The Business Council for Sustainable Energy®
25 YEARS

Energy Efficiency · Natural Gas · Renewable Energy

December 7, 2017

The Honorable Mitch McConnell
Majority Leader, United States Senate
S-226 The Capitol
Washington, DC 20510

The Honorable Orrin Hatch Chairman
Chairman, Senate Finance Committee
104 Hart Senate Office Building
Washington, DC 20510

The Honorable Paul Ryan
Speaker of the House of Representatives
H-232 The Capitol
Washington, DC 20515

The Honorable Kevin Brady, Chairman
Chairman, House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

Dear Majority Leader McConnell, Speaker Ryan and Chairman Hatch and Chairman Brady:

I am writing on behalf of the Business Council for Sustainable Energy (BCSE), to convey our views on the tax reform legislation currently being considered by Congress, the Tax Cuts and Jobs Act. The Council appreciates the historic effort to reform the US tax system with the aim of boosting employment and economic prosperity for consumers and businesses, and we appreciate the opportunity to share our views on specific provisions of the House and Senate legislation.

BCSE is a coalition of companies and trade associations from the energy efficiency, natural gas and renewable energy sectors – supporting over 3 million jobs across the country, many of those in manufacturing. It includes investor-owned utilities, public power, independent power producers, project developers, equipment manufacturers, and environmental and energy market service providers. Founded in 1992, the coalition's diverse business membership is united around the continued revitalization of the economy and the creation of a secure and reliable energy future in America. As a diverse coalition, not all members endorse or take position on the issues discussed in this letter.

The Council believes that to maintain a diverse portfolio of energy resources, energy tax measures should be structured such that benefits are provided to all qualifying technologies in accordance with the energy, environmental and other public benefits they generate. The tax code should not pick winners and losers, but should allow all fuel sources to compete on an even playing field. Further, consistent and predictable tax policy is fundamental to investment and job creation. Therefore, should changes be made to existing tax laws, adequate transition is needed to avoid market disruptions.

We note that the Senate version of the bill does not have an energy title, but includes provisions that would negatively impact energy financing and deployment for certain energy sources (renewable energy, energy efficiency, among others). The House version includes energy provisions that change the tax treatment of a range of energy technologies – some favorably and some in an extremely problematic manner. We urge Congress to address these issues during the conference on the tax reform legislation or in a year-end extenders bill. Please see the following specific comments on the legislation.

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Comments on the House Version of the Tax Cuts and Jobs Act:

- **Investment Tax Credit:** We are pleased that the House legislation would restore incentives for non-solar technologies that have accessed the Investment Tax Credit (ITC) that expired on December 31, 2016, including fuel cells, combined heat and power, small wind, and geothermal. However, the House legislation does not provide the necessary clarification of eligibility for the Investment Tax Credit for energy storage or waste heat to power.
- **Production Tax Credit:** We are disappointed and concerned that the bill does not restore the Production Tax Credit (PTC) for technologies such as biogas, biomass, waste to energy, hydropower, and marine and hydrokinetic.
- **PATH Act changes:** Further, we are concerned that the House legislation would alter provisions impacting the solar and wind industries that were included in the bipartisan agreements reached in the PATH Act at end of 2015, such as changing the underlying IRS guidance on the PTC and the inflation adjustment to the PTC and ITC.
- **Expired credits for energy efficiency and alternative fuels:** We are also disappointed that the House legislation is silent about several expired credits for energy efficiency and alternative fuels.
- **Tax Credit Bonds:** BCSE opposes provisions in the House bill that would eliminate the ability to issue new tax credit bonds after December 31, 2017, including Qualified Energy Conservation Bonds (QECBs), Clean Renewable Energy Bonds (CREBs), Qualified Zone Academy Bonds (QZABs) and Qualified School Construction Bonds. States and local governments across the nation use these bonds to support energy modernization and infrastructure projects. The Senate legislation does not eliminate these bond programs and we would like to see the Senate prevail on its position during conference.
- **Commercial Buildings:** We are encouraged by the inclusion of heating, ventilation, and air-conditioning (HVAC) equipment as real property eligible for expensing under 179(f), however the definition for HVAC equipment under both bills is too broad. Eligible HVAC equipment should include only equipment within scope of ASHRAE Standard 90.1-2016 or any successor standard. This will ensure that only equipment which meets industry definitions for HVAC equipment and energy performance are eligible for expensing. The House legislation already uses this definition, but references a previous edition of the standard (2007 instead of 2016). The Senate version by comparison says HVAC equipment is eligible but does not define it. We also note the need for Congress to reinstate the 179(d) deduction that expired at the end of 2016.
- **Electric Vehicles:** The House bill rescinds the electric vehicle credits and we urge Congress to maintain them.

Comments on the Senate Version of the Tax Cuts and Jobs Act:

- **Silence on energy credits:** The Senate legislation does not include an energy title and we encourage Congress to incorporate and preserve measures for all the above technologies in the tax reform conference. If these issues are not addressed in the tax reform legislation, we urge Congress to move on an extenders bill before year's end.
- **BEAT Provision:** The Senate legislation contains a new tax called the Base Erosion Anti-Abuse Tax (BEAT) and for multi-national companies covered under the BEAT provisions, the ITC and PTC tax credits would, as drafted, be subject to a new 100 percent tax. These provisions would apply to both new and existing projects, and would greatly undermine tax equity markets for

certain energy sources and have severe negative impacts on US jobs in manufacturing and deployment in virtually all 50 states.

- **Corporate Alternative Minimum Tax:** Concern has also been raised on the Senate bill's corporate Alternative Minimum Tax (AMT) provisions. Unless the AMT is fully repealed, as it is in the House bill, or there are significant liberalizations to the use of PTCs under the AMT, the reduction of the corporate tax rate and the existence of any AMT will severely reduce the capacity for corporations to claim PTCs.

As noted above, although the PTC/ITC phase-out negotiated in 2015 is left in place in the Senate bill, the problematic BEAT provision and the AMT change render the credits unusable. We urge conferees to continue to address and resolve these issues, which could otherwise devastate the ability of companies to finance new projects for certain sectors.

Conclusion

In closing, BCSE reaffirms that maintaining business certainty for investment, job training and job creation is paramount. Tax reform should make the tax code more efficient, protect existing investments and provide an appropriate transition to new tax laws.

We look forward to working with you to achieve these objectives and would be pleased to provide more information. Thank you for your consideration.

Sincerely,

Lisa Jacobson
President

Cc: House and Senate conferees to the Tax Cuts and Jobs Act