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The Honorable Orrin G. Hatch
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
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The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
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The Honorable John Thune
Co-Chair, Business Income Tax Working Group
United States Senate
511 Dirksen Senate Office Building
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The Honorable Benjamin Cardin
Co-Chair, Business Income Tax Working Group
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The Honorable Dean Heller
Co-Chair, Community Development & Infrastructure Working Group
United States Senate
324 Hart Senate Office Building
Washington, DC 20510

The Honorable Michael Bennet
Co-Chair, Community Development & Infrastructure Working Group
United States Senate
458 Russell Senate Office Building
Washington, DC 20510

April 8, 2015

Dear Senators:

On behalf of the members of the National Biodiesel Board (NBB), we appreciate this opportunity to submit comments on fundamental tax reform to the Senate Finance Committee's Business Tax and Community Development & Infrastructure Working Groups.

As background, NBB is the national trade association representing the biodiesel industry and the coordinating body for biodiesel research and development in the United States. Since 1992 when it was founded, NBB has developed into a comprehensive industry association that works with a broad range of stakeholders including industry, government and academia. NBB represents more than 250 companies with facilities and employees in nearly every state in the country. Our membership includes biodiesel producers, feedstock suppliers, marketers, distributors and other industry stakeholders.

Biodiesel is a renewable, low-carbon diesel replacement fuel made from recycled cooking oil, animal fats and plant oils such as soybean, camelina and canola oil. The EPA has determined, based on the performance requirements established by the *Energy Independence and Security Act,* that domestically produced biodiesel is an "Advanced Biofuel" under the Renewable Fuel Standard (RFS), meaning it reduces greenhouse gas emissions by at least 50 percent when compared to petroleum diesel. Biodiesel is the only commercial-scale fuel sold and produced across the United States to achieve this designation. The fuel meets a strict fuel specification set forth by ASTM International, the official U.S. fuel-certification organization, and it is primarily used in blends of 5 percent to 20 percent. Biodiesel does not require special fuel pumps or engine modifications. In fact,

the majority of automobile manufacturers support biodiesel blends up to 20 percent in their engine warranties.

Under present law, the biodiesel fuels credit is the sum of three credits: the biodiesel mixture credit of $1.00 per gallon used by the taxpayer in the production of a qualified biodiesel mixture, the biodiesel credit of $1.00 per gallon of biodiesel that is not in a mixture with diesel fuel, and the small agri-biodiesel producer credit of 10 cents per gallon for up to 15 million gallons of agri-biodiesel produced by small producers. The credits may be taken as income tax credits and the biodiesel mixture credit may be taken as an excise tax credit. Like a number of other tax "extenders", the credit lapsed on December 31, 2014. It is the fourth time in six years that Congress has allowed the incentive to expire, creating significant instability within the industry and preventing companies, entrepreneurs and investors from planning for future expansion.

History has shown that well-crafted and efficient tax incentives can be powerful policy mechanisms to achieve the nation's energy objectives and leverage private-sector investment to promote the deployment and utilization of new energy resources. This is certainly the case with the tax credit for biodiesel. Losing this tax incentive would effectively amount to a tax increase on the industry. It would hamper growth and stunt investment in an industry that is helping to lead U.S. innovation toward a cleaner, more diversified domestic fuel supply.

In its short history, the biodiesel tax incentive has without question stimulated production. When the incentives were first implemented in 2005, the U.S. produced roughly 112 million gallons. The industry reached a key milestone in 2011 when it crossed the billion gallon production mark for the first time, and the U.S. market has topped 1.7 billion gallons in each of the past two years. Importantly, this production has filled the majority of the Advanced Biofuel requirement under the RFS.

The growth and success of the U.S. biodiesel industry should be celebrated; it demonstrates that smart policies can help build new American industries and drive innovation. But the industry's success should not be taken for granted. Biodiesel remains a young and developing industry, and it needs predictable federal tax policy to continue to attract investment, build infrastructure and continue growing so that it can compete with incumbent industries that have long received favorable tax preferences. When compared to other major fuels such as gasoline, diesel and ethanol, biodiesel is at a fundamentally different stage of development.

We believe the public policy benefits of continuing tax incentives for biodiesel are clear, including:

- *Jobs and Economic Impact:* A recent study found that the U.S. biodiesel industry supports more than 62,000 jobs across the country, along with $2.6 billion in household income, $16.8 billion in overall economic impact, and at least $628 million in federal, state and local tax revenues. In many rural areas, biodiesel plants are a driving force of the local economy.

- *Reducing our Dependence on Foreign Oil:* Biodiesel can play a major role in expanding domestic refining capacity and reducing our reliance on foreign oil. Each gallon of biodiesel produced in the U.S. displaces an equivalent amount of petroleum diesel fuel with a clean-burning, efficient fuel. This is important because despite increased U.S. oil production, petroleum is a global commodity, and our economic and national security will continue to be vulnerable to heavily manipulated global oil markets until we have diversity in the fuels market. Recent decisions from OPEC to steer global oil markets in response to increased U.S. production have demonstrated our continued vulnerability from our oil dependence.

- *Improving Air Quality and the Environment:* Biodiesel is the only EPA-designated Advanced Biofuel with commercial-scale production nationwide. According to the EPA, biodiesel reduces lifecycle greenhouse gas emissions by 57 percent to 86 percent compared to

petroleum diesel. With nearly 8.2 billion gallons used from 2004 to 2014, biodiesel has cut carbon pollution by 75.5 million metric tons – the same impact as removing more than 15.9 million passenger vehicles from America's roadways. Additionally, the EPA consistently cites tailpipe emissions from traditional diesel – primarily from older trucking fleets and other heavy-duty vehicles – as a major national health hazard. Substituting higher amounts of biodiesel for traditional diesel fuel is the simplest, most effective way to immediately reduce diesel emissions.

- *Feedstock Diversity:* The growth of the biodiesel industry is driving new technologies and feedstock development. The biodiesel industry has evolved significantly in recent years and now uses a wide variety of feedstocks, including soybean oil, recycled cooking oil, and animal fats. New feedstocks are being added every year. For example, the EPA recently approved camelina – a high-oil-content plant grown on marginal lands with low inputs – as a biodiesel feedstock.

- *Lowering Consumer Prices:* The biodiesel tax incentive lowers prices for consumers. In fact, with help from the biodiesel tax incentive, fuel distributers have often been able to purchase and sell biodiesel blends at a lower price than petroleum diesel in recent years, resulting in significant savings at the pump.

<u>Suggested Policy Reforms in Tax Reform</u>

Fundamental tax reform offers an opportunity to rethink the structure of the biodiesel tax incentive and update it to further enhance and encourage the growth of domestic production. NBB suggests the following reforms to the current biodiesel incentives:

1. Replace the existing blender credit VEETC mechanism for all diesel-replacement fuels with a Production Tax Credit incentive for all diesel-replacement fuels, patterned on legislation introduced by Senators Charles Grassley (R-IA) and Maria Cantwell (D-WA) (S. 2021 in the 113th Congress). A production tax credit would have the following advantages:

    a. Technology Neutral and Environmentally Beneficial: Allow the same $1/gallon credit rate for all diesel and conventional aviation replacement fuels made from renewable feedstocks that meet an applicable ASTM or Department of Defense specification for highway or aviation fuels. Additionally, all eligible fuels must reduce greenhouse gas emissions by at least 50% compared to the emissions of petroleum-based fuels. (If a broad 50% standard is used, then simple eligibility as an "Advanced Biofuel" under the federal Renewable Fuel Standard will signify compliance. This should obviate the need for any new and/or controversial testing regimes or rulemakings as the EPA already makes this determination in administering the RFS).

    b. Reducing Costs to the Treasury: Imports of foreign-produced biodiesel and renewable diesel to the U.S. have increased significantly in recent years and have the potential for strong future growth. Under the current blender's credit structure, many of these imports are eligible to take the tax credit and in fact are often coming to the U.S. as a direct result of the tax incentive. This comes at significant cost to the U.S. Treasury and occurs even as much of the foreign production enjoys incentives and subsidies in its country of origin. Changing to a producer's credit available only to domestic production would eliminate these costs and sharply reduce the cost of the incentive while further encouraging growth of domestic manufacturing.

    c. Simplifying the Tax Code: The current structure of the blender's credit – which allows a large number of business entities to claim the tax credit at numerous stages along

the blending and distribution chain – is unnecessarily complex. It creates tremendous difficulties for the IRS in administering and enforcing the credit while increasing opportunities for fraud or abuse. Reforming the structure to a producer's credit taken at the point of production would significantly streamline the process, reducing the number of business entities and "trigger points" eligible for claiming the credit. This simplified approach would reduce time-consuming and costly burdens on both taxpayers and the IRS.

d. Predictability: To allow taxpayers certainty that they can rely upon the credit, the provision is made permanent in the Internal Revenue Code.

e. Accessibility: Credit can be taken on taxpayer's return as an income tax credit, or as an excise tax credit.

f. Flexibility: Credits can only be taken by producers who are registered with the IRS, or in the event that the producer needs to sell untaxed fuel, the credit could be taken by an IRS registered "discretionary blender." A discretionary blender would be defined as a blender who has entered into a written binding contract with a registered producer to take the credit that would otherwise be allowable to the registered producer, and who blended 10 million gallons or more in the previous year.

Conclusion:

We appreciate the opportunity to discuss the biodiesel tax credit with you. We encourage the Committee to consider reforming the tax code in a way that includes a long-term tax credit for Advanced Biofuels in an efficient way that will simplify the tax code and reduce costs. A permanent biodiesel tax credit is necessary in order to move this country away from its dependence on imported oil and to create cleaner-burning diesel fuels.

If you have any questions or comments, please do not hesitate to contact me at 202.737.8801.

Sincerely,



Anne Steckel
Vice President of Federal Affairs
National Biodiesel Board