

August 24, 2012

- **ICSC President and CEO Hits the Airwaves for Sales Tax Fairness Media Tour**
- **There's Still Time to Meet with Your Members of Congress about Sales Tax Fairness**
- **Real Estate Industry Groups Turn Their Attention to Basel III**
- **ICSC Joins Real Estate Groups for a Policy Briefing at National Party Conventions**
- **ICSC's Office of Global Public Policy Coming to a Meeting near You**
- **New Federal Stormwater Rules Delayed**
- **CA: CEQA Reform Long Overdue**
- **CA: ADA Reform Nearing Passage**
- **CA: Legislature Declines to Act on Environmental, Parking and Energy Measures**
- **FL: Proposed Sales Tax on Tenant Improvements**
- **MA: Governor Signs Economic Development Bill; Lease Liability Right Restored**
- **OH: Real Property Assessment Corrected**
- **TX: Property Tax vs. Sales Tax Debate**
- **TX: Fiscal Outlook Better than Before**

ICSC President and CEO Hits the Airwaves for Sales Tax Fairness Media Tour

Last week ICSC members may have seen a familiar face on television. ICSC President and CEO Michael Kercheval appeared on nearly 25 media markets across the country to talk about ICSC's efforts on behalf of sales tax fairness. ICSC has been aggressively educating lawmakers and others about the burden placed on consumers to determine and remit sales and use taxes owed from online purchases. Currently, if a sale takes place in a brick and mortar store or on a website or catalog for a vendor that has a physical presence in the state, the sales tax is collected for the consumer. If a sale takes place through an online-only retailer (or from a vendor located in another state), the sales or use tax is not collected for the consumer, but it is still owed. This places an impractical burden on the consumer, who must then determine what the applicable tax rate is, what sales are impacted and where the tax should be sent. ICSC recently conducted national polling that found that 86% of consumers would prefer to have the tax collected at the time of purchase.

Throughout the summer, ICSC has seen the momentum increase on important federal legislation that would give states the tools to fix this problem and the ability to structure their sales and use tax programs. We look forward to seeing further progress on this issue when Congress returns in September.

There's Still Time to Meet with Your Members of Congress about Sales Tax Fairness During the Recess

Congress is in recess for their district work period until September 7. There's still time to meet with your Senators and Representatives at home to discuss the importance of closing the online sales tax loophole. The August recess provides many opportunities for you to interact with your Congressional Delegation – everything from setting up a meeting with the Members and/or their staff, to inviting Members to tour your site, to attending one of their town hall meetings. [For tips on how to interact with your Congressional Delegation, click here.](#)

Under the Global Public Policy section of the ICSC website, you'll find [a helpful FAQ on the federal bills in play](#), [a myths and facts piece](#), and [talking points](#). All of these documents may be used as leave behind materials with Congressional offices. We also encourage you to share ICSC's website www.21stCenturyRetail.org with elected officials, community leaders and colleagues to help spread the word. This website provides background on the issue, stats by state, recent media coverage and videos of key public officials and academics talking about the issue.

(Need the contact information for your Member of Congress? [Please visit ICSC's Legislative Action Center to look up your Congressional Delegation.](#))

Real Estate Industry Groups Turn Their Attention to Basel III

"Basel III" is a comprehensive set of reform measures, building on the prior Basel I and Basel II documents. Basel III was

developed by the Basel Committee on Banking Supervision to improve the banking sector's ability to deal with financial and economic stress, improve risk management and strengthen the banks' transparency. A focus of Basel III is to foster greater resilience at the individual bank level in order to reduce the risk of system wide shocks.

The National Real Estate Organizations (NREO) are committed to strong capital requirements to insure the stability of financial institutions. However, appropriate capital requirements are necessary to allow for suitable levels of risk-taking to fuel economic growth and job creation. NREO believes that the recently released proposed Basel III rulemaking will have impacts upon liquidity and capital formation for non-financial businesses. Financial institutions serve as a conduit to match investors with entities and to provide credit to businesses.

Therefore, how the Basel III rulemaking impacts financial institutions will have a direct bearing upon the ability of non-financial businesses to access the capital and credit needed to operate and expand. Additionally, the proposal must be viewed in the context of how other initiatives, including but not limited to the Volcker Rule, derivatives regulations, systemic risk regulation, proposed accounting reforms, possible money market regulations, combine to affect the ability of non-financial businesses to raise capital. A cursory study of the Basel III rulemaking seems to indicate that the Comptroller of the Currency (OCC), Federal Reserve and Federal Deposit Insurance Corporation (FDIC) are not taking these non-financial business and economic impacts in account as these proposals are being drafted and considered.

ICSC is currently collecting opinions and background from ICSC members on this issue. If you have any interest in this issue please contact Jennifer Platt at jplatt@icsc.org or 202-626-1404.

ICSC Joins Real Estate Groups for a Policy Briefing at National Party Conventions

Every four years as the United States gears up for the Presidential campaign season, the Republican and Democratic parties call their members together to coalesce behind their party's presidential nominee. As in years past, the National Real Estate Organizations (NREO) will hold events to create visibility and branding for the important economic, societal and community impacts the real estate industry makes to the country. NREO will be hosting a policy briefing at both conventions with national industry leaders and lawmakers.

- August 28, 2012 - 3:00 pm to 3:45 pm - Real Estate Policy Forum - Republican National Convention - "A Strong Real Estate Market is Vital for a Robust Economic Recovery"
- September 5, 2012 - 2:00 pm – 2:45 pm - Real Estate Policy Forum - Democratic National Convention - "A Strong Real Estate Market is Vital for a Robust Economic Recovery"

The briefing will be available online for all ICSC members interested in viewing. To participate in this webcast, please RSVP by visiting the following links:

Tampa FL: <http://realestatetampa.eventbrite.com/>

Charlotte NC: <http://realestatecharlotte.eventbrite.com/>

ICSC's Office of Global Public Policy Coming to a Meeting near You!

The ICSC Office of Global Public Policy (GPP) is expanding its presence at several ICSC meetings around the country. The goals are to increase the number of ICSC members contributing to ICSC's federal PAC, educate members on the importance of the ICSC PAC, increase awareness of legislative efforts in Washington, DC and across the country and encourage ICSC members to get engaged in the political process. So far this year, GPP has hosted information booths at the Mid-Atlantic Idea Exchange, RECon, New England Idea Exchange, Next Generation Conference and the Florida Conference. GPP will have a booth presence several upcoming events, including PA/NJ/DE Idea Exchange, Western Division Conference, Southeast Conference, Chicago Deal Making, Texas Conference and New York National Conference. Please stop by and visit the GPP booth and send your friends and colleagues over so that they can learn more about how to get involved!

New Federal Stormwater Rules Delayed

The U.S. Environmental Protection Agency (EPA) has postponed action on new rules for post-construction stormwater management (for new and existing commercial properties) until 2014.

Existing federal rules apply to active construction sites larger than one acre. New rules could preempt state and local regulations across the country and might include requirements for pervious paving, rainfall retention and construction design. ICSC argued for a delay given the complexity of the issue and the wide variety of commercial property types and uses.

CA: CEQA Reform Long Overdue

Despite stringent federal and state environmental laws and local planning requirements, public and private projects throughout the state are commonly challenged under the California Environmental Quality Act (CEQA), even when a project meets all other environmental standards of existing laws. Many lawsuits are brought or threatened for non-

environmental reasons and often these lawsuits seek to halt environmentally desirable projects like clean power, infill and transit.

While CBPA and ICSC have focused on a CEQA reform package for several years, we have been unable to overcome the unified and organized opposition of every environmental group in the state to any suggestion of general reform.

This year, a retooled legislative strategy and alignment with such organizations such as the Silicon Valley Leadership Group and the California Alliance for Jobs provided a new opportunity. SB 317 (Rubio; D-Bakersfield) would accomplish the following: 1. Integrate Environmental and Planning Laws; 2. Eliminate CEQA Duplication; 3. Focus CEQA Litigation on Compliance with Environmental and Planning Laws; 4. Enhance Public Disclosure and Accountability. We expect the legislature to tackle the issue either in a special session or at the beginning of 2013.

CA: ADA Reform Nearing Passage

SB 1186 is a consensus measure that would help put an end to demand letters and find a way around technical issues versus accessibility issues. After years of effort, this bill represents the best chance to reduce the number of frivolous "drive by" ADA lawsuits.

CA: Legislature Declines to Act on Environmental, Parking and Energy Measures

As the California Legislature concludes the final days of the 2012 session, several measures impacting retail development have been defeated including:

"GREEN WASTE" RECYCLING BILL KILLED - AB 2670 (Chesbro; D-Eureka) would have increased statewide alternative daily cover and organic diversion requirements on businesses that handle green waste (food). This would have greatly increased cost and difficulty of operating properties that produce green waste.

PARKING BILL DIES - AB 904 (Skinner; D-Berkeley) would have set state limits for parking by reducing parking requirements for affordable housing projects in certain urban areas. This bill could have had a negative impact on existing and future retail/office/industrial projects by spillover of parking from residential projects without enough parking.

ENERGY EFFICIENCY LOAN BILL DIES - SB 1130 (de Leon; D-San Francisco) an industry-supported bill that would have provided low cost energy efficiency loans did not advance out of committee. The industry has been working with the administration, treasurer, and/or controller over the past three years to design a program that uses the bonding ability of the state to provide an option for property owners to tap into low cost loans for energy efficiency. This year, unfortunately, the required funds needed to seed the program are not available.

ENERGY COMMISSION WITHDRAWS ZERO NET ENERGY - Due to ongoing concerns expressed by a number of groups, the California Energy Commission has again withdrawn a recent proposal to adopt "Net Zero Energy" by way of a third "Tier" to the state's California Green Building Standards (CalGreen). While "voluntary" at the state level, the CalGreen Tiers are routinely adopted as mandatory by local cities and counties. A zero net energy building is one which produces its entire annual energy needs from on-site sources (solar photovoltaic). A recent study sponsored by industry showed that many commercial buildings - even the most energy-efficient - simply do not have enough roof space to sustain the amount of PV that would be needed to meet this requirement.

FL: Proposed Sales Tax on Tenant Improvements

A proposed rule to impose the state sales tax on tenant improvements continues to be reviewed by the Florida Department of Revenue (DOR). This issue persists despite an appellate court ruling last December affirming that tenant improvements are not "rent" and not subject to sales tax under Florida statutes. ICSC is continuing to play an active role in a stakeholder group opposed to the proposal. If adopted, the rule would amount to double taxation since the state already applies the sales tax to the improvement materials, property tax on the improved property, and a 6% sales tax on all commercial leases. The next public hearing on the matter is scheduled for September 6, 2012.

MA: Governor Signs Economic Development Bill; Lease Liability Right Restored

The 2012 Economic Development Bill (HB 4352), recently signed into law by Governor Deval Patrick (D), included a section drafted by the Massachusetts ICSC Government Relations Committee that restores the rights of commercial landlords and tenants to negotiate liability with respect to building repairs. The ICSC Massachusetts Government Relations Committee worked for the past year in the aftermath of a 2011 Supreme Judicial Court (SJC) ruling, *Bishop v. TES Reality Trust*, to restore this decades-old negotiation practice for commercial real estate leases.

The legislation contained a number of other provisions important to retail development, including a sales tax holiday to increase business for the Commonwealth's retailers, reforms within the Department of Environmental Protection to expedite permitting and ease regulatory burdens for development and new financing mechanisms for infrastructure investments through enhancements to the I-Cubed program in Massachusetts.

OH: Real Property Assessment Corrected

Thanks to efforts by ICSC members in Ohio, language was recently enacted (HB 487) that corrected a major issue in how real property value was determined for taxation purposes.

For decades the Ohio Supreme Court interpreted the code section under what is known as the Ratner Standard (which measured upon a uniform set of rules) and a uniform tax rate was applied to that value. The result was a fair and uniform tax system. The Ohio Ratner Standard was consistent with property valuation law in the vast majority of state jurisdictions.

In 2005 the Ohio Supreme Court changed its position on valuation and prohibited auditors or courts from taking into consideration circumstances that demonstrate that the sale may not be representative of fair market value. This placed Ohio in the extreme minority of state jurisdictions with regard to property tax valuations. Because a great number of variables are associated with commercial sales, they did not always reflect true market value. As a result, strict reliance on the purchase price often resulted in unfair and non-uniform taxation.

HB 487 returns Ohio to a system where all property is assessed based on market conditions and not contractual obligations. Restoring the Ratner Standard assures a fair, uniform and predictable assessment for taxpayers and taxing authorities. The added language makes clear that when determining true value from the best sources of information, the focus is on the "fee simple estate, as if unencumbered" of each property. This change will have a long-term positive impact on ICSC members throughout Ohio and could not have been achieved without their efforts.

TX: Property Tax vs. Sales Tax Debate

The debate between property tax and sales tax is heating up in Texas. Various proposals have surfaced that may receive consideration when the Legislature convenes again in January 2013.

- **"We Texas Plan"** - Former Republican candidate for Governor (2008), Debra Medina, who is a Tea Party leader, is advocating what she calls the "We Texas Plan," which would eliminate all property taxes and franchise taxes; increase the state sales tax rate from 6.25% to 7.5% for individual purchases (current exemptions); add a 2.525% sales tax to business purchases with no exemptions (raw materials, machinery and equipment, and utilities would not be exempt); and the local 2% additional sales taxes would remain the same. The Texas Taxpayers and Research Association estimates that the "We Texas Plan" would be a \$16 billion tax shift from individuals to businesses.
- **Texas Public Policy Foundation** - Led by former State Representative Talmadge Heflin, the Texas Public Policy Foundation has proposed a similar plan with two alternatives: It would eliminate property taxes but keep the franchise tax and either double the state sales tax rate to 12.5% keeping current exemptions or increase the state sales tax rate to 9% if the base is broadened to include services.
- **Texas Tax Truth** - In response to these property tax/sales tax swap proposals, former House Ways and Means Committee Chairman Representative Jim Keffer commissioned Billy Hamilton (former Chief Revenue Estimator for the Comptroller's office) to do a study called "Texas Tax Truth." He produced a report entitled "A Big Idea That is Bad for Texas." The report concluded that replacing lost property tax revenue would require an additional state sales tax of 11.6%, added to the current 6.25% rate, plus the 2% local rate - causing the Texas sales tax rate to be 19.85%.

TX: Fiscal Outlook Better than Before

The Texas state budget situation appears to be better than the fiscal outlook legislators dealt with in the 2011 legislative session when the state faced a \$12 billion budget deficit. Sales tax collections have increased for 28 consecutive months. The comptroller has not officially revised her forecast, but in a recent briefing document she indicated the state's revenue is \$5 billion more than anticipated going into the 2013 legislative session. That will more than cover the \$4.7 billion Medicaid shortfall without using the Rainy Day Fund. The trajectory indicates that economic growth will also likely cover normal growth including \$2 billion in public education enrollment growth. It will not cover the more than \$5 billion in public education formula funding cuts made by the 2011 legislature, and it will not be enough to provide additional public school funding if the state loses one of the public school finance lawsuits.

ICSC Global Public Policy
555 12th Street, N.W., Suite 660
Washington, DC 20004
202-626-1400