January 23, 2012

The Honorable Chris Van Hollen
U.S. House of Representatives
1707 Longworth House Office Building
Washington, DC 20515

Dear Representative Van Hollen:

In the wake of recent press reports proclaiming that you proposed raising the tax on carried interest to pay for the extension of the payroll tax, the undersigned organizations voice our strong objection to that approach. We contest your description of the "carried interest" tax provision that now seems to have become the center piece of your tax fairness campaign.

Unquestionably in the discussions on how to address the current tax code, all provisions should be considered, but in an open and honest manner. In today's political arena, it's gospel that dramatically changing the tax on "carried interest" would only affect hedge fund managers. In fact, the tax increase would squarely hit commercial real estate, since 46% of all investment partnerships in America are real estate and the vast majority of them use a carried interest structure. In simple terms, this is a tax increase on commercial real estate.

Further, the characterization of carried interest as a "tax loophole" suggests that those benefiting from it are somehow evading a legal obligation imposed on others in similar circumstances. This could not be farther from the truth. This structure is not something recently discovered by some sophisticated tax lawyers. Carried interest (or promote) has been used as an investment model in commercial real estate for several decades. It is the way to reward the general partner in a real estate business venture for taking on the countless risks and liabilities associated with long term real estate projects, such as potential environmental concerns, operational shortfalls, construction delays and loan guarantees. In addition to compensating the general partner for assumed risks and potential liabilities, this effectively assures alignment of interests in the partnership.

No matter how it is spun politically, raising taxes on carried interest is bad for the entrepreneurs and small businesses that need capital to innovate, grow, build and create jobs.

Clearly, more than doubling the tax on carried interest (from capital to ordinary income) would discourage risk taking and the type of investment in real estate that we now need across the country. A tax increase on real estate partnerships would limit future economic development projects and slow the creation of desperately needed jobs.

This is a major issue with enormous potential negative unintended consequences. This would be a sea change in tax law. It properly belongs in a discussion about comprehensive tax reform.

Thank you for your consideration of our views.

Sincerely,

American Hotel & Lodging Association
American Resort Development Association
American Seniors Housing Association
Building Owners and Managers Association International
CCIM Institute
Council for Affordable and Rural Housing
CRE Finance Council
Institute of Real Estate Management
International Council of Shopping Centers
NAIOP, The Commercial Real Estate Development Assn.
National Apartment Association
National Association of Home Builders
National Leased Housing Association
National Multi Housing Council
Society of Industrial and Office Realtors
Realtors Land Institute
The Real Estate Roundtable