TAX REFORM

OUR POSITION:

ICSC supports the stated goals of comprehensive tax reform: simplification; global competitiveness; and economic growth. However, the retail real estate industry holds significant concerns about the direct and indirect economic impact of several proposals in the Baucus and Camp tax reform drafts.

Many of the member companies that comprise the retail real estate industry are organized as pass-through entities or as Real Estate Investment Trusts (REIT). Based on the currently proposed tax reform proposals, our industry will not directly benefit from lower corporate tax rates, but will carry the burden of helping to finance the cost of rate reduction. This will materially and disproportionately harm real estate, the valuation of underlying assets, capital formation, the institutions that are invested in retail real estate and the economy as a whole.

Based upon feedback from our members the major areas of concern are as follows:

Like-kind Exchange: Both the Baucus and Camp discussion drafts propose to eliminate like-kind exchange treatment for real property. The current like-kind exchange rules should be maintained as they promote the efficient use of capital and cash flow by allowing taxpayers to shift to more productive like-kind property, change geographic location, diversify or consolidate holdings, or otherwise transition to meet changes in business needs.

Depreciation Recapture: Both drafts propose taxing depreciation recapture at ordinary income rates. The current 25% capital gain rate for straight-line depreciation recapture should be preserved as it recognizes the hybrid nature of real estate gains, which can derive from a combination of factors including general asset appreciation, inflation, and the value of the owner's improvements to the property.

43/40 Year Depreciation: The Baucus draft calls for a 43-year and the Camp draft calls for a 40-year life for real property. These extended depreciation lives are considerably longer than the usable life for most real estate. ICSC has advocated for permanent depreciation schedules that are more in line with market economics, especially for replacing certain building components such as roofs and updating retail space to reflect consumers' expectations and government regulations. The longer depreciation periods suggested in tax reform drafts would result in higher capital costs for building owners, creating disincentives to upgrade and modernize the space for their tenants.

Capital Contribution by a Non-Shareholder (Section 118): State and local economic development incentives, especially those funded by state and local taxes, should be exempt from federal income taxes. It is unreasonable for the federal government to claim 35% of the value of tax increment and other financing provided to encourage economic development in a community.

Energy Efficiency: Instead of total repeal, as proposed by both the Baucus and Camp discussion drafts, Section 179D should be revised with more effective rules encouraging the energy efficiency of buildings, such as providing for a sliding scale that would increase the amount of the incentive for retrofits with greater energy savings.

Finally, it is crucial that transition rules be carefully considered. Potential changes in tax rules should not be retroactive as proposed in the Baucus draft and should only apply to property not yet "placed in service." As well, the cumulative negative effects of various tax reform proposals should be taken into account.

As Congress continues to consider the priorities and how to structure comprehensive tax reform, ICSC looks forward to engaging with the Senate Finance Committee and the House Ways and Means Committee on how U.S. tax policy can truly provide growth and continued investment in America's communities.

Based on the aftermath of the 1986 Tax Act, tax reform that is not carefully considered can have disastrous consequences for individuals, institutions, and for the economy as a whole.

Proposed changes would increase the rate on straight-line depreciation recapture by over 58%.

In 2011, leasehold improvement outlays of more than $15.5 billion added nearly $45 billion to the U.S. economy, and supported nearly 342,000 jobs.

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