COMMITTEE ON FINANCE
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Max Baucus, Chairman
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Hearing Statement of Senator Max Baucus (D-Mont.)
Regarding Tax Considerations Under Climate Change Legislation

The author Theodore Roszak wrote:

"Nature composes some of her loveliest poems for the microscope and telescope."

Today, we consider one of the broadest subjects in nature — that of climate change. And we are going to look at it through a particular microscope — that of tax policy.

Today, we'll look at the tax implications of legislation on global warming. We'll consider the narrow question: How should the tax law treat allowances? The answer will have broad implications.

Most major climate change proposals set an emissions target on greenhouse gas emissions. For example, the Obama Administration proposes capping greenhouse gases in 2020 at 14 percent below the level emitted in 2005.

The cap is then divided into emission allowances. An allowance is the right to emit one ton of carbon dioxide or its equivalent. People can then buy or sell those allowances. Or folks can hold onto them for the future.

Some proposals would distribute allowances free of charge. Other proposals would sell the allowances through an auction. Still other plans would combine distributing and auctioning.

Today, we'll put questions like these under the microscope:

If allocations are distributed for free, should the tax law treat them as income to the recipient? Should the tax code treat an emission allowance as a capital asset, subject to depreciation over time? Or should the law allow buyers to deduct the cost of buying an allowance as a cost of doing business?

How should the law treat gains and losses associated with allowances? Should the law treat them as capital gains or ordinary income from a sale?

And should the system allow emission allowances to be banked, and carried forward to future years?

The Treasury Department has provided some approaches to some of these questions, through guidance on legislation to eliminate acid rain. The Clean Air Act amendments of 1990 successfully cut sulfur dioxide emissions, in the least-costly way. And Treasury's guidance was important in determining how the exchange of allowances should be considered from a tax perspective.

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Should Congress abide by this same guidance in considering legislation to reduce carbon emissions?

It may be appropriate to adopt some past practices on tax treatment of allowances. But the scope of the Clean Air Act Amendments is much smaller than legislation to cut carbon emissions. For example, the acid rain program applied to fewer than 120 facilities nationwide. Cap and trade will apply to over 7,000 entities.

Moreover, the law has changed since 1992. Congress has enacted major tax legislation, including legislation affecting the amortization of intangible assets, since Treasury issued its 1992 guidance.

I support legislation to reduce carbon emissions. And the Finance Committee will play a key role in that law's development.

In a recent hearing, we explored the implications of a carbon auction. In another hearing next month, we'll look at what climate change legislation means to our trade-exposed industries.

We have also been working hard to smooth the transition to a low-carbon economy through other means, especially energy tax incentives. In the last year, we've passed more than $38 billion in energy tax incentives, for areas ranging from fuels to efficiency to clean electricity.

But we have a great deal more to do. And we'll continue our efforts in the coming weeks and months.

I appreciate our distinguished witnesses being here to help us. I also appreciate the Joint Committee on Taxation for providing yet another solid background pamphlet for today's hearing.

Now the tax law is certainly not among the world's loveliest poems. But every now and then, it's important to take a look at it, under the microscope. By doing so today, we'll try to advance one of the broadest goals in nature — that of slowing climate change.

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