



Tax Reform | TIF Update | Historic Tax Credit | Dark Store | Inclusionary Zoning | New Legislation Signed | Government Day 2018

As the calendar year comes to a close, activity in Washington DC and Madison continues to be brisk.

**Nationally**, bills have been passed separately in the House and the Senate. Commercial Real Estate in general looks to fare relatively well in both bills. Now, the House and Senate will determine how to reconcile the differences or the House will adopt the Senate plan. On key issues affecting the commercial real estate industry — from business interest deductibility to cost recovery to like-kind exchanges — both House and Senate bills would largely ensure that real estate and real estate transactions continue to be taxed on an economic basis.

Business interest expense incurred in a real property trade or business would remain deductible; the cost of commercial real estate would continue to be recovered over an extended period, and taxpayers could continue to defer gain on real estate like-kind exchange or 1031 exchange.

The changing of the corporate tax brackets, specific timelines for carried interest deduction, and treatment of pass-through entities are addressed differently in both bills and are important lever points that would be solved for in reconciliation. The federal historic tax rate is still under debate. Many efforts on the part of Wisconsin and National real estate professionals are garnering attention. Matters pertaining to the tax rates are still to be determined but movement appears to be imminent.

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**On the State front:** [while a budget is passed](#), the legislature is still in session with many initiatives on the radar. Those included:

**Wetland Mitigation:** The WRA along with other groups are advocating for legislation that would change the permitting and mitigation requirements for nonfederal and artificial wetlands. The bill exempts wetlands

that are not subject to federal jurisdiction (nonfederal wetlands) from state wetland permitting requirements. Generally speaking, only wetlands that are adjacent to navigable waters are subject to federal jurisdiction. The bill continues to require the mitigation of impacts from a discharge to a nonfederal wetland, which under current law is required before DNR may issue a wetland individual permit. The bill also excludes artificial wetlands from the definition of a wetland, thereby exempting these wetlands from the permitting and mitigation requirements that apply to the discharge of dredged or fill material into a wetland. By Rep. Steineke (R-Kaukauna). (credit League of Municipalities for content)

**TIF (Tax Increment Financing):** While there has been a lot of progress made with regard to TIF, there may be cause for concern as the Wisconsin Supreme Court has decided to hear a major case on TIF districts. The WRA will be filing an amicus brief in early December. The lawsuit was filed more than two years ago by the Wisconsin Institute for Law & Liberty on behalf of a group of Eau Claire taxpayers. The lawsuit, *Voters With Facts v. City of Eau Claire*, seeks to invalidate Eau Claire's creation and subsequent amendment of two tax incremental financing districts to fund aspects of the city's Confluence Project. The Eau Claire County circuit court dismissed the case – the plaintiffs lacked standing and the state court of appeals substantially upheld that ruling, though it allowed the suit to advance. Now the Supreme Court has agreed to step in, and that could have major implications for the future of TIF districts in the state. WILL's Esenberg and Fischer comment. [By Moore, NORTHWOODS RIVER NEWS](#)

**Historic Tax Credit:** CARW is part of a coalition that is being led by the WRA, working to create stand-alone legislation that will raise the amount of credits that can be claimed per project under the HTC program from \$500,000 to \$3.5 million, starting July 1st, 2018. Raising the limit will increase the feasibility of more projects across the state while still ensuring cost controls on the program. The cap also ensures that communities and developers across the state will have certainty when applying for the HTC credit. Right now, the bill is being circulated for co-sponsorship and is expected to be introduced in some modified form, in early 2018 if the fiscal analysis comes back favorably. Much of the program's success will also be tied to the fate of the Federal Historic Tax Credit program. The HTC program is a low-risk, high-return program. The credit cannot be claimed until a project is complete, and if a project fails, the state does not pay out the credit. The program has already helped to create thousands of jobs across the State of Wisconsin and has benefitted communities both large and small. Recent studies have indicated that Wisconsin receives an \$8-to-\$1 return on investment over a 10-year period from the program. Between 2014 and 2016, credits issued to development projects are expected to generate more than \$600 million in economic output, and more than \$90 million in new state tax revenue. This program also helps to increase property values while reducing blight through the revitalization of often vacant buildings. Stay tuned for more information.

**Tax Assessment Bills:** Two tax assessment-related bills continue to circulate at the State. We have been monitoring the two bills over the past few months that were formally introduced in over the summer. The bills relate to [AB 386](#) (Dark Store) and [AB 387](#) (Reversing the Walgreens v. City of Madison decision). Our CARW policy committee has discussed this, and the WRA policy committee is officially 'neutral' on the two bills, but have been working through our State lobbyist to help ensure that the bills don't have unintended consequences for commercial real estate practitioners or clients. Most of our member concerns relate to the bill (AB 387) or Walgreens bill that would in essence, have a negative effect on the investment real estate market. It cites large retailers including Walgreens, at the core of the problem. Subsequently, past-chairman, Jeff Hoffman, had a letter published in the BizTimes [HERE](#) outlining the legislation's impact on businesses in Wisconsin. Many other members have reached out expressing their concerns over the

language in the bills which have been communicated with the bill authors. At this time, the bills have not yet been scheduled for a vote but have been voted on and passed in their committees.

**Development/Inclusionary Zoning:** In mid-November, City of Milwaukee officials introduced an ordinance that would mandate new apartments set aside a percentage of units for 'affordable housing'. Developers say the proposal could result in fewer projects and will require subsidies to make future projects viable. The proposed ordinance would require apartment developments downtown or near downtown that are creating at least 20 new apartment units to rent at least 10 percent of those units at below-market rents. If the project is receiving a subsidy from the city the developers would be required to lease 20 percent of the units at below market rents. WRA has been working towards State legislation that would prohibit local units of government from introducing such inclusionary measures. Members of CARW are also meeting with local officials to determine if there are other ways to address concerns related to affordable housing.

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#### **Recent New Legislation:**

**Win for Property Owners:** Late last week, Gov. Walker signed into law 2017 Wis. Act 67 and 2017 Wis. Act 68. Known collectively as the "Homeowners Bill of Rights," these two pieces of legislation will have a significant impact on private property rights in Wisconsin. This summer, Wisconsin lawmakers Rep. Adam Jarchow and Sen. Tom Tiffany introduced this legislation to reverse several important property rights cases decided by both the U.S. Supreme Court and the Wisconsin Supreme Court. The three cases demonstrated the need for legislative action to protect property owners' rights to develop their property. The WRA waged a significant grassroots effort with the public to help pass this legislation. [Click Here](#) for more information explaining the specific changes.

**Changes to Chapter 452 and Commercial Lease Transactions:** Last week, changes to real estate practice were signed into law. The most noteworthy for commercial members is the voluntary opportunity allowing **Wisconsin firms, other than the listing firm, to cooperate with out-of-state (OSL) firms representing commercial buyer or tenants.**

In addition to the currently OSL cooperation laws, the new form of cooperation:

- Exists as of March 1, 2018;
- Is limited to commercial transactions;
- For this section of the law, commercial transactions are defined as property other than real property containing 1 to 4 dwelling units or real property zoned for agricultural use. But does not include any transaction concerning a dwelling unit that is a part of real property containing more than 4 dwelling units and that is being sold on a unit-by-unit basis;
- Provides for its own WB-commercial cooperative agreement (currently being developed by the state);
- Requires either the OSL or Wisconsin firm to be in a client relationship with the purchaser or tenant. If the OSL has the client relationship, the Wisconsin firm must provide the OSL a Disclosure to Clients form;
- Unless authorized under the WB-commercial cooperative agreement, the OSL's contact with the seller or landlord is limited, as is the OSL's ability to show or view the property;

Since Wisconsin became a cooperative state in 2015, commercial members identified an opportunity to ensure the Wisconsin broker remains at the heart of the transaction, while removing an unnecessary restriction for commercial practitioners. CARW worked in close collaboration with WRA in shaping the recommended changes.

Stay tuned for more information about this exciting change effective March 1, 2018.



**Commercial Real Estate Government Day:** This year's event will be held on Wednesday, January 31st from 8:00 – 1:00 p.m. New half-day format! More information is [Here.](#)

## Upcoming Events:

See the 2017-2018 calendar of events [HERE](#)

**Thursday, December 7** | 4:00 - 6:00 PM | Holiday Broker Event by BID #21 | [Register here](#)

**Thursday, December 14** | 3:00 - 7:00 PM | Market Update | [Register here](#)

**Thursday, January 11** | 4:30 - 6:30 PM | New Member Orientation | [Register here](#)