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House Ways and Means Chair Camp Releases Broad Tax Reform Proposal

On February 26 House Ways and Means Chair, Dave Camp (R-MI) released a broad tax reform proposal that has been several years in the making. ICSC has pulled together a brief analysis on some items of importance to the shopping center industry. [A section-by-section summary is available as well.](#) More details are forthcoming. ICSC has a number of concerns about the elimination of various provisions in the current IRS Code – such as the repeal of like-kind exchanges, accelerated depreciation and capital contributions to corporations for development, as well as what the impact will be on other business deductions. Most of the proposals in the legislation are prospective rather than retroactive.

Given that 2013 is an election year and there is a divided Congress, this bill, much like the reform plan late last year from then Senate Finance Chairman Max Baucus, is UNLIKELY to move. The Camp legislation, however, will be the topic of discussion going forward; certainly its provisions are possible starting points for inclusion in future reform legislation.

AT A GLANCE:

- **Carried interest** - The draft recharacterizes as ordinary income a portion of the gain of a partner that is actively engaged in buying, developing and selling other businesses. Both the summary accompanying the proposal and Revenue chart specifically state that “the provision would not apply to a partnership engaged in a real property trade or business” but given the importance of CI to our members we are trying to confirm that (pages 120-122 of summary).
- **Ordinary income** – Under the Camp tax reform plan, the top marginal tax rate on real-estate related income would be 35 percent (25 percent, plus a 10 percent “surtax” on modified adjusted gross income). Receipts derived from the construction of real property (in the active conduct of a construction trade or business) would be excluded from the 10 percent surtax.
- **Capital gains** – The maximum individual capital gains rate would be 24.8 percent (21 percent plus the 3.8 percent tax on net investment income).
- **FIRPTA** – Provisions aimed at increasing foreign equity investment in the U.S. commercial real estate market by providing relief from discriminatory tax rules in the Foreign Investment in Real Property Tax Act (FIRPTA), such as those included in the Real Estate Investment and Jobs Act (H.R. 2870) are not included in the Camp proposal
- **REIT-specific provisions** – *Not yet analyzed* (pages 123-131 of summary).
- **Repeals Section 118 contributions to capital** – Removes federal subsidy for state and local governments to offer incentives and concessions to businesses that locate their operations within their jurisdiction (page 50 of summary).
- **Depreciation** – The draft would repeal MACRS and subject depreciable property to the Alternative Depreciation

System (straight-line depreciation), lengthening depreciation lives for property placed in service after 2016 (pages 51-53 of summary).

- Treasury study. The proposal directs Treasury, in consultation with BEA, to develop new depreciation schedules that track the economic life of assets by the end of 2017. Although it is not entirely clear, it appears the Treasury would not have the authority to automatically adjust depreciation lives, but would rather make recommendations to the Congress.
- Preexisting investments. Unlike the Baucus discussion draft, the new depreciation rules would not apply to existing investment. The proposal directs Treasury, in consultation with BEA, to develop new depreciation schedules that track the economic life of assets.
- Basis indexing for inflation. Taxpayers could adjust the basis of depreciable property annually to reflect inflation, as measured by chained CPI-U.
- Leasehold improvements. The expired provision that permits 15-year depreciation for qualified leasehold improvements would not be reinstated, but presumably the depreciable life of leasehold improvements could be shortened in the context of Treasury's reevaluation of depreciation schedules.
- **Net Operating Loss Deduction** – C-corps could deduct a carryover or carryback only to extent of 90 percent of corporation's taxable income (determined without regard to the NOL deduction) conforming to current AMT rule. Repeals a number of special carryback rules (page 53 of summary).
- **Depreciation recapture** – Future depreciation deductions would be recaptured at the time of disposition and taxed as ordinary income (unlike the Baucus discussion draft, the depreciation recapture proposal does not apply to prior depreciation deductions unless does not reach back). This provision is still under review by tax counsel.
- **Repeal of like-kind exchanges** – The ability to deferral capital gain through exchanges of like-kind property would be repealed for transfers after 2014, with the exception of certain binding contracts entered into before the end of 2014 (page 68 of summary).
- **Partnership reform** – ICSC is trying to identify which of the particular reforms is most impactful to our members – your input is welcome.
 - Audits. TEFRA rules would be repealed and a single audit system would be created that examines partnership items and partners' distributive shares. Partnerships with 100 or fewer partners could opt out. *This provision is estimated to raise \$13.4 billion over 10 years.*
 - Pre-contribution gains. A partner who contributes property with pre-contribution built-in gain or loss would recognize the gain or loss when the partnership distributes the property, regardless of when the distribution occurs. *This provision is estimated to raise \$0.4 billion over 10 years.*
 - Basis adjustments. A partnership would be required to its basis in partnership property when a partner transfers his partnership interest or the partnership distributes property to a partner. *This provision is estimated to raise \$0.4 billion over 10 years.*
 - Publicly traded partnerships. Publicly traded partnerships would be taxed as C corporations, with the exception of partnerships in which 90 percent of income is from activities relating to mining and natural resources.
- **Energy-efficiency** – The expired section 179D deduction for energy efficient commercial buildings is not reinstated (page 58 of summary).

For questions, please contact Jennifer Platt, jplatt@icsc.org or Betsy Laird, blaird@icsc.org

House Judiciary Committee to Hold Hearing on E-Fairness

On March 4, the U.S. House of Representatives Judiciary Committee will hold a hearing titled "Exploring Alternative Solutions on the Internet Sales Tax Issue." This much-anticipated hearing will examine the different policy concepts and approaches to take in order to achieve a fair and level playing field for retailers as it relates to sales tax collection. Witnesses include: The Honorable Chris Cox, representing NetChoice; Joe Crosby with MultiState Associates; Stephen Kranz with McDermott, Will and Emery; William Moschella with Brownstein, Hyatt, Farber; Andrew Moylan with R Street Institute; James Sutton with Moffa, Gainor & Sutton. ICSC applauds Judiciary Chairman Bob Goodlatte and the committee members for focusing on this important issue. Our hope is that the hearing will mobilize support amongst committee members and that a new proposal will emerge in the House in the near future. ICSC will provide a post-hearing update.

Governors Continue Support of Marketplace Fairness at Annual Meeting

Gubernatorial support for the Marketplace Fairness Act was strongly in evidence at the annual National Governors' Association (NGA) Winter Meeting last week in Washington, DC.

Colorado Democratic Governor John Hickenlooper, serving as Vice Chairman for NGA, urged Congress to pass the Marketplace Fairness Act because "It is plain and simple good for business."

Alabama Republican Governor Robert Bentley emphasized what other supporters have said all along: "This is not a new tax. The tax is already owed."

And rounding out all three major political parties, Rhode Island Independent Governor Lincoln Chaffee said he will also urge his federal counterparts to pass Marketplace Fairness Act because the revenue generated can be "put into higher education, toward K-12, toward our roads and bridges, and be competitively economically."

Flood Insurance Affordability Act Introduced

Last week the House of Representatives released legislation that would address the sharp rate increases associated with changes made to the National Flood Insurance Program through the Biggert-Waters Act of 2012. H.R. 3370, the Homeowner Flood Insurance Affordability Act, would, among other things, reinstate grandfathering for those properties built after the implementation of flood insurance rate maps (Post-FIRM properties). The bill is expected to be brought up for a vote within the next few weeks. If you have any questions or comments, please contact Mike Anderson at mranderson@icsc.org.

Senate Banking Committee Holds TRIA Hearing

On Tuesday, the Senate Banking Committee held its second hearing on the reauthorization of the Terrorism Risk Insurance Act (TRIA). Both Democrat and Republican committee members showed a strong interest in a prompt reauthorization of the program. While the details associated with a final reauthorization bill are still being debated, the hearing reemphasized the committee's commitment to addressing the issue of TRIA.

AZ: Governor Vetoes Controversial Bill

On Wednesday Governor Jan Brewer (R) vetoed SB 1062 after a week of intense debate among supports and opponents of the measure. The bill was intended to protect businesses that deny services to customers for religious reasons. In reality, however, the legislation would have allowed a business owner to deny service to a customer based on race or sexual orientation. ICSC GPP staff had direct conversations with the Governor and her staff during last weekend's National Governors Association (NGA) meeting in Washington, D.C. ICSC members in Arizona also worked with business owners, the Arizona Chamber, and numerous local officials to further encourage a veto by Governor Brewer.

CO: Day at the Capitol Scheduled for March 3

ICSC members will join members of NAIOP and the Colorado Apartment Association for the annual "Commercial Real Estate and Multi-family Housing Day at the Capitol" on Monday, March 3. The day will begin with a tour of the capitol and includes the opportunity to interact with legislators and monitor committee hearings. Colorado Attorney General John Suthers will address attendees, followed by the Governor's budget Director Henry Sobanet. This will be followed by a legislative reception at the nearby University Club. Attendance at this year's event is expected to be higher than ever, both for legislators and members. It will be a great opportunity to interact with lawmakers. For more information or to register for this event please contact Erin Goff at erin@axiompolitics.com.

CO: Nexus Bill Introduced

A bill has been introduced in the House to change the definition of "nexus" for state sales tax collection purposes. The bill, HB 1269, was heard in committee earlier this week but no vote was taken. A similar bill was introduced last year and failed. Recognizing that this is more of a "band-aid" and may end up in court, ICSC is using this bill as an opportunity to remind state legislators of the importance of the Marketplace Fairness Act, and to encourage their support of its passage on the federal level.

Canada: Premier Wynne to Welcome Canadian Energy Leaders at Summit

On Feb. 28, 2014, Premier Kathleen Wynne will host energy leaders from across Canada at the Canadian Energy Innovation Summit. The Summit will bring together national, provincial, business and policy leaders from the energy and innovation sectors to collaborate and build economic development strategies for Canada's clean energy technologies. It will also inform Ontario's input into the Council of the Federation's Canadian Energy Strategy.

The Summit will be held at the MaRS Discovery District in Toronto. Annette Verschuren, Chair of Ontario's Clean Energy Task Force, and Dr. Ilse Treurnicht, CEO of MaRS Discovery District will co-chair the Canadian Energy Innovation Summit.

IL: Illinois Concealed Carry Permits Ready for Issue

Next week the Illinois State Police is expected to announce the distribution of the first concealed carry permits in Illinois. Illinois retailers who do not want concealed guns carried into businesses must post specific signs at all entrances. The state-approved signs can be found here: <https://ccl4illinois.com/ccw/Public/Signage.aspx>.

Additionally, the law allows carriers to store their firearms in their vehicles in the parking lot. The firearm can only be carried from the passenger compartment to the trunk and vice-versa for purposes of storing upon arrival or retrieving upon departure. The entire law can be found here: <http://www.ilga.gov/legislation/publicacts/98/PDF/098-0063.pdf>.

Finally, Frequently Asked Questions regarding the law and other information may be found here: <https://ccl4illinois.com/ccw/public/home.aspx>.

MD: Day at the Capitol Scheduled for March 6

The ICSC Maryland Government Relations Committee's annual "Day at the Capitol" will be held on Thursday, March 6. This yearly visit to the state capital is designed to engage elected officials on the issues most important to retail real estate. The Day at the Capitol is also an excellent networking event for reconnecting with colleagues and establishing new relationships in the shopping center industry.

The day in Annapolis concludes with an ICSC-hosted reception at Harry Browne's on State Circle. This event continues to be very popular and attracts a number of state officials. Whether or not you are able to join us for legislative visits, we hope you will consider helping us put a face on the shopping center industry in Maryland by attending the reception at Harry Browne's on March 6. To RSVP for the event, please contact Blaise Stanicic at Blaise.Stanicic@capitol-strategies.com

MA: Brownfields Tax Credit Included in Budget Bill

The Massachusetts House and Senate recently passed a supplemental budget to make further appropriations for FY2014. The budget included \$15 million for the Brownfields Tax Credit. The Brownfields Act, passed in 1998, allows tax credits for any taxpayer who incurs costs in the cleanup of contaminated property in the state. A bill extending the Credit through 2019 is currently awaiting action before the Legislature. However, the Brownfields Fund had run dry until the supplemental budget recapitalized it in order to allow existing Brownfields projects to continue.

MN: Legislature Begins Session with Business Tax Bills

The Minnesota Legislature began its 2014 session on February 25. Lawmakers enter this session with a projected state budget surplus.

The House Taxes Committee is quickly pushing forward bills to address some highly contentious taxes enacted last session. The proposals would repeal three business related taxes that deal with warehousing, telecommunications purchases and business equipment repair. Changing the state's tax code to conform to federal tax changes passed by Congress last year is also on the agenda.

Governor Mark Dayton (DFL) and House leadership have indicated they are in favor of the repeals. However, Senate leadership hasn't agreed to repeal any of the taxes.

Are You Involved in the Political Process? Let Us Know!

ICSC recently launched a survey to gauge the level of political engagement and relationships with elected officials that ICSC member have. If you have not done so yet, please take a moment to fill out our brief survey. It only takes about 5 minutes to complete and will make a tremendous difference in ICSC's ability to advocate at the state and federal levels on issues that are vital to the retail real estate industry. To begin the survey, please use this link:

<http://re.spon.se/v6RB1t>.

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