

December 16, 2014

President Barack Obama  
The White House  
1600 Pennsylvania Ave., NW  
Washington, DC 20500

Dear Mr. President,

As you and your economic team work to prepare a federal budget for fiscal year 2016, we respectfully request that you omit a proposal included in last year's budget which could raise the tax burden on hundreds of thousands of real estate transactions. The revenue proposal to limit the deferral of gain on real property like-kind exchanges, if enacted, would undermine the functioning of the real estate marketplace, reduce capital investment, and discourage job-creating property improvements and land conservation efforts.

The like-kind exchange rules are a basic tool that facilitates the smooth functioning of the real estate market in the United States. Since 1921, the Internal Revenue 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. This 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 exchanged for stock, when property is exchanged for an interest in a partnership, 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 the like-kind exchange rules in section 1031 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.

The ability to defer gain through a like-kind exchange also leads to lower levels of leverage and debt in commercial and multifamily real estate transactions. The buyer of replacement property in a like-kind exchange is more likely to have a higher down payment because drawing out the cash proceeds from exchange sales results in immediate tax liability. Federal like-kind exchange rules positively affect local government budgets 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. In some geographic markets, the majority of commercial real estate transactions involve the use of like-kind exchanges.

Finally, section 1031 is often a critically important means of facilitating conservation real estate transactions involving important 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. These types of transactions help to achieve the public benefit of securing the protection of environmentally significant land and open space for the future while at the same time enabling private landowners to preserve capital for expansion or diversification of existing operations, retirement, or other needs.

In short, in addition to constituting sound and well-grounded tax policy, our current like-kind exchange rules generate broad economic and environmental benefits that serve the public interest. For these reasons, we hope you will reconsider the merits of your proposal and omit the like-kind exchange provision from your next budget submission.

Thank you for your consideration of this important matter.

Sincerely,

American Farmland Trust  
Asian American Hotel Owners Association  
Alternative & Direct Investment Securities Association  
American Land Title Association  
American Seniors Housing Association  
Building Owners and Managers Association International  
CCIM Institute  
Federation of Exchange Accommodators  
Inland Real Estate Group  
Institute of Real Estate Management  
International Council of Shopping Centers  
Investment Program Association  
Land Trust Alliance  
NAIOP, 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  
Peconic Land Trust  
Real Estate Roundtable  
REALTORS® Land Institute  
The Conservation Fund  
The Nature Conservancy  
The Trust for Public Land

CC: The Honorable Ron Wyden  
The Honorable Orrin G. Hatch  
The Honorable Dave Camp  
The Honorable Sander Levin