AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

April 15, 2015

The Honorable Dean Heller, Co-Chair
Senate Committee on Finance
Community Development & Infrastructure
Working Group

The Honorable Michael Bennet, Co-Chair
Senate Committee on Finance
Community Development & Infrastructure
Working Group

Re: Tax Reform Working Group Stakeholder Comments

Dear Co-Chairs Heller and Bennet:

The Associated General Contractors of America (AGC) appreciates the ongoing efforts in the Senate Finance Committee toward addressing tax policies that are critical to the construction industry. AGC is the leading association in the construction industry. Founded in 1918, AGC represents nearly 25,000 leading firms in the construction industry throughout the United States. AGC members engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, hospitals, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property.

AGC members are engaged in all forms of nonresidential construction and consist primarily of small businesses with the vast majority of our members (typically more than 70 percent) organized as pass-through entities. When our members discuss tax reform they gravitate towards simplicity and permanency as being critical to tax policy that will help construction businesses grow. With a critical element of permanency being the indexing of income thresholds so that inflation is not the cause of policy changes in the Internal Revenue Code ("tax code").

While the industry continues to gradually recover under improving market conditions, the inconsistent tax policy coming from Washington creates an unfavorable investment climate for long-term investment decisions that prohibits more employment, safer infrastructure, and direct economic growth in our communities. As the Working Group prepares findings on current tax policy and legislative recommendations, AGC respectfully urges you to include the following construction industry related provisions that contribute to job creation, capital formation, and long-term investment:

- Tax Exempt Bonds/Public Private Partnerships
- Highway Trust Fund
- Water Trust Fund
- New Markets Tax Credit
- Production Tax Credit

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Infrastructure Investment & Financing

Tax Exempt Bonds

AGC supports tax-exempt public works financing; and thus, opposes efforts to reduce or repeal the federal tax exemption on municipal bond interest because it would make it harder to finance construction at the state and local level. The majority of schools and municipal buildings are financed using special revenue or tax exempt bond debt. Even talk about repeal of the tax exempt status can increase borrowing costs because of the uncertainty it creates in the market.

Private Activity Bonds

In addition to municipal debt, Private Activity Bonds (PAB) are becoming more important components of U.S. infrastructure investment. The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established a separate cap of $15 billion nationwide for transportation related private activity bonds. The separate cap is important because it is teamed up with financing under the Transportation Infrastructure Finance and Innovation Act (TIFIA). The ability to marry up TIFIA funds with PAB funds on nationally important P3s would be nearly impossible if states were forced to set aside a portion of their PABs allocation to a project. As of March 2015, over $11.4 billion in PAB bonds and allocations have been issued to date for 21 projects.[1] As the cap is now being reached, AGC supports efforts to increase the cap size to $20 billion.

Given the success of public-private partnerships (P3s) in the transportation sector, since the passage of SAFETEA-LU in 2005, P3s should be considered as a new way to improve schools, hospitals, labs, courthouses and correctional facilities. The utilization of P3s for public buildings has been limited because unlike the transportation, solid waste, or water sectors, public buildings are not eligible for exempt facility bonds. AGC supports the creation a new category of exempt facility PAB for public buildings that allows private investment to be combined with tax-exempt financing to design, build, finance, and maintain public buildings.

Water and sewer projects, being out of sight and out of mind, and being multi-year, typically are not selected for PAB usage because of the state volume caps. As long as this volume cap exists for these projects, water and sewer infrastructure will always lose the competition for this type of financing mechanism. AGC supports the removal of the PAB volume cap for water and sewer infrastructure projects. PABs under the cap have to compete with ongoing activities that utilize PABs authority like housing, airports, and solid waste facilities. Exempting water infrastructure PABs will allow the allocation of PAB authority with an 18-36 month lead time necessary for them to be incorporated into a P3 financing proposal.

Highway Trust Fund

The United States has been under investing in our transportation systems for far too long and the impact is now being felt in every state. Congress must address the long-term viability of the Highway Trust Fund (HTF), as well as the funding and operation of the Airport and Airway Trust Fund (i.e. increasing Passenger Facility Charges), Harbor Maintenance Trust Fund, and Inland Waterways Trust

[1].Statistics published by FHWA Office of Innovative Program Delivery:
http://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_debt_financing/private_activity_bonds/#tifia

Fund. In 2013, the Finance Committee policy option papers highlighted the deterioration of the user-fee model for funding for federal trust funds for infrastructure.

AGC believes that the federal government should double down on its infrastructure investment, not reduce it or shift it to the states that is why AGC opposes efforts to devolve federal revenues to the states. Devolution is a gimmick that provides no new money for transportation despite the consensus that more investment is needed. Moreover, devolution devalues the impact that interstate commerce has had on economic growth since the interstate was started; and ignores the fact that the country has kept growing, while freight and commerce corridors have grown outside the designated interstate system. Furthermore, devolution ignores the significant improvements made to project delivery in MAP-21 that improve state decision making and increase the speed of project delivery. Last but not least, devolution is a way of avoiding making tough decisions, not a way of showing leadership.

AGC believes long-term investment in infrastructure, particularly transportation, where the national benefits from the federal commitment are obvious. For instance, recent research shows that every dollar invested in HTF programs returns 74 cents in tax revenue, and adds $1.80 to $2.00 to GDP. "Taxes and spending associated with the Highway Trust fund are based on the benefit principle of taxation. This principle is seen as an equitable way to finance government projects"[2] We continue to support the traditional funding mechanisms for the HTF, but they need to be modernized and augmented to account for inflation, changes in vehicles, evolution of technologies, and growing maintenance needs on our aging system.

AGC recommends that the committee look at attributing money from customs fees to the HTF. The U.S. has recognized the connection between international commerce and infrastructure since the First Congress, when the U.S. assumed responsibility for the construction, repair and operation of all light houses, public piers and public buoys in the thirteen states in order to ensure "safe and easy navigation." [3]

AGC also recommends the imposition of a $5 drivers' license fee, a $5 light duty tire tax, a $10 light duty registration fee, and increase in the heavy vehicle use tax, as well as indexing all taxes and fees that go into the HTF. It is nonsensical to ignore the impact of inflation on a program that is so dependent on the price of commodities and energy. Simply accounting for inflation since the last gas tax increase in 1993 would have added 11 cents[4] to the current gas tax and in all probability avoided the $62 billion in transfers the trust fund has needed since 2008. AGC recognizes that some advocates believe there may be room to improve the existing program in order to create some savings, yet that is exactly what the state and local governments, as well as construction community has done since they have been starved for additional resources for the past 22 years.

AGC suggests that the committee should make it a priority to look beyond the current reauthorization and solve the HTF dilemma for future generations in need of safe and sufficient infrastructure. There have been proposals introduced or discussed to replace the gas tax with a distance traveled fee or impose a fee on a per-barrel basis. There have also been discussions about an energy extraction fee,

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[2] Tax Foundation "options to fix the highway trust fund" March 5, 2015
[3] The Lighthouses Act of 1789
[4] BLS CPI inflation calculator

energy transmission fee, freight fees and even fees on transit. AGC believes all of these policies should be examined fully, because while the primary mode of travel for goods has changed since the First Congress, there is still a strong federal role in making sure that we are economically competitive with the rest of the developed world.

Water Trust Fund

Along the lines of preserving the user fee concept for infrastructure, AGC believes Congress should establish a Water Trust Fund to help finance drinking water and wastewater infrastructure. This should be funded by various user fees on products that disproportionally rely on clean water or that affect the wastewater stream. Water/wastewater infrastructure is unique in that it is the only type of infrastructure where the government establishes minimum standards with enforcement for noncompliance, but also has no dedicated revenue source.

Support Community Renewal

The New Markets Tax Credit (NMTC) program provides tax credits to investors in certified Community Development Entities – which provide investment capital for urban and rural low-income and blighted communities. Under the program, construction firms may be engaged in a wide range of activities, varying in size and location (e.g. schools, hospitals, manufacturing facilities, mixed-use developments). These investments totaled $30.8 billion from 2000 through 2012, and it's expected that $3.5 billion will be allocated to the NMTC program for 2013.[5]

The NMTC program can be credited with supporting about 151,304 construction jobs in its early years – with a median of 40 construction jobs supported per project.[6] A total of $45 billion has been invested in NMTC-financed businesses; and these businesses have created or retained some 300,000 jobs since 2010.[7] AGC supports the permanent extension of the NMTC.

Support Alternative Energy Development

AGC supports the permanent extension of the Production Tax Credit (PTC) for the development of renewable energy facilities (e.g. wind, geothermal). Construction firms engage high- and low-skilled workers at various phases of the build-out for renewable energy projects including: basic infrastructure, development of access roads, excavation of foundations, assembling of emplacements and erection of turbines.

Conclusion

AGC thanks the members of the Working Group for the opportunity to submit comments on areas regarding construction firms during this period of fact-finding. We believe strongly that an overhaul of the tax code must deal with all business structures similarly and contemporaneously. We believe that simplicity and certainty should be the goal of tax reform and that provisions in the existing code that create a compliance nuisance with little or no change in tax liability should be eliminated especially for small businesses.

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[5] According to an April 2013 Urban Institute Report prepared for the U.S. Department of the Treasury Community Development Financial Institutions (CDFI) Fund

[6] Ibid.

[7] Ibid.

AGC looks forward to ongoing consultation with the Committee, and members of the Working Groups as this process continues to make improvements to the code in order to create an atmosphere that is increasingly pro-business and pro-growth for the construction industry and the over 6.3 million American workers who benefit from direct or indirect employment.

Sincerely,

Jeffrey D. Shoaf
Senior Executive Director
Government Affairs

Cc:
The Honorable Dan Coats, Member, Community Development & Infrastructure Tax Working Group
The Honorable Tim Scott, Member, Community Development & Infrastructure Tax Working Group
The Honorable Maria Cantwell, Member, Community Development & Infrastructure Tax Working Group
The Honorable Bill Nelson, Member, Community Development & Infrastructure Working Group