

April 14, 2015

Honorable Orrin Hatch
Chairman
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Ron Wyden
Ranking Member
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch and Ranking Member Wyden:

Thank you for giving us an opportunity to comment on ways to reform the tax code to support U.S. competitiveness, create jobs and fix inequities in the tax system. The American Association of Port Authorities (AAPA) represents the leading port authorities in the Western Hemisphere and our comments today reflect the comments of our U.S. members.

America's seaports are a vital component of our nation's infrastructure. For centuries, seaports have been at the heart of our nation's transportation infrastructure system. U.S. seaports are responsible for moving more than 99 percent of the country's overseas cargo and handling more than two billion tons of domestic, import and export cargo annually. Cargo moving through seaports is responsible for more than 13 million jobs. Annually, seaports generate over \$200 billion in federal, state and local tax revenues and more than \$25 billion in customs duties.

My letter today focuses on three areas that we urge the Finance Committee to address that would result in increased competitiveness, create jobs and provide tax fairness. Our recommendations relate to the harbor maintenance tax (HMT), alternative minimum tax (AMT) for private activity bonds, and further extension of the wind energy's production tax credit.

Harbor Maintenance Tax

The historic partnership between seaports and the federal government finds its roots in the Commerce Clause of the U.S. Constitution and is the oldest and largest of all the Corps of Engineers' missions. That partnership has built much of the waterside infrastructure used today. Operation and maintenance of this waterside infrastructure is paid for through the harbor maintenance tax established in 1986.

The tax has significant flaws and full use of the HMT is critical to ensuring our system of ports is well maintained. The HMT has been the subject of lawsuits as well as concerns over equity and tax fairness. **U.S. tax policy should not disadvantage U.S. ports and maritime cargo.**

While a number of issues were addressed in the Water Resources Reform and Development Act of 2014, a key HMT issue, the structure of the harbor maintenance tax,

is under the jurisdiction of the Finance Committee. **AAPA believes it is vital that Congress provide a true, permanent fix to ensure full use of the revenues of the HMT by providing an offset to revenues, or otherwise making the use mandatory with all HMT revenues automatically going to the Corps as other fee-based systems do.** We understand this solution would require a one-time offset of roughly \$20 billion, however, this approach would both permanently fix the HMT full-use problem, and importantly, address the poor condition of our nation's navigation channels. Additionally, **US port to port movement should be exempted from HMT to eliminate a current disincentive to utilize waterborne transport domestically.**

The 1986 Water Resources Development Act (WRDA) established the HMT to fund 100 percent of federal deep draft channel navigation operation and maintenance. The HMT is an ad valorem tax that was originally paid on the value of exports, imports and domestic cargo. In 1998, the U.S. Supreme Court ruled that the HMT was an unconstitutional tax on exports, and therefore, is no longer paid by exporters. Through the early 1990's the revenues were roughly equal to expenses, but there has been a growing imbalance between revenues and appropriations, with just over half of the revenues currently being spent for its intended purposes. More than \$1.8 billion in revenue was collected in fiscal year 2014, and the surplus in the Harbor Maintenance Trust Fund has grown to more than \$8.5 billion. The low appropriations have resulted in an under maintained system in which channels are not being maintained to their constructed depths and widths despite adequate taxes being collected. Even the top 59 busiest ports on average only have their channel dimensions available 35 percent of the time. Eight of the top 10 U.S. ports presently have depth or width restrictions resulting in safety risks of groundings and cargo spills and economic risks of light-loading ships which increase transportation costs, impacting the competitiveness of U.S. exports in the global marketplace and the cost of imported goods to U.S. consumers and manufacturers.

America must prepare for 21st century freight movement – 95 percent of the world's population and 80 percent of consumption is outside the US. Global trade is the key to U.S. economic growth and jobs. Fully maintained navigation channels are essential to safe and efficient freight movement. U.S. ports are actively making the investments required to keep U.S. maritime infrastructure world-class. It has been 29 years since enactment of the landmark WRDA '86 legislation which laid out a sustainable, self-funded plan to maintain our deep-draft navigation system based on revenues from port users. The vision and plan outlined in WRDA '86, however, has not been achieved due to the underspending of the HMT Trust Fund. By fixing the structure of the HMT to ensure full use, AAPA believes we can meet the visions of the 1986 Act.

Private Activity Bonds

Private activity bonds are an important tool for local public port authorities to fund needed infrastructure investments. The fact that they are subject to the alternative minimum tax (AMT) decreases their value and increases the interest rate the bond issuer must offer to account for the AMT. Congress has recognized this problem in the past by passing

several exemptions to the AMT for private activity bonds. During your tax reform efforts, we urge you to make this exemption permanent.

Wind Energy Production Tax Credit

AAPA supports an extension of the production tax credit for wind energy. America will see an increase in jobs as this industry grows and ports serve as both the importer of components and on land facility where these components are stored and assembled. Construction materials and service providers also must use ports to reach offshore wind farms.

We thank you for this opportunity to address these critical tax issues that will help enhance America's international competitiveness, revitalize our economy and create sustainable jobs.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kurt J. Nagle", with a long horizontal flourish extending to the right.

Kurt J. Nagle
President and CEO
KJN:JW/pm

cc: Finance Committee Majority Staff Director Chris Campbell
Finance Committee Minority Staff Director Josh Sheinkman
Rob Porter, Chief of Staff to Chairman Hatch
Jeff Michels, Chief of Staff to Ranking Member Wyden