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# Client Bulletin



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## Enforcement of Ohio's Texting While Driving Ban

The texting while driving ban went into effect on August 31, 2012. Enforcement of the law, however, did not begin until March 1, 2013. The texting while driving ban encompasses two different sections of the Ohio Revised Code. Enforcement of R.C. § 4511.204 "Driving while texting" and R.C. § 4511.205 "Use of devices by persons under 18 years of age" differs based on the age of the offender. The texting while driving ban is stricter for drivers under 18 years of age.

For adult drivers age 18 and older, R.C. § 4511.204 prohibits driving while using a handheld electronic wireless communications device to write, send, or read a text-based communication. A violation of R.C. § 4511.204 is a secondary offense, meaning the driver cannot be stopped for the sole purpose of determining whether a violation has occurred or for the sole purpose of issuing a ticket, citation, or summons for a violation of that law. Additionally, a violation is a minor misdemeanor, which means the driver could be fined up to \$150.

For drivers under 18 years of age, R.C. § 4511.205 prohibits driving while using in any manner an electronic wireless communications device. "Electronic wireless communications device" includes: (1) a wireless telephone; (2) a personal digital assistant; (3) a computer, including laptop computer and a computer tablet; (4) a text-messaging device; (5) any other substantially similar electronic wireless device that is designed to communicate via voice, image, or written word. Exceptions to the enforcement of R.C. § 4511.205 include using a wireless communications device for emergency purposes (e.g., to call a hospital, law enforcement agency, etc.), using such a device while the vehicle is in a stationary position and outside a lane of travel, and using a navigation device in a voice-operated or hands-free manner. A violation of R.C. § 4511.205 is a primary offense, meaning the driver can be stopped for the sole purpose of such a violation. For the first violation, the driver will be fined \$150 and receive a 60-day license or permit suspension (the fine and the license or permit suspension are mandatory). If the driver already has been previously convicted of violating that section, the driver will be fined \$300 and receive a one-year license suspension.

## Commercial Developers Resource Supplement in Business First

On the firm's website is a reprint of an article the firm's Andrew P. Wecker, as President of the Central Ohio Chapter of NAIOP, the Commercial Real Estate Development Association, wrote for a Commercial Developers Resource Supplement to Business First.

*Continued . . .*

## Federal Income Tax Reform and its Impact on Business and Real Estate

Ohioans are likely to see a great deal of activity at the federal and state levels on tax reform. Broadly speaking, this is sometimes understood as eliminating exceptions to general rules (broadening the base) and either lowering or keeping overall rates the same (depending on whether the stated goal is to remain revenue neutral or raise taxes instead). At the federal level, two items in particular impact the owners of commercial real estate and businesses:

- 1) Depreciation of tenant improvements;
- 2) Carried interest

### Depreciation of Tenant Improvements

Most owners in Central Ohio are accustomed to seeing commercial and industrial leases with three to five year terms. However, under the federal tax code, the depreciation of customized improvements bears no relation to the term of the lease – there is a 15-year depreciation schedule. And even that amount must be reauthorized yearly or it automatically reverts to a 39-year depreciation schedule.

Real estate can decline or sit vacant for a number of reasons, but two of the leading ones are owners not having enough cash to pay for tenant improvements and leasing commissions. To the extent tax reform is about eliminating “loopholes,” this is an example in which the exception works more for the government than the taxpayer, since a hard and fast 15-year depreciation schedule on tenant improvements may often be three to five times longer than the underlying lease.

### Carried Interests – Tax as Capital Gains or Ordinary Income?

As discussed in the trade and general media, a carried interest is often portrayed as an instance of abuse by wealthy hedge fund managers who structure their compensation to receive it as capital gains rather than ordinary income. However, the possible cure (taxing carried interests as ordinary income) may indiscriminately affect not only the rich, but also those who hope someday to become more prosperous through their own sweat equity.

Carried interests (sometimes referred to as “carry,” “promote interest” or “promote”) is a financial interest in the capital appreciation and success of a venture, from a capital fund to a real estate development to a growing business (think of a restaurant owner negotiating a partial ownership interest with a promising young chef, or the “Microsoft secretary,” in either case, employees who forgo higher salaries or wages in return for a share in the company). The investors and owners are willing to give an equity stake to the person actively involved in the ultimate success of the project to compensate that person for risks and foregoing a more steady income from a salary or hourly paycheck.

Carried interests have typically been taxed at capital gains tax rates, but as Congress has debated taxing carried interests instead at ordinary income tax rates, it is important to consider what that means for:

- ◆ Business formation and start-ups
- ◆ Economic activity and job creation
- ◆ Retroactive tax increases, to the extent any agreements already in place could be taxed differently by Congress

## Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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