

# Briefly...

## ■ Moe is Better

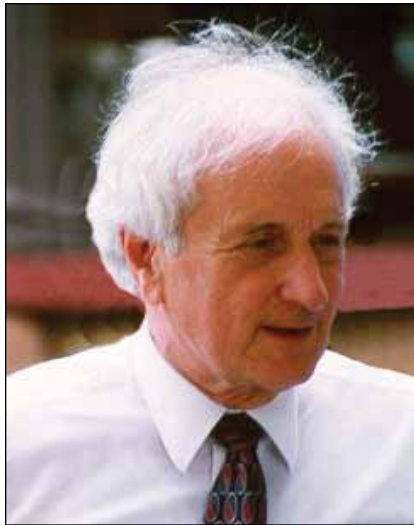
Olympic gold and silver medalist Tommy Moe will be the closing speaker at the 2010 SSA Executive Ski Workshop in Jackson Hole, Wyoming, next month. Moe was the first U.S. alpine skier to win two medals in the same Olympics (Lillehammer, 1994). At the SSA Ski Workshop, Moe will talk about persistence, dedication, goal-setting, training and his experiences as an Olympian.

## ■ Legislative Planning

The SSA is currently planning its 2010 legislative agenda. The SSA's Legislative Advisory Committee will meet in Dallas in January to consider the Association's top priorities on the government relations front. State associations looking for support for their legislative efforts should contact Tim Dietz at [tdietz@selfstorage.org](mailto:tdietz@selfstorage.org).

## ■ Membership Renewal

SSA membership renewal is in full swing. If you don't renew your membership this month, it will expire on December 31st. The SSA thanks you for your participation and all you do to help the self storage industry.



*Rep. Sander Levin (D-MI)*



*Rep. Charles Rangel (D-NY)*

## 'Carried Interest' Tax Hike Casts Too Wide a Net

*By Tim Dietz – SSA VP, Communications & Government Relations*

The SSA is studying the latest “carried interest” legislation in Washington that threatens many association members who conduct business through partnerships. Of particular concern to the SSA and other organizations that represent real estate sectors is that the latest bills drafted in Congress still cast a wide net beyond the giant hedge funds that many consider to be the original target of the increase. The groups are promoting the idea of an amendment to the bill that would distinguish permanent or long-term partnerships from the other investors, exempting them from the increase in tax.

House Ways and Means Committee members, led by committee chairman Rep. Charles Rangel (D-NY) and Rep. Sander Levin (D-MI), are again considering resurrecting a “carried interest” tax bill to help offset the cost of proposed tax “extenders.” The Self Storage Association, together with other real estate organizations, rejects the proposed tax change, warning that it would cause additional distress to the real estate industry at a time of extraordinary uncertainty and suffocate new investment, much needed entrepreneurial activity and job growth.

The carried interest tax increase is said to be targeted at hedge funds and private equity firms, but it would unreasonably affect the real estate industry, where more than \$1 trillion is invested through the partnership structure. Under the Rangel-Levin bill, carried interest would be taxed at 35 percent (and potentially higher) because it would be considered “income.” Current law treats carried interest as a capital gain, taxable at 15 percent. The proposed bill also would add a 3 percent self employment tax, resulting in a near-tripling of the carried interest tax rate.

“This carried interest measure as written in current legislation would represent a significant tax increase on many of our members, and more importantly would choke much needed investment,” said Mike Scanlon, SSA's president and CEO. “Although this is an issue that is larger than self storage, it is important that our voice be heard along with the other affected sectors within the real estate industry.”

*See Carried Interest, page 23*

**Carried Interest**, from page 4

Despite the concerns voiced by many in the business community, most of the investors that would be affected believe that the legislation will pass. According to a study released recently by BDO Seidman, LLP, a Chicago, Illinois-based accounting and consulting firm, two-thirds (67 percent) of private equity executives surveyed expect the government's new tax proposal on carried interest to pass.

SSA general counsel Carlos Kaslow said it would be simple for legislators to ameliorate the effect on real estate investors from such a measure, while targeting the large hedge funds that were the original subject of the matter. "I believe that there is a lot of support for a bill that would go after the hedge fund problem, which is converting earned income into capital gains," says Kaslow. "The solution is very simple: impose a holding period of five to seven years to qualify for capital gains treatment. This would take care of the hedge fund flippers and keep investment real estate out of the net."

The Real Estate Roundtable and its members, including the Self Storage Association, and other real estate-focused trade associations noted their disapproval in a letter delivered in October to the U.S. House of Representatives.

The letter reads in part: Since 2007, our industry has stressed to lawmakers time and time again the potential negative consequences of the carried interest legislation to the commercial real estate industry. We have explained the following:

*The proposal goes way beyond the "high income" people it is intended to impact—and in fact would alter the taxation of all partnerships large and small.*

*Partnerships are the predominate business model used in all types of real estate development, ownership and investing including office buildings, apartments, hotels, shopping centers and senior housing.*

*The legislation does not contain transition rules and, as a result, represents a retroactive tax increase that will significantly change the economics of transactions entered into decades ago.*

*The legislation punishes general partners for aligning their risk and interests with equity investors. This is nonsensical because investors demand this alignment so the general partner remains incentivized to bring the investment to its maximum return.*

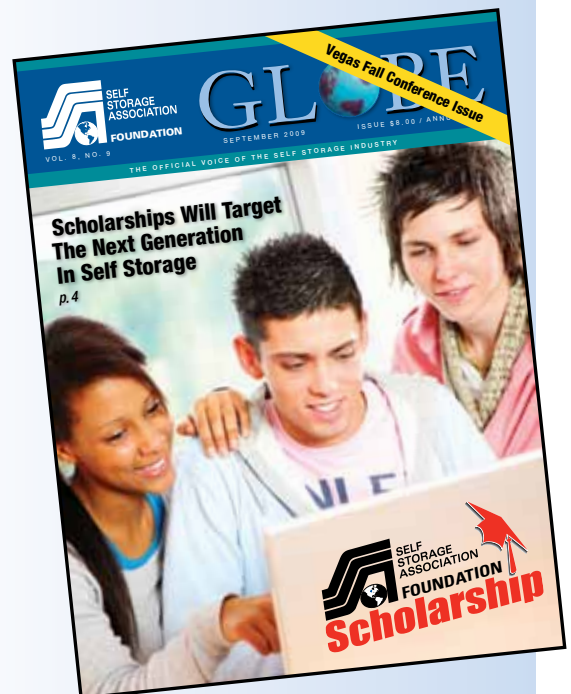
The House voted for a carried interest tax hike in 2007 and 2008 to help pay for temporary AMT (Alternative Minimum Tax) relief but, in both cases, the legislation stalled in the Senate and was subsequently shelved. Unlike in the prior Congress, however, the measure has the support of President Obama, and Senate Democrats now have a filibuster-proof majority. The President's initial

budget this year projected \$24 billion in revenue from a carried interest tax hike.

There may be alternative positive accounting for REITs, as well. According to a study offered by accounting firm Latham and Watkins, although it's true that under current law the tax treatment of compensatory profits interests is generally more favorable than other equity-based compensation, depressed stock values could provide REITs with an opportunity to utilize other types of equity awards with alternative capital gain treatment. For example, restricted stock in the REIT could be granted in lieu of profits interests.

If the recipient of the restricted stock makes an election under Section 83(b) of the Internal Revenue Code to be taxed on the value of the restricted stock at the time of grant (subject to ordinary income tax rates), any subsequent gain on the shares of stock will be taxed as capital gain. ❖

## Read the SSA Globe Online!



**Go to:**

**[www.ssaglobe.org](http://www.ssaglobe.org)**