



THE PARTNERSHIP AUDIT SIMPLIFICATION ACT OF 2015

OUR POSITION: ICSC opposes H.R. 2821, the Partnership Audit Simplification Act of 2015, which would impose joint and several liability on partners as a result of a partnership audit, amongst other concerns. We hope to find a suitable alternative approach that will not impact capital creation but allow for the current process to be improved.

Current Situation:

Over the last several years the Internal Revenue Service (IRS) has been unable to sufficiently audit partnerships for a variety of reasons. As part of the project to address under-enforced aspects of the tax code, legislation has been developed to replace existing rules for IRS audits of large multi-tiered partnerships.

H.R. 2821, the Partnership Audit Simplification Act of 2015, was introduced in June 2015 by Congressman Jim Renacci (R-OH) and Congressman Ron Kind (D-WI). Upon review of this legislation, ICSC, in conjunction with the national real estate organizations, identified several provisions that could hurt the retail real estate industry's ability to attract equity by significantly increasing tax liability.

First and foremost, H.R. 2821, as introduced, would impose joint and several liability on current partners, prior partners (who were partners during the year being adjusted), and the partnership itself for tax liabilities identified during the audit process. Further, all partners would be bound by the decisions of a designated partnership representative. Tax adjustments would be calculated by reference to the highest statutory income tax rate (currently 39.6%), regardless of the character of the income or whether the partnership includes tax-exempt partners. The burden would fall on individual partners to amend a prior tax return and prove they are subject to a reduced tax rate.

Conclusion:

The Tax Policy Advisory Committee of the Real Estate Roundtable, in which ICSC and many of our members participate, has developed a series of suggestions to alleviate the impact on real estate partnerships while providing improved procedures for partnership audits. ICSC hopes that the tax writing committees will incorporate these changes before moving forward with legislation related to partnership audit simplification.

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