

September 12, 2014

The Honorable Dave Camp
Chairman
House Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg
Washington, DC 20515

Dear Chairman Camp:

In the few legislative days remaining before Congress adjourns, we urge you to work with the House Leadership to bring the Real Estate Investment and Jobs Act (H.R. 2870) to the floor on the suspension calendar.

Members of Congress on both sides of the aisle overwhelmingly agree that the Foreign Investment in Real Property Tax Act (FIRPTA) is a needless obstacle to mobilizing private capital and creating well-paid, domestic jobs in real estate and related industries. Cosponsored by almost every member of the House Ways and Means Committee, the Real Estate Investment and Jobs Act would be a powerful catalyst for new and productive investment in commercial real estate and infrastructure here at home.

Enacted during the American farm crisis nearly 30 years ago, the punitive and outdated tax rules under FIRPTA actively discourage investment from overseas in one of the places where it could have a tremendous economic impact – the commercial real estate industry, which today represents 13 percent of U.S. GDP by revenue and generates or supports over 9 million American jobs. FIRPTA subjects foreign investment in U.S. real estate and infrastructure to a much higher tax burden than applies to a foreign investor purchasing a U.S. stock or bond, or an investment in any other asset class. It distorts private economic decisions, investment flows, and the allocation of capital to the detriment of U.S. growth and job creation.

The Real Estate Investment and Jobs Act would make two modest reforms to FIRPTA aimed at putting real estate investment on a more level playing field with other types of inbound investment. Currently, foreign shareholders can own up to 5 percent of publicly-traded companies without triggering FIRPTA liability. The legislation would increase from 5 percent to 10 percent the exemption level threshold and apply the new threshold to investors in certain widely held qualified collective investment vehicles. Second, the legislation would clarify that redemptions and liquidating distributions of a domestically controlled real estate investment trust are treated as sales of stock and not subject to FIRPTA. This was the position of the IRS prior to 2007, and the legislation simply reinstates and codifies the pre-2007 IRS position on this issue.

The momentum and support for FIRPTA reform is strong and growing stronger daily. H.R. 2870, introduced by Representatives Kevin Brady (R-TX) and Joseph Crowley (D-NY), is cosponsored by 67 U.S. Representatives, including 35 of the 39 House Ways and Means Committee members. The Senate version (S. 1181), introduced by Senators Robert Menendez (D-NJ) and

Michael Enzi (R-WY), is cosponsored by 40 U.S. Senators, including 21 of 24 Senate Finance Committee members. In 2010, the House passed a similar version of FIRPTA reform by a vote of 402-11. In the period since, the FIRPTA reform coalition has worked to increase awareness and understanding of the FIRPTA issue in the Senate, and the coalition anticipates strong support in the Senate for acting on a House-passed FIRPTA measure.

The FIRPTA tax regime is an outlier in the international tax system. Simply stated, it is depriving the United States of billions of dollars in equity investment and capital that is being deployed elsewhere rather than creating jobs and growth in our own cities and communities. The original author of the FIRPTA law, Senator Malcolm Wallop (R-WY), understood this problem when he sought to repeal it years after its enactment. The Senate understood this problem when it voted to repeal FIRPTA during the debate on the Tax Reform Act of 1986. And 402 Members of the House of Representatives understood this problem when they voted to support FIRPTA reform in 2010. At a time when Congress and the Administration are at an impasse on so many issues, FIRPTA is one area where lawmakers could have an immediate and meaningful impact on jobs and growth. We encourage you to work with the House leadership to schedule a vote on the Real Estate Investment and Jobs Act.

Sincerely,

American Hotel & Lodging Association
American Resort Development Association
Building Owners and Managers Association International
CCIM Institute
Institute of Real Estate Management
International Council of Shopping Centers
International Union of Painters and Allied Trades
NAIOP, Commercial Real Estate Development Association
National Association of Real Estate Investment Trusts
National Association of REALTORS®
National Multifamily Housing Council
The Real Estate Roundtable

CC: The Honorable Sandy Levin
Ranking Member, House Committee on Ways and Means