

April 22, 2011

CA: Statewide Big Box Ban Bill Moves Forward

On a vote of 6-3, the California State Senate Committee on Government and Finance approved SB 469. The 6-3 committee tally represents a party-line vote; all Democrats in support with all Republicans opposed. SB 469 mandates that projects 90,000 square feet and larger conduct “economic and community” impact reports that include a long list of complicated statutory assessments that must be made and submitted to the local agency. However, the practical impact of the bill will be to make it more expensive to develop such properties, and more difficult by providing lawsuit “hooks” to groups that oppose such development. SB 469 is actively being pushed by unions hoping to make it more difficult to build big box retail stores that are out of their control. The bill will next be heard by the Senate Environmental Quality Committee on May 2.

AL: Internet Sales Tax Notice Bill

The Alabama House has approved HB 365, which proposes to require Internet businesses to inform their customers from Alabama that they are responsible for paying sales tax. The bill also proposes that a space be provided on state income tax forms for taxpayers to list Internet purchases and pay income tax on those items. The proposal was approved by a vote of 89-6 and is now before the Alabama Senate.

NC: Internet Sales Tax Collection Repeal – Affiliate Nexus

SB 715 was filed on April 19 and proposes to eliminate the current obligation of a remote retailer to collect sales tax based on affiliate contracts with North Carolina residents. SB 715 was filed in conjunction with a House companion bill, HB 867.

SC: Internet Sales Tax Collection Physical Nexus Exemption

On April 19 the Senate Finance Committee favorably reported SB 808 on a 15-5 vote without holding a public hearing on the measure.

SB 808 proposes to redefine the threshold for physical nexus, a standing law that triggers the obligation for internet sales tax collections. The bill proposes that owning or utilizing a distribution facility within South Carolina will not be considered a determining factor to establish a physical presence in the state that is sufficient to establish nexus for sales and use tax collection purposes. Former Governor Mark Sanford struck a deal with Amazon to exempt the online seller from the state’s current physical nexus law in exchange for one of the seller’s distribution centers. Current Governor Nikki Haley does not support the deal but has said she would not veto the bill if passed by the legislature. SB 808 is now before the full Senate for a vote. A companion bill, HB 4091, has been filed but has yet to move forward in the legislative process.

In 2011-12, South Carolina is estimated to lose \$235 million in uncollected state and local sales tax from online purchases.

TX: Affiliate Nexus Legislation

HB 2403 by John Otto (R-Dayton) would require remote sellers to collect sales tax if they are affiliated with an entity in Texas (50% control test) which performs sales related to activities for the retailer or sells products similar to the retailer under a similar business name. The bill was recently approved by the House Ways and Means Committee as substituted. The bill's sponsor is a member of the majority party. There are no cosponsors and a companion bill has not been filed. Companions are considered important to moving bills through the legislative process.

HB 1317 by Elliot Naishtat (D-Austin) and SB 1798 by Royce West (D-Dallas) would create a rebuttable presumption that a retailer is doing business in Texas, and thus would be required to collect sales tax. Both of these bills have been heard in committee but have not been voted out.

E-fairness issues have come to the forefront in Texas. Last year, Comptroller Susan Combs (R) began to demand companies remit an estimated \$600 million in uncollected sales taxes from online transactions. Amazon notified employees February 10, 2011 that it will be closing a distribution center in the state due to what the retailer has termed an "unfriendly regulatory climate." The company has a case pending before the State Office of Administrative Hearings. In response to the Comptroller's decision, Governor Rick Perry (R) has been quoted as saying, "The comptroller made that decision independently. I would tell you from my perspective that's not the decision I would have made."

In 2011-12, Texas is estimated to lose \$1.6 billion in uncollected state and local sales taxes from online purchases.

MA: Sales Tax Holiday Filed Along with 758 Budget Amendments

The Massachusetts House has filed 758 amendments to the proposed budget. Included are amendments filed by House Minority Leader Brad Jones to create a sales tax holiday in August, and roll back the state sales tax to 5.625%. The House will begin debating the budget on the week of April 25.

MO: Historic Preservation and Brownfields Tax Credit Programs

SB 280 is currently before the Senate and proposes to cut Missouri's Historic Tax Credit program by almost 50% and eliminate a developers' ability to use the credit in tandem with other state incentive programs. Additionally, Brownfield Remediation Tax Credits are on the chopping block in SB 280. [The ICSC Missouri Government relations committee recently sent a statewide alert urging ICSC members in the Show Me State to contact their legislators in opposition to the removal of these incentives.](#)

Feds Release Proposed Regulations For CMBS

On March 29 federal banking regulators and the Securities and Exchange Commission (SEC) released proposed regulations to govern credit risk retention by securitizers of asset-backed securities, including Commercial Mortgage Backed Securities (CMBS). These regulations were prescribed by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) enacted into law in 2010.

Throughout Congressional consideration of the Dodd-Frank financial services reform legislation, ICSC joined the Commercial Real Estate Finance Council and other real estate trade groups in advocating for flexibility in the risk retention rules to acknowledge the difference in structuring between the various asset-backed securities. The proposed rule provides for options in terms of permissible forms of holding the retained risk. However, certain restrictions and newly-created requirements may be cause for concern.

ICSC believes that appropriate regulatory oversight and transparency are achievable without jeopardizing a viable secondary credit market for commercial real estate. ICSC will be submitting comments to the proposed regulations and we welcome input from our membership. Comments on the proposed rules are due on June 10, 2011. The final regulations will go into effect for CMBS in April 2013.

ICSC Global Public Policy
555 12th Street, N.W., Suite 660
Washington, DC 20004
202-626-1400

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For inquiries about the Global Public Policy office, contact gpp@icsc.org or call +1 202 626 1400.*

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