

February 10, 2012

**Dear IREM Members,**

You have been sent this email because you are from a state that has a U.S. Representative and/or a U.S. Senator on the Payroll Tax Conference Committee that may be looking at alternatives to raise revenues to pay for the extension of the payroll-tax cut that expires on 2/27/12. The issue of carried interest may be considered as one source of revenue to pay for the continuation of the popular tax cut which reduces the payroll tax from 6.2% to 4.2%.

IREM Members are severely impacted by the proposed increase on carried interest income and we are eager to see this language avoided during the payroll tax negotiations. We urge IREM Members to act quickly and **reach out to their U.S. Representatives and Senators, from the list below**, and request they vote against any increase of the carried interest tax rate. It is imperative that our elected officials know how the real estate industry feels about this issue and how severely we will be impacted.

The following list of U.S. Representatives and Senators are serving on the Payroll Tax Conference Committee. We ask that you contact, in writing, those U.S. Representatives and Senators in your state and provide them with some of the following information.

Senate conferees named:

- Baucus, D-Mont.,
- Reed, D-R.I.,
- Cardin, D-Md.,
- Casey, D-Pa.,
- Kyl, R-Ariz.,
- Crapo, R-Idaho, and
- Barrasso, R-Wyo.

House conferees named:

- Levin, D-Mich.,
- Becerra, D-Calif.,
- Van Hollen, D-Md.,
- Schwartz, D-Pa.,
- Waxman, D-Calif.
- Brady, R-Texas,
- Camp, R-Mich.,
- Ellmers, R-N.C.,
- Hayworth, R-N.Y.,
- Price, R-Ga.,
- Reed, R-N.Y.,
- Upton, R-Mich. and
- Walden, R-Ore.

## History of Carried Interest Income

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 a 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.

In order to raise revenue and pay for the payroll tax extension, Congress may seek new revenue sources to close the gap. During these talks, there is great potential for Congressional members to change the tax treatment on carried interest from capital gains to ordinary income. Currently, the capital gains rate is 15%. Changing the tax treatment to ordinary income would raise tax rates on carried interest to as high as 39.5%.

Changing the tax treatment of carried interest would be detrimental to commercial real estate because taxing the general partner at an ordinary income rate would create a disincentive for real estate investment, further damaging an already fragile market.

**We urge IREM Members to immediately contact your U.S. Representatives and Senators, from your state and the list above, and tell them you oppose the change in tax treatment of carried interest. This matter is extremely time-sensitive so contact, on or before Friday, 2/17/12, with your elected officials is imperative.**

### How to Contact your U.S. Representatives and Senators:

1. Look up your Members of Congress and their contact information at the following website: [www.congress.org](http://www.congress.org)
2. Introduce yourself in a sentence or two. For instance: I am a constituent and a property manager who... (make sure to tell them you have properties in their district (if you do))
3. Use the bullets (below) to argue your point. You are encouraged to add your own examples.
4. If you will be faxing your legislators, print your letter on your company letterhead.
5. After contacting your legislators, please contact the IREM Legislative Liaison, Beth Price at [bprice@irem.org](mailto:bprice@irem.org) or 800-837-0706 ext. 6021 with any comments or questions. We ask that you please send this letter on or before, Friday, February 17, 2012.

## Call to Action Discussion Points:

- Approximately \$360 billion in commercial loans will be coming due within the next year. The great majority of these properties are held by partnerships. Changing the tax rates on carried interest from capital gains rates to ordinary income rates would be devastating to these businesses.
- With 46% of all investment partnerships in America being real estate and the vast majority of them use a carried interest structure, the change from capital gain rate of 15% to ordinary income rate would be a massive blow to the commercial real estate industry.
- Real estate investments are designed as long-term investments. The capital is "patient" because property owners take major risks and hold the asset for long periods of time before seeing a gain, thus should be taxed at capital gains rates.
- Unlike hedge fund managers, capital gains treatment for general partners involved in real estate partnerships is an appropriate incentive for risk-taking. The direct risks include environmental issues, loan guarantees, and lawsuits, to name a few.
- Potential legislation that may be pushed forward would treat virtually any family member who owns an interest in a family partnership as holding a carried interest in the partnership if one family member in the partnership provides broadly defined "investment management services" to the partnership, whether or not the family member provides services to the partnership. That result occurs because some legislative proposals provide that if one family member in the partnership provides "investment management services" to the partnership, the investments of all other family partners are considered tainted by those services. Thus family partnerships are covered if they own a substantial quantity of the broad category of specified investments listed in the legislation (e.g., securities, rental or investment real estate, commodities, interests in other partnerships, and options or derivative interests in the above).  
Further, although the "qualified capital" exception is arguably designed to allow these non-service partners to escape the clutches of the Carried Interest tax, that exception is generally inapplicable to family partnerships because the exception requires the family member's capital interest to have the same economic terms as significant capital interest held by someone not related to the service provider – which is very unlikely to occur in the family context.
- Drives investors to put their money elsewhere such as stocks with much more favorable tax treatment. Creates a disincentive to invest in real estate since many would no longer earn a reasonable profit.
- Stifles growth in a part of our economy which has become increasingly important over the last several years due to manufacturing, call centers, and other key industries moving offshore.
- Punishes partners involved with prior arranged transactions by causing a totally different economic result than all partners agreed with in advance. This has been characterized as a drastic change in tax rules and could be devastating to the industry.

- Fails to recognize that real estate investors are involved in their investments daily, while hedge fund managers are not involved daily in their investments.
- The real estate industry, in all its commercial, multi-family and individual investment categories, is very fragile at present, and is likely to remain so. These new tax burdens on real estate owners will impair and delay further recovery.