GPP eNews
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ICSC Legislative News, Events & Resources

September 28, 2012

Update on FASB Lease Accounting
The Financial Accounting Standards Board (FASB) and its international counterpart, the International Accounting Standards Board (IASB), met September 20 in what was supposed to be their final meeting before issuing a new exposure draft (ED) on lease accounting. The release of the new ED is not expected until the first quarter of 2013. FASB was also to meet on private company issues associated with the lease accounting proposal in late September.

FASB and IASB are planning to differentiate between real estate operating leases and equipment leases in a number of ways. There has been some progress made on the real estate front but those covering the Boards' actions still have major concerns with their handling of equipment leases.

As it pertains to real estate, however, at the September 20 meeting the Boards' accepted the staff recommendation of a complicated bookkeeping method for leases under the single lease expense (SLE) approach and when doing sublease accounting.

Those following the Boards' latest actions say the decisions about "sweep issues" with SLE and sublease accounting are going to be problematic for real estate lessees. They also believe lenders and debt analysts will object because they no longer will have information on capital lease obligations and newly capitalized operating lease obligations (they will not be combined). Analysts will not have information on rent expense and cash paid for rent.

Earlier in September, ICSC, the Real Estate Roundtable, the U.S. Chamber of Commerce and numerous other associations representing real estate, finance and business called upon the Boards to "fundamentally rethink" the lease accounting proposal given investor concerns and procedural issues. The letter questioned whether, under the proposed changes, "investors would receive any additional decision-useful information" and whether there would be "an adverse impact on financial statements."

Since the Boards have decided to move forward, it is important the real estate and investor communities to stay engaged. Following the release of the 2013 ED there will be a six month public comment period to address outstanding issues like those mentioned above. New rules would not be issued until 2014 and transition period will likely go until 2017. For more information, please contact Betsy Laird at blaird@icsc.org.

NLRB Close to *Roundy's* Decision on Public Access
The Coalition for a Democratic Workplace (CDW) reports that National Labor Relations Board (NLRB) member Sharon Block has suggested several times this summer that the Board may issue its decision in *Roundy's* in the near future. The decision could set new standards for physical and electronic access to employer property (such as access to employer email systems) by **non-employee** union organizers. The *Roundy's* case involves a grocery store that used a nonunion construction company to make renovations. The union argued that the store must allow union agents

access to the store's private property for union run boycotts because the store had allowed charitable organizations, such as the Salvation Army and the Girl Scouts, to access the property (i.e., the union argued it would be unlawful discrimination for the store to bar the union access where it had granted access to other organizations). CDW, of which ICSC is a member, filed a brief in *Roundy's* on January 7, 2011, arguing there is fundamental difference between consumer boycotts intended to harm the business and the presence of organizations that benefit the business. Furthermore, CDW contended that the Board should not require employers to allow nonemployee union agents to trespass on private property for the purpose of harming the employer's business, under any circumstances. ICSC will keep members updated on any release by the NLRB. For more information, please contact Betsy Laird at blaird@icsc.org.

Joint Hearing on Capital Gains
On September 20, the House Ways and Means Committee and Senate Finance Committee Chairman held a joint hearing to review the tax treatment of capital gains in the context of comprehensive tax reform. David Brockway, who was Joint Committee on Taxation (JCT) chief of staff when the *Tax Reform Act of 1986* was developed, said the top rate on capital gains would likely need to be increased if a revenue neutral and distributional neutral tax reform measure were to be pursued in the near future. Under those constraints, there are not enough base broadeners (aka removing deductions and tax credits) that will pay for lowering the tax rate for those in the top 10% of incomes into the "20s," other than taxing capital gains at a higher rate, he said. The hearing was not especially political, aside from Democrats noting that higher-income taxpayers benefit disproportionately from the reduced rate on capital gains.

ACS Funding Maintained
The U.S. House of Representatives and Senate voted this month to keep the federal government funded by a Continuing Resolution (CR), which included the Census' American Community Survey (ACS) and 2012 Economic Survey. These Census programs will remain funded until March 27, 2013. The President is expected to sign this bill into law before September 30. The uncertainty of the final Fiscal Year 2013 funding level and the possibility of across-the-board cuts, also known as sequestration, being implemented in January, complicate the Bureau's long-term financial planning as well as its short-term plans for completing the 2012 Economic Census and keeping the ACS on track. ICSC will continue to monitor this issue. ICSC, the business community and the Census coalition are working hard to see Census and ACS funding maintained at an appropriate level and to keep ACS participation mandatory. Please contact Rachel Kelley at rkelley@icsc.org with any questions.

Current and Former ICSC Members in Federal Office
ICSC PAC hopes to see former and current ICSC members return to Congress and to welcome new ICSC members to the House of Representatives. This election cycle it seems there are even more former and current ICSC members running for office.

After redistricting, ICSC has two members running for new and updated Congressional seats, John Tavaglione is running in California's 41st district in an open seat and Marc Veasey is running in Texas' new 33rd district. ICSC PAC hopes to see the return of Rep. Ted Deutch (FL), Rep. Janice Hahn (CA), Rep. Ken Calvert (CA) and Rep. Quico Canseco (TX) all former ICSC members.

If you would like more information on ICSC PAC's open seat interview program or how to get involved, please contact Rachel Kelley at rkelley@icsc.org.

Energy Efficiency Tax Deductions
Retiring Senators Jeff Bingaman (D-NM) and Olympia Snowe (R-ME), together with Senator Dianne Feinstein (D-CA) and Senator Benjamin Cardin (D-MD) have introduced S. 3591, the "Commercial Building Modernization Act." This bill would improve the existing Section 179D tax deduction for energy efficient commercial and multifamily buildings and would also extend it for five years beyond the current expiration date of December 31, 2013. However, few observers believe that Congress will pass S. 3591 during the "lame duck" session following the November election. Thus, it is felt that this bill will present an early starting point for the next Congress.

If adopted, the Commercial Building Modernization Act would amend existing law to permit real estate investment trusts (REITs) to better utilize the 179D tax deduction by "allocating" the tax deductions earned by the REIT to its contractors, engineers, lenders, or other parties responsible for retrofit projects. **Click here for a two-page description of the 179D provisions.**

CA: Governor Brown Signs ADA Reform into Law
On September 19, California Governor Jerry Brown (D) signed SB 1186 into law. This bipartisan effort is being hailed as the most comprehensive and significant reform to California's Americans with Disabilities Act (ADA) Law and was strongly backed by ICSC and the California Business Properties Association (CBPA).

SB 1186 will curb lawsuit abuse regarding ADA while promoting increased compliance with disabled accessibility building codes throughout the state. This is a “win-win” situation for the State of California. Among other things, this measure: prohibits pre-litigation “demands for money” by attorneys; puts into place new provisions to prevent “stacking” of multiple claims to increase statutory damages; reduces statutory damages and provides litigation protections for defendants who correct violations; and establishes priorities for the California Commission on Disabled Accessibility that promote and facilitate disability access compliance.

ICSC applauds California legislators and Governor Brown for passing such an important piece of legislation.

FL: Tenant Improvements Sales Tax Proposal Returns
The Florida Department of Revenue conducted a workshop on September 6 and indicated its plan to develop rules that will impose the state’s sales tax on tenant improvements. A similar proposal was successfully opposed by the ICSC Florida Government Relations Committee last year. The department-generated proposal is considered to be double taxation because 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 department is in the process of collecting comments. ICSC has joined with Building Owners and Managers Association (BOMA), Commercial Real Estate Development Association (NAIOP), Certified Commercial Investment Member (CCIM), Florida Hotel and Lodging Association (FHLA) and the Florida Retail Federation (FRF) to show the widespread effect of these changes to the real estate industry in Florida.

MI: ICSC Encourages Members to Vote NO on Michigan Ballot Proposal 5
ICSC has joined efforts to oppose Michigan Ballot Proposal 5, a constitutional amendment that is up for consideration on the November 6 statewide ballot. This ballot initiative would amend Michigan's Constitution to give a small minority of lawmakers - as few as just 13 state senators - the power to control the state's financial future forever. Proposal 5 would require a supermajority 2/3 vote of both the state House and Senate before any state tax could be enacted or raised, or the rate or base of taxation increased. In modern history no state tax or tax increase has ever passed the Legislature with a supermajority vote. So in effect, Proposal 5 would make it practically and politically impossible to ever pass a state tax or major tax reform again regardless of the financial circumstance or emergency.

Proposal 5, if ratified, would have sweeping negative effects on Michigan’s economy. It threatens to lower the state's credit rating, thereby driving borrowing costs higher when state and local governments bond to build new roads and bridges, schools, senior centers and parks and create the kinds of cities young, talented people are seeking. It would damage Michigan's ability to invest in its future, modernize its tax system and solve unforeseen financial emergencies. Proposal 5 would also cost the state jobs by allowing out-of-state companies to continue to receive sales tax breaks while imposing those taxes on Michigan retailers. There are many other negative impacts that this proposal would have on the economic health of the state, which is why ICSC has joined many other business groups and localities to encourage Michigan residents to Vote NO on Proposal 5 on November 6. To learn more, visit http://defendmidemocracy.com/.

NJ: Governor Christie Signs Permit Extension Bill
On September 21, New Jersey Governor Chris Christie (R) signed S.B. 743 into law. This law amends the Permit Extension Act of 2008 to allow previously approved, stalled projects to receive permit extensions up to an additional two years through December 31, 2014. The original law saved many projects (and construction lenders) from financial ruin during the financial downtown; however it was scheduled to expire December 31, 2012. The new extension date will allow New Jersey to avoid project abandonments that could have slowed economic recovery in the state. This effort had tremendous bipartisan support in both the Assembly and Senate. ICSC applauds its members for their hard work on this measure, as well as the New Jersey Legislature and Governor Christie for passage of this important law.

NY: Brownfields Bill Sent to Governor Cuomo
In 2003, the New York State Legislature authorized tax credits as part of the Brownfield Cleanup Program. The authority for those credits is set to expire on March 31, 2015. A10953 would delay the sunset of those tax credits until December 31, 2015. On September 21st, the bill was sent to New York Governor Andrew Cuomo (D) for his signature. The Governor has until midnight on October 4 to sign or veto the bill.

Upcoming Events:

Government Relations Conference (GRC)
November 14-16, 2012
San Diego, CA
Registration link: www.icsc.org/2012GRC

Hotel link: www.starwoodmeeting.com/Book/ICSC2012

SAVE-THE-DATE: Strategic Leadership Summit
April 30-May 1, 2013
Washington, DC

ICSC Global Public Policy
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