Congress of the United States
Washington, DC 20515

January 28, 2016

The Honorable Jacob Lew
United States Secretary of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Dear Secretary Lew:

We write to strongly urge you to use the current discussions with the Government of Norway to make necessary and critical reforms to the existing U.S.-Norway Tax Treaty (Treaty) in order to address serious competitive disadvantages faced by U.S. companies as quickly as possible. More specifically, we urge the inclusion of a sufficiently rated withholding tax on rental and lease payments in the revised Treaty, which we feel is necessary to rectify this Treaty-driven competitive disadvantage.

As a result of recent changes by Norway to its tax laws and the interaction of those changes with the current Treaty and U.S. tax law, U.S. companies that provide offshore construction services on the U.S. Outer Continental Shelf (OCS) are at a significant competitive disadvantage versus their Norwegian competitors. As you know, tonnage tax benefits across tax jurisdictions have historically been tied to activities surrounding the international transport of goods; to our knowledge, no other country currently provides these benefits to activities outside that scope. In 2007, however, Norway substantially expanded the scope of its tonnage tax regime to also include income earned on the OCS.

As you are aware, the U.S. OCS is considered part of the United States for tax purposes, however, U.S. companies are not eligible for benefits under the U.S. tonnage tax regime for analogous activity. As a result of the broad scope of Norway's tonnage tax regime, competing Norwegian companies with OCS income are subject to virtually no tax in Norway, affording them a significant competitive advantage over our U.S. based companies.

Notwithstanding that the Norwegian companies provide the same services using similar vessels as the U.S. companies, by having a U.S. subsidiary company charter or rent the vessels used for this work from its Norwegian parent, the Norwegian subsidiary avoids triggering Permanent Establishment (PE) status that would otherwise subject them to U.S. tax. If not for provisions in the current Treaty, negotiated long before Norway changed its tonnage tax regime, the OCS income of Norwegian-headquartered companies would ordinarily be subject to a withholding tax of 30 percent by the United States. As a result of the combination of tonnage tax treatment, avoidance of Permanent Establishment (PE) status, and avoidance of the 30 percent withholding tax, the Norwegian companies pay essentially zero tax on this income – giving them a significant competitive advantage over U.S. companies that are subject to full U.S. income tax.

Therefore, we strongly urge you to include in the revised Treaty a withholding tax sufficient to offset the competitive disadvantage faced by the U.S. companies. An economic analysis by the U.S. companies, which has been shared with your staff, shows that a rate of 17.5 percent

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represents the mid-point in the range of possible rates that would be sufficient to level the playing field for U.S. companies.

The inclusion of a withholding tax at this rate would continue to keep the rate below the 30 percent rate ordinarily imposed absent the Treaty, is consistent with withholding tax rates proposed by the Norwegian Government on similar transactions in its most recent national budget, and is consistent with similar withholding tax rates on rental and royalty income in other U.S. tax treaties.

Given the dire economic circumstances currently faced by those U.S. companies working on the OCS, many of whom are critical to the economic livelihood of many states including Louisiana, we ask that you prioritize the negotiations with Norway to include such a withholding tax in the reformed Treaty as quickly as possible.

Sincerely,

David Vitter
United States Senator

Bill Cassidy, M.D.
United States Senator

Charles W. Boustany, Jr., M.D.
Member of Congress

Steve Scalise
Member of Congress

John Fleming, M.D.
Member of Congress

Cedric Richmond
Member of Congress

Ralph Abraham, M.D.
Member of Congress

Garret Graves
Member of Congress