

AFL-CIO

LEGISLATIVE ALERT

December 12, 2022

The Honorable Richard Neal, Chairman
The Honorable Kevin Brady, Ranking Member
Committee on Ways and Means
United State House of Representatives
Washington, D.C. 20515

Dear Chairman Neal and Ranking Member Brady:

I am writing on behalf of the AFL-CIO in opposition to the Retail Revitalization Act of 2021 (H.R. 840) and to urge you and your colleagues on the House Ways and Means Committee not to include it in any tax extender package during the lame-duck session. This bill would create a large and ill-defined loophole in our corporate tax code that would likely benefit some of our country's largest and most profitable companies at the expense of smaller Main Street competitors and the public. H.R. 840 would expand the reach of the Real Estate Investment Trusts (REITs) tax structure that has been used to weaken workers' and their unions' right to bargain with their actual employers, and would strengthen the grip of giant Wall Street firms on our communities.

REITs were created to facilitate passive real estate investment. A REIT's income is exempt from corporate income taxes on the theory that its income is not from operating businesses. Expanding the ability of REITs to own and profit from operating companies essentially turns the REIT structure into an all purpose invitation to tax evasion by any business that uses real estate.

Given the potential impact of H.R. 840 on our corporate tax system and on workers rights, it is particularly striking that there has been a near total absence of any analysis or public debate on the tax and public policy questions it raises. The Congressional Research Service has not provided any analysis, nor has Congress held any hearings. Further, the Congressional Budget Office has not provided a cost estimate of the bill.

H.R. 840 would increase a REIT's permissible stock ownership and constructive stock ownership to allow it to own 50% of an operating tenant. In addition to our broad tax policy concerns, the labor movement opposes such an expansion of REITs based on our considerable first-hand experience of the harm to workers that arose following the enactment-- also under the banner of "modernization"-- of similar legislation in 1999. That legislation allows lodging REITs to lease facilities to their own Taxable REIT Subsidiaries (TRS) without the REIT losing its favorable tax status if certain conditions are met.

In the 1999 legislation, Congress attempted to provide some worker protection by prohibiting a TRS from “directly or indirectly” operating or managing a lodging facility. But because the Internal Revenue Code does not define the operative terms, and in the absence of any administrative guidance and oversight, lodging REITs have narrowly construed, or even disregarded, these restrictions, thereby allowing them to control labor costs, while avoiding having to comply with labor laws.

H.R. 840 appears to expand an already destructive tax loophole—an expansion that could potentially do serious damage to the corporate tax code as a whole. For all the reasons we identify, we respectfully request that the Retail Revitalization Act of 2021 be excluded from any tax extender package. Please contact Greg Jefferson at gjefferson@aficio.org for additional information or any questions.

Sincerely,



William Samuel
Director, Government Affairs

cc: all members, House Committee on Ways and Means