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STATEMENT FOR THE RECORD

FOR THE HOUSE COMMITTEE ON WAYS AND MEANS

FULL COMMITTEE HEARING ON ENERGY TAX INCENTIVES DRIVING
THE GREEN JOB ECONOMY

APRIL 14, 2010

SUBMITTED BY

ROGER PLATT, SENIOR VICE PRESIDENT, GLOBAL POLICY & LAW
U.S. GREEN BUILDING COUNCIL



On behalf of the U.S. Green Building Council's (USGBC) nearly 19,000 organizational members and nearly 78 local chapters, I would like to thank Chairman Levin and Ranking Member Camp for convening a hearing on "Energy Tax Incentives Driving the Green Job Economy."

It is imperative the federal government play a leading role in improving the sustainability and energy efficiency of residential and commercial buildings nationwide. Expanding and creating new incentives are powerful market signals to consumer consumption and private industry investment.

To aid in job creation, energy reduction use and to assist a market with capital challenges we recommend the House Ways and Means Committee and the Congress to take action of the following items:

Improve the Energy Efficient Commercial Building Tax Deduction: Created in 2005, the Energy Efficient Commercial Building Tax Deduction (26 U.S.C 179(d)) currently provides a tax deduction of up to \$1.80 per square foot for the design and installation of qualified energy efficient building systems in new building construction or in the renovation of existing buildings. This performance-based deduction has leveraged billions of dollars in private capital, in turn leading to energy-efficient and sustainable construction or renovation of thousands of buildings across the country, and creating or preserving hundreds of thousands of jobs in the process. While it has been a powerful tool more can be done to improve the credit.

- 1) We recommend enlarging the Energy Efficient Commercial Building Tax Deduction from \$1.80 per square foot to \$3.00 per square foot in order to help stimulate immediate job creation. This improvement to 26 U.S.C 179(d) is contained in HR 4226, "The Expanding Building Efficiency Incentives Act of 2009," which we urge the Committee to swiftly consider and report.
- 2) In addition, the Committee should direct IRS to change the existing guidance on the Section 179D tax deduction to provide needed detail and to simplify needlessly burdensome requirements, which will increase the number of businesses that take advantage of the incentive. Directing the Service to clarify this guidance may be legislated by the Committee – or may be simply requested by the Chair and Ranking Member. In such request, we recommend the following specific areas for improvement:
 - As it has done with the similar new homes tax credit, the IRS should provide technical guidance for computing projected energy savings that is based on the California Alternative Calculation Method (ACM) manual, which is widely understood and also mentioned as a reference for calculation procedures in the text of Section 179D itself.



- To eliminate confusion and potential abuse of the tax deduction, the IRS should provide uniform regional energy cost assumptions for use in estimating building energy savings.
 - As required by the ACM manual, IRS should require that modeling software automatically generate the “reference” building against which energy savings are measured. Software meeting this requirement can be readily produced and would save considerable time and effort for potential applicants.
 - IRS guidance for the partial tax deduction (for individual lighting, HVAC, water heating, or envelope systems) should be further specified and simplified instead of requiring costly software modeling on the part of the applicant.
- 3) Finally, we recommend the Committee direct IRS to produce a form to provide taxpayers with greater certainty (and documentation in the case of an audit), and to provide the IRS with more information on the use of the deduction. Without forms, the IRS has no clear way of tracking how many taxpayers have claimed the deduction and for what amount.

Allow Real Estate Investment Trusts (REITs) to be Fully Eligible for Energy

Grants: Companies investing in qualifying projects that include investments in solar, fuel cell, small wind, combined heat and power systems, and geothermal technology, are eligible for a credit against their federal income tax liability. In recognition that the current economic downturn would likely limit many taxpayers from producing adequate taxable liability, Congress authorized the use of energy grants in lieu of tax credits in the American Recovery and Reinvestment Act (Pub. L. 111-5) through 2010. Despite being designed for this purpose, the energy grants provision in the Recovery Act has been interpreted to limit any direct benefit to a REIT.

- 1) We urge the Committee to swiftly consider and report bipartisan legislation, H.R. 4256, the “Sustainable Property Grants Act of 2009.” The bill would allow REITs to be fully eligible for energy grants authorized in last year’s stimulus bill and would encourage greater efficiency in commercial buildings. Such a change would move the market dramatically given that REITs have property holdings that are approximately 10-15% of the U.S. commercial real estate industry.¹

Expand Access to Financing: In a time of limited access to capital, a number of states and localities have utilized creative financing models to provide funding to perform building retrofits. Programs such as Property Assessed Clean Energy (PACE) financing enable the costs for efficiency upgrades in buildings to be added to commercial and residential property owner’s property tax bill as part of a

¹ “Real Estate Investment Trusts.” Hoovers Inc, 2010 <http://www.hoovers.com/real-estate-investment-trusts-%28reits%29/--ID__160--/free-ind-fr-profile-basic.xhtml>



municipal property tax assessment. Bonds for PACE can be issued by municipal financing districts or finance companies and the proceeds can be typically used to retrofit both commercial and residential properties. To date sixteen states have passed PACE-enabling legislation that would allow municipalities to establish programs².

- 1) We urge the Committee to swiftly consider and report H.R. 4155, "The Property Assessed Clean Energy Tax Benefits Act of 2009" or similar legislation or legislation soon to be introduced by Rep. Jim McDermott to assist states and localities to create and expand PACE programs.

Renew and Review New Energy Efficient Home Tax Credit (45L): The credit, created in 2005, provides a credit of \$2,000 for the construction of a new home that is 50 percent more energy efficient than 2003 standards. Since its creation this credit has been a tremendous tool to transform the new homes market to be more sustainable.

- 1) We urge the Committee to extend the tax credit until December 31, 2010 and to retroactively allow qualifying homes that were sold since January 1, 2010 to qualify for the credit.
- 2) Additionally, the Committee should pass provisions that establish a process for reviewing the credit to ensure it is utilizing up-to-date standards as its baseline year, thus maximizing the effectiveness of the program.

Expand Incentives for Workforce Training: The recent report from the U.S. Bureau of Labor Statistics paints a grim portrait: the construction industry alone has lost an average of 72,000 jobs per month in the last year.³ With scores of individuals remaining unemployed or underemployed, Congress should expand training and retraining opportunities in the construction sector with an eye toward sustainability.

- 1) USGBC urges the Committee to enact provisions similar to H.R. 4226, the "Expanding Building Efficiency Incentives Act of 2009" which provide tax credit for home-performance auditor training and certification. Such a program should also include LEED for Homes Green Rater certificate as an eligible training program.

² Bureau of Labor Statistics, "Employment Situation Summary." United States Department of Labor, 2 April 2010 <<http://www.bls.gov/news.release/empsit.nr0.htm>>

³ "Recovery Through Retrofit." White House, October 2009 <http://www.whitehouse.gov/assets/documents/Recovery_Through_Retrofit_Final_Report.pdf>



Create Tax Credits for Water Efficient Products: The energy use to treat and transport water is staggering. American public water supply and treatment facilities consume about 56 billion kilowatt-hours (kWh) per year – enough electricity to power more than 5 million homes for an entire year.⁴ Voluntary programs like EPA’s WaterSense, which designate products and services that save water and perform efficiently, are currently assisting consumers in decreasing water and energy use and saving money on their monthly utility bill. More can be done to encourage consumers to adopt water saving technologies – which will also save energy.

- 1) We urge Congress to pass H.R. 1908, “The Water Accountability Tax Efficiency Reinvestment Act,” or similar legislation to provide tax credit for WaterSense products and property.

USGBC commends the Committee’s attention to this matter and encourages you to consider legislation recommended above in order to spur job creation, lower energy costs, and curtail fossil fuel dependence. We look forward to working with the Committee, Congress and other stakeholders to make these recommendations a reality.

⁴ WaterSense, “Benefits of Water Efficiency.” U.S. Environmental Protection Agency, 30 March 2010
<http://www.epa.gov/watersense/water_efficiency/benefits_of_water_efficiency.html>



About U.S. Green Building Council: *The Washington, D.C.-based U.S. Green Building Council is committed to a prosperous and sustainable future for our nation through cost-efficient and energy saving green buildings. With a membership comprising 78 local chapters, nearly 19,000 member companies and organizations, and more than 100,000 LEED Accredited Professionals, the U.S. Green Building Council is the driving force of an industry that leads an unlikely constituency of builders and environmentalists, corporations and nonprofit organizations, elected officials and concerned citizens, and teachers and students.*

Environmental Impacts of Buildings: *On the aggregate, buildings are responsible for 38% of U.S. CO₂ emissions per year.⁵ In addition, buildings annually account for 39% of U.S. primary energy use;⁶ use 13.6% of all potable water or 15 trillion gallons per year;⁷ and consume 40% of raw materials globally (3 billion tons annually).⁸ The EPA estimates that 136 million tons of building-related construction and demolition debris are generated in the U.S. in a single year.⁹ (By way of comparison, the U.S. creates 209.7 million tons of municipal solid waste per year.¹⁰)*

⁵ Energy Information Administration (2008). Assumptions to the Annual Energy Outlook.

⁶ Energy Information Administration (2008). EIA Annual Energy Outlook.

⁷ U.S. Geological Survey (2000). 2000 data.

⁸ Lenssen and Roodman, 1995, "Worldwatch Paper 124: A Building Revolution: How Ecology and Health Concerns are Transforming Construction," Worldwatch Institute.

⁹ U.S. EPA Characterization of Construction and Demolition Debris in the United States, 1997 Update.

¹⁰ U.S. EPA Characterization of Municipal Solid Waste in the United States, 1997 Update. Report No. EPA530-R-98-007.