

April 12, 2013

Chairman David Camp
Ways & Means Committee
1106 Longworth House Office Building
Washington, D.C. 20515

Ranking Member Sander Levin
Ways & Means Committee
1106 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Camp and Ranking Member Levin:

Thank you for giving us an opportunity to comment on ways to reform the tax code to support U.S. competitiveness, create jobs and fix inequities in the tax system. The American Association of Port Authorities (AAPA) represents the leading port authorities in the Western Hemisphere and our comments today reflect the comments of our U.S. members.

American's seaports are a vital component of our nation's infrastructure. For centuries, seaports have been at the heart of our nation's transportation infrastructure system. U.S. seaports are responsible for moving more than 99 percent of the country's overseas cargo and handling more than two billion tons of domestic, import and export cargo annually. Cargo moving through seaports is responsible for more than 13 million jobs. Annually, seaports generate over \$200 billion in federal, state and local tax revenues and more than \$25 billion in customs duties.

My letter today focuses on three areas that we urge the Ways and Means Committee to address that would result in increased competitiveness, create jobs and provide tax fairness. Our recommendations relate to the harbor maintenance tax (HMT), alternative minimum tax (AMT) for private activity bonds, and further extension of the wind energy's production tax credit.

Harbor Maintenance Tax

The historic partnership between seaports and the federal government finds its roots in the Commerce Clause of the U.S. Constitution and is the oldest and largest of all the Corps of Engineers' missions. That partnership has built much of the water-side infrastructure used today. Operation and maintenance of this waterside infrastructure is paid for through the harbor maintenance tax established in 1986.

The tax has significant flaws and full use of the HMT is critical to ensuring our system of ports is well maintained. The harbor maintenance tax has been the subject of lawsuits as well as concerns over equity. Recently, AAPA developed the following principles to reform the HMT:

Principle 1 – AAPA advocates for full use of all HMT revenues.

Principle 2 – Funding from HMT revenues first should be used for historical intended purposes, ensuring: 1) all Federal navigation channels are brought up to and maintained

at their constructed depths and widths; 2) needs are met for disposal of maintenance dredged material and construction and maintenance of confined disposal facilities; 3) jetties and breakwaters are properly maintained, and 4) related studies and surveys are funded.

Principle 3 – AAPA is supportive of providing more equity for HMT donors.

Principle 4 – U.S. tax policy should not disadvantage U.S. ports and maritime cargo.

Principle 5 – The U.S. must have a process to efficiently study and construct deep draft navigation projects.

Principle 6 – The cost-share formula for maintenance and deepening should be reflective of the current cargo fleet.

While some of these principles can be addressed in a Water Resources Development Act, others are in the jurisdiction of the Ways and Means Committee since they relate to the structure of the tax.

The 1986 Water Resources Development Act (WRDA) established the harbor maintenance tax to fund federal deep draft channel navigation operation and maintenance. The HMT is an ad valorem tax that was originally paid on the value of exports, imports and domestic cargo. In 1998, the U.S. Supreme Court ruled that the HMT was an unconstitutional tax on exports, and therefore, is no longer paid by exporters. Through the early 1990's the revenues were roughly equal to expenses, but there has been a growing imbalance between revenues and appropriations, with just over half of the revenues currently being spent for its intended purposes. More than \$1.6 billion in revenue was collected in fiscal year 2012, and the surplus in the Harbor Maintenance Trust Fund has grown to more than \$7 billion. The low appropriations have resulted in an undermaintained system in which channels are not being maintained to their constructed depths and widths despite adequate taxes being collected. Even the top 59 busiest ports on average only have their channel dimensions available 35 percent of the time. Eight of the top 10 U.S. ports presently have depth or width restrictions resulting in safety risks of groundings and cargo spills and economic risks of light-loading ships which increase transportation costs, impacting the competitiveness of U.S. exports in the global marketplace and the cost of imported goods to U.S. consumers and manufacturers.

Ports and the federal government must maintain existing infrastructure while preparing for the reality of larger ships. U.S. public ports and their private sector partners are doing their part, funding the lion's share of port-related infrastructure improvements. According to AAPA's most recent survey, ports and their private sector partners will invest more than \$46 billion over the next five years. However, increasingly we find that the federal partner is not upholding its part of the bargain in funding channel maintenance/improvement projects. As a result, this negatively impacts jobs, economic growth and U.S. competitiveness.

This problem was highlighted in the American Society of Civil Engineers (ASCE) report issued last fall entitled “Failure To Act: The Economic Impact of Current Investment Trends in Airport, Inland Waterways and Marine Ports Infrastructure.” This report concluded that aging infrastructure for marine ports, inland waterways, and airports threatens more than one million U.S. jobs. We cannot let that forecast become a reality. ASCE’s 2013 recent report card for America’s Infrastructure rated Port Infrastructure a ‘C’, which is essentially an averaging of the generally good state of infrastructure at port facilities with the inadequate condition of navigation channels and land-side connections due to federal underinvestment.

Last year, as part of the MAP-21 Transportation bill Congress included language that stated a Sense of the Congress that the Administration should request full use of the harbor maintenance tax and that HMT funds should be fully expended for harbor operation and maintenance. Unfortunately, the President’s FY 2014 proposed budget did not follow that recommendation.

AAPA believes it is vital that Congress provide a true, permanent fix to ensure full use of the revenues of the HMT by providing an offset to revenues, or otherwise making the use mandatory with all HMT revenues automatically going to the Corps as other fee-based systems do. We understand this solution would require a one-time offset of \$15-20 billion, however, this approach would both permanently fix the HMT full-use problem, and importantly, address the poor condition of our nation’s navigation channels.

AAPA has been actively preparing for the next WRDA bill to address the investment and process changes needed to keep U.S. maritime infrastructure world-class. It has been 26 years since enactment of the landmark WRDA ’86 legislation which laid out a sustainable, self-funded plan to maintain our deep-draft navigation system based on revenues from port users. The vision and plan outlined in WRDA ’86, however, has not been achieved due to the underspending of the HMT Trust Fund. By fixing the structure of the HMT to ensure full use, AAPA believes we can meet the visions of the 1986 Act.

Private Activity Bonds

Private activity bonds are an important tool for local public port authorities to fund needed infrastructure investments. The fact that they are subject to the alternative minimum tax (AMT) decreases their value and increases the interest rate the bond issuer must offer to account for the AMT. Congress has recognized this problem in the past by passing several exemptions to the AMT for private activity bonds. During your tax reform efforts, we urge you to make this exemption permanent.

Wind Energy Production Tax Credit

AAPA supports an extension of the production tax credit for wind energy. America will see an increase in jobs as this industry grows and ports serve as both the importer of components and on-land facility where these components are stored and assembled. Construction materials and service providers also must use ports to reach off-shore wind farms.

We thank you for this opportunity to address these critical tax issues that will help enhance America's international competitiveness, revitalize our economy and create sustainable jobs.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kurt J. Nagle", with a long horizontal flourish extending to the right.

Kurt J. Nagle
President and CEO
KJN:SJM/lsm

cc: Ways and Means Committee Majority Staff Director Jennifer Safavian
Ways and Means Committee Minority Staff Director Askia Suruma
Jim Brandell, Chief of Staff to Chairman Camp
Hilarie Chambers, Chief of Staff to Ranking Member Levin