RENEWABLE FUELS ASSOCIATION

April 15, 2013

The Honorable Kevin Brady
301 Cannon House Office Building
Washington, DC 20515

The Honorable Mike Thompson
231 Cannon House Office Building
Washington, DC 20515

Dear Reps. Brady and Thompson

On behalf of the Renewable Fuels Association (the "RFA") the national trade association representing the U.S. ethanol industry, we applaud the efforts of the House Ways & Means Committee (the "Committee") and the Energy Tax Reform Working Group (the "Energy Working Group") in tackling the difficult, yet critical, issue of reforming our nation's tax code as it relates to energy production and consumption in the United States. We appreciate the opportunity to discuss our industry and our ideas for improving and reforming our current system of tax incentives as part of your roundtable process and look forward to working with you on tax reform.

Tax incentives can be extremely helpful in the deployment and utilization of new energy technologies. Previous biofuels incentives were essential to the commercial success of the first generation ethanol industry. In fact, the first generation industry is no longer seeking tax incentives to aid its growth. Sustained incentives to assist second generation technologies can provide similar success.

As the primary trade association representing our nation's ethanol producers, including the traditional grain based producers, as well as, the emerging advanced and cellulosic sector of the industry, we support the Committee's approach to tax reform which focuses on educating Committee members on energy tax reform by reviewing current law and compiling and evaluating feedback from industry stakeholders. While we understand that significant budget constraints impacting any tax reform efforts, and the difficulties of reaching an agreement on a comprehensive reform package, we are hopeful that the Committee's efforts here will go a long way in improving our system of incentives, even if only through incremental changes to the Code.

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We offer the following comments as a supplement to our oral presentation before you and the other members of the Energy Working Group.

1. Current Tax Incentives Need More Certainty to Greater Encourage Cellulosic Industry Development and Commercialization

A supportive and targeted tax policy is critical to emerging industries such as the cellulosic and second generation ethanol industry, which is currently faced with the difficulty of securing large capital investments for its "first of its kind" technologies, and struggling to achieve wide-spread, commercial scale development. Despite promising advances in technology and the discovery and testing of new production processes in the industry, due to fairly recent credit constraints and a struggling global economy, the anticipated wide-spread development and commercialization of second generation ethanol has taken much longer than expected. However, the industry is finally breaking through at commercial scale with a number of commercial projects having already broken ground and expected to become operational within the next couple years.

Critical to the ability of these second generation ethanol producers to complete these projects, and others to expand and grow commercially, are two important incentives: the Second Generation Production Tax Credit ("PTC") and the Accelerated Depreciation Allowance for Cellulosic Biomass Property, both of which were first enacted in 2008. As you know, the PTC allows producers of biofuels to take a tax credit in the amount of $1.01 for every gallon of cellulosic ethanol produced, and the accelerated depreciation allowance permits producers of cellulosic biofuel to take 50% depreciation in the first year for property used to produce cellulosic ethanol. However, because these incentives expired in 2012, and were last extended for only 1 year to the end of 2013, they provide little, if any, security for investors that they will be around in the future. Without any certainty that these or other incentives will continue beyond 2013, they are becoming increasingly ineffective in encouraging industry investment, and are not expected to be available to help early movers survive in the marketplace while economies of scale are being realized.

To provide greater certainty, we would recommend that the PTC be modified to allow for a set, 10 year period of credit eligibility, such as the tax incentive offered to renewable electricity Section 45. In addition, we recommend that the eligibility period for the PTC should be triggered upon the beginning of construction, as found in Section 45, as well. Finally, the accelerated depreciation allowance should be extended similarly for multiple years. By doing so, the tax code provides more certainty to investors that the credit will be around for a set period of time, and that the credit will not be subject to the annual tax extension exercise that normally occurs at every year end in Congress.

2. Playing Field Needs to be Level to Encourage Necessary Capital Investment

To improve and reform the tax code for energy, it is critically important that we remove built-in inequities that serve to drive investment away from renewables and toward incumbents like oil & gas. While we continue to support the incentivization of domestic energy production, we believe that reform requires that investment be driven solely by market factors, and not the tax code. Some of the ways that the tax code is rigged toward incumbents like the oil and gas industry is through such tax incentives as MLPs, percentage depletion, and expensing intangible drilling costs. Even where there exist similar incentives, the incentives for renewables expire year after year, while those for oil and gas are permanent.

a. Expanded Access to MLPs

In order to successfully spur investment in energy, you need to (1) mobilize capital and (2) reduce investment risk. One such method of achieving both of these goals is through a Master Limited Partnership ("MLP") structure, which allows individual investors a tax advantaged and relatively predictable investment.

In the years since MLPs have been available to the oil and gas industry, it has been successfully used to attract significant investment capital. While there were only 12 publicly traded MLPs with market capitalization of $8 billion in 1996, by 2011 that number had grown to 75 publicly traded MLPs representing over $270 billion in market capitalization. And, while energy related MLPs represented only a third of all MLPs, today they represent about 80%.

However, the renewable energy sector has been excluded from accessing this powerful investment tool. Currently, renewable energy sources are not allowed to take advantage of the MLP structure. Many believe that expanding MLPs to include renewable energy sources could attract capital to the sector, reduce the risk of investments, impose some market discipline on the players, and offer a new way to grow a sector of the economy that will be important in meeting our nation's future energy needs.

b. Percentage Depletion, and others.

The Committee needs to look at ways to level the field regarding other incentives available to oil and gas industry such as percentage depletion, etc., that are not available to biofuel producers. Given the inherent differences between the oil industry and the biofuel industry, making percentage depletion allowance available to biofuel producers may not necessarily work given the absence of a depleting resource. However, there may be other creative means of equalizing the credit among other alternative energies.

3. Incentives for Retail Infrastructure Must be Modernized to Encourage Expanded Market Access

The ethanol industry continues to struggle with market access due to the need for infrastructure enhancements at the retail level. In order to compete with gasoline at the pump, drivers need the ability to choose between alternatives using market based drivers such as price, mpg, octane, etc.

Today, however, out of a total of 160,000 retail stations nationwide, there only exists 3000 stations with the infrastructure sufficient to offer higher level blends of ethanol. And, this is true despite the existence of the Alternative Vehicle Refueling Property Credit, which provides a tax credit in an amount equal to 30 percent (up to $30,000) of the cost of any qualified alternative fuel vehicle refueling device.

This credit has not been very effective in pushing infrastructure improvements related to ethanol, despite additional money limits temporarily added in connection with stimulus. We believe the reason that it has been ineffective is due to the fact that it has not kept up with the growth trends in the retail fueling business. Moreover, it is insufficiently designed to accommodate the technological growth that is occurring at today fueling stations, which have increasingly been moving toward blender-style pumps which allow for blending to occur at different levels at the pump.

To improve the effectiveness of this credit, Congress needs to be focused on expanding eligibility. For example, the credit requires that retailers use the credit to install E85 infrastructure, when instead it should be modernized to focus on higher level blends. Rather than require the infrastructure to deliver fuel with a minimum of 85% ethanol, it could be permitted for high level blends such as E50 and above.

Another much needed reform would be to allow the credit for dual use property (retail infrastructure that delivers both conventional and renewable/alternative fuel). This would allow for the continued growth trend toward the use blender pumps. Currently, the credit is limited to providing an incentive for single use, dedicated pumps, despite the fact that retail providers are moving in a different direction.

Once again, we appreciate the opportunity to comment on reforming the tax code as part of the Committee's Working Group process. We hope that you find this information helpful as you work through these important issues. If you have any questions, please feel free to contact myself, or our General Counsel, Ed Hubbard, at [redacted]

Sincerely,

Bob Dinneen

Bob M. Dinneen
President