Biotechnology Industry Organization

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President & CEO

March 24, 2015

The Honorable Dean Heller
Co-chair
Working Group on Community
Development and Infrastructure
324 Hart Senate Office Building
Washington, DC 20510

The Honorable Michael Bennet
Co-chair
Working Group on Community
Development and Infrastructure
458 Russell Senate Office Building
Washington, DC 20510

Dear Senator Heller, Senator Bennet, and the Community Development and Infrastructure Working Group:

On behalf of the Biotechnology Industry Organization (BIO) and its more than 1,100 members, I want to thank you for your dedication to reforming America's corporate tax code to make it competitive on the global stage. High tax rates can impede growth, and this is particularly true in the biotechnology industry, where it can take more than a decade and cost more than $1 billion to develop a single breakthrough technology. BIO applauds your efforts to lower the U.S. corporate tax rate, which is currently the highest among countries in the Organisation for Economic Co-operation and Development (OECD).

As you undertake this effort, it is also vital that Congress take steps to move America to a competitive territorial tax system, unburdened by overly stringent anti-base erosion policies and consistent with those in so many other OECD countries. Freeing up over one trillion dollars that are currently trapped overseas due to the inefficiencies of the tax code will boost economic growth and capital investment. Congress should ensure that a move to a territorial system is truly competitive for knowledge-based industries like biotechnology. Placing disproportionate tax burdens on the biotechnology industry harms America's competitiveness on the world stage and could stymie cutting-edge research and development (R&D) critical to meeting our nation's public health, agricultural, bioenergy, and environmental challenges.

BIO supports your efforts to streamline the tax code in order to facilitate lower rates and international competitiveness. At the same time, there are provisions in the current code that stimulate biotech R&D and early-stage commercialization, and these provisions are vitally important to the scientific progress of BIO members. These provisions, including the Orphan Drug Tax Credit, the R&D Tax Credit, and the Second Generation Biofuel Producer Tax Credit, should be retained in any reformed tax code. In combination with lower overall rates, these incentives will support breakthrough research and foster commercialization to bolster the economy.

Additionally, Congress has the opportunity in tax reform to take new steps to inspire innovative research, development, and commercialization. Many biotech companies operate without product revenue to fund their scientific progress, which means they have little or no taxable income in early years, so provisions in the current code designed to incentivize research actually function as a potential future benefit rather than providing immediate support for R&D. Such incentives do not reduce current operating or capital costs for small, pre-revenue businesses. Congress should bear in mind the needs of these pre-revenue innovators, which depend almost entirely on external capital to fund the typical decade-long, billion-dollar biotech development program. In addition to lowering the corporate tax rate and maintaining vital provisions from the current code, Congress should enact targeted provisions that support innovative companies early in their life cycle.

BIO believes that the following provisions should be included along with a lower corporate tax rate and a competitive territorial system in any reformed tax code. These proposals will help grow the economy and achieve the vitally important policy objective of stimulating technological advancement.

- **Orphan Drug Tax Credit.** BIO supports maintaining the Orphan Drug Tax Credit in the reformed tax code. By reducing the costs of developing drugs for smaller patient populations, the Orphan Drug Tax Credit has allowed companies to develop hundreds of new therapies that would otherwise not have been commercially feasible – helping millions of patients suffering from rare conditions get the new medicines they desperately need, while fostering economic growth though new and expanding biotech companies with good jobs and high wages.

- **R&D Tax Credit.** BIO supports maintaining the R&D Tax Credit in the tax code, while at the same time strengthening it by increasing the Alternative Simplified Credit (ASC) rate and making it permanent. Constant uncertainty about whether the R&D credit will be extended makes tax planning extremely difficult for companies preparing their development program. Increasing and making permanent the ASC would contribute to U.S. job growth and an increase in the U.S. GDP. President Obama and Senate and House Democrats and Republicans have all publicly supported the need for a permanent R&D credit as well as an increase in the ASC rate. Making this credit permanent would recognize its vital role in supporting America's innovation economy.

- **Second Generation Biofuel Producer Tax Credit.** Advanced and cellulosic biofuels have an important role to play in U.S. energy security. Since second generation biofuel tax incentives were first enacted, advanced and cellulosic biofuel developers have invested several billion dollars and created thousands of jobs in these technologies. With advanced and cellulosic biofuels commercial scale facilities coming online, tax incentives are more important now than ever. BIO supports making the Second Generation Biofuel Producer Tax Credit permanent, but with reforms to provide predictability and technology neutrality and providing options such as an investment tax credit election.

- **Incentives for R&D-Focused Small Businesses.** BIO supports targeted tax incentives to spur research by and investment in small, pre-revenue innovators. Early-stage investment is key to the success of these next generation small businesses, and BIO urges Congress to enact provisions to support their growth, including:
    - **Section 469 R&D Partnership Structures.** BIO supports a limited exception from the passive activity loss (PAL) rules in Section 469 to allow tax assets generated by innovative research to flow through to an R&D project's investors. This change would allow companies to partner with their investors on a research project, stimulating early-stage R&D.
    - **Section 382 Net Operating Loss (NOL) Reform.** BIO supports exempting NOLs generated by qualifying small business R&D from Section 382's ownership change restrictions. Section 382 reform would allow

    emerging companies to maintain the valuable NOLs generated during the decade-long, billion-dollar biotech development timeline.
    - **Section 1202 Capital Gains Reform.** BIO supports allowing investors in companies with gross assets up to $150 million or with valuable intellectual property (IP) to qualify for Section 1202's lower capital gains rates. By expanding the pool of companies eligible for Section 1202, this modification would bring investment dollars to a wider swath of growth-stage innovators.

- **Lower Tax Rate for Innovation Income.** BIO supports the favorable tax treatment of income derived from the research and manufacturing of innovative products through a tax regime referred to as an "Innovation Box" or "Patent Box." This would help make the U.S. tax code more competitive with countries that have adopted such tax regimes. Such an approach should not affect the design of a competitive international tax regime or treat income derived from intangible assets less favorably than other income.

- **Renewable Chemical Production Tax Credit.** Renewable chemicals represent an historic opportunity for revitalization of U.S. chemical manufacturing, reduced dependence on foreign oil, and mitigation of greenhouse gas emissions, but they are currently disadvantaged in the tax code relative to incumbent technologies and other renewable energy initiatives. The U.S. has the potential to become the world leader in renewable chemicals and create domestic jobs from homegrown technologies. BIO supports extending existing renewable energy and manufacturing tax opportunities – including tax credits for investment and production – to renewable chemicals to create a level playing field.

- **Advanced Biofuel and Renewable Chemical Master Limited Partnerships (MLP) Parity Act.** Sectors of the fossil energy industry are able to benefit from using the advantages of a publicly traded MLP. The renewable chemicals industry and the renewable energy sector (including advanced biofuels companies) cannot. The publicly traded MLP structure reduces a company's tax burden, enables access to capital at lower cost, and increases liquidity. Access to capital is critical to the success of emerging industries, particularly as they develop their infrastructure. BIO supports legislation to allow the advanced biofuels and renewable chemical sectors to be able to operate as publicly traded MLPs. This would provide parity and level the playing field among the different industry sectors.

BIO supports a U.S. tax code that recognizes innovation as a crucial part of the 21st century American economy and encourages innovative research and new technologies to enter the market. The tax code should promote research-intensive and advanced manufacturing businesses as they continue to create high-quality American jobs, stimulate long-term economic growth, and bolster America's competitiveness on an increasingly global stage. We look forward to working with you as Congress undertakes this important effort.

Sincerely,

Jim Greenwood

James C. Greenwood
President and CEO