



The Voice of the 1031 Industry



An Update from the FEA Government Affairs Committee

January 2016

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## GOVERNMENT AFFAIRS UPDATE

*Brent Abraham, Suzanne Goldstein Baker, Max Hansen, Chairs*

### PATH Act Furthers Tax Reform Preparations

With the passage of the *Protecting Americans from Tax Hikes Act (PATH)* on December 18, 2015, most of the temporary tax breaks known as "tax extenders" are now part of the permanent tax code.

Section 1031 was not included as a "pay for" in the legislation.

House Ways and Means Committee Chairman Kevin Brady (R-Tex.) was quoted as saying that the passage of the PATH Act is good for tax reform; it clarifies the contents of the tax code and paves the way for future tax reform efforts. "Good tax policy is going to blossom, and we're going to have a chance to give [tax reform] oxygen over 2016 and 2017," he was quoted by Tax Analysts. Brady was quoted as supporting international tax reform in 2016 and broader reform after the presidential election. House Speaker Paul Ryan (R-Wisc.) has made similar comments.

### FIRPTA Rules Revised

As part of the PATH Act, both eligibility and withholding for the *Foreign Investment Real Property Tax Act (FIRPTA)* rules were amended. Originally passed in 1980, FIRPTA is a means to tax gains on non-U.S. residents' income from the sale of real property.

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John Wunderlich

## Thank You to Our 1031 PAC Donors

Thank you PAC donors! The FEA 1031 PAC is a vital part of our strategy to influence Congress to keep 1031 exchanges.

*For information on how to make a personal PAC contribution, please contact Naomi Weitzel at [naomi.weitzel@cdec1031.com](mailto:naomi.weitzel@cdec1031.com)*

## Save the Date!

**FEA Mid-Year Conference and  
Lobby Day  
March 15-16, 2016  
Washington, D.C.**

**FEA 2016 Annual Conference  
September 14 - 16, 2016  
Las Vegas, Nevada**

## Affiliates First

**FEA thanks our Affiliate Members for their support, and in return, FEA members are encouraged to support our Affiliate Members.**

Several changes were approved:

- A foreign investor will be able to hold 10% (up from 5%) of an ownership stake in a publicly-treated REIT without triggering FIRPTA liability.
- FIRPTA withholding is increased from 10% to 15% of the gross purchase price.
- The rules for determining a "domestically controlled REIT" status are revised.
- Foreign pension funds are exempted from FIRPTA taxation.
- The "cleansing rule" will not apply to REITs and RICs.
- A narrowly targeted provision exempts qualified shareholders from FIRPTA.

## Presidential Candidate Tax Positions

Several presidential primary candidates have released tax plans. Williams and Jensen, FEA's lobbying partner has compiled the Republican and Democratic presidential primary candidates' tax plans, [available for download here](#).

## California Franchise Tax Board

As tax filing season sets in, and some 2015 exchanges will terminate on the tax filing due date, beware that the California Franchise Tax Board has taken the position that there is no authority by which a QI is relieved of the duty to withhold under the following circumstances: 1) an exchange spans two calendar years, 2) boot is received in the second year, 3) the taxpayer reports the failed exchange as a taxable sale in Calendar Year 1, recognizes all gain and pays all taxes due when the Year 1 tax return is filed, and 4) the exchange terminates after the tax return has been filed. FTB's position is that the statute does not include an exemption from withholding for prepayment of the full tax liability, therefore the QI cannot rely upon a letter from the taxpayer's CPA, or any other evidence, certifying that the taxes have been paid. Instead, FTB's position is that the QI must withhold, using the Year 1 Form 593, submit the withholding, and then the taxpayer will be required to file an amended return, reporting the subsequent withholding, and then wait for a refund of the overpayment.

## Congressman Stivers Article Supporting 1031 Featured in *The Hill*

U.S. Representative Steve Stivers, (R-Ohio) calls for tax reform that retains like-kind exchanges in a recent article in *The Hill*. In "Raising taxes on property exchanges would kill jobs, raise rents, deepen debts," the Congressman calls Section 1031 a "longstanding, commonsense tax incentive [that] encourages investors to seek out new opportunities without going deep into debt." Further, he writes that 1031 exchanges have created jobs for Ohioans and economic activity in the state, allowing many Ohioans to expand and grow their businesses. The article

## Affiliates First Webpage

Click on the logos below for more information.



Atlantic Capital



appeared in *The Hill* on January 6, 2016. [Read the full article at The Hill.](#)

## Affiliates First

### FEA Recognizes Affiliates First on Website

Use an FEA Affiliate Member to assist you with your business. Check out the [FEA Affiliate Members page](#) dedicated to our affiliate partners at 1031.org. Find a list of Affiliate Members in alphabetical order by company, with their key contacts listed.

*(Be sure to login first to click on a company name to see more details about that member company.)*

Visit the Affiliates First page on [www.1031.org](http://www.1031.org)

## Affiliate Member Spotlight



### Texas Capital Bank

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Founded in 1998, Texas Capital Bank is a strong business and private client bank. Our team is comprised of experienced financial professionals who are entrepreneurial in nature and who understand each of our client's business objectives. We believe in building long-term relationships and in assisting our clients to meet their financial goals. To this end we have developed and are proud to offer a 1031 Exchange Solution to QIs. In addition to being one of the strongest banks in the country, our primary focus is centered on the personal relationships we create with our clients. We think that's the right way to work. To find out more about how we can help you, please visit [www.texascapitalbank.com](http://www.texascapitalbank.com).

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## About the FEA Government Affairs Committee

The FEA Government Affairs Committee monitors legislative and regulatory activity, regularly meets with and provides commentary to the IRS, House Ways and Means Committee, Senate Finance Committee, and state and federal legislators. It proactively responds to legislative and regulatory initiatives at both the state and federal levels and advocates on behalf of the FEA and consumers. The GAC has provided input to state legislatures and regulatory agencies that shaped their approach to the licensing and regulation of exchange professionals and



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influenced state taxation and procedures for exchange transactions. GAC activities are led by co-chairs Brent Abrahm, Suzanne Goldstein Baker, and Max Hansen, working closely with our lobbying partners at Williams & Jensen.

The GAC is grateful for the vigilance of our members. If you become aware of any 1031 legislative or regulatory activity in your state, please contact one of the GAC co-chairs.

The commitment and perseverance of FEA members, the Government Affairs Committee, and our volunteer leaders have made the FEA The Voice of the 1031 Industry.

### Federation of Exchange Accommodators

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