

**March 15, 2013**

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### **Vote on Marketplace Fairness Could be as Early as Next Week**

Next week the United States Senate is expected to take up the fiscal year 2014 Senate Budget Resolution. As part of the consideration of the FY 2014 budget, ICSC is hopeful that an amendment in support of S. 336, the Marketplace Fairness Act, will pass the necessary hurdles to be considered on the Senate floor. After more than 12 years of working on this issue, ICSC is excited to have the opportunity to move forward with this vitally important legislation.

As part of this process, we are asking all ICSC members to reach out to their United States Senators to encourage them to vote in favor of this amendment to the budget resolution. This amendment is an important piece of the overall plan to get this legislation across the finish line. Even if the Senator decides to vote against the final budget, we need as many favorable votes on the amendment as possible.

**[Please click here to ask your Senator to vote for Marketplace Fairness.](#)**

The Marketplace Fairness Act will level the playing field for all sellers while assisting the states in collecting approximately \$23 billion in uncollected state sales taxes that are currently due on Internet and other remote sales. The bill was introduced by a strong bi-partisan group of Senators, led by Senators Enzi, Alexander, Heitkamp and Durbin, to address the inequality in today's marketplace.

### **House Tax Committee Reveals Small Business/Pass-Through Tax Reform Plan**

The House Ways and Means Committee released a "discussion draft" of small business and pass-through entity tax reform as part of the committee's broader tax reform efforts. The proposal would substantially change the federal tax treatment of partnerships and S corporations, but does not specifically address real estate investment trusts (REITs), regulated investment companies, or real estate mortgage investment conduits (REMICs).

The major reform model for pass-through entities could have a major impact on real estate partnerships. First, it would make carried interest, the widely used model to recognize the general partner's risk in real estate partnerships, potentially impossible. Second, it would create a single pass-through regime for partnerships and S Corporations, excluding publicly-traded entities and entities currently ineligible for S corporation status. Third, it would require pass-through entities to directly withhold income taxes with penalties similar to what is currently imposed on corporate income. Fourth, in-kind distributions would accelerate the tax on the appreciation in the distributed assets. Other potential changes include permanent Section 179 bonus expensing, an increase in the limitation on cash method accounting (but now applying the limitation to professional service entities), and a change in partnership and S corporation tax return due dates.

Chairman Dave Camp (R-MI) has solicited comments on all the discussion drafts and has indicated that he intends to produce a comprehensive tax reform proposal later this year. The legislative prospects of tax reform are unclear at this time.

### **CO: Retainage Bill Dies, FMLA Moves Forward**

A bill introduced in the Colorado House that would have limited retainage in construction contracts and imposed impossible prompt pay requirements for the same has been killed by the House Business, Labor, Economic and Workforce Development Committee.

In other news, ICSC has joined a large coalition of businesses in opposition to H.B. 1222, which would essentially create a state Family and Medical Leave Act (FMLA) that is much more liberally construed than the Federal FMLA. It applies to all employers regardless of size, expands the definition of "relative" to include everyone from a child to someone with whom the employee is in a "committed relationship" and potentially allows an employee to take state FMLA leave and federal FMLA consecutively, for a total of 24 weeks of leave in a given year. The bill is on the House calendar for second reading next week.

ICSC will hold its Colorado Commercial Real Estate Day at the Capitol on Thursday, March 21 and will be joined by NAIOP Colorado.

#### **FL: Bills Seek to Eliminate the Sales Tax on Rents**

The ICSC Florida Government Relations Committee joined a coalition of real estate and business trade associations in support of two proposals that seek to eliminate the nation's only state sales tax on commercial rents, H.B. 629 by Representative Marlene O'Toole (R) and S.B. 656 by Senator Dorothy Hukill (R). The coalition includes BOMA Florida, Florida CCIM, FGCAR, Florida Relators, Restaurant and Lodging Association and NAIOP. As the only state that has a sales tax on commercial rents, businesses expanding or relocating in Florida cite the rent tax as a major impediment to investing in the state. Since the fiscal note for the entire tax is sizable the coalition is looking at a multi-year step-down approach to elimination. Since Florida is forecasting a budget surplus around \$800 million to \$1 billion, this year is a good year to advance this effort.

#### **MN: Governor Dayton Pulls Sales Tax on Services Proposal**

On March 8 Minnesota Governor Mark Dayton (DFL) announced to the Twin West Chamber of Commerce that he will change his budget proposal in such a way that he will remove his support for the extension of the state's sales tax to professional services. The Governor admitted the unified front of opposition to his plan changed his perspective and thus removed this support. ICSC, along with numerous business groups, voiced opposition to the proposal to extend the sales tax to engineers, architects, lawyers, accountants, landscapers, snowplowers, etc. Dayton was expected to present a revised budget plan earlier this week, but that presentation was postponed as the Governor fell ill. Conversely, on March 11 Senate Majority Leader Tom Bakk (DFL) was reported to say that taxes on services are still on the table.

"If we're going to create a stable revenue system going forward, we're going to, unfortunately, have some additional reliance on the sales tax," Bakk said.

The House Taxes Committee Chair Ann Lenczewsk (DFL) indicated the House majority has yet to make a decision on sales taxes.

#### **OH: Governor's Sales Tax on Rents and Services Considered in House Subcommittees**

In Ohio members of the House Ways and Means and House Finance and Appropriations subcommittees are meeting to consider the budget proposals contained in H.B. 59, Governor John Kasich's (R) budget bill.

The bill as written proposes several changes to the state sales and use tax. Most notable is that the bill lowers the rate of the state tax from 5.5% to 5% while expanding the state and county tax base to include most sales of services. Current law generally exempts from taxation the sale or use of services. H.B. 59 reverses this general exemption and instead requires the taxation of services unless specifically exempted.

Among the services that would now be taxable that would impact the commercial real estate market are the lease/rental of real property, property sales agents, real estate management fees, refuse collection and parking lots and garages. Additionally, the bill covers a huge range of services that businesses use - advertising, bookkeeping, accounting, legal, background and credit checks, bank service charges, use of independent contractors, etc.

This represents a huge increase in the cost of doing business. The proposal is a broad sales tax on business inputs, with no business-to-business exemption - putting Ohio businesses at a competitive disadvantage compared to those in nearly every other state. The lack of a business-to-business exemption would also greatly impact businesses established as corporations with subsidiaries, affiliates, etc., as the services that are provided between the related companies would now be taxable.

#### **2013 Strategic Leadership Summit**

For more than 20 years the shopping center industry has assembled in Washington, DC to deliver its legislative agenda to Capitol Hill. ICSC will hold the 2013 Strategic Leadership Summit on April 9-10. Make your voice heard on legislation ranging from tax reform to the environment to workforce matters. 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 for more information.](#)

## Upcoming State GR Events

- **CO Day at the Capitol:** 21 March, 2013; Denver, CO
- **CT Day at the Capitol:** 17 April, 2013; Hartford, CT
- **IL Day at the Capitol:** 1 May, 2013; Springfield, IL
- **CA Commercial Real Estate Summit & CBPA Annual Meeting:** 11-12 June, 2013; Sacramento, CA

For more information about participation in the ICSC Days at the State Capitols please contact Lorin Alusic, State and Local Government Relations, at [lalusic@icsc.org](mailto:lalusic@icsc.org).

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