only extension of the R&D tax credit, but also efforts to modernize, strengthen, and make it permanent. In the meantime, failure to extend the current credit increases the risk that

R&D – along with the jobs, investment, and intangible property that may result – will be conducted outside the U.S. at the expense of our economy.

The Committee on Taxation believes that active financing exemption is another example of very sound tax policy within the tax extender package and should be extended. The active financing exemption is another longstanding tax extender provision that prevents the double taxation of income from active foreign business operations in the U.S. financial sector, including captive finance companies of U.S. manufacturers. It also ensures that American financial services providers and U.S. exports financed by captive finance companies are not put at a competitive disadvantage compared to their worldwide competitors.

A more recent tax extender that the Committee on Taxation believes should be extended is the related controlled foreign corporation (CFC) look-through rules. This provision also removes the double taxation faced by U.S. companies that operate and compete abroad. It allows related CFCs of a common U.S. parent company to make cross-border dividend, interest, rent, or royalty payments without creating subpart F income if the amounts are paid from active foreign business profits or effectively connected income. Without these rules, such reinvestments would be subject to immediate tax that competitors based in many other countries do not incur.

The Committee on Taxation also urges Congress to extend 100 percent "bonus depreciation" expensing. Temporary partial expensing has been enacted, enhanced, and reenacted several times since 2002 to boost economic recovery. The 100 percent expensing was enacted in December 2010 and expired at the end of 2011. The Committee on Taxation believes that expensing is an effective investment stimulus and should be increased back to 100 percent.

The benefits of renewing the annual tax extender package and 100 percent bonus depreciation to jobs and global competitiveness cannot be overstated. The United States not only has the highest corporate tax rate in the OECD, but also is the only OECD country that uses a worldwide system of taxation. These tax extender provisions help U.S. companies compete globally. U.S. companies and American workers can ill-afford the uncertainty caused by inaction on these important tax provisions.

The Committee on Taxation appreciates the opportunity to submit these comments and looks forward to working with Congress in support of extending these tax provisions as quickly as possible.

Submitted by:

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Food Donation Connection
Let Nothing Be Wasted

Statement for the Record

Hearing on

Framework for Evaluating Certain Expiring Tax Provisions

Before

Subcommittee on Select Revenue Measures
Committee on Ways and Means
The U.S. House of Representatives

June 8, 2012

By

Jim Larson
Food Donation Connection

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Statement for the Record
of Food Donation Connection

U.S. House of Representatives, Committee on Ways and Means
Subcommittee on Select Revenue Measures

Hearing on Framework for Evaluating Certain Expiring Tax Provisions

June 8, 2012

Chairman Tiberi, Ranking Member Neal, and members of the House Subcommittee on Select Revenue Measures, thank you for the opportunity to submit this statement for the record on behalf of Food Donation Connection (FDC). One of the most beneficial tax laws within the list of expired tax provisions is the **enhanced charitable deduction for food inventory**. This provision encourages the donation of surplus, wholesome food to the needy through an incentive to foodservice companies. This tax incentive serves to offset the time and expense required for these companies to safely save and donate surplus food to non-profit organizations.

The current economic climate has intensified the needs of charities seeking to feed the nation's hungry. Feeding America reports that since 2006, the demand for food assistance in their national network of food banks has increased by 46%. One successful approach to meet this need is to redirect surplus, wholesome food from restaurants, universities, hospitals and other foodservice companies to food banks and hunger relief organizations.

There are many reasons for extending the food donation provision *now*, bridging the gap since expiration, and then making it permanent with the proposed House Bill HR 3729. Before I elaborate on those reasons, I'd like to explain Food Donation Connection's role in this process. Since 1992, FDC has assisted companies nationwide in establishing programs to safely donate their surplus food to local hunger relief agencies. FDC's vision is to "let nothing be wasted," and the company has coordinated the donation of more than 230 million pounds of wholesome prepared food from nearly 14,000 locations to over 7,900 non-profits helping people in need. We currently partner with a wide range of companies and organizations including Darden Restaurants (Red Lobster, Olive Garden, LongHorn, Seasons 52, Bahama Breeze, Capital Grille), Yum! Brands (Pizza Hut, KFC, Taco Bell), The Cheesecake Factory, Chipotle Mexican Grill, Bob Evans, Mimi's Café, HMSHost, ARAMARK, St Jude Children's Hospital, Starbucks Coffee Company, and others.

Reasons to Extend the Charitable Food Donation Deduction

There are several reasons for extending the food donation provision and then following up by making it permanent with HR 3729. The food donation enhanced tax deduction provision for non-C corporations will:

- Serve a **valid policy goal** of encouraging food donations by offsetting the costs incurred by donors and provide an economic incentive to donate rather than dump surplus food.

- Result in **tax fairness**. This provision results in a just tax code since non-C corporations would be allowed the same enhanced deduction as C corporations.
- Promote the **equity in society** by helping the non-profits that help people in need.
- Inexpensively accomplish the policy goal by **efficiently using public funds**. For example, a donated $10 pizza results in a $1.17 tax savings for the donor, which costs the government $1.17 in lost revenue. The cost to the government for providing this food to those in need is considerably less than the retail price it would pay for a similar product.
- Allow for **proper tax planning** for non-C corporations and good stewardship of wholesome surplus food that can help people in need.

Katrina Emergency Tax Relief Act (KETRA)

When Hurricane Katrina devastated the Gulf Coast in late August, 2005, Congress passed KETRA to make it possible for *all* business entities to take the enhanced tax deduction allowed by Section 170(e)(3). This meant that non-C corporations like S corporations, Partnerships, and Sole Proprietorships could take the same enhanced deduction as C corporations. The law, which expired at the end of 2011, was previously extended on three occasions with the Pension Protection Act of 2006, the Emergency Economic Stabilization Act of 2008, and the Middle Class Tax Cut Act of 2010. While these measures have helped to meet the needs of hungry individuals, this bi-annual, retroactive tax extender approach makes it difficult for potential food donors to undertake adequate tax planning.

HR 3729 - Permanently Extend and Expand the Charitable Deduction for Contributions of Food Inventory

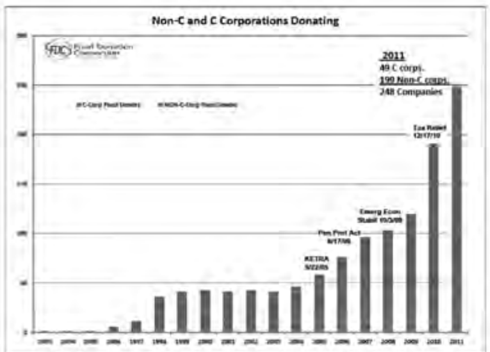
The uncertainty of incentive longevity and lapses in the charitable deduction provision increase the difficulty of convincing non-C corporation business owners to donate food. Many things compete for the attention of business managers and as an unfortunate result wholesome food continues to be thrown away at many foodservice locations. FDC supports the permanent expansion of Section 170(e)(3) to *all* food industry businesses as proposed in HR 3729, introduced in December of 2011 by Representatives Geoff Davis and Sander Levin.

The language included in HR 3729 provides an enhanced tax deduction for all business taxpayers and codifies an important tax court ruling regarding valuation for food donations. Specifically, this legislation would do five things:

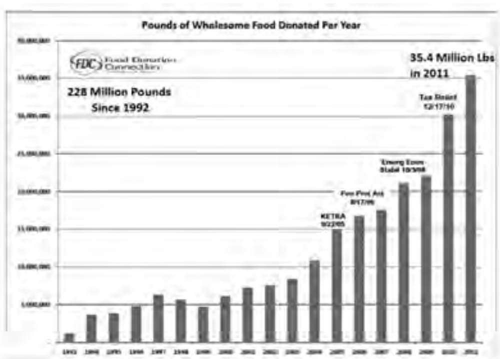
- Make permanent the provision to allow small businesses (non-C corporations) to apply the enhanced deduction for contributions of food inventory;
- Change the cap on charitable deductions from 10% to 15% in an effort to increase the amount of food donated to individuals in need;
- Codify the definition of fair market value as the price at the time of the contribution without regard to internal standards or lack of market;
- Allow taxpayers using the cash method of accounting to deduct 25% of the fair market value of food donated (this generally affects farmers and ranchers); and
- Allow non-C corporations to carry forward the charitable deduction for 5 years, to mirror the treatment of C corporations.

Tax Law Impact

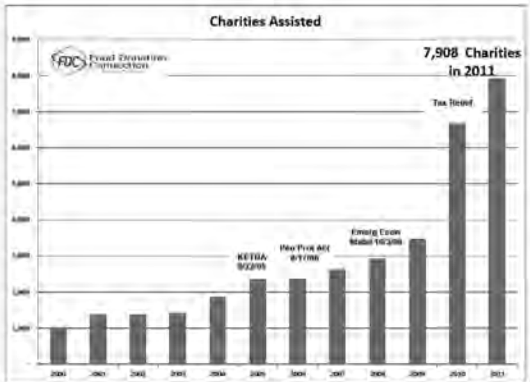
FDC is uniquely positioned to examine the effect of expanding Section 170(e)(3) to all business taxpayers in the foodservice industry. We track the donations of nearly 14,000 foodservice locations. FDC's role in coordinating food donation programs allows us to measure the impact with data that is not collected on tax returns. The following charts illustrate the benefit of expanding Section 170(e)(3) to non-C corporations.



The first chart, ***Non-C and C Corporations Donating***, illustrates the increase in the number of non-C corporations participating in the FDC's food donation program when the tax law was extended to non-C corporations.



The second chart, ***Pounds Donated***, graphically illustrates the increase in pounds of food donated in conjunction with the KETRA extensions.



The third chart, ***Charities Assisted***, illustrates the increased number of organizations helped as a result of the KETRA and subsequent extensions.

All three charts illustrate the growth in donations from companies involved in FDC's Harvest Program, in part due to the expansion of Section 170(e)(3) in 2005 and subsequent extensions. Another extension is critical to keep food from non-C corporations from being discarded.

Pertinent History

The fundamental features of HR 3729 have been previously examined and agreed upon in bipartisan bills designed to expand the capacity of individuals and organizations to serve those in need - the Charitable Giving Act, HR 7 and the CARE Act, S. 476.

> *"In the 108th Congress, the CARE Act, S.476, passed the Senate by a vote of 95-5. The House of Representatives passed companion legislation, the Charitable Giving Act, H.R. 7 by a vote of 408-13. Tragically for those in need, the bill was chosen as the first bill to not be allowed to go to conference after passage by both chambers and thus prevented from becoming law in the last Congress."* [1]

(1) Senator Rick Santorum, Chairman of the Subcommittee on Social Security and Family Policy, Senate Finance Committee, September 13, 2005.

In closing, please consider the following, typical comment from a recipient hunger relief agency, concerning the impact of prepared food donations. Stephanie Paine, Director of Food Service for the San Diego Rescue Mission writes:

> ...The donations of pizza from Pizza Hut and chicken wings, rice, mashed potatoes, corn on the cob and macaroni &cheese from KFC have increased the nutritional value of the food we had available and the men, women and children that receive these meals have been so grateful to have more variety in the weekly menus. We collect enough of the Pizza Hut and KFC items to serve three meals a week! And we serve 500 people at each

meal. That is 1500 free meals that would otherwise be thrown away if these restaurants didn't donate to our organization...

As you consider the best ways to address tax extenders and help end hunger throughout the United States of America, please remember that food donation programs provide free prepared food to non-profit organizations in local communities, resulting in an immediate impact on the lives of less fortunate individuals in need of food. Surplus food donations re-direct wholesome food – otherwise destined for a landfill – to the stomachs of hungry people.

Extending the food donation tax law and ultimately passing a permanent law outlined in HR 3729,would fulfill the original intent of the Section 170(e)(3) legislation by allowing non-C corporations to take advantage of a charitable deduction for their contributions of food inventory. The provision makes efficient use of public funds for a valid policy goal while creating tax code parity for non-C corporations and C corporations.

Thank you for your efforts to make a difference in the lives of thousands of people by extending the enhanced charitable deduction for food inventory and ultimately making this legislation permanent tax law.

Sincerely,

Jim Larson
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Fuel Cell & Hydrogen Energy Association

June 8, 2012

Statement of the Fuel Cell and Hydrogen Energy Association
House Committee on Ways and Means
Subcommittee on Select Revenue Measures
Hearing on a Framework for Evaluating Certain Expiring Tax Provisions

The Fuel Cell and Hydrogen Energy Association (FCHEA) commends the Committee for making a much needed review of the framework for evaluating temporary tax provisions in the U.S. Tax Code to ensure continued efficacy and necessity. The fuel cell and hydrogen energy industry has recently begun to utilize several tax incentives that are critical to ensuring continued American leadership in this technology.

FCHEA is the trade association for the fuel cell and hydrogen energy industry. Our membership includes fuel cell materials, components and systems manufacturers; automotive companies; hydrogen producers and distributors; universities, government laboratories and agencies; and other end users.

As you may know, fuel cells and hydrogen energy technologies deliver clean, reliable power to leading edge corporate, academic and public sector users, and FCHEA members are helping to transform our energy, economic, and environmental future. Our industry has quietly become a significant source of jobs and economic growth in the U.S. over the past few years as fuel cell products gain early market traction. The prospects for growth are exceptional. This is an emerging American success story – American technology and American–made products dominate the early commercial fuel cell markets here and all over the world. This is an energy technology we don't have to buy back from the Europeans or Chinese. But we do need to foster it to achieve maximum growth and increased exports and more American jobs.

FCHEA is open to the concept of comprehensive tax reform that would simplify the tax code and look forward to working with the Committee on proposals that could be put into place after the existing credits run their course. We understand that the time is now and commend the Committee for taking tax reform and the proliferation of individual tax credits seriously.

Within the context of the review the Committee is undertaking currently, the 1603 Grant In Lieu of Taxes provision is the one that has had the most impact on the industry. The 1603 program is good policy; it is efficient, easy to use, and extremely effective in creating jobs and supporting economic development.

1603 Grant-In-Lieu of Taxes: This program, which allows the election of a grant instead of the tax credit under Section 48, has been very effective for the fuel cell industry. In fact, nearly all of the fuel cell sales in the United States in 2009-2011 took advantage of the program, which is much more cost efficient as a market transformation mechanism than are, even the tax credits themselves. This is simply because transactional costs are lower than for the tax credit, both for the private entity using it and for the government. Because 1603 is lapsed in 2012, FCHEA members assume that 2012 sales in the United States will be approximately one-third lower than in 2011. This may have an impact on jobs growth, which was almost 10% over the last 2 years with the fuel cell and hydrogen industry being cited by Breakthrough Institute as one of the fastest growing clean energy sectors. The Fuel Cell and Hydrogen Energy Association suggests:

- Extending the 1603 program through 2013 so that we can be sure that capital markets are recovered and there are investors for fuel cell projects. These projects tend to be smaller than with other technologies eligible for the program and therefore will rebound more slowly than capital flow for large scale projects.

The Grant-In-Lieu is only available for PTC and ITC eligible credits and the continuation of the underlying Section 48 Fuel Cell Investment Tax Credit through its sunset of January 2016 is critical to the fuel cell and hydrogen industry. This credit was put in place in 2005 in order to spur U.S. market introduction of American made fuel cell systems. The credit of 30% up to $1500 per half a kilowatt currently extends through 2015 and has been significantly underutilized until very recently. In some sense, this was a reflection of the enthusiasm for fuel cells, both in the industry and among policy makers that was slightly ahead of true market viability. The credit, however, has now begun to be used a bit more robustly as stationary, industrial and back up fuel cells are beginning to gain some small traction in commercial markets.

The technology remains more expensive than incumbent technologies in most cases, however, provides several public benefits that can be hard to capture, hence the necessity of a credit. First, fuel cell systems, whether using fossil fuels to generate hydrogen or renewable systems, are much cleaner than the technologies they replace. Moreover, they provide very reliable, secure and steady power, with the ability to load follow as necessary. In many applications, such an in industrial motive operations, they increase productivity, and in some power generation applications, they are upwards of 85% efficient.

The Fuel Cell and Hydrogen Energy Association suggests the following in regards to Section 48 fuel cell credit:

- Put into place a tiered system that would make the credit most robust for more efficient systems. This would move toward performance based credits, which we feel are necessary in a reformed environment
- Delineate how the credit is calculated for motive operations such as industrial fork trucks and other motive equipment. H.R. 1659 and S.1417, the Industrial Fuel Cell Vehicle Act is a modification of the existing credit to allow them to more smoothly apply to the motive market

Section 30C Hydrogen Infrastructure Credit: While the Alternative Fuel Infrastructure Credit expires in the time frame being considered by this Committee, the Hydrogen Infrastructure credit does not expire until December of 2014. This credit was also initiated in 2005 and has existed at various levels for several years with a current expiration date of December 31, 2014. This credit is for all alternative fueling infrastructure and is currently capped at $30,000 per system, regardless of whether it's an ethanol refueling, natural gas refueling, or hydrogen refueling system. This level of funding is robust for some systems and negligible for others, particularly hydrogen, refueling for which can cost upwards of $1,000,000 and even more with onsite reforming. This cost is expected to come down significantly but not without volume, which will be assisted by a useful tax credit. The Fuel Cell and Hydrogen Energy Association suggests:

- Increase the cap for hydrogen systems significantly or eliminate the cap for all refueling property so that the relative benefit is the same for all types of infrastructure. This will encourage an "all of the above" approach to alternative fuel vehicles and infrastructure and allow locales to decide on their approach based on their unique needs and resources.
- Include installations for material handling fuel cell equipment, such as fork trucks in warehouses, since these systems are precursors to a large scale refueling infrastructure and can help in early stage build out of such infrastructures.
- Extend the credit through 2016 to line up with the fuel cell tax credit and to better reflect the commercial realities of the fuel cell vehicle market, which isn't expected to start selling commercially until 2014-2015, and even then at fairly small numbers.

Section 30B Fuel Cell Vehicle Tax Credit:
While this credit does not expire, we would be remiss in not pointed out that the credit was reduced in 2010, a reduction that was written into the original EPACT 2005 statute, bringing the core credit from $3000 to $1500. This reduction, written in 2005, was premised on the idea that fuel cell vehicles would be commercially available. Unfortunately, like other fuel cell systems, fuel cell vehicles are not being widely purchased and commercial introduction is not planned until 2014-2015. The Fuel Cell and Hydrogen Energy Association suggests:

- The credit revert to the original amount written into the 2005 bipartisan Energy Policy Act
- Modify the credit to allow industrial vehicles to claim the credit such as in H.R. 1659 and S.1417.
- The credit be extended until 2016 or until tax reform has occurred and we have developed more simplified and technology agnostic means by which to ensure continued American leadership in fuel cell technology.

Section 25D Residential Fuel Cell Tax Credit: While this credit is not due to expire until 2016, it is not, as we understand it, under the purview of this credit review; however we feel that this credit needs some modification to agree more closely with the commercial fuel cell program. This credit, which was also initiated in 2005, provides a 30% tax credit for fuel cells used in residential property up to a cap of $500 per half kilowatt. As with several others mentioned above, the credit was extended in the TARP bill in 2008 through 2016. It, too, has been underutilized to date; in fact, the FCHEA knows of only a handful of sales to the residential market to in the last 7 years. Again, excitement about the use of fuel cells among the industry and policymakers, overshadowed the developmental reality. The Fuel Cell and Hydrogen Energy Association suggests:

- Increase the cap for the section 25d fuel cell credit along the same lines as the credit currently available to business purchasers – from $500 per half kW to $1500 per half kW. It has never been clear why we would provide a larger credit to businesses than to individuals, particularly since the smaller sized fuel cells tend to be a more expensive technology and most costly to interconnect on a per kW basis.

In conclusion, we again want to thank you for taking the initiative to thoroughly review tax extenders and how they are evaluated as we all begin to think about preserving American international leadership in the context of a more simplified tax system in the near future.

Regards,

Morry B. Markowitz
President & Executive Director
Fuel Cell and Hydrogen Energy Association

NATIONAL ASSOCIATION OF Manufacturers

Statement of the
National Association of Manufacturers

For the Hearing Record
of the Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives

On
"Framework for Evaluating Certain Expiring Tax Provisions"

June 8, 2012

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Statement
of the National Association of Manufacturers

For the Hearing Record
of the Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives

Hearing on
"Framework for Evaluating Certain Expiring Tax Provisions"

June 8, 2012

The National Association of Manufacturers (NAM), the largest manufacturing association in the United States representing manufacturers in every industrial sector and in all 50 states, is pleased the subcommittee is holding hearings on temporary tax provisions that expired at the end of 2011 or will expire at the end of 2012. While the NAM supports a number of the more than 60 expiring or expired provisions, our statement focuses on three expired tax extenders widely used by manufacturers: the R&D tax credit, look-through rules for controlled foreign corporations (CFCs) and deferral for active business financing income.

The NAM is a strong advocate for reform of our current tax code to make it simpler, fairer and more competitive, and we welcome the current focus on tax reform. At the same time, until policymakers agree on a final reform plan, we believe that it is important to keep our current tax system in place. Piece-meal changes to long-standing rules will inject more uncertainty into business planning, making U.S companies even less competitive and threaten economic growth and U.S. jobs.

In contrast, renewing the tax extenders will provide a bridge of certainty and predictability for manufacturers. The tax extenders described below represent sound tax policy and have a history of strong, bipartisan, bicameral support. These provisions help manufacturers innovate and compete in a global marketplace and contribute to U.S economic growth and job creation. In light of the current uncertainty in the U.S. economy, including a persistently high unemployment rate, we strongly urge Congress to retroactively extend these and other business tax provisions as soon as possible.

R&D Tax Credit

The R&D tax credit spurs U.S.-based innovation and R&D jobs. By design, only U.S.-based R&D may qualify for the credit and 70 percent of the credit claims are for R&D wages. Since it was first enacted in 1981, the credit has incentivized companies to increase spending on research activities and hire more R&D workers.

In recent years, however, more and more countries have realized the importance of R&D and now provide more robust and often permanent R&D incentives. These new incentives are having an impact on R&D spending: the U.S. share of global R&D dropped to 31 percent in 2009 from 38 percent in 1999, according to the National Science Board.

The credit has been renewed 14 times since it was first enacted into law in 1981 and it is critical that Congress act as soon as possible to renew this important innovation incentive, retroactive to January 1, 2012. When the credit expired, the cost of performing R&D in the United States immediately rose and effectively increased taxes on companies that use the credit. Furthermore, this lapsed credit is exacerbating the trend of new R&D investment dollars flowing from the United States to countries offering more reliable and more generous research incentives. Thus, renewing the credit will eliminate the tax increase on companies that perform U.S. R&D and make the United States a more attractive place for both domestic and foreign investment in research activities.

Global Active Business Financing Income

The NAM also supports a retroactive extension of the provision that taxes active financial services income earned abroad by foreign subsidiaries of U.S. companies when the financial income is brought back to the United States. While this provision (also known as an exemption from subpart F for active financial income) typically is associated with financial service firms, it also is important to U.S. manufacturers with affiliates that provide financing for overseas buyers.

The ability to provide competitive financing for customers has a direct and positive impact on U.S. exports and manufacturing jobs. In contrast, since the exemption from subpart F expired at the end of 2012, U.S. financing arms, unlike their foreign counterparts, are subject to simultaneous foreign and U.S. taxes on their overseas income. This added tax burden makes U.S. manufacturers less competitive, threatening U.S. exports and jobs.

The "Look-through" Rules

Similarly, the NAM supports a retroactive extension of a provision that allows "look-through" treatment for payments of dividends, interest, rent and royalties between related CFCs. Without this provision, which expired at the end of 2011, American companies are subject to immediate U.S. taxation when they redeploy foreign earnings from active business operations in foreign markets. In contrast, our foreign competitors operating in the same markets generally do not pay this tax to their home countries. Thus, American companies are at a competitive disadvantage in serving foreign customers and consumers.

With 77 percent of the world's purchasing power outside of the United States, the ability of U.S. manufacturers to compete effectively in the global marketplace is critical to our country's future economic growth. The retroactive renewal of CFC look-through is vital to helping American companies compete globally.

Like deferral for active financing income, the look-through rules were designed to strengthen the ability of American companies to compete more effectively in the global marketplace. American companies that operate worldwide create and support U.S. jobs. An estimated 21 million people in the United States are employed by companies with overseas operations.

Conclusion

The expiration or pending expiration of these and other business "tax extenders" represents a tax increase for manufacturers and businesses of all sizes that use these incentives. Manufacturers already face a 20 percent cost disadvantage in comparison to companies operating outside the United State, and taxes represent a major factor in this cost differential. Increasing the tax burden on these companies makes it more difficult for them to compete and thrive in the global marketplace and imposes yet another road block to durable U.S. economic growth and job creation.

Manufacturers agree that comprehensive tax reform of the U.S. tax code is sorely needed, particularly in the current economic climate. As we move toward tax reform, we strongly urge you to revive and extend these important incentives that are part of the current system and avoid making an uncompetitive system even worse.

Supplemental Sheet

Statement of the National Association of Manufacturers (NAM)

For the Hearing Record
of the Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives

On
"Framework for Evaluating Certain Expiring Tax Provisions"

June 8, 2012

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Written Testimony of Anne Steckel
National Biodiesel Board Vice President of Federal Affairs
Submitted to the U.S. Committee on Ways and Means
Subcommittee on Select Revenue Measures
Hearing on Framework for Evaluating Certain Expiring Tax Provisions
June 8, 2012

Executive Summary: Biodiesel is a renewable, low-carbon diesel replacement fuel made from an increasingly diverse mix of feedstocks including agricultural oils, recycled cooking oil, and animal fats. It is the only domestically produced, commercial-scale Advanced Biofuel – as defined by the Environmental Protection Agency (EPA) – that is readily available and accepted nationwide. It meets a strict ASTM fuel specification and is used in existing diesel engines without modification.

In its short history, the biodiesel tax incentive has achieved its desired goal of stimulating U.S. biodiesel production – increasing the domestic manufacturing of a clean-burning, renewable fuel while generating jobs, reducing America's reliance on foreign oil and improving the environment.

When the tax incentive was enacted in 2005, the U.S. produced 112 million gallons of biodiesel. In 2011, with support from the tax incentive and the RFS, the industry set a new production record of nearly 1.1 billion gallons, supporting more than 39,000 jobs across the country while generating at least $628 million in federal, state and local tax revenues, according to a recent economic study [i].

The biodiesel industry is poised to continue that momentum in 2012 so long as Congress and the Administration continue supporting strong policies such as the biodiesel tax incentive for stimulating clean, domestic energy production.

However, the industry's recent success should not be taken for granted, and the recent expiration of the $1 per gallon biodiesel tax incentive poses a significant threat to the industry's continued growth. U.S. biodiesel remains a young and vulnerable industry. In fact, we know from recent history what could happen without the biodiesel tax incentive and a strong Renewable Fuel Standard (RFS). When the tax incentive lapsed in 2010, the result was predictable: Plants closed and thousands of people across the country lost work. Specifically, U.S. biodiesel production plummeted by 42 percent, resulting in the loss of nearly 8,900 jobs and a drop in household income of $485 million.

Only in 2011, after Congress reinstated the tax incentive and the RFS was fully implemented, did the industry regain its footing and begin ramping up production again, with record-breaking success.

With the ongoing economic downturn, now is not the time to allow another industry slump. Under projected expansion by 2015, biodiesel is expected to support more than 74,000 jobs, $4 billion in income, and some $7.3 billion in GDP, according to the economic study.

That growth will be severely jeopardized if Congress does not extend the biodiesel tax incentive, which also applies to bio-jet and renewable diesel production.

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Chairman Tiberi and Ranking Member Neal, I appreciate the opportunity to submit written testimony on behalf of the National Biodiesel Board (NBB) regarding the economic impact of the biodiesel tax incentive.

As producers of America's only commercial-scale Advanced Biofuel that's sold and produced nationwide, the U.S. biodiesel industry looks forward to working constructively with this committee to ensure that our nation's Advanced Biofuel goals are met.

NBB applauds your efforts to review expiring tax provisions to determine how these provisions measure against key metrics such as cost, effectiveness, and job creation. History has shown that well-crafted and efficient tax incentives can be powerful policy mechanisms to achieve the nation's energy objectives and leverage private sector investment to promote the deployment and utilization of new energy resources. This is certainly the case with the tax credit for biodiesel, renewable diesel and bio-jet fuel. As with every other major U.S energy resource, effective tax policy has helped create domestic manufacturing jobs as well as significant economic and energy policy benefits.

Before the biodiesel tax incentive expired on December 31, the U.S. biodiesel industry had a record year of production in 2011, producing nearly 1.1 billion gallons and creating good-paying jobs in nearly every state in the country. This success is in part attributed to the strong federal policies in place encouraging domestic energy production. While we understand the pressures facing Congress, we believe economic conditions are simply too weak today to pull support from a growing American industry that is a rare bright spot in this struggling economy.

The recent expiration of the $1 per gallon biodiesel tax incentive poses a significant threat to the industry's continued growth, economic impact and job creation. Now, as much as ever, the biodiesel industry needs stability and support to continue its remarkable success story, and we encourage Congress to provide a retroactive extension of the biodiesel, renewable diesel, and bio-jet tax credit.

While we understand there is an interest among some to delay processing tax extenders until it can be done within the context of broader tax reform, we are concerned that doing so would indefinitely delay an extension and continue to jeopardize the jobs, investment and economic activity generated by the U.S. biodiesel industry. Biodiesel production already has suffered since the loss of the biodiesel tax incentive nearly six months ago, and we urge Congress to act expeditiously to extend provisions such as the biodiesel tax incentive that enjoy strong bipartisan support. We would welcome the opportunity to participate in a broader discussion of U.S. tax policy, but we believe the U.S. biodiesel industry cannot wait the months and possibly years it could take for Congress to reach a consensus on comprehensive tax reform. Quickly reinstating the expired biodiesel tax incentive would provide needed certainty and protect against future disruptions and the loss of thousands of much-needed jobs.

Background and Industry Overview: Biodiesel is a renewable, low-carbon diesel replacement fuel. The EPA has determined, based on the performance requirements established by the *Energy Independence and Security Act* (EISA) (P.L. 110-140), that domestically produced biodiesel is an Advanced Biofuel under the RFS2 program. In fact, it is the only commercial-scale fuel sold and produced across the United States to achieve this designation.

Biodiesel is made from waste greases such as recycled cooking oil, animal fats and secondary-use agricultural oils, and is refined to meet a specific commercial fuel definition and specification. The fuel meets the D6751 fuel specification set forth by ASTM International, the official U.S. fuel-certification organization. Biodiesel is one of the most- and best-tested alternative fuels in the country and the only alternative fuel to meet all of the testing requirements of the 1990 amendments to the Clean Air Act. There are approximately 195 domestic and foreign biodiesel plants registered with the EPA, representing a combined production capacity in excess of 3 billion gallons.

Biodiesel is primarily marketed as a five percent (B5) blending component with conventional diesel fuel, but can be used in concentrations up to twenty percent (B20). It is distributed utilizing the existing fuel distribution infrastructure with blending occurring both at fuel terminals and "below the rack" by fuel jobbers.

Status and Background on the Biodiesel Tax Incentive: The biodiesel tax incentive was enacted in 2004 as part of the American Jobs Creation Act (P.L. 108-357) and took effect in 2005. The incentive was subsequently extended through December 31, 2008, as part of the Energy Policy Act of 2005 (P.L. 109-190). H.R. 1424, the Emergency Economic Stabilization Act of 2008 (P.L. 110-343), again extended the incentive for one year through December 31, 2009, at which time the credit expired. After being expired for all of 2010, Congress extended the tax credit through December 31, 2011 (P.L. 111-312).

It expired again on December 31, 2011, and is currently lapsed.

While the impact of this year's expiration are just beginning to be seen, the 2010 expiration of the tax credit had a severely detrimental impact on the domestic biodiesel industry. In fact, the industry's decline resulted in the loss of nearly 8,900 jobs and a drop in household income of $485 million.

The biodiesel tax incentive is designed to encourage the production and use of biodiesel by making the fuel price-competitive with conventional diesel fuel. In general, current law allows taxpayers to claim the biodiesel tax incentive as either a $1.00 per gallon general business income tax credit or as a $1.00 per gallon blenders excise tax credit. To qualify for the biodiesel tax incentive, the fuel must by statute meet both the ASTM D6751 fuel specification and the Environmental Protection Agency's (EPA) registration requirements under Section 211 of the Clean Air Act.

The Internal Revenue Code provides a general business income tax credit to encourage the production and use of biodiesel, renewable diesel and bio-jet fuel. The credit is the sum of three credits – the biodiesel mixture credit; the biodiesel credit; and the small agri-biodiesel producer credit. The biodiesel mixture credit provides a $1.00 per gallon credit for each gallon of biodiesel that is blended with conventional diesel fuel. The biodiesel credit provides $1.00 per gallon for each gallon of pure B100 biodiesel that is used as a fuel. The small agri-biodiesel producer credit is a 10 cents per gallon credit for plants with a production capacity of less than 60 million gallons per year. The credit can be claimed on the first 15 million gallons of production.

Biodiesel Public Policy Benefits: The biodiesel tax incentive has helped achieve the worthwhile policy goal of creating jobs while increasing the production and use of biodiesel in the U.S. In 2004, when the incentive was initially enacted, the U.S. produced 25 million gallons. In 2011, with the tax credit reinstated and with a strong RFS program, the industry produced nearly 1.1 billion gallons. There are compelling public policy benefits associated with the enhanced production and use of biodiesel in the U.S.

Biodiesel Reduces our Dependence on Foreign Oil: Biodiesel can play a major role in expanding domestic refining capacity and reducing our reliance on foreign oil. The 3.6 billion gallons of biodiesel produced in the U.S. since 2005 have displaced an equivalent amount of diesel fuel with a clean-burning, efficient fuel that the EPA estimates reduces lifecycle greenhouse gas emissions by as much as 86 percent compared to petroleum diesel fuel and creates 5.5 units of energy for every unit of energy that is required to produce the fuel.

Biodiesel is Good for the Environment: Biodiesel is an environmentally safe fuel, and is the most viable transportation fuel when measuring its tailpipe emissions, lifecycle carbon emissions and energy balance. Since 2005, biodiesel has reduced lifecycle greenhouse gas emissions by 48.3 billion pounds, the equivalent of removing 4.25 million passenger vehicles from America's roadways.

Biodiesel Reduces Diesel Emissions: Tailpipe emissions from traditional diesel – primarily from trucking fleets, school buses and other vehicles – are a significant health and air quality concern. In an update to its National-Scale Air Toxics Assessment earlier this year, EPA cited diesel exhaust as one of the nation's most dangerous pollutants, saying it is "among the substances that may pose the greatest risk to the U.S. population." Thousands of trucks and buses hit the road every day burning traditional diesel fuel. Substituting higher amounts of biodiesel for traditional diesel fuel is the simplest, most effective way to immediately improve emissions.

The Biodiesel Industry is Creating Jobs and Making a Positive Contribution to the Economy: NBB estimates that the U.S. biodiesel industry supported more than 39,000 jobs in 2011, in all sectors of the economy, and added more than $3.8 billion to the nation's Gross Domestic Product (GDP).

Biodiesel is America's first advanced biofuel and when compared to gasoline, diesel and ethanol, it is at a fundamentally different stage of development and should be treated as a new fuel in the marketplace. The petroleum industry has received a number of tax incentives for many years; and the ethanol industry has been around for decades and had its tax incentive since 1980. In contrast, the biodiesel industry has had commercial-scale production for only about six years, and has had its tax credit only since 2005. The gasoline marketplace is approximately 140 billion gallons, the diesel pool is approximately 60 billion gallons and the ethanol marketplace is producing some 14 billion gallons. By comparison, biodiesel production reached a record 1.1 billion gallons last year. Biodiesel is an up-and-coming industry and is in a far more fragile stage of development.

Conclusion: The biodiesel tax incentive has helped achieve the desired goal of increasing the domestic production and use of biodiesel, and in turn has helped the U.S. realize the energy security, economic and environmental benefits associated with displacing petroleum with domestically produced renewable fuels. These benefits, however, will be jeopardized if Congress does not act in a timely manner to address the immediate issue facing the industry and extend the biodiesel tax incentive.

About NBB: NBB is the national trade association representing the biodiesel industry as the coordinating body for research and development in the U.S. It was founded in 1992, and since that time, NBB has developed into a comprehensive industry association which coordinates and interacts with a broad range of cooperators including industry, government and academia. NBB's membership is made up of biodiesel producers; state, national and international feedstock organizations and feedstock processor organizations; fuel marketers and distributors; and technology providers.

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Chairman Tiberi and Ranking Member Neal, I again appreciate having the opportunity to submit written testimony on this issue of significant importance to the U.S. biodiesel industry. We look forward to serving as a resource for the Committee on issues related to biofuels tax policy as the committee proceeds.

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[i] Cardno ENTRIX June 8, 2011, Economic Impact of Removing the Biodiesel Tax Credit for 2010 and Implementation of RFS2 Targets Through 2015.

NATIONAL EDUCATION ASSOCIATION nea.org

Great Public Schools for Every Student

Testimony Submitted for the Record
U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Select Revenue Measures

Hearing on
Certain Expiring Tax Provisions
June 8, 2012

Chairman Tiberi and Members of the Subcommittee. On behalf of the 3.2 million members of the National Education Association (NEA), we thank you for the opportunity to submit these comments for the record in conjunction with the hearing on certain expiring tax provisions. These comments focus on two specific expiring tax policies – the educator tax deduction and the Qualified Zone Academy Bond (QZAB) program.

Extend the Educator Tax Deduction
NEA strongly supports an extension of the educator tax deduction. This critical deduction, which expired at the end of the 2011 tax year, helps recognize the financial sacrifices made by teachers and education support professionals.

Educators often reach into their own pockets to purchase classroom supplies because they want to make sure students have what they need to succeed. Studies show that educators are spending more of their own funds each year to supply their classrooms and purchase essential items such as pencils, glue, scissors, and facial tissues. According to NEA's most recent survey, 97 percent of educators surveyed indicated that, in 2006, they had spent some of their own money to meet the needs of their students. These educators spent an average of $477 a year out of their own pockets to purchase classroom supplies such as books, pencils, paper, and art supplies.[1]

According to a 2010 report by Office Max, seven in ten teachers report their schools are not able to provide them with all the necessary tools to effectively teach their students, and 79% of educators say their classrooms are in need of more items that they currently lack such as essential classroom supplies, paper products, and arts and crafts supplies. The majority (82%) of teachers think it is their responsibility to ensure students have the best learning experience possible – no matter the price tag – spending their own money on supplies for their students each year. Everyday classroom supplies such as pencils and pens (78%), prizes and incentives (72%), and arts and crafts supplies (72%) top the list of purchases teachers make using their own cash. [2]

Many educators are finding the need to reach into their own pocket has increased in these difficult economic times, as funding cuts lead to shortages in essential supplies and more students come to school without basic learning tools. A large majority of educators also

[1] National Education Association, *Status of the American Public School Teacher 2005–2006*, March 2010.
[2] OfficeMax Teacher Survey, May 2010, http://multivu.prnewswire.com/mnr/officemax/43900/

spend an average of $15 a month out of their own pockets to feed students. (*Status of the American Public School Teacher 2005–2006*, March 2010.)[3]

The need for these expenditures is not surprising. According to First Focus:

- 2.7 million more children lived with an unemployed parent during a typical month in 2011, compared to 2007 (an increase of 71%), bringing the 2011 total to 6.5 million children;
- 3 million (47% of those living with an unemployed parent) lived, during a typical 2011 month, with a parent unemployed six months or longer;
- 8 million more additional children relied upon SNAP for food in 2011, compared to 2007, bringing the total number of children receiving SNAP to 21 million (one in four);
- 16 million children (more than one in five) currently live in poverty[4]
- One in three working families today find that employment does not guarantee a decent living standard. Forty percent of all children – 30 million kids – grow up in such households.[5]

The educator tax deduction is a bipartisan recognition of educators' financial sacrifices as well as of the needs of students who lack even the basic necessities for success in school. Extending it will make a real difference for many educators, who often must sacrifice other personal needs in order to pay for classroom supplies and instructional materials.

Expand the Educator Tax Deduction

We also strongly support the Teacher Tax Relief Act (H.R. 1738), introduced by Representative Reichert (R-WA). This bill would expand the educator deduction to cover professional development expenses, increase it from $250 to $500, and make the deduction permanent. Teacher quality is the single most critical factor in maximizing student achievement. Ongoing professional development is essential to ensure that educators stay up-to-date on the skills and knowledge necessary to prepare students for the challenges of the 21st century. Expanding the deduction to cover professional development expenses would make a critical difference in helping educators access quality training.

Extend the QZAB Program

NEA also supports extension of the Qualified Zone Academy Bonds program. On average, the buildings that house our public schools are more than 40 years old.[6] The American Society of Civil Engineers gives the condition of our schools a grade of "D" and attributes the failure to upgrade them to "problems in the financial sector and declining revenues for states and local governments."[7] According to Fix America's Schools Today (FAST!), a project of the Economic Policy Institute and the 21st Century School Fund schools need an estimated $500 billion in repairs and upgrades.

The QZAB program has proven to be an efficient and cost-effective way to help disadvantaged communities address pressing renovation and repair needs. QZABs assist school districts in rural and urban communities by providing a financing mechanism to renovate buildings and invest in equipment and technology. Investors receive a federal tax

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[3] Ibid.

[4] *The Recession's Ongoing Impact on America's Children: Indicators of Children's Economic Well-Being Through 2011*, Julia Isaacs, Brookings Institution, December 2011.

[5] *Living on the Edge: America's Low-Earning Families*, Sophia Parker, The Resolution Foundation, September 2011.

[6] *National Center for Education Statistics*

[7] *Report Card for America's Infrastructure, 2009*

credit equal to the amount of interest payable on the bonds, thereby relieving local taxpayers and municipalities of the interest burden.

A school that is awarded a QZAB may use the funds to:

- renovate and repair buildings;
- invest in equipment and up-to-date technology;
- develop challenging curricula; or
- train quality teachers.

The QZAB program expired at the end of the 2011 tax year. We urge Congress to extend this critical program.

Thank you for your consideration of these comments.

Submitted on behalf of:

The National Education Association
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NATIONAL GOVERNORS ASSOCIATION

Dave Heineman
Governor of Nebraska
Chair

Jack Markell
Governor of Delaware
Vice Chair

Dan Crippen
Executive Director

March 30, 2012

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable John Boehner
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Senator Reid, Senator McConnell, Speaker Boehner and Representative Pelosi:

On behalf of the nation's governors, we urge Congress to pass a long-term extension of tax provisions that encourage the investment in renewable energy sources and diversify our nation's energy portfolio.

Governors are pursuing a wide variety of strategies to promote job creation and economic development in their states. Continued development of renewable energy resources and manufacturing is an important component of these efforts. Renewable energy provides Americans with high-tech manufacturing jobs, secure sources of energy, and our states with crucial economic development opportunities.

To supplement state efforts, governors support the continuation of the production tax credit (PTC) for wind and renewable energy and the investment tax credit (ITC) for wind as well as the recent legislative proposal to institute ITC's for the first 3,000 megawatts of offshore wind facilities placed into service. Such measures can help promote environmentally responsible, efficient, and secure affordable energy to fuel America's future.

Predictable tax policies provide a foundation for renewable energy development and can play an important role in our nation's economic recovery. Therefore we are encouraging an extension of both the PTC and ITC for at least 4 years. These tax credits can continue to encourage robust investment and deployment of renewable technologies by affording industry a reliable investment framework within which to operate.

Creating jobs and securing our energy future must be a priority at both the state and federal levels. We strongly urge you to partner with states to support these industries as they continue to develop by passing legislation on a bipartisan basis to extend expiring renewable production and investment tax credits.

Sincerely,

Governor Dannel P. Malloy
Chair, Natural Resources Committee

Governor Dennis Daugaard
Vice Chair, Natural Resources Committee

Submission Contact Information

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Title of Hearing: Hearing on Framework for Evaluating Certain Expiring Tax Provisions

PRESERVATION WORKING GROUP

June 21, 2012

The Honorable Pat Tiberi
Chairman
Ways and Means Committee
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Tiberi and Members of the Subcommittee on Select Revenue Measures:

On behalf of the Preservation Working Group (PWG), we urge you to consider the modifications made to the Low Income Housing Tax Credit ("LIHTC") program by the Housing and Economic Recovery Act of 2008 ("HERA") as a tax extender. The PWG is a national coalition of nonprofit and for profit owners, tenant advocates and state and local housing agencies dedicated to the preservation and improvement of federally assisted multifamily affordable housing.

PWG commends you on your efforts to address this important issue by introducing H.R. 3661 with Ranking Member Neal. This important piece of bipartisan legislation would provide stability to the 9% credit, ultimately ensuring that the LIHTC remain an effective tool for affordable housing production.

While the hearing held in your committee only covered tax extenders expiring in 2011 and 2012, the impending expiration of the HERA provision has already begun to impact communities. The production time associated with developing a LIHTC property that includes application, awards, finance structuring and finally, construction may take as long as two years. Because HERA requires that buildings be placed in service before December 31, 2013, the last projects to qualify for the credit floor would have needed to apply for LIHTC sometime during 2011 or early 2012. Therefore, we believe that extending or making the credit floor permanent should be included as a proposal for the purposes of tax extenders.

HERA's credit-floor modification to LIHTC was an important change that helped stabilize the LIHTC industry during some of the most volatile times for multifamily housing development. Prior to HERA, the applicable percentage for determining the amount of LIHTC under Section 42(b)(1) fluctuated based upon interest rates. This created difficulties in projecting the amount of LIHTCs a property could receive and the amount of investor equity a property could raise, often creating large gaps in financing that needed to be filled through alternative funding sources. By providing a fixed rate, HERA eliminated the uncertainty of the applicable percentage rate and helped fill funding gaps by providing more LIHTCs to properties. Extending this critical provision in HERA does not have any additional costs to the government.

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Preservation Working Group

The LIHTC program is the largest production program for affordable rental housing. Since the creation of the program, the LIHTC has developed or preserved over 2 million affordable apartments serving low-income families.

More recently, the 9 percent credit has been allocated to preserve and improve HUD and RHS assisted properties that are in need of rehabilitation or at risk of being converted to market-rate. When rating competitive LIHTC development proposals, 48 state and local allocating agencies prioritize preservation of existing federally subsidized affordable rental housing. Further, the LIHTC is a critical tool for rehabilitating properties in communities, retaining affordable housing options for low-income families and serving as a catalyst for additional development and growth.

We respectfully request that you and your members consider including the credit floor as a tax extender and extend it beyond the original sunset date of December 31, 2013. Extending the credit floor will enable the LIHTC to more efficiently provide affordable housing to seniors and families while stimulating local economies.

Sincerely,

ACTION Housing, Inc.
California Housing Partnership Corporation
CASA of Oregon
Coastal Enterprises, Inc.
Coalition on Homelessness and Housing in Ohio
The Community Builders, Inc.
Emily Achtenberg, Housing Policy and Development Consultant
Enterprise Community Partners
Housing Partnership Network
LeadingAge
Lutheran Services in America
Local Initiatives Support Corporation
National Council of State Housing Agencies
National Church Residences
National Housing Conference
National Housing Law Project
National Housing Trust
National Low-Income Housing Coalition
Network for Oregon Affordable Housing
Madison Park Development Corporation
Maine Affordable Housing Coalition
Mercy Housing
Preservation of Affordable Housing, Inc.
Ohio Capital Corporation for Housing
Stewards of Affordable Housing for the Future

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NATIONAL RESTAURANT ASSOCIATION®
Representing the Restaurant Industry
The Cornerstone of the Economy, Career Opportunities and Community Involvement

Statement for the Record

Of

Dave Koenig, Vice President, Tax and Profitability, National Restaurant Association

For The Hearing On

"Framework for Evaluating Certain Expiring Tax Provisions"

Before

Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives

June 8, 2012

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Chairman Tiberi, Ranking Member Neal, and members of the House Ways and Means Select Revenue Measures Subcommittee, thank you for the opportunity to submit this statement for the record on behalf of the National Restaurant Association.

We applaud the Chairman, Ranking Member, and Subcommittee's consideration of tax extenders. The Subcommittee's June 8th hearing to explore principles and metrics to evaluate tax extenders importantly advanced the dialogue on these tax policies. The witnesses discussed possible frameworks to assess tax extenders, many of which shared key criteria. Key criteria included: the rationale for the tax policy; revenue and efficiency; and, the reason for the temporary nature of the tax policy and its appropriate duration.

This statement focuses on three expired provisions of significance to the restaurant industry: the 15-year depreciation schedule for leasehold improvements, restaurant improvements and new construction, and retail improvements; the Work Opportunity Tax Credit ("WOTC"); and the deduction for donations of food inventory. Evaluating these tax provisions against the key criteria discussed at the June 8th hearing demonstrates that these important policies should be made permanent.

Looking ahead, tax reform presents an opportunity to provide taxpayers with certainty, simplicity, and fairness, while encouraging economic growth and job creation. Done properly, a comprehensive review of the tax system, including tax extenders, would eliminate those tax policies that detract from these objectives, while promoting those that advance them. However, in the interim, we urge immediate and seamless extension of the 15-year depreciation schedule, WOTC, and the charitable deduction for donations of food inventory.

Restaurants: Small Businesses with a Large Impact on Our Nation's Economy

The restaurant industry plays a significant role in our nation's economy. In 2012, the restaurant industry is expected to generate an estimated $632 billion in sales, with an overall economic impact of more than $1.7 trillion. Every dollar spent in restaurants generates an additional $2.05 spent in our nation's economy. The restaurant industry is one of the nation's largest private job creators, employing approximately 12.9 million people, representing nearly ten percent of the U.S. workforce. We are truly the cornerstone of this nation's economy.

Moreover, it is important to stress that the restaurant industry is an industry of small businesses. There are 970,000 restaurant and foodservice outlets in this country. Seven out of ten restaurants are single-unit operators. Most eating and drinking establishments, 93 percent of the industry, have fewer than 50 employees. Restaurants also serve as the conference rooms for many of the self-employed and other small businesses.

15-year Depreciation Schedule for Leasehold Improvements, Restaurant Improvements and New Construction, and Retail Improvements

Rationale for Tax Policy

During the June 8th hearing, witnesses discussed the need to understand the rationale behind a tax provision. In particular, witnesses recommended considering whether a tax provision addresses a compelling need for government intervention and whether a tax provision reflects sound tax policy.

One principle of the tax code is that costs of assets are allocated over the period in which they are used. Assets with longer expected lives are depreciated over a longer period of time, while assets with shorter lives are depreciated over a shorter period of time. As a reflection of this principle, Congress permanently provided for the 15-year depreciation schedule for retail motor fuels outlet stores in 1996. Congress subsequently expanded property subject to the 15-year depreciation schedule to include leasehold improvements, restaurant improvements and new construction, and retail improvements.

With more than 130 million Americans patronizing restaurants each day, restaurant building structures experience daily structural and cosmetic wear and tear caused by customers and employees. National Restaurant Association research shows that, as a result, most restaurants remodel and update their building structures every six to eight years. Consequently, 15 years is a more accurate timeframe for recovering the cost of investments in restaurant buildings and improvements.

Revenue and Efficiency

During the June 8th hearing, witnesses discussed the importance of evaluating a tax provision by its revenue effect and its efficiency, meaning whether the provision accomplishes its goals effectively.

JCT has estimated that an extension of the 15-year depreciation schedule would cost $3.399 billion over ten years. (JOINT COMMITTEE ON TAXATION, ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS CONTAINED IN PRESIDENT'S FY 2012 BUDGET PROPOSAL, JCX-19-11 March 17, 2011).

The cost associated with the provision must be viewed in light of the effectiveness of the 15-year depreciation schedule. A 15-year depreciation schedule reduces the cost of capital expenditures and increases cash flow. As demonstrated in Figure 1 below, the annual tax savings and corresponding additional cash flow realized by restaurateurs from a 15-year, rather than a 39-year, depreciation schedule are considerable. According to a National Restaurant Association survey, between 2005 to the end of 2011, nearly two-thirds of restaurant operators benefitted from the 15-year depreciation schedule, either expanding or making improvements to their restaurants. Of these restaurant operators, 52 percent said that the expansions or improvements may not have been undertaken if the 15-year depreciation schedule was not in place.

Figure 1.
Sample Calculations for 15-Year versus 39-Year Depreciation

Total Capital Expenditure	Annual Depreciation (39-year)	Annual Tax Savings	Annual Depreciation (15-year)	Annual Tax Savings	Annual Difference in Tax Savings
$100,000	$2,532	$608	$6,667	$1,600	$992
$250,000	$6,329	$1,519	$16,667	$4,000	$2,481
$500,000	$12,658	$3,038	$33,333	$8,000	$4,962
$700,000	$17,722	$4,253	$46,667	$11,200	$6,947
$1,000,000	$25,316	$6,076	$66,667	$16,000	$9,924
$1,500,000	$37,975	$9,114	$100,000	$24,000	$14,886
$2,000,000	$50,633	$12,152	$133,333	$32,000	$19,848

Expenditure Scenarios
Rebuild Costs: Quickservice - $700,000; Fullservice - $1,500,000
Renovation Costs: Quickservice - $250,000; Fullservice - $500,000
Note: Figures are based on a 24 percent effective marginal tax rate

Additionally, when restaurants invest in construction and renovations, the impact spreads throughout the economy. Figure 2 provides state-by-state estimates of the additional spending on restaurant improvements and new construction that would result from an extension of the 15-year depreciation provision, as well as the overall economic and employment impact within each state.

Consequently, economic activity is sitting on the sidelines in a fragile economic recovery. Currently, 30 percent of restaurant operators said they have put projects on hold because of the uncertainty around the extension of the 15-year depreciation provision. With single-unit restaurant operators reporting an average expected project cost of $40,000, and multi-unit operators reporting an average expected project cost of $500,000, the additional construction activity of these restaurant projects alone would exceed $7 billion. Based on economic multipliers from the Bureau of Economic Analysis, the overall economic impact of these restaurant construction projects would exceed $23 billion, with a total employment impact of nearly 200,000 additional jobs across all U.S. industries.

Reason for Temporary Nature and Appropriate Duration

The 15-year depreciation schedule has been an integral part of the tax code for several years. However, it is temporary and must be extended annually. Most recently, the 15-year depreciation schedule was extended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 and expired again on December 31, 2011. The piecemeal and temporary approach to the 15-year depreciation schedule, requiring extension every couple of years, presents taxpayers with unnecessary uncertainty and complexity.

The provision was not designed as a temporary measure, either as a stimulus provision or a provision requiring sunset review. The 15-year depreciation schedule was put in place to appropriately reflect the useful life of certain properties and to provide equity with the tax treatment of retail motor fuels outlet stores, both of which demonstrate the need for a permanent policy. However, the 15-year depreciation schedule's temporary extensions continue because it has been difficult to identify revenue sources to offset the cost of making the provision permanent.

The 15-year depreciation schedule is an effective and efficient tax policy that appropriately reflects economic reality and fosters economic and job growth. As part of tax reform, Congress should make permanent the 15-year depreciation provision. In this regard, we commend Congressman Gerlach and Congressman Neal for their introduction of H.R. 1265, broadly-supported, bipartisan legislation that would make permanent the 15-year depreciation schedule.

Work Opportunity Tax Credit

Rationale for Tax Policy

Another important, but largely expired, aspect of the tax code is WOTC, a tax credit provided to employers who hire individuals from several targeted groups who face significant barriers to employment. Examples of WOTC-targeted employee groups include veterans who either are food stamp recipients or are unemployed and suffering a service-connected disability, former felons, disconnected youth, and members of families receiving benefits under the Temporary Assistance for Needy Families Program ("TANF").

WOTC was enacted to address the critical issue of persistent unemployment among certain groups who face significant barriers to entering the workforce. The credit is provided to employers to help offset the additional costs associated with employing these worker populations. WOTC effectively lessens the impact of the productivity gap between the target group members and other workers, encouraging employers to take a chance and hire workers they may otherwise not. At the same time, the employee is given an opportunity to work, building skill sets and taking them off public assistance.

Revenue and Efficiency

JCT has estimated that a one-year extension of WOTC would cost $971 million over ten years. (JOINT COMMITTEE ON TAXATION, ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS CONTAINED IN PRESIDENT'S FY 2012 BUDGET PROPOSAL, JCX-19-11 Mar. 17, 2011).

At a relatively low cost, WOTC works by effectively accomplishing its goal of ending persistent unemployment among our nation's most vulnerable citizens. The restaurant industry employs close to 13 million people, many of whom may not have been hired if WOTC had not been in place. Through WOTC, more long-term welfare recipients, a historically difficult group to employ, are being employed in the private sector and 7 out of 10 welfare recipients are using WOTC to find private sector jobs. A 2011 study by Peter Cappelli of the Wharton Business School at the University of Pennsylvania found that individuals hired under WOTC go on to become productive employees who are no longer dependent on public assistance.

In 2011, more that 1.1 million workers found jobs through WOTC, at an average cost of approximately $1,300 based on Joint Committee on Taxation data. It is important to note that this figure does not reflect any offsetting savings from lower welfare, disability, and social security payments.

Reason for Temporary Nature and Appropriate Duration

WOTC and its predecessors, the Targeted Jobs Tax Credit ("TJTC") and the Welfare to Work ("WTW") Tax Credit, have existed since 1977, except for a brief lapse in the 1990s. Since WOTC was established in 1996, it has been temporarily extended nearly a dozen times. WOTC has effectively been part of the tax code for three decades. The ongoing extensions of WOTC reflect that the tax policy effectively and efficiently addresses an important policy need. As part of tax reform, Congress should make WOTC permanent. Until then, WOTC should be extended retroactive to the beginning of 2012 and prospective as well.

Deduction for Charitable Donation of Food Inventory for Small Businesses

Rationale for Tax Policy

The deduction for charitable donation of food inventory is a critical tool in alleviating hunger. For nearly 30 years since its inception in 1976, the tax deduction for contributions of food inventory was limited to C corporations. In 2005, the provision was temporarily expanded to include pass-through entities (i.e., Subchapter S corporations, limited liability companies) and has been extended on subsequent occasions.

Without the provision, taxpayers get the same tax treatment for throwing out surplus food as they do for giving it to charity. The enhanced deduction instead encourages donating the food to charity, by helping to offset the costs associated with storing and transporting the extra food. Absent the enhanced deduction for the charitable donation of food inventory, these charities would be hard-pressed to meet critical demands, putting our nation's most vulnerable families at risk for hunger.

Revenue and Efficiency
JCT has estimated that a one-year extension of deduction for donations of food inventory would cost $138 million over ten years. (JOINT COMMITTEE ON TAXATION, ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS CONTAINED IN PRESIDENT'S FY 2012 BUDGET PROPOSAL, JCX-19-11 Mar. 17, 2011).

With a small revenue impact, the deduction plays a critical role in feeding our nation's hungry. Each day, 35 million Americans are at risk of hunger. There has been a significant positive impact on food donations since the deduction's enactment in 2006. The deduction has resulted in a 137% increase in the amount of food donated by restaurants. This is food that prior to expansion of the food donation deduction was being landfilled.

America's restaurants give back to their communities in major ways, the most significant of which is through food donation. According to National Restaurant Association research, 73 percent of restaurants donate food to individuals or charities. The National Restaurant Association strongly encourages its members to donate more food and has partnered with Food Donation Connection ("FDC") to strengthen this effort. Founded by a former restaurant executive, FDC serves as the liaison between the restaurants interested in donating food and the social service agencies adept at getting that food to people in need. FDC helps restaurants develop and implement programs designed to provide an alternative to discarding surplus food, while capitalizing on the economic benefits of those donations through the tax savings. Since 1992, FDC has helped facilitate the donation of over 210 million pounds of food to non-profit, hunger-relief agencies.

Reason for Temporary Nature and Appropriate Duration
The deduction for donations of food inventory is yet another tax provision that, although temporary, addresses a permanent challenge of hunger. The deduction was put in place to address this challenge and provide equity with the tax treatment of such donations for C corporations.

Unfortunately, the uncertainty caused by the expiration of the food donation tax deduction extender has caused reductions in much needed food donations. The lapse of the food donation tax deduction extender is a significant impediment for small businesses that want to donate safe, nutritious food, rather than see it end up in landfill. Studies have estimated upwards of 70 billion pounds of recoverable food goes to waste each year. Making permanent the now-temporary component of the deduction would make it more effective, while advancing the objectives of providing taxpayers with simplicity and predictability.

Conclusion

Thank you for the opportunity to submit this statement on behalf of the National Restaurant Association. The tax extenders, including the 15-year depreciation schedule, WOTC, and the charitable deduction for donations of food inventory, must be reviewed and the June 8th hearing advanced the dialogue about possible ways to move forward. Tax reform would provide an opportunity to comprehensively review the tax extenders and other tax policies and consider permanent solutions. Until there is an opportunity for tax reform, we urge the immediate and seamless extension of the expired tax provisions. As Congress considers these important issues, we would be pleased to serve as a resource for the Subcommittee, the Committee, and Congress.

Figure 2

Estimated Impact of Extending 15-Year Restaurant Depreciation Provision Through 2013

State	Increase in Spending on Restaurant Improvements & New Construction (in millions)	Total Economic Impact Within the State (in millions)	Total Employment Impact Within the State (total jobs in all industries)
Alabama	$78	$170	1,591
Alaska	$21	$37	263
Arizona	$113	$233	1,913
Arkansas	$53	$104	961
California	$851	$1,953	13,122
Colorado	$130	$293	2,264
Connecticut	$101	$192	1,250
Delaware	$22	$41	269
District of Columbia	$26	$31	42
Florida	$380	$785	7,054
Georgia	$194	$441	3,818
Hawaii	$42	$80	609
Idaho	$40	$71	718
Illinois	$312	$728	4,870
Indiana	$134	$294	2,381
Iowa	$81	$144	1,293
Kansas	$60	$115	900
Kentucky	$75	$161	1,406
Louisiana	$87	$182	1,518
Maine	$42	$82	834
Maryland	$129	$250	1,758
Massachusetts	$193	$382	2,474
Michigan	$224	$482	4,051
Minnesota	$118	$251	1,957
Mississippi	$47	$94	872
Missouri	$127	$275	2,145
Montana	$39	$73	748
Nebraska	$48	$80	723
Nevada	$58	$109	801
New Hampshire	$39	$78	586
New Jersey	$254	$550	3,468
New Mexico	$37	$71	659
New York	$595	$1,075	7,049
North Carolina	$190	$391	3,665
North Dakota	$22	$38	307
Ohio	$254	$584	4,840
Oklahoma	$70	$150	1,424
Oregon	$117	$241	2,018
Pennsylvania	$330	$781	5,728
Rhode Island	$39	$71	539
South Carolina	$98	$214	2,016
South Dakota	$25	$42	416
Tennessee	$109	$246	2,035
Texas	$427	$1,068	8,210
Utah	$48	$112	1,012
Vermont	$21	$39	384
Virginia	$166	$345	2,645
Washington	$187	$408	3,010
West Virginia	$38	$73	627
Wisconsin	$173	$362	3,036
Wyoming	$17	$29	241
United States	$7,081	$23,944	199,830

Source: National Restaurant Association estimates, with economic and employment impact based on BEA multipliers
Note: State impact figures do not sum to the U.S. total, because they only include inputs within each state.

Ohio Grantmakers Forum
Serving Grantmakers. Promoting Philanthropy

STATEMENT FOR THE RECORD
GEORGE E. ESPY
PRESIDENT, OHIO GRANTMAKERS FORUM
HOUSE WAYS AND MEANS
SUBCOMMITTEE ON SELECT REVENUE MEASURES

Hearing on Framework for Evaluating Certain Expiring Tax Provisions
June 8, 2012

Chairman Tiberi, Ranking Member Neal, and distinguished members of the Subcommittee on Select Revenue Measures, thank you for the opportunity to share with you the perspectives of Ohio's philanthropic community as the subcommittee considers a framework to use for evaluating expiring tax provisions that include the IRA Charitable Rollover.

I am the president of Ohio Grantmakers Forum, a statewide association of private and community foundations and corporate giving programs. Our mission is to provide leadership for organized philanthropy in Ohio and to enhance the ability of members to fulfill their charitable goals. Together, our 206 members hold roughly 63 percent ($10.9 billion) of the state's charitable assets and annually award about the same percentage of the state's grants ($735 million).

Ohio has a strong history of philanthropic giving, starting with the creation of the world's first community foundation in Cleveland in 1914. Since that day, Ohio's foundation community has grown to 3,306, including 68 community foundations. Millions of Ohioans are helped – and lives changed – every day by grants given by these foundations:

- High school seniors receive scholarships that enable them to pursue the higher education they will need to be competitive in a 21st century economy;
- Adults who have been unemployed during the recent recession receive job training to help them find new jobs;
- Children without dental insurance get teeth cleaned and repaired by mobile oral health clinics; and
- Ohioans of all ages are enriched by visits to museums, zoos, parks and performing arts organizations.

The foundations are only able to provide these critical dollars due to the generous contributions they receive from individuals: one-quarter of Ohio taxpayers itemize their federal tax returns and take advantage of the charitable deduction currently allowed. The IRA Charitable Rollover, enacted as part of the 2006 Pension Protection Act, allows individuals aged 70 ½ to donate up to $100,000 to charitable organizations directly from their Individual Retirement Account without treating the distribution as taxable income.

Because of the incentive provided by this legislation, Ohioans have contributed thousands of dollars to the causes they care about, with significant impacts:

- A donor's half million dollar pledge to the capital campaign to build a local technical college campus brought higher education to Coshocton for the first time, resulting in 700 students currently enrolled who otherwise wouldn't have access to a college education in their community. Ability to use the IRA assets freed up $300,000 in the donor's community foundation fund to support other charitable causes.
- A donor's wish to honor his wife's memory led him to use IRA assets to establish a scholarship fund in her name at his local community foundation. This rural community's college-bound students will have an opportunity for the next 20 years to win a $5000 scholarship that will help them reach their dreams.
- A donor's passion for her community foundation allowed her to make $100,000 gifts per year to support the foundation's operating expenses – roughly half of its operating dollars. Without the provision, the donor said "I will no longer be able to make gifts of such significant size" and the foundation's executive director must look for new sources of operating support.
- A businessman's IRA contribution to his local community foundation provided grant dollars that supported alcohol and drug abuse treatment services and medical care for uninsured people in Lorain County.

The IRA Charitable Rollover expired at the end of 2011, depriving Americans of a significant pool of dollars they can use to support community foundations and other public charities. Ohio Grantmakers Forum strongly encourages the Subcommittee to continue to provide incentives for charitable giving by including the IRA Charitable Rollover in U.S. tax policy and code.

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ONE VOICE
NTMA National Tooling & Machining Association 800-248-6862
Precision Metalforming Association 216-901-8800 PMA
6363 Oak Tree Blvd. • Independence, OH 44131 • www.metalworkingadvocate.org

June 22, 2012

The Honorable Pat Tiberi
Chairman
House Subcommittee on Select Revenue Measures
1101 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Tiberi:

On behalf of One Voice, the joint effort between the National Tooling and Machining Association (NTMA) and the Precision Metalforming Association (PMA) based in Ohio, and our nearly 3,000 nationwide metalworking member companies, thank you for your leadership and continued efforts to address tax reform. Please accept these comments in response to your request for input following your hearing on the Framework for Evaluating Certain Expiring Tax Provisions on June 8, 2012 ("tax extenders hearing"). These comments focus on expiring provisions included in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 and related expiring tax law.

While we will formally comment on comprehensive tax reform at a later point, at this time we will focus specifically on the tax credits and deductions that our member companies report using to help them create jobs and remain globally competitive. Our member companies are primarily family-owned small and medium-sized middle market manufacturers with fewer than 50 employees who supply tooling, parts and other components for manufacturing machinery or goods serving the automotive, defense, aerospace, medical, agriculture, electrical and energy, among other industries. A recent survey of our members showed that roughly 60 percent are structured as Sole Proprietorships and other "pass-through" entities, such as S Corps and LLCs which account for 72 percent of all small businesses in the U.S. and 80 percent of all manufacturers.

Manufacturers, including small businesses, utilize tax credits and deductions to relieve their tax burden, lower their effective tax rate, and improve global competitiveness. If tax reform involves eliminating credits and exemptions, Washington must lower tax rates for all manufacturers, whether C Corporations, S Corporations, Partnerships or any other pass-through entities.

Our members utilize numerous tax provisions not discussed here, many of which are applicable more broadly to corporations and business owners. Survey results are based on responses in January 2012 from 131 One Voice manufacturing company executives.

Other tax provisions important to One Voice members included in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("TRUIRJCA") and related expiring tax law but not discussed in detail here include:

- Overall limitation on itemized deductions and the personal exemption phase-out
- Reduced rate on dividends and capital gains
- AMT relief
- Energy efficient appliance credit
- Deduction of State and local sales taxes
- Above-the-line deduction for qualified tuition and related expenses (employees benefit)
- Refundability of unused AMT credits
- Employer wage credit for employees who are active duty members of the uniformed services
- Enhanced charitable deduction for corporate contributions of computer inventory for educational purposes
- Expensing of environmental remediation costs
- Basis adjustment to stock of S corps making charitable contributions of property
- Temporary exclusion of 100 percent of gain on certain small business stock

These comments focus on the following tax deductions, credits and provisions as examples and is not a comprehensive list and is not limited to those included in TRUIRJCA.

- R&D Tax Credit
- Section 199 Domestic Production Activity Deduction
- Bonus Depreciation, 100% Expensing, and Section 179 Increased Expensing
- Last-in-First-Out (LIFO)
- Interest Charge Domestic International Sales Corporation (IC-DISC)
- Estate Tax

R&D Tax Credit (R&D)

As it is in many other industries, the R&D Tax Credit is an important component of innovation for small and medium-sized manufacturers. Fifty-three percent of One Voice members who responded reported using the R&D Tax Credit. This figure is down somewhat over previous years as some members cite increased audits by state and federal officials over the use of the R&D Tax Credit. This has dissuaded some small manufacturers who lack necessary resources from taking advantage of the credit in order to avoid costly audits. As one manufacturer reported, "paying $20,000 in accounting and legal fees to support a $40,000 R&D credit simply isn't worth it." R&D is an important tool which incentivizes manufacturers to conduct domestic innovation activities and is a high priority for One Voice manufacturers. Further, the ability to claim R&D credits against AMT liability as an offset is an important tool for manufacturers.

Section 199 Domestic Production Activity Deduction (Section 199)

The Section 199 deduction is one of the few provisions within the tax code that truly focuses on manufacturing in America. While not as well known by smaller manufacturers as other credits, nearly half of One Voice members report claiming the Section 199 Deduction. A renewed and focused deduction is critical for helping manufacturers level the global playing field. For manufacturing companies that used the Section 199 Deduction, they reported a 3.15 percent effective tax rate reduction (based on a 35 percent rate). When the majority of privately held manufacturers report they invest most of their earnings back into the company, paying a 3 percent lower effective tax rate frees up resources to invest in equipment and hiring workers. For those who use it, this deduction is among the most effective in improving global competitiveness, especially when the U.S. now has the highest corporate tax rate in the developed world.

Bonus Depreciation, 100% Expensing, and Section 179 Increased Expensing

Members of One Voice are heavy investors in capital equipment with machines that they purchase regularly costing over $1 million. While 99 percent of One Voice members are classified as small business and most of those make "small parts," they use sophisticated machines which are costly investments. Purchasing new capital equipment is a major undertaking for a small business who must hire additional workers to operate the machines. In the survey, 88 percent of One Voice members report using the Section 179 Expensing provision for capital equipment on which 78 percent claimed Bonus (Accelerated) Depreciation. These numbers reinforce how critical purchasing equipment is to this industry.

A majority of members reported maxing out their Section 179 before turning to Bonus Depreciation. However, most of the equipment purchased by One Voice members exceeds the Section 179 limits on expensing which is why so many turn to Bonus Depreciation. While these businesses meet the Small Business Administration's intent with Section 179, a 10-person machine shop will purchase a $750,000 machine when expanding operations and often factors in tax incentives when deciding whether or not to make such a significant investment. Extending and increasing the allowable limit for capital expensing is critical for One Voice members and this industry. One Voice members describe Bonus Depreciation as the provision that has the greatest influence over their activities – such as whether or not (and/or when) to purchase capital equipment costing $1 million which often requires hiring more employees.

Last-in-First-Out (LIFO)

Nearly one-third of One Voice members reported using LIFO as an inventory accounting method. However, respondents in particular industries report more usage than others. For example, LIFO is used more frequently by automotive suppliers but it also depends on the state of the particular industry our members supply. For those who utilize LIFO, it makes a significant impact. A business with roughly 300 employees supplying the automotive and defense industries reported having more than $750,000 in LIFO exposure.

Interest Charge Domestic International Sales Corporation (IC-DISC)

As manufacturers increasingly look to increase export sales, they are exploring various opportunities and incentives to address foreign markets. While only 11 percent of One Voice members report claiming IC-DISC, 58 percent of respondents report exporting parts and products abroad, a significant increase over previous years. As the economy improves and small manufacturers learn more about exporting opportunities, we expect the number of manufacturers who utilize IC-DISC to increase. For those companies who have long thrived on exports, IC-DISC remains a critical component of their strategy to make their costs more globally competitive when selling their parts and tooling overseas.

Estate Tax

The vast majority of One Voice members are structured as family-owned small businesses. Many companies are now controlled by the third and fourth generations and often employ generations of families on the shop floor from the grandchildren to grandparents. Family-owned businesses are facing a crossroads, as many of the baby boomer's parents who founded the companies are passing away while the current owners are planning for their own retirements in the next ten years and are considering their estate planning now. The Estate Tax restricts the ability of family-owned businesses to pass along the company to the next generation of manufacturers putting the employees' futures in jeopardy and risking a business simply closing its doors rather than take out a loan to pay the taxes. One Voice members strongly believe Congress should repeal the Estate Tax entirely. However, recognizing the political and fiscal realities, we urge the Committee not to exceed the exemption level and rates currently in place in 2012 (i.e. $5 million exemption indexed to inflation, 35% tax rate, with spousal transfer and stepped-up basis).

Regardless of the outcome of comprehensive tax reform, manufacturers need stability and transparency in the tax code. A business cannot effectively plan for the future when it is unclear whether Congress will extend a provision before it expires, or gamble that the R&D will be made retroactive. Business owners make decisions for the next year beginning the previous summer and in many cases earlier. Tax credits and deductions can only succeed if manufacturers can trust they will still exist six months from now. The prime example is Bonus Depreciation. A small manufacturer cannot make a decision on whether to purchase a $1 million machine without knowing if they can depreciate the cost of the equipment. A tax credit or deduction, such as Bonus Depreciation in this example, can mean the difference between investing in that equipment and hiring workers or not taking on the new business.

To further demonstrate the impact of tax reform on small manufacturing businesses, we have attached as Exhibit 1 a tax template created by accounting firm Plante & Moran in partnership with One Voice. The sample template was completed by a New England based manufacturing business with roughly 200 employees and demonstrates the impact on that particular manufacturer should Congress eliminate certain tax deductions and credits or increase certain rates. In this New England manufacturer example and based on their current claims and deductions, this 200-employee company will see a 6% Effective Tax Rate Increase in 2013 compared to 2011 law assuming no Congressional action and will jump 15% under a worst case 39.6% scenario with no deductions permitted. Some smaller companies have shown a 15% increase in 2013, and a 7% increase under 39.6% with no deductions.

To strengthen the competitiveness of small and medium-sized manufacturers, we need to simplify and stabilize the tax code and implement policies that encourage investment and eliminate tax disadvantages. The current tax structure is a myriad of high rates, temporary credits, loopholes, and outdated policies that slow growth and competitiveness. In order to compete globally under the current U.S. tax structure, domestic manufacturers must use as many tax incentives as possible to lower their burden, expand their businesses and hire more employees.

Manufacturing businesses employ nearly 12 million Americans, represent more than 10 percent of our entire economy, and are a vital part of America's future economic and national security. Comprehensive tax reform is the single most important stimulus Washington could provide businesses manufacturing in America.

Thank you for your consideration and your leadership on behalf of the metalworking industry.

Sincerely,

William E. Gaskin
PMA President

Dave Tilstone
NTMA President

STATEMENT OF THE R&D CREDIT COALITION

SUBMITTED FOR THE RECORD OF THE HEARING ON

"FRAMEWORK FOR EVALUATING CERTAIN EXPIRING TAX PROVISIONS"

BEFORE
SUBCOMMITTEE ON SELECT REVENUE MEASURES
COMMITTEE ON WAYS AND MEANS

ON

June 8, 2012

Introduction

The R&D Credit Coalition welcomes the opportunity to provide comments for the record of the June 8, 2012, Committee on Ways & Means, Select Revenue Measures Subcommittee ("Committee") hearing to examine "how Congress should evaluate certain tax provisions that either expired in 2011 or will expire in 2012."

The R&D Credit Coalition thanks Select Revenue Measures Subcommittee Chairman Tiberi and Ranking Member Neal for giving Members the opportunity to discuss a framework for evaluating important tax extender provisions, such as the Research & Development ("R&D") tax credit (also known as the Research & Experimentation tax credit). In addition, we would like to thank Ways & Means Committee members Kevin Brady (R-TX) and John Larson (D-CT) for their leadership in sponsoring H.R. 942 legislation that would provide a strengthened and permanent R&D tax credit. The credit expired on December 31, 2011, and we look forward to continuing our work with them to advance a seamless extension that would provide businesses with the certainty and incentives they need to maintain and increase R&D jobs here in the U.S.

The R&D Credit Coalition is a group of more than 100 trade and professional associations along with small, medium and large companies that collectively represent millions of American workers engaged in U.S.-based research throughout major sectors of the U.S. economy, including aerospace, agriculture, biotechnology, chemicals, electronics, energy, information technology, manufacturing, medical technology, pharmaceuticals, software and telecommunications.

Although the make-up of the R&D Credit Coalition is diverse, the member companies share a major characteristic—they collectively spend billions of dollars annually on research and development, which provides high-wage and highly-skilled jobs in the United States. There is significant global competition for R&D jobs, which means that companies have an array of choices on where to locate such jobs and where to invest research dollars—here in the U.S. or abroad. The high U.S. corporate tax rate and the temporary nature of the U.S. R&D tax credit, compared to the lower corporate tax rates and more stable, robust, and often permanent research incentives in most other developed countries, are key factors that companies consider in determining where they are going to create and maintain R&D jobs.

Even before the U.S. R&D credit expired at the end of 2011, on average a company claiming the credit only realized an effective credit rate of 6%. In addition, the U.S. requires that the corporate income tax deduction for R&D expenses be reduced by the amount of any R&D credit.

The inability of Congress to agree on a permanent incentive for U.S. research and development expenditures, including the failure of Congress to seamlessly extend the R&D tax credit, retroactive to January 1, 2012, will over the long-term have a dramatic impact on the number of R&D jobs created and maintained in the U.S Given the Committee's focus on finding a long-term solution for tax extenders within the context of tax reform, the R&D Credit Coalition urges Congress to pass a strengthened credit in the short-term, with a seamless effective date to ensure that R&D jobs remain here in the U.S.

Discussion

The R&D tax credit, originally enacted in 1981, was designed to be an important incentive in spurring private sector investment in innovative research by companies of all sizes and in a variety of industries. The enactment of this incentive helped establish the U.S. as a leader in cutting-edge research. The purpose of the R&D tax credit is to encourage U.S. based research activity and to ensure that companies create high-paying jobs here in the U.S. In fact, during the 1980s, the U.S. was the leader among OECD countries in providing the best R&D incentives for companies. However, in recent years, many other countries have instituted more generous and often permanent R&D incentives. As a result, the U.S. today ranks 24th in research incentives among industrialized countries[1].

In contrast to the incentives offered by a number of other countries, the temporary nature of the U.S. R&D tax credit makes it a less powerful incentive in terms of a company's R&D budgets and decisions about where to locate new R&D activities. The certainty of a strengthened, permanent credit, especially in a tax reform environment, is critical to maintaining U.S. leadership in advanced research and encouraging companies to continue to spend R&D funds here in the U.S.

The R&D credit has a significant impact on private R&D spending and the creation of research jobs. A recent study by the Center for American Progress concludes that, "the credit is effective in the sense that each dollar of foregone tax revenue causes businesses to invest at least an additional dollar in R&D.[2]" In addition, according to a recent study by Ernst & Young, "In total, the overall policy – the existing credit plus strengthening the alternative simplified credit – is estimated to increase annual private research spending by $15 billion in the short-term and $33 billion in the long-term."[3]

As noted above, many other countries offer *both* lower corporate tax rates and more attractive R&D incentives[4]. Accordingly, the U.S. should not engage in an "either/or" debate with respect to lower marginal rates and boosting U.S. job creation through R&D incentives when looking at options to reform the corporate tax code.

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[1] OECD, "Science, Technology and Industry Scorecard," December 2009, p. 79.
[2] Center for American Progress, "The Corporate R&D Tax Credit and U.S. Innovation and Competitiveness," by Laura Tyson and Greg Linden, January 2012, p.2.
[3] Ernst & Young, "The R&D Credit: An effective policy for promoting research spending," September 2011, p. i.
[4] Deloitte, "Global Survey of R&D Tax Incentives," July 2011.

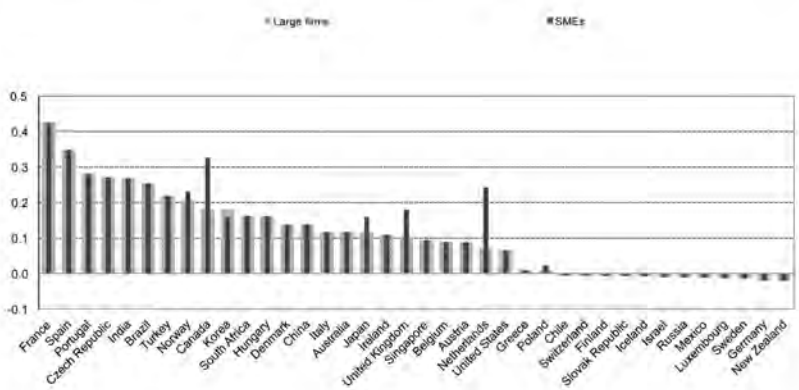
Moreover, it is important to note that the R&D credit is a *jobs* credit—70 percent of credit dollars are used to pay the salaries of high skilled R&D workers in the U.S. The E&Y study also stated that, "the credit and its enhancement is estimated to increase research-related employment by 140,000 in the short term and 300,000 in the long-term."[5]

International R&D Tax Incentives

The U.S. must maintain a globally competitive tax system that supports high-skilled, high-paying jobs, here in the U.S. Failure to seamlessly extend the credit as soon as possible and failure to permanently strengthen the R&D tax credit will put current jobs at risk of moving abroad, and jeopardize the expenditure of R&D funds in the U.S. Research and development will continue; the question is where will the R&D jobs be located.

While the United States has offered an "on-again, off-again" incentive for more than 25 years, the number of OECD countries offering some sort of incentive for research has grown dramatically in recent years as countries attempt to become leaders in research. The U.S. share of global R&D fell from 39 percent in 1999 to 33 percent in 2007.[6] In addition, the following OECD chart shows that in 2009, the United States ranked 24 among 38 industrialized countries offering R&D tax incentives.[7]

OECD Science, Technology and Industry Scoreboard 2009 - OECD © 2009 - ISBN 9789264063716
Tax subsidy rate for USD 1 of R&D, large firms and SMEs, 2008



[5] Ernst & Young, "The R&D Credit: An effective policy for promoting research spending," September 2011, p.11.
[6] OECD, Ministerial Report on the OECD Innovation Strategy, May 2010, p. 8.
[7] OECD, "Science, Technology and Industry Scorecard," December 2009, p. 79.

A recent National Science Board report concluded that the United States' lead in science and technology is "rapidly shrinking" as R&D jobs and overall R&D spending continue to increase faster outside the U.S. than here at home. The report shows that "between 1999 and 2009…the U.S. share of global research and development (R&D) dropped from 38 percent to 31 percent, whereas it grew from 24 percent to 35 percent in the Asia region during the same time.[8]"

Bipartisan Support for a Strengthened, Permanent Research & Development Incentive

On a positive note, there is broad and bipartisan support for extending the credit. Every Administration has supported the R&D tax credit since it was enacted. In a March 2011 study, the Treasury Department noted that, "[T]wo years ago, the President set an ambitious goal of achieving a level of research and development that is the highest share of the economy since the space race of the 1960's – 3 percent of GDP – a commitment he re-emphasized in his State of the Union address in 2011. The R&D tax credit is a vital component of achieving this goal and helping us out-innovate our competition. This is why, in addition to making it permanent, the President proposed…to expand and simplify the credit, making it easier and more attractive for businesses to claim this credit for their research investments. This proposal was subsequently included in the President's FY 2012 and FY 2013 Budget(s) and should be part of the reform of our corporate tax system currently under consideration."[9]

Moreover, Congress has extended the credit 14 times since it was first adopted in 1981. In 2011, Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) introduced S.1577, The Greater Research Opportunities With Tax Help Act. Similar to H.R.942, this legislation would provide important certainty for U.S.-based research spending by making the R&D tax credit permanent as well as simplifying and strengthening it, thereby increasing its effectiveness.

Conclusion

The R&D Tax Credit was designed to ensure that companies conduct their research activities in the United States and create well-paying, highly skilled jobs here. That original purpose still holds true today, although increasing global competition is making it more difficult. It is vitally important that U.S. policy makers support a strengthened and permanent research and development incentive as part of any tax reform measure and seamlessly extend the credit as soon as possible. A robust and permanent research and development tax credit is critical to competitiveness, innovation and U.S. jobs. In the global economy many companies have a choice as to where they are going to do their research—and with many other countries offering *both* lower corporate income tax rates and more robust R&D incentives, the U.S. tax system must provide globally competitive R&D incentives that can be counted on by businesses. The R&D Credit Coalition looks forward to assisting members of the Committee and their staffs in gaining a more detailed understanding of the competitive pressures faced by companies as well as of the research and development tax credit and its impact on U.S. jobs. We also look forward to working together to advance legislation to seamlessly extend, strengthen and make permanent the R&D tax credit.

[8] National Science Foundation press release, "New Report Outlines Trends in U.S. Global Competitiveness in Science and Technology," January 17, 2011.
[9] *"Investing in U.S. Competitiveness: The Benefits of Enhancing the Research and Experimentation (R&E) Tax Credit,"* U.S. Department of the Treasury, March 25, 2011, page 1.

Links to Studies:

Center for American Progress, "The Corporate R&D Tax Credit and U.S. Innovation and Competitiveness"
http://www.americanprogress.org/issues/2012/01/corporate_r_and_d.html

Ernst & Young, "The R&D Credit: An effective policy for promoting research spending"
http://www.investinamericasfuture.org/PDFs/EY_R&D_Credit_Report_2011_09_16.pdf

Deloitte, "Global Survey of R&D Tax Incentives,"
http://www.investinamericasfuture.org/PDFs/Global%20RD%20Survey%20Final%20-%202011.pdf

National Science Foundation press release, "New Report Outlines Trends in U.S. Global Competitiveness in Science and Technology"
http://www.nsf.gov/nsb/news/news_summ.jsp?cntn_id=122859&org=NSB&from=news

OECD, Ministerial Report on the OECD Innovation Strategy, May 2010
http://www.oecd.org/dataoecd/51/28/45326349.pdf

OECD, "Science, Technology and Industry Scorecard," December 2009
http://www.oecd.org/document/21/0,3746,en_2649_33703_48714517_1_1_1_1,00.html

U.S. Department of the Treasury, "*Investing in U.S. Competitiveness: The benefits of Enhancing the Research and Experimentation (R&E) Tax Credit*"
http://www.investinamericasfuture.org/PDFs/TreasuryRDReportMarch25.PDF

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RADIAN

STATEMENT FOR THE RECORD

OF

TERESA BRYCE BAZEMORE
PRESIDENT,
RADIAN GUARANTY INC.

FOR THE HEARING ON

"FRAMEWORK FOR EVALUATING CERTAIN EXPIRING TAX PROVISIONS"

BEFORE

THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS & MEANS
SUBCOMMITTEE ON SELECT REVENUE MEASURES

JUNE 8, 2012

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Thank you for the opportunity to submit this statement for the record. I am Teresa Bryce Bazemore, and I am submitting this testimony on behalf of Radian Guaranty Inc. ("Radian"), one of the nation's leading private mortgage insurers. Private mortgage insurance ("MI") helps promote and preserve the tradition of homeownership, while protecting taxpayers from default-related losses on residential first mortgages.

Radian urges Congress to extend the deduction for private mortgage insurance premiums (the "private MI deduction"). The private MI deduction expired on December 31, 2011, along with a number of other critical tax policies. When evaluated against the key criteria discussed at the June 8th hearing, the private MI deduction is an important tax policy that should be made permanent. In this regard, we commend Congressman Nunes and Congressman Crowley for their introduction of H.R. 1018, broadly-supported, bipartisan legislation that would make permanent the private MI deduction.

Reviewing tax extenders in the context of tax reform would provide an opportunity to comprehensively consider the tax extenders and other tax policies. However, until such a review, we strongly urge the immediate and seamless extension of the private MI deduction. Until there is an opportunity to address tax policy in a long-term and comprehensive manner, extension of the private MI deduction is important to ensuring that there continue to be incentives aimed at stabilizing and strengthening the housing market, which is still undergoing a fragile recovery.

PRIVATE MORTGAGE INSURANCE

For many families, the most common hurdle to homeownership is saving enough money for the down payment. The traditional 20% down payment is a hardship for many and an impossibility for others. Private MI enables borrowers with less than a 20% down – typically first-time and low- and moderate-income borrowers – to achieve the dream of homeownership.

When a borrower places less than 20% down to purchase a home, the lender is required to obtain private MI in order for that loan to be eligible to be subsequently sold to Fannie Mae or Freddie Mac ("the GSEs"). Lenders are willing to make low down payment loans, and the GSEs are willing to purchase them, because in the event of a homeowner's default on the mortgage, the private MI company pays the owner of the loan a claim that is typically in the amount of 25-35% of the value of the loan.

This amount of private MI generally covers costs associated with defaulted loans (interest charges during the delinquent and foreclosure periods, legal fees, home maintenance and repair costs, real estate brokers' fees, and closing costs) and any losses resulting from reselling the property for less than the outstanding mortgage loan balance.

Placing the private MI company's private capital at risk in a "first loss" position after the borrower's equity means both the insurer and the borrower have a vested interest in making home loans that are affordable not only at the time of purchase, but throughout the years of homeownership. Having their own capital at risk also means that mortgage insurers have very clear incentives to work with lenders, investors, and community groups to help borrowers in default stay in their homes. Also, private MI is automatically canceled when the loan reaches 78% of the original home value, and private MI may be canceled earlier, at the borrower's request, if an appraisal shows that the borrower's equity has reached 80% of the original home value.

Over the past four years, private mortgage insurers have paid approximately $33 billion in foreclosure losses that would have otherwise been paid by taxpayers. Private mortgage insurers are projected to pay approximately $50 billion in total to cover losses from the recent, unprecedented housing downturn.

The history of the private MI industry proves that private mortgage insurers have paid their claims through good and bad economic cycles. This is because of the rigorous, countercyclical capital and reserve requirements imposed by state insurance commissioners. In fact, half of each premium dollar earned goes into a contingency reserve and generally cannot be touched by the mortgage insurer for 10 years. This ensures that significant capital reserves are accumulated during good times and then drawn upon to absorb losses during downturns.

The private MI model has stood the test of time. Looking ahead, private mortgage insurers stand ready to play a critical role in the future of housing finance by continuing to safely and soundly enable first-time and lower income families to purchase homes while protecting taxpayers from losses that result from borrower default. Housing policies should encourage the return of private capital to the housing market and maintain a role for low down payment loans as long as they are prudently underwritten and insured by private MI.

PRIVATE MORTGAGE INSURANCE DEDUCTION

The private MI deduction was first enacted in 2006 on a broadly-supported and bipartisan basis. Under Section 163(h) of the Internal Revenue Code ("IRC" or "tax code"), premiums paid or accrued for qualified private MI by a taxpayer in connection with acquisition indebtedness on a qualified residence of the taxpayer are treated as interest that is qualified residence interest and thus deductible. The amount allowable as a deduction is phased out ratably. The private MI deduction was most recently extended as part of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. L. No. 111-312) and has since expired.

Evaluating the private MI deduction underscores the importance and effectiveness of the tax policy and the need to make it permanent. This section considers the key criteria discussed at the June 8th hearing.

Rationale for Tax Policy

During the June 8th hearing, witnesses discussed the need to understand the rationale behind a tax provision. In particular, witnesses recommended considering whether a tax provision reflects sound tax policy.

One of the key reasons the private MI deduction was enacted was to foster homeownership. Private MI is a critical factor for low- and moderate-income families seeking to become homeowners, as it allows borrowers to qualify for a mortgage with less than a 20% down payment. The private MI deduction makes private MI premiums deductible to the taxpayer, assisting in offsetting the cost of private MI. Maintaining incentives for these borrowers is important to ensuring continued access to the housing market.

The private MI deduction also increases the fairness of the tax code by equalizing the tax treatment of private MI and mortgage interest, which is deductible by the taxpayer. Private MI premiums are the economic equivalent of mortgage interest. Paying premiums on mortgage insurance has a direct and quantifiable impact on interest expense. Without the insurance purchased by those premiums, interest charges would be much higher as a consequence of the much higher credit risk. Consequently, the private MI deduction effectively provides some parity to those homeowners who must rely on mortgage insurance by offsetting some of the costs with those homeowners that have the means to make a 20% down payment.

Finally, by encouraging the use of private MI, the deduction reduces losses to the taxpayers. In the past, borrowers were circumventing private MI, which was not tax deductible, by instead procuring a "piggyback" or second loan, which *was* tax deductible, to make up the difference between the amount they were able to put down and the 20% down payment required for loans to be eligible for purchase by the GSEs. Eliminating the tax deductibility of private MI will incentivize borrowers to obtain risky piggy backs for which the interest is tax deductible, despite the fact that piggy back loans permit borrowers to obtain a home with almost no down payment and do not provide protection to lenders, investors, or the GSEs from the risk of default. The deduction puts private MI premiums on par with piggyback loan interest.

Revenue and Efficiency

During the June 8th hearing, witnesses discussed the importance of evaluating a tax provision by its revenue effect and its efficiency, meaning whether the provision accomplishes its goals effectively.

JCT has estimated that a one-year extension of private MI deduction would cost $739 million over ten years. JOINT COMMITTEE ON TAXATION, ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS CONTAINED IN PRESIDENT'S FY 2012 BUDGET PROPOSAL, JCX-19-11 (Mar. 17, 2011). The cost, however, must be considered in light of the significant benefits associated with the private MI deduction.

The private MI deduction has been an important tool in promoting access to homeownership. By acquiring private MI, low- and moderate-income families are much better positioned to obtain the loans needed to purchase homes for their families. According to Internal Revenue Service figures, in 2009 alone, the private MI deduction was claimed on 3.6 million tax returns. The majority of the taxpayers that claimed the deduction had annual incomes under $60,000. The provision has resulted in an average of approximately $350 in annual savings per family, a considerable sum for many families. Of all the tax provisions which expired at the end of 2011, only the private MI deduction was limited to low- and moderate-income taxpayers and only the AMT patch and deduction for state and local sales taxes benefitted more individuals.

Moreover, it is important not to overlook the impact of the private MI deduction on the housing market, which is currently still undergoing a fragile recovery. With the grave state of the housing sector in recent years, extensions of the provision have ensured that there continue to be provisions aimed at stabilizing and strengthening the housing market in a responsible way. Maintaining incentives for this population of borrowers to access the housing market is crucial to reducing the nation's excess housing inventory and facilitating a full recovery of the housing market.

Reason for Temporary Nature and Appropriate Duration

Although the legislation first proposing the private MI deduction would have made the provision permanent, the private MI deduction was put in place on a temporary basis when it was enacted in 2006. The private MI deduction was not designed to be a temporary provision; instead, it was intended to equalize the tax treatment of private MI premiums and mortgage interest, which is a permanent provision in the tax code. The most likely reason for the private MI deduction's temporary extensions is due to budget constraints.

Taken together, the private MI deduction reflects effective and efficient tax policy that fosters homeownership and equalizes the tax code treatment between private MI premiums and mortgage interest. As part of tax reform, Congress should make permanent the private MI deduction.

CONCLUSION

Tax reform would provide an opportunity to comprehensively review the tax extenders and other tax policies and consider permanent solutions. H.R. 1018 is bipartisan legislation that would achieve this objective, breaking the constant cycle of expiration and extension. In the interim, however, we strongly urge Congress to extend the private MI deduction seamlessly and expeditiously.

Radian greatly appreciates the opportunity to submit this statement. We are pleased to serve as a resource to the Congress, the Committee, and the Subcommittee on these and related matters. We look forward to our continued work together on these important issues.

REBUILD AMERICA'S SCHOOLS
A National Coalition

National Parent Teacher Association □ Council of The Great City Schools □ National Education Association
American Federation of Teachers □ American Association of School Administrators □ National School Boards Association
National Association of Elementary School Principals □ National Association of Secondary School Principals
NAACP □ National Association of Federally Impacted Schools □ American Institute of Architects
Organizations Concerned About Rural Education □ National Rural Education Association
Californians for School Facilities

SCHOOL DISTRICTS
Akron, OH
Aldine, TX
Birmingham City, AL
Birmingham Public, AL
Boston, MA
Broward County, FL
Brownsville, TX
Chicago, IL
Cincinnati, OH
Clark County, NV
Compton, CA
Corpus Christi, TX
Dayton, OH
Detroit, MI
Escambia, FL
Houston, TX
Jefferson Parish, LA
Jersey City, NJ
McAllen, TX
Memphis, TN
Miami-Dade, FL
Milwaukee, WI
Minneapolis, MN
Montgomery, AL
Nashville, TN
Newark, NJ
New Orleans, LA
New York, NY
Norfolk, VA
Oklahoma City, OK
Omaha, NE
Pharr-San Juan-Alamo, TX
Philadelphia, PA
Providence, RI
Richmond, VA
Rochester, NY
Savannah-Chatham, GA
St. Louis, MO
St. Paul, MN
Toledo, OH
Tulsa, OK
Ysleta, TX

1440 N Street, NW
Suite 1016
Washington, DC 20005

PHONE 202-462-5911
FAX 202-986-4569
E-MAIL
RebuildAmericasSchools@comcast.net

June 8, 2012

The Honorable Pat Tiberi, Chair
Ways and Means Subcommittee on Select Revenue Measures
United States House of Representatives
Washington, D.C. 20515

RE: **Hearing on Framework for Evaluating Certain Expiring Tax Provisions**

Dear Chairman Tiberi:

Rebuild America's Schools appreciates the opportunity to provide a statement to the House Ways and Means Subcommittee on Select Revenue Measures for the Hearing on Framework for Evaluating Certain Expiring Tax Provisions.

Rebuild America's Schools is writing to express our **support for the extension of the Qualified Zone Academy Bond (QZAB) and the Qualified School Constrcution Bond (QSCB) programs.**

Rebuild America Schools supports the extension of QZABs originally enacted in the Taxpayer Relief Act of 1997 and extended with bipartisan support in all subsequent Congresses since. QZABs allow schools districts to modernize school facilities and to improve curriculum. QZABs are a cost effective program being used by school districts in every state to renovate, repair and modernize school buildings and classrooms. The Qualified School Construction Bond (QSCB) program provides federal financing for the construction, rehabilitation, and repair of public school facilities. In 2010-2011 School districts in forty-nine states used $11 billion in QSCB bond financing to build and renovate more energy efficient 21st Century schools in communities across the country.

QZABs and QSCBs are helping school districts provide modern, more energy efficient, green and better schools, improving the learning environment for students and enhancing the workplace for students, teachers and staff. As modern schools advance student achievement in urban, rural and suburban communities in every state more jobs to improve community schools will be generated as well.

Support through QZABs and QSCBs are helping repair, renovate and modernize America's schools and stimulating and creating thousands of jobs in Michigan and every state. These jobs are generated in the construction industry among suppliers, ranging from architects and engineers to roofing contractors and other construction workers who modernize, renovate and repair schools. Modern, energy efficient schools are helping local communities increase opportunities for all students to develop the educational skills necessary to achieve and succeed in the 21st century workforce.

QZABs and QSCBs are providing Ohio school districts with the capacity to make major upgrades, renovations, and to build new facilities. Ohio historically has utilized the QZAB program fully. Below is a list of Ohio school district usage of Qualified School Construction Bonds in 2010-11. This illustrates how important these bonds are to school modernization efforts in Ohio. QZABs and QSCB bonds are improving schools and generating jobs across Ohio and in every state.

Communities across Ohio and in every state are using QZABs and QSCBs to modernize their local schools providing their students the opportunity to achieve and succeed in the 21st century.

Rebuild America's Schools asks that the Qualified Zone Academy Bond and Qualified School Construction Bond programs supporting school modernization and job creation be included among tax extension provisions considered by the Ways and Means Committee this year.

Rebuild America's Schools appreciates the inclusion of this letter in the printed record of the Hearing on Framework for Evaluating Certain Expiring Tax Provisions.

Sincerely,

Bob Canavan

Robert P. Canavan

OHIO

2011 **$77.4 million**

Warren County (Lebanon) School District, Ohio $3.0
Mahoning County (Boardman) Local School District, Ohio $3.5
Summit County (Reeve) Local School District, Ohio $3.2
Clinton County (Wilmington) School District, Ohio $0.3
Cuyahoga County (Chagrin Falls Exempted Village) School District, Ohio $0.5
Highland County (Bright) Local School District, Ohio $0.4
Hamilton County (Cincinnati) School District, Ohio $3.0
Champaign County (Mechanicsburg) Exempted Village School District, Ohio $0.7
Franklin County (South-Western) School District, Ohio $6.7
Wayen County (Northwestern) Local School District, Ohio $1.4
Franklin County (Columbus) School District, Ohio $9.9
Hamilton County (Southwest) Local School District, Ohio $2.8
Miami County (Piqua) School District, Ohio $3.8
Franklin County (Hilliard City) School District, Ohio $5.0
Lake County (Willoughby-Eastlake) School District, Ohio (2 issues) $12.9
Hamilton County (Sycamore) Community School District, Ohio $2.1
Trumbull County (Champion) Local School District, Ohio $1.1
Columbiana Exempted Village School District, Ohio $1.0
Preble County (Eaton) School District, Ohio $2.0
Franklin County (Dublin City) School District, Ohio $1.7
Pickaway County (Circleville) School District, Ohio $7.0
Stark County (Perry) Local School District, Ohio (2 issues) $5.4

2010 **$293 million**

Lorain County (Keystone) Local School District, Ohio $5.3
Hamilton County (Sycamore) City School District, Ohio $17.5
Stark County (Canton City) School District, Ohio $6.7
Clark County (Springfield) City School District, Ohio $1.0
Henry County (Liberty) Local School District, Ohio $2.3
Richland County (Madison) Local School District, Ohio $6.9
Meigs County (Southern) Local School District, Ohio $2.0
Ashtabula County (Pymatuning Valley) Local School District, Ohio $0.7
Harrison County (Harrison Hills) City School District, Ohio $0.6
Licking County (North Fork) Local School District, Ohio $1.3
Portage County (Field) Local School District, Ohio $1.1
Fulton County (Evergreen) Local School District, Ohio $1.3
Columbia County (Salem City) School District, Ohio $1.7
Franklin County (Dublin City) School District, Ohio $4.0
Coshocton City School District, Ohio $4.3
Champaign County (Triad) Local School District, Ohio $0.8
Scioto County (Green) Local School District, Ohio $5.6
Stark County (Northwest) Local School District, Ohio $1.7
Hamilton County (Three Rivers) Local School District, Ohio $11.3
Columbiana County (Crestview) Local School District, Ohio $4.0
Cuyahoga County (Cleveland) Municipal School District, Ohio $55.0
Cuyahoga County (Rocky River) School District, Ohio $11.3
Hamilton County (Princeton) School District, Ohio $11.3
Licking Heights Local School District, Ohio $4.0
Cuyahoga County (Mayfield) School District, Ohio $4.0
Mahoning County (Austintown) Local School District, Ohio $11.3

Richland County (Madison) Local School District, Ohio $9.5
Warren County Vocational School District, Ohio $0.9
Ashtabula County (Conneaut) Area School District, Ohio $1.7
Franklin County (Worthington) School District, Ohio $1.8
Hamilton County (Mariemont) School District, Ohio $11.1
Summit County (Springfield) Local School District, Ohio $11.3
Marion County (Elgin) Local School District, Ohio $12.0
Lorain County (Firelands) Local School District, Ohio $1.1
Seneca County (Hopewell-Loudon) Local School District, Ohio $6.3
Preble County (Eaton) Community City School District, Ohio $3.1
Cuyahoga County (Westlake City) School District, Ohio $11.3
Calumet County (Appleton) Area School District, Wis. $2.3
Summit County (Twinsburg) School District, Ohio $2.6
Cuyahoga County (Beachwood) School District, Ohio $11.3
Pickaway County (Circleville) School District, Ohio $11.3
Akron, Ohio $15.1
Warren County (Franklin) School District, Ohio $1.0
Stark County (Alliance) School District, Ohio $2.3

Statement of the Residential Energy Efficient Tax Credit Industry Coalition

before the

Subcommittee on Select Revenue Measures

Committee on Ways and Means
United States House of Representatives

on

"Framework for Evaluating Certain Expiring Tax Provisions"

June 8, 2012

2025 M St, NW, Suite 800 | Washington, DC 20036 | Phone: 202-367-1280

As the trade associations representing manufacturers, distributors, retailers, remodelers, installers and contractors bringing energy-efficient products to homeowners, we are seeking the restoration and extension of the residential energy efficiency (25C) tax credit. The residential energy efficiency tax credit was drastically reduced at the end of 2010[1] and expired at the end of 2011. Our member companies actively promoted and their customers benefited from the higher tax credit levels that were in place from 2009 to 2010, sustaining jobs in our industries during the otherwise dire new home and retrofit construction downturn. Private residential investment was 2.6 percent of gross domestic product for the first quarter of 2012, well below its historical average of 5 percent. Many of the products that qualify for the 25C tax credit are manufactured—and also installed—in America, unlike alternative energy sources that have benefited from other federal incentives.

We are seeking a robust energy efficiency tax credit for qualified products, as outlined below, of 10 percent of the purchase price up to $1,000. We believe that a $1,000 tax credit is generally the minimum incentive needed to motivate consumers to improve their homes by purchasing these higher-performing products, and to do so in sizable enough numbers to positively influence residential energy consumption.

We are seeking a uniform tax credit across most product categories to minimize consumer confusion, include labor costs for all qualifying products and maintain consumer choice in the improvements they wish to make in their homes.

Economic Impact of the Energy Tax Credit

Using the 2009 IRS tax data, we can demonstrate that the net economic impacts of the 25C tax credit programs from a remodeling perspective are significant (setting aside the long-run energy efficiency benefits for homeowners).

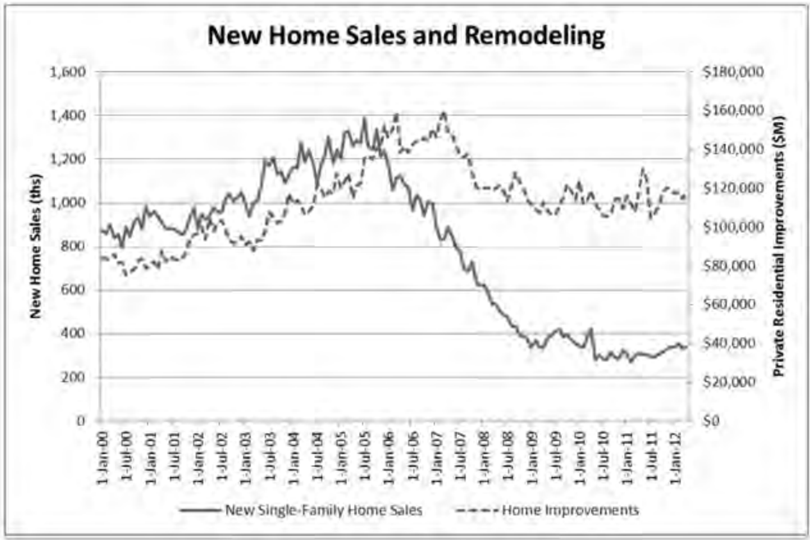
With respect to the 25C credit for energy-efficient remodeling of existing homes, the IRS data indicates a total of $25.1 billion of qualified expenditures in 2009. Overall, in 2009 taxpayers claimed nearly $5.9 billion in 25C and 25D tax credits. For the two tax credits combined, ***93 percent of tax credit claims were made by taxpayers who have an adjusted gross income of no more than $200,000***, which is indicative of a middle class tax program.

Because the tax credit in 2009 was limited to $1,500 per taxpayer, not all of this activity generated tax credits. In fact, according to the IRS data, just a little more than 71 percent of these costs ($5.404 billion versus potential $7.539 billion) were allowed in the 25C calculation due to the $1,500 limit. Moreover, due to other tax rules, only $5.172 billion of the $5.404 billion were allowed as realized 25C tax credits.

The following chart plots new home sales (left axis) and private residential improvements (right axis). The data indicate that remodeling expenditures fared better over the 2008 through 2011

[1] Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Sec. 710, Credit for Nonbusiness Energy Property.

period than new home sales. The tax credit program provided a floor on remodeling activity, which has declined only 26 percent since its peak compared to 75 percent for new home sales.



The first portion of the 25C credit usage is related to energy-efficient building envelope improvements, with 13 percent of the 25C claims associated with insulation, 34 percent with windows and skylights, 9 percent with doors and another 9 percent with qualified roofing materials. The second part of the credit dealt with energy-saving appliance installation, with 16 percent of the total 25C claims connected to qualified heat pumps, air conditioners, water heaters and biomass-burning stoves and fireplace inserts; 17 percent with qualified natural gas, propane, oil furnaces or hot water boilers; 3 percent with advanced main air circulating fans used with a natural gas, propane or oil furnace.

The National Association of Home Builders has developed an economic impact model that enables estimating total employment and economic income impacts from home building and remodeling.[2] The model used Bureau of Economic Analysis (BEA) data and BEA input-output tables to generate economic impacts by sector. The following table presents the impacts that result from $100,000 of remodeling activity.

[2] http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=103543&channelID=311
The Direct Impact of Home Building and Remodeling on the U.S. Economy. NAHB Economics.

The jobs are measured on a full-time equivalent (FTE) basis. Thus, NAHB estimates that every $100,000 of remodeling activity creates 1.11 jobs on an FTE basis. 48.6 percent of those jobs are in the construction and remodeling sector.

Income and Employment Impacts of Remodeling on the U.S. Economy

	Number of Full-time Jobs	Wages and Salaries	Proprietors' Income	Corporate Profits	Total Income
$100,000 Spent on Remodeling					
All industries	**1.11**	**$52,709**	**$13,810**	**$16,147**	**$82,667**
Construction	0.54	$25,573	$6,601	$4,232	$36,406
Manufacturing	0.18	$8,136	$824	$4,529	$13,489
Wholesale and retail, Transportation and warehousing	0.16	$6,432	$849	$2,307	$9,588
Finance and insurance	0.02	$1,487	$71	$1,459	$3,017
Real estate and rental and leasing	0.01	$315	$1,652	$758	$2,725
Professional, Management, administrative services	0.12	$6,970	$2,191	$764	$9,924
Other services	0.09	$3,797	$1,623	$2,098	$7,518

Source: NAHB estimates, based primarily on the data from the U.S. Bureau of Economic Analysis.

Putting all the data together, the IRS data and the NAHB economic impact model indicate that for 2009, a total of 278,610 full-time jobs were in connection with the 25C credit. 135,540 of these jobs were in the construction and remodeling sectors. The program supported approximately $13.2 billion in wages for these workers and $7.5 billion in net business income.

Conclusion

The program has created and preserved America jobs and promoted energy efficiency by helping owners of existing homes afford higher efficiency windows, doors, HVAC systems, hot water heaters, roofing and insulation. We are deeply concerned that the loss of this incentive before the housing market recovers would lead to substantial job losses.

The residential energy efficiency tax credit has broad support across the remodeling and retrofit market. A total of 34 businesses and associations sent a letter in December 2011 to the Committee on Ways and Means supporting a robust extension of the 25C tax credit, knowing the $1,000 level would effectively leverage consumer activity and job preservation. A copy of the letter is Included in the appendix of this statement.

As the Committee on Ways and Means evaluates the merits of the 25C tax credit, the data illustrates the program has had a powerful and positive impact on employment and extending the incentives until the housing market further stabilizes will protect American jobs.

Supporting Industry Associations
Air Conditioning Contractors of America
Air-Conditioning, Heating and Refrigeration Institute
Asphalt Roofing Manufacturers Association
Biomass Thermal Energy Council
Insulation Contractors Association of America
Hearth, Patio & Barbecue Association
Heating, Air Conditioning & Refrigeration Distributors International
Metal Contractors Association
National Association of Home Builders
National Association of the Remodeling Industry
National Electrical Manufacturers Association
National Lumber & Building Material Dealers Association
National Roofing Contractors Association
New England Fuel Institute
Oilheat Manufacturers Association
Plumbing-Heating-Cooling Contractors—National Association
Pellet Fuels Institute
Petroleum Marketers Association of America
Retail Industry Leaders Association
Roof Coatings Manufacturers Association
Spray Polyurethane Foam Alliance
Tile Roofing Institute
Window & Door Manufacturers Association

For More Information Contact
Ben Gann
Director of Legislative Affairs, National Lumber and Building Material Dealers Association
(202) 367-2346
ben@dealer.org

Appendix

Residential Energy Efficient Tax Credit Industry Coalition

December 8, 2011

The Honorable John Boehner
Speaker of the House
H-232, United States Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
House Minority Leader
H-204, United States Capitol
Washington, D.C. 20515

The Honorable Dave Camp
Chairman, Committee on Ways & Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Sander Levin
Ranking Member, Committee on Ways & Means
1139E Longworth House Office Building
Washington, D.C. 20515

Dear Speaker Boehner, Leader Pelosi, Chairman Camp and Ranking Member Levin:

As companies and associations representing manufacturers, retailers, builders and contractors in the housing and residential energy retrofit industry, we are writing to urge your support for an extension at the $1,000 level for the residential energy efficiency (25C) tax credit set to expire at the end of the year. The 25C tax credit creates and preserves American jobs and promotes energy efficiency by helping owners of existing homes afford higher efficiency windows, doors, HVAC systems, hot water heaters, roofing and insulation. We are deeply concerned that the loss of this incentive before the housing market recovers would lead to substantial job losses.

Residential remodeling activity spurred by the 25C tax credit in 2009 and 2010 was critical to maintaining our economic vitality. In 2009, Internal Revenue Service data indicates American taxpayers reported spending $25.1 billion on remodeling costs associated with the tax credit. Moreover, the program supported 278,610 jobs (135,540 of which were in the construction and remodeling sectors), approximately $13.2 billion in wages and $7.5 billion in net business income according to analysis by the National Association of Home Builders. In addition, 25C is truly a middle-class tax credit. In 2009, over two-thirds of the households claiming the credit had adjusted gross income of $100,000 or less.

Further, private residential investment as a percent of gross domestic product set another record low of 2.4 percent in the third quarter of 2011—in comparison to its historic average of approximately 5 percent. The 25C tax credit has provided a needed floor on remodeling activity, declining 32% since its peak compared to 76% for new home sales. It creates jobs and benefits homeowners by reducing their energy use, lowering their energy bills and improving their homes.

Again, we urge your support for a robust extension of the 25C tax credit, knowing the $1,000 level would effectively leverage consumer activity and job preservation. We believe that the program has had a powerful and positive impact on employment and extending the incentives until the housing market further stabilizes will protect American jobs.

Thank you for your consideration. We look forward to working with you to include an extension of the residential energy efficiency credit in tax legislation before the end of the year.

Sincerely,

Air Conditioning Contractors of America
Air-Conditioning, Heating and Refrigeration Institute
Andersen Corporation
A.O. Smith
Asphalt Roofing Manufacturers Association
Champion Window Manufacturing Company
Council of North American Insulation Manufacturers Association
Fortune Home and Security
Guardian Industries
Heating, Air Conditioning & Refrigeration Distributors International
The Home Depot, Inc.
Ingersoll Rand
Insulation Contractors Association of America
JELD-WEN, inc.
Lennox International, Inc.
Lowe's Companies, Inc.
National Association of Home Builders
National Association of Manufacturers
National Association of the Remodeling Industry
National Electrical Manufacturers Association
National Lumber and Building Material Dealers Association
National Roofing Contractors Association
New England Fuel Institute
Pella Corporation
Petroleum Marketers Association of America
Plumbing-Heating-Cooling Contractors—National Association
Regal Beloit
Retail Industry Leaders Association
Rheem Manufacturing Company
Roof Coatings Manufacturers Association
Spray Polyurethane Foam Alliance
Tile Roofing Institute
United Technologies Corporation
Window and Door Manufacturers Association

cc: House Committee on Ways and Means members

Congress of the United States
House of Representatives
Washington, DC 20515

June 22, 2012

The Honorable Dave Camp
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
1106 Longworth House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable Pat Tiberi
Chairman
Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Richard E. Neal
Ranking Member
Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Camp, Chairman Tiberi, Congressman Levin, and Congressman Neal:

As the Committee continues its work on legislation to amend provisions of our tax code, the Members of the Sustainable Energy and Environment Coalition (SEEC) strongly urge you to reinstate the clean energy and energy efficiency tax incentives that expired at the end of 2011 and to extend the provisions that will expire at the end of this year.

These provisions contribute greatly to the economic well-being of our nation by creating thousands of jobs, assisting small start-up businesses, lowering energy bills for working families, and driving emerging technologies that will provide Americans with a permanent solution to our long-term energy challenges. These provisions are essential to building a strong domestic renewable energy industry and creating jobs.

According to testimony given by Rhone Resch, President of the Solar Energy Industries Association, before the Committee on Science and Technology in April, the enactment of the 30 percent commercial and residential solar Investment Tax Credit in 2005 and the 1603 Treasury Program in 2009 spurred a seven-fold increase in domestic deployment of solar technologies and the development of a domestic industry value chain that employs over 100,000 American workers. As another example, the expired Efficient Appliance Credit, enacted with strong bipartisan support in 2005, is an important factor in maintaining jobs in America's appliance manufacturing industry. According to the Association of Home Appliance Manufacturers, the number of jobs in the United States affected by the incentive is on the scale of 40,000, which accounts for at least 17,000 direct manufacturing jobs that support the manufacturing of the appliance products covered by the incentive. These are just a couple of examples of the tremendous benefit these tax incentive programs provide to our economy.

We have reduced our imports of foreign oil below 50 percent of our demand for the first time in decades. Further diversification of our energy supply and broader deployment of energy efficiency measures is needed if we are to continue this positive trend. Expanded deployment of renewable energy and efficiency technologies is essential to accomplishing the goal of energy independence.

The specific provisions we urge the Committee to reinstate include the following:

Sec. 25C(g): Credit for certain non-business energy property

Sec. 30B(i)(4): Conversion credit for plug-in electric vehicles

Sec. 30C(g)(2): Credit for alternative fuel vehicle refueling property (non-hydrogen property)

Sec. 45L(g): Credit for construction of new energy efficient homes

Sec. 45M(b): Credit for energy efficient appliances

Sec. 48(d) and sec. 1603 of Pub. L. No. 111-5: Grants for specified energy property in lieu of tax credits

Sec. 132(f): Parity for exclusion from income for employer-provided mass transit and parking benefits

The specific provisions we urge you to extend include the following:

Sec. 142(1)(8): Qualified green buildings and sustainable design project bonds

Sec. 40(b)(6)(H): Cellulosic biofuel producer credit

Sec. 45(d): Placed-in-service date for wind facilities eligible to claim electricity production credit

Sec. 48(a)(5): Election to claim the energy credit in lieu of the electricity production credit for wind facilities

Sec.168(1): Special depreciation allowance for cellulosic biofuel plant property

Without these tax incentives, we risk losing thousands of existing American jobs, and growth in these domestic industries will come to a grinding halt. Other nations are making significant investments in renewable energy technologies and energy efficiency. We operate in a global economy. If we are unwilling to invest in domestic industries, these businesses and the jobs they support will move elsewhere. Our nation has been a leader in the research and development of many of these technologies. We must now ensure these past research and development investments pay dividends here at home in the form of a strong, domestic renewable energy sector. Therefore, we strongly urge you to reinstate or extend these important tax incentives.

Thank you for your attention and consideration of this matter.

Sincerely,

THE MEMBERS OF THE SUSTAINABLE ENERGY & ENVIRONMENT COALITION

Rep. Steve Israel, SEEC Member
SEEC Co-Chair

Rep. Paul Tonko, SEEC Member
SEEC Co-Chair

Rep. Gerry Connolly, SEEC Member
SEEC Co-Chair

Rep. Doris Matsui, SEEC Member
SEEC Vice Chair

Rep. Jared Polis, SEEC Member
SEEC Vice Chair

Rep. Rush Holt, SEEC Member
SEEC Vice Chair

Rep. James McGovern, SEEC Member

Rep. Jim Langevin, SEEC Member

Rep. Jackie Speier, SEEC Member

Rep. John Olver, SEEC Member

Rep. Maurice Hinchey, SEEC Member

Rep. Mike Quigley, SEEC Member

Rep. Lois Capps, SEEC Member

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Testimony of

Douglas Kridler

President and CEO of the Columbus Foundation

on behalf of

The Council on Foundations

in support of

Extension of the Charitable IRA Rollover

House Committee on Ways and Means

Subcommittee on Select Revenue Measures

Hearing on

"Framework for Evaluating Certain Expiring Tax Provisions"

June 8, 2012

Chairman Tiberi, Ranking Member Neal, and members of the Select Revenue Measures Subcommittee, thank you for this opportunity to present testimony on behalf of the Council of Foundations regarding how Congress should evaluate certain expired and expiring tax provisions, and why sound criteria strongly support extension of the charitable individual retirement plan rollover.

My name is Doug Kridler, and since 2002 I have served as president and chief executive officer of the Columbus Foundation, a community foundation serving the central Ohio region. During 2010, the Foundation awarded more than $100 million in grants to more than 2,000 charitable organizations in such fields as education, health, social services, community development, urban affairs, and the arts. Since its founding in 1943, the Columbus Foundation has grown to become the tenth largest community foundation in the United States. The assets of the Foundation and our affiliates totaled $1.06 billion as of December 31, 2010. These assets are held in nearly 2,000 funds, 29 supporting organizations, and one state-wide affiliate. The Columbus Foundation, and other community foundations in every region of the country, provide critical assistance to the communities we serve. We are engaged in every aspect of the lives of the cities, towns, and rural areas in which we are located, and often we are the first place our neighbors turn when in need of help. That is particularly true in times, such as now, when so many individuals and organizations in our communities face increased need amidst diminished resources. We at the Columbus Foundation have responded to those increased needs by stepping up our own efforts. We are fully committed to continuing to do everything we can to provide essential support to the central Ohio region, and I know other community foundations are fully committed to their communities as well.

I am testifying today on behalf of the Council on Foundations, of which the Columbus Foundation is a member. The Council on Foundations represents over 2,000 grantmaking foundations and corporations with assets of over $300 billion. As the voice of philanthropy, the Council works to create an environment in which the movement can grow and thrive, and to promote policies that enable the philanthropic sector to work most effectively. A key component of the Council's mission is to advocate policies which will permit its members to best serve their communities. Accordingly, my testimony focuses on one of the Council's major policy priorities—extension of the Internal Revenue Code provision which permitted taxpayers to make tax-free distributions from individual retirement plans for charitable purposes, popularly known as the "charitable IRA rollover".[1]

I applaud Chairman Tiberi for holding this hearing. The Council on Foundations very much agrees that expired or expiring tax provisions should be further extended only if it is conclusively demonstrated that those provisions effectively serve worthy policy goals. Based on such evaluation criteria, the charitable IRA rollover very much merits further extension.

By way of background, prior to 2006, taxpayers wishing to transfer Individual Retirement Account ("IRA") assets to charity first had to recognize the amount as income, make a transfer, and then claim a charitable contribution deduction for the amount gifted. This often resulted in

[1] As the Chairman's announcement of the hearing noted, among the "tax extenders" to be addressed by the hearing are those extended in Title VII of Public Law No. 111-312, the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010". The IRS rollover was among the provisions extended in that 2010

tax liability, even though the donor ultimately transferred the entire IRA distribution to charity. The Pension Protection Act of 2006 partially solved this problem by allowing individuals to transfer amounts from their IRA accounts directly to charity without first having to recognize the distribution as income. Since its initial enactment, the charitable IRA rollover was extended multiple times with broad bipartisan support. The most recent extension of the provision expired at the end of 2011.

Community foundations are the means through which many of our neighbors choose to give back to their communities, through both volunteer service and financial support. Community foundations rely on many individual donors, most of whom contribute modest sums saved over a lifetime of work. The support of individual donors, no matter how small, is essential to our mission. We believe that applicable law should acknowledge the value of their contributions, and remove any unnecessary impediments to giving from whatever assets a prospective donor may have. The IRA rollover has done just that, proving to be a very important tool for donors who wish to make a positive difference in their community, but who may not have substantial assets beyond those typically saved by a family over the course of a lifetime, such as a retirement account. Until its expiration at the end of 2011, Internal Revenue Code section 408(d)(8) provided such donors the opportunity to make tax-free distributions from their individual retirement plans for charitable purposes. For that reason, the charitable IRA rollover has proven popular with donors, resulting in increased giving from IRA accounts. That is particularly true for donors of relatively modest means, who disproportionately have utilized the provision.

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legislation, in which it was included as section 725.

Throughout the very difficult economic circumstances of recent years, the recently expired charitable IRA rollover has proven to be immensely helpful in ensuring that philanthropic organizations have the means and flexibility to address dramatically growing needs. Further extension of the provision regarding IRA rollovers will provide donors the greater certainty needed for prudent charitable gift planning, and will ensure future donors have the ability to use this efficient means of giving.

The members of the Ways and Means Committee are right to insist that any expired of expiring tax provision which is further extended provide the maximum "bang for the buck", that is, that the provision confer the maximum possible public benefit while using the least possible taxpayer resources. The charitable IRA rollover has done just that. It provides a critical impetus for private donors, using their own resources, to step up and help meet their community's needs. Moreover, their assistance is channeled through private charitable entities who generally do not rely on government staff or funding to accomplish their missions, and whose structures afford them the flexibility to confer benefits to people in need in a highly innovative and cost effective manner. In short, preserving the IRA rollover will help ensure that community needs will be continued to be met through philanthropy, and will help avert increased demands on already-strained government budgets.

The Council on Foundations recognizes that, in view of the current federal budget situation, the top priority is simply extending the expired provision. However, the Council supports revisions to Internal Revenue Code section 408(d)(8) that would make the provision more effective. At an appropriate time, such as in the context of tax reform, the Council asks that consideration be given to the reforms to section 408(d)(8) proposed in H.R. 2502, "The Public Good IRA Rollover Act of 2011", introduced by Congressman Herger, Congressman Blumenauer, and others.

H.R. 2502 would extend permanently the provision authorizing charitable rollovers of IRAs, and make it more effective by eliminating the $100,000 cap on rollovers, allowing donors to make rollovers beginning at age 59 ½, and permitting rollovers to donor-advised funds, supporting organizations, and private foundations.

Making the charitable IRA rollover available for gifts to donor-advised funds, supporting organizations, and private foundations will enable additional donors, particularly among middle-income Americans, to utilize charitable rollovers for the benefit of organizations that are particularly well-suited to delivering philanthropic resources quickly and effectively to communities in need.

By expanding the charitable rollover to all philanthropic tools, including donor-advised funds, charitable giving would increase even more. In particular, community foundations, which make as much as two-thirds of their grants from donor-advised funds, would be able to attract new sources of support from within their communities. These new gifts are particularly important for small community foundations—those with less than $5 million in assets—which are particularly dependent on donor-advised funds to provide the charitable resources their communities need. Studies by the Council on Foundations found that, in 2007, donor-advised funds accounted for over one-third of all community foundation assets and 62% of their total grantmaking.

The Council also has found that donor-advised funds are a particularly effective tool for middle-income Americans to engage in philanthropy. With most community foundations accepting a donor-advised fund in the range of $5,000 to $15,000, donor-advised funds are a philanthropic vehicle that can go to work immediately, a particularly valuable trait given current demands. Because donor-advised funds are so critical to the work of community foundations and to the philanthropic sector generally, it is very important that foundations and donor-advised funds be able to put assets from IRA rollovers to work for their communities.

For these reasons and more, the reforms proposed in the "Public Good Rollover Act of 2011" merit consideration in tax reform discussions. They will provide philanthropies with valuable additional tools needed to fulfill their missions, and help meet the growing needs of their communities.

In sum, the Council on Foundation urges this Committee, and the Congress, to act promptly to extend the recently expired charitable IRA rollover and, in the longer term, to enact needed reforms to the charitable IRA rollover as proposed in H.R. 2502, "The Public Good IRA Rollover Act of 2011". Thank you again for this opportunity to present testimony.

Testimony of

William C. Daroff
Vice President for Public Policy &
Director of the Washington Office of
The Jewish Federations of North America

House Ways and Means Subcommittee on Select Revenue Measures
Hearing on
Framework for Evaluating Certain Expiring Tax Provisions

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Summary: The Jewish Federations of North America urges the House Ways and Means Committee to make permanent and expand the current incentive in the tax code that permits tax-free rollover of individual retirement account dollars to charities (the "IRA Charitable Rollover"). As one of the nation's largest philanthropic networks, we know first hand that targeted tax incentives such as the IRA Charitable Rollover result in increased contributions that translate into more dollars that can be spend for the overall social good. We strongly believe that if the IRA Charitable Rollover was made permanent and expanded as discussed below, it would result in even larger amounts of support flowing into the nonprofit sector, which would be especially beneficial as the Nation's charities seek to fill the void left by decreasing government funding and increased demands for social services during this time of economic recovery. We believe that if Congress reviews the IRA Charitable Rollover using the objective criteria outlined at the hearing held on June 8, 2012, the provision will be judged worthy of inclusion as a permanent part of the income tax code.

Background: The Jewish Federations of North America (herein referred to as "JFNA") is the national organization that represents and serves 157 Jewish Federations, their affiliated Jewish community foundations and 300 independent Jewish communities in more than 800 cities and towns across North America., The Jewish Federations and Network volunteers (collectively, the "JFNA System") are the umbrella Jewish fundraising organizations and the central planning and coordinating bodies for an extensive network of Jewish health, education and social services in their communities. Thus, the JFNA System represents over one thousand affiliated agencies and serves several million individuals throughout the country.

JFNA conducts an annual fundraising campaign that collectively raises almost $1 billion system-wide each year from almost 500,000 donors. In addition, the endowment departments of Federations or their affiliated Jewish community foundations raise in excess of another $1.25 billion each year through charitable vehicles including donor-advised funds, supporting organizations, (together referred to a "participatory funds"), which support one or more specified public charities or programs through an active grant-making program, as well as maintaining charitable income plans. The combined endowment assets of the JFNA system is in excess of $14 billion and annual endowment grants from the participatory funds and other endowment assets is approximately $1.5 billion, split between Jewish organizations and those of the wider charitable sector. The IRA Charitable Rollover is another relatively recent incentive added to the income tax code which has materially increasing giving to Federations throughout the country.

IRA Charitable Rollover: A qualified tax-free distribution from individual retirement accounts provision defined in Code section 408(d)(8) was added to the federal tax law by the Pension Protection Act of 2006. Unfortunately, the provision contained an expiration date of December 31, 2007, and, as such, has joined the growing list of so-called "tax extender" items that must be renewed by Congress. The current version of the IRA charitable rollover, ***which expired on December 31, 2011***, permits individuals age 70½ to make tax-free charitable gifts of up to $100,000 directly from their individual retirement account to eligible charities. Amounts rolled over are not taken into income by the IRA owner and are not eligible for a charitable contribution deduction. However, such rollovers qualify as an annual required minimum distribution from the owner's IRA.

It is important to note that the IRA Charitable Rollover is one of the few provisions in the tax code that provides an incentive to give to charity to those taxpayers who do not itemize their deductions. As noted above, amounts that qualify for the IRA Charitable

Rollover do not qualify for a charitable contribution deduction. Such amounts, however, do not have to be taken into income, which can be equivalent to a charitable contribution deduction for the more than two-thirds of all taxpayers who do not claim itemized deductions.

Criteria for Evaluating Expiring Tax Provisions: JFNA applauds the Subcommittee on Select Revenue Measures for conducting the hearing on the framework for evaluating expiring tax provisions. We find much to agree with in the testimony provided by Dr. James White, Director of Tax Issues for the Government Accountability Office who outlined three major criteria for evaluating expiring tax provisions. In addition to the revenue impact, it is essential to judge tax provisions such as the "tax extenders" by criteria such as equity, economic efficiency and simplicity, transparency and administrability. Although it is important to measure the cost of revenue foregone for each provision, it is also essential to determine if the provisions are fair or equitable. Are similarly situated taxpayers treated equally under the provision? Furthermore, does the provision promote economic benefits to the society as well as foster growth? Is it comprehensible, and does it ease recordkeeping or filing burdens? Finally, does the provision make the tax system simpler? Does it lower compliance costs for taxpayers or ease the IRS burden in administering the tax laws?

Merits of the IRA Charitable Rollover: JFNA believes that in the six tax years in which it has been part of the Internal Revenue Code, the IRA Charitable Rollover has proven success as a tax incentive that has greatly increased charitable giving. In the words of Donald Marron, Director, Urban-Brookings Tax Policy Center, the provision has satisfied the "burden of proof" of demonstrating its merit. The existing IRA Charitable Rollover has been an overwhelming success for the charitable sector in general, and the JFNA system, in particular. The IRA Charitable Rollover helps charities provide needed social services at a time when there is both an increased demand and fewer resources available from government sources. In a relatively short period of time, Jewish Federations have received **more than $30 million** in contributions from IRA charitable rollovers, through targeted campaigns, such as one to attract rollover gifts from grandparents to support Jewish day schools by reducing tuition costs and funding operations. Charitable rollover gifts have also enabled Jewish Federations to accelerate capital campaigns to finance new construction projects, expand or fully-fund existing social services programs, among other worthwhile projects, at a time when other sources of charitable giving have been on the decline. In addition, many donors have taken advantage of the IRA Charitable Rollover provision to fund an endowment for their annual Federation campaign gift. These gifts are perhaps the most important as the annual Federation campaign represents the life-blood of giving to the JFNA system and the source of annual allocations to literally thousands of social service agencies throughout the country. Each year since the provision has been enacted and renewed, several large Jewish Federations have received rollover contributions in excess of $1 million. Federations have come to rely on IRA Charitable Rollover gifts as an important source of annual budgeting for needed on-going operational costs.

When evaluated against the criteria described above, it can be seen that the IRA Charitable Rollover provides charities with a significant source of revenue without a large revenue cost to the Federal government. In addition, individuals who are over age 70 ½ are able to make gifts directly to a charitable institution without any adverse tax consequence, and in some cases, are relieved of filing additional tax forms such as the Form 1040 Schedule A for itemized deductions as well as Form 8283 for noncash charitable contributions in excess of $500. Further, the funds that flow directly from retirement accounts are often used to pay salaries and other operating expenses for charitable organizations. It is important to remember that the nonprofit sector is a significant source of jobs in the U.S. economy. It is reported that over 1.6 million nonprofits in the U.S. employ over 13 million workers, which is almost 10 percent of the total workforce in the country. Nonprofits wages and benefits annually exceed $670 billion and represent 9 percent of salaries paid in the country. The nonprofit sector accounts for almost 6 percent of the country's gross domestic product. Direct gifts from IRA Charitable Rollovers reduce the need for taxpayer recordkeeping and are easily administered by the IRS through existing reporting by investment brokerage firms and others that currently handle IRA accounts.

First JFNA Recommendation: Make the IRA Charitable Rollover permanent. We recommend that, at a minimum, the IRA Charitable Rollover be made a permanent part of the Federal tax code. We advance several arguments in favor of making the provision permanent:

1. The current law that allows the IRA Charitable Rollover to expire and be reenacted adds unnecessary confusion to taxpayers, their financial advisors, and the charities that can benefit from such transfers.
2. Because multiple parties are involved in any qualified charitable distribution under Code section 408(d)(8), (the IRA owner, brokerage firms and others that maintain or act as trustees of such accounts, and public charities that qualify to receive direct distributions) the need for permanence is magnified.
3. The interactions between qualified charitable distributions and the required minimum distribution requirements make it essential that taxpayers know the law with certainty. Potential confusion over the interaction of these two provisions can be exacerbated when Congress fails to extend the IRA Charitable Rollover provision before expiration and is forced to do so retroactively, as was the case in 2010 when the statute extending the provision was enacted in December retroactive to the prior January.

Second JFNA Recommendation: Expand current law to include provisions contained in the "Public Good IRA Rollover Act of 2011." Bi-partisan legislation to make permanent and expand the provisions of the current law IRA Charitable Rollover has been introduced in the Senate and the House. S. 557, introduced by Sens. Schumer and Snowe, with 12 cosponsors, and H.R. 2502, introduced by Reps. Herger and Blumenauer and 18 cosponsors. The major provisions in the "Public Good IRA Rollover Act of 2011" would (1) make the rollover permanent; (2) remove the current $100,000 annual cap on qualified charitable distributions; (3) allow donor advised funds, supporting organizations, and private foundations to receive qualified charitable distributions; and (4) provide IRA owners at age 59½ with a planned giving option such as using the rollover to fund a split-interest (life-income) gift through a charitable gift annuity or charitable remainder annuity trust. Although JFNA urges Congress to enact the "Public Good IRA Rollover Act of 2011" as introduced, we wish to provide specific comments regarding two of its main provisions:

- **Allow donor advised funds, supporting organizations, and private foundations to receive qualified charitable distributions.** Over the past several decades, the JFNA system has been proud of the growth in charitable giving that has been generated through planned giving vehicles. Of special importance have been participatory funds, such as donor advised funds and supporting organizations, which are essential in creating a broad base of support for the Jewish community to fulfill its social services mission, especially in times of economic distress. Participatory funds have been an indispensible tool in encouraging intergenerational involvement in Jewish charity through family philanthropy. In addition to providing financial resources for critical human services in local Jewish and general communities, these charitable vehicles also advance the values and goals of the JFNA System through nurturing relationships between Jewish philanthropists and Federation lay and professional leadership as well establishing priorities that consider the future needs of the Jewish community.

  Such participatory vehicles provide a reliable pool of dollars to fund a variety of social service activities, in particular support of a Federation's annual campaign, which remains the most important fundraising activity carried on by the Federation movement each year. Permitting, indeed encouraging, participatory funds to exist for extended periods provide greater opportunities for sponsoring organizations such as Jewish Federations to build a collaborative philanthropic relationship with the donor and the donor's family. One of the greatest strengths of the JFNA System lies in its unique ability to match donor's interests with funding needs in the Jewish community. Because donor advised funds can continue for an extended period of time, including the lifetimes of the donor and spouse, heirs and additional successors, this relationship continues to grow over time and succeeding generations of Jewish community leaders can be fostered. This provides the JFNA System with a valuable tool to educate future generations of donors so that they can become effective funders in the future. As the House Ways and Means Committee continues to consider tax reform options in general, and "tax extenders" in particular, JFNA urges that growth in participatory vehicles be allowed to flourish and urge that they be included in the definition of charities that are entitled to receive qualified distributions from IRA Charitable Rollovers.

- **Provide IRA owners at age 59½ with a planned giving option such as using the rollover to fund a split-interest (life-income) gift through a charitable gift annuity or charitable remainder annuity trust.** Expansion of the IRA Charitable Rollover to permit those age 59½ to fund life-income charitable gifts could also provide additional resources to America's charities, as well as provide a safe and reliable return on investment for donors who chose this option. Gift annuities have a long history as a well-regulated and popular method of fundraising for charitable institutions. Existing state and federal regulations will assure that proper benefits accrue to both the charity and donor. Moreover, expansion of the IRA Charitable Rollover to cover such gift arrangements should not result in any additional revenue loss because the annual payments to donors would remain taxable at ordinary income rates.

The Importance of Tax Incentives in the Internal Revenue Code: Similar to many other large national charities, the JFNA system has a sophisticated fund raising operation as well as highly-organized procedures for allocating such collected monies to fund a broad range of social service programs in their communities. Perhaps the primary mission of JFNA is to assist Federations as they inspire Jews to fulfill their religious duty to be charitable by securing the financial and human resources necessary to care for those in need, rescuing Jews in danger, and ensuring the continuity of the Jewish people. This critical fundraising task is essential to provide the strategic resources and direction to help local Federations fulfill their individual and collective responsibilities to improve the world, build community, and foster Jewish renaissance. As noted above, the two key elements of such fundraising is a highly-recognized annual campaign supplemented by a sophisticated planned giving operation that utilizes a number of established and highly-regulated charitable giving vehicles, including the IRA Charitable Rollover.

Because the JFNA system is one of the largest philanthropic networks in the nation, our perspective on charitable giving and the importance of tax incentives is grounded on years of experience. We see the impact of economic and tax factors on charitable giving every day. At a time when our social service partners are being asked to meet increasing demands for services and government funding at the federal, state and local level is shrinking, we know that charitable incentives in the tax code are more important today than ever.

JFNA applauds the House Ways and Means Committee and the Subcommittee on Select Revenue Measures for its deliberative process and year long study of the many issues which need to be considered in contemplating fundamental tax reform such as the issues raised by making "tax extenders" a permanent part of the tax code. JFNA remains committed to ensuring that federal tax policies continue to encourage private philanthropy and urge that the IRA Charitable Rollover be made permanent and expanded as outlined above.

I thank the Subcommittee for the opportunity to present this testimony. If you have any questions regarding this submission, please feel free to contact William C. Daroff, Vice President for Public Policy and Director of the Washington Office at 202-736-5868 or william.daroff@jewishfederations.org or Steven Woolf, senior tax policy counsel at 202-736-5863 or steven.woolf@jewishfederations.org

TRUE BLUE

STATEMENT FOR THE RECORD

OF

JOANNA S. MONROE
VICE PRESIDENT, DEPUTY GENERAL COUNSEL
AND CHIEF COMPLIANCE OFFICER
TRUEBLUE, INC.

FOR THE HEARING ON

"FRAMEWORK FOR EVALUATING CERTAIN EXPIRING TAX PROVISIONS"

BEFORE

THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SELECT REVENUE MEASURES

JUNE 8, 2012

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On behalf of TrueBlue, Inc. ("TrueBlue"), thank you for the opportunity to submit this statement for the record. We applaud the Subcommittee and the Committee for its leadership on the important issue of tax extenders.

The Subcommittee's June 8th hearing to explore principles and metrics to evaluate tax extenders was particularly helpful in advancing the dialogue on these tax policies. The witnesses discussed possible frameworks to assess tax extenders, many of which shared key criteria. Key criteria included: the rationale for the tax policy; revenue and efficiency; and, the reason for the temporary nature of the tax policy and its appropriate duration.

A provision of significant interest to TrueBlue, and the focus of this statement, is the Work Opportunity Tax Credit ("WOTC"). Along with a number of other meritorious tax policies, WOTC largely expired on December 31, 2011. As discussed in further detail in this statement, WOTC, when evaluated against the key criteria discussed at the June 8th hearing, is an important tax policy that should be made permanent.

We welcome a robust review of the tax extenders, including WOTC. Such a review in the context of tax reform would provide an opportunity to comprehensively review the tax extenders and other tax policies. However, in the interim, we strongly urge Congress to seamlessly extend WOTC without delay. At a time of intransigent unemployment, particularly among WOTC's target groups, the lapse in WOTC is a significant setback for job creation in our nation. Consequently, extension of this important policy simply cannot wait.

TRUEBLUE

TrueBlue is a leading supplier of temporary work. In 2011, TrueBlue connected approximately 300,000 people to work, paying nearly $600 million in wages and serving nearly 150,000 businesses in the service, retail, wholesale, manufacturing, transportation, and construction industries. TrueBlue also employs 2,500 regular headquarter and branch staff.

TrueBlue provides temporary blue collar and skilled work through five lines of business: Labor Ready; Spartan Staffing; CLP Resources; Plane Techs; and Centerline. The TrueBlue family of companies is committed to providing individuals with opportunities for growth and customers with the help they need to succeed in today's competitive environment.

As a leading supplier of temporary work, TrueBlue provides employment opportunities to and a bridge to permanent jobs for many who otherwise face barriers to entering the workforce. Annually, approximately 40,000 applicants are eligible and approximately 8,000 are ultimately approved for WOTC.

TEMPORARY WORK

Temporary employment plays a critical role in the economy by providing employment flexibility for workers and businesses. Temporary staffing firms employ more than 10 million people each year. These jobs offer millions of people the opportunity to work, particularly as the economy continues its fragile recovery.

Temporary employment is critical to mitigating unemployment, while offering a significant opportunity to find permanent employment through temporary jobs. Temporary employment also provides people with on-the-job training, allowing them to learn new skills and expand their knowledge base, which can later be transferred to other employers and strengthened.

At the same time, temporary employment provides businesses with the opportunity to support or supplement their workforce in various work situations, such as employee absences, skill shortages, seasonal workloads, and special assignments or projects. Moreover, in the current economy, temporary employment is leading the jobs recovery by allowing employers to gauge business and economic conditions before committing to permanent hires.

In TrueBlue's experience, the average tenure of a temporary employee is approximately one month per year. However, even if someone works for us for *one day*, that person is an employee of the company rather than an independent contractor. Employee status integrates workers into the U.S. economy byensuring that they are eligible to work in the U.S., that all workers' compensation, unemployment, and income taxes – as well as any court-ordered garnishments – are withheld and collected, and that W-2s report income accurately.

WORK OPPORTUNITY TAX CREDIT

WOTC and its predecessors, the Targeted Jobs Tax Credit ("TJTC") and the Welfare to Work ("WTW") Tax Credit, have existed since 1977, except for a brief lapse in the 1990s. Since WOTC was established in 1996, it has been temporarily extended nearly a dozen times. WOTC was last significantly considered in 2007, when it was modified and extended through August 31, 2011 in the Small Business and Work Opportunity Tax Act of 2007. In 2010, WOTC was extended through December 31, 2011 by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WOTC for most target groups expired as scheduled at the end of 2011, though WOTC for certain veterans' populations was extended through December 31, 2012 by the 3% Withholding Repeal and Job Creation Act.

Evaluating WOTC underscores the importance and effectiveness of the tax policy and the need to make it permanent. This section considers the key criteria discussed at the June 8th hearing.

Rationale for Tax Policy

During the June 8th hearing, witnesses discussed the need to understand the rationale behind a tax provision. In particular, witnesses recommended considering whether a tax provision addresses a compelling need for government intervention and whether a tax provision reflects sound tax policy.

WOTC and its predecessors, TJTC and WTW, were enacted to address the critical issue of persistent unemployment among certain groups who face significant barriers to entering the workforce. The credit is provided to employers to help offset the additional costs associated with employing these worker populations.

WOTC focuses on workers perceived to have relatively low skill levels, making them less attractive to employers. These groups suffer from higher unemployment and lower wages. Examples of WOTC-targeted employee groups include veterans who either are food stamp recipients or are unemployed and suffering a service-connected disability, former felons, disconnected youth, and members of families receiving benefits under the Temporary Assistance for Needy Families Program ("TANF").

WOTC is structured as a tax credit for employers who hire individuals from the targeted groups, providing an incentive for the employer. WOTC effectively lessens the impact of the productivity gap between the target group members and other workers, encouraging employers to take a chance and hire workers they may otherwise not. At the same time, the employee is given an opportunity to work, building skill sets and taking them off public assistance.

WOTC addresses a compelling need that requires some government intervention and reflects sound tax policy.

Revenue and Efficiency

During the June 8th hearing, witnesses discussed the importance of evaluating a tax provision by its revenue effect and its efficiency, meaning whether the provision accomplishes its goals effectively.

JCT has estimated that a one-year extension of WOTC would cost $971 million over 10 years. JOINT COMMITTEE ON TAXATION, ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS CONTAINED IN PRESIDENT'S FY 2012 BUDGET PROPOSAL, JCX-19-11 (Mar. 17, 2011). The cost, however, must be considered in light of the significant benefits associated with WOTC.

WOTC works, effectively accomplishing its goal of ending persistent unemployment among our nation's most vulnerable citizens. Once in the workforce, workers in the target group gain experience and on-the-job training, allowing them to subsequently "climb the ladder" to higher-skilled and higher-paying jobs. Through WOTC, more long-term welfare recipients – the most difficult cases – are being employed in the private sector and 7 out of 10 welfare recipients are using WOTC to find private sector jobs, according to a 2011 study by Peter Cappelli of the Wharton Business School at the University of Pennsylvania.

In 2011 alone, more that 1.1 million workers found jobs through WOTC. Further, this important tax policy enables these workers to move into self-sufficiency as they earn a steady income and become contributing taxpayers. The Cappelli study found that individuals hired under WOTC go on to become productive employees who are no longer dependent on public assistance. In this manner, WOTC provides a relatively less costly mechanism to assist people who may otherwise rely on public assistance. The Cappelli study also found that WOTC is one of the most successful and cost effective federal employment programs.

Reason for Temporary Nature and Appropriate Duration

As noted previously, WOTC and its predecessors have existed since 1977, making the provisions part of the fabric of the tax code for over three decades. WOTC was not designed to be a temporary provision, either as a stimulus provision or a provision requiring sunset review. Instead, WOTC was designed to be a permanent policy, though it was enacted as a temporary provision due to budget constraints . In previous Congresses, efforts to make permanent WOTC have been pared back as a result of the budget impact.

The ongoing extensions of WOTC reflect that the tax policy effectively and efficiently addresses an important policy need. As part of tax reform, Congress should make WOTC permanent.

CONCLUSION

The tax extenders, including WOTC, must be reviewed and the June 8th hearing advanced the dialogue about possible ways to move forward. Tax reform would provide an opportunity to comprehensively review the tax extenders and other tax policies and consider permanent solutions.

In the interim, Congress should seamlessly extend WOTC. WOTC has proven to be an efficient incentive for businesses to provide jobs for workers who might otherwise fall through the cracks. Allowing this provision to expire at a time of persistently high unemployment is a significant setback for job creation and the provision should be expeditiously extended.

TrueBlue greatly appreciates the opportunity to submit this statement. We are pleased to serve as a resource to the Congress, the Committee, and the Subcommittee on these and related matters. We look forward to our continued work together on these important issues.

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