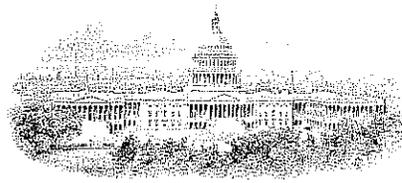


DON YOUNG
CONGRESSMAN FOR ALL ALASKA
WASHINGTON OFFICE:
2314 RAYBURN BUILDING
WASHINGTON, DC 20515
202-225-5765



Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN, SUBCOMMITTEE ON
INDIAN AND ALASKA NATIVE AFFAIRS
COMMITTEE ON
TRANSPORTATION & INFRASTRUCTURE
REPUBLICAN
POLICY COMMITTEE

May 9, 2012

The Honorable Pat Tiberi, Chairman
Select Revenue Measures Subcommittee
U.S. House Committee on Ways and Means
1101 Longworth HOB
Washington, D.C. 20515

The Honorable Richard Neal, Ranking Member
Select Revenue Measures Subcommittee
U.S. House Committee on Ways and Means
1139E Longworth HOB
Washington, D.C. 20515

Dear Chairman Tiberi and Ranking Member Neal,

I am pleased to submit this request in connection with the April 26, 2012 hearing of the House Committee on Ways and Means Subcommittee on Select Revenue Measures on the important topic of expiring tax provisions. As you know, the Alaska Native and Native American community is generally recognized as among the most economically disadvantaged populations in the United States. These expiring tax incentives represent a direct method of empowerment for Native Americans and should be extended well into the future

As you begin the critical task of reviewing dozens of tax provisions that either expired last year or will expire this year, please consider extending the following tax provisions that Alaska Natives and American Indians depend on to create and sustain jobs.

Extend Section 646: Alaska Native Settlement Trusts

Section 646 of the Internal Revenue Code allows Alaska Native Settlement Trusts to protect, for current and future generations of Alaska Natives, valuable portions of their aboriginal land claims settlements under the Alaska Native Claims Settlement Act. The trusts provide valuable economic and social benefits to Alaska Natives, including cash distributions to provide for basic needs, educational scholarships, cash payments to the elderly and funeral benefits. In the absence of these benefits, many Alaska Natives would simply not have the means to provide for themselves and their families.

With regard to the provision itself, I have introduced H.R. 2320, which would make permanent Section 646 of the Internal Revenue Code, which is currently scheduled to expire on December 31,

2012. Companion legislation, S. 1337, has been introduced in the U.S. Senate by Senators Murkowski and Begich. In August of 2011, the Joint Committee on Taxation estimated that the permanent extension of Section 646 would only cost \$41 million over the 10-year budget window.

Section 646 provides an elective regime that allows each Alaska Native Settlement Trust to maximize the benefits it provides to Alaska Natives by (i) providing for a trust-level tax at the lowest individual rate in lieu of any beneficiary-level taxes, (ii) allowing contributions to a trust on a tax-efficient basis, and (iii) providing streamlined administrative reporting.

Section 646 has a unique procedural history, and it is for this reason alone (and not because of any substantive deficiency in its policy merits nor revenue concerns about its cost) that Section 646 is not already a permanent part of the Internal Revenue Code. Section 646 was originally enacted, along with several other provisions, as an unrelated, miscellaneous provision as part of the *Economic Growth and Tax Relief Reconciliation Act of 2001* ("EGTRRA") which, because of the need to use the budget reconciliation process, was subject to a December 31, 2010 sunset provision. Rather than subsequently being made permanent, similar to other unrelated, miscellaneous provisions in the 2001 tax legislation, Section 646 was extended for two years as part of the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010* such that it is now scheduled to expire on December 31, 2012. Once again, the decision to enact a two-year extension (rather than a permanent extension) was not attributable to substantive or revenue considerations relating to Section 646 itself. Rather, it followed from a decision to enact a simple two-year extension of all of the expiring provisions of EGTRRA without assessing the merits of alternative extension periods for each expiring provision being extended. I respectfully request that the Committee remedy this accident of the legislative process and make permanent a provision that should have originally been enacted as such on the first tax legislative vehicle – extender package or otherwise -- that is available in the future.

Making Section 646 permanent will finally remove the cloud of uncertainty on the continued viability of the Alaska Native Settlement Trust as a vehicle for fulfilling the promise of the Alaska Native Claims Settlement Act by improving the socioeconomic condition of Alaska Natives, as intended by Congress.

Extend the Indian Coal Production Tax Credit (ICPTC)

The Indian Coal Production Tax Credit (ICPTC) has been critical to keeping Indian coal competitive in the tight marketplace where non-Indian coal is subject to fewer federal requirements. Congress enacted the ICPTC in an effort to neutralize the impact of price differentials created by sulfur dioxide (SO₂) emissions allowances, thereby keeping Indian coal competitive in the regional market.

The 2005 Energy Policy Act established the ICPTC beginning in tax year 2006, based upon the number of tons of Indian coal produced and sold to an unrelated party. Without the credit, the financial stability of coal-mining tribes would be threatened further than it is already by unpredictable market conditions. The loss of coal-mining revenues would have had a devastating impact on these Tribes. In order to protect existing operations and encourage growth, the ICPTC should be made permanent, and I also urge you to consider limited reforms. For example, the ICPTC should be allowed to be used against the alternative minimum tax. Also, the requirement that ICPTC coal be sold to an unrelated person should be deleted to allow and encourage facilities owned, in whole or in

part, by Indian Nations to participate and benefit from the credit. However, at a minimum, this vital tax credit should be extended.

Extend Section 168: Accelerated Depreciation

In 1993, Congress recognized that while tax credits were made available to aid in development projects on Indian lands, development efforts were often hampered by a lack of supporting infrastructure surrounding reservations. Tax credits were available for “qualified Indian reservation property,” property located primarily on reservations and used by Federal taxpayers when conducting trade or business within such reservations. However, there was little incentive for investors to engage in business or trade with reservations because of the high capital costs associated with building the necessary infrastructure to move goods from these traditionally isolated areas to market. To rectify this situation, Congress enacted Section 168, extending accelerated depreciation allowance eligibility to certain infrastructure property located outside Indian reservations, but connected to reservation infrastructure. Specific examples of such “qualified infrastructure property” listed in Section 168 are “roads, power lines, water systems, railroad spurs, and communications facilities,” See 26 U.S.C. 168(j)(4)(C).

Section 168 has proved an invaluable investment tool. Since 2003, the provision has been extended repeatedly, but only on a one to two-year basis. While it is valuable to keep this provision alive in the tax code, unfortunately, one or two-year extensions of the accelerated-depreciation provision are insufficient incentive for investment of new capital in Indian country, especially when concerning significant energy projects. Development of these projects generally takes ten years or longer. Investors need greater certainty that the benefit will be available when the project comes on line. Making this provision permanent would make long-term energy projects on Indian lands attractive investment opportunities.

In addition to a permanent extension, it is my understanding that as currently written the depreciation allowance could be interpreted to exclude certain types of energy-related infrastructure associated with energy resource production, generation, transportation, transmission, distribution, and even carbon sequestration activities. As a result, to the extent that confusion may exist over how this benefit applies, the Committee should consider whether any clarifying language is necessary to ensure tribes can fully utilize the depreciation allowance for their benefit and to increase energy infrastructure that benefits Indians and America's economy.

Extend the Ultra Low Sulfur Diesel Credit (ULSD)

Sections 45H and 179B of the Internal Revenue Code of 1986 were enacted by Congress to help defray the considerable costs associated with complying with Environmental Protection Agency (EPA) regulations that required small business refiners to limit sulfur in all diesel fuels to less than 15 parts per million by June 1, 2010. This special tax treatment was afforded to small business refiners in recognition of the enormous capital costs involved in upgrading refineries and the need to ensure adequate supplies of fuel for agriculture, mining, transportation, fishing, and other industries. In issuing the ultra low sulfur diesel (ULSD) fuel standards, EPA noted that “small refiners would likely experience a significant and disproportionate financial hardship” in complying with the regulations.

Under Section 179B, qualifying small business refiners were permitted to deduct, as an expense, up to 75 percent of the costs incurred to comply with the ultra low sulfur diesel (ULSD) standard. Section 45H provided that small business refiners also receive a credit of five cents per

gallon of ULSD produced up to an amount equal to the remaining 25% of capital expenses. Only costs incurred up to December 31, 2009 qualified for these special tax treatments.

At the time that these tax benefits were created, it was believed that a 2009 sunset date would provide sufficient lead time to complete the necessary upgrades to comply with the new regulation. Unfortunately, the 2008 financial crisis intervened and the credit necessary to finance many of these projects was difficult, if not impossible, to obtain. On top of financial issues, Alaska refiners were given their own set of compliance dates by the EPA (acting in concert with the State of Alaska) in recognition of the unique market conditions that exist in the state. Notably, while refiners in the lower 48 states had an interim 500 ppm sulfur standard for on-road and off-road diesel fuels (until June 1, 2006 and 2007 respectively), Alaska refiners did not have the interim standard. This separate treatment was largely attributable to Alaska's hugely disproportionate consumption of aviation and heating fuels as compared to motor vehicle fuels.

Thus, the first major deadline for small business refiners in Alaska was June 1, 2006 for producing 500 ppm on-road (motor vehicle) diesel, followed by June 1, 2010 for producing 500 ppm sulfur non-road diesel fuel, and June 1, 2012 for producing 500 ppm locomotive and marine diesel fuel. Not until June 1, 2014 will the ultra-low sulfur <15 ppm standard apply to all diesel fuel grades in Alaska. Alaska's exemption from the "interim" 500 ppm standard meant that small business refinery desulphurization capacity had to be built as a grassroots project as opposed to an incremental change to existing process units - a very expensive proposition.

As a result, I respectfully request that sections 45H and 179B be extended for two years, effective January 1, 2010. Such a date will virtually guarantee that all small business refiners will have both sufficient time to convert their facilities to ULSD production and derive the full benefits Congress intended from the tax provisions it saw fit to create

Thank you again for the opportunity to submit these requests, and for your consideration. I look forward to working with the Subcommittee and your colleagues on the full Committee to ensure that these important benefits for the Alaska Native and American Indian community are continued.

Sincerely,



DON YOUNG
Congressman for All Alaska