Special Announcement for October 8, 2004

Congress Acts on FSC/ ETI Legislation Affecting the Leasing Industry

A House-Senate conference committee has given final approval to a $145 billion tax measure that contains a number of key provisions affecting the leasing industry.

The conference agreement on the $145 billion Foreign Sales Corporation/Extraterritorial Income (FSC/ETI) reform legislation (H.R. 4520) provides transitional relief for FSC/ETI leases in light of the repeal of FSC/ETI. Toward this end, ELA worked to obtain and the conference agreement includes full transitional relief for FSC/ETI leases subject to a binding contract as of September 17, 2003. By definition, the binding contract language includes purchase options, renewal options and replacement options. This transitional language was necessary so that U.S. companies that have acted as lessors in multi year leases of U.S manufactured goods would receive the benefits that they relied upon when they entered into these transactions.

As a partial revenue offset for this legislation, the conference agreement contains $26.6 billion over ten years from proposed changes in the tax treatment of certain leasing transactions. This legislation contains a number of depreciation changes, a passive loss regime which addresses the monetization of lease obligations, equity investment, and risk of loss as well as a provision addressing like kind exchanges of certain leases and lease property.

This bill sets forth a general effective date of March 12, 2004 which was the House effective date rather than the super-retroactive effective date in the Senate bill. ELA opposed all retroactive tax increases and therefore opposed the effective dates of the Senate proposals and any rule that had retroactive effect on any transactions entered into prior to the effective date of the House-passed leasing provisions of March 12, 2004.

In addition, the conference agreement contains an ELA endorsed provision providing a special rule for qualified technological equipment (QTE) leases so that standard renewal options of no more than an additional 24 months do not count against the "5 year" rule for purposes of the 125% depreciation rule. This rule will be particularly helpful in the medical and telecom fields and would encompass such diagnostic imaging equipment as MRI's, CT scanners and ultra sound equipment as well as high tech microprocessors.

This legislation is expected to receive final approval by both Houses of Congress within days and signed by the President.

For further information on ELA's policy positions as well as legislative developments visit ELA online or contact David Fenig, ELA's Vice President for Federal Government Relations at dfenig@elamail.com