Adaptive Reuse Tax Credit Legislation (Rep.Carey)

Tax Credit:

A new "Affordable Housing Conversion Tax Credit" to facilitate conversion of older, under-utilized office buildings and other commercial real estate to residential housing:

- **20% of the qualified conversion expenditures** with respect to a qualified converted building.
- **30% of qualified conversion expenditures** for buildings located in low-income census tracts.
- Conversion expenditures taken into account in the taxable year converted building is placed in service.
- Eligible commercial buildings are those placed in service at least **20 years before** the beginning of the conversion (i.e. Class B & C underutilized office properties).
- Mixed-use developments (i.e. retail and residential) allowed.

Housing Affordability Requirements:

- **20% or more of residential units** reserved for residents with incomes at or below **80%** of area median income (AMI) for **10 years**, *or*
- **40% or more of residential units** are reserved for residents with incomes at or below **120%** of AMI for **10 years.**

Exclusions:

- Acquisition costs are not eligible for the tax credit.
- Expansion or enlargement of existing building not eligible beyond 10% of the size of the building (determined prior to conversion).

Allocation:

- Per state population.
- Pursuant to a conversion credit allocation plan of a housing credit agency.

Historic Tax Credits (HTC):

- Projects eligible for HTC are eligible for an additional *half* of the conversion credit:10% or 15% if in a low-income census tract.
- Special rules for HTC projects in rural areas: an HTC project is eligible for 15% of the conversion tax credit (up to $2 million).

Transferability of Credit:

- Credit is **transferable** to other parties (can be monetized) allowing REITS to utilize.

Other Tax Credits:

- Will not reduce amounts from low-income housing tax credit, energy-related tax credits, energy-efficient tax deduction, new markets tax credits, etc.

Dollar Cap on Program:

- $10 billion through 2027.

NAIOP Priority Tax Provisions and Legislation

Pending Tax Legislation

⇒ **Affordable Housing Conversion Act:** Rep. Mike Carey (R-OH) to introduce legislation that would create a 20% tax credit for eligible costs of converting a commercial structure to residential, with a certain percentage of units reserved for affordable housing.

⇒ **H.R 5580 - Saving Our Mainstreet American Locations for Leisure and Shopping Act:** Introduced by Reps. Claudia Tenney (R-NY) and Brian Higgins (D-NY) to ensure commercial real estate developers do not suffer tax liabilities in workouts involving debt forgiveness.

⇒ **H.R 5761 – Opportunity Zones Transparency, Extension, and Improvement Act:** Introduced by Reps. Mike Kelly (R-PA) and Dale Kildee (D-MI) to extend certain dates in the opportunity zones program.

Tax Cuts & Jobs Act (TCJA) Provisions

⇒ **Bonus Depreciation Phase-Down:** TCJA enacted bonus depreciation provisions allowing businesses to write off immediately 100% of the cost of eligible property acquired and placed in service after Sept. 27, 2017, and before Jan. 1, 2023 (prior write-off was 50%). ***Bonus depreciation at 100% expired Dec. 31, 2022, and decreases by 20 percentage points each year thereafter*** for property placed in service after Dec. 31, 2022, and before Jan. 1, 2027. In 2023, bonus depreciation was 80% and will be 60% in 2024 (2025 - 40%; 2026 – 20%; 2027- 0).

⇒ **Section 199A** TCJA Section 199A allows individuals, trusts, and estates with pass-through business income to deduct up to 20% of their qualified business income (QBI) from their taxable ordinary income. Owners of certain agricultural or horticultural cooperatives, real estate investment trusts, and publicly traded partnerships, are also eligible for the deduction. ***Expires December 31, 2025***.

⇒ **Section 163(j):** TCJA expanded Section 163(j) to allow all taxpayers with business interest expenses to deduct business interest income up to 30% of the taxpayer's adjusted taxable income (ATI) for the taxable year, and the taxpayer's floor plan financing interest expense for the taxable year. The CARES Act of 2020 increased this to 50% of ATI for taxable years beginning in 2019 and 2020. ***Expires December 31, 2025***.

⇒ **Opportunity Zone provisions:** TCJA authorized tax incentives to encourage private investment in an economically distressed community designated as an "Opportunity Zone" (OZ). Incentives are available on investments held by Qualified Opportunity Funds (QOFs) in OZs, and include a temporary tax deferral for capital gains reinvested in a QOF, (2) a step-up in basis for any investment in a QOF held for at least five years (10% basis increase) or seven years (15% basis increase), and (3) a permanent exclusion of capital gains from the sale or exchange of an investment in a QOF held for at least 10 years. ***Deferral provisions expire December 31, 2026***. (See H.R.5761 in above section).

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