Comments of Susan Ford, Vice President, Corning Incorporated
to the
House Ways and Means Manufacturing Tax Reform Working Group

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Corning Incorporated submits the following comments to the House Ways and Means Committee Manufacturing Tax Reform Working Group.

Corning Background

Corning Incorporated is a 162-year old manufacturer with its world headquarters in Corning, New York. Corning's stock is publicly traded on the New York Stock exchange and its market cap is approximately $19 Billion. Sales in 2012 were approximately $8 Billion and we have about 29,000 employees worldwide with over half of our payroll in the United States. Corning takes a tremendous amount of pride in its heritage as one of America's oldest and most innovative companies. We spend about 10% of our global revenues on R&D, and our principal R&D center is in upstate New York. We have located some of the world's most advanced manufacturing plants in small and medium-sized cities around the United States – for example, optical fiber facilities in Wilmington and Concord, North Carolina, a specialty glass manufacturing facility in Harrodsburg, Kentucky, and an emissions control product manufacturing plant in Erwin, New York. In all, Corning operates in 26 states, with manufacturing facilities in 11 of those states.

Over the last 162 years Corning has delivered innovation that has significantly impacted the way the world communicates, conducts medical research, protects the environment, prepares its food, and is entertained. In its early days, Corning made the glass envelopes for Thomas Edison's light bulbs, as well as railroad lanterns which could withstand intense heat and cold. In the 1950s, Corning developed CorningWare and Pyrex, which most of you probably still have in your kitchens. In the 1970s, Corning invented optical fiber and ceramic honeycomb substrates enabling the catalytic converter. Today, Corning continues to manufacture and sell optical fiber, cable and hardware and equipment for the telecommunications industry, as well as the ceramic substrates for automobile and heavy duty diesel catalytic converters. Additionally we are currently the world's leader in the production of liquid crystal display glass used in LCD televisions and computer screens. Your mobile phone likely features a damage resistant Corning display glass called Gorilla Glass. And we have a growing family of life sciences products used in pharmaceutical and biotechnology research. Corning has been fortunate to receive the National Medal of Technology and Innovation four times.

Corning also is a global company. Approximately 79% of our sales are to foreign customers. Corning operates in industries where customers and competitors are predominantly located outside of the United States. To survive and prosper, Corning must operate there as well. As an example, China is currently the largest growth country in the world. They are the number one optical fiber consumer in the world, the number one auto maker in the world, and becoming the world's largest consumer of LCD televisions.

A closer look at our Display Technologies segment underscores the importance of Corning's global, and particularly our Asian, presence. In the case of Corning's Display business, we sell our specialized LCD glass substrates to manufacturers of active-matrix LCD panels. There are no panel makers located in the United States. They are located in Taiwan, Japan, Korea, and China. Our LCD glass is formed in large sheets—sheets larger than what might cover a king size bed at a thickness of approximately four times that of a human hair. You can imagine that little good can happen to this glass if it is shipped thousands of miles. In many instances, our melting plants are located plant-side to our customers to avoid this. In the instances where we must ship this glass internationally, the packaging process must be done with extreme care – in fact, that packaging is so sophisticated that it is itself patented.

Because foreign markets are the larger proportion of the global consumer demand, we must be able to grow not just domestically, but internationally. This is true for Corning and many other U.S. manufacturers working to compete in an intense global market. We need tax policy that is competitive while continuing to incentivize innovation and job creation in the United States. The current tax code's manufacturing and R&D incentives, tax rates, and worldwide system of taxation are complex and no longer globally competitive.

Impact of Current U.S. Tax Policy and Growing Consensus of Need for Reform

American manufacturers are at a distinct disadvantage to competitors headquartered in other countries. Specifically, foreign manufacturers uniformly face a lower corporate tax rate than U.S. manufacturers, and virtually all operate under territorial systems which encourage investment both abroad and at home. In addition, many foreign manufacturers enjoy more robust R&D incentives than do American companies, and a growing number enjoy other innovation incentives, like "patent boxes." Together, these factors can give foreign manufacturers a significant edge over their American counterparts. This situation is not new, but has become exacerbated in recent years as foreign governments have increasingly turned to tax law to help their companies compete internationally.

We therefore are very heartened by a growing consensus among U.S. policymakers on the need to reform the U.S. tax code. Key Members of the House and Senate, as well as the Obama Administration, have all publicly stated the importance of tax reform to the American economy and competitiveness. Starting in 2011, the Ways and Means and Senate Finance Committees held numerous hearings on this topic and continue to do so. In October 2011, Chairman Camp released his discussion draft on corporate tax reform, which we believe spurred the conversation forward dramatically. In 2012, Chairman Baucus provided an outline of his thoughts in a major speech on tax reform, noting that other countries have lowered corporate rates and shifted to territorial systems in order to become more competitive. And the Obama Administration also has recognized that our current tax system is uncompetitive, distorts business decision making and slows economic growth. Having such broad bipartisan agreement on the existence of the fundamental problem is in itself a significant development, and we are therefore very optimistic on the prospects for meaningful tax reform.

We believe Chairman Camp's 2011 discussion draft provides a good roadmap for corporate tax reform. It would provide a top corporate rate of 25%; a 95% deduction for the foreign-source portion of dividends received from controlled foreign corporations ("CFCs"); no additional allocation of U.S. incurred expenses such as interest expense to foreign exempt earnings; a deduction for 95% of gain on disposition of stock in certain active CFCs (with no deduction for losses on such transactions); imposition of a 5.25% tax rate on pre-effective date foreign earnings, with an election to spread the tax over as long as eight years; and provisions for the prevention of base erosion. A number of details are still to be determined, most importantly relating to base erosion protection, and those details will be critical to the ultimate effectiveness of the proposal.

A substantial reduction in the statutory tax rate is critical. A statutory rate nearing the average rate of our major trading partners would make significant progress toward leveling the competitive landscape and would be more effective than many current incentives in supporting that purpose. The most obvious appeal of a significant tax rate reduction is that it would help all U.S. companies - U.S-based multinationals, U.S. exporters and U.S. companies which operate strictly domestically. However, the new rate must be low enough to make an impact. A token reduction coupled with a broadening of the tax base would have limited positive effect and could actually hurt U.S. competitiveness. A significant rate cut accompanied by a review of existing tax benefits is in order.

Moving to a territorial tax system could do as much as a rate reduction to foster U.S. competitiveness. Most of the world's tax systems are territorial, excluding from tax the majority of their taxpayer's foreign earned income – even income in the form of dividends. The current U.S. system of worldwide taxation is expensive to administer, dissuades multinational companies from headquartering in the U.S., and discourages U.S. companies from repatriating foreign earnings. Moving to a competitive territorial system will address all of these issues. Corning appreciates the Camp proposal's flat taxation of five percent of foreign earnings in place of an allocated expense disallowance. This approach is predominate in territorial systems and provides simplicity, thus furthering parity with global systems and reducing the cost of taxpayer compliance and government enforcement.

Moving to a territorial system does present transition challenges, such as how income earned abroad prior to the adoption of the territorial system should be treated after adoption. Some policy makers advocate "bringing everything current" by taxing all pre-adoption foreign earnings immediately. We believe that Mr. Camp's proposal to reduce the rate on such "deemed" repatriation via an eighty-five percent dividends received deduction begins to address the potential hardship that could result from an immediate and potentially large U.S. taxable inclusion. However, the trade-off for the lower rate is that ***all*** foreign earnings would be deemed repatriated without a reduction for losses in separate entities or for earnings that are not represented by cash (i.e. those invested abroad in hard assets and therefore cannot be repatriated). This can be a harsh result for a capital intensive company like Corning that often must put its manufacturing facilities in the same country as its customers. Further study may be warranted to consider the appropriate use of foreign losses, the treatment of trapped earnings, the use of U.S. net operating losses and foreign tax credit carryovers, and the terms for payment of the resulting tax.

Chairman Camp's proposal also includes possible "base erosion" protections. As a starting point, it is important to recognize that the greater the reduction in the U.S. corporate tax rate, the less companies will be compelled to migrate income producing activity or assets. We appreciate, however, the need to carefully consider the possibility that any new system could be abused and to discuss possible protections against abusive erosion of the U.S. tax base. Of the three preventive measures proposed by Mr. Camp, Option C may best alleviate the competitive pressure that compels many U.S. technology companies to move research activities and intellectual property offshore. As patent laws around the world become more sophisticated and their enforceability improves, the historic benefits of U.S. technology ownership no longer serve as sufficient compensation for a higher U.S. tax burden on the related income. Mr. Camp's Option C, which levies a fifteen percent tax on foreign income generated by U.S.-owned intangibles, will help U.S. companies with U.S.-created and owned intellectual property to compete with those that create and own such property abroad. In this area too, any broadening of the tax base accompanying a tax rate reduction on foreign earned income from intellectual property must be measured for total effect. We are aware of concerns raised by software makers and others regarding the potential negative impact Option C could have on their business models. Corning looks forward to working with all interested parties to ensure that any such provision supports the competitiveness of all U.S.-based companies.

Another aspect of tax reform that must be considered relates to provisions intended to incentivize the creation of technology in the United States. We believe such provisions should be broadened and made more efficient in order to make them more effective in improving the competitiveness of U.S. technology and manufacturing companies.

It is hard to disagree with incentivizing the conduct of American research and development, but a comparison of the U.S. R&D credit to those that exist in some other countries shows that the U.S. incentive is complex and uncompetitive. As an example, consider Corning's recent experience with the U.S. R&D credit compared to the French R&D incentive. Approximately 95 percent of Corning's R&D expenditures fund activities conducted in the United States. Much of the balance of our R&D occurs in France. But France is dramatically more generous in its R&D incentive than is the United States: typically the French government provides a tax incentive of around 30% of our French R&D expenditure, compared to a U.S. R&D credit of slightly over 1% of our U.S. R&D expenditures. Further, calculation of the U.S. R&D credit is so complex that it often requires the hiring of a consulting firm with sophisticated software, so we recommend simplifying the credit in that regard. To ensure that the R&D credit encourages domestic manufacturing, Congress should consider providing a larger benefit on income coming from products that result from R&D performed in the U.S. If the R&D credit is to be effective, it must undergo significant reform.

Another tax benefit offered to U.S. manufacturers is the deduction for domestic production activities provided by Section 199 of the tax code. Section 199 was adopted as a replacement for FSC/ETI, but has proven a poor substitute. This incentive does reduce the tax impact of the high regular tax rate in the United States, but is also extremely complex and is not available to manufacturers that have suffered U.S. operating losses. We would expect that many smaller manufacturers also would have difficulty obtaining a benefit from it due to its complexity and/or operating losses attributable to the most recent recession. In our case, because the manufacturing deduction cannot increase a tax net operating loss in the current year or an NOL carryover, we have been unable to benefit from Section 199 due to significant economic losses suffered in the telecommunication sector's collapse in the early to mid 2000's. If Congress maintains Section 199 after tax reform, our preference would be to eliminate or modify the 9% of income limitation to at least allow for a carryover of the deduction, or have the limitation apply to taxable income before NOL carryovers. Also, to simplify the provision, Congress should consider reducing the amount of expense apportionment to this category of income, and perhaps provide a safe harbor.

Corning recognizes that the tax reform process will require all tax benefits to be on the table as part of the base-broadening consideration, and -- as long as the ultimate tax reform package is significant in its effect -- we accept that prospect.

Summary

In summary, we believe tax reform is a necessary action for the competitiveness and economic health of the United States. For U.S.-headquartered manufacturers competing at home or abroad, the current system is cumbersome and inefficient. Many developed nations have modified their tax policies to facilitate competition and encourage domestic investment. The United States should not allow its major trading partners to gain an advantage through tax policy modernization. Moving to a competitive territorial system with a competitive tax rate will result in benefits both to the United States and its manufacturers. Tax benefits like the R&D credit and the Section 199 deduction for domestic production activities can be valuable tools if modified appropriately, but changes are needed from their current form in order to provide the maximum incentive for U.S. manufacturers.

Thank you again for the opportunity to submit these comments. Corning commends the Committee for its work on tax reform to date and urges it to continue the effort. We stand ready to work with you to reform the tax code in a manner that is positive for American taxpayers and the American economy.