NATIONAL TAXPAYERS UNION

To: Members of the Senate Committee on Finance
From: National Taxpayers Union
Date: May 25, 2021
Subject: Committee Markup of S. 1298, the Clean Energy for America Act

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I. Introduction and Key Taxpayer Considerations

Ahead of the Committee's May 26 markup of S. 1298, the Clean Energy for America Act, National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, wishes to share its views on certain portions of the legislation. While reducing complexity, duplication, and overlap in the tax code remains a top priority of NTU and many stakeholders on and off Capitol Hill, the sponsors and cosponsors of S. 1298 err in framing legitimate cost recovery provisions of the code as "subsidies" or "special tax incentives."

II. The Tax Code Should Maximize Opportunities for Full and Immediate Cost Recovery

NTU supports a tax code that is simple, fair, and oriented towards economic growth. A key principle we urge lawmakers to adhere to on the corporate side of the tax code is to ensure businesses large and small can fully and immediately recover the cost of their investments in machinery, equipment, structures, research and development (R&D), and more.

Unfortunately, the Clean Energy for America Act would repeal expensing for intangible drilling costs (IDC), likening this provision of the code to a "preferential incentive." As we wrote of the recently introduced End Polluter Welfare Act, which contains a similar proposal:

> "...some provisions the lawmakers seek to repeal allow energy companies to access the same cost recovery opportunities afforded to U.S. companies in any other industry or sector."

Indeed, as former NTU Foundation Vice President Nicole Kaeding wrote in 2019:

> "...one provision, known as intangible drilling costs, allows energy companies to deduct their expenses incurred preparing a well for production. Other industries don't use wells. So while it seems like the oil and gas industry is receiving a special benefit, they aren't. They are being treated how other industries are; they are allowed to deduct their capital expenditures."

In other words, repealing expensing for IDC would not level the tax playing field, it would actively *harm* certain sectors of the energy industry at the expense of others. The Joint Committee on Taxation (JCT) estimates this would raise taxes by $3.4 billion over the next 10 years. This would make for a less fair tax code, not a more fair one.

III. The Committee Should Not Double Down on EV Tax Credits That Flow to the Wealthy

According to the Congressional Research Service, around 80 cents of every dollar in electric vehicle (EV) credits have been claimed by taxpayers with an average income of over $100,000. Rather than use this opportunity to limit the types of households that can claim the EV tax credit, lawmakers supporting the Clean Energy for America Act have doubled down on this subsidy for wealthy car buyers by lifting the per-manufacturer cap without any corresponding changes -- at a cost of $21 billion over 10 years. NTU has suggested to lawmakers that they target the credit to lower-income households and/or convert the per-manufacturer cap into an overall cap for EVs across the market.

IV. The Committee Should Not Subject Energy Companies to Double Taxation

The Clean Energy for America Act would also subject energy companies to a higher level of double taxation by making changes to so-called “dual capacity” rules that currently enable companies to receive a tax credit for levies paid to foreign countries. As former NTU Foundation Vice President Nicole Kaeding once explained: “Oil and gas companies pay income taxes for their foreign production in the foreign jurisdiction, but often other countries also assess royalties on companies that extract resources. For example, Norway imposes a corporate income tax of 22 percent, with an additional tax rate of 56 percent on oil and gas extraction, bringing the total marginal tax rate to 78 percent. Dual capacity rules ensure that the company gets a foreign tax credit against the full 78 percent tax paid to Norway.”

JCT estimates that rolling back dual capacity rules for major integrated oil companies would raise their taxes by $5.6 billion over 10 years, which combined with the IDC changes mentioned above could raise taxes on energy companies by $9 billion over the next decade. This could have significant, negative impacts on workers that directly and indirectly support these companies, while also making the tax code less fair and less oriented toward economic growth.

V. S. 1298 Would Have Significant Deficit Impacts

It is also deeply concerning that, according to a JCT cost estimate for the Clean Energy for America Act, the legislation would increase deficits by more than $200 billion over the next 10 years. With the nation’s debt in a perilous place, and after $5 trillion in spending on responses to the COVID-19 pandemic, now is the time for lawmakers to propose reducing deficits rather than increasing them. This bill would be yet another budget-buster, notwithstanding the modest (and, in the case of the IDC and dual capacity provisions, harmful) tax hikes sponsors included to offset a small fraction of the cost for new tax credits.

VI. There Are Better Options for Tackling Climate Change

In short, we have numerous concerns with the Clean Energy for America Act, above and beyond those significant concerns mentioned above. However, as we said when we critiqued the End Polluter Welfare Act, none of the above critiques are to suggest that Congress does not need to tackle climate change and its deleterious impacts.

NTU has supported bipartisan legislation like the Growing Climate Solutions Act, "limited-government climate legislation that would make it easier for American farmers, ranchers and private landowners to share information and best practices, and to access private sector carbon markets should they choose to voluntarily adopt emissions-reducing agriculture and land management practices and technologies." To the extent additional legislation leverages public-private partnerships to reduce carbon emissions, Congress should thoughtfully consider such proposals.

VII. Contact Information

Should you have any questions about the recommendations in this memo, please do not hesitate to reach out to Andrew Lautz, Director of Federal Policy, at alautz@ntu.org.

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