REBNY®
REAL ESTATE BOARD OF NEW YORK

Sent: Thursday, December 31, 2015
Subject: Important New Federal Provisions Impacting Real Estate

Dear Member,

On December 18th, President Obama signed into law Congressionally-passed omnibus tax and spending legislation that provides funding for the federal government through September 2016. The omnibus legislation contained many provisions that are important to the real estate industry. We would like to highlight a few for you now.

- Major reforms were made to the Foreign Investment in Real Property Tax Act (FIRPTA). FIRPTA results in US capital gains tax on the sale of an interest in US real property (including real estate and infrastructure) by a foreign person. Since its inception, FIRPTA's application has contradicted the general tax principles that otherwise apply to passive foreign investment. As a result, FIRPTA discriminates against investment in real estate and infrastructure relative to other types of assets, such as stocks and bonds. The omnibus legislation contained reforms to FIRPTA that will:
    - increase (from 5 % to 10%) the ownership stake that a foreign person can take in a US publicly traded Real Estate Investment Trust (REIT) without triggering FIRPTA;
    - allow foreign pension funds to invest in US real estate and infrastructure without incurring tax liability under FIRPTA;
    - extend the relief to interests in REITs held by foreign collective investment vehicles that meet certain requirements; and
    - modify the rules for determining whether an entity is domestically controlled for FIRPTA purposes

It is important to note that reforms to FIRPTA would not have been possible without the leadership of Congressman Joseph Crowley who has been longtime proponent of such changes.

- In addition to the FIRPTA reforms, the legislation included a number of reforms to the treatment of REITs, including:
    - New restrictions on tax-free spinoffs involving REITs;
    - Reductions in percentage limitations on assets of a REIT that may be taxable REIT subsidiaries;
    - Repeal of the preferential dividend rule for publicly offered REITs;
    - Authority for alternative remedies to address certain REIT distribution failures;
    - Treat debt instruments of publicly offered REITs and mortgages as real estate assets; and
    - Modification of REIT earnings and profits calculations to avoid duplicate taxation.
- After extensive discussions, the EB-5 program, which stimulates the US economy through job creation and capital investment by foreign investors, was extended through September 2016. This extension of time will permit the opportunity to forge a consensus set of reforms that address concerns about investor fraud, homeland security, accountability and transparency. We will continue to work with the Real Estate

Roundtable and the EB-5 Investment Coalition in 2016 to secure a long-term extension of a revised EB-5 Program.
- The omnibus legislation also contained several business tax provisions — some were put in place or extended for two years; others were extended indefinitely (permanently). Key provisions of interest to real estate include:
    - A permanent extension of 15-year depreciation for leasehold (tenant) improvements. The $20.3 billion measure will provide real estate owners with the greater certainty they need to undertake property improvements. Fifteen-year cost recovery allows for better matching of tenant "build-out" expenses with the typical lease term and economic life of such assets (7-10 years);
    - a two-year extension (and limited reform) of the 179D tax deduction for energy efficiency upgrades in commercial and multi-family buildings — providing an opportunity to press for broader reforms next year that would make the deduction more workable, easier to claim, and more effective at spurring "deep" energy efficiency retrofits;
    - Permanent extension and modification of the increased expensing limitations in section 179, and elimination of the limit on use of the expensing allowance for qualified real property expenditures;
    - Permanent extension of the temporary 9% minimum low-income housing tax credit (LIHTC) rate for non-federally subsidized buildings;
    - 5-year extension of bonus depreciation (gradually phased down from 50% to 30%) and extension of the benefit to qualified nonresidential real estate improvements;
    - 2-year extension (through 2016) of the treatment of mortgage insurance premiums as qualified residence interest for purposes of the mortgage interest deduction; and
    - 2-year extension (through 2016) of the section 45L manufacturer credit for energy-efficient new residential homes.
- Finally, the omnibus legislation included a provision that prohibits the US Treasury Department from selling or otherwise disposing of shares in Government Sponsored Enterprises (GSEs), like Fannie Mae and Freddie Mac, without Congressional approval.

We would like to thank New York's Congressional delegation for its support of the omnibus legislation. In particular, we would like to note the leadership of United States Senator Charles Schumer who played a pivotal role in negotiations. Likewise, we would like to thank the Real Estate Roundtable, so ably led by Chairman Bill Rudin and long-time President Jeff DeBoer, which was a critical advocate for the successful passage of these provisions as well as our federal lobbyists, Harbinger Strategies, led by John O'Neil and Kyle Nevins, for their expert advice and advocacy.

If you have additional questions or issues regarding the provisions discussed above, please do not hesitate to follow up with Carl Hum at (212) 616-5233.

On behalf of the entire REBNY board and staff, we would like to wish you a Healthy and Happy New Year!

Rob Speyer & John Banks

Chairman President