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**The Real Estate Roundtable**

April 19, 2013

The Honorable Dave Camp  
Chairman  
House Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Sander M. Levin  
Ranking Member  
House Committee on Ways and Means  
1106 Longworth House Office Building  
Washington, DC 20515

RE: Tax Consequences of Debt Cancellation – A Return to Prior Law

Dear Chairman Camp and Ranking Member Levin:

As the nation recovers from a historic economic downturn, we are unfortunately reminded that we are subject to broad swings of the economy. This latest decline affected every sector and stretched from Wall Street to Main Street – touching everyone from business owners to homeowners. Thus, at this moment, the country needs tax policies that allow financially troubled taxpayers to efficiently restructure their debts without triggering a tax liability when least able to pay. In fact, a tax system which operates to create a tax liability in the midst of financial hardship seems not only counter-productive, but unreflective of sound tax policy.

The Real Estate Roundtable believes the debt cancellation tax rules should be reviewed and fundamentally reformed. Financially troubled debtors who work out their obligations with lenders – whether with their business debts or home mortgages – should be able to do so without triggering a tax liability. Simple rules that apply fairly should be in place so that taxpayers can emerge from financial distress without facing a tax burden.

As a starting point, the provisions of Section 108, as originally enacted in the Bankruptcy Tax Act of 1980, should be restored. A return to prior law would include the re-enactment of the qualified business debt exception (allowing all business taxpayers to elect to reduce the basis of depreciable property rather than currently recognizing discharge income from business indebtedness) and the equity-for-debt exception for corporations and partnerships.

The following changes would modernize the rules and eliminate current problems encountered under present law:

- Make the Section 108(a)(1)(E) qualified principal residence indebtedness exception (set to expire after 2013) permanent
- Clarify the rules as they apply to partnerships so, for example, partners may claim their share of partnership debt in their personal partner-level insolvency exception, as provided under Rev. Rul. 2014-12

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- Clarify that Section 108(e)(6) applies to partnerships, so that the forgiveness of a debt owed to a partner/creditor becomes a nontaxable contribution to capital to the extent of the partner's adjusted basis in the debt
- Clarify that retirement and other assets exempt from creditors under the taxpayer's applicable state law are not counted as assets in the Section 108(d)(3) insolvency calculation
- Treat all no deducted/limited interest, including personal interest, as if deductible for purposes of Section 108(e)(2)

We also believe that other tax rules implicated in a debt restructuring transaction which operate to create unintended tax consequences should be reviewed. For example, we agree with the Chairman's financial products discussion draft proposal which would eliminate the phantom income problem associated with debt modifications by providing that the issue price of the "new" modified debt instrument cannot be less than the issue price of the "old" debt instrument, reduced by the amount of principal forgiven, if any.

The Real Estate Roundtable appreciates your consideration of these comments and your efforts to make the tax laws more reflective of sound tax policy.

Sincerely,



Jeffrey D. DeBoer  
President and Chief Executive Officer