June 12, 2025

The Honorable John Thune
Majority Leader
United States Senate
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Crapo
Chair, Senate Finance Committee
United States Senate
239 Dirksen Senate Office Building
Washington, DC 20510

Dear Majority Leader Thune and Chairman Crapo:

We support the effort to pressure foreign governments to reform tax policies that unfairly target American businesses and their employees. The undersigned real estate organizations are concerned, however, that the retaliatory tax measures in the House-passed budget reconciliation bill, as currently drafted, could have significant negative, unintended consequences. These include higher mortgage rates, reduced housing supply, decreased investment in urban and rural communities, fewer jobs, and slower economic growth. We urge the Senate to revise proposed Section 899 to exempt non-controlling investments in U.S. real estate, regardless of whether those investment are made through equity or debt. Such an exemption is necessary to ensure U.S. taxpayers continue to have access to foreign capital for real estate investment.

In the last five years, foreign sources have invested more than $213 billion in U.S. commercial real estate, including $57 billion in multifamily housing.[1] This foreign investment expands real estate lending capacity and lowers the cost of capital for new real estate projects, spurs construction and economic activity, supports well-paying jobs, generates returns for retirees and pensioners, and boosts local tax revenue needed to finance schools, law enforcement, and other vital public services. By bridging gaps that domestic sources cannot meet, foreign capital helps put tradesmen and others to work improving U.S. commercial properties, including shopping centers, hotels, and senior housing. Foreign investment in affordable housing brings down housing costs for working families. A key reason foreign investors are attracted to U.S. commercial real estate is the stability and predictability of U.S. tax laws.

As proposed, Section 899 would impose higher tax rates on foreign taxpayers that reside in foreign countries that are deemed to have unfair taxes. Certain taxes would be per-se unfair. In other cases, the proposal directs the Treasury Secretary to identify discriminatory or extraterritorial taxes. The higher tax

[1] CBRE (June 2025). Last year, the three largest sources of foreign real estate investment were Canada, the European Union, and the United Kingdom. Over a 10-year period, Canadian investors, alone, have invested almost $200 billion in U.S. commercial real estate.

rates would escalate every year until the rate reaches 20% above the non-treaty tax rate, which could result in withholding taxes as high as 50%.

The higher tax rates triggered by Section 899 would apply broadly to foreign investment in U.S. real estate. The rates would apply to interest income (foreign lenders to U.S. real estate) and dividend income (foreign equity investors in U.S. REITs), as well as direct investments in U.S. real estate. In many cases, Section 899 would result in higher capital gains taxes as well. The "Super BEAT" provision in Section 899 would create a new minimum tax that reaches smaller foreign real estate investors than the current BEAT provision.

Foreign countries should not be permitted to adopt discriminatory or extraterritorial tax rules that penalize U.S. businesses. The policy response, however, should be tailored and well-designed to create leverage while avoiding unintended negative consequences for U.S. real estate, American workers, and economic growth here at home. Concerns with Section 899 include the following:

- Chilling Impact on Real Estate Investment. We believe that the proposed Section 899 would lead to an exodus of foreign real estate investment as it is phased in. According to Thomas Barthold, Chief of Staff of the nonpartisan Joint Committee on Taxation, Section 899 will lead to a "decline in foreign demand for U.S. direct and portfolio investment" and the lower foreign demand for U.S. investment would also reduce U.S. asset values and lead to a revenue loss for the U.S. government towards the end of the budget window.[2] Historically, foreign investors have been attracted to the U.S. real estate market because of its liquidity, stability, and regulatory certainty. U.S. tax rules are more predictable than those of our peer countries. Due to the unique nature of Section 899 as a retaliatory tax, even in draft form, it is having a chilling effect on potential foreign investment in U.S. real estate. Foreign real estate investors are pausing or delaying potential investments due to this abrupt policy shift.

- New, Unintended Tax Burden on U.S. Real Estate Owners. Commercial real estate loans frequently include provisions in which the borrower contractually agrees to bear the risk of changes in the tax law. For existing loans, any additional withholding tax imposed under Section 899 would be the responsibility of the U.S. borrower, typically in the form of a gross-up payment to the foreign lender. As a result, the economic burden of the Section 899 tax could fall on the U.S. borrower rather than the foreign lender. For real estate borrowers who are often sensitive to cash flow fluctuations, this could represent an unexpected and significant increase in debt service payments—one that many may not be adequately capitalized to absorb.

- Unfair Retroactive Effect. The higher tax rates triggered by Section 899 would apply not only to future investments, but to the income generated from prior transactions negotiated based on a clear understanding of applicable tax rates under bilateral tax treaties. This retroactive application of higher tax rates to investments made years, or decades, earlier is unfair and would undermine global confidence in U.S. property markets.

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[2] Michael Rapoport, Trump 'Revenge' Tax Would Cut Foreign Investment, Congressional Panel Says, Bloomberg, May 30, 2025.

For all of these reasons, we urge the Senate to revise Section 899 to exempt non-controlling investments in U.S. real estate, regardless of whether those investments are made through equity or debt. Any exemption for passive investment should apply broadly to investors in U.S. real estate who do not control the day-to-day management and conduct of the U.S. real estate business. Relief should also be considered for existing transactions and investments made and negotiated based on well-settled current tax rules and treaties before Section 899 becomes law.

A retaliatory tax on foreign capital that is highly mobile and easily redirected to other regions of the world is unlikely to inflict significant losses on foreign taxpayers or create leverage over foreign governments. These investors simply will redirect their investments elsewhere. The result will be less investment, lower property values, and reduced tax revenue for the U.S. Treasury. The Joint Committee on Taxation projects that Section 899 will ultimately result in a net revenue loss due to anticipated capital flight. In addition, by applying the retaliatory tax measures to both debt and equity investments, the negative consequences will extend well beyond directly affected foreign taxpayers and impacted U.S. taxpayers. They will drive up borrowing costs and raise interest and mortgage rates for all U.S. real estate borrowers.

An exception for non-controlling investments in real estate would preserve access to foreign sources of equity and debt capital, avoid an unnecessary spike in mortgage and interest rates, and prevent the cost of capital from rising for U.S. real estate businesses. Such an exception would go a long ways towards protecting the important gains from other tax provisions in the reconciliation bill and avoiding harmful, unintended consequences for U.S. real estate and the broader economy. If you or your staff have questions, please contact Real Estate Roundtable Senior V.P. and Counsel Ryan McCormick (rmccormick@rer.org, PH: 202-639-8400). Thank you for your attention to this matter.

Sincerely,

American Hotel & Lodging Association
American Resort Development Association
American Seniors Housing Association
CRE Finance Council
International Council of Shopping Centers
Mortgage Bankers Association
NAIOP, the Commercial Real Estate Development Association
Nareit
National Multifamily Housing Council
National Apartment Association
The Real Estate Roundtable

CC: Members of the Senate Finance Committee