April 15, 2015

The Honorable Orrin Hatch
Chairman
Senate Committee on Finance
215 Dirksen Senate Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Senate Committee on Finance
215 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Wyden:

Thank you for the opportunity to provide input and ideas on how best to improve our Nation's tax code to make it simpler, fairer, and more efficient. Commercial real estate, which generates or supports 9 million American jobs and contributes 13 percent of the nation's gross domestic product, is an inseparable part of the fabric of the American economy. Like you, we support pro-growth tax reform.

Commercial real estate encompasses a multitude of property types, from land, office buildings, warehouses, retail centers and shopping malls, to industrial properties, hotels, convenience stores, multifamily housing, medical centers, senior living facilities, data centers, telecommunications towers, gas stations and more. The current total value of America's commercial real estate is more than $6.0 trillion, leveraged conservatively at about 55 percent (over $2.7 trillion of equity; $3.3 trillion of debt).[1] Our industry is also one of the leading employers in the United States. Commercial real estate companies are engaged in a broad array of activities, generating millions of real estate-related jobs. These include jobs in construction, planning, architecture, building maintenance, management, environmental consulting, leasing, brokerage, mortgage lending, accounting and legal services, investment advising, interior design and others. Economic activity is also created by the recirculation of the income generated by commercial real estate into the economy. As an example, SEC-registered real estate investment trusts (REITs) distributed over $47 billion in income to people planning for retirement and other shareholders in 2014.

Real estate activity accounts for nearly one-quarter of taxes collected at all levels of government (this includes income, property and sales taxes). Property taxes alone constitute 40 percent of the state and local tax base,[2] and taxes derived from real estate ownership and transfer

[1] According to the Federal Reserve's most recent "Flow of Funds" report, half of all commercial real estate mortgages ($1.65 trillion) are held by large and small commercial banks on their balance sheets, while life insurance companies and pension funds hold an additional $385 billion. The commercial mortgage backed securities (CMBS) market is $425 billion. Government-sponsored enterprises hold another $241 billion in commercial real estate mortgages, mortgage REITs hold $191 billion, and GSE-backed mortgage pools account for $171 billion. Board of Governors of the Federal Reserve System, *Financial Accounts of the United States* (Mar. 12, 2015). The value of America's commercial real estate is an estimate based on input received from members of The Real Estate Roundtable's Research Committee, which consists of executives from leading real estate data, economic research, and advisory firms, including academic institutions.

[2] Tabulation of Census Bureau's Quarterly Summary of State and Local Tax Revenue by the National Association of Home Builders (Mar. 27, 2015), available at: http://eyeonhousing.org/2015/03/property-taxes-make-up-40-of-state-and-local-tax-revenues.

represent the largest source — in some cases approximately 70 percent — of local tax revenues, helping to pay for schools, roads, law enforcement and other essential public services. Real estate provides a safe and stable investment for individuals across the country, notably retirees. Over $300 billion is invested in real estate and real estate-backed investments by tax-exempt organizations (pension funds, foundations, educational endowments and charities). By its very nature, as the place where goods and services are conceived, manufactured, and sold, commercial real estate makes other types of productivity possible. New real estate investment – modernizing office buildings, building manufacturing facilities, and upgrading infrastructure, etc. – contributes to the productivity and efficiency of American firms and their workers.

In short, commercial real estate is deeply embedded in all aspects of the way we live, work, shop, play, and invest.

We welcome your leadership in advancing the tax reform debate. Tax reform should be aimed at unleashing entrepreneurship, investment, capital formation and job creation while avoiding unfair burdens on property owners, operators, and tenants. Congress should reject tax reform proposals that unduly increase the overall tax burden, or that reduce the corporate tax rate at the expense of those who pay taxes on business and investment income through the individual tax provisions, as through pass-through entities or as proprietors. We urge the Finance Committee to be mindful of how changes in commercial real estate taxation will dramatically affect not only real estate investment activities relative to other asset classes, but also the health of the U.S. economy, job creation, retirement savings, lending institutions, pension funds, and, of course, local communities.

Commercial real estate (also referred to as income-producing real estate) is a capital-intensive asset, meaning that income-producing buildings require constant infusions of capital for acquisition and construction needs, ongoing repairs and maintenance, and to address tenants' ever-changing technological requirements. Tax policy changes relating to the owners, developers, investors and financiers of real estate assets could significantly impact the U.S. economy — in ways both intended and unintended.

Federal tax policy relating to interest expensing, depreciation, capital gains, foreign investment sources, entity taxation and choice, as well as state and local tax deductibility, are particularly important to strong and growing commercial real estate markets. Moreover, the entities through which almost all commercial real estate is developed, owned and financed — that is, partnerships, LLCs, Subchapter S corporations, C corporations and REITs — are long-standing business models that facilitate the types of job-creating investment and ownership opportunities that Americans support. Proposals to change tax policy in any of these areas must be studied carefully for both direct effects on real estate and potential unintended effects across the economy.

Positive changes in any of these areas could spur job-creating activity. For example, tax reform that recognizes and rewards appropriate levels of risk taking will encourage construction and development activities. Alternatively, other changes might unintentionally be counter-productive to long-term economic growth. Of major concern are proposals that could result in substantial drops in real estate values. Lower property values produce a cascade of negative economic impacts, affecting property owners' ability to obtain credit, reducing tax revenues collected by local governments and eroding the value of retirees' pension fund portfolios.

Thus, as much as we welcome a simpler, more rational tax code — and any associated improvements in U.S. competitiveness abroad — we continue to urge that comprehensive tax restructuring be undertaken thoughtfully and with caution, given the potential for tremendous economic dislocation. As history illustrates, the unintended consequences of tax reform can be disastrous for individual business sectors and the economy as a whole. A case in point is the 1986 Tax Reform Act, which ushered in a series of over-reaching and over-reactive policies — in some cases on a retroactive basis as significant policy changes were made applicable to pre-existing investments. Taken together, these policy changes had a destabilizing effect on commercial real estate values, financial institutions, the federal government and state and local tax bases. It took years for the overall industry to regain its productive footing, and certain aspects of the economy never recovered.

Three areas where real estate-related tax reforms could have a major impact on economic growth include: (1) the cost of capital and the tax treatment of investment, (2) entity choice rules and the consequences for business formation, and (3) the alignment of tax rules with underlying economics. In addition, well-designed tax reform will correct a market failure and provide a critical incentive for investment in energy-efficient buildings.

Cost of Capital and the Tax Treatment of Investment

How tax reform affects the cost of capital and the tax treatment of investment will largely determine whether it constitutes positive, pro-growth policy or a step in the wrong direction. Long-term economic growth flows from our productive capacity—a function of the economy's supply of labor, capital, and technology. The ultimate impact that corporate tax reform has on growth depends on how it affects business investment decisions.[3] Pro-growth tax reform will reduce the cost of capital and promote greater investment. In contrast, anti-growth reform will raise the cost of capital and reduce net investment. Examples of real estate-related tax changes that would increase the cost of capital include the following: raising capital gains rates, restricting the deferral of gain through like-kind exchanges, re-characterizing carried interest as ordinary income, limiting the deductibility of business interest expense, raising the tax burden on inbound real estate investment, or slowing the cost recovery of real property in ways unjustified by the rate of actual economic depreciation.

Capital gains. The lower tax rate afforded long-term capital assets is an essential ingredient in the risk-reward tradeoff that induces developers and investors to take on unique long-term risks of commercial real estate development. A long-term capital gain tax rate that is lower than the rate on ordinary income stimulates economic growth, increases domestic and international investment, and most importantly, helps to create and sustain new jobs. One of the best tools available for assuring strong economic growth, productivity gains, and continued job creation is to encourage greater investment in the economy. Achieving capital gain is one of the pre-eminent goals of real estate ownership and investment. A lower tax rate on capital gain enhances the flow of capital to real

[3] The close relationship between tax policies that promote investment and economic growth is well-researched and well-accepted. *See* Nicholas Bull, Timothy A. Dowd, and Pamela Moomau, *Corporate Tax Reform: A Macroeconomic Perspective*, NATIONAL TAX JOURNAL, vol. 64, no. 4, December 2011, pp. 923-941 ("The effects of corporate reform on the economy will be determined by how the reform influences decisions to add to the stock of capital, that is, to increase investment."). The authors are economists at the nonpartisan Joint Committee on Taxation.

estate assets and to other job-creating investments. In general, a high capital gains tax discourages savings and risk-taking and encourages investors to remain locked into old investments.

Like-kind exchanges. Since 1921, the tax code has recognized that the exchange of one property held for investment or business use for another property of like kind results in no change in the economic position of the taxpayer and therefore should not result in the imposition of tax. Section 1031 is similar in concept to other non-recognition, tax deferral provisions that reflect basic, broadly accepted policies about the nature of gain realization, applicable, for example, when property is contributed to a partnership or corporation in which the taxpayer continues the investment through ownership in the ongoing entity, and when stock is exchanged for stock or property pursuant to a corporate reorganization.

Allowing capital to flow more freely among investments encourages commerce, and supports economic growth and job creation. Real estate owners use like-kind exchange rules to efficiently retain and allocate capital to its most productive uses. Section 1031 enables owners to reposition portfolios, exchange peripheral assets for core assets, realign property by geography or real estate sector to improve operating efficiencies, and manage risk. By avoiding a tax-induced "lock up" of properties, like-kind exchange rules increase the frequency of property transactions and ensure a more dynamic real estate sector that supports more reinvestment in real estate and a higher level of construction activity.

Like-kind exchanges lead to lower levels of leverage and debt in commercial and multifamily real estate transactions. Buyers make a higher down payment because drawing out the cash proceeds from exchange sales results in immediate tax liability. Like-kind exchanges increase state and local tax revenue since more frequent turnover of real estate generates significant property transfer and recording fees, as well as property reassessments that increase the property tax base. Lastly, like-kind exchanges promote conservation and the preservation of open spaces and/or significant environmentally sensitive properties that may be exchanged for other privately held like-kind property, such as adjacent farmland or ranchland.

Carried interest. The real estate industry utilizes partnerships with carried interests on projects ranging from small property development to large multi-billion dollar investment funds. This partnership structure allows entrepreneurs to match their expertise and risk assumption with a financial partner and align the parties' economic interests so that entrepreneurial risk taking is viable.[4] A carried interest is, first and foremost, an interest in the partnership. Its amount and timing depends on the success of the partnership venture. Because it is a long-term, risk–based investment,

[4] In typical real estate partnerships, before a financial partner enters the picture, a developer typically spends 3-5 years and hundreds of thousands to millions of dollars in architectural, engineering, consulting and legal costs to bring land to a buildable state—through zoning, plans, studies, and approvals. Given that the finance partners have the most actual capital at risk, they want such risk capital (plus an agreed rate of return) returned as quickly as possible. The partnership is ideal in facilitating this because the partners can agree to pay all partnership income (in a real estate deal typically rental income) to the finance partners until their capital contribution, plus the negotiated rate of return thereon, is repaid. Thereafter, the partners can agree to share partnership income in any combination of ways they want to reflect the economics of the deal. When (and only when) the partnership assets are sold, the carried interest kicks in as a capital gain, assuming agreed upon profit targets are met, and the proceeds are shared in accordance with that agreement. In a typical real estate transaction, it is in fact only on sale that the carried interest produces capital gain.

it is not paid contemporaneously, nor is it guaranteed. Regardless of paper profits that might exist throughout the course of the investment, actual profit only exists when the asset is sold. Not only do real estate general partners put "sweat equity" into their businesses, but they fund the predevelopment costs, are liable for recourse loans, guarantee the construction budget and financing, and expose themselves to potential litigation over countless possibilities. They risk much. Their gain is never guaranteed. It is appropriately taxed today as capital gain. In recognition of the risk-taking inherent in real estate investments, the carried interest proposal in former Ways and Means Chairman Dave Camp's H.R. 1 included a real estate exception. Achieving tax fairness is complicated. Simple solutions often create new and unforeseen problems.

Interest expense. Debt is a fundamental part of a typical real estate entity's capital structure and is often used to finance day-to-day operations and fundamental business activities like meeting payroll, buying raw materials, making capital expenditures, building new facilities, and financing asset acquisitions that allow the firm to expand as the economy improves. The tax code is currently neutral with respect to debt. Generally, each dollar of interest deducted from the borrower's income is a dollar included in the creditor's taxable income. Debt also creates an environment of fiscal discipline as investors carefully examine business plans prior to investing and maintain a close watch on the progress and growth of their investments.

Limiting interest deductibility would mean that the tax code, and not investors, would be picking which companies are more likely to receive financing and which are more likely to be disregarded. Tax reform should not come at the expense of eliminating fundamental tax principles that are essential to the conduct of business. If Congress is concerned about excessive borrowing or the level of leverage in our financial system, the tax code is a blunt instrument and not the proper policy tool for addressing the issue. On the contrary, limiting the ability to deduct ordinary business expenses, or changing the longstanding definition of those expenses, would increase the marginal effective tax rate on new investment and have a negative impact of capital growth.

Inbound investment. Foreign investors constitute a large and growing source of capital for commercial real estate investment. Global institutional investors manage over $90 trillion in assets, and portfolio managers are allocating an increasing percentage of those assets to real estate and infrastructure.[5] The competition to attract foreign capital, however, is intensifying. Whereas the United States once dominated the market for international real estate investment, today's cross-border real estate investors readily invest in regions previously considered unstable, uncertain, and illiquid. Property developers in the United States compete with projects in Asia, Latin America, and elsewhere for equity capital.

The global competition to attract equity investment means a country's tax environment will often have a significant and influential effect on inbound real estate investment decisions. Unfortunately, the *Foreign Investment in Real Property Tax Act (FIRPTA)* acts as an discriminatory and anti-competitive barrier deterring foreign capital that could be put to work improving properties and creating jobs here in the United States. FIRPTA imposes U.S. tax on the gain realized by a foreign investor on the disposition of an "interest" in U.S. real property, including infrastructure

[5] Organization for Economic Cooperation and Development (OECD), Annual Survey of Large Pension Funds and Public Pension Reserve Funds (2014); OECD, *Institutional Investors and Long-term Investment: Project Report* (May 2014).

assets. An interest in U.S. real property includes stock in a U.S. corporation where the majority of the corporation's assets are U.S. real property. In contrast, foreign investors in U.S. corporations that hold assets *other* than U.S. real property are not subject to any tax on the sale of such stock.

FIRPTA discourages foreign investment in U.S. real estate and infrastructure to the detriment of the overall U.S. economy. In some cases, the FIRPTA tax can be as high as 54.5 percent—an initial 35 percent tax on the gain plus potentially the Branch Profits tax. The highly complex tax regime can create onerous tax and administrative burdens while encouraging financial engineering and gamesmanship. FIRPTA artificially reduces demand for U.S. real property, which depresses property values and curtails job creation. At a minimum, the law should be carefully reformed to mitigate these negative effects. The additional inbound investment generated by FIRPTA reform would allow property owners to hire workers to upgrade and rehabilitate existing properties, and it will make badly needed private infrastructure investment more attractive.

In recent years, under the bipartisan leadership of Senators Menendez and Enzi and Representatives Brady and Crowley—and with the strong support of virtually every member of the Congressional tax-writing committees—the House and Senate have taken important steps toward meaningful FIRPTA reform. In the short term, Congress should build on these efforts by passing legislation that: (1) increases the ownership stake that a foreign investor can take in a publicly traded U.S. REIT without triggering FIRPTA liability and (2) improves tax parity by exempting foreign pension funds from FIRPTA altogether. In the context of tax reform, Congress should consider more comprehensive change[6] Collectively, these changes would be a strong, market-driven catalyst for putting Americans back to work modernizing U.S. commercial real estate and repairing our nation's crumbling infrastructure.

Tax-exempt investment. Tax reform should include careful review and modernization of the unrelated business income tax (UBIT) laws and regulations. Well-designed tax changes could spur economic growth and domestic job creation by encouraging tax-exempt entities to diversify their passive investment portfolios with greater investment in U.S. commercial real estate. For example, under current law, only certain types of tax-exempt entities—pension funds and education endowments—can invest in debt-financed real estate without triggering unrelated business taxable income. Similar treatment should be extended to IRAs, foundations, and charities. In addition, the overly mechanical Fractions Rule in section 514(c)(9), which can apply to real estate partnerships that involve both a taxable and tax-exempt partner, often prevents the formation of productive and beneficial real estate joint ventures, even where there is no tax abuse.

Business Formation and Entity Choice Rules

The U.S. tax system allows real estate businesses to organize and structure their activities in a variety of legal forms. These so-called "entity choice" rules are a strength, not a weakness, of the U.S. tax system.

[6] The Tax Reform Act of 1986, as originally passed by the Senate Finance Committee, would have repealed FIRPTA in its entirety.

Partnerships and other pass-through entities. Over 47 percent of the 3.3 million partnerships in the United States are real estate partnerships.[7] A large percentage of S corporations are also engaged in real estate investment. Pass-through rules facilitate the pooling of real estate capital and expertise in joint ventures and economic arrangements that are flexible, dynamic, and able to respond rapidly to changing market needs. Unlike C corporations, real estate partnerships and LLCs can allocate and align ownership interests, risks, and financial rewards in a manner that ensures resources go to their most productive uses. In the context of real estate investment, pass-through tax rules allow parties with diverse time horizons and return expectations to come together in support of capital-intensive new property developments that would not otherwise occur.

Tax reform proposals aimed at restricting pass-through taxation would be detrimental to the U.S. economy. Limiting the availability of pass-through taxation to businesses that meet a specific definition of a small business would distort economic decisions, discourage firm expansion, and inevitably lead to counterproductive and inefficient tax structuring. Many partnership reform proposals disregard a principal purpose of Subchapter K—promoting and encouraging flexibility in the way businesses structure ownership interests, including income, deductions, and losses.

REITs. Another common legal structure for real estate investment is the real estate investment trust (REIT). Authorized by Congress 55 years ago and patterned after the tax rules governing mutual funds, REITs allow small investors to collectively invest in diversified portfolios of income-producing real estate with the advantage of professional management. Without a model for real estate investment akin to mutual funds, only a select few would have the opportunity to gain from three fundamental benefits of real estate investment: current income, long-term capital preservation and appreciation, and investment diversification. As with tax reform proposals limiting the availability of pass-through business taxation, overly broad proposals to modify REIT rules in a way that restricts real estate investment—such as former Ways and Means Chairman Dave Camp's proposals to redefine REIT-eligible real estate or prohibit tax-free REIT spinoffs—would be harmful to the U.S. economy.

Aligning Tax Rules with the Economics of Business Transactions

Tax reform should ensure that tax rules closely reflect the economics of underlying transactions. A reformed tax system that is fair, neutral, and economically efficient will avoid excessive incentives or disincentives while preserving appropriate exceptions to address specific market failures, such as the lack of an adequate supply of low-income housing or the inability of the market to accurately capture the value of energy-efficiency improvements in commercial buildings.

Cost recovery rules. Reform proposals put forward in the last Congress aim to create a system of cost recovery rules for long-term investments that better approximates the decline in the economic value of assets. These proposals seek to align the tax depreciation rules with the actual economic depreciation of property. This effort is welcomed. Congress should adopt a cost recovery system that improves tax neutrality with respect to depreciation rules. The existing depreciation regime is far less favorable for real property investment than at any time in recent history.

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[7] IRS, *Statistics of Income Bulletin* (Winter 2015).

In the case of commercial real estate, current-law depreciation recovery periods and methods generate deductions that are smaller in terms of their present value than any time since 1954. A proposal from former Senate Finance Chairman Max Baucus for a 43-year depreciation schedule[8] goes well beyond the economic life of structures, which must be upgraded and retrofitted in response to changing market demands, demographics and other factors in order to avoid obsolescence and maintain desirability in the marketplace. Moreover, the Baucus proposal would have applied retroactively to existing investment. Studies by Treasury, the Congressional Research Service, academics, and the real estate industry have consistently concluded that the current depreciable lives for non-residential structures (39 years) and residential structures (27.5) exceed the useful lives of such properties.[9] Congress should avoid imposing punitive and targeted tax increases on economically sound investment in commercial real estate under the false pretext of a "simpler and fairer" cost recovery system. Any changes to depreciation periods or methods should be informed by a fact-based understanding of the actual useful lives of real property.

Leasehold improvements. Under prior law, leasehold improvements were depreciated over 39 years, the same period as the shell of the building. The actual useful life of these improvements (or tenant "build-outs") is typically no longer than the life of the lease – about 10 years on average. This mismatch of income and expenses imposed an unwarranted tax cost and discouraged building modernization. In 2004, Congress temporarily shortened the depreciation period for qualifying leasehold improvements to 15 years. The shorter term encourages building owners to make improvements (walls, ceilings, flooring, lighting, wiring, plumbing, partitions, etc.) to older existing buildings. In office buildings, reconfigurations of leased space are critical as technologies evolve, tenant expectations and government regulations change, and team-based work-styles redefine the modern business environment. Depreciating leasehold improvements over a 15-year period increases the productivity and competitiveness of the American workplace, and the 15-year depreciation rule should be permanently extended.

Depreciation recapture. Some tax reform proposals would re-characterize gain on the sale of depreciable real property as ordinary income to the extent it is attributable to prior depreciation deductions. Currently, such gain is subject to a special 25 percent capital gains rate. The 25 percent

[8] In the House, the Camp tax reform plan (H.R. 1) would have lengthened current depreciation schedules to 40-years. In both the Baucus and Camp proposals, the longer depreciation period would apply to all types of real property, including residential rental property and leasehold improvements.

[9] A comprehensive report on depreciation recovery periods and methods undertaken by the Treasury Department during the Clinton Administration (and mandated by the Congress) concluded that a 30-year straight-line depreciation schedule for nonresidential real property would match the economic rate of depreciation, not the current 39-year rule. Separately, a study by economists in Treasury's Office of Tax Analysis found that a 20-year recovery period for nonresidential property would be needed to provide tax parity with equipment. Department of the Treasury, *Report to the Congress on Depreciation Recovery Periods and Methods* (July 2000). *See also*: David W. Brazell & James B. Mackie, Office of Tax Analysis, U.S. Department of the Treasury, *Depreciation Lives and Methods: Current Issues in the U.S. Capital Cost Recovery System*, NATIONAL TAX JOURNAL (Sept. 2000); Jeffrey D. Fisher et al, *Analysis of Economic Depreciation for Multi-Family* Property, THE JOURNAL OF REAL ESTATE RESEARCH (Oct. 2005); Jane G. Gravelle, *Whither Tax Depreciation?*, NATIONAL TAX JOURNAL (Sept. 2001). In addition, forthcoming academic research at the MIT Center for Real Estate will examine the magnitude and nature of the economic depreciation of structures. It will incorporate the value of land as well as ongoing capital expenditures, and will be more extensive and thorough than any prior studies on real property depreciation.

rate applicable to "depreciation recapture" recognizes the hybrid nature of real estate gains, which derive from a combination of factors—land appreciation, inflation, and the value of the owner's improvements to the property. Current law takes into account the unique tax attributes found only in real estate – the presence of two separate bases (land and structure) in one indivisible asset. Structures are depreciable, land is not. A hybrid tax rate of 25 percent fairly reflects this asymmetry and should be retained.

Promoting long-term, sustainable growth through investment in energy-efficient buildings

Residential and commercial buildings, and the homeowners, tenants, and other occupants who live, work and play in them, account for approximately 40 percent of the nation's energy consumption (relative to the industrial and transportation sectors).[10] Improving the energy efficiency of buildings is the most cost-effective means available for moving the nation toward energy independence and energy security. An "all of the above" national energy policy must include measures that help make our built environment more efficient.

The tax code allows businesses to immediately deduct "ordinary and necessary" operating expenses. Electric, gas, water, and other utility bills are deducted for tax purposes as they are incurred. In contrast, the costs to purchase and install highly efficient building equipment and components are capitalized and recovered over an extended period. The upfront expenses of such systems impose significant costs on real estate owners.

Section 179D aims to encourage owners to install high performance heating, lighting, windows, roofs, and other systems that exceed baseline requirements imposed by building energy codes. While any amounts available under section 179D do not cover the entire cost of state-of-the-art systems,[11] the deduction allows building owners to more quickly recoup returns on their investments—an incentive to go "deeper" with upgrade projects that achieve higher levels of energy savings. Well-designed tax reform should unleash section 179D's potential to spur existing building retrofit projects, create jobs, improve the environment, and move our nation closer toward energy independence. Similarly, tax reform should include legislation sponsored by Senators Heller and Carper and recently passed by the Finance Committee to create a tax credit for combined heat and power, or "cogeneration" systems, which allow otherwise wasted energy to be captured and used for generating electricity onsite.

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Rational taxation of real estate assets and entities promotes job creation and facilitates sound, environmentally-responsible real estate investment and development, which contributes to strong

[10] U.S. Energy Information Administration, *Monthly Energy Review* (Nov. 2013), Table 2.1a: "Energy Consumption by Sector," *available at* http://www.eia.gov/totalenergy/data/monthly/pdf/sec2_3.pdf.

[11] When it was in effect prior to expiration on December 31, 2014, section 179D provided a maximum deduction of $1.80 per square foot, where "energy efficient building property" is installed and certified as part of a plan so that an entire building is expected to exceed minimum energy code requirements by 50 percent. 26 U.S.C. §§ 179D(b)(1), (c)(1)(D). A "partial allowance" of $.60 per square foot is allowed where individual systems meet energy savings performance targets established by the IRS. *Id.* § 179D(d).

property values and well-served, livable communities. Based on past experience, we believe that any significant overhaul of the nation's tax system should strive to create a system that:

- Promotes economic growth across all sectors of the economy by encouraging capital formation and rewarding appropriate risk taking;
- Closely reflects the economics of underlying transactions by avoiding excessive incentives or disincentives, while allowing for necessary corrections to address market failures;
- Is relatively simple, or at least simpler than today's system, and provides certainty and predictability for long-term investment through permanent, rather than temporary, tax rules;
- Refrains from giving new real estate activities an advantage over existing ones, and vice-versa, and provides for transition rules that minimize any dislocation in real estate markets.

Because commercial real estate, which includes nonresidential and multifamily, is so ubiquitous, it is sometimes easy to overlook its positive and essential contribution to our nation. The right tax policy can fortify commercial real estate: create and maintain jobs; finance schools, law enforcement, and other functions of local government; and strengthen the retirement savings of millions of Americans. A strong and healthy commercial real estate industry provides the impetus necessary for infrastructure improvements, while real estate investment enhances the productivity of the American workplace and the American worker.

We appreciate your consideration of these comments, and we look forward to working with you to ensure that our industry continues to play its historic role as a driver of broader U.S. economic growth. If you or your staff have questions or would like additional information on any of the issues we have raised, please contact Ryan McCormick of The Real Estate Roundtable, at (202) 639-8400, or Evan Liddiard with the National Association of REALTORS at (202) 383-1083.

Sincerely,

Alternative & Direct Investment Securities Association

American Hotel & Lodging Association

American Institute of Architects

American Land Title Association

American Resort Development Association

American Seniors Housing Association

Appraisal Institute

Asian American Hotel Owners Association

Associated General Contractors

Building Owners and Managers Association International

CCIM Institute

Federation of Exchange Accommodators

Institute of Real Estate Management

International Council of Shopping Centers

Investment Program Association

NAIOP, the Commercial Real Estate Development Association

National Apartment Association

National Association of Home Builders

National Association of Real Estate Investment Trusts

National Association of REALTORS®

National Multifamily Housing Council

REALTORS® Land Institute

Society of Industrial and Office REALTORS®

The Real Estate Roundtable

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The Honorable Charles E. Schumer
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