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IREM 13th annual Leadership and Legislative Summit

May 02, 2013 - Owners Developers & Managers

The Institute of Real-Estate Management (IREM) is affiliated with The National Association of Realtors and represents more than 17,000 real estate management professionals who manage 57% of the nation's conventionally financed apartment units, 1.3 million units of federally assisted housing, 32% of the nation's office buildings, and 9% of the nation's retail space. Collectively, IREM members manage more than 10.4 billion s/f of commercial space and more than 11.4 million residential units, totaling over 2 trillion in real estate assets. IREM Members are employed by some of the most prestigious real estate firms in the world and nearly 70% hold upper-level management positions.

IREM's success as an origination is largely due to its highly rated education programs, management designations and networking events. However, IREM is very active in legislative issues that affect the real-estate industry both at the state and nationally levels.

Members of the IREM Boston Chapter joined members from chapters around the country during our 13th annual Leadership and Legislative Summit in Washington, DC this April.

At this important summit IREM members teamed up with members of the CCIM Institute and held more than 231 meetings with their respective senators, and congress- men on Capitol Hill to raise awareness of key issues affecting the commercial real estate industry.

Members of the Boston Chapter, met personally with senators Jeanne Shaheen of N.H., and senator Elizabeth Warren of Mass., as well as high ranking staffers for Kelly Ayotte and congresswomen Ann McLane Kuster of N.H. and congressmen Michael Capuano and Edward Markey of Mass.

The topics of discussion included:

Carried Interest: Real estate partnerships are often organized as limited partnerships (or LLCs) in which the limited partners provide capital and the general partner(s) provides operational expertise. When the partnership property is sold, the limited partners generally receive the profits in proportion to their capital investment. Often, however, the limited partners grant profits interest to general partner(s). This profits interest is known as a "carried interest."

A carried interest is designed to act as an incentive for a general partner to maintain and enhance the value of the real estate so that the operation of the property is a value-added proposition. The carried interest of general partner(s) has historically been taxed at capital gains rates, just as the limited partners' gains are taxed at capital gains rates. The current tax rate on capital gains is 15%.

President Obama has proposed having all carried interest income be treated as ordinary income instead of falling into capital gains rates. This would increase the tax rate to a maximum rate of 39.6%, rather than the 15% rate it is at currently.

IREM and CCIM Institute oppose any proposal that would eliminate capital gains treatment for any carried interest of a real estate partnership.

Internet Sales Tax Fairness: Under current law, purchases made online are subject to sales tax through what is known as a use tax. Consumers who live in states with a sales tax are legally obligated to report and pay sales taxes on purchases made online, although the majority of them are unaware of this obligation, and very few pay this sales tax. Conversely, brick-and-mortar retailers are required by law to collect the tax on behalf of the state.

States cannot require online retailers to collect the tax on their own. In the 1992, the U.S. Supreme Court case *Quill vs. North Dakota*, the Court determined that states could not compel out-of-state sellers to collect their sales taxes because the burden would be a violation of interstate commerce. In fact, the Supreme Court stated in the *Quill* decision that the problem "is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve".

To date, 24 states have simplified their sales tax systems through the Streamlined Sales and Use Tax Agreement (SSUTA) to provide one uniform system to administer and collect sales tax, eliminating the burden of the country's diverse sales tax systems on retailers. However, because this is a matter of interstate commerce, Congressional authorization is still required to allow states to collect taxes from out-of-state sellers and online retailers.

IREM and CCIM urge Congress to support H.R. 684 and S. 336 to modernize our nation's tax policy and provide equity between online and brick-and-mortar retailers.

Lead Paint in Commercial Buildings: The Toxic Substances Control Act (TSCA) includes a provision in section 402 that requires EPA to "promulgate guidelines for the conduct of such renovation and remodeling activities which may create a risk of exposure to dangerous level of lead" in public buildings constructed before 1978, and commercial buildings. Following several law suits alleging that EPA was focusing on residential dwellings and ignoring this portion of the law, EPA has now begun to work on it.

On May 6th, 2010, the U.S. EPA issued an Advance Notice of Proposed Rulemaking (ANPR) (75 Fed. Reg. 24, 848) titled "Lead: Renovation, Repair, and Painting (LRRP) Program for Public and Commercial Buildings." IREM, in conjunction with other real estate groups, responded to the ANPR and reminded the EPA that they are required to complete a "congressionally mandated study of RRP activities in commercial and public buildings and the extent to which they create lead-based paint hazards before it can proceed with any regulations." Studies to date have been undertaken almost exclusively in residential settings.

EPA has been engaged in a number of lawsuits and settlements with environmental advocates over implementation of TSCA. A recent settlement requires that EPA to finalize an approach to regulating lead paint dust in commercial and public buildings by July 17th, 2016. To that end, on December 31st, EPA announced a public hearing to develop the LRRP rule for public and commercial buildings. The hearing will be held on June 26th, 2013. In this notice about the hearing, EPA is looking to stakeholders to provide data. The notice states that EPA "is in the process of determining whether these activities create lead-based paint hazards." IREM, in coalition with the industry groups, responded to the notice, focusing on the lack of data identifying any hazard; the extent to which such a rule would place burdens on commercial properties; the differences between commercial buildings and residential structures; and the renovation practices of different property types.

IREM urged members of congress to sign in to a letter asking the EPA to ensure that they have identified the actual hazard and its target population before proceeding with any such regulation.

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