NRDC

April 15, 2015

Chairman Orrin Hatch (R-UT)
Senate Committee on Finance
104 Hart Senate Office Building
Washington, DC 20510

Ranking Member Ron Wyden (D- OR)
Senate Finance Committee
221 Dirksen Senate Office Building
Washington, DC 20510

Senator Dean Heller (R-NV)
Senate Committee on Finance: Community Development & Infrastructure Co-Chair
324 Hart Senate Office Building
Washington, DC 20510

Senator Michael Bennet (D-CO)
Senate Committee on Finance: Community Development & Infrastructure Co-Chair
261 Russell Senate Office Building
Washington, DC 20510

Via mail and email (communitydevelopment@finance.senate.gov)

NRDC Comments: Bipartisan Tax Reform - Community Development and Infrastructure Working Group

Dear Chairman Hatch, Ranking Member Wyden, Senator Heller, and Senator Bennet,

As the committee continues its work on energy tax policy, we write to emphasize the critical importance of continuing to utilize the tax code to promote clean energy and efficiency technologies that reduce pollution and drive innovation. Properly-crafted tax policy has already proven effective at delivering energy efficiency and clean, renewable energy to the nation's consumers at an exceptionally low cost to the taxpayer while cutting harmful pollution. This creates jobs, provides benefits to local communities, saves businesses and consumers money, and helps ensure America remains a global leader in clean technologies in the 21st century.

It is also long past time to jettison costly and wasteful tax provisions, some of them a century old, which promote mature, polluting energy sources that undermine our national goals. It simply does not make sense to continue funneling billions in taxpayer dollars to enormously powerful, wealthy corporations to produce dirty energy that degrades the environment and threatens the health of our children and communities.

Any energy tax policy should be judged by its contribution to meeting our obligation to reduce carbon pollution and pass on a cleaner, healthier, safer planet to our children. For example, the general philosophy reflected in former Chairman Baucus's tax reform proposal to establish a stable, long-term set of energy tax incentives focused on promoting domestic energy production that reduces pollution is directionally correct.

Energy Efficiency

The cheapest and cleanest energy resource is the energy we don't have to use. Despite the many benefits of energy efficiency, the opportunities fail to be implemented due to a variety of market failures, such as split incentives, lack of information, and a multitude of other barriers. Tax incentives for energy efficiency overcome these market barriers by attracting producer and consumer attention to the opportunities and transforming markets for new technologies and practices. In addition to reducing pollution and saving money for consumers and businesses, energy efficiency incentives have the added benefit of creating jobs both directly in homes and businesses but also indirectly. As utility bill savings are spent in other parts of the economy it stimulates growth. These incentives can also increase tax revenue. Energy efficiency tax incentives for buildings, industry and manufacturing deliver results and they should be strengthened to deliver even greater economic and environmental benefits.

Efficiency tax policy should be designed around the following principles—policy should:

- Deliver innovation in buildings and manufacturing, with tough qualification (only the most efficient); this cuts the cost to the Treasury dramatically as well as increasing savings
- Reward taxpayers based on performance and not cost;
- Be technology neutral; and
- Be regularly updated to continue to drive innovation and to prevent the incentive from going to recipients who are no longer doing state-of-the-art efficiency.

Specifically, the following energy efficiency tax incentives should be extended and strengthened:

Energy Efficient Commercial and Multifamily Buildings – section 179D

What: The Energy Efficient Commercial Buildings Tax Deduction under the Commercial Building Modernization Act. This provision expired at the end of 2014. The 179D tax deduction provision should be extended with the following modifications:

- Update the requirements so that they achieve the specified savings compared to the updated ASHRAE reference standard for new construction and the building's prior performance for retrofits.
- Clarify the lighting partial deduction to allow simple tradeoffs between lighting power levels and controls.
- Raise the amount to $3.00 a square foot to adjust the original legislation for inflation.

Energy Efficient New Homes – Section 45L

What: The New Energy Efficient Home Credit (expired at the end of 2014), which provided taxpayers a credit of up to $2,000 for the construction of new energy efficient homes.

- Revise the criterion to measure reductions in whole-house energy use and increase the stringency of the target to meet the strongest efficiency option in the 2015 International Energy Conservation Code.
- Raise the bar automatically whenever market share of rated homes qualifying for the incentive reaches 10 percent to a level met by only the top 5 percent of the new homes market.

Energy Efficient Home Renovation – Section 25C

What: A residential energy efficient property credit (expired at the end of 2014) that provided homeowners with a tax credit for various types of residential energy efficiency improvements, including insulation, windows, doors, water heaters, and HVAC equipment.

- Eliminate Section 25C: this very costly incentive mostly went for windows that would have been installed without the tax credit
- Provide a whole-building-based tax credit for savings of 20 percent or more, on a sliding scale. Projected savings would have to be verified by a third-party rating.

Renewable Energy

Production Tax Credit (PTC) and Investment Tax Credit (ITC):
NRDC supports the long-term extension of existing tax incentives for renewable energy. The nation has seen a near doubling of wind power in the last five years and also a doubling of solar power in just the last two years. The U.S. wind industry employs over 50,000 Americans, while the solar industry creates jobs for over 173,000 workers. More renewable energy from these sources means burning less coal, reducing air pollution that contributes to asthma attacks, heart attacks, and mercury exposure and drives dangerous climate change. None of this would be possible without the support of the Production Tax Credit, which has been integral to the explosive growth and cost reductions for wind energy. Yet Congress has let the PTC expire and the lack of certainty around whether it will be renewed has suppressed investment and triggered job losses, all of which could be avoided by putting in place long-term, predictable support.

The pending reduction and expiration of the Investment Tax Credit will do the same for the solar and offshore wind industries. Offshore wind energy represents our largest untapped clean energy resource. Wind turbines off our coasts can harness fast wind speeds to power our homes and businesses with pollution-free energy and create new manufacturing jobs. However, there are still no operating offshore wind facilities in U.S. waters. A long-term extension, including a separate line-item in the tax code, of the ITC for offshore wind is critical to the success of the industry. We encourage the committee to examine and support the Incentivizing Offshore Wind Power Act (H.R.924).

Master Limited Partnerships:
NRDC also endorses allowing the renewable energy and energy efficiency industries to benefit from the same tax treatment that has long been available to the oil and gas industry through master limited partnerships (MLP). Clean energy markets, like other economic sectors, have been hampered by capital constraints in the aftermath of the U.S. financial crisis. All energy industries require private capital to fund projects, and the recent financial market volatility illustrated the value of capital supply afforded by the MLP structure. Furthermore, clean energy projects are attractive assets for MLP investors, featuring stable revenue sources and a good long-term risk profile for investors. Supplementing successful energy tax credits with access to MLPs for renewables and other clean energy technologies would enhance the sources of capital for the industry and increase investors' opportunities to take ownership in America's clean energy future.

Clean Energy Investment Trust:
REITs and mutual funds are public capital vehicles that enable retail investors to invest in real estate and stocks and bonds, respectively. Congress should enact legislation providing for a "clean energy investment trust" (CEIT) that is patterned on the existing REIT model but would invest in renewable energy assets. Moreover, the CEIT vehicle should be permitted to invest a portion of its capital in other assets (e.g., assets that are permissible for current law REITs and mutual funds) to enable the CEIT to use the excess tax benefits generated by the renewables assets to offset this other income. Independent of whether CEIT legislation is enacted, legislation should be enacted to enable current law REITs and mutual funds to invest a portion of their capital in renewable energy assets. These proposals would provide an important source of public market capital for renewables investing, while permitting investors of modest means to invest in renewable energy.

Biofuel Tax Credits:
NRDC recommends amending biofuel tax incentives so that they are performance based. We believe that biofuels can play an important role reducing transportation emissions and improving the nation's trade balance. Policy supports should continue to provide a favorable investment climate for sustainably grown non-food based biofuels. But biofuels also bring inherent risks since their feedstocks are inextricably linked to land, water and wildlife. Incorporating features that calibrate value to environmental performance, including carbon pollution reductions, will encourage feedstock and biofuel production practices that can be sustained over the long term.

Ending 100 Years of Fossil Fuel Subsidies

NRDC supports putting an end to a hundred years of handouts to fossil fuels. Further subsidization of fossil fuels flatly contradicts our obligation to protect our children and future generations from the impacts of climate change by addressing its main cause: carbon pollution. Carbon pollution drives climate change, which triggers more asthma attacks and respiratory disease, worsens air quality, and contributes to more frequent, destructive, costly, and deadly extreme weather events. Our tax policy should heed the science that dictates the vast majority of fossil fuel reserves must remain unburned in order to avoid the worst impacts of climate change.[1]

Additionally, the National Academy of Sciences estimates that the total public health cost of fossil fuel use in the United States-is $120 billion annually. Pollution from fossil fuels makes our children sick and drives extreme weather that costs the nation billions in destroyed homes, lost crops, crippled infrastructure, and devastated communities.

The President has identified roughly $4 billion annually in tax loopholes specifically for oil and gas companies. At minimum, these should be closed. Even greater environmental benefits and taxpayer savings could be made by modifying rules for dual capacity taxpayers and eliminating Last In First Out Accounting for oil and gas. Oil companies often use these provisions to minimize their tax liability. Prior NRDC analysis has shown that eliminating a similar range of oil and gas subsidies could produce taxpayer savings in the neighborhood of $80 billion over 10 years.

Congress should go even further and take a hard look at oil and gas royalties, our mining laws, and coal leasing programs which have historically padded the pockets of polluters at the expense of taxpayers.

Once again, we believe that the goal of our energy tax policy is a simple one: promote clean energy that advances our national interest by reducing dependence on the dirty energy sources of the past. To do that, we must double down on the nation's investment in clean energy, while ending antiquated policies that promote the very pollution we must end to ensure the health of our children's future.

Thank you for your consideration. For more information on any of these subjects please contact Elizabeth Noll (enoll@nrdc.org) or Marc Boom (mboom@nrdc.org).

Sincerely,

Scott Slesinger
Legislative Director
Natural Resources Defense Council

[1] Intergovernmental Panel on Climate Change, "Climate Change 2014: Synthesis Report," page 63, http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_Topics_2.pdf.