

Briefly...

■ Legislative Awards

At this month's Fall Conference & Trade Show, the SSA will present legislative awards to the self storage associations of California and Michigan, as well as to Lisa Chiappetta of the Wisconsin SSA. All were successful in modernizing their lien laws, working with the SSA in the past year.

■ Friend Us

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■ Legal Webcasts

Are you taking advantage of the Self Storage Legal Network? It's a cost-effective way to get answers to your legal questions. For a taste of the information available from our legal experts, check out pages 30–34. SSA members can also take advantage of the free legal webcasts each month. For more information visit www.selfstorage.org.

■ ADA's 20th

Two decades after the Americans with Disabilities Act was introduced, new standards have been approved in Washington. The implications for the self storage industry appear to be minor. Look for more information from the SSA in coming weeks. More information can be found on page 54.

Unemployment Bill: Important for What Was Left Out

Tax Increase on Partnerships Still a Possibility

By Tim Dietz - SSA VP, Communications & Government Relations

After weeks of delay, an unemployment benefits extension bill was finally passed by Congress on July 21. The latest congressional attempt to provide relief to more than two million long-term unemployed became a political football as the two parties fought over a number of extraneous issues that had nothing to do with unemployment benefits—particularly various provisions that would have increased taxes.

The much ballyhooed American Jobs and Closing Tax Loopholes Act (HR 4213) was passed by the Senate only after various controversial provisions were removed, including a tax increase on "carried interest" for real estate and hedge fund transactions. Ultimately the law was simply tabbed the "Unemployment Compensation Extension Act," after the language originally passed in May by the House eliminating tax credit extensions was taken out. Essentially, these tax increases were dropped in order to capture needed votes for the primary purpose of the bill, the unemployment coverage.

One Democrat, Senator Ben Nelson from Nebraska, voted with Republicans against the bill; and two Republicans, Senators Susan Collins and Olympia Snowe, both from Maine, crossed the aisle to vote with the Democrats. Meanwhile, two Independents, Senator Joseph Lieberman from Connecticut and Senator Bernie Sander from Vermont, voted in favor of the Democrats to pass the bill.

The original measure increased the tax rate on carried interest from the current and more favorable capital gain rate (15%) to the higher ordinary income tax rate (35%). The increase would have dramatically changed the way real estate partnerships have operated for more than 50 years, a period in which many real estate ventures have been established as limited partnerships or LLCs. As has been reported by the *SSA Globe* over the past three years, the original stated intent of this proposed increase was to address a perceived tax rate inequity

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applied to private equity and hedge fund managers. Subsequent proposals for this hedge fund-driven tax increase have cast a wider net that would disproportionately impact the real estate industry.

The SSA has joined the Washington-based Real Estate Roundtable along with dozens of other like-minded groups that oppose the increase. Jeffrey DeBoer, the group's president & CEO, has said that the increase would be devastating. "The proposed increase to carried interest taxation would represent the largest tax increase for real estate in more than 20 years—since the Tax Reform Act of 1986, when property values plunged, pressure increased on savings and loan associations, there were forced government closures and ultimately the taxpayer was stuck paying to reset the system," he said.

While the exclusion of the tax increase on real estate partnerships was a positive result of HR 4213, the carried interest tax increase remains a threat to members of the Self Storage Association and other investors. Democratic legislators in both the House and Senate still believe the carried interest tax increase is a viable source of revenue. Unfortunately there is a possibility that the measure could be added back to another bill later or onto another piece of legislation. A recently introduced new version of the tax extenders package could also include the carried interest provision.

The increase in carried interest would be particularly harmful to partners who manage the transactions. Real estate carried interest grants a specially allocated portion of profits to the partner(s) providing the services to operate the partnership. The "carried interest" is usually activated when the property is sold. Historically, that portion of profits has been taxed as a capital gain. The new stipulations redefine this protocol so that those who provide services to manage and operate real estate partnerships will no longer receive capital gains benefits for those carried interests, but will pay tax at ordinary income rates.

The SSA opposes efforts to increase taxes on real estate partnerships because many of its members have been organized via partnerships. These businesses were willing to take risks, create jobs and invest in communities. This tax increase would stifle such investment. Whether it's a new development in the suburbs or revitalization of a dated structure in an urban area, self storage facilities fill a needed purpose, as is the case with many developments.

According to DeBoer, such a disruption in real estate development, self storage or otherwise, will threaten jobs and economic growth that are critical to local communities nationwide and to the country's overall economic health. "This proposal is not only short sighted, but is also coming at the worst possible time for the economy, jobs and the banking system," he said. ❖