

## REAL ESTATE-RELATED PROVISIONS

### H.R. 6111 – THE TAX RELIEF AND HEALTH CARE ACT OF 2006

December 2006

*The 109<sup>th</sup> Congress ended shortly after passing a mammoth piece of legislation covering tax, trade, energy and health care issues. H.R. 6111, the Tax Relief and Health Care Act of 2006 (TRHCA) passed on a substantial bipartisan vote: 367 – 45 in the House and 79 – 9 in the Senate. President Bush will sign the bill. Several provisions are of interest to REALTORS.<sup>®</sup> Note that earlier in 2006, Congress provided alternative minimum tax relief for the 2006 tax year and extended the 15% capital gains tax rate through 2010.*

#### Extension of Expired and Expiring Provisions

*Leasehold Improvements:* Congress continues its stopgap approach to permitting a 15-year recovery period for leasehold improvements made either by or on behalf of tenants of non-residential real estate. The provision had expired as of December 31, 2005. Congress has renewed it retroactive to January 1, 2006. The provision will remain in effect through December 31, 2007. Had this extension not been enacted, the recovery period for 2006 and 2007 would have been 39 years.

*Brownfields Cleanup Expenditures:* The general rule for the tax treatment of site preparation expenditures is that the developer must capitalize them into the basis of the land being developed. An exception to this rule expired as of December 31, 2005. The expired provision allowed developers to take deductions for the costs of cleaning up brownfields pollutants in the year the expense is incurred. H.R. 6111 renews the provision retroactive to January 1, 2006. The deduction will remain in effect through December 31, 2007. Notably, the legislation also expands the categories of pollutants eligible for the deduction to include petroleum products.

*Deduction for Sales Taxes Paid:* Individuals who live in states that do not have an income tax receive no tax benefit for the state-level taxes they pay. A special rule was created for 2005, however, that permits a taxpayer living in a state without an income tax to deduct either actual, documented sales taxes paid or to take a deduction based on an IRS table. An election is also provided so that individuals in other states may deduct *either* their state income taxes or the state sales tax. This provision was made effective for the 2006 and 2007 tax years.

*New Markets Tax Credit:* The New Markets Tax Credit was created to facilitate business investment in low-income areas that create a so-called “community development entity” (CDE). The purpose of the CDE is to provide capital for creation of businesses in those communities. The tax credit is available for investors in those entities. The program was originally contemplated as an urban development mechanism. TRHCA extends the tax credit to designated rural areas, as well. A tax credit allocation of \$3.5 billion is available for 2007. TRHCA provides an additional \$3.5 billion allocation for 2008.

## Energy Tax Credits

*Energy Production:* A tax credit for electricity production from a variety of sources expired at the end of 2005. The amount of credit varies, depending on the technology. TRHCA renews and extends the credit for some, but not all technologies through December 31, 2008. The bill also designates additional technologies that will qualify for the credit.

*Construction of Energy-efficient Commercial Buildings:* Legislation enacted in 2005 created a tax credit of \$1.80 per square foot for the development of energy-efficient commercial buildings. The credit applies if developers adhere to guidelines issued by designated standard-setting bodies. As originally enacted, that credit was available for construction placed in service in 2006 and 2007. TRHCA extends eligibility for the credit through 2008.

*Photovoltaic and Solar Water Heating Property:* A tax credit is available in 2006 and 2007 for owners of residential property who install certain qualified alternative photovoltaic and solar water heating property. TRHCA makes the credit available through 2008. Similarly, a tax credit available in 2006 and 2007 is now made available in 2008 for owners of certain commercial property that install these and similar alternative energy technology on their property.

## Other Provisions

*Mortgage Insurance Premiums:* The legislation included a one-year-only provision that would allow some 2007 home buyers to deduct the cost of their mortgage insurance (MI) premiums. The deduction applies only to MI policies issued in 2007 for homes purchased in 2007. The deduction would apply not only to private MI, but to FHA, VA and Rural Housing premiums, as well. The new deduction is available to individuals with less than \$100,000 adjusted gross income on a joint or single tax return (\$50,000 for married filing separately returns) and phases out for incomes above \$110,000 (\$55,000 for married filing separately). Individuals who claim the deduction are not permitted to prepay premiums that are otherwise due after 2007. The provision expires after 2007.

*\$250,000/\$500,000 Exclusion on Sale of Principal Residence:* In order to utilize the benefits of this exclusion, a home seller must have used the property as a principal residence for two of the preceding 5 years. A special rule was created for military and Foreign Service officers allowing them to suspend the 5-year requirement for as long as 10 years if they were on assignment. That special rule has now been expanded to include individuals who are on assignment from any of several designated intelligence or homeland security positions.

*Veteran's Mortgage Bonds:* Proceeds from state-issued private activity bonds may be used to fund mortgages for veterans of active military service who are first-time homebuyers. TRHCA waives the requirement that the qualified veteran be a first-time homebuyer. Thus, mortgages can be offered to all qualified veterans, even if they have previously been homeowners.