

August 26, 2011

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Main Street Fairness Efforts Ongoing

During the August Congressional recess, ICSC continued its advocacy efforts on the "Main Street Fairness Act" (MSF) by arranging for meetings with Members of Congress and constituents back home, making press opportunities available to ICSC members and meeting with others in the retail community about a legislative strategy when work in Washington resumes. Enactment of MSF closes a loophole that currently has online-only retailers and traditional "brick and mortar" retailers on an uneven playing field when it comes to sales tax collection. Collectively, states are losing from \$21.5 billion to \$33.7 billion in sales tax revenue every year from uncollected sales tax on e-commerce, catalogue and phone sales. While online retailers are posting record growth, the outdated sales tax collection system in place today places a tremendous burden on state and local governments who need revenue to continue important services.

For example, the average salary for a **police officer** in the United States is \$53,540. The lost sales tax revenue could pay the salary of:

- 1,892 police officers in Arkansas
- 3,246 police officers in Indiana
- 6,827 police officers in Tennessee
- 1,469 police officers in Utah

The average salary for an **elementary school teacher** in the United States is \$54,330. The lost sales tax revenue could pay the salary of:

- 1,864 elementary school teachers in Arkansas
- 3,198 elementary school teachers in Indiana
- 6,727 elementary school teachers in Tennessee
- 1,448 elementary school teachers in Utah

The average salary for a **child care professional** in the United States is \$22,000. The lost sales tax revenue could pay the salary of:

- 4,604 child care professionals in Arkansas
- 7,900 child care professionals in Indiana

- 16,613 child care professionals in Tennessee
- 4,737 child care professionals in Utah

For more information on this issue visit www.icsc.org/mainstreetfairness

Budget Control Act of 2011 (BCA) Takes Center Stage After Break

As Congress returns from the August break, ICSC's Office of Global Public Policy is analyzing the issues that may impact ICSC members, including implementation of the Budget Control Act (BCA).

As a part of the BCA, a Joint Select Committee on Deficit Reduction will convene to produce a plan to reduce the country's growing deficit by at least \$1.5 trillion. This report and its December 2 deadline to present a plan to the Administration and Congress, will largely overshadow the consideration of other legislative matters throughout the next several months. (See additional information on the Joint Select Committee on Deficit Reduction below.) We expect that revenue raisers such as the proposed tax increase on carried interest will be part of the Joint Committee's deliberations. ICSC GPP will have an education campaign to reach out to the members of the Joint Committee.

While many are focused on the activities of the new "Super Committee", there will likely be another stand-off at the end of September, which marks the end of the federal budget year. Before September 30th, Congress must put in place a continuing resolution to fund the government. Given the challenges associated with debate on spending legislation throughout this Congress, the debate on the CR may occupy much of September.

Looking beyond September to the end of the year, certain provisions of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, commonly referred to as "Tax Extenders," will expire at the end of 2011, beginning another discussion centered upon spending and taxes. These provisions include extensions of the "bonus depreciation" allowance included in the Small Business Jobs and Credit Act of 2010, leasehold depreciation and brownfields expensing. Again, however, this debate may be coupled with the Super Committee's work, with the potential for some tax reform included in the broader context of its charge.

Additional areas ICSC GPP is monitoring include the Surface Transportation Reauthorization Act, extension of the National Flood Insurance Program, and legislation to protect business from undue interference from the National Labor Relations Board.

Details of the Budget Control Act of 2011 (BCA) and Joint Select Committee on Deficit Reduction:

The BCA grants the President the authority to increase the debt limit in stages, subject to a Congressional disapproval process. In exchange for the caps on discretionary spending, the BCA authorizes the President to increase the debt ceiling by \$900 billion. The President used his authority under the BCA to request a \$400 billion initial increase in the debt ceiling on August 2 when he signed the bill into law.

The second step of BCA's deficit reduction regime involves the establishment of a bicameral, bipartisan Joint Select Committee on Deficit Reduction ("Super Committee") whose twelve members are charged with recommending by November 23, 2011 at least \$1.5 in additional deficit reduction over the period of Fiscal Years 2012 to 2021. Given the composition of the Super Committee, developing a consensus package that can be agreed upon by a majority of its members will likely prove both a political and practical challenge, even with \$1.2 trillion in automatic spending cuts should consensus not be met.

At this point, Democratic members of the Super Committee are expected to insist on revenue increases being part of the final package, with Republican members likely to demand that all of the additional deficit reduction come solely from spending cuts. Because of this dynamic, we are gearing up for a fight to protect the capital gains tax rate on the carried interest for real estate partnerships and LLCs.

Updated Deficit Reduction Process Calendar:

By August 16, 2011 -- Congressional leaders must appoint the 12 members of Super Committee.

By September 16, 2011 -- The Super Committee must hold its first public meeting by this date.

September 30, 2011-December 31, 2011 -- During this period, the House and Senate each must vote on a balanced budget amendment to the U.S. Constitution. This legislation will almost certainly fail to garner support of 2/3 of the Senate mandated for passage of amendments to the Constitution and will likely also fail in the House.

October 1, 2011 -- Unless the appropriations process is completed by this date, Congress will be forced to enact a continuing resolution funding the Federal government's operations in order to prevent a government shutdown. A major question still to be determined is whether such a continuing resolution will be of relatively brief duration to allow the appropriations process to be completed or whether the CR will become a de facto omnibus appropriations bill for Fiscal Year 2012 that substitutes for the normal appropriations process.

By October 14, 2011 -- Congressional Committees may report deficit reduction recommendations to the Super Committee for its consideration. Please note that Committees are not required to provide any recommendations.

By November 23, 2011 -- The Super Committee must produce detailed legislation that would achieve at least \$1.5 in additional deficit reduction over the period of Fiscal Years 2012 to 2021.

By December 2, 2011 -- The Super Committee's report, legislative language and CBO score must be transmitted to the Administration and Congress.

By December 9, 2011 -- All Congressional Committees to whom the Super Committee's legislation is referred must report the legislation to the full House and Senate with no amendment.

By December 23, 2011 -- The House and Senate must vote on the Super Committee's legislation which cannot be amended on the Floor of either Chamber. A simple majority vote will be required in both the House and Senate to pass this legislation; 60 votes in the Senate will not be required.

October 1, 2012 -- If a bill does not become law by January 15, 2012 that reduces the deficit by an additional \$1.5 trillion over the next ten years, Director of the Office of Management and Budget(OMB) must make cuts to defense and non-defense programs sufficient to produce \$1.2 trillion in savings over ten years. If no additional deficit reduction becomes law, these automatic cuts of \$1.2 trillion over ten years would represent a cut of approximately 8.0 percent from projected spending levels. Social Security payments, Medicare premiums, co-payments, and certain low income programs are exempt from these across-the-board cuts. The cuts to Medicare can only come from provider payments and are capped at 2 percent of the annual cost of the Medicare program. Military pay is also likely to be exempted from any automatic cuts to defense programs. Obviously, the size of these exemptions means that there will have to be substantially larger cuts to remaining programs than 8.0 percent to achieve the required \$1.2 trillion in savings.

MA: Main Street Fairness Bill Reported Favorably Out of Committee

The Joint Committee on Revenue has reported favorably on an amended version of the Main Street Fairness Bill. If passed, the bill will make vendors responsible for collecting the state sales tax on internet purchases made in Massachusetts. The new bill (H 3673) makes minor changes to the original, and is now with the Joint Committee on Rules.

CA: Superstore Ban Bill Pending

SB 469 (Vargas; D-San Diego), the proposed California law that seeks to make the local approval process for certain retail development significantly more difficult, was passed by the Senate in May,

cleared the Assembly Appropriations Committee this week and now goes to the Floor where it must be acted on in the next two weeks. The bill would specifically require additional economic and community impact analyses for retail developments 90,000 square feet or larger that sell groceries. SB 469 adds additional bureaucratic red tape to an already cumbersome regulatory process that discourages business investment by retailers, negatively impact tenant improvements on existing stores, and further inhibits the state's struggling economy.

ICSC continues to strongly oppose the measure which is sponsored by certain unions as a way to gain bargaining leverage on certain big retailers.

CA: Displaced Property Service Employee Opportunity Act Advances

Approved by the CA State Assembly, AB 350 (Solorio; D-Santa Ana) was passed by the Senate Appropriations Committee on August 22 and will next be considered by the full Senate.

AB 350 expands an already-flawed law that requires employers with new janitorial contracts to keep their predecessor's employees, even if the predecessor lost the contract because of personnel problems. Under the bill employers with a new contract for property services (including building maintenance, licensed security, window cleaners and food cafeteria services) would be required to hire all of the prior contractor's employees. AB 350 impacts not only shopping centers but any property with service contracts and will further burden an already distressed commercial real estate market in California.

NJ: Economic Development Bills Signed Into Law

Commercial Development Fee Moratorium -- On August 24 Acting Governor Kim Guadagno (R-NJ) signed into law a bill extending a moratorium on the fee that threatens to add 2.5% to the cost of every commercial development project in the State of New Jersey.

The Act, (S-2974, Lesniak/Sweeney, A-4221Coutinho/Bucco/Burzichelli) specifically revives and extends a moratorium on the imposition of fees on non-residential construction projects until July 1, 2013. The statewide 2.5% non-residential development fees had been charged to retail, office, commercial and industrial real estate developers to help municipalities meet affordable housing obligations. An earlier moratorium on the fee requirement expired on July 1, 2010, and the commercial development community in New Jersey has suffered tremendous financial uncertainty on construction projects ever since.

Extending the 2.5% commercial development fee moratorium effectively suspends a jobs tax on the shopping center industry while balancing the need for affordable housing with the ability to manage growth and create jobs in New Jersey. The measure, a long-standing priority of the New Jersey Government Relations Committee, was propelled by the many contributions from ICSC members including grassroots support, committee testimony, telephone calls, letters and emails throughout the legislative process.

Expansion of Tax Credits for Mixed-Use Development - Governor Christie (R-NJ) recently signed S-2972 (Lesniak/Coutinho), which enhances and expands the Urban Transit Hub Tax Credit program and makes important regulatory changes to encourage mixed-use development in New Jersey.

Specifically, the bill provides that affordable housing requirements for a project are to be determined by the municipality; allows mixed use projects to receive tax credits for both the residential component and the commercial components of a project; allows the tax credits to be carried forward for up to 20 years; and provides \$200 million in tax credits to spur the development of the proposed American Dream project in the Meadowlands.

Recognizing that urban redevelopment is central to the future of retail real estate, the Urban Transit Hub Tax Credit Program concept was produced by members of the ICSC New Jersey Government Relations Committee along with the Smart Growth Economic Development Coalition of New Jersey.

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