

August 5, 2011

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Main Street Fairness Bill introduced in US Congress

On July 29, 2011 Senator Dick Durbin (D-IL) and Representatives John Conyers (D-MI) and Peter Welch (D-VT) introduced the "Main Street Fairness Act" (MSF) in their respective chambers of the U.S. Congress (S. 1452 and H.R. 2701). If enacted, this measure would enable states to require Internet retailers to collect sales tax for all purchases made online. Currently, Internet retailers only have to collect sales taxes in states where they have a physical nexus (store, office, warehouse or distribution center). The legislation is cosponsored by Senators Tim Johnson (D-SD) and Jack Reed (D-RI) in the Senate and Representative Heath Shuler (D-NC) in the House. This is the first time in five years there has been a MSF bill in both houses of Congress.

"This bill brings needed attention to an issue that requires Congressional action. Many Internet retailers currently enjoy a competitive pricing advantage over brick-and-mortar retailers because of a loophole created by a 1992 Supreme Court decision that allows them to avoid collecting state sales taxes. The Main Street Fairness Act would ensure that all retailers, regardless of where they are located, collect and remit state sales taxes," explained David B. Henry, chairman of the International Council of Shopping Centers (ICSC) and president and chief executive officer of Kimco Realty Corporation. "ICSC believes a sale is a sale, no matter where it happens."

Most states already have what is known as a "use tax," which requires consumers to pay a tax when they make a remote or online purchase and sales tax is not collected by the retailer. However, few consumers are aware of this tax liability. According to a recent poll conducted by ICSC, 64% percent of consumers either do not know or do not believe they are required to pay sales tax on Internet purchases if not collected by the vendor. This uncollected tax can represent a sizable amount in lost revenue for states. A 2009 University of Tennessee study estimates that in 2012 that number could be as high as \$23 billion.

ICSC has promoted sales tax fairness for over a decade, advocating a level playing field regardless of where the purchase takes place. We will continue to work with Congress towards a bipartisan solution to the problem. To learn more about this issue visit www.icsc.org/mainstreetfairness.

Congress Recesses Until September, Carried Interest Tax Increase Dodged in Final Agreement

Temperatures and tempers soared in Washington in July over the debt ceiling limit bill. Finally, on August 2, 2011, after protracted and often fractious debate, the Senate approved by a 74-26 vote the Budget Control Act of 2011 (S. 365), a debt limit/deficit reduction measure that also establishes a powerful, joint select committee of Congress to develop additional deficit cuts.

The bill would establish a 12-member “Joint Select Committee on Deficit Reduction” to make recommendations, including legislative language, to reduce the deficit by \$1.5 trillion over the period of 2012 through 2021. Members of the Committee are expected to be named shortly. ICSC and other real estate organizations worked arduously to ensure that the carried interest tax hike was not included in the final agreement. The proposal, portrayed as a tax break for hedge fund managers, would increase the tax on the general partner’s share of profits in a real estate partnership from the 15% capital gains rate to the 35% ordinary income (starting in 2013 rates go to 44%!) With the formation of the Deficit Reduction Committee, ICSC and its members must continue to be ever-vigilant in opposing what represents the largest tax increase on real estate since the 1986 Tax Act.

FASB Lease Accounting Proposal Update

The Financial Accounting Standards Board and its international counterpart continue to work on their lease accounting proposal project (capitalization of all leases) and in July announced a new target date for an exposure draft at the end of 2011. That would be followed by a 120-day comment period; the new rules will not be issued until mid-2012 and the transition date is 2015. This departure from the Boards’ original timeline is an indication of the complexity of the proposal and reaction to FASB changing its course over the past few months. The delay allows stakeholders another chance to comment. For more information, see http://www.icsc.org/government/news_events.php .

MA: Sales Tax Holiday August 13-14

Governor Patrick signed into law a sales tax holiday on August 13 and 14 this month. The Massachusetts 6.25% sales tax will be waived on items under \$2,500.

MA: 2012 Ballot Initiatives Filed

Ballot initiatives for the 2012 election were filed with the Massachusetts Attorney General. Among the proposed laws are a plan to expand the bottle redemption law to include non-carbonated beverages and a pair of laws that would sanction the sale of beer and wine at food stores, a plan defeated by voters in 2006. Backers of certified proposals must gather 68,911 signatures by mid-November. After successful signature drives, lawmakers have until May 2012 to support the proposals, offer alternatives, or permit the questions to appear on the 2012 ballot. If lawmakers take no action, supporters must gather an additional 11,485 signatures to place the question on the ballot.

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