Individual, Excise, and Other Temporary Tax Policy Task Force

Senator Pat Roberts (R-KS), Co-Lead
Senator Robert Menendez (D-NJ), Co-Lead
Senator Steve Daines (R-MT), Task Force Member
Senator Maggie Hassan (D-NH), Task Force Member

August 2019

I. Introduction

Since the end of 2017, 29 temporary tax provisions have expired, with more than a dozen other temporary provisions set to expire at the end of this year. As part of the Finance Committee's efforts to address those provisions that have already expired and those set to expire at the end of this year, the Committee formed bipartisan Task Forces to examine this group of over 40 temporary tax provisions and identify options for long-term resolution of these temporary tax policies.

The Individual, Excise, and Other Temporary Tax Policy Task Force was charged with examining six temporary tax policies. Three of these tax provisions expired on December 31, 2017, one provision expired on December 31, 2018, and two provisions are set to expire on December 31, 2019. The list of these provisions is set out below, and additional background on each was provided in the pamphlet prepared by the Joint Committee on Taxation (JCX-22R-19 – https://www.jct.gov/publications.html?func=startdown&id=5188).

The Task Force worked with stakeholders, interested Senate offices, and other interested parties to examine the original basis of each provision, determine whether there continues to be a need for the provision as currently drafted, and identify long-term resolutions. The Individual, Excise, and Other Temporary Tax Policy Task Force received and considered comments and proposals from stakeholders and other interested parties with respect to its set of temporary tax policies, which are summarized below.

The recommendations summarized below were presented to the Task Force in submission letters and meetings. These stakeholder recommendations should not be interpreted as recommendations of the Task Force.

II. Task Force Membership

Senator Roberts (R-KS) and Senator Menendez (D-NJ) would like to thank: Senator Steve Daines (R-MT), Senator Maggie Hassan (D-NH), and their staffs for their membership and participation in the Task Force's activities; Chairman Grassley (R-IA), Ranking Member Wyden (D-OR), and their professional staff members for their participation as ex-officio members and for their technical assistance; and all stakeholders who submitted comments.

III. Temporary Provisions Considered

The Task Force examined the following six expiring or expired provisions:

- Discharge of indebtedness on principal residence excluded from gross income of individuals (sec. 108(a)(1)(E);

- Premiums for mortgage insurance deductible as interest that is qualified residence interest (sec. 163(h)(3)(E));

- Above-the-line deduction for qualified tuition and related expenses (sec. 222);

- Look-through treatment of payments between related controlled foreign corporations under the foreign personal holding company rules (sec. 954(c)(6)(C));

- Excise taxes on beer, wine, and distilled spirits:
    a. Special rule for the production period for beer, wine, and distilled spirits (sec. 263A(f)(4)),
    b. Provisions modifying the rates of taxation of beer and certain other rules (secs. 5051 and 5414),
    c. Provisions modifying the rates of taxation of wine and certain other rules (sec. 5041)
    d. Provisions modifying the rates of taxation of distilled spirits and certain other rules (secs. 5001 and 5212), and
    e. Simplification of rules regarding records, statements, and returns (sec. 5555); and

- Oil Spill Liability Trust Fund financing rate (sec. 4611).

IV. Overview of the Taskforce's Work

Over the course of six weeks, the Task Force held a total of seven meetings and received 41 submissions concerning the provisions within the purview of the Task Force. Stakeholders were asked to submit comments that included the following information:

- Provision about which the organization is submitting comments:
- Name of organization;
- Geographic footprint of organization;
- Organization's position on short-term and/or permanent extension of provision, or whether it should be left to expire permanently, including policy and economic justification for the request;
- Any proposal(s) for expansion or modifications to the provision, including policy and economic justification for the request; and
- Miscellaneous considerations related to the provision (i.e., other provisions in the code that interact with the provision that should be considered).

Stakeholders who submitted comments and requested to meet with the Task Force were generally offered a meeting with staff of members on the Task Force. Meetings commonly consisted of two parts: a presentation by the stakeholder(s) and a question and answer session following the presentation. On average, meetings ranged in length from 30 to 90 minutes.

V. Summary of Stakeholder Views Received

Discharge of indebtedness on principal residence excluded from gross income of individuals (sec. 108(a)(1)(E)

As noted in the JCT pamphlet: "A maximum exclusion from gross income of $2,000,000 is provided for any discharge of indebtedness income by reason of a discharge (in whole or in part) of qualified principal residence indebtedness. In general, the discharged indebtedness eligible for the exclusion must be indebtedness incurred in the acquisition, construction, or substantial improvement of the principal residence of the individual and secured by the residence. The provision does not apply to discharges after December 31, 2017, or to discharges subject to an arrangement that is entered into and evidenced in writing after such date."

The Task Force did not hold any meetings specifically on this provision, but received one proposal from the National Association of Realtors (NAR) in support of making the mortgage debt forgiveness relief provision permanent at a reduced level (indexed to inflation) with eligibility conditions tightened. If permanence is not possible, NAR proposed the provision be extended in its current form. This proposal summary should in no way be construed as a policy recommendation from the Task Force.

Premiums for mortgage insurance deductible as interest that is qualified residence interest (sec. 163(h)(3)(E))

As noted in the JCT pamphlet: "Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness on a principal residence or second home of the taxpayer is treated as if it were deductible qualified residence interest. The deduction is phased out for taxpayers with adjusted gross income over $100,000 ($50,000 if married filing separately). The provision does not apply to amounts paid or accrued after December 31, 2017, or properly allocable to any period after such date."

The Task Force held one meeting with the U.S. Mortgage Insurers (USMI) on their submission, which proposed eliminating the mortgage insurance deduction so long as the deduction on interest paid for piggyback second liens is also eliminated. This proposal is supported by Senator Isakson. If USMI's proposal is not enacted, they would like to see this provision extended in its current form. This proposal summary should in no way be construed as a policy recommendation from the Task Force.

Above-the-line deduction for qualified tuition and related expenses (sec. 222)

As noted in the JCT pamphlet: "An individual is allowed an above-the-line deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year. The maximum deduction is $4,000 for taxpayers with adjusted gross income of $65,000 or less ($130,000 for joint filers) and $2,000 for taxpayers with adjusted gross income above $65,000 ($130,000 for joint filers) but less than or equal to $80,000 ($160,000 for joint filers). No deduction is allowed for taxpayers with adjusted gross income above $80,000 ($160,000 for joint filers). The provision expired for taxable years beginning after December 31, 2017."

The Task Force did not hold any meetings or receive any comments on this provision.

Look-through treatment of payments between related controlled foreign corporations under the foreign personal holding company rules (sec. 954(c)(6)(C))

As noted in the JCT pamphlet: "Certain payments of dividends, interest, rents, and royalties that would otherwise be included in foreign personal holding company income (and thus subpart F income) may be excepted if the payments are received from a related controlled foreign corporation and are properly attributable and allocable to income of the payor that is neither subpart F income nor treated as effectively connected to a U.S. trade or business. The provision expires for taxable years of foreign corporations beginning after December 31, 2019, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end."

The Task Force received five submissions on this provision, and held two meetings (American Express, Blackrock, and Washington Council Ernst and Young; and another with PricewaterhouseCoopers, General Electric, International Business Machines, and Proctor and Gamble). All five stakeholders who submitted comments to the Task Force expressed support for permanence of the CFC Look-Thru rule, arguing primarily that it remains important to preserving U.S. competitiveness abroad. This proposal summary should in no way be construed as a policy recommendation from the Task Force.

Excise taxes on beer, wine, and distilled spirits

As noted in the JCT pamphlet, several provisions enacted in the 2017 Tax Act temporarily reduced the excise tax imposed on beer, wine, and distilled spirits. The excise tax was further reduced for craft producers. In addition, the 2017 Tax Act reduced tax and compliance burdens for all producers.

The Task Force received a total of 23 submissions from a variety of stakeholders in the beer, wine, and spirits industries. The Task Force held two meetings: one with industry groups supportive of the provision, and another with the Alcohol and Tobacco Tax and Trade Bureau to discuss tax administration.

All members of this Task Force are cosponsors of the Craft Beverage Modernization and Tax Reform Act, S.362, which permanently reduces the excise tax for breweries, distilleries, and wineries to help these entrepreneurial small businesses succeed. A provision similar to the Craft Beverage Modernization and Tax Reform Act was included to the 2017 Tax Act, but authorized the reduced excise rate for two years. This provision is set to expire on December 31, 2019. The Task Force would like not only to have this provision extended, but furthermore see the Craft Beverage Modernization and Tax Reform Act enacted on a permanent basis.

The Craft Beverage Modernization and Tax Reform Act was introduced by Senator Wyden and Senator Blunt. The bill has broad bipartisan support with 66 cosponsors. In addition, the House companion bill has 258 cosponsors.

All industry stakeholders who submitted comments to the Task Force expressed support for permanence of the provisions. Senator Blunt sent a letter to the Task Force in support of the Craft Beverage Modernization and Tax Reform Act.

Oil Spill Liability Trust Fund financing rate (sec. 4611)

As noted in the JCT pamphlet: "Before December 31, 2018, the Oil Spill Liability Trust Fund financing rate (the "oil spill tax") was nine cents per barrel and generally applied to crude oil received at a U.S. refinery and to petroleum products entered into the United States for consumption, use, or warehousing."

The Task Force received two submissions from stakeholders and held two meetings. The American Fuel and Petrochemical Manufacturers requested that if the tax is reinstated, "…such reinstatement commence as of the first day of the month following enactment…as has been done with prior [Oil Spill Liability Trust Fund] excise tax reinstatements." The Prince William Sound Regional Citizens' Advisory Council and the Cook Inlet Regional Citizens Advisory Council requested that the oil spill tax be permanently reauthorized at eight cents per barrel, but with a "ceiling and floor" approach to suspending and implementing collection of the tax. Several recommendations from this proposal are included in S. 865, the Spill Response and Prevention Surety Act, which Senator Dan Sullivan (R-AK) and Senator Lisa Murkowski (R-AK) introduced earlier this year. This summary of proposals should in no way be construed as a policy recommendation from the Task Force.

May 28, 2019

The Honorable Pat Roberts
Co-Lead
Individual, Excise & Other Expiring Provisions Task Force
Committee on Finance
United States Senate
109 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Robert Menendez
Co-Lead
Individual, Excise & Other Expiring Provisions Task Force
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The Honorable Steve Daines
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The Honorable Maggie Hassan
Individual, Excise & Other Expiring Provisions Task Force
Committee on Finance
United States Senate
324 Hart Senate Office Building
Washington, D.C. 20510

Dear Co-Lead Roberts, Co-Lead Menendez, Senator Daines, and Senator Hassan:

U.S. Mortgage Insurers ("**USMI**") appreciates the opportunity to provide you additional information regarding an expired temporary tax provision that is within the scope of your task force on temporary tax provisions that expired, or will expire, between December 31, 2017 and December 31, 2019 ("**Task Force**"). More particularly, this particular "tax extender" falls within the rubric of "individual" tax provisions.

By way of brief background, USMI is a trade association of the leading private mortgage insurers in the U.S. dedicated to a housing finance system backed by private capital that enables access to prudent and affordable mortgage finance for borrowers while protecting taxpayers.

USMI has long supported one of the temporary "tax extenders" being evaluated by your Task Force ("**Tax Extenders**"), namely, the provision allowing a deduction for mortgage insurance premiums paid in connection with a mortgage on a qualified residence ("**MI Deduction**"). The original purpose of this bipartisan provision was to strike a rough parity for traditional mortgages with mortgage insurance with so-called "piggyback" mortgages—which are mortgages where a second-lien loan ("**Piggyback Second Liens**") is incurred simultaneously with a first-lien loan in order to acquire property in order to avoid purchasing MI on what would otherwise be a low-down payment loan. Interest paid on a Piggyback Second Lien is generally treated as deductible mortgage interest under the Internal Revenue Code.

Since its enactment, the MI Deduction has been a powerful tool in prudently promoting homeownership for low- and moderate-income families. The MI deduction phases out and is capped at homeowners with incomes above $110,000 so that it is targeted at homeowners most in need. Yet, its persistent status as an "extender" provision is challenging. Moreover, in the context of the significant increase in the standard deduction under today's tax law, the provision's value to taxpayers is reduced. Under current law, and as discussed in more detail in the annex that follows, the number of taxpayers who utilize the MI Deduction is projected to have dropped by roughly half, from more than 4 million taxpayers to around 2 million taxpayers. As such, USMI appreciates Congress' willingness to evaluate the provision and consider whether to take a different policy approach.

More specifically, USMI would support Congress determining to not extend the MI Deduction so long as a reciprocal change was made to even out the tax treatment of interest paid with respect to Piggyback Second Liens. This mortgage product began as a niche product but was increasingly designed to be used as an end-run around obtaining a traditional mortgage with mortgage insurance protection. Independent research consistently bears out that these mortgage structures are riskier than traditional mortgages with mortgage insurance and that they performed poorly through the economic crisis.

Since the consideration and passage of the "Tax Cuts and Jobs Act of 2017," Senator Isakson has attempted to add a fix that would strike the deductibility of Piggyback Second Liens and thereby permanently eliminate the need for the MI Deduction as a Tax Extender. <u>Taken together, both changes (*i.e.*, striking the deductibility of interest paid on a Piggyback Second Lien and eliminating the MI Deduction) will provide a positive revenue score and reduce the overall cost of enacting the remaining Tax Extenders</u>.

Further background on the MI Deduction and piggyback mortgages is included as **<u>Annex A</u>**, along with potential legislative language that would address the current law tax advantage afforded to Piggyback Second Liens as **<u>Annex B</u>**. USMI thanks the Senate Finance Committee and your Task Force for devoting needed attention to the issue of tax extenders and stands available as a resource to the Task Force as you do so.

Very truly yours,

Lindsey Johnson
President, USMI

cc: The Honorable Chuck Grassley
The Honorable Ron Wyden
Mark Warren
Tiffany Smith
P.J. Austin
Jason Tuber
Darin Thacker
Jay Weismuller
Victoria Williams

ANNEX A: Additional Background Information on MI Deduction and Competing Products

MI Deduction

USMI members have provided private capital to stand in front of Fannie Mae and Freddie Mac (the "GSEs") and taxpayers for more than 60 years. In fact, the private mortgage insurance industry has covered more than $50 billion in claims to the GSEs since they entered federal conservatorship—losses that would have otherwise been absorbed by taxpayers. Private mortgage insurance offers an effective and time-tested way to prudently make mortgage credit available to those who do not have a large down payment, helping more than 30 million low- and moderate-income individuals become homeowners and allowing these individuals to build equity and personal wealth.

During the time it has been in effect, the MI Deduction has proven to be an important tool in lowering the cost of homeownership for the low- and moderate-income homebuyers and millions of taxpayers have benefitted from the MI Deduction. The most recent IRS statistics of information (circa 2016) indicated that more than 4.4 million taxpayers utilized the provision just in that year. The provision has resulted in significant savings for families striving to afford a home. The private mortgage insurance industry has helped more than 30 million families become homeowners and, in the past year alone, private mortgage insurers helped more than one million homeowners purchase or refinance a mortgage. Importantly, nearly 60 percent of purchase loans with private mortgage insurance go to first-time homebuyers and more than 60 percent of taxpayers who claim the MI Deduction have incomes at or below $75,000.

Because the MI Deduction starts to phase out for joint-filing taxpayers with adjusted gross incomes above $100,000 (and is phased-out completely for taxpayers with incomes above $110,000), the provision has always been targeted towards those who need it the most: low- and moderate-income taxpayers who have managed their finances responsibly but nonetheless may not have the resources to afford a large down payment to buy a home (and begin to build equity). According to IRS statistics of income, $6.797 billion in deductions for qualified mortgage insurance premiums were claimed in 2016, for an average deduction of $1,542 per taxpayer claiming the deduction. Over four-fifths of these taxpayers had incomes between $30,000 and $100,000.

The provision also allows a <u>measure</u> of parity between traditional mortgages where borrowers take out mortgage insurance, and so-called "piggyback" mortgages ("**Piggyback Mortgage**") where borrowers take out a first mortgage covering 80 percent of the cost of the home, and a second mortgage covering the shortfall between their down payment and the remainder of the purchase price for the home (*i.e.*, the Piggyback Second Lien). This measure of parity is not simply grounded in terms of providing similar benefits to competing products. The MI Deduction also fosters parity because as a tax policy matter, mortgage insurance premiums are economically equivalent to mortgage interest. Mortgage insurance is a condition for low down-payment mortgages in both the conventional and government mortgage markets and thus, like interest and GSE guarantee fees, is part of the consideration required by lenders in exchange for extending mortgage credit. While lenders want to lend to as many potential homebuyers as possible, without mortgage insurance they cannot accept the risk of extending credit to certain individuals.

A key goal of your Task Force is to evaluate the continued necessity and utility of the remaining Tax Extenders not made permanent following the December 2015 enactment of the PATH Act, and in particular those provisions that expired (or are expiring) in 2017—of which the mortgage insurance premium provision is one. While the MI Deduction has been supported and extended numerous times by Congress on a bipartisan basis, under current law USMI estimates that the number of taxpayers utilizing the provision has decreased. Data from the Joint Committee on Taxation ("**JCT**") bears out this hypothesis.

For example, in its analysis of the estimated revenue effects of the Bipartisan Budget Act of 2018, the JCT estimated that the one-year revenue cost for MI Deduction would be $1.079 billion—which is in-line with the JCT's customary estimate of the one-year revenue cost of the provision.[1] This cost was associated only with the retroactive extension of the MI Deduction for tax year 2017, and thus, under current law the provision is expired for tax years 2018 and beyond.

In contrast to the revenue estimate for the Bipartisan Budget Act of 2018, in its analysis of the tax provisions expiring in 2017, the JCT provided an estimate of the revenue cost of extending the MI Deduction permanently, and between federal fiscal year's 2019 and 2025, the cost ranged from roughly around $500 to $600 million, per year.[2] Beginning in fiscal year 2026, the cost estimate of making the provision permanent increases, with a cost of $801 million in fiscal year 2026, and a cost of $1.4 billion for fiscal year 2027.[3]

Further, in its most recent estimate of the one-year revenue cost of extending the MI Deduction for the 2018 tax year, the JCT estimates that the provision would reduce federal revenues by $453 million.[4] As evidenced by the reductions in the JCT's estimates for the revenue cost of extending the MI Deduction (e.g., comparing those made at the end of 2018 for 2018 those made with respect to 2017), the number of taxpayers utilizing the provision under current law is less than the number that utilized it previously.

This result is at-least in part a reflection of the state of current law, where many itemized deductions have been temporarily suspended through tax year 2025, and the standard deduction has effectively been doubled for this same period. Doubling the standard deduction and suspending many itemized deductions was estimated by the JCT to significantly reduce the number of taxpayers who itemize their deductions, and with respect to the MI Deduction its current estimates of the revenue impact of the provision bear this fact out.

"Piggyback" Mortgages

In contrast to the MI Deduction, current law still allows an itemized deduction for a competing product, specifically, for interest paid with respect to Piggyback Second Liens. For borrowers who do not have sufficient funds to make a 20 percent down-payment on the purchase of a home, the only options that are generally available are to take out a mortgage for the entire balance of the home (*i.e.*, the portion for which they cannot make a cash payment) and also acquire mortgage insurance, or to take out a first mortgage for 80 percent of the purchase price, and then take out a second mortgage for the remaining balance of the purchase price (*i.e.*, the remaining portion for which they cannot make a case payment). Under current law, interest paid with respect to this Piggyback Second Lien loan is just as deductible as is the interest paid on the first-lien loan in a Piggyback Mortgage structure.

Thus, between these two competing products, current tax law favors Piggyback Mortgages. This is obviously inequitable, but is even a worse policy choice when considering the fact that recent studies

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[1] STAFF OF THE J. COMM. ON TAX'N, 115TH CONG., ESTIMATED BUDGET EFFECTS OF THE REVENUE PROVISIONS CONTAINED IN THE "BIPARTISAN BUDGET ACT OF 2018", JCX-4-18, at 2 (Feb. 8, 2018).

[2] STAFF OF THE J. COMM. ON TAX'N, 115TH CONG., FEDERAL TAX PROVISIONS EXPIRED IN 2017, ESTIMATED REVENUE EFFECTS OF A PROPOSAL TO MAKE PERMANENT CERTAIN REVENUE PROVISIONS EXPIRED IN 2017, SCHEDULED FOR A PUBLIC HEARING BEFORE THE COMM. ON WAYS AND MEANS ON MAR. 14, 2018, JCX-5-18, app. tbl. at 2 (Feb. 8, 2018).

[3] *Id*.

[4] STAFF OF THE J. COMM. ON TAX'N, 115TH CONG., ESTIMATED BUDGET EFFECTS OF THE REVENUE PROVISIONS CONTAINED IN THE H. AMEND. TO THE S. AMEND. TO H.R. 88 SCHEDULED FOR CONSIDERATION BY THE H. OF REP., JCX-82-18, at 2 (Nov. 29, 2018).

conducted by the Federal Reserve,[5] Joint Center for Housing Studies of Harvard University,[6] and Promontory Financial Group[7] have all concluded that Piggyback Mortgages are risky loan products that perform poorly and "have historically experienced higher lifetime rates of severe delinquency than insured mortgages."[8] During the financial crisis, many homeowners had negative experiences with Piggyback Mortgages because the Piggyback Second Lien often had either an adjustable rate or significantly higher fixed rate than the primary loan, and also because the two-loan structure made it very difficult – if not impossible – for homeowners to receive loan modifications or workouts that would enable them to stay in their homes. Even today, many Piggyback Mortgages have characteristics like these that can be harmful to consumers. Not surprisingly, the Consumer Financial Protection Bureau ("**CFPB**") currently warns consumers regarding the potential negative outcomes from Piggyback Mortgages, which it concludes may not be the cheaper alternative to a traditional mortgage with mortgage insurance that they are marketed to be.

In short, the tax preference provided by current law to Piggyback Mortgages is not only unfair, but also inadvisable from a tax- or housing-policy standpoint.

The legislative change proposed in **Annex B**, coupled with the elimination of the MI Deduction, would rectify this imbalance. USMI encourages Congress to give such changes serious consideration, and particularly to consider how its policy choices with respect to the MI Deduction would impact the relative parity between mortgage insurance and similar products.

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[5] CHRISTOPHER J. MAYER, KARREN M. PENCE, AND SHANE M. SHERLUND, FEDERAL RESERVE BOARD, DIVISION OF RESEARCH & STATISTICS AND MONETARY AFFAIRS, FINANCE AND ECONOMICS DISCUSSION SERIES, THE RISE IN MORTGAGE DEFAULTS (November 2008), https://www.federalreserve.gov/pubs/feds/2008/200859/200859pap.pdf.

[6] Eric S. Belsky and Nela Richardson, J. Center for Housing Studies of Harv. U., *Understanding the Boom and Bust in Nonprime Mortgage Lending* (September 2010), https://www.jchs.harvard.edu/sites/default/files/ubb10-1.pdf.

[7] Promontory Financial Group, Assessing the Delinquency and Default Risk of Insured and Non-Insured High LTV Mortgages (July 15, 2011), https://www.promontory.com/uploadedFiles/Articles/Insights/Larson%20-%20Assessing%20the%20Delinquency%20and%20Default%20Risk%20of%20Insured%20and%20Non-Insured%20High%20LTV%20Mortgages.pdf.

[8] *Id*. at 17.

ANNEX B: Potential Legislative Change

SEC. 1. CERTAIN ADDITIONAL INDEBTEDNESS.

(a) IN GENERAL.—Section 163(h)(3)(B) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

> (iii) ADDITIONAL LIMITATION.—In the case of taxable years beginning after December 31, 2017, and before January 1, 2026, such term shall not include any indebtedness incurred after [date of enactment], if such indebtedness—
>
> > (I) is incurred with and to finance the same acquisition (or to refinance the same indebtedness) as other indebtedness that is incurred as part of such transaction and which is secured by the qualified residence, and
> >
> > (II) does not have priority (within the meaning of such term as used in section 6323) over such other indebtedness.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2017.

Attached is a letter from the U.S. Mortgage Insurers ("USMI") to the Members of the Senate Finance Committee's task force on individual, excise, and other expiring policies that addresses one of the "tax extender" provisions being considered by the Finance Committee on such task force.

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I would be interested in providing assistance for the task force to examine the individual, excise, and other expiring policies. Please let me know how I can be of assistance.

Sincerely,

Kurt J Konek, CPA
515-238-5276

Sent from my iPad

Prince William Sound RCAC
Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage: 3709 Spenard Road / Suite 100 / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523
In Valdez: P.O. Box 3089 / 130 South Meals / Suite 202 / Valdez, Alaska 99686 / (907) 834-5000 / FAX (907) 835-5926

June 10, 2019

Sen. Charles E. Grassley, Chair
Sen. Ron Wyden, Ranking Member
Sen. Pat Roberts, Member
Sen. Robert Menendez, Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Subject: Reinstating the Application of the Financing Rate for the Oil Spill Liability Trust Fund and Setting a Floor and Ceiling for the Fund

Dear Senator Grassley, Senator Wyden, Senator Roberts, and Senator Menendez:

On behalf of the members of the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC or the Council), we would like to express our appreciation to the Senate Finance Committee for its consideration of a provision to reinstate the application of the Oil Spill Liability Trust Fund (OSLTF or the Fund) financing rate (sec. 4611) with a floor and ceiling for the Fund in legislation that the committee is working on at this time.

Certain information on the chronology of the OSLTF was included in the Joint Committee on Taxation's document JCX-22-19, "Background Related to Certain Temporary and Disaster Relief Tax Provisions," dated May 16, 2019.

The members of the PWSRCAC believe that such a provision warrants strong support from across the United States because of the key role that the OSLTF plays in helping the nation to respond quickly and effectively to major oil spills that may happen in any state.

By way of background and introduction, in the wake of the Exxon Valdez oil spill in 1989, Congress passed on a strongly bipartisan basis an authorization for the establishment of citizen monitoring and advisory organizations in Alaska to help fight complacency and other factors that contributed to the conditions that led to that environmentally and economically devastating oil spill. The PWSRCAC is one of the citizen organizations authorized by Public Law 101-380 (104 Stat. 484), the Oil Pollution Act of 1990 ("OPA 90").

The PWSRCAC is comprised of citizens representing communities and organizations that were adversely affected by the Exxon Valdez oil spill and have widely varying interests and responsibilities including: Alaska cities of Kodiak, Cordova, Valdez, Homer, Whittier, Seward and Seldovia; the boroughs of Kodiak Island and the Kenai Peninsula; Alaska Native organizations- Chugach Alaska Corporation, Port Graham Corporation, the Community of Tatitlek and the Community of Chenega; commercial fishing and aquaculture; oil spill region coalition of environmental organizations including the Alaska Center for the Environment, Alaska Marine Conservation Council, Alaska

Forum for the Environmental Responsibility, Cook Inletkeeper, Copper River Watershed Project, Kachemak Bay Conservation Society, Kodiak Audubon Society and Prince William Sound Keeper; the state Chamber of Commerce; and the Kodiak Village Mayors Association.

In its advisory role, the PWSRCAC monitors actions and relevant policies of industry and government regulators and offers both its assessment and advice based on the experience of its membership and the institutional memory the Council has gained over its nearly 30 years of existence and work, through in-house and contracted research and study helping to prevent another major oil spill in Prince William Sound and the Kodiak Archipelago.

As part of the PWSRCAC's mission, the organization meets with and provides its views to the oil and oil tanker industries serving the Valdez oil terminal, relevant federal and state regulatory agencies, as well as from time to time, the Alaska congressional delegation and other representatives of congressional committees of the U.S. House of Representatives and the United States Senate on issues regarding preventing and responding to oil spills.

Authorized in 1986 and funded in 1990 following the Exxon Valdez oil spill, the OSLTF is an essential resource to ensure that the federal government has the ability to respond immediately to oil spills in all 50 states. The Fund has played a pivotal role in helping to respond to all major oil spills across the nation since its inception, including the 2010 Deepwater Horizon oil spill in the Gulf of Mexico.

In 2017, and again in 2018, the PWSRCAC provided recommendations to the Alaska Congressional delegation and others within Congress on ways to improve the OSLTF for the benefit of Alaska and the rest of the nation. Most of these recommendations were included in the bill S. 865 introduced by Sen. Dan Sullivan and Sen. Lisa Murkowski in the 116th Congress. The recommendations were developed after consulting with current and former representatives of government agencies responsible for implementing provisions of the OSLTF as well as representatives of affected industries and all organizations that comprise the PWSRCAC. Although this Council believes all of the recommendations, including those providing funding for greater oil spill ***prevention*** efforts, are in the best interest of the nation and should be enacted soon, the essential recommendations for your committee's consideration are the reinstatement of the application of the OSLTF financing rate of 8 cents per barrel collected at the refineries and the establishment of a $5 billion floor and a $7 billion ceiling for the Fund.

This approach with a floor and ceiling would provide for the financing rate to be suspended when the Fund reaches the upper limit of $7 billion and to remain suspended until such time that the size of the Fund drops below the $5 billion floor. This would ensure that the OSLTF will always remain of sufficient size to support a vigorous and effective federal response to major oil spills anywhere in the nation.

As an organization that has spent almost the past three decades working on behalf of the public's interest in seeking to help prevent any further oil spills in Prince William Sound and the Gulf of Alaska and responding to them quickly and effectively if they occur, we believe that your committee's passage and the enactment of legislation to reinstate the application of the OSLTF financing rate, along with establishing the proposed floor and ceiling limits, would be a historic contribution to protecting marine and terrestrial environments in all 50 states by ensuring there will always be adequate federal resources to help prevent and respond to major oil spills.

Sincerely,

Donna Schantz
Executive Director

Robert Archibald
President

Enclosures: (1) Letter from the PWSRCAC to the Alaska Congressional Delegation, dated November 9, 2017
(2) Joint letter from the PWSRCAC and the Cook Inlet Regional Citizens Advisory Council to Sen. Dan Sullivan, cc to Sen. Lisa Murkowski and Rep. Don Young, dated November 20, 2018

cc: Rep. Richard E. Neal, Chair
Rep. Kevin Brady, Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Sen. Roger Wicker, Chair
Sen. Maria Cantwell, Ranking Member
Sen. Dan Sullivan, Chair, Subcommittee on Security
Sen. Ed Markey, Ranking Member, Subcommittee on Security
Committee on Commerce, Science and Transportation
United States Senate
Rep. Peter DeFazio, Chair
Rep. Sam Graves, Ranking Member
Rep. Don Young, Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Sen. Lisa Murkowski, Chair
Sen. Joe Manchin, Ranking Member
Committee on Energy and Natural Resources
United States Senate

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Regional Citizens' Advisory Council / *"Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."*

In Anchorage: 3709 Spenard Road / Suite 100 / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523
In Valdez: P.O. Box 3089 / 130 South Meals / Suite 202 / Valdez, Alaska 99686 / (907) 834-5000 / FAX (907) 835-5926

November 9, 2017 ***Corrected Copy***

Hon. Don Young
U.S. House of Representatives
2314 Rayburn House Office Bldg
Washington, DC 20515

Hon. Lisa Murkowski
United States Senate
522 Hart Senate Office Bldg
Washington, DC 20510

Hon. Dan Sullivan
United States Senate
702 Hart Senate Office Bldg
Washington, DC 20510

Subject: Support for Congressional Efforts to Reauthorize the Financing Rate for the Oil Spill Liability Trust Fund

Dear Congressman Young, Senator Murkowski and Senator Sullivan:

This is in follow up to our discussions about one of the matters that representatives of the Prince William Sound Regional Citizens' Advisory Council (Council) discussed with you and your office staffs several months ago during the annual visit by our Council's representatives to Washington DC. The primary matter is the continuation and viability of the Oil Spill Liability Trust Fund (OSLTF), whose financing rate is scheduled to expire at the end of next month.

Additionally, there are several draft OSLTF provisions in the enclosure to this letter that would substantially improve the effectiveness of the operations of the Fund and its beneficial effect on communities and states prior to, and in the event of, a major oil spill.

As you know, the OSLTF is the primary federal source of funding for oil spill response and clean up across the nation, and it ensures compensation for oil spill damages, including damages to natural resources. It is absolutely vital to ensuring that government agencies are prepared to respond to a major oil spill in Alaska and anywhere else within the United States, and its health and adequate funding are of prime importance to people in all 50 states.

In response to your requests for input on the OSLTF from the Council, we are submitting the attached draft provisions for your consideration and for the consideration of your colleagues in the House and Senate. These draft provisions are based on discussions with you and your professional staff members as well as staff members from several congressional committees of jurisdiction. They also reflect past discussions with officials of the U.S. Coast Guard, the National Pollution Funds Center, and the Interagency Coordinating Committee on Oil Pollution Research and a former head of the NPFC.

As you know, the financing rate of 9 cents per barrel collected at the refineries expires at the end of 2017 unless extended by statute. And, although the OSLTF is currently at a healthy level, we all know from past experience that it would not take but a couple of major accidents to deplete the fund and put people and their livelihoods, natural resources, and the environment at great risk.

To prevent the OSLTF from dropping to a level of funding that cannot adequately respond to major oil spills, as occurred in 2005, we are recommending that the attached legislative provisions *be enacted prior to the end of this year*. As you will recall, Senator Ted Stevens was strongly committed to reauthorizing the financing rate after it had expired, and in 2005, he and the rest of the Alaska Congressional delegation and other Members of Congress were able to reinstate the financing rate.

By way of overview, the key objectives of the attached draft language are summarized below:

1. Re-authorize the ***financing rate*** which is currently 9 cents per barrel collected at the refinery;
2. Set an ***upper and lower limit*** of the size of the Fund at $6 billion and $5 billion respectively;
3. Raise the ***single incident*** funding limit to $2 billion;
4. Eliminate the limit on ***emergency fund advances*** permitted by the Coast Guard and allow for multiple advancements to be made from the Fund, with reporting to Congress, and not to exceed the $2 billion per incident cap;
5. Authorize $100 million annually to the states ***for prevention*** activities and programs.

Considering the devastatingly harmful impacts of major oil spills on communities, regions, states and our nation, the ability of the federal government to have the necessary resources to prevent, respond to, and clean up after major oil spills is an imperative. Therefore, we are submitting to you as you requested and support your seeking to have the attached draft legislative provisions considered, amended as may be needed, and included in legislation that will be enacted before the end of 2017.

We would like to express this Council's appreciation of your support of the work of the Council as citizens promoting environmentally safe operation of the Alyeska Pipeline marine terminal in Valdez and the oil tankers that use it. This work, with the support of the Alaska Congressional delegation over the years, has helped to keep Alaska's marine and terrestrial habitats, fish, wildlife and plants that inhabit those habitats, as well as the thousands of livelihoods dependent upon them, as safe as possible from the enormous harm that can be caused by major oil spills.

The Council stands ready to provide additional information that you may need and to assist you in whatever way may be helpful to achieve the enactment of the enclosed legislative provisions which would be of such great benefit to Alaska and to the rest of the United States.

Sincerely,

Donna Schantz
Executive Director

Amanda Bauer
President

Enclosure: Draft Legislative Provisions re: Oil Spill Liability Trust Fund

<u>**Draft Legislative Provisions re: Oil Spill Liability Trust Fund**</u>
November 6, 2017

Sec.______ Oil Spill Prevention and Response through the OSLTF

(a) Continuation of Transfers to the Oil Spill Liability Trust Fund. In Title 26 of the Internal Revenue Code, Chapter 38, Subchapter A, Section 4611(f)(1), strike "(1)", strike "Except as provided in paragraph (2), the " and insert in lieu thereof "The", and strike "(2) Termination The Oil Spill Liability Trust Fund ("OSLTF" or "Fund") financing rate shall not apply after December 31, 2017.")

(b) OSLTF Capacity and Application of Financing Rate. To increase the capacity of the Oil Spill Liability Trust Fund so as to help ensure that adequate resources are available to fund the federal response to two major oil spills simultaneously anywhere in the United States and to fund all annual authorized expenses from the OSLTF, in Title 26 of the Internal Revenue Code, Chapter 38, Subchapter A, Section 4611 (f)(1), strike "2,000,000,000" and insert in lieu thereof "5,000,000,000. The application of such financing rate shall continue until the unobligated balance in the Fund is greater than $6,000,000,000, at which time the financing rate shall be temporarily suspended until the unobligated balance in the Fund is less than $5,000,000,000, at which time the financing rate shall become applicable again. These lower and upper Fund balance limits shall be adjusted every 5 years thereafter based upon the Consumer Price Index and upon notice published in the Federal Register."

(c) Oil Spill Single Incident Funding Limit. In recognition that oil spills are today capable of exceeding the current single incident authorized funding limit, the maximum amount which may be paid from the Oil Spill Liability Trust Fund [26 USC 9509(c)(2)(A)] with respect to any single incident is hereby changed to $2,000,000,000 and, with respect to natural resource damage assessments and natural resource damage claims in connection with any single incident, the maximum amount which may be paid from the Fund is hereby changed to $1,000,000,000. Any expenditures from the fund that are reimbursed by the responsible party will not count against these funding limits for any single incident. These incident limits shall be adjusted every 5 years thereafter based upon the Consumer Price Index and upon notice published in the Federal Register.

(d) Access to the OSLTF Emergency Funds. In 33 U.S.C 2752(b), strike "Exceptions" and all that follows and insert in lieu "Exceptions - Subsection (a) of this section shall not apply to section 1006(f), 1012(f), 1012(a)(4) or 5006, and shall not apply to an amount not to exceed $50,000,000 with respect to any fiscal year which the President may make available from the Fund to carry out section 311(c) of the Federal Water Pollution Act, as amended by this Act, and to initiate the assessment of natural resources damages required under section 1006. To the extent that such amount is not adequate, the Coast Guard may obtain one or more advances from the Fund as may be necessary, up to a maximum of $100,000,000 for each advance, with the total amount of advances not to exceed amounts available under section 9509(c)(2) of title 26 of the Internal Revenue Code of 1986, and within 30 days after each advance, and annually until repayment of such advances are completed, shall report to Congress the amount advanced and the facts and circumstances necessitating, supporting, and justifying the advance. Amounts advanced shall be repaid to the Fund when, and to the extent that, removal costs are recovered from responsible parties for the discharge or substantial threat of discharge. Sums to which this subsection applies shall remain available until expended. The report to Congress shall be made to the Senate Committee on Commerce, Science and Transportation and the Senate Committee on Finance, and to the House Committee on Transportation and Infrastructure and the House Committee on Ways and Means."

(e) Oil Spill Prevention Program. For the purpose of preventing oil spills and thereby assisting in reducing hereafter the need for expenditures from the Fund over time, $100,000,000 from the Fund is authorized without further congressional action, to be made available with respect to any fiscal year for grants to be awarded annually by the U.S. Department of Homeland Security, in coordination with the National Oceanic and Atmospheric Administration, to States with marine oil terminal and transportation facilities, that submit to and have approved by the Department, oil spill proposed prevention activities and programs that the Department determines have substantial merit and potential to help prevent oil spills. Of the amount authorized in this subsection, two percent shall be allocated for the Department's administration of this oil spill prevention grant program.

Explanation and Analysis by Subsections:

*(a) The authorization of the application of the financing rate (9 cents per barrel) to fund the OSLTF currently expires at the end of 2017. This subsection would delete the termination date for the OSLTF financing rate applicability and instead rely upon subsection (b) to ensure that the Fund would remain in force with unobligated balances of between $5 billion and $6 billion so as to be able to cover 2 major oil spills contemporaneously and cover the annual authorized expenditures of the Fund. In the GAO report, GAO-15-682, the GAO stated: "**. . . the per barrel oil tax is set to expire in 2017, creating uncertainty with regard to future funding**" and that "**Congress should consider options for sustaining the Fund, as well as the optimal level of funding, to address uncertainty regarding future funding.**" This subsection addresses the GAO recommendation and rectifies the uncertainty of future funding by continuing the authorization of the application of the financing rate for the OSLTF. As discussed in (b), the financing rate would be temporarily suspended and reinstated as the overall size of the OSLTF exceeds or drops below the limits provided in subsection (b).*

*(b) In the above cited GAO report, the GAO also states "**it will be important for Congress to determine what mechanism it would like to rely on to provide sustained funding for the Fund . . . Congress should consider options for sustaining the Oil Spill Liability Trust Fund as well as the optimal level of funding to be maintained in the Fund . . .**" In order to ensure that the United States has sufficient funds in the OSLTF to allow it to adequately respond to two major oil spills simultaneously anywhere in the United States and to fulfill all other responsibilities and funding needs the Fund has been established to address, the size of the OSLTF is authorized by this subsection to be maintained so as to not be reduced below $5 billion (lower limit) and to not exceed $6 billion (upper limit). To facilitate maintenance of the Fund within these limits, when the Fund exceeds the upper limit, the financing rate would be suspended. When the Fund subsequently drops below the lower limit, the financing rate would be reinstated and would remain reinstated until the Fund again exceeds $6 billion. To allow for the escalation of costs over time, these lower and upper Fund balance limits would be adjusted every 5 years thereafter based upon the Consumer Price Index and upon notice published in the Federal Register.*

(c) Currently, the funding limit from the Fund for any single incident is $1 billion. Considering that the Exxon Valdez oil spill has caused upward of $4 billion in damages and claims and the Deepwater Horizon oil spill is currently projected to reach $62 billion in similar damages and claims, it appears that raising the funding limit to $2 billion for a single incident and raising the amount authorized for natural resource damage assessments and natural resource damage claims in connection with a single incident should be similarly raised from $500 million to $1 billion is reasonable, appropriate and will help effectively respond to major spill incidents, protect lives, protect the marine and terrestrial environments, protect livelihoods, and protect the local, state, regional and

national economies. To allow for the escalation of costs over time, these per incident limits shall be adjusted every 5 years thereafter Register based upon the Consumer Price Index and upon notice published in the Federal.

(d) OPA Section 6002(b) [33 U.S.C 2752(b)] allows the President to access to up to $50 million in annual appropriations for Emergency Funds from the OSLTF to finance the Government (Federal, State, local and Indian Tribe) response to oil pollution incidents. Further, it also allows the President to advance up to an additional $100 million from the OSLTF with notice to Congress. For the Deepwater Horizon (DWH) spill, Section 6002b was amended by emergency legislation to allow for continued funding of the Government response for that incident only, and multiple advances were made for the Emergency Fund using that authority. In order to ensure an uninterrupted Government response during any significant oil spill or simultaneous spills, and eliminate the risk that the Government will not have the needed response capacity when it is needed in the event of future oil spills, or simultaneous spills, the proposed changes would mirror that provided by Congress in the wake of the DWH oil spill and provide that procedure for all future oil spill incidents. It would allow for multiple advancements to be made from the Fund with a report as to the facts, circumstances, supporting information and justification to Congress not to exceed the per incident caps ($2 billion per incident; $1 billion for NRD) that are provided by 26 U.S.C 9509.

(e) The purpose of this subsection is to provide from the OSLTF the amount of $100 million annually in grants to states with marine oil terminals and transportation facilities for oil spill prevention activities and programs. The U.S. Department of Homeland Security, in coordination with the National Oceanic and Atmospheric Administration, would make the determination as to the allocation of such funds to the states in order to achieve the most effective actions and programs to help prevent future oil spills. This provision recognizes that oil spill prevention funding is, in general, far less costly than funding response, clean-up and restoration activities, and that such prevention activities and programs are likely over time to save public funding resources and are, therefore, in the public interest.

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November 20, 2018

Hon. Dan Sullivan
United States Senate
702 Hart Senate Office Building
Washington, D.C. 20510

Subject: Spill Response and Prevention Surety Act

Dear Senator Sullivan:

On behalf of the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) and the Cook Inlet Regional Citizens Advisory Council (CIRCAC), we would like to express to you that both Councils genuinely appreciate, support, and applaud your actions to help prevent and respond to future oil spills in Alaska and throughout the United States as reflected in the draft Spill Response and Prevention Surety Act (SRPSA) that you and your advisors have developed.

As you know, the PWSRCAC and CIRCAC were statutorily authorized in the wake of the 1989 Exxon Valdez Oil Spill (EVOS) which had a profoundly harmful impact on the fish and wildlife, people, environment, and economy of Alaska. Section 5002(b)(3) of Public Law 101-380 (33 U.S.C. 2701), the Oil Pollution Act of 1990 (OPA 90), states that --

> **"Purpose--The Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located South of the latitude at Point Possession and North of the latitude at Amatuli Island, including offshore facilities in Cook Inlet."**

Since enactment of OPA 90, these organizations have worked closely with industry, State and Federal regulators, the Congress, and the public to learn and benefit from the experience of the EVOS so as to help Alaska avoid any future major oil spills.

One of the most meaningful and effective ways to help prevent and respond to major oil spills is to ensure that there is adequate funding for the immediate as well as the long-term sustainability of the Oil Spill Liability Trust Fund (OSLTF). In 2005, Senator Ted Stevens, Senator Murkowski, and Congressman Young with support and assistance of the Councils worked to obtain the statutory reinstatement of the OSLTF financing rate that had terminated. In part, as a result of such termination and drawdown on the Fund, the OSLTF was in serious jeopardy of not being able to fulfill its mission. The Congress with leadership from the Alaska Congressional Delegation, who had lived through a major oil spill, took action with their colleagues in Congress to reinstate the financing rate and thereby help ensure that the OSLTF would be adequately funded.

The members of the two Councils are very pleased that the SRPSA incorporates a number of the recommendations that the Councils have considered along with the Alaska Congressional Delegation over the past few years. By establishing a ceiling and a floor for the unobligated Fund balances of the OSLTF and a mechanism automatically metering the financing rate, the SRPSA would prudently secure continuous adequate funding for the OSLTF and would as a result substantially enhance the capabilities of the OSLTF to prevent and respond to oil spills quickly and effectively. Also, we agree with your decision to drop the provision in the draft bill that would have exempted exported oil from the application of the current OSLTF financing rate.

Other notable features of the SRPSA that both Councils believe will be extremely helpful to the operation of the OSLTF are that the bill would: (1) authorize cost of living adjustments for the Fund floor and ceiling in order to make certain that the funding levels do not become obsolete due to the effects of inflation; (2) eliminate the limit on emergency fund advances from the OSLTF principal fund permitted by the Coast Guard to respond to spills; (3) allow for multiple advances to the emergency fund subject to a cap and reporting to Congress; (4) double the single incident funding cap to $2 billion; (5) double the natural resource damage claim cap to $1 billion; (6) establish a ***prevention*** grant program to be financed by interest earnings and other sources of revenue to the Fund; and (7) reform the review and Fund dispersal process to improve efficiency.

In response to your, Senator Murkowski's, and Congressman Young's request for suggestions about potential State activities, projects, and programs that would be constructive and feasible uses of OSLTF ***prevention grant program funding***, we have included in the enclosure to this letter a list of such activities, projects and programs for possible use by the Secretary of the Department of Homeland Security in evaluating oil spill prevention activities, projects, and program applications from the states.

In developing this list, the Councils sought comments from the stakeholders within the two Councils as well as other stakeholders, including the Pacific States British Columbia Oil Spill Task Force; Nuka Research and Planning Group; the Alaska Department of Environmental Conservation; the State of Washington's Department of Ecology and others.

We appreciate this opportunity to offer the enclosed comments and recommendations on the draft SRPSA for your review and consideration as you, the other members of the Alaska Congressional Delegation, and your other colleagues work to enact the SRPSA as soon as that can be achieved.

We will be standing by to respond to any questions or requests for further information that may be helpful to you, and to otherwise assist, as the SRPSA goes through the legislative process toward what the diverse membership of both Councils hope will be enactment of this landmark and legacy legislation that is so important to Alaska and to the rest of the United States.

Sincerely,

Michael Munger
Executive Director
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Donna Schantz
Donna Schantz
Executive Director
Prince William Sound
Regional Citizens' Advisory Council
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Enclosure: Comments and Recommendations on the SRPSA

cc: Rep. Don Young
Sen. Lisa Murkowski
PWSRCAC and CIRCAC Board of Directors and Member Organizations

Comments and Recommendations by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) and the Cook Inlet Regional Citizens Advisory Council (CIRCAC) on the draft Spill Response and Prevention Surety Act

November 20, 2018

The following are comments and recommendations regarding the draft Spill Response and Prevention Surety Act language.

1. OIL SPILL PREVENTION GRANT PROGRAM

a. The bill would amend the Oil Pollution Act of 1990 by adding a new Section 4119 which creates the Oil Spill Response and Prevention Grant Program. Section (b) entitled "Establishment" states that the "Secretary shall ***annually*** award grants to eligible entities.....". Section (e) entitled "Funding", subsection (1) states that $20,000,000 shall be available, without further appropriation, ***biennially***, to carry out the grant program.....".

Recommendation: Amend the title of the program to the "Oil Spill Prevention Grant Program" ("OSPGP") so as to ensure the focus of the program is on Prevention, as an essential complement to the programmatic rationale for the OSLTF which is oil spill response. Also, clarify the bill language to avoid possible confusion between the grant award cycle and the timing for transferring funds from the OSLTF to the OSPGP.

b. Section (d) entitled "Required Coordination," subsection (1), provides that the Secretary shall coordinate with the Interagency Coordinating Committee on Oil Pollution Research (ICCOPR) to prioritize and award grants and to ensure alignment with the principal objectives established in the Oil Pollution Research and Technology Plan. The PWSRCAC and the CIRCAC believe that while ICCOPR is a logical and outstanding group to review *research grants,* and provide recommendations to the Secretary on oil spill research as it does currently, it would not be an appropriate entity to advise on *non-research* **prevention** grants. For those, other offices within federal agencies would be very appropriate and capable of helping to advise the Secretary upon request.

Recommendation: Amend the draft bill to clarify that the Secretary has the authority to seek and receive recommendations from other relevant federal agencies to assist the Secretary in evaluating grant awards for **prevention** activities, projects, and programs and ICCOPR where such activities, projects, and programs are oil pollution research but **prevention** related.

c. Section (e) entitled "Funding," subsection (1) provides that $20,000,000 shall be available, without further appropriation, biennially, to carry out the grant program.....". The intent of this section and the establishment of the OSPGP is highly meritorious and has great potential to positively impact oil spill **prevention**. However, in the Council's opinion, $20 million every two years ($10 million a year), is inadequate to yield a substantial positive impact on preventing oil spills. From experience, oil spill prevention is far less expensive by comparison than oil spill response *after* a spill; for industry, government, and the public. Therefore, allocating adequate resources toward **prevention** is one of the *best investments* the U.S. can make to avoid the harm and expense to people, their lives and livelihoods, the environment, and to the economy.

Recommendation: Change the amount available *biennially* for the Oil Spill Prevention Grant Program to $60 million so that up to $30 million *annually* could be granted to the states for **oil spill prevention** and **prevention-related** response activities, projects, and programs for grant applications approved by the Secretary.

2. INFLATION PROOFING

The section of the bill entitled "Fund Financing Rate" on page nine, contains Section 2 entitled "Inflation Adjustment." This section provides for cost of living adjustments to the floor and ceiling of the unobligated Fund balance. The two Councils support inflation proofing in order to keep pace with the real costs of responding to oil spills. However, the Councils recommend that inflation proofing also be applied to other components of the bill, including the limits on single incident and natural resource damage claim payouts and the biennial limit on funding for the Prevention Grant Program. By including such inflation proofing, the Congress would reduce or eliminate the need for legislation to adjust such figures in the future.

Recommendation: Include inflation proofing adjustments every four (4) years for all OSLTF components including the limits on single incident and natural resource damage claim payouts and the biennial limit on funding for the Oil Spill Prevention Grant Program.

3. LISTING OF POTENTIAL OIL SPILL PREVENTION GRANT PROGRAM ACTIVITIES, PROJECTS, AND PROGRAMS

The following is a listing of potential activities, projects, and programs recommended for consideration by the federal government for providing funding support to states from the OSLTF for an oil spill prevention grant program.

The input the PWSRCAC and the CIRCAC sought and received from a diverse group of agencies and stakeholders was categorized into six broad areas as shown below. OSLTF funding could be used to encourage and support oil spill prevention activities, projects, and programs by the states: inspections and evaluations, equipment and technology upgrades, training, contingency planning, risk assessment and studies, and abandoned and derelict vessel identification, remediation, and removal.

a. Inspections and Evaluations:

(1) Testing of marine terminal and transportation facility secondary containment systems.
(2) Periodic reviews of best available oil spill prevention technology and equipment.
(3) Evaluation of national and international Best Available Technology (BAT) and Best Management Practices (BMP) at marine terminal and oil transportation facilities.
(4) In support of BAT and BMP reviews, funding for state personnel to attend technical conferences, hire experts, host conferences, research specific technology improvements, and publish results for use by industry and regulators.

b. Equipment and Technology Upgrades:

(1) Upgrade and/or provide additional vessel emergency tow packages to key areas around the states.
(2) Provide additional response equipment caches around the states to protect environmentally sensitive areas.
(3) Use of analytic tools to tailor response capacity. For example, if there is a response gap because of certain factors in an area, making sure equipment stockpiles are the most fit-for-purpose technology to deal with the response limits.
(4) New technology and equipment demonstration projects or pilot programs to benefit oil spill prevention.

c. Training:

(1) Upgrade and promote optimal use of spill prevention and response training facilities like the AVTEC Marine Vessel Simulator in Seward, AK.
(2) Training for states to ensure compliance with American Petroleum Institute (API) marine terminal and secondary containment system and piping and tank system inspection, maintenance, and repair standards.
(3) Training state staff on corrosion mitigation techniques.
(4) Review corrosion mitigation plans currently used by industry and to inform and make recommendations for improvements aimed at preventing oil spills.
(5) Training for state staff in pipeline inspection technology, equipment, and methods and/or hire experts to assist in reviewing pipeline inspection plans currently used by industry to inform and make recommendations on improvements aimed at preventing oil spills.
(6) Support state outreach initiatives such as home heating oil tank maintenance and risks and additional research on proper storage and maintenance of those tanks to prevent oil spills.
(7) Educating tank truck companies on safety procedures and mitigating the risk of (i.e., preventing) oil spills through state-sponsored public forums.

d. Contingency Planning:

(1) Expand the State of Alaska's Geographic Response Strategy (GRS) Program to better identify and protect additional environmentally sensitive areas from oil spills.

(2) Support for states to conduct and participate in additional oil spill prevention exercises and inspections of prevention devices and equipment.

(3) Strategic plans to assist states in prioritizing and remediating aging bulk oil storage and transportation infrastructure to help prevent oil leaks/spills.

e. Risk Assessment/Oil Spill Prevention and Studies:

(1) Funding for risk assessments on bulk oil facilities, vessels, and pipelines to identify and address areas of concern.

(2) Vessel traffic analyses that occur with some regularity to inform understanding of overall ship movements and potentially changing patterns or risks.

(3) Support Harbor and/or Waterway Safety Committees to bring together key stakeholders in oversight roles.

(4) Building better information/data management systems and sharing across coastal states (U.S.-wide) so that cross-boundary risks and patterns can be assessed and best prevention management practices can be shared.

(5) Support for improved methods or increased organizational capacity to capture and leverage near miss information (i.e., British Columbia Coastal States Task Force). This data could be used to inform human factors related casualty incidents and identify ways to mitigate risks and prevent reoccurrence.

(6) A formal vessel risk assessment study to determine and document the current and forecasted increase in Arctic/Alaska vessel traffic and analyze the potential for oil spills.

(7) A study to determine and document the logistical challenges and inherent difficulties with launching and sustaining an effective oil spill response in remote locations.

(8) Support for robust state agency involvement in Waterway and Harbor Safety Committees responsible for identifying and reducing port and harbor vulnerabilities and maritime risks including vessel casualties and oil spills.

f. Abandoned and Derelict Vessel and Facility Identification, Remediation, and Removal:

(1) Assist states with the removal, remediation, and destruction of pre-identified abandoned and derelict vessels prior to them becoming a hazard to the communities they are left in and the environment.

(2) Support for additional Class 2 Facility Inspections and/or the development of an abandoned facility inventory in an effort to identify and prioritize risk to aid in preventing oil spills.

(3) Technical assistance and training via in person and telephonic engagement with facilities which is critical for oil spill prevention, especially in rural facilities.

Recommendation: That the language of the bill reflect that the primary purpose of the section is oil spill **prevention**. The primary focus of the OSLTF has been and is oil spill response and clean-up. The PWSRCAC and the CIRCAC believe that because of the historic focus of the OSLTF on oil spill response, the prevention grant program should be aimed at encouraging greater efforts by the states to prevent oil spills. Also recommend incorporating by reference the above list of activities, projects, and programs in the legislative history of the SRPSA. Such a list could then be utilized by the Secretary and the states and may be considered in applications to the Secretary from states for grants from the OSLTF that the Secretary determines would be directly beneficial to the prevention of oil spills, to include oil spill response activities, projects, and programs, if they would have a primary and distinct benefit to the prevention of oil spills.

INDIVIDUAL, EXCISE & OTHER EXPIRING POLICIES
Contact: Individual&Excise&Other_Taskforce@finance.senate.gov

To: **Senator Pat Roberts (R-KS), Co-Lead**
Senator Robert Menendez (D-NJ), Co-Lead
Senator Steve Daines (R-MT)
Senator Maggie Hassan (D-NH)

From: Donna Schantz, Executive Director, Prince William Sound Regional Citizens' Advisory Council

Subject: Reinstating the Application of the Financing Rate for the Oil Spill Liability Trust Fund (OSLTF), and setting a Floor and Ceiling for the Fund

In response to our organization's submission of the attached letter with enclosures, it was suggested to us by Mr. PJ Austin to respond to several questions which we answer below as follows:

> **Provision you are writing in about:** Reinstating the application of the financing rate for the Oil Spill Liability Trust Fund (OSLTF) while setting a floor and ceiling for the Fund.
>
> **Name of organization:** Prince William Sound Regional Citizens' Advisory Council (Council) (authorized by Public Law 101-380 in 1990 in the wake of the Exxon Valdez oil spill).
>
> **Geographic footprint of organization:** Alaskan communities and organizations that were adversely affected by the 1989 Exxon Valdez oil spill (EVOS), including those representing aquaculture, commercial fishing, environmental groups, Alaska Native communities, cities and boroughs, recreation and tourism, and the State Chamber of Commerce. The geographic footprint of our organization spans most of the Exxon Valdez oil spill area…. the area roughly 600 miles long by 145 miles wide or about 87,000 square miles. That area is approximately equivalent to the combined area of the states of Maryland, South Carolina and Mississippi. An estimated thirteen hundred miles of coastline were affected by the 1989 EVOS.
>
> **Position on short-term and/or permanent extension of provision, or whether it should be left to expire permanently:** Council recommends the permanent reinstatement of the application of the OSLTF financing rate in a way that the collection of the rate of 8 cents a barrel at the refinery would automatically be temporarily suspended when the Fund reaches $7 billion and would remain suspended until the Fund drops below $5 billion, at which time the financing rate would be automatically reinstated. This approach would ensure that the Fund always will have adequate funds to respond to and deal with at least two major oil spills at the same time anywhere in the nation, including its territories and commonwealths.

Policy and economic justification for the request: Originally established in 1986, the Oil Spill Liability Trust Fund was first funded through enactment of the Oil Pollution Act of 1990 (OPA 90). The OSLTF is intended to ensure that the federal government has the ability to respond immediately to oil spills in all 50 states as well as the territories and commonwealths of the U.S. However, as was the case in 2005 when the financing rate had been terminated, the Fund dropped to such a low amount as to not be able to effectively respond to even one major oil spill with no clear time frame when the financing rate would be reinstated.

The OSLTF needs to be funded so that it can help support expenditures that are able to contribute to the prevention of oil spills. And, when a major oil spill occurs, the federal government needs to be prepared to respond rapidly and with adequate equipment and manpower and funding resources at any location around the nation to contain such a spill and begin cleaning up the spill and at the same time trying to identify the responsible party or parties. The adverse economic impact on a community, region and state grows rapidly during such an oil spill so the sooner that the spill is contained, the less impact it will have on the economy of the region. It is appropriate policy therefore of the U.S. to have a viable and robust OSLTF to support prevention and response and clean-up imperatives related to oil spills anywhere in the United States and its territories and commonwealths.

Proposal(s) for expansion or modifications to the provision: Council recommends first and foremost the reinstatement of the financing rate of 8 cents per barrel of oil collected at the refineries. Additionally, as a pragmatic refinement to the OSLTF, the Council recommends the designation within the Fund of a $5 billion floor and a $7 billion ceiling for the Fund.

This approach would provide for the financing rate to be automatically suspended when the Fund reaches the upper limit of $7 billion and for the financing rate to remain suspended until such time that the size of the fund drops below the $5 billion floor at which time the financing rate would be automatically reinstated. This would ensure that the OSTLF will always remain of sufficient size to support a vigorous and effective federal response to major oil spills anywhere in the nation.

Miscellaneous considerations related to the provision (i.e., other provisions in the code that interact with the provision that should be considered): N/A

If there are further questions, please let me know and we will do our best to respond to them.

Also, if it would be possible, we would be most appreciative of the opportunity to meet with anyone on the Finance Committee regarding the OSLTF provision as the Committee considers this request.

Thank you for your assistance and consideration.

Donna Schantz
Executive Director
Prince William Sound Regional Citizens' Advisory Council
130 S. Meals, Suite 202
P.O. Box 3089
Valdez, AK 99686
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The Walt Disney Company

June 12, 2019

Senate Finance Committee Task Force on Individual, Excise & Other Expiring Policies
Senator Pat Roberts, Co-Lead
Senator Robert Menendez, Co-Lead
219 Dirksen Senate Office Building
Washington, DC 20510
by email: Individual&Excise&Other_Taskforce@finance.senate.gov

Dear Senators:

Since 2006, section 954(c)(6) (the "Look-Through Rule") has allowed U.S.-based companies to conduct their foreign operations in a commercially efficient manner. Under the Look-Through Rule, dividends, interest, rents, and royalties that are paid out of the active foreign earnings of a foreign subsidiary to a related foreign subsidiary are treated as active income and thus are not included as taxable passive income of the U.S. parent company (under Subpart F of the Internal Revenue Code).

Since its original enactment in 2006, the provision has been extended multiple times with broad bipartisan support of Congress and under Republican and Democratic presidents.[1] The Look-Through Rule was most recently extended through December 31, 2019, as part of the "Protecting Americans from Tax Hikes" (PATH) Act of 2015.

Public Law 115-97 (commonly referred to as the "Tax Cuts and Jobs Act of 2017," or "TCJA") made significant changes to the U.S. international tax system that were intended to enhance the global competitiveness of U.S. businesses and the U.S. economy. Under TCJA, the United States moved to a dividend exemption system, which provides for a 100-percent dividends received deduction for dividends paid from a foreign subsidiary to its U.S. parent. TCJA also enacted many provisions to increase protection of the U.S. tax base, including limitations on net interest expense, a new tax on global low-taxed intangible income ("GILTI"), the base erosion anti-avoidance tax (BEAT), and anti-hybrid rules.[2]

As discussed below, notwithstanding TCJA, retention of the Look-Through Rule remains critically important to permit U.S.-headquartered companies to conduct their foreign operations in a commercially efficient manner.

[1] The Look-Through Rule has been in effect since 2006, with extensions in 2008, 2010, 2013, 2014, and 2015 occurring under both Democratic and Republican majorities of the House and Senate. As an example of its bipartisan support, when the Look-Through Rule was last facing expiration the Obama Administration proposed that it be made permanent. (*See* "General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals," February 2015.)
[2] TCJA did not modify the Look-Through Rule. Prior to the conference agreement on H.R. 1, both the House and Senate versions of the legislation would have made the Look-Through Rule permanent.

Dividends. Dividend exemption systems in other countries allow active foreign earnings to be repatriated through a chain of foreign subsidiaries to the ultimate parent company without home country tax. While this was the intent of TCJA, as drafted, the dividends received deduction only applies to dividends paid directly to U.S. shareholders and not between related foreign affiliates. As a result, absent corrective Treasury regulations or Technical Corrections, the Look-Through Rule would be required for a properly functioning dividend exemption system that does not block the repatriation of active foreign earnings of lower tier foreign subsidiaries. Failure to exempt payments of dividends between related foreign subsidiaries would once again leave foreign earnings of U.S. companies "locked out" from the United States.

Interest. Most global companies establish centralized treasury operations to provide in-house cash management functions, including accepting deposits from foreign affiliates with excess cash, lending to other affiliates with cash needs, and managing foreign exchange rate risk. Such operations allow companies to finance their global operations more efficiently. In addition internal debt financing may be advantageous due to currency and regulatory restrictions, which impose greater restrictions on payments of dividends and return of capital than on interest and repayment of principal. For many reasons (e.g., functional currency issues, location of personnel with expertise in foreign laws and regulations), these treasury centers are typically established as foreign subsidiaries. In the absence of the Look-Through Rule, related-company interest received by a foreign subsidiary providing treasury operations would be subject to current taxation at the 21-percent U.S. corporate tax rate. Such a tax (or the required restructuring to avoid the tax) would raise the cost of capital and would make U.S. companies less competitive.

Importantly, due to TCJA, interest income excluded from Subpart F under the Look-Through Rule is included in tested income under GILTI and therefore taxed at a minimum rate of 10.5 percent (increasing to 13.125 percent after 2025). As a result, post-TCJA, the Look-Through Rule no longer results (and if extended would not result) in exclusion from current U.S. taxable income.[3] In addition, to address concerns over *foreign* tax base erosion, countries in the OECD, European Union, and others participating in the OECD project on Base Erosion and Profit Shifting (BEPS) have implemented "thin cap" rules to prevent the use of debt to artificially transfer profits from one jurisdiction to another.

Royalties. Royalty payments arise from the licensing of intellectual property ("IP"). In addition to self-created IP of a foreign subsidiary, whenever a U.S. company acquires a foreign target, that target's global IP will be owned outside the United States. In many cases it is not practical for U.S. companies to relocate foreign-held IP to the United States. For example, many countries impose significant exit taxes on distribution of IP. In these circumstances, the non-U.S. tax costs associated with an outright transfer of IP from a foreign affiliate to the United States would be prohibitive. In other cases, foreign countries effectively require IP to be owned by a local company (e.g., for national security or for other reasons).

[3] Under pre-TCJA law, income excluded from Subpart F under the Look-Through Rule could be deferred from U.S. tax indefinitely. Under TCJA, the reduction in Subpart F income due to the Look-Through Rule increases tested income that is used to determine GILTI by a like amount. U.S. tax on GILTI may be offset by 80 percent of foreign taxes paid, while U.S. tax on Subpart F inclusions may be offset by 100 percent of foreign taxes paid.

The foreign-derived intangible income ("FDII") and GILTI provisions of TCJA seek to provide neutral tax treatment for IP held in the United States or abroad by U.S. global companies. Nevertheless, U.S. companies will continue to have extensive IP ownership in foreign affiliates. Absent the Look-Through Rule, U.S. parent companies would be subject to current U.S. tax on royalties paid between their foreign affiliates under Subpart F. This would adversely affect the competitiveness of U.S. global companies and impose an added cost for U.S. companies seeking to acquire foreign targets with valuable IP.

Since enactment of TCJA, royalty income excluded from Subpart F under the Look-Through Rule (as with interest income described above) is included in tested income under GILTI. As with interest income, post-TCJA, the Look-Through Rule no longer results in exclusion from current U.S. taxable income.

* * *

In summary, the Look-Through Rule remains essential to the efficient operation of U.S. global businesses. As U.S. businesses succeed abroad, they add jobs at home. We urge the Senate Finance Committee to make the Look-Through Rule permanent to maintain and promote the competitiveness of U.S. companies in the global economy.

Sincerely,

Alliance for Competitive Taxation

cc: Senator Steve Daines
Senator Maggie Hassan
Chairman Charles Grassley
Ranking Member Ron Wyden

Good Afternoon,

Please see the attached letter on the Look-Through Rule from the Alliance for Competitive Taxation to the Senate Finance Committee Task Force on which you serve examining expiring tax provisions.

Allison Street
Washington | +1 (703) 638 9575
PricewaterhouseCoopers LLP
pwc.com

Dear Senators Roberts, Menendez, Daines and Hassan,

The more than 112 independent craft breweries in the state of Missouri would appreciate your consideration in making the FET recalibration permanent.

Please see the attached letter of support from our Guild.

Thank you.

Sherry Wohlgemuth
Executive Director
Missouri Craft Brewers Guild
PO Box 7713
Columbia MO 65205
(573) 824-2935
www.mocraftbeer.com

MISSOURI
CRAFT BREWERS GUILD

P.O. Box 7713
Columbia MO 65205
573.824.2935

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Missouri Craft Brewers Guild, and the 112 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
- 39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Missouri help to employ more than 8,100 people and generate more than $1.2 billion in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended – to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Sherry Wohlgemuth

Sherry Wohlgemuth, Executive Director

The Honorable Pat Roberts
The Honorable Robert Menendez
The Honorable Steve Daines
The Honorable Maggie Hassan

On behalf of the Texas Craft Brewers Guild and the 300 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

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- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Craft breweries in Texas help to employ approximately 30,000 people and generate more than $5.28 Billion in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Charles Vallhonrat
Executive Director
Texas Craft Brewers Guild
Charles@texascraftbrewersguild.org

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Kentucky Guild of Brewers and the 69 licensed breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
- 39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Kentucky help to employ 1,000 people and generate more than $650,000,000 in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Derek Selznick
Executive Director
Kentucky Guild of Brewers

Louisiana Craft Brewers Guild

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Louisiana Craft Brewers Guild, and the 34 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
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- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Louisiana help to employ 400 people and generate more than $734M in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

W. Cary Koch

Cary Koch
Executive Director
Louisiana Craft Brewers Guild

MINNESOTA
CRAFT BREWERS GUILD

The Honorable Pat Roberts
The Honorable Steve Daines
The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Minnesota Craft Brewers Guild, and the 170+ breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent—has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

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Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Minnesota help to employ approximately 4500 people and generate more than $2.1 billion in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries are using the money saved from reduced FET the way it was intended—to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Lauren Bennett McGinty
Executive Director
Minnesota Craft Brewers Guild

NH Brewers Association
PO Box 2216
Concord, NH 03302

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the New Hampshire Brewers Association, and the 78 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

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Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in New Hampshire help to employ over 3900 people and generate more than $353 million in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

CJ White
Executive Director
New Hampshire Brewers Association

The Honorable Pat Roberts
The Honorable Robert Menendez
The Honorable Steve Daines
The Honorable Maggie Hassan

Dear Senators:

We want to thank you, Chairman Grassley and Ranking Member Wyden for undertaking a bipartisan examination of temporary tax provisions that have expired or will expire by December 31, 2019. As representatives of America's winemakers, brewers, distillers, cideries and beverage importers, we are in full agreement that the extension of tax incentives designed to stimulate job growth and investment must be dealt with ahead of their expiration dates or they will not continue to function as originally intended.

These are precisely the circumstances both small and large beverage alcohol producers now face with respect to the Craft Beverage Modernization and Tax Reform Act (CBMTRA), which was enacted as a two-year provision of the Tax Cuts and Jobs Act of 2017. It is scheduled to expire at the end of 2019. We are grateful that each of the senators co-chairing this Task Force, is a cosponsor of S. 362, the Wyden-Blunt bill to make CBMTRA permanent. It's also remarkable that 60 of your Senate colleagues have already joined in cosponsoring as well.

We would like to address several key questions about these craft beverage provisions recently raised by staff assisting the Task Force on Individual, Excise & Other Expiring Policies.

Original Purpose. The CBMTRA was principally designed to reduce the extraordinarily high federal excise taxes (FET) paid by all alcohol producers and importers. The tax reduction was geared to provide the most relief at relatively low levels of production as a way of generating extra funds for investment in new capacity, local tourist facilities and jobs. The tax cuts, together with modernized regulations, have unquestionably contributed to the growth and competitiveness of distillers, brewers, vintners and cider makers of all sizes. (Examples?)

Unintended Consequences. There were unanticipated difficulties with the implementation of the new FET rules as they apply to beverage importers, but these obstacles have been overcome through close collaboration between the U.S. Treasury's Alcohol Tax and Trade Bureau (TTB), Customs and Border Patrol officials and industry participants. A system was devised to enable the agencies to verify the identity and business activity of importers with much greater certainty than existed under previous systems.

An additional unintended consequence of the act is directly attributable to the temporary nature of the tax provision itself. Instead of aggressively moving forward with expansion plans as they did in Year One, producers are now unsure if the FET cuts will be made permanent in Year Two, or if they will be allowed to expire, causing huge tax increases instead. The jobs that have already been gained, as well as the supply contracts with local farmers, can manufacturers and glass bottle plants, are hanging in the balance.

The Case for Extension or Permanence. Beverage alcohol FET was, and still is, one of the highest consumer goods taxes in America. The modest reduction resulting from enactment of CMBTRA has succeeded in energizing economic activity in the industry, right down to the local level in virtually every state. Brewers have expanded production and enhanced their taprooms; spirits makers are buying new stills and expanding purchases of locally-grown grains; wineries are opening tourist facilities that boost the local employment; and cider makers are innovating and bringing new products to market. While the official revenue estimate for 2018 was $1.6 billion, the actual revenue cost came in at a much more modest $532 million according to TTB tax collection records. We believe this tax incentive is doing exactly what it was designed to do at a cost far less expensive than expected.

Thank you for soliciting our views and supporting our bill. Please contact any of the organizations endorsing this letter for further information about the impact of extending the craft beverage tax act in your state.

Best regards,

American Craft Spirits Association
Beer Institute
Brewers Association
Distilled Spirits Council
Wine America
Wine Institute
United States Association of Cider Makers

June 14, 2019

The Honorable Pat Roberts
The Honorable Robert Menendez
U.S. Senate Committee on Finance
The Individual, Excise, and Other Expiring Policies Temporary Tax Policy Task Force
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators:

In your capacity as members of a bipartisan Senate Finance Committee task force on expired and expiring provisions, the undersigned trade associations which represent all states across the nation, are writing to you in support of making permanent, or at least extending for as long as possible, the CFC look-through rule contained in Internal Revenue Code Section 954(c)(6). This exception to the subpart F rules is critical to our ability to compete in foreign markets.

A permanent CFC look-through rule is essential to a competitive international tax system because it facilitates the ability of foreign subsidiaries of American companies to efficiently fund their foreign operations by allowing active business income earned outside the United States to move from one country to another without incurring full and immediate U.S. taxation. This policy helps U.S. companies compete globally.

For a number of reasons, including eliminating the lock-out effect that caused many U.S. companies to leave foreign earnings offshore rather than utilizing those earnings to create jobs in the United States, the TCJA sought to move the United States closer to a territorial tax system. Therefore, current law allows a portion of foreign active business earnings of controlled foreign corporations of U.S. companies (CFCs) to be repatriated to the U.S. parent tax-free.

However, the TCJA retained the subpart F rules of prior law that impose full U.S. tax (at a 21% rate) currently if the income is passive or highly mobile. The TCJA also created a separate category of income, called global intangible low taxed income (GILTI), which is generally comprised of most or all of a CFC's income except its subpart F income. Foreign earnings subject to the GILTI provisions are taxed at a lower U.S. corporate rate of 10.5% (as opposed to the full 21% U.S. corporate rate). In the Senate Finance Committee's explanation of its version of the TCJA, the Committee recognized that "taxing that income at the full U.S. corporate tax rate may hurt the competitive position of U.S. corporations relative to their foreign counterparts." *See* Senate Finance Explanation at page 365.

Section 954(c)(6) is an exception to subpart F that was enacted in 2006 as a temporary provision and has been renewed numerous times with bipartisan support; it is currently authorized through 2019. The rule generally excludes payments of dividends, interest, rents, and royalties between U.S.-owned foreign subsidiaries in different countries from subpart F treatment, provided the payments are attributable to active business income. While the CFC look-through rule excepts these payments from full U.S. taxation at 21%, they would still be subject to the GILTI provisions.

The TCJA made essential updates to the U.S. international tax regime, most importantly encouraging U.S. companies to bring foreign earnings home to the United States. While it left the subpart F regime in place, it failed to make permanent the exception from subpart F income under the CFC look-through rule. As a result, after 2019, earnings that are redeployed from a CFC in one country to a CFC in another country will generally be subject to an immediate 21% US corporate tax rate.

The CFC look-through rule recognizes that there should be no U.S. tax penalty under subpart F when American companies redeploy foreign capital among their foreign subsidiaries. This policy remains a necessary piece of a competitive international tax system for the same reasons it was enacted prior to the TCJA.

If the CFC look-through rule expires this year, American companies will face additional U.S. tax costs that will inhibit their ability to redeploy active foreign earnings where they are most efficiently utilized. The CFC look-through rule should be made permanent or, at a minimum, extended. To allow the CFC look-through rule to expire would be a giant step backwards by adding tax costs for U.S. companies when seeking to best serve customers in global markets.

Regards,

American Chemistry Council
American Forest and Paper Association
American Petroleum Institute
Financial Executives International
Information Technology Industry Council
National Association of Manufacturers
National Foreign Trade Council
Semiconductor Industry Association
Silicon Valley Leadership Group
Silicon Valley Tax Directors Group
Software Finance and Tax Executives Council
TechNet
U.S. Chamber of Commerce
United States Council for International Business

cc: The Honorable Charles Grassley
The Honorable Ron Wyden
The Honorable Steve Daines
The Honorable Maggie Hassan

American
Fuel & Petrochemical
Manufacturers

1800 M Street, NW
Suite 900 North
Washington, DC
20036

June 14, 2019

The Honorable Pat Roberts
109 Hart Senate Office Building
Washington, DC 20510

The Honorable Robert Menendez
528 Hart Senate Office Building
Washington, DC 20510

RE: The Oil Spill Liability Trust Fund (OSLTF) Excise Tax

Dear Senator Roberts and Senator Menendez:

The American Fuel & Petrochemical Manufacturers (AFPM) is a trade association representing high-tech American manufacturers of virtually the entire U.S. supply of fuels and home heating oil, as well as the petrochemicals used as building blocks for thousands of vital products in daily life. AFPM members make modern life possible and keep America moving and growing as they meet the needs of our nation and local communities, strengthen economic and national security, and support over three million American jobs.

We are submitting comments today to the Senate Finance Committee's bipartisan taskforce on Individual, Excise, & Other Expiring Policies regarding the Oil Spill Liability Trust Fund (OSLTF) excise tax. Section 4611 of the Internal Revenue Code imposes an excise tax on crude oil and imported petroleum products, the resulting revenue is deposited into the OSLTF as a source of funds for federal responses to potential oil spills.

We are writing today because the OSLTF excise tax expired on December 31, 2018. We request that if reinstated, such reinstatement commence as of the first day of the month following enactment to a provide adequate time for the Internal Revenue Service and industry to accurately restart the tax collection processes, as has been done with prior OSLTF excise tax reinstatements.

As the taskforce considers this excise tax, we ask for the opportunity to visit with the group and discuss our views on its expiration. More specifically, we ask that the taskforce look to provide certainty to the industry not only as it relates to the OSTFL, but any other matters impacting AFPM's members that come before the group.

Additionally, we ask that AFPM be included in any discussions the taskforce may have regarding potential modifications to the tax.

We very much appreciate the opportunity to provide our perspective on the OSLTF excise tax. We look forward to working with members of the taskforce to provide the industry more certainty regarding the tax's status in 2019.

If you have additional questions, please feel free to contact Justin Sykes at jsykes@afpm.org, and we would be happy to meet with the task force to talk further about this important issue.

CC: Senate Finance Committee Chairman Chuck Grassley
Senate Finance Committee Ranking Member Ron Wyden
Senator Steve Daines
Senator Maggie Hassan

6/14/19

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Maine Brewers' Guild and the 140+ breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
- 39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

On the following page, I've highlighted specific examples of the specific ways Maine breweries from around the state have used the FET recalibration from the 2018 reduction in FET. As you'll see - it led directly to reinvestment in capital equipment, hiring more staff/ creating jobs, support local agriculture, and increasing benefits offered to brewery employees.

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Maine help to employ more than 1900 people and generate more than $260,000,000 in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Sean M. Sullivan
Executive Director, Maine Brewers' Guild

p.s.
The Maine Brewers' Guild asked our members, "How did you spend the savings from the 2018 Federal Excise Tax recalibration?" Here are their answers:

2 Feet Brewing (Bangor, Maine)
- "We reinvested every penny into our brewpub."

Atlantic Brewing (Bar Harbor, Maine)
- "We at Atlantic Brewing have used the tax savings to hire a new fulltime production person. In addition, have made several capital improvements including new floors, new kegs and a new pump. If the FET was made permanent, we would continue to reinvest in our company and our state."

Bigelow Brewing (Skowhegan, Maine)
- "We hired additional staff for canning our beer."

Bissell Brothers (Portland, Maine)
- "We opened up a second location in Milo, Maine. We would never have been able to open our second location in Maine's poorest area (our home area) which operates on very different margins, and still invest in the beer, experience, and of course making sure our employees are properly compensated, without savings like these. It's the right thing for beer in Maine to make sure all areas have access to the best the state has to offer."

Fogtown Brewing Company (Ellsworth, Maine)
- "Emboldened by the savings, our brewery has committed to using at least 80% Maine-grown grain in all beers. This is a more expensive, but local option."

Foundation Brewing (Portland, Maine)

- “We are five years old and have 18 employees. We implemented a Simple IRA in 2018 with the help of our excise tax savings that includes a 3% company match. Even though our health insurance premiums have increased 20-25% every year since we started offering insurance to our employees in 2015, we were able to not pass along the full impact of that increase to our employees because of the help from the lower excise tax rate. We were able to redirect almost $15k in excise tax savings to our employees and reinvestment in our business in 2018.”

Funky Bow Brewery (Lyman Maine)
- “Tax cuts allowed us to hire more staff, buy more equipment for the brewery and taproom, and put a salesperson on the road in different states.”

Gneiss Brewing Company (Limerick, Maine)
- “The tax cut came at a time when Gneiss was expanding during 2018, the savings were able to be appropriated to other costs during this time of transition and scaling up.”

Liberator Brewing Company (Rockland, Maine)
- “We used the tax cuts to help with staff salaries and buy local Ingredients to support the local economy.”

Lake St. George Brewing (Liberty, Maine)
- “We were able to give to our local low income community, which in turn solidifies our spot as a community gathering place. Most recently, during a fundraiser for the Waldo County Woodshed hosted at our brewery by state Senator Erin Herbig, we were able to donate $1 per pint sold to the Woodshed. Earlier in the winter, we were able to donate to both of our local food pantries.”

Lone Pine Brewing Company (Portland, Maine)
- “In 2018, we expanded our brewery production 4x, hired more staff, and offered healthcare to all employees.”

Lubec Brewing Company (Lubec, Maine)
- “We reinvested the money in local agriculture: paid a premium price to local hops producer who in turn were able to buy heating oil to get through the winter. Every penny saved on taxes goes right back in to our local economy.”

Maine Beer Company (Freeport, Maine)
- “We used the tax savings to increase jobs and employee benefits.”

Mason's Brewing Company (Brewer, Maine)
- “The tax cuts helped us cover some of the effects from the impact of the tariffs on stainless steel.”

Mast Landing Brewing Company (Westbrook, Maine)
- “We used the tax savings to invest in Staff Training, QA/QC equipment, and safety equipment.”

North Haven Brewing Company (North Haven Island, Maine)
- “We are a very small brewery in a very small island town. Every cent saved helps our bottom line. These tax cuts helped us offer far more in per/hr wage to our tasting room staff.”

Orono Brewing Company (Orono, Maine)

- "We created new full time manufacturing jobs, grew the brewery substantially, and purchased and revitalized a blighted 10,000sf shuttered concrete plant for our brewery expansion."

Penobscot Bay (Winterport, Maine)

- "Because of the tax cut we were able to hire a new employee for our tasting room."

Sasanoa Brewing Company (Westport Island, Maine)

- "The tax cut has helped us in starting up this year, a small but important reduction in our expenses."

Tributary Brewing Co. (Kittery, Maine)

- "The reduction in excise taxes helped to offset our health insurance costs for employees."

Two Gramps Brewing (Gardiner, Maine)

- "We hired more staff, five of our 15 employees first job."

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the New York State Brewers Association, and the 443 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
- 39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in New York State help to employ 20,000 people and generate more than $5.4 billion (according to our 2018 economic impact study) in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Paul Leone
Executive Director, New York State Brewers Association

ROY BLUNT
MISSOURI

CHAIRMAN, REPUBLICAN POLICY COMMITTEE

260 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510–2508
202–224–5721

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
APPROPRIATIONS

COMMERCE, SCIENCE
AND TRANSPORTATION

RULES AND
ADMINISTRATION,
CHAIRMAN

SELECT COMMITTEE
ON INTELLIGENCE

June 14, 2019

The Honorable Pat Roberts
United States Senator
109 Hart Senate Office Building
Washington, DC 20510

The Honorable Bob Menendez
United States Senator
528 Hart Senate Office Building
Washington, DC 20510

Dear Senators Roberts and Menendez,

Thank you for the work you have undertaken as Co-Leads of the Finance Committee's Taskforce on Individual, Excise and Other Expiring Policies. Finding long-term solutions to these temporary tax policies is an important goal, both to achieve the desired benefits of those policies as well as to increase the efficiency of our policymaking process.

With those goals in mind, I am writing to advocate for S. 362, the *Craft Beverage Modernization and Tax Reform Act (CBMTRA) of 2019*, introduced by Senator Wyden [D-OR] with my support as the Republican co-lead. This legislation would permanently enact tax changes passed as part of the Tax Cuts and Jobs Act (TCJA) in 2017 and enjoys overwhelming bipartisan support in the Senate, with 64 current cosponsors. The bill's House counterpart, H.R. 1175, led by Representative Ron Kind [D-WI], currently has 226 cosponsors.

The lowering of the federal excise tax in the TCJA has led to strong nationwide growth for breweries, wineries, and distilleries. According to the Brewers Association, the small and independent brewing industry – which employs over 150,000 Americans – saw its annual job growth rate rise from 5,000 employees per year to 15,000 per year. The legislation also allowed those breweries to invest in new equipment and brewing spaces, increase benefits for their employees, and increase their charitable giving. The brewing, wine, and spirits industries employ more than 5.43 million people combined, both directly and indirectly.

Unfortunately, the excise tax provisions in the TCJA only extend through December 31, 2019. If these provisions are not made permanent, on January 1, 2020 the brewing, wine, and spirits industries will see a federal excise tax hike that could reverse the growth that was spurred by the TCJA. Brewers who produce fewer than two million barrels annually would see their tax rate *double* to $7 per barrel on the first 60,000 barrels. Large breweries, those producing more than two million barrels annually, would see an increase from $16 per barrel to $18 on the first six million barrels.

In addition, wine producers would see their current tax credits disappear, resulting in a higher total excise tax, between $1.07 and $3.40 per gallon of wine. CBMTRA would maintain a tiered credit system, similar to the one enacted in the 2017 law. The tax credit would be $1.00 per gallon for the first 30,000 gallons, $0.90 for the next 100,000 gallons, and $0.535 for the next 620,000 gallons.

The distilled spirits industry is also set to lose the tax benefits that were passed as part of the TCJA. Distilled spirits are typically taxed at a rate of $13.50 per gallon. Under CBMTRA, distilleries would have a permanent reduced tax rate of $2.70 per gallon for the first 100,000 gallons of distilled spirits produced or imported. That rate would rise to $13.34 per proof gallon for the next 22,130,000 gallons and then $13.50 for any excess over 22,230,000.

Additionally, CBMTRA simplifies various federal regulations, including tax treatment of aging wine, spirits, and other products. The bill also simplifies bookkeeping for brewers, expands the list of automatically-approved beer ingredients, expands flexibility for winemaking, and eases restrictions to transfer products between production facilities. Moreover, the Alcohol and Tobacco Tax and Trade Bureau would receive additional funding to accelerate approvals of labels and ingredient lists, increase fair marketplace enforcement, and implement the provisions of this act.

Beyond the direct benefits for the craft beverage industry, a permanent enactment of this legislation would also positively impact rural development and promote growth in agriculture. Farmers and growers benefit from increased demand for row crops, including wheat, barley, hops, rice, and rye, as well as grapes and other fruits that are used in the craft beverage industry. For this reason, CBMTRA is supported by the American Farm Bureau Federation.

If the excise tax provisions of the TCJA are permitted to expire, we may see a reversal of the economic growth and progress made by companies since its passage. Unlike other temporary tax policies, where the effect of a lapse may not be felt until tax filing season of the following year, the effects of a change in the excise tax will have immediate business consequences because many beverage alcohol producers are required to file taxes on a semi-monthly basis.

I therefore respectfully ask your support for CBMTRA to give the craft brewers, vintners, cider makers, and distillers the certainty they need to maintain the increased investments they have been able to make in their businesses since the TCJA so that they can continue to hire, grow, and produce their products.

Sincere regards,

Roy Blunt

Roy Blunt
United States Senator

SOUTH CAROLINA BREWERS GUILD

June 14, 2019

VIA Email at Individual&Excise&Other_Taskforce@finance.senate.gov
The Honorable Steve Daines
The Honorable Maggie Hassan
The Honorable Robert Menendez
The Honorable Pat Roberts
Individual, Excise and Other Expiring Policies Task Force
Washington, DC 20510

Dear Senators,

On behalf of the South Carolina Brewers Guild and the 84 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration, which lowered excise taxes for small and independent brewers, permanent. Small and independent breweries are an economic engine across our state and nation, and we need to help them continue to thrive.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

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- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in South Carolina help to employ 4,862 people and generate more than $780 million in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Brook

Brook Bristow
Executive Director

Business Roundtable

June 17, 2019

Senate Finance Committee Task Force on Individual, Excise & Other Expiring Policies
Senator Pat Roberts, Co-Lead
Senator Robert Menendez, Co-Lead
219 Dirksen Senate Office Building
Washington, DC 20510

By email: individual&excise&other_taskforce@finance.senate.gov

RE: Look-Thru Rule for Related Controlled Foreign Corporations under IRC § 954(c)(6)

Dear Senators:

Business Roundtable urges Congress to make permanent the Section 954(c)(6) look-thru rule for related controlled foreign corporations (Look-Thru Rule). The Look-Thru Rule has received broad bipartisan support since enactment in 2006, and it remains crucial to sustaining the ability of U.S. companies to compete globally.

The 2017 tax law aligned the United States with other territorial tax systems in exempting from domestic tax active foreign earnings remitted as a dividend. Yet in the absence of the Look-Thru Rule, when active foreign earnings are remitted through a chain of foreign subsidiaries, U.S. parent companies could be burdened with additional tax costs compared to non-U.S. companies.

The Look-Thru Rule is also needed to ensure that U.S. companies are not made uncompetitive due to interest or royalties received from their foreign subsidiaries. It is common for U.S. parent companies to provide treasury services to foreign subsidiaries and to utilize debt to finance foreign operations. It is also common for U.S. companies to create or acquire intellectual property (IP) around the world, as when a U.S. company acquires a foreign business and its existing IP. Absent the Look-Thru Rule, U.S. parent companies with such financing or IP arrangements among their foreign subsidiaries would be placed at a competitive disadvantage.

The Look-Thru Rule remains an important provision to sustain the competitiveness of U.S. companies, and Business Roundtable urges Congress to make the provision permanent.

Yours sincerely,

Joshua Bolten

Joshua Bolten
President & CEO
Business Roundtable

"The mission of the Council is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet."

June 13, 2019

Sen. Charles E. Grassley, Chair
Sen. Ron Wyden, Ranking Member
Sen. Pat Roberts, Member
Sen. Robert Menendez, Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Subject: Reinstating the Application of the Financing Rate for the Oil Spill Liability Trust Fund and Setting a Floor and Ceiling for the Fund

Dear Senator Grassley, Senator Wyden, Senator Roberts, and Senator Menendez:

On behalf of the members of Cook Inlet Regional Citizens Advisory Council (CIRCAC), we would like to thank the Senate Finance Committee for your work on the Oil Spill Liability Trust Fund (OSLTF or the Fund). In particular, we appreciate the Committee's consideration of a provision to reinstate the application of the Fund financing rate (sec. 4611) with a floor and ceiling for the Fund in legislation that the Committee is working on at this time. CIRCAC believes that such a provision warrants strong support from across the United States because of the critical role that the OSLTF plays in helping the nation to respond quickly and effectively to significant oil spills that may happen in any state.

Specific historical information of the OSLTF is included in the Joint Committee on Taxation's document JCX-22-19, "Background Related to Certain Temporary and Disaster Relief Tax Provisions," dated May 16, 2019.

By way of introduction, CIRCAC is a federally mandated citizens' organization formed under the Federal Oil Pollution Act of 1990 (OPA90). Our mission is to represent the citizens of Cook Inlet in promoting environmentally safe marine transportation and oil facility operations in Cook Inlet. In pursuing this mandate, the Council strives to help protect Cook Inlet's environment, fisheries, economic vitality, cultural resources, and recreational interests.

As Cook Inlet's citizens' representative, we work closely with regulators, industry, and affected communities in the Cook Inlet region to help prevent future oil spills through promoting prevention, response, operations, and safety measures. Additionally, we actively monitor Cook Inlet's marine and shoreline environments for potential impacts of ongoing industrial activities, to provide detailed information to inform future decisions and gather extensive data for baseline studies, among other things.

Our 13-member volunteer Board of Directors represents those interests and communities which were adversely impacted by the 1989 oil spill, including Alaska Native, Environmental, Recreation, Tourism, and Commercial Fishing groups; Aquaculture Associations, the Municipality of Anchorage, Cities of Kodiak, Kenai, Homer, and Seldovia; the Kenai Peninsula Borough and Kodiak Island Borough.

*Cook Inlet Regional Citizens Advisory Council * 8195 Kenai Spur Hwy, Kenai, AK 99611-8033*
*Phone: (907) 283-7222 * Fax (907) 283-6102 * www.circac.org*

As part of CIRCAC's mission, the organization meets with and provides its views to the oil and oil tanker industries serving the Cook Inlet area and relevant federal and state regulatory agencies. From time to time, we also communicate our views to the Alaska congressional delegation and other representatives of congressional committees of the U.S. House of Representatives and the United States Senate on issues regarding oil spill prevention and response.

Authorized in 1986 and funded in 1990 following the *Exxon Valdez* oil spill, the OSLTF is an essential resource to ensure that the federal government can respond immediately to oil spills in all 50 states. The Fund has played a pivotal role in helping to respond to all major oil spills across the nation since its inception, including the 2010 Deepwater Horizon oil spill in the Gulf of Mexico.

In 2018, CIRCAC provided recommendations to the Alaska Congressional delegation and others within Congress on ways to improve the OSLTF for the benefit of Alaska and the rest of the nation. Most of these recommendations are in the bill S. 865 introduced by Sen. Dan Sullivan and Sen. Lisa Murkowski in the 116th Congress. We developed the recommendations after consulting with current and former representatives of government agencies responsible for implementing provisions of the OSLTF as well as representatives of affected industries and all organizations that comprise CIRCAC. This Council believes all of the recommendations, including those providing funding for more significant oil spill prevention efforts, are in the best interest of the nation and should be enacted soon. However, the essential recommendations for your Committee's consideration are the reinstatement of the application of the OSLTF financing rate of 8 cents per barrel collected at the refineries and the establishment of a $5 billion floor and a $7 billion ceiling for the Fund.

This approach with a floor and ceiling would provide for the financing rate to be suspended when the Fund reaches the upper limit of $7 billion and to remain suspended until such time that the size of the Fund drops below $5 billion. A floor and ceiling approach ensures that the OSLTF will always stay of sufficient size to support a vigorous and adequate federal response to major oil spills anywhere in the nation.

CIRCAC has spent almost the past three decades working on behalf of the public's interest in helping prevent any further oil spills in Cook Inlet and responding to them quickly and effectively if they occur. We believe that your Committee's passage and enactment of legislation to reinstate the application of the OSLTF financing rate, and establishing the proposed floor and ceiling limits, would be a historic contribution to protecting marine and terrestrial environments in all 50 states, ensuring there will always be adequate federal resources to help prevent and respond to significant oil spills.

Sincerely,

Michael Munger
Executive Director

Enclosures: (1) Joint letter from CIRCAC and the Prince William Sound Regional Citizens Advisory Council to Sen. Dan Sullivan, cc to Sen. Lisa Murkowski and Rep. Don Young, dated November 20, 2018

cc: Rep. Richard E. Neal, Chair
Rep. Kevin Brady, Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Sen. Roger Wicker, Chair
Sen. Maria Cantwell, Ranking Member
Sen. Dan Sullivan, Chair, Subcommittee on Security
Sen. Ed Markey, Ranking Member, Subcommittee on Security
Committee on Commerce, Science and Transportation
United States Senate
Rep. Peter DeFazio, Chair
Rep. Sam Graves, Ranking Member
Rep. Don Young, Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Sen. Lisa Murkowski, Chair
Sen. Joe Manchin, Ranking Member
Committee on Energy and Natural Resources
United States Senate

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COOK INLET RCAC

Regional Citizens' Advisory Council

November 20, 2018

Hon. Dan Sullivan
United States Senate
702 Hart Senate Office Building
Washington, D.C. 20510

Subject: Spill Response and Prevention Surety Act

Dear Senator Sullivan:

On behalf of the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) and the Cook Inlet Regional Citizens Advisory Council (CIRCAC), we would like to express to you that both Councils genuinely appreciate, support, and applaud your actions to help prevent and respond to future oil spills in Alaska and throughout the United States as reflected in the draft Spill Response and Prevention Surety Act (SRPSA) that you and your advisors have developed.

As you know, the PWSRCAC and CIRCAC were statutorily authorized in the wake of the 1989 Exxon Valdez Oil Spill (EVOS) which had a profoundly harmful impact on the fish and wildlife, people, environment, and economy of Alaska. Section 5002(b)(3) of Public Law 101-380 (33 U.S.C. 2701), the Oil Pollution Act of 1990 (OPA 90), states that --

> "Purpose--The Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located South of the latitude at Point Possession and North of the latitude at Amatuli Island, including offshore facilities in Cook Inlet."

Since enactment of OPA 90, these organizations have worked closely with industry, State and Federal regulators, the Congress, and the public to learn and benefit from the experience of the EVOS so as to help Alaska avoid any future major oil spills.

One of the most meaningful and effective ways to help prevent and respond to major oil spills is to ensure that there is adequate funding for the immediate as well as the long-term sustainability of the Oil Spill Liability Trust Fund (OSLTF). In 2005, Senator Ted Stevens, Senator Murkowski, and Congressman Young with support and assistance of the Councils worked to obtain the statutory reinstatement of the OSLTF financing rate that had terminated. In part, as a result of such termination and drawdown on the Fund, the OSLTF was in serious jeopardy of not being able to fulfill its mission. The Congress with leadership from the Alaska Congressional Delegation, who had lived through a major oil spill, took action with their colleagues in Congress to reinstate the financing rate and thereby help ensure that the OSLTF would be adequately funded.

The members of the two Councils are very pleased that the SRPSA incorporates a number of the recommendations that the Councils have considered along with the Alaska Congressional Delegation over the past few years. By establishing a ceiling and a floor for the unobligated Fund balances of the OSLTF and a mechanism automatically metering the financing rate, the SRPSA would prudently secure continuous adequate funding for the OSLTF and would as a result substantially enhance the capabilities of the OSLTF to prevent and respond to oil spills quickly and effectively. Also, we agree with your decision to drop the provision in the draft bill that would have exempted exported oil from the application of the current OSLTF financing rate.

Other notable features of the SRPSA that both Councils believe will be extremely helpful to the operation of the OSLTF are that the bill would: (1) authorize cost of living adjustments for the Fund floor and ceiling in order to make certain that the funding levels do not become obsolete due to the effects of inflation; (2) eliminate the limit on emergency fund advances from the OSLTF principal fund permitted by the Coast Guard to respond to spills; (3) allow for multiple advances to the emergency fund subject to a cap and reporting to Congress; (4) double the single incident funding cap to $2 billion; (5) double the natural resource damage claim cap to $1 billion; (6) establish a ***prevention*** grant program to be financed by interest earnings and other sources of revenue to the Fund; and (7) reform the review and Fund dispersal process to improve efficiency.

In response to your, Senator Murkowski's, and Congressman Young's request for suggestions about potential State activities, projects, and programs that would be constructive and feasible uses of OSLTF ***prevention grant program funding***, we have included in the enclosure to this letter a list of such activities, projects and programs for possible use by the Secretary of the Department of Homeland Security in evaluating oil spill prevention activities, projects, and program applications from the states.

In developing this list, the Councils sought comments from the stakeholders within the two Councils as well as other stakeholders, including the Pacific States British Columbia Oil Spill Task Force; Nuka Research and Planning Group; the Alaska Department of Environmental Conservation; the State of Washington's Department of Ecology and others.

We appreciate this opportunity to offer the enclosed comments and recommendations on the draft SRPSA for your review and consideration as you, the other members of the Alaska Congressional Delegation, and your other colleagues work to enact the SRPSA as soon as that can be achieved.

We will be standing by to respond to any questions or requests for further information that may be helpful to you, and to otherwise assist, as the SRPSA goes through the legislative process toward what the diverse membership of both Councils hope will be enactment of this landmark and legacy legislation that is so important to Alaska and to the rest of the United States.

Sincerely,

Michael Munger
Executive Director
Cook Inlet
Regional Citizens Advisory Council
8195 Kenai Spur Hwy
Kenai, AK 99611-8033
907-283-7222

Donna Schantz
Donna Schantz
Executive Director
Prince William Sound
Regional Citizens' Advisory Council
3709 Spenard Road, Suite 100
Anchorage, AK 99503
907-277-7222

Enclosure: Comments and Recommendations on the SRPSA

cc: Rep. Don Young
Sen. Lisa Murkowski
PWSRCAC and CIRCAC Board of Directors and Member Organizations

Comments and Recommendations by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) and the Cook Inlet Regional Citizens Advisory Council (CIRCAC) on the draft Spill Response and Prevention Surety Act

November 20, 2018

The following are comments and recommendations regarding the draft Spill Response and Prevention Surety Act language.

1. OIL SPILL PREVENTION GRANT PROGRAM

a. The bill would amend the Oil Pollution Act of 1990 by adding a new Section 4119 which creates the Oil Spill Response and Prevention Grant Program. Section (b) entitled "Establishment" states that the "Secretary shall ***annually*** award grants to eligible entities.....". Section (e) entitled "Funding", subsection (1) states that $20,000,000 shall be available, without further appropriation, ***biennially***, to carry out the grant program.....".

Recommendation: Amend the title of the program to the "Oil Spill Prevention Grant Program" ("OSPGP") so as to ensure the focus of the program is on Prevention, as an essential complement to the programmatic rationale for the OSLTF which is oil spill response. Also, clarify the bill language to avoid possible confusion between the grant award cycle and the timing for transferring funds from the OSLTF to the OSPGP.

b. Section (d) entitled "Required Coordination," subsection (1), provides that the Secretary shall coordinate with the Interagency Coordinating Committee on Oil Pollution Research (ICCOPR) to prioritize and award grants and to ensure alignment with the principal objectives established in the Oil Pollution Research and Technology Plan. The PWSRCAC and the CIRCAC believe that while ICCOPR is a logical and outstanding group to review *research grants,* and provide recommendations to the Secretary on oil spill research as it does currently, it would not be an appropriate entity to advise on *non-research* prevention grants. For those, other offices within federal agencies would be very appropriate and capable of helping to advise the Secretary upon request.

Recommendation: Amend the draft bill to clarify that the Secretary has the authority to seek and receive recommendations from other relevant federal agencies to assist the Secretary in evaluating grant awards for prevention activities, projects, and programs and ICCOPR where such activities, projects, and programs are oil pollution research but prevention related.

c. Section (e) entitled "Funding," subsection (1) provides that $20,000,000 shall be available, without further appropriation, biennially, to carry out the grant program.....". The intent of this section and the establishment of the OSPGP is highly meritorious and has great potential to positively impact oil spill prevention. However, in the Council's opinion, $20 million every two years ($10 million a year), is inadequate to yield a substantial positive impact on preventing oil spills. From experience, oil spill prevention is far less expensive by comparison than oil spill response *after* a spill; for industry, government, and the public. Therefore, allocating adequate resources toward prevention is one of the *best investments* the U.S. can make to avoid the harm and expense to people, their lives and livelihoods, the environment, and to the economy.

Recommendation: Change the amount available *biennially* for the Oil Spill Prevention Grant Program to $60 million so that up to $30 million *annually* could be granted to the states for oil spill prevention and prevention-related response activities, projects, and programs for grant applications approved by the Secretary.

2. INFLATION PROOFING

The section of the bill entitled "Fund Financing Rate" on page nine, contains Section 2 entitled "Inflation Adjustment." This section provides for cost of living adjustments to the floor and ceiling of the unobligated Fund balance. The two Councils support inflation proofing in order to keep pace with the real costs of responding to oil spills. However, the Councils recommend that inflation proofing also be applied to other components of the bill, including the limits on single incident and natural resource damage claim payouts and the biennial limit on funding for the Prevention Grant Program. By including such inflation proofing, the Congress would reduce or eliminate the need for legislation to adjust such figures in the future.

Recommendation: Include inflation proofing adjustments every four (4) years for all OSLTF components including the limits on single incident and natural resource damage claim payouts and the biennial limit on funding for the Oil Spill Prevention Grant Program.

3. LISTING OF POTENTIAL OIL SPILL PREVENTION GRANT PROGRAM ACTIVITIES, PROJECTS, AND PROGRAMS

The following is a listing of potential activities, projects, and programs recommended for consideration by the federal government for providing funding support to states from the OSLTF for an oil spill prevention grant program.

The input the PWSRCAC and the CIRCAC sought and received from a diverse group of agencies and stakeholders was categorized into six broad areas as shown below. OSLTF funding could be used to encourage and support oil spill prevention activities, projects, and programs by the states: inspections and evaluations, equipment and technology upgrades, training, contingency planning, risk assessment and studies, and abandoned and derelict vessel identification, remediation, and removal.

a. Inspections and Evaluations:
(1) Testing of marine terminal and transportation facility secondary containment systems.
(2) Periodic reviews of best available oil spill prevention technology and equipment.
(3) Evaluation of national and international Best Available Technology (BAT) and Best Management Practices (BMP) at marine terminal and oil transportation facilities.
(4) In support of BAT and BMP reviews, funding for state personnel to attend technical conferences, hire experts, host conferences, research specific technology improvements, and publish results for use by industry and regulators.

b. Equipment and Technology Upgrades:
(1) Upgrade and/or provide additional vessel emergency tow packages to key areas around the states.
(2) Provide additional response equipment caches around the states to protect environmentally sensitive areas.
(3) Use of analytic tools to tailor response capacity. For example, if there is a response gap because of certain factors in an area, making sure equipment stockpiles are the most fit-for-purpose technology to deal with the response limits.
(4) New technology and equipment demonstration projects or pilot programs to benefit oil spill prevention.

c. Training:
(1) Upgrade and promote optimal use of spill prevention and response training facilities like the AVTEC Marine Vessel Simulator in Seward, AK.
(2) Training for states to ensure compliance with American Petroleum Institute (API) marine terminal and secondary containment system and piping and tank system inspection, maintenance, and repair standards.
(3) Training state staff on corrosion mitigation techniques.
(4) Review corrosion mitigation plans currently used by industry and to inform and make recommendations for improvements aimed at preventing oil spills.
(5) Training for state staff in pipeline inspection technology, equipment, and methods and/or hire experts to assist in reviewing pipeline inspection plans currently used by industry to inform and make recommendations on improvements aimed at preventing oil spills.
(6) Support state outreach initiatives such as home heating oil tank maintenance and risks and additional research on proper storage and maintenance of those tanks to prevent oil spills.
(7) Educating tank truck companies on safety procedures and mitigating the risk of (i.e., preventing) oil spills through state-sponsored public forums.

d. Contingency Planning:

(1) Expand the State of Alaska's Geographic Response Strategy (GRS) Program to better identify and protect additional environmentally sensitive areas from oil spills.

(2) Support for states to conduct and participate in additional oil spill prevention exercises and inspections of prevention devices and equipment.

(3) Strategic plans to assist states in prioritizing and remediating aging bulk oil storage and transportation infrastructure to help prevent oil leaks/spills.

e. Risk Assessment/Oil Spill Prevention and Studies:

(1) Funding for risk assessments on bulk oil facilities, vessels, and pipelines to identify and address areas of concern.

(2) Vessel traffic analyses that occur with some regularity to inform understanding of overall ship movements and potentially changing patterns or risks.

(3) Support Harbor and/or Waterway Safety Committees to bring together key stakeholders in oversight roles.

(4) Building better information/data management systems and sharing across coastal states (U.S.-wide) so that cross-boundary risks and patterns can be assessed and best prevention management practices can be shared.

(5) Support for improved methods or increased organizational capacity to capture and leverage near miss information (i.e., British Columbia Coastal States Task Force). This data could be used to inform human factors related casualty incidents and identify ways to mitigate risks and prevent reoccurrence.

(6) A formal vessel risk assessment study to determine and document the current and forecasted increase in Arctic/Alaska vessel traffic and analyze the potential for oil spills.

(7) A study to determine and document the logistical challenges and inherent difficulties with launching and sustaining an effective oil spill response in remote locations.

(8) Support for robust state agency involvement in Waterway and Harbor Safety Committees responsible for identifying and reducing port and harbor vulnerabilities and maritime risks including vessel casualties and oil spills.

f. Abandoned and Derelict Vessel and Facility Identification, Remediation, and Removal:

(1) Assist states with the removal, remediation, and destruction of pre-identified abandoned and derelict vessels prior to them becoming a hazard to the communities they are left in and the environment.

(2) Support for additional Class 2 Facility Inspections and/or the development of an abandoned facility inventory in an effort to identify and prioritize risk to aid in preventing oil spills.

(3) Technical assistance and training via in person and telephonic engagement with facilities which is critical for oil spill prevention, especially in rural facilities.

Recommendation: That the language of the bill reflect that the primary purpose of the section is oil spill prevention. The primary focus of the OSLTF has been and is oil spill response and clean-up. The PWSRCAC and the CIRCAC believe that because of the historic focus of the OSLTF on oil spill response, the prevention grant program should be aimed at encouraging greater efforts by the states to prevent oil spills. Also recommend incorporating by reference the above list of activities, projects, and programs in the legislative history of the SRPSA. Such a list could then be utilized by the Secretary and the states and may be considered in applications to the Secretary from states for grants from the OSLTF that the Secretary determines would be directly beneficial to the prevention of oil spills, to include oil spill response activities, projects, and programs, if they would have a primary and distinct benefit to the prevention of oil spills.

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the North Carolina Craft Brewers Guild and the 312 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
- 39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in North Carolina help to employ 12 thousand people and generate more than $2 billion in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Richard Greene
Executive Director
North Carolina Craft Brewers Guild
richard@ncbeer.org
www.NCBeer.org

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Ohio Craft Brewers Association and the 301 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

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Breweries in Ohio help to employ 8,341 people and generate more than $967 million in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Mary MacDonald

Mary MacDonald, Executive Director

To the Individual, Excise and Other Task Force,

On behalf of NEA, I am submitting a one-pager on qualified zone academy bonds (QZABs) for your Task Force's consideration of expired tax provisions that should be extended. Except for last year, QZABs have received a new bonding authority as part of "Tax Extenders" legislation. These bonds are incredibly important for the renovation of our nation's schools. In previous years, the Finance Committee has been bipartisan in its support of extending, and sometimes expanding, QZABs.

We respectfully request that your Task Force recommend to the Chairman and Ranking Member a new allocation of QZABs as part of your efforts with a reduction in the qualifying match and allowing the bonds to be used for construction as well as renovation.

We are available to meet and discuss QZABs at your convenience. Please let us know if we can supply you with any more information.

James

James R. Dennis
Rock Creek Counsel
801 Pennsylvania Ave, NW
Suite 430
Washington, D.C. *20004*
Phone: (202) 750-6849
Mobile: (202) 309-0829

Support School Infrastructure by Reinstating QZABs

NATIONAL EDUCATION ASSOCIATION nea.org
Great Public Schools for Every Student

"If we're committed to helping every child fulfill his or her potential, then we have to provide safe and modern learning environments for every student." — Carolyn Smith Evans, Teacher, Salem-Keizer School District, Oregon

POOR CONDITIONS UNDERMINE STUDENT LEARNING

- According to the National Center for Education Statistics, the average public school building in the United States is **44 years old.**
- The 2017 Infrastructure Report Card of the American Society of Civil Engineers gives the condition of America's 100,000 public school buildings an **overall grade of D+**. Twenty-four percent of schools in permanent buildings and 31 percent of schools in temporary buildings are in "fair" or "poor" condition.
- The U.S. Environmental Protection Agency attributes **poor indoor air quality** in more than 60,000 schools to cockroaches, rodents, dust mites, fungi, and respiratory irritants from sources of formaldehyde and nitrogen dioxide.
- A 2017 EducationSuperHighway report found that over **19,000 schools serving 11.6 million students** "are without the minimum connectivity necessary for digital learning."

INVEST IN SCHOOL MODERNIZATION AND CONSTRUCTION

- The **Investing in 21st Century Schools Act** would:
  - Generate a new round of $1.4 billion in Qualfifed Zone Academy Bonds (QZABs) to help states and localities renovate and build new public schools.
  - QZABs were first issued in 1997 and since that time $9.6 billion have been issued.
    - QZABs allow qualifying schools to finance renovations, repairs, and investments in technology at below-market rates — sometimes, as low as zero. School districts pay back the amount of money borrowed initially, but do not have to pay any interest — typically, about half the cost of renovating a school.
    - Financial institutions holding QZABs receive tax credits in lieu of interest.
- This legislation would also expand the allowable expenses to new school construction and reduce the 10% private-investment match to 5%.
- QZABs had become one of the "Tax Extenders," expiring periodically and needing retroactive extension. At the end of 2017, the Tax Cuts and Jobs Act (TJCA) eliminated all tax credit bonds, including QZABs.
- QZABs should be treated similarly to the rest of the current Tax Extenders and get extended. Almost all of the Tax Extenders under current consideration had expired at the time of passage of TCJA and yet were not extended at that time. QZABs should be treated the same as all of these provisions and extended at the earliest opportunity.

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Alabama Brewers Guild, and the 43 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
- 39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Alabama help to employ 4,041 people and generate more than $740 million in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Dan Roberts, Executive Director

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Delaware Brewers Guild, and the 27 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

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Breweries in Delaware help to employ 2000 people and generate more than $318 Million in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Kim Willson
Executive Director
Delaware Brewers Guild

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Colorado Brewers Guild and the over 400 breweries and brewpubs in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

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Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Colorado help to employ over 20,000 people and generate more than $3.1 billion in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Justin Baccary
Chair, Government Affairs Committee, Colorado Brewers Guild
Founder, Station 26 Brewing Co.

Delivered Via U.S. Mail and Email: Individual&Excise&Other_Taskforce@finance.senate.gov

June 21, 2019

The Honorable Pat Roberts
U.S. Senate
109 Hart Senate Office Building
Washington, DC 20510-1605

The Honorable Robert Menendez
U.S. Senate
538 Hart Senate Office Building
Washington, DC 20510-3001

Dear Senators Roberts and Menendez:

On behalf of the Brewers Association – the national trade association for America's 7,000 small and independent craft brewers – I want to thank you for your continuing efforts on the Senate Finance Committee's Task Force on Individual, Excise and Other Expiring Policies, and to urge you to support the inclusion of S. 362 (the Craft Beverage Modernization and Tax Reform Act of 2019) in any tax extender package considered by the Senate.

I also want to personally thank you – as well as the other two members of the Task Force, Senators Daines and Hassan – for co-sponsoring S. 362. We are deeply appreciative of your support and leadership on this matter.

As you know, this bipartisan legislation was introduced by Sen. Ron Wyden (OR), the Ranking Member on the Senate Finance Committee, and currently has 64 Senate co-sponsors (32 Democrats, 31 Republicans and 1 Independent). Companion legislation in the House, H.R. 1175, has 229 bipartisan co-sponsors (123 Republicans and 106 Democrats).

Most importantly for America's small and independent brewers, this legislation would make permanent the federal excise tax (FET) rates on beer that were enacted as part of the Tax Cuts and Jobs Act of 2017 (TCJA). Recall that under the TCJA, brewers who produce less than two million barrels of beer annually had their FET reduced from $7/per barrel to $3.50/per barrel on their first 60,000 barrels. Those brewers then pay $16/per barrel (rather than the previous $18/per barrel) on barrels 60,001 through two million. Literally 99.9 percent of Brewers Association members make less than two million barrels per year, and thus qualify for this favorable tax treatment.

The TCJA also created a middle tier of excise tax rates for the larger small and independent brewers. That is, if a brewer produces less than 6 million barrels of beer annually (but more than the 2 million barrel threshold referenced above), it pays an FET of $16/per barrel, rather than the previous $18/per barrel. This tax law change is a recognition that there is a tremendous difference between a large small and independent craft brewer and a multinational brewer that produces 50 million barrels of beer or more annually for the American market.

As part of the TCJA, these excise tax changes will expire on December 31, 2019. Unless Congress acts to extend or make such recalibrated FET permanent prior to that date, the rates will go back up to their previous levels, which could hinder or stifle the gains small and independent brewers have made over the last 18 months. S. 362 would make the lower rates permanent.

Without question, the recalibrated FET has been tremendously beneficial to America's small and independent brewers. In 2018, for example, craft brewers created an additional 15,000 new jobs – job growth that we believe is attributable in large part to this tax law change.

Subsequent to the recalibration of the FET, the BA asked a sample of 545 craft brewers from across the United States how they are using excise tax savings. The brewers who participated in this survey are located in all 50 states and range in size from 25 barrels per year to more than 2 million barrels per year.

This is what they told us:

- 399 breweries responded that they would be increasing their economic development by purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.;

- 293 breweries responded that they would be hiring new employees; and

- 216 breweries responded that they would be increasing their employee benefits by raising pay, offering insurance and expanding vacation time.

Here are some specific, concrete examples of small and independent breweries hiring additional workers, expanding or upgrading their breweries, and providing workers with additional benefits as a result of the recalibrated FET on beer:

Kansas
Little Apple Brewing Co was able to use their excise tax savings for much needed repairs and replacements on some of their older equipment, as well as purchase additional and better quality ingredients that we otherwise would not be in the position financially to do so.

New Jersey
Flying Fish Brewing Co used the guarantee of extra income via the tax cut allowed us to purchase a higher end canning line that they put into operation in May. If the release of new canned products go as well as they expect they will be hiring additional staff later this year.

Montana
Cabinet Mountain Brewing Co was able to give raises to some key employees, hire an assistant brewer and another two other tap room assistants; and expand their cold storage facility, which will allow them to distribute more of our beers across Montana.

Bayern Brewing Inc. used excise tax recalibration to purchase new canning equipment, as well as to increase employee wages and benefits.

New Hampshire
Litherman's Limited purchased more equipment and tripled production capacity. They hired three new employees, including an assistant brewer and two tasting room associates.

Hobbs Tavern hired two new employees for their sales team and also bought a new delivery vehicle.

An overwhelming majority of the breweries (469 out of 545) who participated in the BA survey said that they would be more likely to make capital investments and hire new workers if the FET recalibration was made permanent.

In addition to the information and data about economic growth above, I do want to make a few other key points regarding the importance of the recalibrated FET. First, brewers are not getting a special tax cut from the recalibrated FET. Brewers pay all their federal, state and local taxes just like any other business. But this is a recalibration of an additional tax that other industries do not pay.

Second, most of the excise tax rate savings go to small producers. The large brewers achieve savings as well. But those savings are only applicable to the first 6 million barrels of beer they produce. That is, their savings are capped.

Third, while small and independent craft brewers directly benefited from the changes enacted in the TCJA, a permanent enactment of these tax law changes also would promote growth in agriculture, with farmers and growers benefitting from increased demand for crops such as wheat, barley, and hops. Not surprisingly, the American Farm Bureau Federation supports this legislation.

In conclusion, thank you for soliciting our views on this important matter, and thank you for your continuing support for America's small and independent craft breweries. Again, on behalf of the BA and its members, I urge the Congress to make the FET recalibration for small and independent breweries permanent as soon as possible to help encourage this continued growth.

If you or your staff have any questions about the effects of the lower excise tax rates on small and independent craft brewers, please do not hesitate to contact me.

Thank you in advance for your consideration.

Sincerely,

Robert Pease
Chief Executive Officer and President

cc: The Honorable Steve Daines
The Honorable Margaret Woods Hassan

Hawaiian Craft Brewers Guild
98-814 C Kaonohi Street
Aiea, HI 96701

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Hawaiian Craft Brewers Guild and the 20 craft breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:
73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
53% of breweries are hiring new employees
39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
21% are increasing their charitable contributions
58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay FET in addition to standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in the State of Hawaii help to employ about 1200 people and generate more than 245 million in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Cindy Goldstein

Cindy Goldstein
Executive Director, Hawaiian Craft Brewers Guild

The Honorable Pat Roberts	The Honorable Robert Menendez
The Honorable Steve Daines	The Honorable Maggie Hassan

On behalf of the Wyoming Craft Brewers Guild and the 29 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
- 39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Wyoming help to employ 996 people and generate more than $200 million in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Michelle R. Forster
Executive Director

AMERICANS for TAX REFORM

722 12th Street N.W.
Fourth Floor
Washington, D.C.
20005
T: (202)785-0266
F:(202)785-0261
www.atr.org

ATR Urges Congress to Make the CFC Look-Thru Rule Permanent

June 24, 2019

Dear Chairman Grassley, Ranking Member Wyden, and Members of the Senate Finance Committee:

I write in support of a permanent Controlled Foreign Corporation (CFC) Look-Thru Rule.

The CFC look-thru rule is a key component of a modern, globally competitive U.S tax system and should be made permanent, or at the very least, extended. However, if lawmakers fail to act soon, the CFC look-thru rule will expire effective January 1, 2020.

Allowing the expiration of this provision will subject American businesses to additional taxation when they are seeking to redeploy business earnings from one CFC to another. The majority of America's foreign competitors do not face additional taxation when redeploying capital, so this provision is key to ensuring U.S. businesses are on a level playing field.

The CFC look-thru rule was first enacted in 2006 under IRC section 954(c)(6). It exists as an exception to Subpart F base erosion rules which are designed prevent a business from improperly shifting passive income (rents, royalties etc.) to low tax jurisdictions. Under this provision, any income designated as Subpart F income would be subject to full U.S. corporate tax. The look-thru rule exempts payments from Subpart F when these payments are between two U.S. foreign subsidiaries in different countries.

A permanent CFC look-thru rule compliments the goals of the TCJA. During consideration of the Tax Cuts and Jobs Act in 2017, Congress preserved the CFC-look thru rule in recognition that U.S. tax should not be owed when an American company redeploys capital among foreign subsidiaries. However, lawmakers did not extend the provision, so it will expire effective 2020.

Tax reform made the U.S. more competitive by moving the tax code toward a territorial tax system. Multiple changes were made to the tax code including exempting certain types of foreign earnings from U.S. taxation and implementing several new international tax provisions such as Global Intangible Low-Tax Income (GILTI) and the Base Erosion Anti-Abuse Tax (BEAT).

Under the new system, certain types of foreign earnings repatriated back to the U.S. are exempt from double taxation, while other types of earnings are subject to the 10.5 percent GILTI rate or the 21 percent rate under Subpart F rules.

It is important to note that a permanent CFC look-thru rule does not give taxpayers a windfall or an opportunity to completely avoid taxation on foreign income – while the provision exempts qualifying payments from Subpart F taxation, these may still be subject to base erosion provisions like GILTI.

The CFC look-thru rule is a key pillar of a competitive, territorial tax system and should be made permanent. Failing to act will undermine the gains of the TCJA in making the U.S. tax code more competitive by unnecessarily imposing taxation on U.S. businesses when they seek to deploy capital from one country to another.

Thank you for your consideration. If you have any questions, please contact me or ATR's Director of Tax Policy Alex Hendrie at 202-785-0266.

Onward,

Grover G. Norquist
President, Americans for Tax Reform

June 24, 2019

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

Dear Senators:

On behalf of the Iowa Brewers Guild and the nearly one hundred breweries in our state, I am writing to express our Guild's strong support for making permanent the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers around our nation. Craft breweries are an economic engine all across Iowa and the United States, and we need to help them continue to grow jobs, develop tourism, and rehab neighborhoods and small communities. Making permanent this FET recalibration will help brewery owners plan expansions and hiring decisions well into the future.

As you may recall, n 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99% of independent breweries will see a FET increase of 100%, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362)—legislation which would make the FET recalibration permanent—has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
- 39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86% of breweries said they would be more likely to make capital investments and hire new people.

In fact, brewery owners currently face uncertainty, and are holding back on hiring new positions; they simply don't know if the resources will be available to them to support increased hiring decisions come January 1, 2020.

Breweries in Iowa generate more than $861 million in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended—to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

J. Wilson
Minister of Iowa Beer
Iowa Brewers Guild

June 24, 2019

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Montana Brewers Association, and the 87 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

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Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Montana help to employ 2,732 people and generate more than $442 million in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Matt Leow
MBA Executive Director

ANHEUSER-BUSCH

June 20, 2019

The Honorable Steve Daines
320 Hart Senate Office Building
Washington, DC 20510

Dear Senator Daines:

On behalf of the Anheuser-Busch employees in Montana and the more than 18,000 employees across the country, I am writing to ask your support for including an excise tax reduction for beer in the tax extenders package as part of your efforts as a member of the Senate Excise Tax Task Force.

A two-year reduction of the excise tax was included as part of the Tax Cuts and Jobs Act of 2017, which will expire at the end of 2019. The Craft Beverage Modernization and Tax Reform Act of 2019 (CBMTRA), which would make the tax cut permanent, has very strong bipartisan support in the Senate (S. 362) with 65 total cosponsors and in the House with 229 cosponsors (H.R. 1175). For these reasons we urge you to include the excise tax reduction in your recommendations.

The CBMTRA mirrors the provisions of the two-year reduction and would make the rollback permanent. It maintains the reduced federal excise tax on beer of $3.50/barrel (down from $7) on the first 60,000 barrels for domestic brewers producing fewer than 2 million barrels of beer annually; and $16 per barrel (from $18) on the first 6 million barrels of beer for all other brewers and all beer importers, including Anheuser-Busch.

Across the country, the beer industry supports more than 2.1 million jobs and contributes more than $328 billion to the national economy. Yet, when all of the taxes are added together, they account for more than 40 percent of the retail price of a beer.

For more than 165 years, Anheuser-Busch has been woven into the cultural fabric of the United States, carrying on a legacy of brewing great-tasting, high-quality beers that have satisfied beer drinkers for generations. We are proud of the fact that more than 98 percent of the beer we sell in the United States is brewed here in the United States, and we are honored to support the American economy and our local communities in which we live and work.

Extending the excise tax reduction will benefit all brewers and, especially in Montana, the Anheuser-Busch employees and facilities in Conrad and Fairfield.

We hope you will consider adding the provisions of the CBMTRA to any tax extender package. If you or your staff have any questions, please reach out to the Anheuser-Busch office in Washington, D.C. or contact me directly at Jerry.jerome@anheuser-busch.com, Anthony.rosing@anheuser-busch.com, and Katelin.standley@anheuser-busch.com.

Sincerely,

Tony Rosing
Katelin Standley

Jerry Jerome
Region Agronomy Manager
Busch Ag Resources
Anheuser-Busch

Tony Rosing
Program Manager
Sidney Barley Operations
Anheuser Busch

Katelin Standley
Program Manager
Conrad Barley Operations
Fairfield Barley Operations
Anheuser-Busch

ANHEUSER-BUSCH

June 20, 2019

The Honorable Margaret Hassan
330 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hassan:

On behalf of the Anheuser-Busch employees at the Merrimack brewery and the more than 18,000 employees across the country, I am writing to ask your support for including an excise tax reduction for beer in the tax extenders package as part of your efforts as a member of the Senate Excise Tax Task Force.

A two-year reduction of the excise tax was included as part of the Tax Cuts and Jobs Act of 2017, which will expire at the end of 2019. The Craft Beverage Modernization and Tax Reform Act of 2019 (CBMTRA), which would make the tax cut permanent, has very strong bipartisan support in the Senate (S. 362) with 65 total cosponsors and in the House with 229 cosponsors (H.R. 1175). For these reasons we urge you to include the excise tax reduction in your recommendations.

The CBMTRA mirrors the provisions of two-year reduction and would make the rollback permanent. It maintains the reduced federal excise tax on beer of $3.50/barrel (down from $7) on the first 60,000 barrels for domestic brewers producing fewer than 2 million barrels of beer annually; and $16 per barrel (from $18) on the first 6 million barrels of beer for all other brewers and all beer importers, including Anheuser-Busch.

Across the country, the beer industry supports more than 2.1 million jobs and contributes more than $328 billion to the national economy. Yet, when all of the taxes are added together, they account for more than 40 percent of the retail price of a beer.

For more than 165 years, Anheuser-Busch has been woven into the cultural fabric of the United States, carrying on a legacy of brewing great-tasting, high-quality beers that have satisfied beer drinkers for generations. We are proud of the fact that more than 98 percent of the beer we sell in the United States is brewed here in the United States, and we are honored to support the American economy and our local communities in which we live and work.

We appreciate your steadfast support of the beer industry in New Hampshire. Extending the excise tax reduction will benefit all brewers who are part of a thriving beer industry in the Granite State.

We hope you will consider adding the provisions of the CBMTRA to any tax extender package. If you or your staff have any questions, please reach out to the Anheuser-Busch team in Washington, D.C. or contact me directly at tom.jokerst@anheuser-busch.com.

Sincerely,

Tom Jokerst
Sr. General Manager
Merrimack Brewery
Anheuser-Busch

ANHEUSER-BUSCH

June 20, 2019

The Honorable Robert Menendez
528 Hart Senate Office Building
Washington, DC 20510

Dear Senator Menendez:

On behalf of the Anheuser-Busch employees in New Jersey and the more than 18,000 employees across the country, I am writing to ask your support for including an excise tax reduction for beer in the tax extenders package as part of your efforts as a member of the Senate Excise Tax Task Force.

A two-year reduction of the excise tax was included as part of the Tax Cuts and Jobs Act of 2017, which will expire at the end of 2019. The Craft Beverage Modernization and Tax Reform Act of 2019 (CBMTRA), which would make the tax cut permanent, has very strong bipartisan support in the Senate (S. 362) with 65 total cosponsors and in the House with 229 cosponsors (H.R. 1175). For these reasons we urge you to include the excise tax reduction in your recommendations.

The CBMTRA mirrors the provisions of two-year reduction and would make the rollback permanent. It maintains the reduced federal excise tax on beer of $3.50/barrel (down from $7) on the first 60,000 barrels for domestic brewers producing fewer than 2 million barrels of beer annually; and $16 per barrel (from $18) on the first 6 million barrels of beer for all other brewers and all beer importers, including Anheuser-Busch.

Across the country, the beer industry supports more than 2.1 million jobs and contributes more than $328 billion to the national economy. Yet, when all of the taxes are added together, they account for more than 40 percent of the retail price of a beer.

For more than 165 years, Anheuser-Busch has been woven into the cultural fabric of the United States, carrying on a legacy of brewing great-tasting, high-quality beers that have satisfied beer drinkers for generations. We are proud of the fact that more than 98 percent of the beer we sell in the United States is brewed here in the United States, and we are honored to support the American economy and our local communities in which we live and work.

Anheuser-Busch has called Newark home since 1951 and we have appreciated your support over the years. Extending the excise tax reduction will benefit not only Anheuser-Busch but all brewers who are part of a growing beer industry in New Jersey.

We hope you will consider adding the provisions of the CBMTRA to any tax extender package. If you or your staff have any questions, please reach out to the Anheuser-Busch team in Washington, D.C. or contact me directly at mike.higgins@anheuser-busch.com.

Sincerely,

Mike Higgins
Sr. General Manager
Newark Brewery

ANHEUSER-BUSCH

June 20, 2019

The Honorable Pat Roberts
109 Hart Senate Office Building
Washington, DC 20510

Dear Senator Roberts,

On behalf of the more than 18,000 Anheuser-Busch employees across the country, I am writing to ask your support for including an excise tax reduction for beer in the tax extenders package as part of your efforts as a member of the Senate Excise Tax Task Force.

A two-year reduction of the excise tax was included as part of the Tax Cuts and Jobs Act of 2017, which will expire at the end of 2019. The Craft Beverage Modernization and Tax Reform Act of 2019 (CBMTRA), which would make the tax cut permanent, has very strong bipartisan support in the Senate (S. 362) with 65 total cosponsors and in the House with 229 cosponsors (H.R. 1175). For these reasons we urge you to include the excise tax reduction in your recommendations.

The CBMTRA mirrors the provisions of the two-year reduction and would make the rollback permanent. It maintains the reduced federal excise tax on beer of $3.50/barrel (down from $7) on the first 60,000 barrels for domestic brewers producing fewer than 2 million barrels of beer annually; and $16 per barrel (from $18) on the first 6 million barrels of beer for all other brewers and all beer importers, including Anheuser-Busch.

Across the country, the beer industry supports more than 2.1 million jobs and contributes more than $328 billion to the national economy. Yet, when all of the taxes are added together, they account for more than 40 percent of the retail price of a beer.

For more than 165 years, Anheuser-Busch has been woven into the cultural fabric of the United States, carrying on a legacy of brewing great-tasting, high-quality beers that have satisfied beer drinkers for generations. We are proud of the fact that more than 98 percent of the beer we sell in the United States is brewed here in the United States, and we are honored to support the American economy and our local communities in which we live and work.

We hope you will consider adding the provisions of the CBMTRA to the tax extender package. If you or your staff have any questions, please reach out to my team in the Anheuser-Busch Washington, D.C. office or contact me directly at chris.ternet@anheuser-busch.com.

Sincerely,

Chris Ternet
Director, Federal Government Affairs
Anheuser-Busch

BEER WORTH FINDING
VERMONT BREWERS ASSOCIATION

The Honorable Pat Roberts
The Honorable Steve Daines

The Honorable Robert Menendez
The Honorable Maggie Hassan

On behalf of the Vermont Brewers Association and the 60 breweries in our state, we are writing to express our strong support for making the federal excise tax (FET) recalibration that lowered excise taxes for small and independent brewers permanent. Small and independent breweries are an economic engine all across our state and nation, and we need to help them continue to thrive and grow.

In 2018, the FET was reduced to $3.50/barrel (from $7/barrel) on the first 60,000 barrels for domestic brewers producing less than two million barrels annually and reduced to $16/barrel (from $18/barrel) on the first six million barrels for all other brewers and all beer importers. That language expires on December 31, 2019 and if it isn't extended or made permanent, breweries will see their FET increase. In fact, 99 percent of independent breweries will see a FET increase of 100 percent, unless the current rate is extended or made permanent.

The Craft Beverage Modernization and Tax Reform Act of 2019 (H.R. 1175/S. 362) -- legislation which would make the FET recalibration permanent -- has broad bipartisanship support in the House and Senate with more than half of the United States Congress cosponsoring the legislation.

Small and independent breweries have positively benefited from the recalibrated FET. According to a survey conducted by the Brewers Association:

- 73% of breweries are purchasing new equipment, upgrading their tasting rooms and breweries, moving to new buildings, etc.
- 53% of breweries are hiring new employees
- 39% are increasing their employee benefits by raising pay, offering insurance and expanding vacation time
- 21% are increasing their charitable contributions
- 58% are doing two or more of the above-mentioned actions

Breweries pay more than $2.3 billion in business, personal, and consumption taxes. All brewers are required to pay the FET in addition to their standard business and payroll taxes. If the current FET rates are made permanent, 86 percent of breweries said they would be more likely to make capital investments and hire new people.

Breweries in Vermont help to employ 2,304 people and generate more than $326M in economic activity every year. They are active participants in their communities, catalysts for economic development and tourism, and job creators. Nationally, the industry employs more than 150,000 full- and part-time employees (with 15,000 additional jobs created in 2019) and generates more than $3 billion in wages and benefits. Breweries have been using the money that they have saved on the reduced FET the way it was intended -- to expand their businesses, hire more workers, and create economic development in communities across the nation.

I hope that this task force will consider the positive impact that the FET recalibration has had on breweries located in our state as well as the 7,300+ independent breweries across the United States and recommend making it permanent.

Sincerely,

Melissa Corbin
Executive Director

NATIONAL TAXPAYERS UNION

June 25, 2019

The Honorable Pat Roberts, Co-Lead
The Honorable Robert Menendez, Co-Lead
Senate Finance Committee Task Force on Individual, Excise and Other Expiring Provisions
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Roberts and Senator Menendez:

On behalf of National Taxpayers Union (NTU), I am honored to submit the following brief comments and observations to the Task Force regarding extension of IRC Section 954(c)(6) – also known as the "Look-Through Rule." As an organization which is committed to ensuring that recently-revised tax laws function as intended for individuals and businesses, this communication is one of several that NTU is issuing on various expiring provisions.

Throughout its 50-year history NTU has advocated for a less burdensome, simpler, and more competitive tax system, including for businesses. During consideration of the Tax Cuts and Jobs Act (TCJA), NTU's concerns over tax reform for corporate and pass-through business entities were made clear: the laws then in existence were untenable, afflicted with high rates, poorly-designed bases, mind-numbing complexity, immobility of investment, and uncompetitiveness with other systems abroad. TCJA made considerable progress toward remedying these problems, although a great deal of work remains. This is particularly true of international tax provisions. While recent procedures for OMB review and public comment on Treasury rules surrounding TCJA's international portions will lead to major long-run improvements in administrability, over the short term both taxpayers and the tax agency must contend with a high degree of flux.

Providing some solidity to the situation, by renewing Section 954(c)(6), would benefit both timeframes. The Look-Through Rule, which was proposed in various iterations until enacted in 2006, addresses the highly technical but critical area of how related Controlled Foreign Corporations (CFCS) deploy active earnings among themselves, by making clear that these transactions are not subject to regular U.S. corporate taxes under Subpart F. While the details here are obtuse to the average taxpayer, the underlying concept is simple: reduce the tax penalties for normal movements of investment that other countries generally allow under their tax laws.

Unlike many other so-called "extenders" currently under evaluation, the legislative history of TCJA convincingly indicates that the Look-Through Rule was not left to wither because of conscious policy decisions that the provision was no longer useful or appropriate in the new international tax framework. Indeed, early House and Senate versions of the package did contemplate retaining Section 954(c)(6). Rather, a fair reading suggests that budgetary "scoring" rules were a major factor. While such conventions are important, in the case of the Look-Through Rule they have acted to impede construction of a more solid, coherent approach to taxation of Controlled Foreign Corporations (CFCs) that Congress intended. In the interest of such stability, the Look-Through Rule deserves prioritization in the international tax space.

Regardless, should there be any lingering belief among lawmakers that enactment of TCJA somehow recommends abrupt termination of Section 954(c)(6), NTU would caution against this notion. While the final version of TCJA signed into law did not enact a purely territorial tax system for CFCs (or their dividends), tax experts have noted the importance of the Look-Through Rule in ensuring the viability of such a massively redesigned system. Thus, in a "hybrid" territorial structure such as the one existing today, Section 954(c)(6) should assume an even *greater* role as a reinforcing element. As David G. Noren, former Joint Tax Committee Counsel and current Partner at McDermott, Will & Emery wrote in 2012:

> One of the primary efficiency gains from adopting a territorial dividend exemption system would be to remove present-law distortions of cash-management decisions by eliminating (or significantly reducing) the tax drag on redeployments of foreign earnings in the United States. Under such a system, the Look-Through Rule would serve a critical function of ensuring that foreign earnings that are intended to be subject to exemption under the new system are not subjected to full U.S. tax as they are distributed up through a chain of CFCs. It would make little sense to go to the effort of adopting a territorial system only to limit the territorial approach to those active business earnings that happen to be generated at the first tier of CFCs.

Those who remain concerned about the potential of Look-Through Rule abuse should be encouraged by the fact that under TCJA, with its tightly-woven fabric of minimum tax provisions and anti-base erosion measures, there is actually less prospect for "gaming" today than there might have been prior to December 2017.

In NTU's estimation, the extenders process is a highly flawed method for making tax policy. While it is reasonable to consciously build "sunsets" into certain sections of the law so their effectiveness may be periodically evaluated, too often temporary tax provisions are employed for far less utilitarian ends. They become instruments of convenience when a robust consensus over policies cannot be reached, or worse, bargaining chips to enlist support for otherwise unpalatable agendas.

However, Section 954(c)(6) and its predecessors aren't necessarily "extenders" in the traditional sense. They were conceived as practical, bipartisan responses to unintended consequences in existing law that thwarted legitimate business decisions about how to arrange active earnings most efficiently among CFCs. Therefore, they more closely resemble "ongoing technical corrections." Here again, the temporary status of the current Look-Through Rule, as with its forebears, is likelier a consequence of its revenue impact than its relevance.

Overall, the Look-Through Rule was designed not only to help mitigate some of the least competitive aspects of the U.S. tax system, but also to uphold the principle that tax consequences should not be the primary factor in making everyday business decisions. Both factors remain as critical now as they did prior to TCJA's passage. Taxpayers deserve the certitude and stability that Section 954(c)(6) can help to provide.

Should you have questions on these comments, or views NTU has expressed on other expiring areas of tax law, I am at your service. Thank you for your consideration.

Sincerely,

Pete Sepp
President

AFL-CIO

LEGISLATIVE ALERT

June 28, 2019

The Honorable Patrick Toomey
Co-Lead, Health Tax Taskforce
United States Senate Committee on Finance
Washington, DC 20510

The Honorable Bob Casey
Co-Lead, Health Tax Taskforce
United States Senate Committee on Finance
Washington, DC 20510

Dear Senators Toomey and Casey:

We write to urge that a five-year extension of the Health Coverage Tax Credit (HCTC) be included in the tax extenders package that the Finance Committee is drafting.

Congress established the HCTC program as part of the Trade Act of 2002 as a means of ameliorating the impact of job losses resulting from the adoption of free trade agreements. For many workers, the loss of a job due to changes in trade policy also means a loss of comprehensive health insurance.

About 13,000 workers receive HCTC payments, which cover 72.5 percent of their health insurance premiums. These workers are eligible for this assistance either because they receive Trade Adjustment Assistance benefits due to trade-related job or wage loss or because their pension fund has been taken over by the Pension Benefit Guaranty Corporation due to inadequate funding.

It is essential that Congress provide stable funding for this program to ensure that HCTC beneficiaries are not exposed to additional financial strain. Congress must not run away from its responsibility to help those negatively impacted by U.S. trade policy.

Sincerely,

William Samuel
Director, Government Affairs

CC Sen. Pat Roberts, Co-Lead Individual, Excise & Other Expiring Policies Taskforce
Sen. Robert Menendez, Co-Lead Individual, Excise & Other Expiring Policies Taskforce

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THE NATIONAL ASSOCIATION OF REALTORS®

AN ADDENDUM TO OUR STATEMENT REGARDING THE TEMPORARY PROVISION TO EXCLUDE THE DISCHARGE OF INDEBTEDNESS ON A PRINCIPAL RESIDENCE FROM THE GROSS INCOME OF INDIVIDUALS (MORTGAGE DEBT FORGIVENESS)

SUBMITTED TO
THE SENATE COMMITTEE ON FINANCE
INDIVIDUAL, EXCISE & OTHER EXPIRING POLICIES TASKFORCE

JULY 19, 2019

Provision

Provision to Exclude the Discharge of Indebtedness on a Principal Residence from the Gross Income of Individuals, hereinafter called "the mortgage debt forgiveness provision."

Name of Organization

The National Association of REALTORS®

Geographic Footprint of Organization

THE NATIONAL ASSOCIATION OF REALTORS® (NAR), representing more than 1.3 million individual REALTORS®, is the Nation's largest professional trade association. It is guided by a core set of principles that provide the foundation for our policy objectives. NAR's decisions on public policy are created through a committee process that considers the needs of REALTORS® and the public they serve. These principles enable NAR to engage the debate on a host of issues ranging across a broad spectrum of legislation and regulation. Among our principles are these beliefs:

- The NATIONAL ASSOCIATION OF REALTORS® is dedicated to protecting and preserving the right of the individual to own real property.
- Political stability and economic prosperity of the United States of America depend in large measure upon the right of the individual to own and freely transfer real property and to exercise and enjoy the benefits of ownership.
- Homeownership serves as a cornerstone of our republican system of government. Homeownership deserves a preferred place in our system of values as it contributes to individual and community responsibility; builds wealth; provides civic, economic, business and employment stability; supports family security and well-being.
- We believe in balancing the needs for private property rights, low- and moderate-income housing, the economic growth and activity required to improve the standard of living of the public and the need to preserve the environment.
- We are firmly committed to equal opportunity in housing.
- We believe in and support policies that promote the healthy growth of the American economy.
- We believe that active involvement in political activity is a privilege and responsibility of every citizen.

Position on Short-term and/or Permanent Extension of Provision, or Whether it Should be Left to Expire Permanently *(amended)*

REALTORS® believe the mortgage debt forgiveness provision should be extended, retroactively to January 1, 2018, as soon as is possible and for as long a period as is practicable. We also believe that the provision should be made permanent, subject to the suggested modifications listed below.

Should the permanence of the mortgage debt cancellation provision be off the table, we would strongly urge a straight extension of the tax provision as previously enacted, with a cap of $2 million.

Policy and Economic Justification for the Request

Since it was first enacted in 2007, the mortgage debt forgiveness relief measure has helped hundreds of thousands of American families all over the Nation at some of the most financially distressed periods of their lives.

Now, more than a decade after the housing crash that led to the Great Recession, there are unfortunately far too many homeowners who still find themselves in foreclosure, completing a short sale, or attempting to have an existing home loan restructured. If the provision is not extended retroactively to January 1, 2018, thousands of American families will have to pay income tax on non-cash or what some refer to as "phantom income." They will owe tax on money they've already lost and will be required to pay that tax at a time of dire hardship, when they are least likely to have the means to pay it. The mortgage tax relief provision protects these homeowners (so long as they meet certain requirements) from facing a tax bill after a devastating economic loss.

In many areas, the housing market has rebounded over recent years so that this excruciating problem is not as widespread as it once was. However, recent estimates by the real estate data analytics firm CoreLogic show that 2.2 million homes in the United States are still "under water" with their mortgage, meaning that more is owed on the mortgage than what the home is worth. This represents 4.1 percent of all mortgaged properties. While this is down from the number of such homes a year ago, it still represents far too many homeowners who are at risk of a financial calamity that could lead to mortgage debt cancellation. Often, it is a job loss, transfer, or a family illness that precipitates the need to move and triggers the need for the tax relief provision.

It is also important to note that, according to the Mortgage Bankers Association, there were more than 360,000 American homes in foreclosure last year. While this is significantly lower than the approximately 2 million homes in foreclosure during the depth of the Great Recession, the current number is still surprisingly high given the strength of today's economy and job market. More than 1.6 million mortgages were past due last year. This is nearly half of the amount of delinquencies in 2011. These figures attest that the recovery is far from universal and that the exclusion is still very much needed.

As the Taskforce and the full Committee on Finance consider the proposal to extend the expired tax provisions, including the exclusion for mortgage debt forgiveness, we hope you will keep in mind that this critical relief is still badly needed by many of your constituents.

Proposal for Expansion or Modifications to the Provision and Policy and Economic Justification for the Request

In connection with our request that the mortgage debt forgiveness provision be made permanent, we also recommend that several modifications to the now-expired exclusion be considered.

These changes are intended to lessen the cost of the provision and also to target its benefits more closely on those who most need the tax relief.

We have three specific suggestions, as follows:

1. Limit the exclusion to $1 million (instead of $2 million) and index it for inflation.

   Justification: The limit on the maximum amount of debt forgiveness provided under the now-expired provision has always been $2 million. Even with the high cost of moderately-priced homes in some areas of the nation, $2 million seems excessive as a limit. REALTORS® believe that a permanent provision would better target those who most need the relief provided by the exclusion if the maximum were reduced to $1 million. However, in order to keep the limit from deteriorating in the future, we also believe it is appropriate to index it for future inflation.

2. Limit the exclusion to cases of demonstrated financial hardship (such as loss or change of job, family illness, or other unforeseen circumstances).

   Justification: In most cases, it is not the fact that someone's home has gone under water as to its mortgage that causes an immediate problem for the homeowner. Far more often, it is when some significant financial event occurs *following* the reduction in value of a home that sends homeowners into financial hardship. In many cases, such an event is unforeseen and not the fault of the mortgagor, such as a family illness or a job loss. REALTORS® believe that this hardship exists in the vast majority of cases where the tax relief from the exclusion has been made available, but that it would be proper to require that such financial hardship be demonstrated should this provision be made permanent.

3. Allow the exclusion only for short sales or other instances where the debtor works with the lender to restructure the debt, rather than irresponsibly walking away.

   Justification: Before its expiration, the mortgage debt forgiveness provision generally applied whenever qualified principal interest indebtedness was discharged. This was true regardless of whether the borrower attempted to work with the lender, for example through a short sale, or simply walked away from the debt in an irresponsible manner that led to the lender eventually ceasing its efforts to collect the debt. While REALTORS® believe that in the great majority of these cases, the borrower works with the lender to achieve the least harmful outcome for both parties, we are not interested in rewarding bad behavior. Therefore, we support additional restrictions to prevent the use of a permanent provision by those who have not attempted or are not willing to work with the lender in a responsible way.

SPILL RESPONSE AND PREVENTION SURETY ACT

- Legislation to modify and permanently reauthorize the Oil Spill Liability Trust Fund.

- The OSLTF ensures the federal government is able to pay for expeditious oil removal and uncompensated damages associated with oil spills.

SRPSA Summary:

- The bill ensures the OSLTF will always exist and ensures it is always solvent;

- By permanently reauthorizing the OSLTF, the bill removes the fund from the list of temporary extenders congress must periodically pass;

- The bill creates a ceiling ($7B) and floor ($5B) for the tax collection to ensure responsible reforms are in place;

- Lowers the tax from 9 to 8 cents;

- Doubles the single incident payout to $2 billion and doubles the natural resource damage claim payout to $1 billion;

- Reforms the process to ensure efficiency;

- Exempts exports of domestic crude from the OSLTF financing rate, to conform with recent changes in allowing the export of crude;

- Clarifies that the financing rate is applicable to tar sands/bitumen;

- Creates a $20 million Response and Prevention Grant program for spill response research, technological development, and prevention activities and programs – state affiliated research and academic institutions would benefit from these grants.

Section by Section:

Title: A bill to amend the Oil Pollution Act of 1990 to establish an oil spill response and prevention grant program and provide for advances from the Oil Spill Liability Trust Fund, to amend the Internal Revenue Code of 1986 to extend and modify the application of the Oil Spill Liability Trust Fund financing rate, and for other purposes.

Section 1: Short Title

Short Title: Spill Response and Prevention Surety Act

Section 2: Oil Spill Response and Prevention

(a) Oil Spill Response and Prevention Grant Program:

- Authorizes a biennial allocation of $20 million to be drawn from the interest produced from the fund to states and academic institutions for spill response research, technological development, and prevention activities and programs, including the conduct of research on oil spill response and prevention in ice-impacted environments.
- The grants are scheduled to be biennial in order to align with Interagency Coordinating Committee on Oil Pollution Research (ICCOPR) biennial reporting to Congress, giving ample time to review proposals, make awards and then report back on the progress of these studies.
- Administered by DHS. The Secretary, in the coordination, prioritization, and the award of grants, shall work with the ICCOPR, taking comments from industry and academia.
- Eligible states must have a marine oil terminal or transportation facility, or have a substantial oil spill risk as determined by the Secretary.
- Eligible academic institutions must be located in an eligible state, and must have relevant competence in related fields of research.
- Limits administrative expenses to no more than 2%.

(b) Advances of Amounts from the Oil Spill Liability Trust Fund:

- Eliminates the limit on emergency fund advances permitted by the Coast Guard and allows for multiple advancements to be made from the Fund, with reporting to Congress, and not to exceed the $2 billion per incident cap.

(c) Modifications to Oil Spill Liability Trust Fund Financing Rate:

- Strikes the termination date of the financing rate of the Oil Spill Liability Trust Fund, providing a permanent extension.
- Lowers the existing financing rate of 9 cents a barrel to 8 cents.
- Exempts exports of domestic crude oil from the OSLTF financing rate, in line with Article 1 Section 9 of the U.S. Constitution. This does not exempt exports from the hazardous substance superfund financing rate (9.7 cents per barrel, dedicated to the hazardous substance superfund). While Article 1 Section 9 should apply to both financing rates, this bill only addresses the OSLTF and is kept to this topic only.
- Reinstates a ceiling and creates a floor for collection of the rate so that the Fund is not reduced below $5 billion (lower limit) and to not exceed $7 billion (upper limit).

  - To facilitate maintenance of the Fund within these limits, when the Fund exceeds the upper limit, the financing rate would be suspended. When the Fund subsequently drops below the lower limit, the financing rate would be reinstated and would remain reinstated until the Fund again exceeds $7 billion.

- Inflation Adjustments: To allow for the escalation of costs over time, these lower and upper Fund balance limits would be adjusted based upon the Consumer Price Index.

<u>(d) Modification of Limitation on Oil Spill Liability Trust Fund Expenditures</u>:

- Raises the funding limit from $1 billion to $2 billion for a single incident.

- Raises the amount authorized for natural resource damage assessments and natural resource damage claims in connection with a single incident should be similarly raised from $500 million to $1 billion.

<u>(e) Clarification of Definition of Crude Oil for Excise Tax Purposes</u>:

- Clarifies that tar sands (bitumen or bituminous mixture and any oil derived from a bitumen or bituminous mixture) are to be treated as crude oil for excise tax purposes.

Hello--I represent the Cook Inlet Regional Citizens Advisory Council, created by Congress in the Oil Pollution Act of 1990. CIRCAC and its fellow Organization-- Prince William Sound Regional Citizens Advisory Council have recently sent letters to Sen. Grassley and other members of the Sen. Finance Committee regarding including language in the Task Force report and hopefully, bill which comes from that effort.

While the letters speak for themselves, CIRCAC respectfully requests that the language in these letters be include din any final bill language which is part of your Task Force Report.

Please include these letters in your Task Force file. Please let me know if you need any other information from either organization.

Thank you

Steve Silver

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