

## **SAMPLE LETTER AND TALKING POINTS**

**It is suggested that a letter be emailed to your elected representatives in Washington followed by a phone call to such official or their staff member handling energy issues to ensure the letter was received and to discuss the letter's content to reinforce its points. Contact information for elected officials can be found at [www.senate.gov](http://www.senate.gov) and <http://www.house.gov>**

**This is a sample letter. It is important to tell your company story, history and how the proposed tax law changes will impact your business, for example force layoffs etc. If you provide drilling services please conform this letter to your business, what you do and how proposed tax law changes will impact your business.**

**When you email your elected representatives, put your letter in the body of the email, not in an attachment.**

**Note also that you can, and probably should, keep your actual letter shorter than the sample; you don't need to include all the points in the sample. The critical parts of the letter are what your business does, how it will be affected by the proposed tax changes, and the specific request that Congress reject the proposals on IDCs and working interests.**

### **Your Company Stationary Heading**

**Dear Senator XXX [or Representative XXX]**

(Briefly describe in your own words)

I am writing to express my company's serious concerns about the effect of some of the Obama administration's proposed tax changes affecting the oil and gas industry as described in his 2010 budget outline. I understand these provisions are to be effective beginning in 2011. My company has been a driller and operator of natural gas wells since \_\_\_\_ (year) and we anticipate drilling \_\_\_\_ (#) new wells this year. Over the years we have been involved in the drilling and operation of approximately \_\_\_\_ (#) natural gas and or oil wells in \_\_\_\_ (several states or in the state of or list the states). We currently have \_\_\_\_ (#) of employees. With limited debt available we rely on individual investors to contribute capital that is used to drill new wells. My concern is that the repeal of certain tax provisions will severely impact my company's ability to raise needed capital which will significantly hurt my business operation.

(Briefly describe in your own words)

Funds we raise from individual investors is used to fund our drilling costs are defined as intangible drilling costs (IDC's). Such costs include wages, fuel, repairs, hauling, supplies and other costs and expenses incident to and necessary for the drilling of wells or the preparation of wells for the production of natural gas or oil. These costs do not create salvage value meaning they are not subject to depreciation deductions. Under current tax law IDC's can be fully deducted in the year paid, as has been the case since 1913, or can be deducted over a five year period. One proposed tax law change that we object to is to repeal the opportunity to fully deduct or expense IDC's in the year paid and require that they be deducted over a five year period.

In addition, individual investors can deduct their share of intangible drilling costs on their tax return if the investments are made in the form of a "working interest" – i.e., an interest that carries with it the personal obligation to share in the intangible costs to develop the resources on the property. To qualify, the taxpayer does not have to materially participate in the operation of the business but cannot hold the working interest through an entity that limits his or her financial responsibility with respect to the interest -- meaning the investor is at risk for the drilling costs. Thus, a taxpayer who holds a working interest in the prescribed fashion and puts up capital to fund the intangible drilling costs of oil and natural gas wells is entitled to deduct his or her share of losses resulting from the drilling expenditures on their tax return.

Another proposed tax law change that is of paramount concern to me is to repeal the treatment of tax losses resulting from the drilling expenditures as just described. The proposal will not allow the losses to be deducted unless the wells generate income -- which is not always the case -- or unless the taxpayers have income from other activities in which they do not materially participate. In other words, they need what is considered passive income that will offset what will now be characterized to be a passive loss.

NEXT: explanation of why these provisions make sense and repeal would be a mistake

The tax rules described above are sound tax policy. Investments in working interests merely involve the investor putting up capital to fund the actual drilling of oil and natural gas wells. Any tax losses are the result of that drilling. Working interests are starkly different from the types of arrangements that were widely publicized and criticized in the early 1980s and that led to the passive loss rules – i.e., arrangements that involved the generation of artificial tax losses through depreciation and non-recourse debt or through transactions that lacked economic substance.

Also, the alternative minimum tax applies to IDC's. It puts an effective limit on the deduction of IDC's and makes the change to apply the passive loss rules to investments in working interests unnecessary. Given the alternative minimum tax, it was reasonable for Congress in 1986 to create the working interest rule as an alternative to material participation under the passive loss rules.

NEXT: description of specifically why the working interest rule is important to your company and others like it.

Many small and independent oil and natural gas companies like mine have traditionally relied on individual investors to contribute capital and share in the risk of drilling wells. There is no reason for Congress to discourage individuals from continuing to participate in that system. In fact it will be devastating. Since the passive loss rules do not apply to corporations, the repeal of the working interest rule would tend to drive investment in oil and natural gas from individuals to corporations. For Congress to take steps to promote such a shift would make little sense, particularly given the application of the alternative minimum tax.

Investments in working interests cannot be criticized on the grounds that losses from the investments arise from the deductibility of intangible drilling costs. Intangible drilling costs are no different from many other deductible costs that generate future value for the business. Research is an obvious example; it produces valuable patents and know-how, but qualifies both for a deduction and for an additional tax credit.

According to recent reports, because of recent discoveries and technological developments, the United States has nearly 100 years of natural gas reserves at current consumption rates. By contrast, it was once thought that U.S. natural gas reserves were dwindling. Expanded development of the resource could help secure the country's energy future. Given the size of the resource, it would be misguided policy for the country to take steps that could make it harder for small and independent oil and natural gas companies to raise capital for drilling.

I have been informed that both the Treasury Department and Congressional economists estimate that the repeal of the working interest rule will raise less than \$20 million in average new revenue per year over the next decade – an amount too small to even count as a rounding error in the federal budget.

NEXT: specific request that Congress not repeal the working interest rule

Congress should reject the proposal to repeal expensing of intangible drilling costs and repeal the working interest rule because the rules are sound tax policy; IDC's are real expenditures and working interests are not tax shelters, but are the traditional method for small and independent oil and natural gas producers to raise capital to fund development.

Additionally, the repeal of expensing of IDC's and the working interest rule would tend to discourage drilling at a time when technological advances and new discoveries have given the country 100 years of reserves of natural gas – reserves that, if developed, could meaningfully increase the country's energy security. America needs an energy policy that recognizes the roles that all forms of energy supply can play. American natural gas and oil are essential elements – natural gas should be part of any clean energy initiative; natural gas and oil should be part of any energy security strategy. The Administration's budget request could cripple the American producers that are pivotal in developing US natural gas and oil.

Respectfully yours,