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### 1986 Déjà Vu?

This week the Senate Finance Committee released discussion drafts of Chairman Baucus's initial approach to tax reform. ICSC's quick analysis suggests that these reforms may impact the retail real estate industry in a similar way as the 1986 Tax Act. We also expect additional reform proposals are forthcoming, such as a cut to business interest or commercial mortgage interest deduction. ICSC and the other real estate organizations will be aggressively pushing back on these misguided proposed changes to the Tax Code.

While the Baucus language dealing with international transactions includes some positive and much-anticipated adjustments to the Foreign Investment in Real Property Tax Act (FIRPTA), it is the "Cost Recovery and Accounting" draft that raises great concern to us. This proposal, if it found its way into law, would make some very significant changes to commercial real estate transactions.

Specifically, the draft proposes a number of reforms to current law that will directly impact retail real estate, including:

- repeal of Section 1031 like-kind exchange rules;
- repeal of the current depreciation rules, in favor of a new system with 43-year depreciation of real property;
- permanent repeal of the Section 179D tax deduction for energy efficient buildings;
- depreciation recapture would be taxed at ordinary income rates;
- limiting to 50% the amount of advertising expenses that can be expensed;
- repeal of the last-in/first-out method of accounting and the lower of cost or market rules; and
- changes relating to the amortization of intangible assets.

As for next steps, Chairman Baucus's staff has requested public comments by January 17, 2014. ICSC and others will solicit feedback for inclusion in the comments. In the meantime, it is important to recognize that comprehensive tax reform may be difficult, if not impossible given the current Congressional climate. The Baucus proposals, however, if not summarily addressed and critiqued, could serve as the basis for legislation in the future. ([Click here to view the proposal.](#)) For more information, contact Betsy Laird ([blaird@icsc.org](mailto:blaird@icsc.org)) or Jennifer Platt ([jplatt@icsc.org](mailto:jplatt@icsc.org)).

### Small Business Administration Examines Small Seller Exception and Internet Sales Taxation

On November 19, the U.S. Small Business Administration (SBA) released a study that analyzed how a small business exemption in the Marketplace Fairness Act would impact online retailers. The SBA's study found that 99% of online retailers would be exempt at the \$1 million threshold. While eBay has long claimed that this bill would burden small business, this study directly contradicts that claim and exposes their true motivation, which is to preserve the unfair competitive advantage enjoyed by its power sellers. The study also found that the current exemption would only capture 57% of taxable online sales. Additionally, the study points out the risk of including any small seller exemption as it disrupts a truly level playing field for small brick-and-mortar retailers that collect sales taxes in the first dollar of sale and continues inefficiencies that skew business development and influence consumer behavior in ways that are harmful to the economy. [Click here for the complete study.](#)

## **GOP Lawmakers Oppose EPA Expansion of Clean Water Act Jurisdiction**

On November 7, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) released a draft rulemaking that would significantly expand the jurisdiction of the Clean Water Act. The rule would apply Clean Water Act standards to all natural and man-made tributary systems, including streams, lakes, ponds, wetlands, and ditches. The EPA clearly rushed this rulemaking, releasing it less than 24 hours after the due date for public comments on the agency's draft report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," which served as the basis of the new rulemaking. More than 100,000 comments on the study were reportedly submitted, including comments submitted by ICSC through its role in the Waters Advocacy Coalition (WAC). Moreover, the rulemaking was released before the completion of a review of the study by the Science Advisory Board (SAB).

The EPA and the Corps have been pushing the proposed rule in order to avoid the need to make case-by-case nexus determinations and create a more efficient process to identify federally protected waters, or "waters of the United States." Expanding determinations in how Clean Water Act regulations are applied will have a considerable impact on the ability of ICSC members to obtain timely permits to continue existing operations or develop new or expanding enterprises. The proposed expansion of the Clean Water Act will result in additional permitting of pollution discharges, some of which could take years to complete. The new rule also requires states to certify that activities such as dam-building or other federally permitted activities do not harm water quality and cleanup of oil spills.

Last week, 30 members of the Senate Western Caucus and Congressional Western Caucus sent a letter to EPA Administrator Gina McCarthy calling on the EPA to stop circumventing Congress in an effort to implement policies that would essentially take over non-federal water in the United States and cause damage to the economy. The Caucus Members pointed out that Congress has rejected this policy in the past due to the devastating effects it has on farmers, ranchers, small businesses and individual landowners to use their property. Additionally, Senate Environment and Public Works Committee Ranking Member David Vitter (R-LA), along with House Committee Chairmen Reps. Bob Goodlatte (R-VA) and Spencer Bachus (R-AL) sent a letter to Office of Management and Budget (OMB) Administrator Howard Shelanski asking OMB to halt the rulemaking.

## **Canada: New Brunswick Provincial GR Chair Leads ICSC Delegation to Ministers' Meeting**

James Petrie (Executive Vice-President, The Plaza Group) is leading a small ICSC delegation on November 28 to meetings with ministers and staff of the Provincial government. This is the first time in memory that such an effort has been made in New Brunswick and will set the stage for further engagement in 2014 on transportation issues, development fees, stormwater concerns and other matters of importance to the shopping center industry.

## **Edward Eickhoff Receives 2013 William M. Sulzbacher Government Relations Leadership Award**

This week ICSC members convened in Chicago for the second annual Volunteer Leadership Summit. As part of the event, the 2013 ICSC William M. Sulzbacher Government Relations Leadership Award was presented to Edward Eickhoff, SCLS (Vice President of Development/ Redevelopment for Ramco-Gershenson). In the spirit of Mr. Sulzbacher, the award recognizes an outstanding ICSC Government Relations Volunteer who demonstrates great capacity for compassion, integrity and service.

"Edward Eickhoff exemplifies what it means to be a volunteer," said Cynthia Kratchman, former Michigan State Director and Recipient of the Trustees Distinguished Service Award. "Ed has taken the role of GR chair and clarified the mission, underscored the urgency of the issues, enlisted an excellent committee and delivered the ICSC message with the utmost in professionalism. He absolutely defines and redefines what it is to be a first class volunteer and representative of ICSC – in all realms and particularly so in the Government Relations arena."



The next ICSC Government Relations event will be the 2014 Strategic Leadership Summit on March 25 - 26 in Washington, DC. The summit serves as ICSC's annual "Federal Fly-In" event and gives members the unique opportunity to visit Congress to lobby on behalf of the industry.

## **Do You Need Help Attracting Retail Development to Your Community?**

The ICSC Foundation is proud to offer the Thomas M. Menino Alliance Scholarship to sponsor a public sector or

non-profit member of ICSC to enroll in the [John T. Riordan \(JTR\) Global School for Professional Development](#).

The JTR School is ICSC's most distinguished professional development program. Participants learn about the retail real estate industry and the positive impact quality development can bring to their communities. This scholarship will allow other public officials to follow in Mayor Menino's footsteps by learning how to attract vibrant retail to your community.

### [Apply now!](#)

Scholarship benefits of the Thomas M. Menino Alliance Scholarship:

- \* Industry wide recognition
- \* Positively impact your community
- \* Learn about retail real estate from industry experts
- \* Attend JTR in Scottsdale, AZ all expenses paid

To find out more about the scholarship and eligibility visit the [ICSC Foundation Website](#). The deadline to apply is February 3, 2014.

### **MA: Final Draft of Brownfields Tax Credit Guidance Released**

The long-awaited Department of Revenue (DOR) regulation concerning the Brownfields Tax Credit was released on November 18. Chapter 206 of the Acts of 1998 created the credit, which allows for a tax credit to taxpayers who undertake the cleaning up and redevelopment of Brownfield sites. The law was amended in 2006 to include nonprofits and allow for the transfer of the credit from one eligible taxpayer to another. DOR Directive 13-4 seeks to clarify issues surrounding the credit.

The directive includes four issues. First, it clarifies that taxpayers are eligible to apply for the credit the year in which the documentation of a permanent solution or remedy operation status is filed with the Department of Environmental Protection. Second, it states that additional costs necessary to attain a permanent solution may be included in a credit application. The directive also says that non-profit organizations who undertook redevelopment of Brownfield sites prior to the 2006 amendment are not eligible for the credit. Finally, credits granted before the amendment may not be transferred.

HB 2515, an act related to the tax credit, seeks to extend the Brownfields Tax Credit until 2019. The credit is set to expire next year. The bill was reported favorably by the Joint Committee on Revenue and is awaiting further action.

### **MA: Winter Break at the State House; Minimum Wage Bill Pending**

Formal sessions in the House and Senate ended on November 20 and the Legislature is on winter break until January. Among the bills pending action is SB 1925, an act to restore the minimum wage, which seeks to raise the minimum wage from \$8.00 per hour to \$11.00 per hour over the next three years, giving Massachusetts the highest minimum wage in the country. Speaker Robert DeLeo said that he is not concerned if certain issues are left unresolved until they reconvene and that the Legislature should not be judged until the end of its two-year session. Others are concerned, however, that members will be distracted next year by other anticipated legislation, such as gun laws, the following fiscal year's budget, and elections coming up next fall.

### **OH: ADA Notification Legislation Introduced**

HB 333 was introduced this month in the House. The purpose of the bill is to protect business owners from frivolous ADA litigation while valid accessibility violations are corrected. The bill would require the aggrieved to provide notice to the responsible party of the property where the alleged violation occurred. Further, upon notification, the responsible party would be given 30 days in which to respond in one of the following ways: 1) State that improvements will be made to bring the property into compliance with accessibility laws; 2) Challenge the validity of the alleged violation; or 3) State that the violations have already been corrected. In addition, under the bill, after the initial response, the responsible party would be given a full 120-day period in which to make the corrections necessary to bring the property back into compliance with ADA regulations before the alleged aggrieved party may file a lawsuit.

In an effort to make Ohio Legislators aware of the importance of HB 333 and to continue the push among state leaders on the Marketplace Fairness Act, Ohio ICSC members held their second "Day at the Capitol" event on November 13. Members from across Ohio traveled to Columbus, where they met with legislators, administration officials and key staff. The group was also recognized by the Speaker of the House during session. The day was tremendously successful and helped further the strength of ICSC with Ohio's General Assembly.

## Register Now for SLS 2014: The ICSC Federal Fly-In

For more than 20 years the shopping center industry has assembled in Washington, DC to deliver its legislative agenda to Capitol Hill. This year ICSC will hold the 2014 Strategic Leadership Summit on March 25-26. We invite you to participate in this important event. Make your voice heard during the second session of the 113th Congress on critical legislation ranging from sales tax fairness to tax reform to the environment. SLS provides an opportunity to have face-to-face meetings with Members of Congress or their staff where you can articulate your views on issues of importance to your company and the shopping center industry. [Click here to register and for more information.](#)



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