

January 6, 2012

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Sales Tax Fairness Report: 2011 Recap and Forward Look for 2012

In 2011 there was a tremendous amount of activity on the sales tax fairness issue. The Main Street Fairness Act was introduced in July by Senator Dick Durbin (D-IL) and Congressman John Conyers (D-MI) in their respective chambers. In September what is best described as a "game changer" occurred when California's Governor enacted the Amazon law. ICSC was involved in that effort, which included the promise by Amazon to walk from a multi-million dollar ballot referendum to repeal the law and a public pledge to work towards a federal solution.

Following on the heels of what happened in Sacramento, two bipartisan bills - H.R. 3179, the Marketplace Equity Act and S. 1832, the Marketplace Fairness Act - were introduced on Capitol Hill to deal with the sales tax collection problem. Both bills take a fresh approach to the sales tax collection problem by offering states the option to comply with the Streamlined Sales and Use Tax Agreement (SSUTA) or satisfy minimum simplification requirements. (The Main Street Fairness Act would require all states to comply with the SSUTA to collect the sales tax from remote sellers.) There is growing momentum as indicated by the three legislative proposals addressing the issue and a November 30, 2011 hearing before the House Judiciary Committee. At the hearing a majority of the committee members commented that it was time for a federal solution.

ICSC's media outreach on sales tax fairness has revolved around op-eds, letters to the editors and radio, newspaper and TV interviews across the country. Since October ICSC has engaged in a robust paid advertising campaign to educate the public about the need for Congressional action on sales tax collection and garner backing for the two bi-partisan proposals. The majority of ads have been placed in inside-the-Washington Beltway publications that cater to Congress and Congressional staff. However, ICSC has occasionally utilized major papers such as The Wall Street Journal, The Washington Post and The New York Times to raise visibility about the issue and ICSC. We have also done online ads in forbes.com and on a city/county publication site. ICSC's communications campaign has provided a heightened understanding of the issue and we are pleased that our efforts have been very well received by the bill sponsors, Congressional offices and other stakeholder groups.

Looking ahead to 2012, ICSC plans to continue its media outreach and grassroots efforts and we invite ICSC member participation. For more information, please visit www.icsc.org/salestaxfairness

Tax Hike on Carried Interest Averted...For Now

Once again ICSC's Office of Global Public Policy, along with our colleagues at the various real estate industry trade groups, has succeeded in holding back efforts to raise taxes on general partners in real estate partnerships and LLCs. Largely due to a lack of movement on any legislation in Congress last year, the potential for the massive tax increase proposed for private equity, real estate and venture fund managers was minimal in 2011. Since 2012 will be largely defined by the Presidential election, we do not expect to see significant movement on this issue. However, should the Republican leadership in the House continue to be pinned down with the image of non-cooperation, the carried interest tax hike could be conceded. This is a very real contingency we will be watching.

Along with consistently pointing out the technical flaws in the proposed legislation and the substantive differences between real estate partnerships and private equity partnerships (the intended target of this legislation), we seem to have made headway with lawmakers with our arguments that this issue should be dealt with in conjunction with the larger tax reform debate on the appropriate tax rate for capital gains across the board, not just for one specific sector.

NY - ICSC Meets with Governor's Staff; Governor Delivers State of the State Address

On December 22, the New York ICSC Government Relations Committee led by Howard Carr, Lamont Blackstone, Damon Hemmerdinger and Ken Kamlet met with Leecia Eve, Governor Andrew Cuomo's (D) newly-appointed Deputy Secretary for Economic Development. The focus of the meeting was ICSC-backed reform proposals to the state's tax increment finance (TIF) law. The Cuomo Administration has expressed their support for modernizing the state's policies regarding TIF and giving developers and municipalities the economic development tools they need to get projects moving again in across the state. The Governor's support and leadership for this issue is key as the industry works with the legislature this session.

Governor Cuomo commenced the Legislative Session by delivering his State of the State Address on January 4. The Governor laid out a three-part plan for 2012 and beyond that included (1) New York's economic blueprint for growth; (2) Reimagining government; and (3) New York as the Progressive Capital. Under the Governor's blueprint for economic growth, he outlined several initiatives, including investing \$1 billion in economic development for Buffalo, a second round of regional economic development council awards and legalizing casino gambling. The Governor also spoke on building on the successes of this year by making New York a progressive state by establishing a tax reform and fairness commission to propose additional, long-term changes to corporate, sales, and personal income tax systems, and to find ways to close tax loopholes, promote efficiency in administration, improve NY's business climate, and enhance collection as well as enforcement.

NJ - Wastewater Reform Legislation Approved by Committee

Assembly Bill No. 4335 and Senate Bill No. 3156 (the Water Quality Management Plan legislation) have been approved by their respective committees in each house. The legislation would address cumbersome and flawed administrative requirements for wastewater treatment plans in New Jersey. The bill proposes to extend the mandated requirement to establish or update county wastewater management plans and extends validity of sewer service areas and wastewater service areas for two years. Under the current burdensome administrative process, all 21 counties were to prepare their intensively detailed countywide plans by April 2009.

This reprieve would allow environmental protections to remain while providing a focused remedy to overly ambitious regulations enacted in 2008. The measure would also prohibit the New Jersey Department of Environmental Protection (NJDEP) from rescinding wastewater service area designations for a limited time period as the plans continue to be developed. Such assurance is necessary for landowners who are concerned about the status of their properties, as well as for those with financial commitments from lenders and investors. An extension will also allow the NJDEP and the counties, both of which are operating under constrained conditions, to ensure that the plans are accurate and are in the best interest of New Jersey and its economic recovery.

The full Senate will consider the bill on the final day of the lame duck session on January 9.

NJ - Grow New Jersey Legislation sent to Governor

Legislation (S3033/A4306), proposing a powerful new business attraction and retention incentive program, has been sent to Governor Chris Christie (R) for signature. With deep bipartisan support, the measure known as "Grow New Jersey" was unanimously approved by the State Senate and overwhelmingly passed by the General Assembly earlier in December.

The "Grow New Jersey" program, if enacted, would create a new tool to both retain and attract jobs in smart growth areas of New Jersey. The bill proposes to award up to \$50,000 per new or existing full-time job, with a possible bonus of up to \$30,000 per job, provided that the capital investment of the business (and any landlord) exceeds \$20 million and the business retains at least 100 full-time existing New Jersey jobs or creates at least 100 new jobs in a targeted industry. Governor Christie has until January 11 to sign the measure into law.

"Grow New Jersey," a legislative priority of the New Jersey Smart Growth Economic Development Coalition, is based on another Coalition bill, the successful Urban Transit Tax Hub Credit Act. The Act has spurred the construction of several \$50 million+ corporate headquarters projects around the State, but the Act is limited to nine cities. Grow New Jersey would create, essentially, a "lite" version of the Urban Transit Hub Tax Credit Act and would be applicable to properties in many more municipalities.

The New Jersey Smart Growth Coalition, of which ICSC is a founding member, is a group of over 30 organizations whose goal is to promote long-term redevelopment, smart growth and economic stimulus initiatives within New Jersey.

NJ - Second Reauthorization Pending for Permit Extension Act of 2008

Draft legislation extending the Permit Extension Act of 2008 a second time (to 2014) was introduced in early December in the General Assembly as A4422. Prime sponsors are Assemblymen Greenwald (D-6, Camden), DeCroce (R-26, Morris Plains), Green (D-22, Plainfield), Milam (D-1, Cape May), and Moriarty (D-4, Washington Twp). Subsequently, A4422 was unanimously approved by the Assembly Housing and Local Government Committee on December 8. An identical Senate companion bill (S3165) was introduced on the same day by State Senator Sarlo (D-36, Wood-Ridge).

Legislation to extend permits maintains strong support in the Senate and Assembly and is expected to gain approval in the legislature's effort provide relief to development projects delayed by the ongoing economic downturn.

CO - General Assembly Returns this Month

The Colorado General Assembly will kick off the 2012 legislative session on January 11. The fact that this is an election year, coupled with the lingering unrest over reapportionment promises a contentious, eventful session for all. Legislative issues expected this year include changes to attorneys' fees in construction defects litigation, requiring title insurance companies to have "bricks and mortar" in the state, and revisions to the state's enterprise zone statute. A handful of legislators are also currently studying the effect of tax increment financing (TIF) on school finance, which could impact future urban renewal projects if legislation is passed to limit the use of TIF. Preservation of urban renewal will also be a priority issue this year.

MA - Amazon.com May Open an Office in Cambridge

Amazon, which currently has no physical presence in Massachusetts, is considering opening an office location in Cambridge as early as February. An office in Massachusetts may create nexus and attendant responsibility to collect the state sales tax.

TX - Texas Revenue Forecast Boosted by Sales Tax Collections

Texas Comptroller Susan Combs has released her state revenue update and forecast for the Texas Economy. She estimated that Texas will collect \$1.6 billion more than was budgeted for the 2012-2013 fiscal biennium that started on September 1, 2011. The report indicates that the driving force behind the

additional state dollars is improved sales tax collections, particularly in the oil and gas industry. Sales tax revenue has rebounded primarily from a technology-driven increase in oil and gas activity which was up 72% over the previous fiscal year. The additional money will mitigate some of the cuts the legislature made to Medicaid, which was under-funded by as much as \$4.8 billion. The new revenue estimate could reduce that shortfall to around \$2.4 billion.

TX - Primary Elections Moved to April 3

A Federal court in San Antonio moved the Texas Primary election date from March 6, 2012 to April 3, 2012 after the U.S. Supreme Court granted the State's request to block the use of congressional and legislative maps ordered by a three-judge federal court in San Antonio. The state alleged that the San Antonio court exceeded their judicial authority and attempted to usurp the duties of the state legislature. The Supreme Court will hold oral arguments on January 9 on whether the three-judge federal court in San Antonio acted properly in redrawing Texas House, Senate, and congressional maps. A candidate filing period was held from November 28 – December 19, 2011, but the filing period will be re-opened once legislative and congressional maps are settled, and it will close at 6:00 p.m. on February 1.

UPCOMING EVENTS

[January 26, 2012: Washington State Day at the Capitol](#)

Olympia, WA

Contact: Alesha Shemwell at Alesha.shemwell@macerich.com

[January 31, 2012: Virginia Day at the Capitol](#)

Richmond, VA

Contact: Roger Rodriguez at Roger.rodriguez@timmons.com

February 7, 2012: Maryland Day at the Capitol

Annapolis, MD

Contact: Tom Barbuti at tbarbuti@wtplaw.com

[November 14-16, 2012: Government Relations Conference \(GRC\)](#)

Westin Gaslamp Quarter

San Diego, CA

Hotel reservations:

www.starwoodmeeting.com/Book/ICSC2012

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