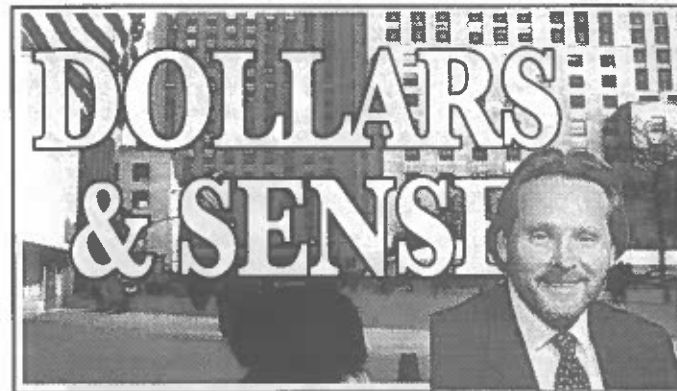


Foreign investment law hinders additional economic growth



with Bob Knakal

Q. You recently wrote that foreign investment is extremely active these days. Do you think this trend will continue?

A. Foreign investment in our commercial real estate market is approaching all-time highs as investors are attracted to the relative stability of both our economy and our political system. I believe that foreign investors will continue to come to the U.S., and particularly New York City, in growing numbers.

If you are optimistic enough to believe that our elected officials in Washington may actually get something accomplished on the tax reform front, they may actually create an additional incentive for foreigners to purchase real estate in the U.S. This would be effectuated if U.S. real estate was not unfairly disadvantaged by a law which should have never have been put into the tax code to begin with.

I am referring to the Foreign Investment in Real Property Tax Act of 1980, commonly referred to as FIRPTA. U.S. tax laws and regulations impose excessive tax barriers on foreign capital investment in U.S. real estate and should be withdrawn or modified significantly. The central obstacle to greater capital investment in U.S. real estate by non-U.S. investors is FIRPTA.

Based upon the fears of some politicians in the Midwest, who were originally concerned about limiting foreign con-

trol over U.S. farm land, FIRPTA was proposed and passed by congress to limit what foreigners could do with "our property." FIRPTA requires foreign persons who dispose of U.S. real property interests to pay taxes in the U.S. on any gain realized on the disposition. This process imposes considerable administrative burdens, not only on foreign investors disposing of their U.S. real estate assets but also, on the purchasers of such properties who are responsible for administering withholding taxes.

Additionally, the law requires foreign investors to file a U.S. income tax return at the end of the year in which they sell their real property interests.

Further political support for FIRPTA was seen noticeably in the mid 80's when Japanese investors were actively purchasing trophy assets in New York City, most notably Rockefeller Center. It is hard to imagine that there is any fundamental basis for this concern. Properties controlled by foreign owners are generally managed by U.S. companies, leased by U.S. companies, serviced by U.S. companies and produce tax revenue paid to New York City. The attorneys representing these investors are likely U.S. firms as are their title insurers. What is the basis of the fear people have about buildings being owned by overseas investors? In the nearly 30 years that I have been brokering properties in New York City, I have yet to witness a foreign investor acquiring a property here, picking it up, and transplanting it back to their homeland.

Real estate is unfairly treated relative to other types of investments in the U.S. by foreign persons as they are not required to pay gains taxes upon the disposition of any other assets. Thus, FIRTA unfairly discriminates against U.S. real estate as an asset class. We believe that U.S. policy makers should move swiftly to eliminate or modernize FIRPTA. Doing so would encourage foreign institutional investors and high net worth individuals to look more favorably on U.S. commercial real estate markets.

The argument against doing this is that it would be difficult to get traction for such a modification as the overwhelming majority of the benefit of a FIRPTA modification would flow to a foreign party.

It is difficult to understand that position and here's why; equity investments from any source would be stimulative to our market and our economy. The extent to which the U.S. and its citizens would benefit, is a positive occurrence regardless of the benefits to others. The additional capital creates a healthy dynamic within our marketplace, would help to create jobs and allow for growth. While economic growth is not dependent upon foreign real estate investment, our real estate market would be enhanced significantly by the elimination or modification to the FIRPTA laws. All this would do is to put real estate on a level playing field with every other type of investment that foreign investors can make in the U.S.