

United States Senate

WASHINGTON, DC 20510

July 26, 2013

The Honorable Max Baucus
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Orrin Hatch
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Baucus and Ranking Member Hatch:

Thank you for the opportunity to share my views as you undertake vital tax reform for our nation. As you know, I have long supported comprehensive tax reform. In the last Congress, along with Senators Dan Coats and Ron Wyden, I was an original co-sponsor of S. 727, the *Bipartisan Tax Fairness and Simplification Act of 2011*. I continue to believe this legislation marks an important step toward making our tax code simpler and fairer while supporting the middle class and fostering economic growth. That is why I appreciate having the opportunity to highlight for you several tax provisions I believe are important to “(1) help grow the economy, (2) make the tax code fairer, or (3) effectively promote other important policy objectives.”

Our current tax code and accompanying regulations fill numerous volumes and contain countless provisions related to nearly every aspect of life in this country, so I have made no effort to offer an exhaustive list, and the omission of any particular section of the code should not necessarily be construed as implying I do not support it. Instead, I want to focus my response to the Committee on a handful of provisions I consider absolutely critical for Alaska, and which may not enjoy as much support from Senators from other states.

I'd also like to note that while I recognize the Committee's policy of confidentiality was intended to encourage candor among Senators in their submissions, such a policy does not fit with my longstanding dedication to transparency and openness. That's why as soon as I submit this letter I intend to simultaneously make it available on my website, so anyone can see the Alaskan tax priorities I am fighting for.

Alaska Natives

Alaska Natives as a population are generally recognized as among the most economically marginalized in the United States. As a result, sections of the tax code that benefit these groups, directly or indirectly, have a significant impact on the fundamental fairness of the tax code. Moreover, the federal government has a legal trust obligation whereby the United States “has charged itself with moral obligations of the highest responsibility and trust” toward American Indian and Alaska Native tribes. *Seminole Nation v. U.S.*, 316 U.S. 286, 297 (1942). This trust obligation represents an important policy objective the tax code should be designed to promote.

As a result of your leadership and bipartisan support, Section 646 of the Internal Revenue Code was recently made permanent by the American Taxpayer Relief Act of 2012. Section 646 allows Alaska Native Settlement Trusts to protect, for current and future generations of Alaska Natives, valuable portions of their aboriginal land claims settlements under the Alaska Native Claims Settlement Act (“ANCSA”). The trusts provide valuable economic and social benefits to Alaska Natives, including cash distributions to provide for basic needs, educational scholarships, cash payments to the elderly and funeral benefits. In the absence of these benefits, many in the Alaska Native community would simply not have the means to provide for themselves and their families.

I respectfully request that Section 646 be permanently retained in the Internal Revenue Code. Such retention is consistent with one of the stated goals of comprehensive tax reform, the promotion of important policy objectives—since, as an essential part of Federal Indian policy, Section 646 allows Alaska Native Settlement Trusts to serve as a viable vehicle to improve the socio-economic conditions of Alaska Natives, in fulfillment of the legislative intent of ANCSA.

Similarly, Section 170(n), while frequently derided as a tax loophole, furthers the significant policy objective of nutrition for vulnerable Native populations. Whaling captains provide all of the expenses out of pocket to harvest allotted whales, which are then distributed freely among the community and which represent one of the primary sources of nutrition for Eskimos on the North Slope. Recognition in the form of a charitable deduction should be afforded this activity, which benefits the entire Alaska Native community, and this section should therefore remain intact in any rewrite of the tax code.

I also encourage you to include the substance of S. 910 in the current Congress in any tax reform bill your committee creates. Currently, Indian tribes are not eligible to receive charitable donations of food, as they are not 501(c)(3) organizations. This legislation

would amend Section 170(e)(3) to make American Indian and Alaska Native entities eligible to accept charitable donations of food, in furtherance of the important policy objective of ending hunger among these groups.

Finally, I would ask that the language found in S. 1673 from the 111th Congress be included in your tax reform bill. This legislation would allow Alaska Native Corporations (ANCs) to enjoy the tax benefits associated with donation of lands for conservation purposes, just as other corporations receive. Such a provision would therefore promote both fairness as between ANCs and other types of corporations, as well as the important policy objective of conservation for future generations.

Energy

No subject is more important to Alaska than energy and energy production, from both fossil and renewable sources. Historically, the tax code has played an important role in facilitating the development of and continued production from these sectors.

For my term in the Senate, the Obama administration has targeted longstanding tax provisions for domestic oil and gas production, including some provisions that have been part of our tax code for close to a century. In the interest of tax fairness, I have consistently opposed repealing those specific provisions absent broader tax reform. While recent dramatic profits for the major oil and gas companies grab headlines, the situation is more complicated.

Provisions of the tax code related to the energy sector clearly help grow the economy. The oil and gas industry supports over 9 million domestic jobs and makes up 7.7 percent of our nation's gross domestic product. Since the start of the recession in late 2008, it has been one of the largest contributors to private sector economic growth and has the potential, through increased responsible production for LNG export, for example, to continue to grow even more.

Similarly, the support of the tax code furthers other significant policy interests for the nation. With continued instability in the Middle East and rising gasoline prices globally, the United States needs to continue to develop our own energy resources. Domestic oil development is crucial to lessening our nation's dependence on foreign nations, many of which do not have our best interests at heart. Singling out this industry by increasing taxes on these producers lowers their profitability. In turn, this discourages investment in domestic production and shifts the focus of major international oil and gas firms overseas.

In particular, independent producers rely on percentage depletion and intangible drilling cost deductions to be profitable and have done so for the better part of a century. It is hard to envision a tax rate on these producers low enough to compensate for eliminating the value of these two provisions. Further, smaller independent oil and gas producers account for roughly one-third of domestic production and provide good-paying jobs in Alaska and around the country.

Moving to other parts of the industry, Section 199, production activities deduction, and LIFO accounting measures, Section 474, help keep domestic refiners competitive in a world commodity market. Similarly, the production side of the industry has also benefitted from other long-standing provisions such as the recovery of geologic and geophysical costs, Section 167(h), and tertiary injectants, Section 193. These provisions have contributed to the growing industry our economy enjoys today. We must approach any adjustments in these provisions with caution and with industry at the table.

Finally, given the importance of oil produced overseas by U.S. companies and imported into the United States, fair treatment of income earned abroad by dual-capacity taxpayers is necessary for a fair tax policy and stable oil and gas industry.

A substantial portion of the workforce for overseas oil and gas projects, primarily project design and management, is located in the United States. While domestic production is increasing at historic rates, we still import nearly half of our total supply, and jeopardizing the competitive status of U.S. companies working abroad unfairly penalizes American companies in a global race for resources. The current system is rigorous and should be maintained if the current worldwide system of taxation is kept in future codes.

Access to clean, abundant, renewable and affordable energy is clearly in our national interest. Renewable energy technologies and production have experienced rapid growth in recent years, in part due to favorable tax treatment. In the past decade, renewable energy generation in the United States has grown by approximately 175 percent, and the sector now employs nearly 500,000 people.

Likewise, Alaska is ground zero for climate change, and the people of my home state are feeling its near-term effects—including retreating sea ice, rapidly eroding shorelines, thawing permafrost, ocean acidification, and changing fish and wildlife migration patterns—far more than the residents of any other state. At the same time, Alaskans already pay the highest costs for energy in the nation due to long distances to markets, high transportation costs, and dispersed populations. Lowering the costs and facilitating greater deployment of renewable energy can positively change both of these troubling problems.

Accordingly, I support a number of broad goals for renewable energy tax policy: increasing investment in renewable energy; providing long-term policy certainty that Congress has failed to provide particularly in recent years; creating parity across renewable energy technologies; and expanding access to low-cost private capital.

The United States can and should regain global leadership in a host of renewable energy technologies. As the economy transitions to newer sources of energy, we should lead the world as we have with responsible oil and gas production techniques. Year-end congressional tax fights have led to serious market uncertainties, and moving forward a more stable code will encourage investment.

Parity across renewable energy types is key to allowing different regions of the country and their utility markets to fairly access capital and benefit from new renewable technologies. In particular, Alaska has over one-third of the untapped hydro potential in the United States and the Interior of Alaska will likely be dependent on biomass for cost-effective heat in many communities. These technologies can survive rigorous environmental review and are no less important than other renewable energy sources.

Housing

As one of few members of this body with significant experience in the real estate industry, I understand the immense importance of housing and real estate development in this country. In Alaska, in particular, the real estate industry contributes heavily to economic growth, employment, and homeownership. Accordingly, I would strongly urge the committee to maintain support for several key provisions of the current code that relate to real estate, homeownership, and construction.

In particular, Section 163(h)(3), otherwise known as the mortgage interest deduction, has been a part of our tax system since its introduction more than 100 years ago and is one of the most popular and widely used provisions in the tax code. Similarly, Section 121, which excludes from gross income the gain from the sale of a principal residence, is vital for homeowners to build wealth and save for retirement. Section 108, which excludes from gross income the value of any cancelled mortgage debt and was put into law in response to the housing crisis, should be made permanent, as it will serve an important countercyclical role in the event of future recessions.

In regards to commercial real estate, I would encourage the committee to incorporate the provisions found in S. 1181, the *Real Estate Investment and Jobs Act of 2013*, into a comprehensive tax reform bill. As you are aware, the *Foreign Investment in Real Property Act* (FIRPTA), enacted 1980, treats foreign investment in real property differently than foreign investment in any other asset class. Under FIRPTA, a foreign

investor who realizes a capital gain from the sale of property is subject to U.S. tax and withholding. On the other hand, U.S. tax and withholding requirements would not apply if the same foreign investor were to realize a capital gain from selling stock (as opposed to real property). There is no legitimate reason for this distinction, and inclusion of these changes would further both fairness as it relates to investment in different classes of assets, as well as the economic growth associated with the commercial real estate market.

Miscellaneous

529 College Savings Plans

A 529 plan is an education savings plan operated by a state or educational institution designed to help families set aside funds for future college costs. It is named after Section 529, which established these types of savings plans in 1996. In addition to clearly promoting the important policy objective of allowing more young people to obtain a higher education, Section 529 also helps to grow the economy by ensuring our workforce remains competitive in the increasingly interconnected global economy.

Credit Union Tax Exemption

Alaska is far removed from traditional financial centers, and credit unions play an outsized role in our economy. That is why Section 501(c)(14), which grants tax exempt status to credit unions, should be retained in any tax reform effort, to ensure continued access to affordable credit for consumers, homebuyers, and small businesses alike, all of which contribute substantially to economic growth.

Exclusion of Interest on State and Local Bonds

On October 3, 1913, Congress recognized the importance of the federal/state/local partnership by codifying the federal tax exemption for municipal bonds as part of the enactment of the original federal tax code. By providing a low-cost financing vehicle for state, county, and local governments, Section 103 provides jobs for countless workers in construction and other sectors, as well as laying the groundwork for future economic growth by encouraging investment in critical infrastructure projects. Section 103 also promotes an additional important policy objective by benefiting investors of all ages and income levels, but particularly seniors who rely in particular on fixed income instruments to provide for their needs post-retirement.

Treatment of Blue Cross and Blue Shield organizations

Section 833 promotes fairness by providing a deduction for not-for-profit organizations providing community-rated health insurance in the individual and small-group markets that are subject to corporate income taxes. This provision also supports the important policy objective of protecting subscribers by helping these organizations accumulate three months reserves. Significantly, the tax deduction is not available for companies with more than three months of reserves. This provision promotes fairness by recognizing the unique disadvantages of these organizations as taxable, not-for-profit entities without access to capital markets, while still recognizing the inherent commercial nature of health insurance.

Railroad Track Maintenance Credit

Section 45G currently provides a 50 percent credit on “qualified railroad track maintenance expenditures”. I believe this credit should be retained and expanded in the way described by S. 411. Not only does investment in rail create jobs and grow the economy in the short term, but by improving our nation’s infrastructure today, we can create an environment that will foster economic growth many years into the future.

Small Brewer Tax Credit

Small breweries are an important part of the Alaskan small business community, and they deserve a level playing field. To that end, I would encourage the committee to incorporate the changes to the brewery excise tax regime found in S. 917, a bipartisan piece of legislation that would recalibrate the excise tax on small brewers to make the tax code fairer by reflecting more accurately the composition of the brewing industry. Moreover, an economic impact study concludes that more than 5,000 good-paying jobs will be created within the first 18 months of enactment of this legislation, demonstrating that these changes would help grow the economy.

Deduction for Charitable Contributions and Gifts

Congress has long recognized the value of encouraging donations to charitable organizations through the tax code, and the charitable deduction as existed since 1917. Accordingly, the provisions in Section 170 that relate to the deductibility of charitable donations should comprise a part of our tax regime after reform.

Exemption for Department of Defense Utilities Privatization Projects

Under the 1986 Tax Act, Contributions in Aid of Construction (CIAC) is treated by utilities providers as a gift and is taxed as ordinary income. Federally funded projects in Alaska are subject to CIAC taxes of 40.2 percent (31.2 percent federal, 9 percent state). In the Alaska privatization, Doyon Utilities was contracted to provide utilities support to Forts Wainwright, Richardson and Greely. Utilities Privatization (UP) contracts outside of Alaska are less affected by CIAC taxes due to their different rate structure or by exemption where water and wastewater costs are predominant. I would therefore encourage the Committee to incorporate the changes found in the attached legislative language into any final tax reform effort.

Merchant Marine Capital Construction Funds

The Capital Construction Fund (CCF) provides Federal income tax incentives to encourage U.S. taxpayers who own or lease vessels operated in the foreign or domestic commerce of the United States or in U.S. fisheries to set aside funds to build new vessels or reconstruct existing vessels. The CCF was authorized in the *Merchant Marine Act of 1936*, as amended, so that the Merchant Marine would always have sufficient vessels at its disposal to serve as a naval or military auxiliary in times of war or national emergency.

The CCF was added to the Internal Revenue Code in 1986 Section 7518. In the interest of supporting critical fishing and other industries, which will encourage economic growth, as well as promoting the important policy of national security, I urge the Committee to retain Section 7518 in any tax reform legislation.

Once again, let me thank you and the other members of your committee, as well as your staff, for undertaking this critical effort. I strongly believe that comprehensive tax reform, if done carefully and deliberately, will yield tremendous benefits for our nation's economy, ensure our future global competitiveness, and promote numerous other important strategic interests.

Sincerely,



Mark Begich
United States Senator