Comments from CalCEF Catalyst

April 15, 2013

The Honorable Kevin Brady
Chairman
Energy Tax Reform Working Group
Committee on Ways and Means
U.S. House of Representatives
301 Cannon House Office Building
Washington, DC 20515

The Honorable Mike Thompson
Vice-Chairman
Energy Tax Reform Working Group
Committee on Ways and Means
U.S. House of Representatives
231 Cannon House Office Building
Washington, DC 20515

Dear Congressman Brady and Congressman Thompson:

Thank you for your leadership on the Ways and Means Committee's Energy Tax Reform Working Group. As you continue the process of developing comprehensive tax reform legislation, CalCEF Catalyst urges you to consider modifying the rules relating to "master limited partnerships" (MLPs) to include businesses in the renewable energy sector. This change represents good energy policy by encouraging the development of domestic, renewable energy; it also represents good tax policy by making the Tax Code more consistent and fair.

MLPs in the Energy Sector

An MLP is a business structure that is taxed as a partnership but whose ownership interests are traded like corporate stock on a financial market. Approximately 100 MLPs, accounting for $350 billion in capital, are currently traded on public exchanges. Most MLPs are in the energy and natural resources industries. Projects involving the gathering, processing, pipelines, and distribution of oil or gas account for the majority of MLPs.

MLPs have existed since the early 1980s, when Apache Oil Company MLP was established as a way to attract private capital by offering small investors a partnership investment in a liquid security. The success of Apache Oil Company MLP led to the establishment of other MLPs in the oil and gas sector, as well as other industries. In 1987, Congress enacted section 7704 of the Tax Code, which effectively limits the use of MLPs by applying the corporate income tax rules to partnerships whose interests either are traded on an established securities market or are readily tradable on a secondary market, unless the partnership qualifies as a "publicly traded partnership" (PTP). To qualify, a PTP (including an MLP) must receive 90 percent of its income from specific sources that fall under the definition of "qualifying income." In the energy sector, qualifying income under the original MLP rules included only "the exploration, development, mining or production, processing, refining, transportation … or the marketing of any mineral or natural resource" that is depletable.[1] In 2008, Congress slightly expanded this definition to include income from the transportation and storage of certain renewable and alternative fuels (e.g., ethanol and biodiesel) and other activities involving industrial source carbon dioxide.[2]

As it currently stands, under section 7704, the MLP structure remains largely unavailable to the renewable energy sector. Meanwhile, companies involved in the exploration and development of oil, natural gas, coal, and other depletable resources continue to enjoy the tax advantages of MLP status.

Modify the MLP Rules to Put Renewable Energy on a Level Playing Field with Oil and Gas

We urge Congress to expand the use of MLPs to others in the renewable energy sector as part of tax reform. In particular, we urge Congress to modify the MLP rules in a similar manner to the "Master Limited Partnerships Parity Act," which Representative Poe and Senator Coons proposed last year.[3] The Master Limited Partnerships Parity Act would expand the availability of MLPs to an additional set of energy technologies, including those that qualify under sections 45 and 48 of the Tax Code, such as wind, closed and open loop biomass, geothermal, solar, municipal solid waste, hydropower, marine and hydrokinetic, fuel cells, and combined heat and power.

This simple change represents both good energy policy and good tax policy. In order to enhance our energy security, it is imperative that we continue to develop our renewable energy portfolio. We note that renewable energy development has accelerated in recent years, bringing jobs, economic development, and expansion of the tax basis to regions throughout the country. Expanding the availability of MLPs would bring substantial private capital to the renewable energy sector, furthering this important source of economic growth. Moreover, by reducing the cost of capital to this industry, MLP availability will accelerate the ongoing improvements in the already robust cost-effectiveness of these energy resources, to the benefit of industry, consumers, and households. As researchers from Stanford University wrote in June 2012, "With average dividends of just 6 percent, these investment vehicles could substantially reduce the cost of financing renewables."[4]

In addition, this change represents good tax policy. Simply put, there is no good reason to make the MLP structure available to one part of the energy sector, but not to others. By making the MLP structure available not just to oil and gas but also to renewable energy, Congress would make significant progress towards leveling the playing field in the energy sector.

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[1] 26 U.S.C. § 7704(d)(1)(E).

[2] Emergency Economic Stabilization Act of 2008, P.L. 110-343.

[3] In the 112th Congress, the Master Limited Partnerships Act was assigned H.R. 6437 and S. 3275.

[4] Felix Mormann and Dan Reicher, How to Make Renewable Energy Competitive, N.Y. TIMES (June 1, 2012), *available at* http://www.nytimes.com/2012/06/02/opinion/how-to-make-renewable-energy-competitive.html?_r=0.

We thank you for your consideration, and we appreciate the Working Group's leadership in reforming America's energy tax system. We look forward to working with you on comprehensive tax reform in the months ahead.

Sincerely,

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Managing Director
CalCEF Catalyst

Jeff Anderson
Managing Director
CalCEF Catalyst

About CalCEF Catalyst

CalCEF Catalyst, is a member of the California Clean Energy Fund family of organizations that work together to promote the transition to a clean energy economy by creating institutions and investment vehicles that grow markets for clean energy technologies. Catalyst, a 501(c)(6) non-profit trade association, is designed to be a flexible platform for the sustained engagement and collective action of clean energy business leaders and other stakeholders. It focuses on the creation of replicable models for innovation in clean energy at the state, local, and national level.