



2011 Legislative Priorities

TAX POLICY

Tax Code Simplification and Reform efforts will be a prominent part of the legislative debate during the next two years. Congress and the Administration will try to make the current tax code simpler, fairer, and more efficient while at the same time generating sufficient revenue for federal government expenditures. Any comprehensive tax reform efforts should take into account the impact upon the commercial real estate industry that would result from changes in capital gains tax levels, and ensure that such changes do not disadvantage capital investment in real estate. As part of tax reform, brownfields remediation expensing and 15-year qualified leasehold depreciation should be made permanent. ***NAIOP supports tax code reform that maintains favorable capital gains tax rates for real estate, and makes permanent important provisions affecting commercial real estate development.***

Leasehold Improvement Depreciation is the ability to deduct the cost of the customized improvements a building owner makes to a rental space to configure it for a tenant's needs. The current 15-year depreciation schedule for qualified leasehold improvements needs to be reauthorized at the end of this year, or it will automatically revert to a 39-year depreciation schedule. Failure to extend 15-year qualified leasehold improvement depreciation will result in higher capital costs for many building owners, creating disincentives to upgrade and modernize the space for their tenants. Because the provision is not a permanent part of the tax code but is only addressed annually as part of broad "tax extenders" legislation, Congress is repeatedly forced to address the issue, denying businesses the level of certainty needed for better long-term planning. ***NAIOP supports extending and making permanent 15-year leasehold improvement depreciation, which is in closer alignment with the economic reality of the leasehold improvements' typical lifespan.***

Brownfields Remediation Expensing allows for the expenses incurred in the cleanup of a brownfields site to be immediately expensed by a developer. Brownfields remediation expensing provides an important incentive to revitalizing contaminated properties across the country. To increase the usefulness of this incentive, a "carry forward" provision should be included to allow the expensing deduction to be used in future years, when taxable income from many of these redevelopments is earned, toward which the deduction can be applied. Like 15-year leasehold depreciation, brownfields remediation expensing is not a permanent part of the tax code, and must be extended before the end of this year. ***NAIOP supports extending and making permanent brownfields remediation expensing, as well as efforts to add a carry forward provision that would increase its effectiveness.***

Carried Interest, also known as a “promoted interest” or a “promote” in the real estate industry, is a financial interest in the long-term capital gain of a development given to a general partner by the investors in the partnership. Currently taxed as capital gains, proposals to change the tax treatment of carried to ordinary income would result in a dramatic tax increase (from 15 percent to as high as 35 percent) for many real estate development partnerships. More importantly, if enacted, such a change would significantly hinder future commercial real estate development activity. ***NAIOP strongly opposes changing the tax treatment of carried interest from capital gains to ordinary income.***

ENERGY

In the real estate industry, local economic conditions determine the levels of energy efficiency and costs that can be absorbed in a given market. Not all markets are created equal, and nationwide energy mandates for all building types will create a disincentive to develop new properties in areas where the markets cannot absorb the increased costs. Incentives are needed to bring all markets to a level of sophistication where more sustainable technologies and methods become the norm and are available within a reasonable cost.

NAIOP opposes recent attempts by the federal government to mandate new federal building codes requiring buildings to reach arbitrary energy efficiency targets. Congress should offer more incentive based solutions to help the real estate community reach higher levels of energy efficiency. Specifically, we support increasing the Energy Efficient Commercial Building Tax Deduction from \$1.80 per square foot to \$3 per square foot rebates for energy efficient equipment that are included in the Building Star proposal and reducing the depreciation periods for direct energy efficient improvements.

TRANSPORTATION AND INFRASTRUCTURE

NAIOP believes that increasing federal transportation and infrastructure funding is paramount to a thriving real estate industry and national economy. The success of commercial real estate projects depends largely on infrastructure investments and viable connectivity strategies that incorporate different modes of transportation, including highways, roads, rail and mass transit.

Congress needs to enact a new multi-year transportation bill that fully funds our nation’s transportation and infrastructure needs. In addition to the passing of a new transportation bill, new innovative funding solutions should be developed to help spur private investment ***NAIOP supports increased transportation and infrastructure funding, new public-private partnerships, the creation of a national infrastructure bank and new tax incentives that encourage private investments for infrastructure improvements.***