

# NAIOP

COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION

SOUTHERN NEVADA CHAPTER

May 25, 2010

Representative Shelley Berkley  
405 Cannon House Office Building,  
District of Columbia 20515-2801

**Re: Oppose Real Estate Tax Increases in H.R. 4213, the "American Jobs and Closing Tax Loopholes Act of 2010"**

Dear Representative Berkley:

I urge you to oppose passage of H.R. 4213, the "American Jobs and Closing Tax Loopholes Act of 2010", because it contains a controversial and substantial tax increase on partnerships, with a particularly harmful impact on real estate partnerships and the commercial real estate industry.

The bill may be voted on as early as Tuesday, May 25. The carried interest provision in the legislation is being used to pay for, in part, the extension of expired business tax provisions. Specifically, it would change the tax treatment of carried interest from capital gains to a mix of capital gains and ordinary income. Starting next year, carried interest would be treated 50 percent as capital gains, and 50 percent as ordinary income. After 2013, 75 percent of carried interest would be taxed as ordinary income, at rates as high as nearly 40 percent.

Proponents of the carried interest tax increase often portray it as affecting only Wall Street private equity and hedge funds. In fact, the provision is very broad and would substantially increase taxes on all partnerships with a carried interest component – and, unfortunately, it will most impact real estate ventures.

Partnerships are the dominant business model used in real estate development, ownership and investment of office buildings, apartments, hotels, shopping centers and senior housing. In the real estate industry, a carried interest is not guaranteed income. It is simply a financial interest in the long-term capital gain of a development venture given by the investors to the developer for the substantial risks undertaken. These include potential liability for environmental remediation, litigation costs and repayment of the operating debts of the partnership.

This is a tax increase that will punish real estate entrepreneurs and those that undertake the risks inherent in commercial real estate development. It will hinder the economic recovery and eliminate jobs – all in a time of extreme economic distress for both the real estate industry and the nation. The negative impact on our industry cannot be overstated.

I urge you to vote against this unwise tax increase on the real estate industry.

Sincerely,



Brad Schnepf  
Chapter President